

The Power of Fatwâ in Indonesia: An Analysis of MUI's Controversial *Fatwâs*

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ABSTRACT

This study aims to investigate socio-political factors that make certain legal opinions (*fatwâs*) in a Muslim context enforceable and powerful. Although these legal opinions are not binding in principle, their supporting agents engender a degree of efficacy and enforceability. They are followed and abided when external factors, either the state or society, politically or voluntarily support the implementation of those *fatwâs*. These external factors of *fatwâ* are largely understudied, especially in the light of how *fatwâ* gains its enforceability and power to attract people following and complying with *fatwâ rulings*. By studying controversial *fatwâs* of MUI (Council of Indonesian Ulama), namely on the banning of Ahmadiyah and the prohibition of secularism, pluralism, and liberalism in religion of Islam, this article sheds a light more comprehensively on the relationship between *fatwâ* and external factors that make this non-legal binding opinion powerful and enforceable.

Keywords: Controversial, Enforceability, Fatwa, MUI, Muhammadiyah, NU

ABSTRAK

Studi ini bertujuan untuk menginvestigasi faktor-faktor sosial-politik yang membuat suatu opini hukum (*fatwâ*) di masyarakat Muslim menjadi otoritatif dan kuat. Meskipun pendapat-pendapat hukum tersebut pada dasarnya tidak mengikat, namun agen-agen luar yang mendukungnya membuat fatwa tersebut mempunyai level kekuatan tertentu dan dapat diterapkan. *Fatwâ-fatwâ* tersebut diikuti dan ditaati ketika faktor-faktor external, baik faktor negara maupun masyarakat, secara politik maupun sukarela, mendukung pelaksanaan opini yang pada dasarnya tidak mengikat ini. Hanya saja, faktor-faktor external ini tidak mendapatkan porsi kajian yang selayaknya, khususnya yang berkaitan dengan bagaimana suatu *fatwâ* dapat diterapkan dan mempunyai kekuatan sehingga orang mengikuti dan menaati

fatwâ tersebut. Dengan meneliti dan membahas tentang fatwa-fatwâ kontroversial MUI, yakni tentang pelarangan Ahmadiyah dan sekularisme-pluralisme-liberalisme, kami berharap dapat menjelaskan hubungan antara fatwâ dan faktor-faktor eksternalnya untuk mendapatkan gambaran dan jawaban tentang bagaimana sebuah fatwâ memperoleh kekuatan dan otoritas sehingga dapat diterapkan.

Keywords: Controversial, Enforceability, Fatwa, MUI, Muhammadiyah, NU

Although *fatwâ* (plural: *fatâwâ* or *fatwâs*) as opinions of law are not legally binding in Islamic legal tradition, but their influence on the heart of Muslim society is still paramount. They are an important source of guidance for many devout Muslims. The *fatwâs* which provided either by a person or an institution influence not only a man who ask the fatwâ, but also give impact on a wider audience. In the early stage, the *fatwâs* were issued by major jurist-consults (*mufitts*). The impact of them might be limited to a person who asks the question to them (*mustafti*). According to Hallaq (1993), nearly all *fatwâs* revolve around a person or persons in highly particular circumstances.¹ But, the efficacy of *fatwâs* becomes much more compelling when jurist-consults provide collectively their opinions of law. Furthermore, there are many legal apparatus that support the implementation of those *fatwâs*.

This is what happens in Indonesia. Although some clerics still provide *fatwâs* sporadically in some regions, the most influential is the *fatwâs* issued by national organizations such as MUI (The Council of Indonesian Ulama), NU (Nahdatul Ulama), Muhammadiyah, or Persis (Persatuan Islam). Studies on *fatwâ* issued by these organizations have been conducted by scholars. Atho Mudzhar wrote about *fatwâs* of MUI in 1993,² and M.B Hooker described a large number of *fatwâs* from various organization according to general themes.³ Meanwhile, Moch. Nur Ichwan discussed the changing position of MUI during the reformation era. While MUI was considered supportive and even legitimating policies during President Habibî's presidency, in the time of President Abdurrahman Wahid, MUI was deemed oppositional to government's political positions and policies.⁴ In addition, Mun'im Sirry examined MUI's controversial fatwas and found out that they were not only stimulating a degree of violence as some scholars suggest, but also fruitful for a public debate and discussion among Islamic groups in Indonesia.⁵

Although these previous studies dealt with MUI *fatwâs*, their main concern was not to study how the *fatwâs* are enforced and what factors

and strategies used to make them abided and applied in society. The enforceability of *fatwās* in public life is still understudied, which leaves us wondering why some *fatwās* are enforced and have practical impacts on society and some others are not. This ignorance about the efficacy of the *fatwās* stimulates a question of how the *fatwas*, which actually have no legal binding, becomes powerful (having an appeal for enforcement through certain apparatus) to deal with social and religious issues in Indonesia. This article, in fact, aims to address this important question.

In this regard, this study uses a socio-political approach to show the operation of the *fatwās* and its “apparatuses” by which their status becomes powerful. Inspired by Michel Foucault’s notion of “relations of power”,⁶ the term “power” in this study is not only understood as intrinsic authoritative force within *fatwā* that engenders obedience of its petitioners (*mustaftis*) and audiences but rather as a network of authoritative and attractive forces, including external forces stemming from apparatuses of the *fatwas*, that makes such *fatwā* embodied in a personal, political, or social life. When *fatwā* is powerful or efficacious, it means that that *fatwā* has necessary apparatuses and forces to make it enforceable, obeyed, and implemented by its targeted audiences.

In this regard, first, we will provide a brief account of *fatwās* in Indonesian context, then focus the discussion on *fatwās* of MUI, especially which dealt with some controversial issues, second, identify social and political factors that make *fatwās* efficacious, and finally draw a conclusion of the grounds of the efficacy of *fatwās*.

FATWĀS IN INDONESIAN CONTEXT

Fatwā, to follow Nico J.G. Kaptein’s term, in its traditional definition refers to an opinion of a particular topic from the point of view of Islamic law, given by an acknowledged expert, known as *mufti*. The practice of issuing *fatwā* called *iftā’*. *Fatwā* is normally given at the request of someone, called *mustafti* (*fatwā* practitioner).⁷ The conditions required by the classical doctrine for the exercise of the profession, or even for the delivery of *fatwā*, are: Islam, integrity or *ʿadāla*, legal knowledge (*ijtihād*), or the ability to reach, by personal reasoning, the solution of a problem.⁸

The important collection of the personal *fatwā* emerged in Indonesia was issued by Shafi’ite *mufti* in Mecca, Ahmad Dahlan (d.1886), based on questions coming from Malay-Indonesian Archipelago. The name of

the collection is *Muhimmât al-nafâ'is fî bayân as'ilat al-hadith* (The precious gems treating the explanation of questions about current topics). It contains a wide range of topics ranging from Islamic rituals, inheritance, to the relationship with the non-Muslim Dutch government. In fact, this *fatwâs* collection mainly relied on Shafi'ite sources in sixteenth century, namely Ibn Hajar Haitami's *Tu%fa* (the Gift) and al-Jamal al-Ramli's the *Nihâya* (The Ultimate Goal).⁹ In other words, the *Muhimmât* represented the *fatwâs* which were issued by using *taqlid* rather than *ijtihad* as the main methodology.

Another example of personal *fatwâs* comes from modernist scholar, namely Ahmad Hassan (1887-1958). He regularly provided religious consultation in a journal called *Pembela Islam* (The defender of Islam) in between 1929-1935. Instead of harnessing certain jurisconsults school of thought, he confidently referred directly to Qur'an and Hadith to derive certain legal opinions. This attitude was actually a result from the influence of Islamic reformists' thought, such as Muhammad Abduh and Rashid Rida.¹⁰ They advocate the importance of *ijtihad* instead of *taqlid* especially in terms of deriving *fatwâs*. Even though Ahmad Hassan's religious opinions based on *ijtihad*, not the *taqlid*, his *fatwâs*' type was still traditional in a sense that it went around individuals.

Nowadays *fatwâ* in its traditional meaning which issued by individual *mufitis* still exist in Indonesia, but their influence seem to be decreasing compared to the *fatwâs* which produced by group of *ulama* (religious experts) of certain religious institutions. In this regard, the character of the *fatwâs* is more collective in terms of *mufiti* and the audience.¹¹ The committee of *ulama* (religious clerics) usually holds certain discussion forum (*shura*) in the aims of issuing *fatwâs* for Islamic community. Then, those modern *fatwâs* are communicated to their petitioners (*mustaftis*) not only in an immediate way and in person, as the case with classical *fatwâs*, but also utilizing the available media, with the result that *fatwâs* now reach a wider spectrum of community members.¹²

The largest organization which has been formulating the *fatwâs* through process of consultation, discussion, and collective reasoning (*shûra*) is NU. The name of the forum in which the collective reasoning session held is *Bahsul Masail* (The Discussion of Issues).¹³ Soon after its inception in 1926, NU held such session in Surabaya to give a proper opinion on problems and issues at the time. The *Bahsul Masail* (Ar. *Bahthul*

Masa'il) of NU continues to be held on a regular basis ever since and the result of the session is published for its member and for Indonesian society at large.¹⁴ At the beginning NU preferred to use certain kind of *taqlid* (following previous opinions of Islamic legal scholars) in issuing *fatwās*. In this regard, the method initially was to take the consensus of Nawawi and al-Rafiʿi, respectively the *Minhaj* and the *Muharrar*. If this failed to answer the *Minhaj* had preference, but on failure then al-Rafiʿi. In the case of further failure, then the majority of Shafiʿi *ʿulama*; the reference here is to al-Mahalli's *Kanz al-Raghibin*, Ibnu Hajar's *Tuhfah al-Muhtaj*, Sharbini's *Mughni al-Muhtaj* and al-Ramli's *Nihayat al-Muhtaj*. Finally, the view of the most knowledgeable (*ʿalim*) might be consulted, and now it was question of *taqlid*, not *ijtihād*.¹⁵ Nevertheless, since 1992 Muktamar (National Conference) held in Lampung, NU has been transcending the purely traditionalist methodology by accepting and adopting a kind of collective *ijtihād* (independent reasoning) and is considered to be valid in deriving religious opinions.¹⁶

Another Islamic organization that gives *fatwās* by means of collective reasoning is Muhammadiyah. Syamsul Anwar records that Muhammadiyah has issued *fatwās* since 1927 after the formation of its *Majelis Tarjih* (The Council for Finding Stronger Legal Proofs or Opinions).¹⁷ This council body of Muhammadiyah was directed to the examination of Islamic teachings; providing in matters of belief, ethics, ritual observances and social relations; issuing *fatwās* either on request or in its own initiative; constructively directing controversies on religious matters; improving the general quality of religious leadership; and handling other matters determined by the board of Muhammadiyah.¹⁸ Due to this organization represents reformist' attitude towards Islam, its *fatwās* and decisions of course reflects the Islamic reformation character, which relies *oijtihād* from Qur'an and *Hadith* of the Prophet. Formally speaking, The Majelis Tarjih's decisions are binding on Muhammadiyah as an institution as well as on its individual members. In practice, however, members exercise their right not to be bound absolutely to a certain decision if they have reached a different opinion as a result of *ijtihād* on the same issue.¹⁹

Persis (*Persatuan Islam*, Islamic Union) is another organization that has a collective way of reasoning to formulate a *fatwā*. This organization was established on September 12, 1923 and have a council designed to discuss legal-religious issues and problems called "Dewan Hisbah (Oversee-

ing Council).” The Dewan Hisbah is given a responsibility to reason based on the proofs derived from the Qur’an and Hadith and provide a conclusion in the forms of *fatwâ* as a solution to a given legal and religious problem.²⁰

Above all, the most influential Islamic organization in terms of the scope of audiences, subjects and authority of *fatwâs* might be MUI (Majelis Ulama Indonesia/ The Council of Indonesian Ulama). This is a national government-sponsored organization which was founded in May 1975.²¹ The members of MUI consist of representatives from acknowledged Islamic society organizations such as NU, Muhammadiyah, Jami’ah Al-Washliyah, Mathla’ul Anwar and also some experts in certain fields.²² Although the establishment of this organization is initiated by the government in the need of bettering communication between Muslim community and government²³, the status of this organization is to be private.²⁴ In addition, the function of the organization is to provide *fatwâs* and to advise to the government and the muslim community on specific issues relating to religion and general problems facing the nation, ideally kind of “watchdog” to ensure that are contradictory to the teachings of Islam.²⁵

For the purpose of issuing *fatwâs*, MUI has special *fatwâ* committee. The committee has regularly issued *fatwâs* since its foundation by using certain method which mainly in accordance to the Shafi’ite methodology. The *fatwâ* committee of MUI employs the Qur’an, Hadith of the Prophet, as the main reference and accompanied in some by a reference to *fiqh* texts. The texts are primarily taken from the Shafi’i school of thought.²⁶ These include the following sources. First, the classic books of *fiqh*: *Sharh al-Muhadhdhab* by al-Nawawi, *al-Umm* by al-Shafi’i, *al-Muhalla* by Ibn Hazm, *Rahmat al-Ummah fi ikhtilaf al-Aimma*, *l’anat al-Talibin* by Abu Bakar Syatta, *Bidayat al-Mujtahid*, *Nihayat al-Zayn*, and Bujayrimi’s *Fath al-Wahhab*. Second, commentaries on the Qur’an: *Tafsir al-Manar*, *Tafsir al-ahkam* by Muhamma Ali al-Sabuni, and *Tafsir Adwa’ al-Bayan*. Third, books of *hadith*: *Nayl al-awtar* and *Subul al-Salam*. Forth, Moderns book of *fiqh* and *fatwâ* like *Fatawa Shaltut*, *Majma’*

al-Buhuth Al-Islamiyya, *Fiqh Sunnah* by Sayyid Sabiq, *al-Fiqh al-Islami wa ‘adillatuhu* by Wahbah Zuhayli, and *al-Fiqh ‘ala al-Madhabih al-‘Arba`ah*.²⁷

Due to the importance and the significant influence of MUI’s *fatwâs*,

the following part of the paper endeavors to investigate; why it is necessary to issue the *fatwās*, how those are issued, what factors are affecting the degree of their influence, and to what extents the impacts of them in society.

THE *FATWĀS* OF MUI

Some modern scholars involves on the debate whether *fatwās* only the result of a speculative attempt by pious scholar²⁸ or actually incorporated on regular basis of real life.²⁹ Interestingly in the case of MUI's Islamic legal opinions, there is a combination between both speculative attitude which seem to be separated from the real problem and incorporative character which corresponds with the real life of people. It can be seen from the fact that sometimes MUI provides *fatwās* based on the analysis of current situations or issues in regular meeting, and sometimes this council issues those *fatwās* on the basis of questions and demands of either government or elements of society. In other words, the *fatwās* are issued in the form of decrees either as a response to growing concerns in society or to questions posed by government, individuals, or institutions.³⁰

In the case of *fatwā* issuance, MUI has a special commission called Komisi Fatwa dan Hukum (*Legal and Fatwā Comission*). The responsibility of this commission is to receive and discuss legal, doctrinal, and religious questions or problems presented to MUI, undergo a legal-religious line of reasoning, and formulate a legal-religious opinion (*fatwā*) on such problem. This legal-religious opinion is called *fatwā*, resulted from collective intellectual discretion (*ijtihād*) by members of The MUI *Fatwā Comission*.³¹

The exemplary *fatwā* which issued as a response to the current situation was the *fatwā* on March 7, 1981 stating that Muslim attendance at Christmas celebrations was *%aram* (forbidden). This was provided by virtue of the growing concern about the attendance of Muslims in formal celebration at Christmas held by Christian. The context of this *fatwā* was a trend of Muslims' attendance in Christmas celebrations. While many Muslims received invitations of Christmas celebrations were reluctant to decline, precisely due to the fear of being accused of intolerance, for Christians, the attendance of Muslims could be good excuse for exposing them to Christianity. The *ʿulama* thought it constituted a direct threat of Christianization.³²

Another example of *fatwā* which is issued on the demands of other

parties is fatwâ on Porkas (lottery) and contraception in the context of family planning. In this light, the government asked the MUI to lend religious opinions (as justification) to certain activities, such as the fatwâ of permissibility of "Porkas" (forecasting, functioning as lottery) for sponsoring sport events in 1986. It was regarded as a kind of justification of government's policy which in turn gave a rise an outcry and protest from committed Muslims since it was regarded as a form of gambling which is forbidden in Islam.³³ On the other occasions, even though the establishment of this council is sponsored by the government, MUI does not automatically adopt the same opinion as the government. For example; fatwâs which forbade vasectomy, tubectomy, and all forms of abortion in 1983 really ran counter to the family planning politics of the government.³⁴

In general, it could be said that the fatwâs of MUI are necessarily issued because of the needs of and the responses to certain socio-cultural and socio-political settings.³⁵ To issue such fatwâs, there are many ways employed by MUI. The council could use annual meeting and weekly meeting, hold an immediate fatwâ committee meeting, or take benefit from the use of mass media, especially internet, to answer questions posted by people. Apart from the fatwâs as products, such meetings also result in fatwâs-like such as *taushiyah* (advise), *tazkirah* (admonition), *pernyataan sikap* (position statement), or *himbauan* (appeal). Nevertheless, the most noticeable and influence result is the fatwâs.

The fatwâs of MUI have been addressing a number of subjects ranging from marriage, business, holiday celebrations, inheritance, prayer, contraception, food certification, medical affairs, to certain political, social, and economic issues. Among those fatwâs, there are some fatwâs that trigger a serious debate in public spheres which will be discussed here.

THE CONTROVERSIAL FATWÂS: CONTENT, APPARATUS AND EFFICACY

During its Seventh National Conference on July 26-27, 2005, MUI issued several fatwâs. Those fatwâs dealt with Intellectual Property Right, woman leading the prayer, inter-religious marriage, inter-religious inheritance, inter-religious praying, Ahmadiyah sect, pluralism-liberalism-secularism of religion, death penalty for a specific crime, shamanism and horo-

scope, criterion of *maslahat*, and taking personal properties for public interest. For the sake of focusing discussion, however, only selected *fatwās* that have caused controversies would be cited in this discussion; first, prohibition of secularism, liberalism, and pluralism of religion; second, a judgment of Ahmadiyah as a deviant sect. Those *fatwās* in fact bring about a huge reaction from the people.

1. Contents

a). Pluralism, Liberalism, and Secularism.³⁶

The letter of *fatwās* consists of three parts; consideration, reference, and decision or decree. In the first part of the official letter which is organized like governmental administration letters, MUI depicts three considerations; a) Recently there has been a growth of religious pluralism, liberalism and secularism which has been understood in a variety of ways in the community; (b) This growth of religious pluralism, liberalism and religious secularism within the society has created an uneasiness and a concern to the extent that part of the community has asked the MUI to give some clarification by means of a *fatwā* in relation to this problem; (c) Therefore, the MUI feel that it is necessary to formulate a *fatwā* about the understanding of pluralism, liberalism and religious secularism in order for it to provide guidance to the Islamic community.³⁷

Second part of the letter embraces a list of references to the Qur'an and Hadith of the Prophet. The Qur'anic quotation cites Surah Ali Imran: (3): 85, Surah Ali Imran (3): 19, Surah Al-Kafirun (109): 6, Surah Al-Ahzab (33): 36, Surah Al-Mumtahinah (60): 8-9, Surah al-Qashash (28): 77, Surah al-An'am (6): 116, and Surah al-Mu'minun (23): 71. While the references of the Hadith of the Prophet are taken; first, from hadith narrated by Muslim; second, narrated by Ibn Sa'd in *Thabaqat al-Kubra* and narrated by al-Bukhari and Muslim.

The third part of the letter determines the status of this issue. It is divided into two sections; first, the general definition of the concepts, second, the legal status of the subject. It defines religious pluralism as an understanding that all religions are the same and because of this (truth), that every religion is relative. Because of that, every follower of religion cannot claim that only their religion is true and correct whilst other religions are wrong. Pluralism also stipulates that all followers of religion will enter and live side by side in heaven. Then liberalism means liberal inter-

pretation and secularism refers to separating worldly affairs with religious affairs.

In the end, MUI issues a religious opinion saying that pluralism, liberalism, and secularism are opposed to the Islamic teaching. Islamic community is prohibited to follow such ideological thoughts. In terms of faith and religious rituals, Islamic community must be exclusive. It means that faith and rituals are not to be blended with other religious faith and rituals. For those Muslims who live in other religious community, they should behave inclusively in social affairs which are not related to the faith and rituals. Social interaction could be maintained as long as not bothering each other.³⁸

b). The Deviant Sect of Islam: Ahmadiyah.³⁹

The latter of Ahmadiyah prohibition has four sections; consideration, reference, precedence, and decision. The first section states that; a). There is a concerting effort of Ahmadiyah to spread their teachings in Indonesia albeit MUI has been issuing the fatwâ of its prohibition; b). Such effort of preaching Ahmadiyah has created uneasiness and concern in the society; c). Part of the community has asked the MUI to give some re-clarification by means of fatwâ about Ahmadiyah status because it has been viewed and reacted variously in the community; d). In a response to the request of people and in the aim of maintaining the purity of Islamic faith, MUI feels that it is important to restate the fatwâ regarding Ahmadiyah sect.

The second section is a quotation from Qur'an and Hadith. The Qur'anic part refers to the following verses of Qur'an: Surah al-Ahzab (33): 40, Surah Al-An'am (6): 153, Surah al-Ma'idah (5): 105. Then there are two *hadiths* cited here; first, "There is no Prophet after me (Narrated by Bukhari); second "The apostolate and prophecy are closed, there is no apostle and prophet after me (Narrated by Tirmidzi).

Since there are some previous opinions in this case, MUI invokes some previous religious opinions as a fatwâ's precedence. They are; first, the decision of *Majma' al-Fiqh al-Islami* (The Council of Islamic Jurisprudence) of Organization of Islamic Conference (OIC) on December 28, 1985 stated that Ahmadiyah sect that believes in the prophecy of Mirza Ghulam Ahmad and his acceptance of revelation after the Prophet Muhammad is converted from Islam; second, the decision of *Majma' Fiqh Rabitah al-Islami*; third, The decision of *Majma' Buhuth*; fourth, the MUI's fatwâ in the Sec-

ond National Conference of MUI (1980) regarding Ahmadiyah Qadiyaniah; fifth, the opinions of "C" Commission in the Seventh National Conference in 2005.

Based on the above reasoning, then MUI issues the following decrees: a). Restating the fatwâ of MUI in Second National Conference (1980) that the Ahmadiyah sect is out of Islam, it is deviant and misleading, and Muslims who follow it considered as apostate (*murtad*); b). Those who currently follow Ahmadiyah teachings are supposed to be back to the right Islamic teaching which based on Qur'an and Hadith; c). The government obliges to prohibit the missionary of the Ahmadiyah in Indonesia, close all of their worshipping and ritual places.⁴⁰

2. Apparatus

In many cases, MUI's fatwâs have been backed up by the state's apparatus.⁴¹ They are backed up primarily in two ways. On the one hand, because the role of the fatwâ was a kind of justification of government policy, the state endorsed the fatwâ by implementing the fatwâ through its bureaucracies. It happened when MUI became legitimating body of ruler's policies, such as family planning program in Soeharto's era. Although there was a strong opposition from religious communities before the fatwâ enacted, gradually it was decreasing after the fatwâ issued. As a result, the program ran well without any significant objections from religious point of view.⁴²

On the other hand, with the downfall of Soeharto, the position of MUI gradually became autonomous. Following the emergence of the radical Islamic groups, MUI's role has become increasingly significant. Now something counter to the Soeharto era is taking place: MUI seems to be controlling the state, and not the other way around. Susilo Bambang Yudhoyono's administration seems to be reluctant, as always, to review the role of MUI.⁴³ In fact, according to the former president Abdurrahman Wahid, the position of the president is inferior to MUI. Whereas, MUI is not state's body but surprisingly its influence resembles to the Supreme Court.⁴⁴ The endorsement of the government towards the fatwâ of the prohibition of religious pluralism, liberalism, and secularism and also the Ahmadiyah sect should be put in this context. The Ministry of Religious Affairs that accepts⁴⁵ and supports publicly the fatwâ can be viewed as inferiority even support to MUI's fatwâ. In turn, those fatwâ becomes

more powerful, especially as a tool for Islamist and radical groups to attack liberal interpretation of Islam and religious minorities.

Besides the government, the apparatus of the MUI's fatwās is a number of Islamist groups who voluntarily becomes the safe guards of the fatwās. Organizations and political party that demonstrates their material and morale boosters of the fatwās are; IKADI (Association of Indonesian Islamic Preachers), PKS (Prosperity and Justice Party),⁴⁶ KISDI (Indonesian Committee for Islamic World), DDII (The Council of Indonesian Islamic Missionary), HTI (Indonesian Hizbut Tahrir), and FUI (Islamic Brotherhood Forum).⁴⁷

3. Enforceability

Theoretically speaking, there are no formal statements from MUI to indicate whether or not it is obligatory to abide its fatwās. Ibrahim Hosen, the former chairman of fatwā committee, believes that there is no obligation to follow a particular school of Islamic law, nor fatwās from any individual *alim* or group of *ulama*.⁴⁸ However, in a practical context, it is a mistake to assume that fatwā has no social and political implications. It is widely known that the fatwā is not an ordinary statement from a layperson but a ruling by learned and respected scholars with religious authority.⁴⁹ As a result, implications and efficacies of the fatwās become prevalent in terms of affecting polemics in society and even some violence acts within Islamic community.

The charisma and religious authority may play a role in acceptance of the fatwā, and whether or not a particular petitioner is prepared to accept the authority of certain mufti of institution.⁵⁰ It can be seen from the statement of ICMI (The Council of Indonesian Muslim Intellectuals) when they accept the MUI fatwā, "ICMI support the MUI and the MUI fatwā as they are a competent religious institution. If we do not believe in MUI, whom else are we going to we have to believe in? We call upon those are not Islamic, don't get involved..."⁵¹

Furthermore, the reasons for defending MUI fatwās might also on the ground of defending Islam itself. It is peculiar to the attitude of groups of Islamist movement. The spokesman of Indonesian Islamic Brotherhood Movement (GPMI), Ahmad Sumargono, states very clear his defense of MUI fatwās: "We are ready to support the MUI fatwā, by any means. We can support it by law. If they (the kontras) use the method outside the

law, then we will use the same methods. There is no backing off from the defense of Islam.”⁵²

The influential Islamic organization like Muhammadiyah seems to be ambiguous whether accepts or rejects those fatwās because its (former) chairman, M. Din Syamsuddin, at the same time become General Secretary of MUI. On the one hand, M. Din Syamsuddin defends the MUI’s fatwās and especially definition of pluralism, liberalism, and secularism. On the other hand, he also offers himself to become a mediator between those who backing the fatwâ and those who against it.⁵³

The clearer critiques of the fatwās come from NU (Nahdlatul Ulama) as the biggest Islamic organization. NU criticizes the way MUI defines secularism, liberalism, and liberalism. The definition according to NU is misleading and could lead to the conflict.⁵⁴ Instead of making inaccurate definition of the term and applying a formalist reading of fiqh texts, the board of NU suggests MUI to use “substantive value” rather than a mere legal formalism. They say, “Because we are in a plural society with diversity both within the Islamic umma, let alone within the context of other religions, communities, cultures and customary laws. It would be more effective if a reason-based approach were used incorporating advice, dialogue, and argumentation. This approach would avoid conflict within our unitary state of Indonesia.”⁵⁵

The strongest response and rejections stem from several religious leaders grouped under the Alliance Toward a Civil Society (ATCS) and those who considered as Liberal Muslim groups. The members of the Alliance have expressed their deep concern over the MUI’s recent *fatwâ*. The alliance regards the *fatwâ* as undermining the conditions of religious tolerance in the country. Representatives of the alliance, including Djohan Effendi (International Center for Religious Pluralism), Ulil Absar Abdalla (Islamic Liberal Network), Anan Khrisna (Anand Ashram), Jati Kusumah (Sunda Wiwitan), Weinata Sairin (the Protestant Church), Father Edi (Catholic Church), YH Lamardi (Ahmadiyah), Syafi’i Anwar (International Center for Islam and Pluralism ICIP), Dawam Rahardjo (LSAF) and several representative of the Confucians, met with former president Abdurrahman Wahid (Gus Dur). Then Gus Dur told the group, “I strongly reject the *fatwâ*. Indonesia is not a religious state. It is a secular state. Those that govern the country are not doing so under religious law but the Constitution,” He criticized President Susilo Bambang Yudhoyono who, during the national

conference of MUI, promised to only listen to MUI when dealing with religious affairs. "It was a very big mistake. He (the President) as the formal leader of this country should follow the decision of the Supreme Court when handling religious affairs and not the MUI *fatwâ*," Gus Dur said.⁵⁶ Others liberal groups such as Islam Liberal Network (JIL) and Young Muhammadiyah Intellectual Network (JIMM) have echoed the same voice condemning the *fatwâs* of MUI.

Above all, some *fatwâs* also have engendered worst unintended consequences. Shortly after the *fatwâ* of Ahmadiyah was issued, for example, several Ahmadiyah mosques were attacked by hard line orthodox groups.⁵⁷ Just two months after MUI released the *fatwâ*, the mob attacked on Ahmadiyah compounds in Bogor and Cianjur. The headquarter of Ahmadiyah was destroyed and their centers of activities were closed by some Islamic groups. A spate of violence against Ahmadiyah members still happen up to now in all over Indonesia. In July 2007, there was an agreement among district mayor, police, and attorney administration to stop Ahmadiyah activities in Tasikmalaya, West Java. Moreover, The Front of Islamic Defense (FPI) has been threatening and fighting against Ahmadiyah based on MUI's *fatwâ* argument.

To sum up, the contemporary *fatwâs* in Indonesia demonstrates mainly a collective attitude in the light of formulation, dissemination, and acceptance or rejection. It can be seen from numbers of Islamic organization which establish a special meeting or committee to formulate *fatwâs* regularly. The most powerful organization in issuing *fatwâs* in fact is MUI (The Council of Indonesian *Ulama*). A huge reaction from the public either in negative or positive way usually follows the *fatwâs* of MUI. The reactions either those who agree with or opposed to the *fatwâs* prove that the *fatwâs* in reality have influential power in society.

After examining the power of the *fatwâs* through the controversial parts of them, we could say that the more apparatus boosting the *fatwâs* and the stronger opposition they have, the more influential and powerful the *fatwâs* will be. The supporters of the *fatwâs* come from the state administration (in the case of MUI's *fatwâ* on Ahmadiyah and pluralism-liberalism-secularism is Ministry of Religious Affair) and Islamic society organizations. They are devoted themselves as apparatus of the *fatwâs*. The expression of the support could be a silent agreement, an explicit endorsement, a public statement, and also an act of violence. The gov-

ernment tends to boost MUI's fatwās by keeping silent or reluctance to review them although they contradict with the reality of Indonesia which is plural and not Islamic state. The Islamic organizations have been supporting MUI's fatwās through various ways; public statements, sermons, and also attacks against those who are considered as liberals and Ahmadiyah group.

The oppositions towards the fatwās represented by Islamic leaders and intellectuals, Islamic liberal organizations, and also religious minority groups in Indonesia. Unfortunately, they have no enough apparatus to enforce their disagreement except giving a press conference in public media. As a result, although they have certain degrees of power in public opinion, in reality their influence can not prevent Ahmadiyah from being attacked by some radical groups.

The other factors of the acceptance or rejection of the fatwās are MUI's authority and the fatwā of MUI's suitability with public conscience. If the fatwā regarding Ahmadiyah is accepted or refused based on the MUI's competence, fatwā's content and the side effect of fatwā, the other fatwā is different. Those who criticize MUI's fatwā on the prohibition of religious pluralism, liberalism, and secularism also include the lack of MUI's competence and authority as a reason for rejection. The inaccurate definition of the term is a proof of the weakness of the fatwā. This reality explains why there are many actions taken either by government and groups of society in Ahmadiyah case, but there is no concrete execution regarding the implementation of the fatwā of religious pluralism, liberalism, and secularism.

In short, the power of the fatwās relies on their relation with the sources of power such as inner-competency and authority of the fatwā's giver, the fatwā apparatus from either state or society, and also the oppositions of the fatwā. Although the fatwās of MUI actually have no legal binding, their impacts are still significant and powerful because of those above factors in shaping how people should behave and how government should act.

ENDNOTES

- ¹ Wael B. Hallaq, *From Fatwas to Furu': Growth and Change in Islamic Substantive Law*, *Islamic Law and Society*, 1, 1 (2004): 32.
- ² M. Atho Mudzhar, *Fatwās and social interactions in modern Indonesia*, *Jusūr*, Vol.

- 8, (1992): 49-67
- ³ M.B Hooker, *Indonesian Islam: social change through contemporary fatâwâ*, (Honolulu: Allen & Unwin and University of Hawaii Press, Crows Nest p. 310, 2003).
- ⁴ Moch. Nur Ichwan, "çulamâ', State, and Politics: Majelis Ulama Indonesia after Suharto," *Islamic Law and Society* 12, no. 1 (2005).
- ⁵ Mun'im Sirry, "Fatwas and Their Controversies: The Case of the Council of Indonesian Ulama (MUI)," *Journal of Southeast Asian Studies* 44, no. 1 (2013).
- ⁶ Michel Foucault writes, "Power must be analysed as something which circulates, or rather as something which only functions in the form of a chain. It is never localised here or there, never in anybody's hands, never appropriated as a commodity or piece of wealth. Power is employed and exercised through a net-like organisation. And not only do individuals circulate between its threads; they are always in the position of simultaneously undergoing and exercising this power. They are not only its inert or consenting target; they are always also the elements of its articulation. In other words, individuals are the vehicles of power, not its points of application." See Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, ed. Colin Gordon (New York: Pantheon Books, 1980), 98.
- ⁷ Nico J.G Kaptein, Introduction, *Theme Issue: Fatwas in Indonesia*, *Islamic Law and Society*, 12, 1 (2005): 2.
- ⁸ Tyan, E.; Walsh, J.R. "Fatwâ." *Encyclopaedia of Islam*. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs. Brill, 2007. Brill Online. INDIANA UNIVERSITY BLOOMINGTON. 06 December 2007.
- ⁹ Nico J.G Kaptein, *The Voice of the Ulama: Fatwas and Religious Authority in Indonesia*, Arch. De Sc. Soc. Des Rel, 125, (janvier-mars, 2004): 118.
- ¹⁰ Nico J.G Kaptein, 119.
- ¹¹ Nico J.G Kaptein, 120-130. .
- ¹² See Messick (1996: 310-320), quoted by Syamsul Anwar, 28.
- ¹³ Michael Laffan, *The Fatwa Debated? Shura in One Indonesian Context*, *Islamic Law and Society*, 12, 1 (2005): 94.
- ¹⁴ Michael Laffan, 95-96.
- ¹⁵ M.B. Hooker, *Indonesian Islam: social change through contemporary fatâwâ*, (Honolulu: Allen & Unwin and University of Hawai'i Press, 2003), 56.
- ¹⁶ Martin Van Bruinessen, (1994: 220-234) quoted by Nico J.G Kaptein, 120.
- ¹⁷ Syamsul Anwar, *Fatwâ, purification and Dynamization: a study of Tarjihò in Muhammadiyah*, *Islamic Law and Society*, Vol. 12 Issue I, (2005): 27-44.
- ¹⁸ Syamsul Anwar, 34.
- ¹⁹ Syamsul Anwar, 34.
- ²⁰ Solehudin and Widiana Rismawati, "Metode Dewan Hisbah Persis Dalam Ber- Istidlâl Dengan Hadis: Studi Fatwa Tentang Tambahan Raka'at Makmum Yang Masbuq," *Diroyah: Jurnal Ilmu Hadis* 1, no. 2 (2017): 137.
- ²¹ See Ali Mufrodi, *Peranan Ulama dalam Masa Orde Baru: Studi Tentang*

- Perkembangan Majelis Ulama*, Jakarta: PhD diss, IAIN Syarif Hidayatullah Jakarta, 1994).
- ²² http://www.mui.or.id/mui_in/about.php, at December 8, 2007.
- ²³ Martin Van Bruinessen, *Indonesia's Ulama and Politics: Caught Between Legitimizing the Status Quo and Searching For Alternatives*, (Jakarta: Prisma-The Indonesian Indicator, No. 49, 1990): 52-69
- ²⁴ M. Atho Mudzhar, *Fatwās and social interactions in modern Indonesia*, Jusūr,, Vol. 8, (1992): 52.
- ²⁵ M. Atho Mudzhar, 52.
- ²⁶ M.B. Hooker, 62.
- ²⁷ Nadirsyah Hosen, *Behind the Scenes: fatwas of Majelis Ulama Indonesia (1975-1998)*, Journal of Islamic Studies, Vol. 15 Issue ii, (2004): 161.
- ²⁸ See N.J. Coulson, *The State and the Individual in Islamic Law*, International and Comparative Law Quarterly, 6 (1957): 57, quoted by Wael B. Hallaq, 29.
- ²⁹ Wael B. Hallaq, 57.
- ³⁰ M. Atho Mudzhar, 52.
- ³¹ Ichwan, "ꦶlamā", State, and Politics: Majelis Ulama Indonesia after Suharto," 50-53.
- ³² M. Atho Mudzhar, 57-58.
- ³³ Martin Van Bruinessen, 67-69.
- ³⁴ Mohammad Atho Mudzhar, *Fatwa-fatwa Majelis Ulama Indonesia: Sebuah studi tentang pemikiran hukum Islam di Indonesia 1975-1988*, (Jakarta: INIS, 1993), 46-54. This is based on his PhD thesis at UCLA, 1990.
- ³⁵ Mohammad Atho Mudzhar, 260.
- ³⁶ Surat Keputusan Majelis Ulama Indonesia, Nomor: 7/MUNAS VII/MUI/II/2005.
- ³⁷ Translated by Piers Gillespie, *Current Issues in Indonesian Islam: Analysing the 2005 Council of Indonesian Ulama Fatwa No. 7 Opposing Pluralism, Liberalism, and Secularism*. Journal of Islamic Studies 18(2), (2007): 202-240.
- ³⁸ Surat Keputusan Majelis Ulama Indonesia, Nomor: 7/MUNAS VII/MUI/II/2005, most of the translation is mine.
- ³⁹ Surat Keputusan Majelis Ulama Indonesia, Nomor: 11/MUNAS VII/MUI/II/2005.
- ⁴⁰ The translation is mine.
- ⁴¹ Luthfi As-Syaukani, *Fatwa and Violence in Indonesia*, <http://www.assyaukanie.com/articles/fatwa-and-violence-in-indonesia>, at December 9, 2007.
- ⁴² Yet, there is still opposition in the case of using contraception tools, see Martin Van Bruinessen, 60-69.
- ⁴³ Luthfi As-Syaukani, <http://www.assyaukanie.com/articles/fatwa-and-violence-in-indonesia>, at December 9, 2007.
- ⁴⁴ http://gusdur.net/indonesia/index.php?option=com_content&task=view&id=2757&Itemid=1, at December 9, 2007.
- ⁴⁵ *Depag Terima Fatwa MUI*, <http://www.detiknews.com/index.php/detik.read/tahun/2005/bulan/08/tgl/08/time/190449/idnews/418340/idkanal/10>, at

December 10, 2007.

- ⁴⁶ *Forum Muslimin Indonesia Dukung Fatwa MUI*, <http://www.detiknews.com/index.php/detik.read/tahun/2005/bulan/08/tgl/03/time/161657/idnews/415388/idkanal/10>, December 10, 2007.
- ⁴⁷ *Pendukung Fatwa MUI Gelar Tabligh Akbar*, <http://www.detiknews.com/index.php/detik.read/tahun/2005/bulan/08/tgl/05/time/094049/idnews/416487/idkanal/10>, December 10, 2007.
- ⁴⁸ Nadisyah Hosen, 173-174.
- ⁴⁹ Luthfi As-Syaukani, <http://www.assyaukanie.com/articles/fatwa-and-violence-in-indonesia>, at December 9, 2007.
- ⁵⁰ Nico J.G Kaptein, 127-128.
- ⁵¹ Piers Gillespie, 231.
- ⁵² Piers Gillespie, 231.
- ⁵³ Piers Gillespie, 229-230.
- ⁵⁴ Piers Gillespie, 226-227.
- ⁵⁵ Piers Gillespie, 226.
- ⁵⁶ http://gusdur.net/english/index.php?Itemid=0&id=732&option=com_content&task=view, at December 9, 2007.
- ⁵⁷ Abdul Muqsih Ghazali, *Oligarchy in the Interpretation of Religion*, http://www.gusdur.net/english/index.php?option=com_content&task=view&id=733&Itemid=1, at December 9, 2007.

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