

Research article

Positivation of MUI Fatwa: From Morally Binding to Legally Binding (Case Study MUI Fatwa Against Madurese Shi'ite in Sampang, Madura)

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Abstract.

The Council of Indonesian Muslim Scholar (MUI) has strategic position in Indonesia. It becomes the big umbrella of Islamic Mass Organisation in Indonesia. MUI was designed by Soeharto's era as the media of the communication between Government and Ulama in one side but in other side to support the policy of the government in Soeharto Era. This paper wants to examine and explore related to the role of MUI in the process of positivation of fatwa in Indonesia. Indonesia is not an Islamic country but also not a secular country, but the presence of MUI as a "semi-government institution" is enough to give color to the process of forming rules and public policies in Indonesia. The MUI fatwa often contains an appeal to the central and regional governments to make policies in accordance with the main content of the fatwa. For example, the issuance of East Java Governor Regulation Number 55 of 2021 is part of responding to the East Java MUI fatwa related to Shia heresy. This shows that the Fatwa has structurally played a strategic role in the production of state policies both at the central and regional levels. This paper is part of a qualitative research using a type of library research, where one of the samples is the East Java MUI Fatwa regarding the Shia deviant fatwa which was later accommodated into East Java Governor Regulation number 55 of 2012. This paper proposes at least two questions important in this paper: first, why is a fatwa produced by MUI? What is the background, as well as the second question: How far is the influence of the fatwa in the process of forming public policies or government regulations that bind its citizens. To answer this problem, this paper uses Fairclough's theory of Critical Discourse Analysis (CDA). This theory wants to help uncover the process of publishing, using, and distributing fatwas and public policies, as well as their discourse and practice. This paper wants to reveal how the process of producing a fatwa from a religious instrument is transformed into a state instrument which I call "fatwa positivation." The positivation of a fatwa is a process of transformation from a fatwa with moral power to a binding and coercive legal force. From here, it can be explored how the role of the MUI in the process of positivizing Islamic law in Indonesia through the issued fatwas.

Keywords: MUI; Fatwa; Positivation of Islamic Law

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1. Introduction

MUI, fatwa, and the process of positivisation of Islamic law are interrelated in social practice of Indonesian Muslim society. MUI expresses the authority through the fatwa. Fatwa is the part of the religious discourse that expressed by language. Language, discourse and social practice are in a dialectic relationship with each other.[1] Language is not only for communication, however is also a way to exercise power. Language and social practice are not in direct relationship but occurs by discursive practice. Discourse constitutes the social practice, and social practice could constitute discourse. Discourse not only refers to the text, but also to the spoken language.[2] Behind the discourse and social practice there is the ideology and hegemony of the formation of discourse and social practice. The discourse on the *fatwa* issued by MUI against Shi'ite minority groups in Indonesia is often a controversial issue. On one hand, it aims to protect the ideology of the majority group from the influence of the ideology of minority groups, nevertheless, it could potentially be a justification for discrimination and violence against these minority groups. This study deals with the issue of the *fatwa's* by MUI in the Sampang regency, public policy of the local government, and violence against religious minority groups in the Sampang and Sidoarjo districts. This study also utilizes a critical discourse analysis of Norma Fairclough's book, to help capture how language influences the social practice through discursive practice. A *fatwa* communicates to social practice through language. It is produced, distributed and accepted by society, influencing social practices. This study will investigate the *fatwa's* influence on the society, including local authority producing the public policy of the local government.

A *fatwa*, is a religious instrument that is morally binding, as well as becoming a public policy that is legally binding. The impact of this forces the state to protect all citizens of various religions and backgrounds from many forms of religious heresy. MUI, which has the authority to decide something is heresy or not, takes a main role in the content of public policy. The relationship between a *fatwa* of MUI Sampang and a *fatwa* of MUI East Java province with the production of a local public policy is problematic. An example of this is the verdict of the judge of the state court of Sampang regency and decree of the governor regulation of East Java (number 55 of 2012) on the monitoring of deviants sect in East Java. In one case, religious authorities protect the Sunni group from the influence of the Shi'a, but in the other case the state authority protects all citizens in order to encourage religious harmony. Nevertheless, the government often takes side to the majority.[3] Between protecting the majority and accommodating the minority, it is possible to achieve both. This issue becomes interesting, as the Shi'a minority, at

the time of the writing of this dissertation, became internally displaced persons within refugee camps in “Puspo Agro” Sidoarjo. Their security as well as their future concerning their family and fate was in jeopardy. This paper will focus on the issue and propose the question about Why were *fatwa*’s and public policies of local government against Shi’a people in Sampang being issued? How does the *fatwa* of MUI in the Sampang regency influence the public policy of the East Java regional government. How the *fatwa* of MUI in East Java transforms from the morally binding to the legally binding?

2. MUI Position: Between Religious Authority and State Authority

MUI has designed by the government at Soeharto era to bridge between the government and Ulama and between the government and Muslim community in Indonesia. Furthermore MUI is one of the manifestation of the institutionalization of Islamic norms in Indonesia. The process of institutionalizing Islamic norms actually occurred in other countries in the world, such as in Iran, in which the *wilayatul faqih* was created as a part of the system of government. In other countries such as Saudi Arabia, the Center for scientific Research and Legal Opinion (CRLO) was created to serve a purpose much like the MUI in Indonesia, namely to give Islamic legal opinion. These institutions were created by states that accommodate Islamic values. Actually the process of the establishment of MUI in the Soeharto era relates to the reciprocal suspicion between the relation of *Ulama* (religious leader) and *Umara* (State leader).[4] Initially, MUI was not accepted by the Muslim community because the Muslims were suspicious of the government because it became the medium for the political interests of the new regime to disseminate at the time. MUI was formed on the 26th of July, 1975.[5] The function of MUI originally was only that of a religious consultant for the Muslim society and among *Ulama* (Muslim Scholars) and *umara* (state authority). But in the process of its growth, the MUI not only handles the giving of Islamic legal opinion, but also the process of certification of halal foods and Islamic finance, such as *baitul mal wa at tamwil* (BMT) or other Islamic community practices in society.[6] In the first period, the MUI tended to support the government policy. This religious thought from MUI could be seen in the *fatwa* on the birth control program (Keluarga berencana, KB) that tends to support the government. But also, the MUI has *fatwa* that are opposed to the state, such as *fatwa* on natal celebration for the Muslim community.[7] Both of these *fatwas* aside, the MUI also has neutral *fatwas* such as the *fatwa* on frog breeding (*budidaya kodok*). There was paradigm shift of MUI from the new order to the reformation era. This paradigm

shift was from the *khodim al hukumah* (the servicer of government), to *khodimul ummah* (the servicer of Muslim society).

The argument that the process of the establishment of MUI during the Soeharto era was nuanced by political interests is supported by many ideas about the strong connection between the politics, state, and religious authority. As Mudzhar mentions in his dissertation that there were three political events before the establishment of MUI [8], C. Van Dijk, in his article, also discusses this situation. In his explanation, Van Dijk states that MUI, at the time, was in a problematical position between the desire of government and the conviction at least part of the Islamic community. In this position sometimes, the MUI attitude is seen in an absence of the fatwa on a particular matter such as, ambitious government policies intended to stimulate economic development and national unity.] Based on this idea, Hooker also stated that MUI's position and its main functions (especially from 1975 to the 1990s) were to support and to justify governmental policies. The power struggles between the government who has a power authority and MUI who has a religious authority tend to influence each other. On one hand, the government has interests to produce public policies which need to support from Ulama, furthermore Ulama also has interests in the public policies produced by government if they are not contradicting Islamic law. However on another hand, Ulama needs the government to make sure the Islamic value could be held in their government policies. Although MUI was a product of the government during the Soeharto era and tends to only give advice, religious opinions (fatwa), as well as guidance to society, MUI has two types of media to guide the society and government. The first type is through fatwa discourse and the second media is the non-fatwa discourse. The non-fatwa discourse consists of recommendations (*Tausiyah*) , admonitions (*Tadzkirah*), instructions/mandates (*Amanah*), position statement (*Pernyataan Sikap*), appeal (*Himbauan*), and thought contribution (*Sumbangan Pemikiran*).

3. Discussing on MUI Fatwa: From Morally Binding to Legally Binding

The Madurese society is strongly influenced by three main forces: *Bhupa-Bhabbu*, *Guruh*, and *Ratoo* (parents, religious teachers, and state apparatus). Besides them, there is another force in local Madura, called *blater*. *Blater* is a social broker who conducts between Kyai and the society. The main authority in Madurese society is the religious authority. The religious authority, through the fatwa of MUI in Sampang regency, takes a role on the formulation of discourse on Shi'a in Sampang society. According to the

Fairclough theory, discourse and social practices are interconnected in a dialectical relationship. Discourse is not only the text of the fatwa and public policy, but also are a part of discourse on the knowledge of the shi'a in Sampang. The fatwa's and the public policy's production, consumption, and distribution are part of the discourse and social practices in the Fairclough theory. According to Khaled Abou el-Fadl's theory, the fatwa that was produced by MUI could not be separated from the individuals who produces the fatwa. A mufti of MUI is an important figure on declaring the fatwa. The Ulama and MUI are the important parts that affect the social interaction between Sunni and Shi'i in Sampang. There was a shifting paradigm of MUI after a new order era from the servant of *Umara'* (*khodimul hukumah*) to the servant of Muslim people (*khodimul umma*). The fatwa is more independent from the state. The other paradigm of MUI is to strengthen the weak and to weaken radicals. On this paradigm there is a contestation between orthodoxy and heterodoxy that exists at national and local levels even now.

The mainstream of the Ulama of MUI, including in Sampang regency, tends to be puritan rather than a liberal and moderate religious mainstream. The impact of this mainstream paradigm is the fatwa is more puritan and conservative rather than tolerant of many different of ideologies in society, contrary to a society based on pluralism. The fatwa tends to be "coercive" rather than 'persuasive". The pressure and despotism of the fatwa potentially occurs "for the importance of the security of ideology" in Sampang society. On the perspective of Khaled Abou el-Fadl's fatwa ethics, such as honesty, dilligence, reasonableness, self-restraint, comprehensiveness, the fatwa against Shi'a tends to dissatisfy all of the fatwa's ethics. Because the power used for the issuing of this fatwa constitutes a domination of a discourse of anti-Shi'a as a heretical sect and as a propagator of religious blasphemy. The discourse looks for the justification in formal regulation through the public policy and product of law. Discourse on Tajul Muluk as a heretical sect was produced by MUI of Sampang regency. The redaction of the fatwa of MUI in Sampang avoids the term of Shi'a to localize the problem only in Sampang, so not to implicate other regions of Sampang. However the impact of the fatwa impacted from local to the province. Why did MUI in Sampang regency produce the fatwa? It was produced by MUI in Sampang regency for four reasons. The first reason is for protection of the majority, the Sunni society from Tajul Muluk's teachings, which are affiliated with Shi'a, considered a heretical sect that has primary differences with Sunni teachings. Tajul Muluk's teachings, according to the chairman of MUI Sampang, is like cancer in the human body. The cancer should to be removed, so that it does not grow and harm other parts of the body. The second reason is to protect the Sunnis from the ideology of "Imamah". The concept of Imamah that Tajul Muluk agrees with, is a dangerous ideology,

because it could be potentially rebel against the official government. The third reason is a response to the local government of Sampang, the problem being that Tajul Muluk's teaching causing conflict amongst them. The fourth reason is to realize the religious harmony life in the Sampang community.

The fatwa was issued towards Tajul Muluk's teachings, because of both primary reasons that exist due to the tension it created in social interaction between the Sunni and the Shi'i, and the factor of Tajul Muluk as person who teaches and spreads his doctrine in Sampang. In addition, the relationship between Shi'i and Sunni in Indonesia was unstable due to social, economic and political conditions in each regions. Tajul Muluk, as the local religious leader in Sampang, became a new challenge for the local religious and social leaders in Sampang. Actually, Tajul Muluk, being affiliated with the Shi'a, was not an issue among Sampang clerics when his teaching was only for him. But he openly teaches his doctrine to other Sunnis in his vicinity. Furthermore, Tajul Muluk did not only reform religious traditions in local Sampang, but also the local bureaucracy system of public services. In addition, there are statements of Tajul that could have offended the Kyai such as the term: "Kyai envelope". Such statements angered the residents where the clerics in the Sampang community held a highly respected position. In return, Tajul and his followers suffered the consequences, because Tajul had offended a respected person. The situation worsened due to the internal conflict of the Kyai Ma'mun family between Tajul and Roisul Hukama who later turned their back on Tajul. Roisul seems to be the new "enemy" for Tajul at the micro-level, who turned into a "wild bull" and then advanced to the mezo level, namely at the district and provincial levels.

The issuing of the fatwa in Sampang regency was triggered by many factors. . The first factor is difference in ideologies. This factor is the primary factor for the issuing of the fatwa. The difference in ideologies creates the "othering" factor amongst the Sunni society, in Sampang in particular, and in East Java in general, causing a split in society. Exclusion of those who differed from the Sunni occurred by constructing the mindset "We" for the majority and "They" for minority. The implication of this framing is cultural and structural, causing such things as discrimination, marginalization, prejudice, stereotyping, persecution, relocation, and other forms of violence. The other factor are the economic and political factors. The evidence of this economic factor is the emerging term "Kyai envelope" that was used by Tajul Muluk. This statement angered the Sampang society. The other evidence is Tajul's reformation of religious tradition such as "maulidan". Economics and politics are interconnected especially in the effort of reformation, with the local government managing correspondence and licensing through a village government. The political factor also contributed to the demand

of the government to issue the fatwa. The other factors are the social jealousy and psychological factors. The increase in Tajul's followers made the local clerics feel less power in their religious authority. The fatwa becomes a religious instrument to exclude the Shi'a from Sampang society. The evidence that the fatwa of MUI Sampang regency was a religious instrument was justified by the local government when Tajul Muluk was sentenced by the state court to two years in prison for religious blasphemy. When Tajul Muluk proposed this issue to the higher state court of East Java province, the judge sentenced him to four years in prison.. The evidence based of the interconnection between the fatwa of Sampang regency becoming public policy is the content of the fatwas (in Sampang regency level and in East Java Province level), which recommends the local government to issue the public policy for regulating the Shi'a. The local government of East Java province response of both fatwas was to regulate the Shi'a through governor regulation number 55 of 2012, concerning *Tentang Pembinaan Kegiatan Keagamaan dan Pengawasan Aliran Sesat di Jawa Timur* (the supervision of religious activity and monitoring on heretical sects in East Java).

The other evidence of the interconnection between the fatwa and public policy in Sampang and East Java Province is the governors regulation of East Java Province, which mentions in its content the giving of authority for MUI in local regions to measure the parameters of whether sects are heretical or not. The local government will follow up the recommendation from the religious authority to supervise and monitor, as well as identify the heretical sect. Framing the fatwa in a positive way was the process for it becoming the a law at at local and national level. The religious authority and state authority needed each other for this to be enforced. This reason is due to the culture of the East Java community, especially the Sampang Madura District. For example, the Kyai occupies a very strategic position, but the clerics were limited in their power in the context of the law. The Kyai also needed a ruler to ensure that the Kyai's will with his followers could be accommodated by the state. Simultaneously, the state in making policies requires legitimacy from the community. The Kyai has a strong base of legitimacy in the community which often becomes the government's reference in making government policies. When the will of Kyai as the holder of religious and social authority has been accommodated by the government as the authority of the state through the establishment of public policies that are binding on all citizens, *this is what I call the positivisation of fatwas in public policy*. The impact of the state support for the interest of majority is that the minority will be excluded from the society. The impact of this exclusion for the minority is marginalization and discrimination on all aspects of life. The relocation of them is an example of exclusion, being exiled from their motherland.

They were removed from their social roots of original culture and society. When the state and religious authorities cooperate with each other, rather than committing structural violence against a minority, they could protect the minority.

4. Conclusion

The fatwa becomes a religious instrument to exclude the Madurese Shi'ite from Sampang society. Tajul Muluk was sentenced by the state court to two years in prison for religious blasphemy is the evidence that the fatwa of MUI Sampang regency was a religious instrument that was justified by the local government. When Tajul Muluk proposed this issue to the higher state court of East Java province, the judge sentenced him to four years in prison. The evidence based of the interconnection between the fatwa of Sampang regency becoming public policy is the content of the fatwas (in Sampang regency level and in East Java Province level), which recommends the local government to issue the public policy for regulating the Shi'a. The local government of East Java province response of both fatwas was to regulate the Shi'a through governor regulation number 55 of 2012, concerning *Tentang Pembinaan Kegiatan Keagamaan dan Pengawasan Aliran Sesat di Jawa Timur* (the supervision of religious activity and monitoring on heretical sects in East Java). A Fatwa is an Islamic legal opinion that is morally binding, whilst the public policy is the decision or action that is made by those in Political authority (government) that is legally binding. The transforming of fatwa from morally binding to legally binding because it often includes the appeal or recommendation for the government to issue the public policy. In the case of Shi'a in Sampang and Sidoarjo, the fatwa also appeals and recommends local governments both in Sampang and East Java province to declare the public policy against Shi'a. To respond to the fatwa on both levels, the government supported the Local Government. The Sampang government accommodated the fatwa through the state court of Sampang regency's decision to sentence Tajul Muluk as the propogator of religious blasphemy, with two years in prison, supported by the higher state court in East Java province. The fatwa of MUI in Sampang regency became the consideration to issue the verdict against Tajul Muluk, with the East Java government applying the fatwa on its level through the governor regulation number 55 of 2012. This regulation offers the authority on each religion, including MUI , to decide which religious teaching is heretical or not. The transformation of MUK fatwa from morally binding to legally binding that I called by the positivisation of fatwa.

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