

## **Legal Politics of the Existence of Fatwa in Islamic Financial Institutions: Evidence from Indonesia**

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### **Abstract**

Fatwa plays an important role in the development of Islamic financial institutions. However, the existence of fatwa is closely related to developing political dynamics, so it influences the formation of regulations on Islamic financial institutions, especially in Indonesia. This paper discusses the legal politics of the existence of fatwa in Islamic financial institutions established by the National Shariah Council - Indonesian Ulama Council. Normative juridical research method with a comparative approach to various fatwas in Malaysia, Sudan, Pakistan, Indonesia, Singapore, the Philippines and Thailand. The research results show the differences in the existence of fatwas between Muslim-majority and Muslim-minority countries; for example, Muslim-majority countries such as Malaysia, Sudan, Pakistan, and Indonesia are centralized. In contrast, Muslim-minority countries such as Singapore, the Philippines, and Thailand are decentralized. In Indonesia, the fatwa of the National Shariah



Council - Indonesian Ulama Council was influenced by the political dynamics of the relationship between the Muslims and government during the New Order and Reformation era. During the New Order era the relationship between the Muslims and government was antagonistic (1966–1981) had critical reciprocity (1982–1985) and was accommodative (1986–1998). In the Reformation era (1998 to present), the relationship between Muslims and the government was accommodative and participatory. The fatwa of the National Shariah Council - Indonesian Ulama Council has been legally binding for Islamic financial institutions since the reformation era (1998 to present) because regulations regarding Islamic financial institutions in Indonesia require that their business activities must be based on the fatwa of the National Shariah Council - Indonesian Ulama Council.

**KEYWORDS** *Islamic Financial Institutions; Legal Politics; National Shariah Council - Indonesian Ulama Council Fatwa.*

### **Abstrak**

Fatwa memiliki peranan penting dalam pengembangan lembaga keuangan syariah. Namun, eksistensi Fatwa sangat terkait dengan dinamika politik yang berkembang, sehingga berpengaruh terhadap pembentukan regulasi lembaga keuangan syariah, khususnya di Indonesia. Tulisan ini membahas tentang politik hukum eksistensi Fatwa Dewan Syariah Nasional- Majelis Ulama Indonesia di Lembaga keuangan Syariah. Metode penelitian yuridis normatif dengan pendekatan perbandingan berbagai fatwa di Malaysia, Sudan, Pakistan, Indonesia, Singapura, Philipina, dan Thailand. Hasil penelitian menunjukkan bahwa perbedaan eksistensi fatwa antara negara mayoritas muslim dengan negara minoritas muslim, misalnya di Malaysia, Sudan, Pakistan, dan Indonesia sebagai negara mayoritas muslim bersifat sentralistik, sedangkan di Singapura, Philipina, dan Thailand sebagai negara minoritas muslim bersifat desentralistik. Di Indonesia, eksistensi Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia dilatarbelakangi oleh dinamika politik hubungan antara umat Islam dengan pemerintah pada masa orde baru dan orde reformasi. Pada masa orde baru hubungan antara umat Islam dengan pemerintah bersifat antagonistik (1966-1981); resiprokal kritis (1982-1985) dan; akomodatif (1986-1998). Pada orde reformasi (1998-sekarang) hubungan antara umat Islam dengan pemerintah bersifat akomodatif-partisipatif. Fatwa Dewan Syariah Nasional- Majelis Ulama Indonesia mengikat secara hukum bagi lembaga keuangan syariah sejak orde reformasi (1998 - sekarang), karena regulasi

tentang Lembaga Keuangan Syariah di Indonesia mewajibkan setiap kegiatan usaha Lembaga Keuangan Syariah harus dijalankan sesuai dengan Fatwa Dewan Syariah Nasional - Majelis Ulama Indonesia.

**KATA KUNCI:** *Fatwa Dewan Syariah Nasional-Majlis Ulama Indonesia; Lembaga Keuangan Syariah; Politik Hukum.*

## Introduction

Fatwa plays an important role in the development of Islamic financial institutions.<sup>1</sup> Fatwa is a legal opinion given by a scholar (faqih) to a person or community regarding a problem for which there is no law.<sup>2</sup> In Muslim-majority countries, fatwa institutions have been established. For example, Malaysia has a fatwa institution called the Shariah Advisory Council,<sup>3</sup> Sudan has a fatwa body called the Higher Shariah Control Commission (HSCC),<sup>4</sup> Pakistan has a Shariah Board,<sup>5</sup> and Indonesia has a National Shariah Council (*Dewan Syariah Nasional-DSN*) called the Indonesian Ulama Council (*Majelis Ulama Indonesia-MUI*).<sup>6</sup> In contrast

<sup>1</sup> Achraf Haddad and Mohamed Naceur Souissi, "The Impact of Shariah Advisory Board Characteristics on the Financial Performance of Islamic Banks," *Cogent Economics & Finance* 10, no. 1 (2022): 1–38, <https://doi.org/10.1080/23322039.2022.2062911>; Faizi Zaini and Mohd Sollehudin Bin Shuib, "Fatwa on Sharia Products and Its Role in The Development of Islamic Finance Industry," *Islamadina: Jurnal Pemikiran Islam* 22, no. 2 (2021): 189–207, <https://doi.org/10.30595/islamadina.v22i2.11859>.

<sup>2</sup> Badruddin Ibrahim, Mahmud Arifin, and Siti Zainab Abd Rashid, "The Role of Fatwa and Mufti in Contemporary Muslim Society," *Pertanika Journal of Social Sciences & Humanities* 23 (2015).

<sup>3</sup> Mohammad Azam Hussain et al., "The Appointment of Members to the Shariah Advisory Council of Central Bank of Malaysia: Legal Issues," *UUM Journal of Legal Studies* 8 (2017): 167–81.

<sup>4</sup> Saed Ahmed Sulub, Zalailah Salleh, and Hafiza Aishah Hashim, "Corporate Governance, SSB Strength and the Use of Internal Audit Function by Islamic Banks: Evidence from Sudan," *Journal of Islamic Accounting and Business Research* 11, no. 1 (2020): 152–67, <https://doi.org/10.1108/JIABR-12-2016-0148>.

<sup>5</sup> Muhammad Mushtaq Ahmed, Zia Uddin, and Muhammad Iqbal, "The Role of Shariah Board in Islamic Banks: Pakistan's Perspective," *Global Regional Review* 2, no. 1 (2017): 356–63, [https://doi.org/10.31703/grr.2017\(II-I\).25](https://doi.org/10.31703/grr.2017(II-I).25).

<sup>6</sup> Iiz Izmuddin et al., "The Legitimation of Religion in Profit Seeking: The Role of National Shari'ah Division of The Indonesian Muslim Council (DSN-MUI)," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (2023): 781–800, <https://doi.org/10.22373/sjhc.v7i2.15835>; Abdurrohman Kasdi, "Contribution of

to Malaysia, Sudan, Pakistan, and Indonesia, there is no fatwa institution at the national level specifically related to the field of Islamic economics in Singapore, the Philippines, and Thailand. However, each of the Islamic financial institutions in Singapore, the Philippines, and Thailand may appoint a shariah advisory board to provide legal opinions (fatwa) on sharia compliance.<sup>7</sup>

The role of fatwa institutions in various countries is influenced by political dynamics that affect the applicable laws in each country, including in Indonesia.<sup>8</sup> Fatwa National Shariah Council - Indonesian Ulama Council Fatwa is a basis for legal decisions about the economics, business, and finance for Islamic financial institutions.<sup>9</sup> The change of fiqh into fatwa National Shariah Council - Indonesian Ulama Council Fatwa is a process of uniformity from various views and thoughts of fuqaha so that it becomes one uniform legal provision through a collective ijihad process by the National Shariah Council - Indonesian Ulama Council Fatwa.<sup>10</sup> The process contextualizes fiqh norms into the social framework of society,

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National Sharia Council Fatwa of Indonesian Council of Ulama (DSN-MUI) in The Islamic Economic Development in Indonesia," *IQTISHADIA: Jurnal Kajian Ekonomi Da Bisnis Islam* 1, no. 1 (2018): 47–64; M Zaidi Abdad, "Signifikansi Fatwa DSN-MUI Terhadap Perkembangan Ekonomi Syariah Di Indonesia," *Istinbath* 18, no. 2 (2019): 233–422.

<sup>7</sup> Ledy Mahara Ginting et al., "Legal and Regulatory Framework of Islamic Banking and Finance: A Study in Singapore," *International Journal of Management and Applied Research* 6, no. 4 (2019): 238, <https://doi.org/10.18646/2056.64.19-017>; See, Asma Sitthivanich and Rusni Hassan, "An Analysis of the Islamic and Conventional Banking Regulatory Bodies and Legislation in Thailand," *Journal of Islamic Banking and Finance* 5, no. 2 (2017): 66, <https://doi.org/10.15640/jibf.v5n2a9>. See, Mariam S. Tagoranao, Alizaman D. Gamon, and Zubaidi Wahyono. "The Contemporary Issues On Fatwa Management In A Secular State: The Philippine Experience." (2020). See to, Ali Rama, "Studi Komparasi Regulasi Tata Kelola Syariah Bagi Perbankan Syariah Di Negara-Negara Muslim Minoritas." *Al-Masraf: Jurnal Lembaga Keuangan dan Perbankan* 3.2 (2018): 133-145. <http://dx.doi.org/10.15548/al-masraf.v3i2.196>

<sup>8</sup> Ibnu Elmi Achmat Slamet Pelu and Jefry Tarantang, "Fatwa Majelis Ulama Indonesia Sebagai Solusi Permasalahan Umat Islam Di Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 14, no. 2 (2020): 307–16, <https://doi.org/10.24090/mnh.v14i2.3927>.

<sup>9</sup> Peraturan Organisasi Majelis Ulama Indonesia Nomor: 11/PO-MUI/VIII/2021 tentang Anggaran Dasar dan Anggaran Rumah Tangga Dewan Syariah Nasional-Majelis Ulama Indonesia.

<sup>10</sup> Samsul Ode et al., "Implications of Religious Fatwa on the Implementation of the COVID-19 Policy in Indonesia," *Pharos Journal of Theology* 104, no. 3 (2023): 1–12.

where fiqh norms that were originally unstructured and diverse undergo a process of simplification, adjustment, and change into structured and uniform legal provisions.<sup>11</sup>

Fatwa National Shariah Council - Indonesian Ulama Council Fatwa is legally formal and is not included in the hierarchy of laws and regulations in Indonesia because fatwa is not made by an institution or body that is given the authority to form laws and regulations.<sup>12</sup> Therefore, fatwa National Shariah Council - Indonesian Ulama Council Fatwa does not have a binding legal force before it is transformed into a form of legislation.<sup>13</sup> However, in terms of legal substances, fatwa National Shariah Council - Indonesian Ulama Council Fatwa played an important role in the history of the development of Islamic economic laws in Indonesia, including Islamic financial institutions. Fatwa National Shariah Council - Indonesian Ulama Council Fatwa is used as a basis for issuing products or conducting business activities in Islamic financial institutions.<sup>14</sup> This means that Islamic financial institutions may not issue products or conduct business activities in the form of funding, financing, or services contrary to the fatwa of National Shariah Council - Indonesian Ulama Council Fatwa.

This paper discusses the legal existence of Islamic economic fatwas in Indonesia using a comparative approach to other countries. The background of the issuance of fatwa National Shariah Council - Indonesian Ulama Council Fatwa and the legal existence of fatwa National Shariah

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<sup>11</sup> Tuti Hasanah, "Transformasi Fatwa Dewan Syariah Nasional Ke Dalam Hukum Positif," *Syariah: Jurnal Hukum Dan Pemikiran* 16, no. 2 (2017): 161-76, <https://doi.org/10.18592/sy.v16i2.1022>.

<sup>12</sup> Muhamad Ibnu Afrelian and Imahda Khoiri Furqon, "Legalitas Dan Otoritas Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Dalam Operasional Lembaga Keuangan Syariah," *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, Dan Keagamaan* 6, no. 1 (2019): 1-12, <https://doi.org/10.29300/mzn.v6i1.2195>.

<sup>13</sup> Astika Nurul Hidayah, "Kedudukan Fatwa Ulama Dalam Sistem Hukum Nasional Sebagai Landasan Operasional Bank Syariah" (Prosiding Seminar Nasional & Call for Papers Hukum dan Industri, 2019).

<sup>14</sup> Pasal 18 Peraturan Otoritas Jasa Keuangan Nomor 24/POJK.03/2015 tentang Produk dan Aktivitas Bank Syariah dan Unit Usaha Syariah.

Council - Indonesian Ulama Council Fatwa in Islamic financial institutions are the main discussions in this paper.

## Methods

Type of normative research using statute, conceptual and comparative in Malaysia, Sudan, Pakistan, Indonesia, Singapore, the Philippines, Thailand, and historical approaches and specific to Indonesia.<sup>15</sup> Legal materials consist of laws, regulations, and fatwas, whereas non-legal materials consist of books, journals, and articles relevant to the object of research study.<sup>16</sup> Legal material collection techniques are conducted through literature and documentation studies.<sup>17</sup> The analysis technique used in this study uses the interpretation method and historiography of legal and non-legal materials.<sup>18</sup>

## Discussion

### Shariah Economic Fatwa Institutions: A Comparison with Other Countries

The Islamic economic fatwa body in Malaysia is called the Shariah Advisory Council (Majelis Penasihat Syariah).<sup>19</sup> It was established by Bank Negara Malaysia (Central Bank of Malaysia) in May 1997 as a fatwa-making authority in the field of Islamic economics (banks, insurance, and

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<sup>15</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Media Grup, 2014).

<sup>16</sup> Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies," *Journal of Judicial Review* 24, no. 2 (2022): 289–304, <https://doi.org/10.37253/jjr.v24i2.7280>.

<sup>17</sup> Ubaka Ogbogu and Natasha Ahmed, "Ethical, Legal, and Social Implications (ELSI) Research: Methods and Approaches," *Current Protocols* 2, no. e354 (2022): 1–8, <https://doi.org/10.1002/cpz1.354>.

<sup>18</sup> Lawrence M Solan, "C," *International Journal for the Semiotics of Law-Revue Internationale de S'miotique Juridique* 33 (2020): 283–98, <https://doi.org/10.1007/s11196-020-09707-8>.

<sup>19</sup> Sofian Al-Hakim, "Dinamika Fatwa Mudharabah Dan Murabahah Di Indonesia Dan Malaysia" (Universitas Islam Negeri (UIN) Syarif Hidayatullah Jakarta, 2019).

other Islamic financial institutions).<sup>20</sup> The duties and powers of the Shariah Advisory Council have changed with the amendment of the Central Bank of Malaysia Act.

The establishment of the Shariah Advisory Council is based on Laws of Malaysia Act 519 Central Bank of Malaysia Act 1958 (revised 1994), where the Central Bank of Malaysia is given the authority to establish such an institution.<sup>21</sup> The duties and powers of the Shariah Advisory Council are to ensure the application of Islamic law to the business activities of Islamic banking, insurance, Islamic finance, and other Islamic financial institutions regulated and supervised by the Central Bank of Malaysia. Additionally, the Shariah Advisory Council may provide an advice or legal opinion to arbitrators and courts.<sup>22</sup>

In 2009, the duties and powers of the Shariah Advisory Council were amended and strengthened by Laws of Malaysia Act 701 Central Bank of Malaysia Act 2009. The duties and powers of the Shariah Advisory Council are to not only ensure the application of Islamic law in Islamic financial institutions but also establish Shariah compliance for Islamic financial institutions. Additionally, the Shariah Advisory Council's legal decisions are binding on not only Islamic financial institutions but also arbitration and judicial bodies that resolve Islamic economic disputes.<sup>23</sup> The method of fatwa determination by the Shariah Advisory Council is

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<sup>20</sup> Suheyib Eldersevi and Razali Haron, "An Analysis of Ma La Ah Based Resolutions Issued by Bank Negara Malaysia," *ISRA International Journal of Islamic Finance* 12, no. 1 (2020): 89–102, <https://doi.org/10.1108/IJIF-09-2018-0103>; Karen PY Lai and Michael Samers, "Conceptualizing Islamic Banking and Finance: A Comparison of Its Development and Governance in Malaysia and Singapore," *The Pacific Review* 30, no. 3 (2017): 405–24, <https://doi.org/10.1080/09512748.2016.1264455>.

<sup>21</sup> Pasal 16B Laws of Malaysia act 519 Central Bank of Malaysia Act 1958 (revised 1994).

<sup>22</sup> Pasal 51-58 Laws of Malaysia act 519 Central Bank of Malaysia Act 1958 (revised 1994).

<sup>23</sup> Mohd Izzat Amsyar Mohd Arif and Ruzian Markom, "Isu-Isu Perundangan Dalam Kedudukan Dan Peranan Statutori Majelis Penasihat Syariah Bank Negara Malaysia," *Global Journal Al-Thaqafah (GJAT)* 10, no. 2 (2020): 84–95, <https://doi.org/10.7187/GJAT122020-10>.

formulated through collective *ijtihad* by several muftis appointed by the Central Bank of Malaysia.<sup>24</sup>

The Islamic economic fatwa institution in Sudan is called the HSCC. The institution was established by the Sudanese government in 1992 under the Banking Business (Organization) Act, 1991.<sup>25</sup> The position of the HSCC is institutionally stronger because it is established by the president. The HSCC is the first shariah economic fatwa institution in the world, and its duties and authorities are directly regulated by law.<sup>26</sup> The HSCC shall consist of at least 7 and not more than 11 persons from various fields of knowledge, including shariah, economics and finance, and law experts who are required to master shariah sciences and appointed by the president (Banking Business (Organization) Act, 2003).<sup>27</sup> The fatwa was issued by the HSCC as a binding Shariah compliance guideline and reference for Islamic banking in Sudan.

The Islamic economic fatwa institution in Pakistan is called the Shariah Board, which was established around 2004 by the State Bank of Pakistan (SBP).<sup>28</sup> The Shariah Board is appointed by the SBP from various scientific fields, including Shariah experts, lawyers, accountants, and bankers. However, it is not the only commission authorized to issue fatwas. Islamic economic fatwa can be formed not only by the Shariah Board but also by the Shariah Advisor.<sup>29</sup> Shariah Advisors are appointed

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<sup>24</sup> BNM, "Appointment of Members of the Shariah Advisory Council of Bank Negara Malaysia," <https://www.bnm.gov.my/>, 2023.

<sup>25</sup> Omer Allagabo Omer Mustafa, "History of Banking in Sudan (Conventional and Islamic): A Critical Review (1903-2019)," *International Finance and Banking* 8, no. 1 (2021): 29–51, <https://doi.org/10.5296/ifb.v8i1.18740>.

<sup>26</sup> Abdurrahman Jemal Yesuf, "Islamic Economics and Finance in Sudan: An Overview" (Istanbul, 2017).

<sup>27</sup> CBOS, "The Banking Business Act, 2003," [cbos.gov.sd](https://www.cbos.gov.sd/), 2003.

<sup>28</sup> SBP, "Shariah Advisory Committee," <https://www.sbp.org.pk/>, 2004.

<sup>29</sup> SBP, "Instructions for Shariah Compliance in Islamic Banking Institutions" (2008).

by each Islamic Banking Institution (IBI) on the basis of the approval of the SBP.<sup>30</sup>

Fatwa issued by the Shariah Advisor-IBI is automatically binding for each IBI.<sup>31</sup> However, if there is a difference of opinion between the Shariah Advisor and the SBP regarding the operation of Islamic banking, the fatwa issued by the Shariah Board-SBP can be referred to resolve it. The SBP made the fatwa issued by the Shariah Board-SBP as a guideline and reference for shariah compliance that is binding for Islamic banking in Pakistan after an announcement (decision letter).<sup>32</sup>

The Islamic economic fatwa institution in Indonesia is called the National Shariah Council - Indonesian Ulama Council Fatwa, established on February 10, 1999.<sup>33</sup> In contrast to Malaysia, Sudan, and Pakistan, the National Shariah Council - Indonesian Ulama Council Fatwa was not formed by the government or the central bank (Bank Indonesia) but by the Indonesian Ulama Council.<sup>34</sup> The National Shariah Council - Indonesian Ulama Council performs the duties of the Indonesian Ulama Council in determining fatwas on economics, business, and Islamic finance and supervising their application in Islamic financial institutions.<sup>35</sup> A comprehensive discussion of the National Shariah Council - Indonesian Ulama Council fatwa is provided in the following subdiscussion.

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<sup>30</sup> Sahibzada Muhammad J A N WAS M, Ahmad Azam OTHMAN B N, and Waqas FAROOQ, "Regulatory Arrangement for Shariah Governance Practice of Islamic Banking Institutions in Pakistan: Issues and Challenges," *Hitit Lahiyat Dergisi* 20, no. 1 (2021): 167–94, <https://doi.org/10.14395/hid.947530>.

<sup>31</sup> SBP, Instructions for Shariah Compliance in Islamic Banking Institutions.

<sup>32</sup> SBP.

<sup>33</sup> Yuli Andriansyah, "Analysis of Fatwas by the National Sharia Board-Indonesian Council of Ulama on the Stock Market," *Millah: Journal of Religious Studies* 22, no. 2 (2023): 525–52, <https://doi.org/10.20885/millah.vol22.iss2.art9>.

<sup>34</sup> Hasanudin Hasanudin, Jaih Mubarak, and Muhammad Al-Fayyad Maulana, "Progressiveness of Islamic Economic Law in Indonesia: The Mura'at Al-'Ilal Wa Al-Mashalih Approach," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (2023): 1267–92, <https://doi.org/10.22373/sjhk.v7i2.17601>.

<sup>35</sup> MUI, "Peraturan Organisasi Majelis Ulama Indonesia Nomor: 11/PO-MUI/VIII/2021 Tentang Anggaran Dasar Dan Anggaran Rumah Tangga Dewan Syariah Nasional-Majelis Ulama Indonesia" (2021).

In contrast to Malaysia, Sudan, Pakistan, and Indonesia, researchers did not find fatwa institutions in the field of Islamic economics at the national level in Singapore, the Philippines, and Thailand.<sup>36</sup> However, each Islamic financial institution may appoint a Shariah Advisory Board. For example, Islamic financial institutions in Singapore have a Shariah Advisory Board, and the Philippines and Thailand have a Shariah Advisory Council.<sup>37</sup>

The duties and authority of the Shariah Advisory Board and Shariah Advisory Council in Singapore, the Philippines, and Thailand include supervising and providing legal opinions related to shariah compliance at each Islamic financial institution. The duties and authority of the Shariah Advisory Board and Shariah Advisory Council is as regulated in the Monetary Authority of Singapore's Guidelines on the Application of Banking Regulations to Islamic Banking (revised 2021), Republic Act No. 6848 and Republic Act No. 11439 (Islamic banking regulations in the Philippines), and the Islamic Bank of Thailand Act 2545 BE enacted in 2002 and Bank of Thailand Notification No. 19/2559 BE in 2016 as Islamic banking regulations in Thailand. The legal opinions issued by the Shariah Advisory Board and Shariah Advisory Council are only internally binding for the respective Islamic financial institutions.

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<sup>36</sup> MAS, "Guidelines on the Application of Banking Regulations to Islamic Banking" (2021); Philippines, "Republic Act No. 11439 - An Act Providing for the Regulation and Organization of Islamic Banks" (2018); Philippines, "Republic Act No. 6848 - Charter of the Al-Amanah Islamic Investment Bank of the Philippines, Authorizing Its Conduct of Islamic Banking Business, and Repealing for This Purpose Presidential Decree Numbered Two Hundred and Sixty-Four as Amended by Presiden" (1990).

<sup>37</sup> Ginting et al., "Legal and Regulatory Framework of Islamic Banking and Finance: A Study in Singapore"; Siththivanich and Hassan, "An Analysis of the Islamic and Conventional Banking Regulatory Bodies and Legislation in Thailand."

## Legal Politics of the Existing of Fatwa National Shariah Council - Indonesian Ulama Council

The existence of fatwa National Shariah Council - Indonesian Ulama Council cannot be separated from the legal political configuration in Indonesia. Mahfud MD explains legal politics as legal policy or what is called the official state policy line related to the law to be applied by either making new laws or replacing old laws to achieve state goals.<sup>38</sup>

The study of the legal politics of the formation of Islamic economic regulations and policies will certainly not be separated from political and economic issues.<sup>39</sup> Similarly, the background governing the issuance of National Shariah Council - Indonesian Ulama Council fatwa is closely related to the political law governing the formation of Islamic economic regulations and policies. Additionally, the development of Islamic economic institutionalization in Indonesia, symbolized by Islamic banks, greatly influenced the birth of the National Shariah Council - Indonesian Ulama Council fatwa.

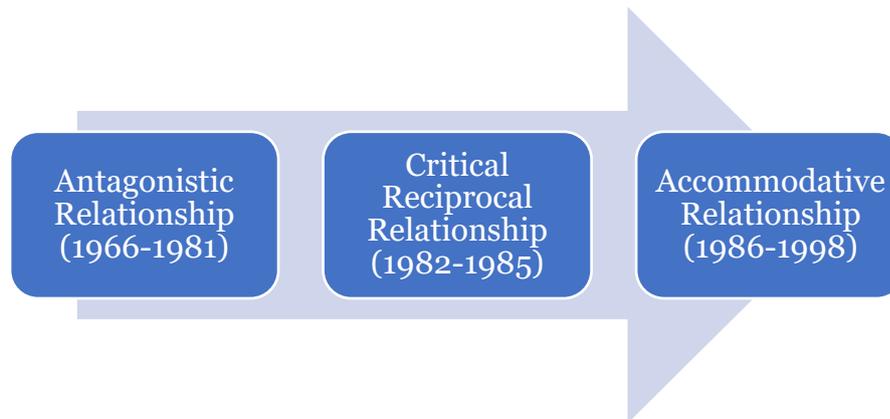
**First**, the legal politics of shariah economic regulation and policy formation is one of the factors behind the existence of the National Shariah Council - Indonesian Ulama Council fatwa. The political situation during the reign of President Suharto (1966-1998)<sup>40</sup> can be described from the relationship and actions between the government and Muslims as follows (see Figure 1):

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<sup>38</sup> Moh. Mahfud MD, *Politik Hukum Di Indonesia*, 7th ed. (Jakarta: PT. RajaGrafindo Persada, 2017); Bambang Santoso, *Politik Hukum* (Pamulang: Unpam Press, 2021).

<sup>39</sup> Ayon Diniyanto, "Politik Hukum Regulasi Pemilihan Umum Di Indonesia: Problem Dan Tantangannya," *Jurnal Legislasi Indonesia* 16, no. 2 (2019): 160-72, <https://doi.org/10.54629/jli.v16i2.464>; MD, *Politik Hukum Di Indonesia*.

<sup>40</sup> A Malthuf Siroj, Ismail Marzuki, and Elkhairati Elkhairati, "Transformation and Future Challenges of Islamic Law in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 May (2023): 95-116, <https://doi.org/10.29240/jhi.v8i1.6618>.



**Figure 1.** Relationship between the Government and Muslims<sup>41</sup>

During Suharto's presidency, the relationship between the Muslims and government was divided into three phases: antagonistic (1966–1981), critical reciprocal (1982–1985), and accommodative (1986–1998).<sup>42</sup> The political situation at that time affected the existence of shariah economic law in Indonesia, which is characterized by the development and renewal of shariah economic law.<sup>43</sup>

In the antagonistic phase, there was a conflict between the government and Muslims. This situation was characterized by a reduction in the role of political parties and avoidance of discussions about ideologies other than Pancasila, especially those related to religion. Some expectations from Muslim groups were not responded to by the government, including the request to restore Masyumi, which was

<sup>41</sup> Atang Abd Hakim, *Fiqih Perbankan Syariah: Transformasi Fiqih Muamalah Ke Dalam Peraturan Perundang-Undangan* (Bandung: Refika Aditama, 2019).

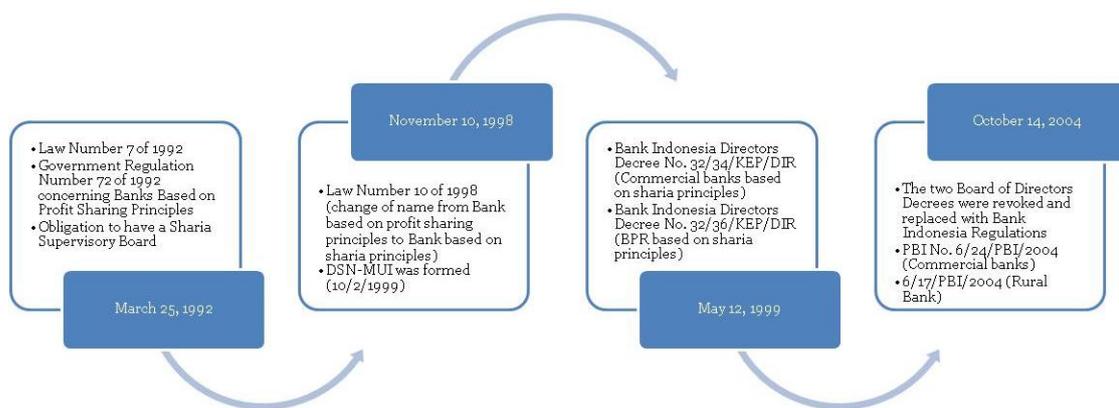
<sup>42</sup> Ida Zahara Adibah, "Dinamika Lembaga Pendidikan Islam Di Indonesia Pada Masa Orde Baru (1966-1998)," *INSPIRASI (Jurnal Kajian Dan Penelitian Pendidikan Islam)* 4, no. 2 (2020): 110–26; Ainun Najib, "Dialektika Politik Hukum Islam Dalam Pembangunan Sistem Hukum Nasional," *HUKMY: Jurnal Hukum* 1, no. 1 (2021): 109–31, <https://doi.org/10.35316/hukmy.2021.v1i1.10>; Syafruddin Syam, Syahrul Syahrul, and Siti Ameliyah, "Pembangunan Politik Hukum Islam Pada Masa Orde Baru, Reformasi Dan Pasca Reformasi," *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 17, no. 2 (2023): 1069–86, <https://doi.org/10.35931/aq.v17i2.1992>; Faryda Ruslan, "Politik Hukum Islam Masa Orde Baru Dan Produk Perundang-Undangannya," *Al Qisthas: Jurnal Hukum Dan Politik Ketatanegaraan* 10, no. 2 (2019): 53–76, <https://doi.org/10.37035/alqisthas.v10i2.2347>; Abd Hakim, *Fiqih Perbankan Syariah: Transformasi Fiqih Muamalah Ke Dalam Peraturan Perundang-Undangan*.

<sup>43</sup> Abd Hakim, *Fiqih Perbankan Syariah: Transformasi Fiqih Muamalah Ke Dalam Peraturan Perundang-Undangan*.

terminated in 1960<sup>44</sup>; ideological issues regarding the implementation of Islam as the state ideology and application of the Jakarta Charter; the formation of a political party based on Islam, namely, the Indonesian Islamic Democratic Party initiated by Mohammad Hatta; and reactivation of the Indonesian Islamic Party.

In the critical reciprocal phase, the government and Muslims sought to build a relationship based on mutual trust, thereby reducing suspicion between the two parties. This was demonstrated through mutual understanding between Islamic interests and the policies of President Suharto's government. From 1982 to 1985, many Islamic groups began to accept the single principle of Pancasila as the basis of state ideology and social and political organizations.

In the accommodative phase, the relationship between the government and Muslims began to improve because all Islamic organizations accepted the single principle of Pancasila. This was marked by the inclusion of Muslims in the elite political system and bureaucracy. This pattern of accommodative relationship began to be felt after the enactment of the Law on Banking (see Figure 2).<sup>45</sup>



<sup>44</sup> Hasanuddin Yusuf Adan et al., “Islam and the Foundation of the State in Indonesia: The Role of the Masyumi Party in the Constituent Assembly the Perspective of Fiqh Al-Siy Sah,” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 377–98, <https://doi.org/10.22373/sjhk.v7i1.16650>.

<sup>45</sup> Fauzan Ali Rasyid, “Konfigurasi Politik Hukum Ekonomi Syariah Di Indonesia,” *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 16, no. 2 (2016): 297–315, <https://doi.org/10.18326/ijtihad.v16i2.297-315>.

**Figure 2.** Evolution of National Shariah Council - Indonesian Ulama Council Authority Arrangements

On March 25, 1992, the government ratified and promulgated Law Number 7 of 1992 concerning Banking, followed by the stipulation of Government Regulation Number 70 of 1992 concerning Commercial Banks and Government Regulation Number 72 of 1992 concerning Banks Based on Profit Sharing Principles.<sup>46</sup> On the basis of these regulations, commercial banks can conduct business activities based on the profit-sharing principle. Additionally, banks that conduct their business activities based on the principle of profit sharing are required to have a Shariah Supervisory Board (*Dewan Pengawas Syariah-DPS*) formed by the bank based on the results of consultations with the institution that is the forum for Indonesian ulama, namely, the Indonesian Ulama Council.

The Indonesian Ulama Council responded positively to the enactment of Government Regulation No. 72 of 1992. This was marked by the issuance of recommendations from the Ulama Workshop on Shariah Mutual Funds on July 29 to 30, 1997, in Jakarta, namely, the need for an institution that specifically handles activities or business activities in Islamic financial institutions. The recommendations of the workshop were then followed up by the Indonesian Ulama Council by holding a meeting of the team for the establishment of a fatwa institution on October 14, 1997. On November 10, 1998, a fatwa institution called the National Shariah Council - Indonesian Ulama Council was established (Decree No. Kep-754/MUI/II/1999).<sup>47</sup>

On November 10, 1998, the government amended Law Number 7 of 1992 to Law Number 10 of 1998.<sup>48</sup> The term “bank based on profit-sharing

<sup>46</sup> Upik Mutiara et al., “Exceptions of Banking Secrets for the Interest of Taxes in Indonesia (a Comparison of the Post-Birth of Access Law to Financial Information),” *Legality: Jurnal Ilmiah Hukum* 28, no. 2 (2020): 196–210, <https://doi.org/10.22219/ljih.v28i2.13375>.

<sup>47</sup> <https://dsnemui.or.id/kami/sekilas/>, diakses 7 April 2023.

<sup>48</sup> Wardah Yuspin et al., “Personal Data Protection Law in Digital Banking Governance in Indonesia,” *Studia Iuridica Lublinensia* 32, no. 1 (2023): 99–130, <https://doi.org/10.17951/sil.2023.32.1.99-130>.

principles” has been revised to “bank based on shariah principles.” After the issuance of the law, it was followed by several decrees of the Board of Directors of Bank Indonesia and Bank Indonesia Regulations.

On May 12, 1999, Central Bank in Indonesia (*Bank Indonesia*) issued a decree on the implementation of shariah business activities for commercial and rural banks (SK Direksi BI No. 32/34/KEP/DIR and SK Direksi BI No. 32/36/KEP/DIR).<sup>49</sup> The name of the National Shariah Council appears in both decrees, and its definition is explained in each decree.

The National Shariah Council is a council established by the MUI, which has the duty and authority to ensure the conformity between the products, services, and business activities of banks with Shariah Principles.

After 5 years, the aforementioned two Bank Indonesia Board of Directors decrees were revoked and declared invalid as of October 14, 2004, and were replaced by the Bank Indonesia Regulation No. 6/24/PBI/2004 and Bank Indonesia Regulation No. 6/17/PBI/2004.<sup>50</sup> The definition of the National Shariah Council was changed after the issuance of the two Bank Indonesia Regulations, from “tasked and authorized to ensure conformity between products, services, and business activities of banks with Shariah Principles” to “tasked and authorized to determine fatwas on products and services in the business activities of Islamic banks.”

Along with the development of Islamic economic activities, including the increasing public awareness of the practice of business and

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<sup>49</sup> R Ichsan et al., “Determinant of Sharia Bank’s Financial Performance during the Covid-19 Pandemic,” *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* 4, no. 1 (2021): 298–309, <https://doi.org/10.33258/BIRCI.V4I1.1594>.

<sup>50</sup> Andi Muhammad Yasin et al., “Analysis Of the Role of The Sharia Supervisor System in The Supervision, Anti-Fraud and Compatibility Audit System in Sharia Compatibility Optimization.,” *Review of International Geographical Education Online* 11, no. 5 (2021).

financial transactions based on shariah principles,<sup>51</sup> the duties and authority of National Shariah Council - Indonesian Ulama Council are expanded to become an institution that determines fatwas on economics, business, and Islamic finance and supervises the implementation of these fatwas (Article 1 Point 1 of MUI Regulation No: 11/PO-MUI/VIII/2021).<sup>52</sup> The addition of the duties and authority of the National Shariah Council - Indonesian Ulama Council is outlined in the National Shariah Council - Indonesian Ulama Council bylaws, which are authorized by Indonesian Ulama Council Regulation No. Kep-407/MUI/IV/2016: Kep-407/MUI/IV/2016. In 2018, the National Shariah Council - Indonesian Ulama Council by laws were amended again through MUI Regulation No. Kep-11/PO-MUI/II/2018: Kep-11/PO-MUI/II/2018 and finally changed in 2021 through MUI Regulation No. Kep-11/PO-MUI/VIII/2018: Kep-11/PO-MUI/VIII/2021. Thus, since the National Shariah Council - Indonesian Ulama Council was established, the National Shariah Council - Indonesian Ulama Council bylaws have been amended twice.

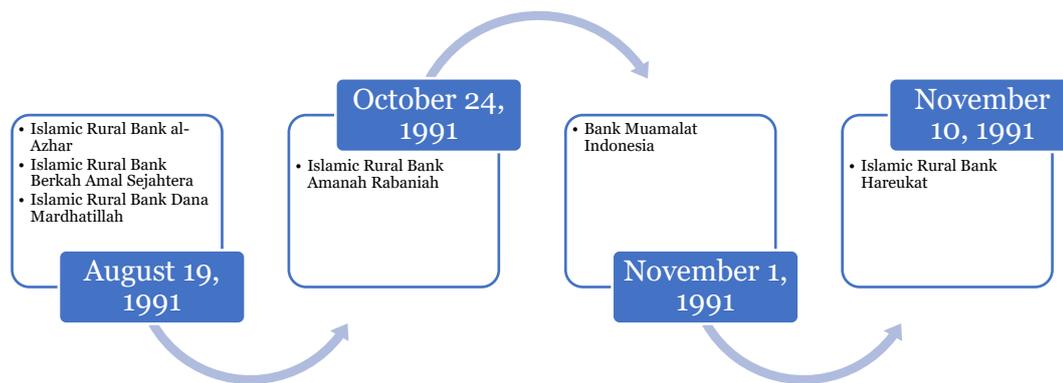
One of the duties and authorities of National Shariah Council - Indonesian Ulama Council as stipulated in the Organizational Regulation of the Indonesian Ulama Council Number: Kep-11/PO-MUI/VIII/2021 is to determine fatwas and supervise the implementation of fatwas through the Shariah Supervisory Board. Meanwhile, one of the authorities of National Shariah Council - Indonesian Ulama Council, namely: 1) to give a warning to Islamic financial institutions, shariah business institutions, and shariah economic institutions that deviate from the fatwa; and 2) if the warning is not heeded, then National Shariah Council - Indonesian Ulama Council can provide recommendations to the competent authorities.

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<sup>51</sup> Oyo Sunaryo Mukhlas, *Dual Banking System Dan Penyelesaian Sengketa Ekonomi Syariah* (Bandung: PT. Refika Aditama, 2019).

<sup>52</sup> Mohammad Jamaludin, "Certification and Supervision of Sharia Conformity National Sharia Council Indonesian Ulama Council (DSN-MUI) on Sharia Property," *Al-Mustashfa: Jurnal Penelitian Hukum Ekonomi Syariah* 8, no. 2 (2023): 192–204, <https://doi.org/10.24235/jm.v8i2.13032>.

**Second**, the development of Islamic economic institutions in Indonesia is one of the factors in the issuance of National Shariah Council - Indonesian Ulema Council fatwa. The development of the Islamic economy symbolized by Islamic financial institutions is one of the drivers of the issuance of the National Shariah Council - Indonesian Ulama Council fatwa (see Figure 3).



**Figure 3.** Islamic Financial Institutions before the Law on Banking

Shariah financial institutions existed around 1991, including (1) Islamic Rural Bank al-Azhar in Jakarta, Islamic Rural Bank Berkah Amal Sejahtera, and Islamic Rural Bank Dana Mardhatillah established on August 19, 1991; (2) Islamic Rural Bank Amanah Rabaniah in Bandung on October 24, 1991; (3) Bank Muamalat Indonesia established on November 1, 1991; and (4) Islamic Rural Bank Hareukat in Aceh established on November 10, 1991.<sup>53</sup>

After the government ratified and promulgated Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, the regulation explicitly regulated two banking systems (dual banking system): conventional and Shariah. This opportunity was welcomed by banking services businesses by establishing several shariah banks as Shariah Business Units (*Unit Usaha Syariah-UUS*).

<sup>53</sup> Abd Hakim, *Fiqih Perbankan Syariah: Transformasi Fiqih Muamalah Ke Dalam Peraturan Perundang-Undangan*.

The first Shariah Business Unit to use a dual banking system, Bank IFI (Indonesia Finance and Investment Company), founded on June 28, 1999, was the first Shariah Business Unit to use a dual banking system. It was subsequently named Bank IFI Syariah Branch.<sup>54</sup> It was followed by Bank Syariah Mandiri, which was the result of the conversion of PT Bank Susila Bakti (BSB); therefore, BSB's business activities changed from a conventional bank to a bank that operates on the basis of shariah principles with the name Bank Syariah Mandiri as stated in the Notarial Deed: Sutjipto, SH, No. 23 dated September 8, 1999. The change in BSB's business activities to become a shariah commercial bank was confirmed by the Governor of Bank Indonesia through BI Governor Decree No. 1/24/KEP.BI/1999, October 25, 1999. Furthermore, through the Decree of the Senior Deputy Governor of Bank Indonesia No. 1/1/KEP.DGS/-1999, BI approved the name change to PT Bank Syariah Mandiri. Following this legal inauguration and recognition, PT Bank Syariah Mandiri officially started operating on Monday, *Rajab* 25, 1420 H or November 1, 1999.<sup>55</sup>

On July 27, 2004, it was followed by Bank Syariah Mega Indonesia. It was initially known as Bank Usaha Tugu (Usaha Tugu Bank), a commercial bank that was founded on July 14, 1990, and then acquired by Mega Corpora (formerly Para Group) through Mega Corpora (formerly Para Global Investindo) and Para Mitra Investama in 2001. This acquisition was followed by a change in business activities on July 27, 2004, from a conventional commercial bank to a shariah commercial bank under the name Bank Syariah Mega Indonesia, which officially operated on August 25, 2004.<sup>56</sup>

On September 16, 2004, Commerce International Merchant Bankers Berhad Niaga (CIMB Niaga Bank) began conducting banking

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<sup>54</sup> [https://p2k.stekom.ac.id/ensiklopedia/Bank IFI](https://p2k.stekom.ac.id/ensiklopedia/Bank_IFI), diakses tanggal 10 April 2023.

<sup>55</sup> <https://web2017.syariahmandiri.co.id/tentang-kami/sejarah>, diakses tanggal 8 April 2023.

<sup>56</sup> <https://www.megasyariah.co.id/id/tentang-kami/profil-perusahaan/sejarah-perusahaan>, diakses tanggal 8 April 2023.

business activities based on shariah principles after obtaining a business license through Bank Indonesia Governor Decree No. 6/71/KEP.GBI.2004 by establishing a Shariah Business Unit.<sup>57</sup> It was followed by Bank Tabungan Negara Syariah, which began operating on February 14, 2005.<sup>58</sup> Furthermore, on November 17, 2008, Bank Rakyat Indonesia Syariah officially started changing business activities that previously operated conventionally into banking activities based on shariah principles.<sup>59</sup> With the increasing number of Islamic financial institutions in Indonesia, fatwa National Shariah Council - Indonesian Ulama Council is needed as an ideal (normative) framework and operational guideline in conducting the business activities of Islamic financial institutions.

On the basis of the aforementioned explanation, the factor behind the issuance of the National Shariah Council - Indonesian Ulama Council fatwa is the existence of regulations governing the obligation for every Islamic financial institution to conduct its business activities based on shariah principles. Additionally, the institutional development of the Islamic economy continues to increase and is followed by various product innovations in each financial institution; therefore, it requires fatwa National Shariah Council - Indonesian Ulama Council as a legal provision (normative) and an operational guideline in conducting its business activities in the form of funding, financing, and service.

## **Existence of Fatwa National Shariah Council - Indonesian Ulama Council in Islamic Financial Institutions**

If the fatwa of National Shariah Council - Indonesian Ulama Council is reviewed using the national legal system approach that applies

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<sup>57</sup> <https://investor.cimbniaga.co.id/gcg/history.html?lang=id&source=corporate>, diakses tanggal 8 April 2023.

<sup>58</sup> <http://repository.iainpare.ac.id/2964/5/15.2300.094%20BAB%204.pdf>, diakses tanggal 8 April 2023.

<sup>59</sup> <https://ir.bankbsi.co.id/milestones.html>, diakses tanggal 8 April 2023.

in Indonesia, then the fatwa of National Shariah Council - Indonesian Ulama Council is not included in the types and hierarchy of statutory regulations.<sup>60</sup> Because the fatwa of National Shariah Council - Indonesian Ulama Council is not formed and stipulated by an institution or body authorized by law to form and establish a statutory regulation.<sup>61</sup>

The term legislation is often referred to as regulation. The use of the word regulation, for legal scholars, is often connoted as a legal instrument. Conversely, sociologists connote regulation as another form of social control.<sup>62</sup> The use of the word regulation in Indonesia is limited to formal legal sources in the form of laws and regulations,<sup>63</sup> where the statutory regulations must be a written legal norm, made by an authorized institution or official, and binding (has forced power). According to Peter Mahmud Marzuki, laws and regulations have two characteristics: universally applicable and outwardly binding.<sup>64</sup>

However, legal decisions as stipulated in the fatwa of National Shariah Council - Indonesian Ulama Council can be legally binding if the following requirements are met: First, legal decisions in fatwas are legitimized by institutions granted the authority to form and stipulate laws and regulations, so that legal decisions in fatwas become laws and regulations, such as Bank Indonesia Regulations (*Peraturan Bank Indonesia-PBI*), Financial Services Authority Regulations (*Peraturan Otoritas Jasa Keuangan-POJK*), and Regional Regulations (*Peraturan Daerah-Perda*). Many National Shariah Council - Indonesian Ulama

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<sup>60</sup> Yeni Salma Barlinti, "Kedudukan Fatwa Dewan Syariah Nasional Dalam Sistem Hukum Nasional Di Indonesia" (Universitas Indonesia, 2010).

<sup>61</sup> Pasal 7 dan 8 Undang-Undang Nomor 12 Tahun 2011 terakhir dirubah oleh Undang-Undang Nomor 13 Tahun 2022 tentang Pembentukan Peraturan Perundang-Undangan.

<sup>62</sup> Anendya Niervana, "Regulasi: Pengertian, Bentuk, Dan Teori," *gramedia.com*, n.d.; Mohd Yusuf DM et al., "Peranan Dan Kedudukan Sosiologi Hukum Bagi Masyarakat Sebagai Kontrol Sosial," *Jurnal Pendidikan Dan Konseling (JPDK)* 5, no. 2 (2023): 1097–1103, <https://doi.org/10.31004/jpdk.v5i2.12967>.

<sup>63</sup> Andi Fachruddin, *Journalism Today* (Jakarta: Kencana, 2019); Lusia Sulastri and Kurniawan Tri Wibowo, *Merajut Sistem Keorganisasian Advokat Di Indonesia* (Ponorogo: Gracias Logis Kreatif, 2021).

<sup>64</sup> Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Jakarta: Kencana, 2017).

Council legal decisions have begun to be transformed into laws and regulations, for example, Law no. 21 of 2008, POJK No. 24/POJK.03/2015, POJK No. 13/POJK.03/2021, PBI No. 10/16/PBI/2008 concerning Amendments to PBI No. 9/19/PBI/2007, and Bandung Regency Regional Regulations Number 6 of 2020 concerning Halal Tourism. Second, legal decisions in fatwas are used as the basis for legal considerations by judges—thus, legal decisions in fatwas that have turned into rulings become binding for the litigants. Third, legal decisions in fatwas are used as the basis for legal considerations by arbitrators—thus, legal decisions in fatwas that have turned into arbitral rulings become binding for the parties to the dispute. Fourth, legal decisions in fatwas are used as one of the clauses in the agreement—thus, legal decisions in fatwas that have entered into the agreement are binding for the parties to the agreement.<sup>65</sup> The binding legal decision in the fatwa National Shariah Council - Indonesian Ulama Council is not due to the position of the fatwa but due to the change in form from fatwa to statutory regulations, court decisions, arbitration decisions, and agreements agreed by the parties.

The existence of fatwa National Shariah Council - Indonesian Ulama Council in practice in Islamic financial institutions can be seen in the following explanation.

First, fatwa National Shariah Council - Indonesian Ulama Council is a legal decision and guideline for Islamic financial institutions related to whether or not to conduct new types of business activities for which there is no fatwa. This means that the type of business activity in Islamic financial institutions can be implemented if there are already legal provisions in the National Shariah Council - Indonesian Ulama Council fatwa. This argument is based on the provisions of Article 18 paragraph (2) POJK No.24/POJK.03/2015.

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<sup>65</sup> Pasal 1338 KUHPerduta: “semua perjanjian yang dibuat secara sah berlaku sebagai undang-undang bagi mereka yang membuatnya, tidak dapat ditarik kembali selain dengan kesepakatan kedua belah pihak, dan perjanjian tersebut harus dilaksanakan dengan itikad baik”.

Second, the National Shariah Council - Indonesian Ulama Council fatwa is a legal decision that must be used as an ideal (normative) framework and operational guideline in conducting business activities based on shariah principles in the economic, business, and financial fields. Shariah principles are defined by the fatwa issued by the National Shariah Council - Indonesian Ulama Council. The obligation of business actors to submit and comply with the fatwa of National Shariah Council - Indonesian Ulama Council is regulated by various statutory regulations (see Table 1).

**Table 1.** *Obligation of Islamic Financial Institutions to Enforce the Fatwa of the National Shariah Council - Indonesian Ulama Council*

Regulations	Rule of law	Sanction
Law no. 21 of 2008 concerning Shariah Banking	Article 24 Shariah banks are prohibited from conducting business activities that conflict with the National Shariah Council - Indonesian Ulama Council fatwa.	Article 56 If a shari bank does not conduct its business activities based on the National Shariah Council - Indonesian Ulama Council fatwa, it will be subject to administrative sanctions by the OJK.
Law no. 1 of 2013 concerning Microfinance Institutions	Article 12 Shariah Microfinance Institutions must be implemented in accordance with the National Shariah Council - Indonesian Ulama Council fatwa.	Article 33 Shariah Microfinance Institutions that do not conduct their business activities based on the National Shariah Council - Indonesian Ulama Council fatwa will be subject to administrative sanctions by the OJK.
POJK No. 15/POJK.04/2015 concerning the Application of Shariah principles in the Capital Market	Article 6 Implementation of shariah activities in the Capital Market must comply with the National Shariah Council - Indonesian Ulama Council fatwa.	Article 13 Any party that does not conduct shariah activities in the Capital Market will be subject to administrative sanctions by the OJK.
POJK No. 69/POJK.05/2016 concerning Business Operations for Insurance Companies, Shariah Insurance	Article 3 Shariah general insurance companies, including shariah units, can only conduct their business activities based on sharia	Article 77 Every shariah general insurance company, including shariah units, that does not conduct its business activities based on shariah principles

Companies, Reinsurance  
Companies, and Shariah  
Reinsurance Companies

principles.

will be subject to  
administrative sanctions by  
the OJK.

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Source: [www.ojk.go.id](http://www.ojk.go.id)

Third, the fatwa of National Shariah Council - Indonesian Ulama Council is a guideline for the Shariah Supervisory Board in conducting its duties.<sup>66</sup> The existence of a Shariah Supervisory Board in every Islamic financial institution is a must. One of the duties of the Shariah Supervisory Board is to oversee the implementation of fatwas and decisions of the National Shariah Council - Indonesian Ulama Council. The Shariah Supervisory Board will report to the National Shariah Council - Indonesian Ulama Council if Islamic financial services business actors deviate from the fatwa of National Shariah Council - Indonesian Ulama Council. Furthermore, the National Shariah Council - Indonesian Ulama Council will warn Islamic financial institutions to stop deviating from the fatwa issued by the National Shariah Council - Indonesian Ulama Council. If the warning is not conveyed, National Shariah Council - Indonesian Ulama Council can make a report to the Financial Services Authority (*Otoritas Jasa Keuangan-OJK*).

## Conclusion

Fatwa formation using a centralized mode, as used by Malaysia, Sudan, Pakistan, and Indonesia, can result in uniform legal decisions for the same cases across all Islamic financial institutions. Conversely, the decentralized model used by Singapore, the Philippines, and Thailand can produce diverse legal decisions for the same case in each Islamic financial institution. The existence of fatwa National Shariah Council - Indonesian Ulama Council is inseparable from the legal politics of Islamic economic regulations and policies in Indonesia. This can be seen from various regulations and policies on Islamic economics in Indonesia, which require

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<sup>66</sup> Peraturan DSN-MUI No. PER-01/DSN-MUI/X/2017 tentang Dewan Pengawas Syariah.

that every business activity or activity of Islamic financial institutions must be conducted in accordance with the fatwa of National Shariah Council - Indonesian Ulama Council. It is necessary for every Islamic financial institution to implement fatwa National Shariah Council - Indonesian Ulama Council and provide sanctions for every Islamic financial institution that violates it. The legal formal position of fatwa National Shariah Council - Indonesian Ulama Council is excluded from the legislation because the fatwa is not formed by an institution that is given the authority to form legislation (the National Shariah Council-Indonesian Ulama Council is not a government institution). However, in legal substances, the position of fatwa National Shariah Council - Indonesian Ulama Council is morally and legally binding for all Islamic financial institutions. The binding of fatwa National Shariah Council - Indonesian Ulama Council to legal substances is caused by orders from statutory regulations. Research on the comparison of the effectiveness of shariah governance in Indonesia and other countries is an important issue that will be developed by researchers in future studies.

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