

## ABSTRAK

Asrori S. Karni, *Problem Konseptual Otoritas Kepatuhan Syariah (Syariah Compliance) Dalam regulasi Perbankan Syariah*, Tesis Pascasarjana Magister Ilmu Hukum, Fakultas Hukum Universitas Indonesia, Juni 2010.

Pilihan otoritas regulasi untuk mempercayakan otoritas kepatuhan syariah (*syariah compliance*) perbankan syariah kepada Majelis Ulama Indonesia (MUI), lembaga non-negara berbadan hukum privat, secara teoritik menyimpan problem. Malaysia, Pakistan, dan Sudan membangun otoritas *syariah compliance* dengan memperkuat lembaga independen berbadan hukum publik, berupa organ dalam bank sentral atau komisi mandiri yang diangkat kepala negara. Dua model otoritas kepatuhan usulan DPR saat pembahasan RUU Perbankan Syariah juga memilih format dewan atau komisi yang menjadi organ bank sentral atau otoritas jasa keuangan. Pilihan demikian karena keputusan otoritas ini akan mengikat publik, maka sewajarnya dipegang badan hukum publik. Dinamika pembahasan RUU akhirnya memilih model MUI. Pertimbangannya, independensinya dipercaya lebih terjaga. Selain itu, selama ini secara *de facto* MUI sudah menjalankan peran itu. Model otoritas kepatuhan demikian membuat fatwa MUI yang secara konseptual tidak mengikat menjadi semi-mengikat publik. Kedudukan MUI sebagai badan hukum privat menjadi mirip badan hukum publik yang berwenang membuat ketetapan mengikat publik. Sisi lain, kelayakan fatwa ormas non-MUI sebagai rujukan regulasi, terkesan diabaikan, karena sudah ada fatwa rujukan resmi. Kajian bercorak penelitian hukum normatif ini bertujuan menguji ketepatan secara teoritik penunjukan MUI itu. Bagaimana jadinya konsepsi fatwa yang makna generiknya dalam literature hukum Islam tidak mengikat publik. Bagaimana pula kedudukan fatwa ormas Islam di luar MUI yang kredibilitasnya juga tidak bisa disepelekan. Penelitian dilakukan dengan tiga pendekatan. Pendekatan peraturan untuk menggali formula regulasi. Pendekatan konsep untuk analisis konseptual. Pendekatan perbandingan untuk komparasi praktek regulasi beberapa negara. Diperoleh konklusi, model otoritas berbasis MUI ini masih relevan dilanjutkan, sejauh sebagai model transisi. Model otoritas ini masih menempatkan fatwa dalam watak privatnya, karena masih diperlukan tahap transformasi fatwa menjadi regulasi mengikat. Banyaknya pihak berkompetensi fatwa di luar MUI dicoba diakomodasi lewat mekanisme internal MUI. Bila saat ini MUI dinilai paling siap memegang otoritas kepatuhan syariah, perlu dilengkapi perangkat regulasi yang menjadi standar legal dan ilmiah untuk menjamin bahwa fatwa MUI, baik proses maupun hasilnya, paling memenuhi kualifikasi diserap dalam regulasi. Namun, problem legal-konseptual yang diidap model ini harus terus diselesaikan secara gradual. Ke depan, perlu dijajaki peluang pembentukan otoritas kepatuhan syariah independen, sesuai argumen pokok dipilihnya MUI, namun berbadan hukum publik, seperti di Malaysia, Pakistan, dan Sudan, karena otoritasnya akan mengikat publik.

## ABSTRACT

Asrori S. Karni, *The Conceptual Problems of The Authority of Shariah Compliance in The Shariah Banking Regulation*, A Thesis for Master Degree, Post-Graduate, Faculty of Law, University of Indonesia, 2010.

Choice of the regulatory authorities to entrust the authority of sharia compliance of Islamic banking to the Indonesian Ulama Council (MUI), a non-state entity, a private law entity, has the problems theoretically. Malaysia, Pakistan, and Sudan built the authority of sharia compliance by strengthening independent institution incorporated under public law entity, such as organs in the central bank or an independent commission that was appointed by head of the state. Two models of sharia compliance authority which were proposed by House of Representative, when discussing the draft of Shariah Banking Act, also chose the format of public legal entity, such like an organ of central bank or a part of the financial services authority. These options base on reason that the decisions of sharia compliance authority will be binding on public, then it was appropriate held by a public legal entity. But the dynamics of the parliamentary debate on the bill ultimately chose the type of a private legal entity, namely MUI. The main consideration is its independence more credible. In addition, empirically MUI has been engaged in that role. The passed model of sharia compliance authority make MUI's fatwa that is conceptually not public binding to be the semi-public binding. The position of MUI as a private legal entity transform to be a pseudo-public legal entity that was authorized to make rulings which was binding on the public. Other hand, the feasibility of non-MUI's fatwa (edicts) as a referral of regulations, was look ignored, because there has been an official fatwa as regulation's reference. The normative legal research was aimed to test theoretically the accuracy of MUI's appointment as a sharia compliance authority holder. How is then the application of the concept of fatwa that its generic meaning in Islamic law literature was not binding on the public? How is the position of fatwa of Islamic organizations outside MUI that their credibility also can not be underestimated? Research was carried out by three approaches. Regulatory approach was used to explore the regulatory formula. Conceptual approach was used to make conceptual analysis. Comparative approach was used to compare the regulation of some countries. Retrieved conclusion that the model of MUI based authority is still relevant to be continued, as far as the transition model. The model of authority is still placing fatwa in it's generic concept as a non-binding ruling, because it still need stage to transform fatwa to be regulation. The large number of competent *mufti* outside MUI try to be accommodated through MUI internal mechanisms. If currently MUI is still considered as the most ready entity to hold the authority of sharia compliance, It is need to be equipped by the regulations that will be a legal and scientific standard to ensure that MUI's fatwa, both process and outcome, were the most qualified one to be absorbed to the regulation. However, the legal-conceptual problems within this model should continue to be solved gradually. For the next time, it is necessary to explore the

feasibility of the establishment of an independent sharia compliance authority. Independence is the principal arguments of MUI appointment as sharia compliance authority holder. Beside independent, the next compliance authority should be a public legal entity, such as in Malaysia, Pakistan, and Sudan, because it's authority will be binding on the public.

