



Halal Tourism: Usul Fiqh's Analysis of DSN-MUI Fatwa Number 108

Nur Faizin^(✉)

Universitas Negeri Malang, Malang, Indonesia
nur.faizin.fs@um.ac.id

Abstract. The phenomenon of tourism development following sharia has now become a demand of the Indonesian people and even the world community. MUI, as an institution with the authority to determine fatwas in Indonesia has made signs related to sharia tourism. Mui has established a fatwa with number: 108/DSN-MUI/IX/2016 regarding the implementation of tourism based on sharia principles. This fatwa has become a reference for several local governments in enacting local regulations. This paper is a study of the content of the fatwa from the perspective of Usul Fiqh. The analysis method in this study is a qualitative descriptive method of Usul Fiqh's perspective. The results of this study show that several sources of Islamic law are the basis for the determination of the fatwa, namely the Quran, Hadith, Fiqh Rules, and the opinions (*qoul*) of previous scholars. There are five verses from the Quran on which the fatwa is based; four Hadiths; the four Rules of Jurisprudence; and two opinions (*qoul*) of scholars. Apart from being based on the legal sources mentioned, this DSN-MUI fatwa also utilizes pre-existing fatwas and decisions, especially fatwas related to the prohibition of pornography, pornography, the concept of benefit, and fatwas about massage parlors.

Keywords: Tourism · Halal · Sharia · Fatwa · DSN · MUI

1 Introduction

The problem of fatwas related to halal law began to arise in the early 20th century. That is growing with the growing impact of modernity in Southeast Asian cities. At first, fatwas on halal were general and did not relate to specific issues such as food, finance, hospitals, or tourism as part of the industry.[1] The halal tourism industry emerged in the last decade as one of the ways to market by segmenting the tourist market to meet the different consumer psychology of a specific target market.[2] In Indonesia, halal tourism is also a new way of developing tourism projects. Sharia tourism upholds culture and values following Islamic law. Sharia tourism is not religious tours, such as tours to cemeteries (*maqbarah pilgrimage*) or to the destinations of certain mosques. Tour activities are travel activities carried out by a person or group of people by visiting certain places for recreational purposes, personal development, or studying the uniqueness of tourist attractions visited in a temporary period of time.[3] Sharia tourism is tourism that comes from nature, culture, or artificial tourism, which is framed with Islamic values.

The role of the MUI in the application and development of Islamic law in Indonesia is indisputable. The halal certification in Indonesia is a form of MUI's role in efforts to implement Islamic law in Indonesia. Although viewed from a positive legal perspective, fatwas are norms and are not binding on positive law. Fatwas are often used as legal norms determined by the state.[4] One of the MUI fatwas that also serves as a guideline and contributes to the application of Islamic law is the DSN-MUI fatwa number 108 in the field of sharia tourism. This DSN-MUI fatwa arose from many public requests to make provisions for halal tourism in Indonesia. Favorable regulations governing halal tourism then appeared in regions in Indonesia, such as the halal tourism regulations of the West Nusa Tenggara (NTB) government.[5].

As for other DSN-MUI fatwas, DSN-MUI fatwa number 108 is also a sharia standard in research aimed at measuring the application of Islamic law applied by sharia tourism or halal tourism.[6] The vital role of the DSN-MUI fatwa number 108 also regulates the entirety of sharia tourism activities, from the provisions of the contract (agreement) carried out, the provisions of hotels, tourist destinations, spas, saunas, massages, travel agencies, as well as provisions regarding tour guides. This fatwa is also the only regulation regarding halal tourism in Indonesia after the repeal of the regulation on Sharia Hotel Business Implementation Guidelines Number 2 of 2014 issued by the Minister of Tourism and Creative Economy through the issuance of Ministerial Regulation Number 11 of 2016.[7].

This paper aims to analyze the DSN-MUI 108 fatwa from the perspective of Usul Fiqh, namely by looking at the legal sources used to compile and decide the fatwa. This research examines aspects of the use of legal sources (*istidlal*) in the fatwa as well as the views of Islamic scholars regarding the legal basis and its use in the issues contained in the fatwa.

2 Research Method

This research is library research with a descriptive-qualitative approach from the perspective of Usul Fiqh. With a descriptive-qualitative approach, researchers can explain and interpret the research object in the DSN-MUI 108 fatwa text. Usul Fiqh is a scientific discipline in Islamic scholarship that explains the process of determining the law. The scholars have procedures that have been used in the past to carry out the inference of the laws (*istimbath al-ahkam*).[8].

The data analysis technique in this study is a content analysis technique. This is because the research data is textual data in the form of DSN-MUI fatwas which can be downloaded on the official DSN-MUI website (<https://dsnmui.or.id/>). Content analysis is a very powerful analysis used in today's era of big data. This analysis is flexible enough to use textual, visual, and audio data. That is due to many permanent data, linguistic archives, photography, video, and audio arising from technological advances. Content analysis can be applied to a variety of subject areas, including social fields.[9].

3 Results and Discussion

MUI has the authority to produce and lower fatwas to be used as guidelines or references for Muslim communities in Indonesia. Like fatwas in general, fatwas will only be issued if there is a question (*istifta'*). In determining fatwas, the MUI has a fatwa institution with various fatwa commissions, including fatwa commissions on issues of creed and faith streams, sharia economic commissions, and so on. This sharia economic fatwa commission is also called DSN-MUI (National Sharia Council-Indonesian Ulama Council). This DSN-MUI makes and publishes many fatwas related to economic and legal problems of the *muamalah*.

In determining fatwas, DSN-MUI has the following operational standards of service: The fatwa applicant submits the fatwa application letter: The DSN-MUI secretariat records the application letter: The Daily Board schedules a meeting and, at the same time, invites the applicant's presentation to explain the problem in depth: Based on the daily management meeting, checking is carried out on whether there has been a fatwa or not: If there is already a fatwa, the DSN-MUI will convey to the applicant the fatwa: If there is no fatwa, the Daily Management field conducts a study according to the application's content.[10].

The sources of Islamic law or Fiqh law mentioned in the determination of fatwa number 108 of the DSN-MUI consist of four types: the Quran, Sunnah / Hadith, Fiqh Rules, and the opinions of scholars.

3.1 The Quran Source of the Fatwa

In terminology, the Quran is the word of Allah Swt revealed to the Messenger of Allah Saw which is now contained in the mushhaf containing 114 letters beginning with the letter of Al-Fatihah and ending with the letter of An-Nas, reading them has worship value and being condemned in mutawatir.[11] The Quran is the source of the first establishment of Islamic law.[12] From the verses about the Muamalah Fiqh in the Quran, there are as many as five verses of the Quran that are the source in the fatwa of SDN-MUI number 108. The five verses are QS. Al-Mulk [67]: 15; QS. Nuh [71]: 19–20; QS. Al-Rum [30]: 9; QS. Al-Ankabut [29]: 20; dan QS. Jumu'ah [62]: 10.

The first verse of the Quran (QS. Al-Mulk [67]: 15) shows the meaning of the earth created to benefit man. This verse is the source of the law about the ability to travel (tour) and make certain places on the earth tourist destinations. Even in this verse, there is a command to travel to all corners of the world. The meaning of the second verse of the Quran (QS. Noah [71]: 19–20) also shows the same meaning as the previous verse, namely Allah Swt made this earth for humans and contained the journey (tourism) of man on earth. The following two verses (QS. Al-Rum [30]: 9; Qs. Al-Ankabut [29]: 20) denote the command to travel in order to gain knowledge of the past as a provision for adding faith and belief in the afterlife. The last verse (QS. Jumu'ah [62]: 10), which is used as a source in the fatwa, gives freedom to work to find the money for the rest of the earth after performing worship.

The use of verses from the Quran as a source of legal determination in the DSN-MUI fatwa uses the mechanism of general meaning (*dilalah ammah*) from the text of these verses. The general meaning of these verses indicates the ability to travel. In addition,

the perspective of *al-maqasid al-ammah* (general purposes) of the mentioned verses of the Quran is also a method of legal inference that is somewhat different from the textual method in Usul Fiqh, either according to the Shafii madzhab or the Hanafi madzhab.

3.2 Sunnah Source of the Fatwa

The Sunnah is the second source of the Islamic law that is considered in fatwa number 108 of the DSN-MUI. Hadith or Sunnah is an act, utterance, or decree that is rested on the Rasulullah Saw, especially those that have implications for the law.[8][12] In matters of halal-haram law, the Sunnah remains a reference used in Islam.[13] DSN-MUI fatwa number 108 mentions three Hadiths from Rasulullah Saw that commanded to travel to get healthy. The fatwa also describes a hadith history from Umar bin Khaththab whose content is almost identical. The two Hadiths of the three Hadiths of Rasulullah Saw and the hadith of Umar ibn Khththab are weak hadiths (*dlaif*), according to Al-Albani.[14] That is the hadith that commands traveling to be healthy.

In this fatwa, there is only one hadith that is sahih of Rasulullah Saw, which shows that Rasulullah Saw and his companions once traveled to the border of the city of Medina and Syria, namely the area of *Al-Hijr* which in ancient times, its inhabitants once received torture (*'adzab*) from Allah. Hadits tersebut diceritakan Imam Bukhari dan Muslim. The use of weak hadith (*dha'if*) in the establishment of Islamic law is allowed in the perspective of Usul Fiqh as long as there is no other postulate as a source of law that prohibits or contradicts the hadith.[15] The use of these hadiths is also supported by the hadith of another Rasulullah that allows travel for specific purposes.

The use of hadith generally uses the mechanism of Usul Fiqh, that is, the general meaning of the hadith text that commands to take a tourist trip. The Quran and the Sunnah are two textual sources of law, so their use in legal determination often has similarities. The perspective of *al-maqasid al-ammah* (the common purposes) of the hadiths cited in the fatwa shows that it is permissible to travel and even rule. However, it must still be carried out with vigilance, including the vigilance stipulated in the fatwa regarding pornography, pornography, and assessment of the benefits found in tourism activities.

From the perspective of Usul Fiqh, *maslahah* (sociability) is one of the sources considered in establishing Islamic law. This benefit is also explicitly mentioned in the DSN-MUI fatwa number 108, the MUI fatwa stipulated in the National Deliberation in 2005. As explained in the Usul Fiqh, the benefit is one of the sources of determination of Islamic law.[8] Wabbah Al-Zuhaili argues that establishing a law sourced to *maslahah* is to establish a law based on considerations of value that are not explained by religious texts or *ijma'* (consensus), whether or not that value is considered as a reason for the establishment of a particular law. In other words, the condition is that no value is contrary to the explanation of religious texts (al-Quran and hadith) and *ijma*. [16].

3.3 Jurisprudence Source of the Fatwa

Legal maxims (*Qawaid Fiqhiyyah*) are sources or rules relating to clear falsification related to the activities of a *mukallaf* (mature and sensible).[17] In DSN-MUI Fatwa number 108, there are four rules mentioned as considerations for establishing the fatwa,

namely the rules regarding the law of origin of problems related to Muamalah Jurisprudence, namely the law permission (*mubah*) (*al-ashl fi al-muamalah al-ibahah*), the rule of “narrowness which can be a broader legal consideration” (*al-amr idza dhaqa ittasa’ a wa idzat tasa’ a dhaqa*), the rule of “rejecting emergencies that must take precedence over simply attracting the benefit” (*dar’ul mafasid muqaddam ala jalb al-mashalih*) and the rule of purity all that is done is illegitimately requested (*ma haruma fi’luhu haruma thalabuhu*).

There are three opinions of Usul fiqh scholars regarding the status of Legal maxims as a source of legal determination in Islam; (1) A group of scholars who do not regard Legal maxims as a postulate or *hujjah* in matters-legal matters of Jurisprudence. Legal maxims are not holistic (do not cover all fiqh issues), so they cannot be a source of law. (2) Groups that make Legal maxims as a postulate or *hujjah* in concluding the law or corroborating (*tarjih*) against the problems. This group considers Legal maxims as a holistic rule (covering all Jurisprudence problems and exceptions to the rule because it does not meet the criteria). (3) Legal maxims can support or reinforce *hujjah* or postulates from sharia texts, both the Quran, hadith, and Ijma’, especially in problems that have only arisen in modern times.[17].

The content of verses from the Quran and hadiths are mentioned as sources for determining DSN-MUI fatwas. The source of the Legal maxims also reinforces the general meanings that allow even order to travel. Apart from being a reinforcement, the Legal maxims in the DSN-MUI fatwa also make Legal maxims a source in providing restrictive provisions following other fatwas that have been issued by the MUI as indicated by the Legal maxims related to the law of origin of the Muamalah field, namely the Rule of narrowness that opens breadth.

Based on the last two rules mentioned in this fatwa, the halal tourism industry must follow the restrictions or provisions on tourist travel or sharia tourism so that tourism remains an activity that is allowed in the perspective of Islamic law. In other words, this DSN-MUI fatwa follows the third opinion on the status of Legal maxims in the taking of Islamic law (*istimbath al-ahkam*).

3.4 Scholar Opinions (*Qoul*) Source of the Fatwa

This research also found that the fatwa issued by the DSN-MUI was also sourced to the opinions (*qoul*) of the ulama madzhab Fiqh. Two scholarly opinions are cited in this fatwa, namely the opinions of Jamaluddin al-Qasimi and Ibn Abidin. Interestingly, the opinions quoted from Jamaluddin al-Qasimi are those mentioned in the quranic interpretation literature, not the Fiqh literature in the particular Fiqh madzhab. This shows that the DSN-MUI fatwa does not limit the citation of scholars’ opinions in Jurisprudence literature only but is open to other references, even in the field of interpretation of the Quran. Jamaluddin al-Qasimi was a cleric who lived in the middle of the Hanafi madzhab, but he criticized various scientific fields, including the field of Jurisprudence of the four madhabs, namely the Hanafi madzhab, the Maliki madzhab, the Shafi’i madzhab, and the Hambali madzhab.

The citation of Ibn Abidin’s opinion in the book al-Durr al-Mukhtar shows that the DSN-MUI is also more flexible in using the opinion of the Fiqh madzhab. Ibn Abidin is one of the scholars of the Hanafiyah madzhab, even though the majority of Muslims

in Indonesia follow the Shafiyah madzhab. This is in accordance with the method of taking the law set out in the internal MUI, which does not limit it to a particular madzhab, but rather prioritizes the *talfiq* method (combining or mixing between madzhab). This method is considered a method that provides answers to the challenges and developments of the times and can be accounted for normatively and socially.[18].

The opinion of scholars from the perspective of Usul Fiqh is not included as a source in determining the law. This citation shows that the method of preparing fatwas within the DSN-MUI institution also uses the *takhrij al-furu'* method (the search for the opinions of scholars who have similarities with the problems that the Law of Jurisprudence is seeking).[19] [20]. This method of legal determination is also known as the *ilhaq al-masail* method (analogizing problems) used in formulating fatwas by the MUI in general when there is no opinion of previous scholars who discuss the problem appropriately, but by analogizing it to a problem that has similarities or similarities.[21] There is a difference between the method of *ilhaq al-furu'* is and Qiyas, which is the source of establishing the Jurisprudence law. The difference lies in the original law (*al-hukm al-ashil*). In Qiyas the original law has been stated textually in the Quran or hadith while in *ilhaq al-furu'* the original law is the result of *ijtihad* or legal conclusions.

4 Conclusion

DSN-MUI Fatwa number 108 on Sharia Tourism can be accounted for by Usul Fiqh, especially in using sources of legal determination. The fatwa uses sources of Islamic law formation agreed upon by the scholars, namely the Quran and Sunnah/Hadith. The fatwa also uses the source of unapproved legal determination, namely the source of Legal maxims. The existence of the opinion of the scholar mentioned in the fatwa shows that this fatwa method is different from the method of taking the law of Jurisprudence described in the Usul Fiqh method in general.

Based on the analysis of legal sources in the DSN-MUI fatwa number 108, it is known that the fatwa uses other fatwas, especially in terms of provisions that limit sharia tourism, both related to principles, contracts, sharia hotels, tourists, destinations, massages, travel agencies, and tour guides that are sharia-compliant. DSN-MUI fatwa number 108 refers a lot to other previous fatwas, namely pornography and pornographic fatwas (MUI Fatwa No. 287 of 2001), fatwas related to massage parlors (MUI Fatwa dated July 9, 1982), and fatwas on the concept and criteria of *maslahah* (MUI Fatwa No.6 / MUNAS VII / MUI / 1012005).

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