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# The Paradigm of Islamic Legal Products in Indonesia; A Critical Review of the Polarization of the Characteristics and Authority of the Madhhab of Thought Products

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## Abstract

Islamic law grows in Indonesia and is formulated in four legal thought products, namely *fiqh*, jurisprudence, law, and fatwa. The problematic Application of Legal Products is more related to the internal aspects of Muslims, who are less dynamic and pay less attention to the developing problem. Therefore, a huge difference occurs between static Islamic and dynamic western legal products using a normative approach. The results showed that Islamic legal products resulted from the work of *ijtihad*, *fiqh*, and Islamic law experts. Each Islamic legal product has characteristics and particularities, and the application implicitly raises problems. However, Islamic legal products have been applied explicitly as the law regulates. The products have reliable binding power through a fatwa, judges' decisions, and critical reviews have increased diversity awareness. The results of the *fatwa* provided many legal answers to the problems, and the establishment of Religious Courts facilitates justice seekers in solving legal issues. The position of legalized Islamic law is strengthened, and a more profound elaboration is needed to analyze the polarization of product authority.

## Keywords:

**Paradigm; Islamic Legal Product; Madhhab; Polarization of the Characteristics; Authority.**

## Abstrak

Hukum Islam tumbuh dan berkembang di Indonesia yang diformulasi dalam empat produk pemikiran hukum, yakni fikih, yurisprudensi, undang-undang dan fatwa. Problematika penerapan produk hukum Islam di Indonesia lebih berkaitan dengan aspek internal umat Islam yang kurang dinamis dan kurang memperhatikan masalah yang berkembang, akibatnya produk hukum Islam yang statis tidak mampu menghadapi gempuran dari dinamisnya produk hukum Barat. Pendekatan yang digunakan untuk menganalisis data adalah pendekatan normatif. Hasil penelitian menunjukkan bahwa Produk hukum Islam adalah hasil kerja ijtihad para ulama, ahli fikih / pakar hukum Islam. Masing-masing dari produk hukum Islam memiliki karakteristik dan ciri khas, penerapan produk hukum Islam di Indonesia secara implisit menimbulkan problematika, namun secara eksplisit produk hukum Islam pada umumnya telah diterapkan sebagaimana yang diatur oleh undang-undang. Produk hukum Islam memiliki daya ikat yang kuat, baik melalui fatwa, maupun keputusan hakim, produk hukum

Islam dan telaah kritisnya telah banyak meningkatkan kesadaran keberagaman, hasil dari fatwa banyak memberi jawaban hukum tentang masalah aktual yang timbul. Berdirinya Peradilan Agama mempermudah pencari keadilan dalam menyelesaikan masalah hukum. Demikian halnya legalisasi hukum Islam sebagai hukum positif dalam bentuk undang-undang memperkuat kedudukan hukum Islam, sehingga diperlukan adanya elaborasi yang lebih mendalam, untuk menganalisis polarisasi karakteristik otoritas produk mazhab.

**Kata Kunci:**

**Paradigma; Produk Hukum Islam; Mazhab; Polarisasi Karakteristik; Otoritas.**

## 1. Introduction

The problem of applying Islamic law products in Indonesia is more related to the internal aspects of Muslims who are less dynamic and pay less attention to problems that are always developing.<sup>1</sup> As a result, static Islamic law products are unable to face the onslaught of dynamic Western legal products.<sup>2</sup> Improving the ability of Muslims will be able to overcome all the obstacles faced in the application and development of more dynamic Islamic legal products.<sup>3</sup>

Islamic law grows and develops in Indonesia which is formulated in four products of legal thought, namely *fiqh*, ulema fatwas, court decisions (jurisprudence), and laws.<sup>4</sup> The four products of legal thought serve as guidelines for Muslims in the life of the nation, state, and society in Indonesia.<sup>5</sup> It must be admitted that products indeed burdened with carrying out the law are part of the product of the Sharia, and everything related to the Sharia.<sup>6</sup> Some of the Sharia itself can change and some cannot change based on the product.<sup>7</sup> The unchanging Sharia law is related to the

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<sup>1</sup> Abu Rokhmad and Sulistiyono Susilo, "Conceptualizing Authority of the Legalization of Indonesian Women's Rights in Islamic Family Law," *Journal of Indonesian Islam* 11, no. 2 (2017): 489–508, <https://doi.org/10.15642/JIIS.2017.11.2.489-508>.

<sup>2</sup> Ahmed M.A. Hamad, Haslinda binti Mohd Anuar, and Rohizan binti Halim, "The Judiciary in Islamic Law, Palestinian Legislation, and Guarantees of Its Independence," *Samarah* 5, no. 1 (2021): 1–22, <https://doi.org/10.22373/sjhk.v5i1.8927>.

<sup>3</sup> Agus Hermanto, "Eksistensi Konsep Maslahat Terhadap Paradigma Fikih Feminis Muslim Tentang Hak Dan Kewajiban Suami Isteri," *Nizham* 7, no. 2 (2019): 263.

<sup>4</sup> Siti Rohmah, Ilham Tohari, and Moh. Anas Kholish, "Menakar Urgensi Dan Masa Depan Legislasi Fiqih Produk Halal Di Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 14, no. 2 (2020): 177–90, <https://doi.org/10.24090/mnh.v14i2.3811>.

<sup>5</sup> Zulkarnain Abdurrahman, "Teori Maqasid Al-Syatibi Dan Kaitannya Dengan Kebutuhan Dasar Manusia Menurut Abraham Maslow," *Al-Fikr* 22, no. 1 (2020): 52–70.

<sup>6</sup> Muammar Bakry et al., "Strengthening the Cyber Terrorism Law Enforcement in Indonesia: Assimilation from Islamic Jurisdiction," *International Journal of Criminology and Sociology* 10 (2021): 1267–76, <https://doi.org/10.6000/1929-4409.2021.10.146>.

<sup>7</sup> Muhamad Izazi Nurjaman and Doli Witro, "The Relevance of the Theory of Legal Change According to Ibnu Qayyim Al-Jauziyyah in Legal Products by Fatwa DSN-MUI Indonesia," *El-Mashlahah* 11, no. 2 (2021): 164–86, <https://doi.org/10.23971/elma.v11i2.3181>.

product of *aqidah* and the six pillars of faith. Sharia law products in this category are called *i'tiqādiyah* laws.

Meanwhile, the laws called *amaliyah* which cover worship such as prayer, fasting, and others may change the product and changes in the law as mentioned above, clearly have their own reasons according to the rules of the Sharia. Thus, this is formulated by Islamic legal thinkers which are interesting to study and examine further.<sup>8</sup> *Amaliyah* law (practical) relates to the words and actions of the *mukallaf* and the procedures for carrying them out. This is what is called the law of *fiqh*, and how to arrive at it requires the knowledge of *ushul al-fiqh*. The division of these aspects actually does not result in a dichotomy of Islamic teachings. This is solely intended as a division of the focus of the study.

The product of Islamic legal thought above has become a reference for Islamic scholars around the world in solving legal problems that exist in society.<sup>9</sup> This happens because Islamic law is universal that applies to all Muslims, even though it must coexist with national law or the general law that applies in one country.<sup>10</sup>

Based on the description of the background, the main problem is "A Critical Review of the Paradigm of Islamic Law Products in Indonesia (Polarization of Characteristics and Authority of Islamic Law Products)". In order to make the discussion more focused, systematic, and comprehensive, the main issues determined are divided into three sub-categories, namely: 1. the paradigm of Islamic law products in Indonesia, 2. the polarization of the characteristics and authority of Islamic law products in Indonesia, and 3. the contribution of Islamic law products in Indonesia.

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<sup>8</sup> Yeni Salma Barlinti, "Inheritance Legal System in Indonesia: A Legal Justice for People," *INDONESIA Law Review* 1, no. 1 (2013): 23–41.

<sup>9</sup> Saifuddin Saifuddin, "Prospek Hukum Islam Dalam Sistem Hukum Indonesia," *Al-'Adalah* 14, no. 2 (2018): 461, <https://doi.org/10.24042/adalah.v14i2.2516>.

<sup>10</sup> Rohmah, Tohari, and Kholish, "Menakar Urgensi Dan Masa Depan Legislasi Fiqih Produk Halal Di Indonesia."

## 2. Methods

This study was library research using a descriptive qualitative research method. The approach used was normative. The data source of this study was library research from written sources such as books, journals, dictionaries, and others. The data obtained was processed based on inductive, deductive, and comparative methods.

## 3. Result and Discussion

### 3.1. The Paradigm of Islamic Law Product in Indonesia

There are four kinds of Islamic law products in Islamic history, namely *fiqh*, fatwas, jurisprudence, and laws.<sup>11</sup> Each of these Islamic law products has characteristics in implementing Islamic law in Indonesia. Fatwa is one of the ways to solve problems of Islamic law which has been exemplified by the Al-Qur'an texts as in Q.S. al-Nisa/4 verses 127 and 176 regarding legal explanations for women and *kalalah*.<sup>12</sup> In this verse, Allah shows how important fatwas are in meeting the needs of Muslims.<sup>13</sup> Therefore, if someone encounters a case that requires evidence or explanation, it is obligatory to ask someone who is an expert. Ulama's fatwa is casuistic which is a response or answer to questions posed by the fatwa requester.<sup>14</sup>

*Fiqh* also has different characteristics from fatwas, jurisprudence, and laws. Fatwas and jurisprudence are casuistic, namely discussing certain issues. *Fiqh* is comprehensive and covers all aspects of discussion in Islamic law, so it should put *fiqh* in proportion.<sup>15</sup> In general, the Islamic community views *fiqh* as identical to Islamic law where the first and main source comes from the Al Qur'an and Hadith. People who master *fiqh* are usually referred to as *fuqaha*.

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<sup>11</sup> Yeni Salma Barlinti, "Inheritance Legal System in Indonesia: A Legal Justice for People."

<sup>12</sup> Addiarrahman Addiarrahman and Illy Yanti, "Dari Idealisme Ke Pragmatisme: Pergeseran Paradigma Dalam Pengembangan Hukum Ekonomi Syariah Di Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 14, no. 2 (2020): 191–210, <https://doi.org/10.24090/mnh.v14i2.3408>.

<sup>13</sup> Andi Fariana, "Legal Politics as a Catalyst in Forming Sharia Economic Legal System in the Indonesia's New Order and Reform Era," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 2 (2021): 197–212, <https://doi.org/10.18326/ijtihad.v21i2.197-212>.

<sup>14</sup> Ilyas Supena, "Konstruksi Epistemologi Fikih Pandemik: Analisis Fatwa-Fatwa MUI," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 1 (2021): 121–36, <https://doi.org/10.24090/mnh.v15i1.4203>.

<sup>15</sup> Addiarrahman and Yanti, "Dari Idealisme Ke Pragmatisme: Pergeseran Paradigma Dalam Pengembangan Hukum Ekonomi Syariah Di Indonesia."

The fatwa is not binding, which means that the requester of the fatwa does not have to follow the law or the content of the fatwa, so the fatwa is more likely to be dynamic in response to developments faced by society.<sup>16</sup> The second product of Islamic law is jurisprudence or religious court decisions that are binding on litigants. The next product of Islamic law is legislation, in contrast to the characteristics of fatwas which are dynamic and not binding in society, laws have binding properties for the community, such as jurisprudence.<sup>17</sup>

The four products of Islamic legal thought above contain social values that grow in society.<sup>18</sup> The formulations in *fiqh* are the results of the reasoning and study of the scholars about the Al-Qur'an and Hadiths which relate to the conditions of society. Likewise, fatwas are not just born. The fatwa is carried out because there are legal problems in society that require a relatively quick answer. Jurisprudence is born based on the judge's belief with consideration of local wisdom. That is why legal sociologists highly value jurisprudence.<sup>19</sup> They argue that the law is not only written in the form of legislation, but the law grows in society. Lastly is the law. In legal culture, the law is born usually after the three products of Islamic legal thought are practiced by the community in a process of time and adaptation to conditions which are finally adopted as a law.

### 3.2. The Polarization of the Characteristics and Authority of Islamic Law Products in Indonesia

The study of *fiqh* is the most extensive study in Islam. The history is older than any other Islamic study. It has been studied on a very wide scale. The words *fiqh* and *tafaqquh* mean deep understanding and are often used in the Al-

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<sup>16</sup> Fariana, "Legal Politics as a Catalyst in Forming Sharia Economic Legal System in the Indonesia's New Order and Reform Era."

<sup>17</sup> Nurul Ula Ulya, "Legal Protection of Donation-Based Crowdfunding Zakat on Financial Technology: Digitalization of Zakat under Perspective of Positive Law and Islamic Law," *International Conference of Zakat*, 2019, <https://doi.org/10.37706/iconz.2018.132>.

<sup>18</sup> Devi Triasari and Francesco De Zwart, "The Legal Reform Policy on the Shariah Supervisory Board Role's in Indonesian Shariah Banks," *Bestuur* 9, no. 2 (2021): 113–25, <https://doi.org/10.20961/bestuur.v9i2.55173>.

<sup>19</sup> Sirajul Munir, "Asas Keterbukaan Dalam Pelaksanaan Fungsi Legislasi Dewan Perwakilan Rakyat (Perspektif Islam Dan Hukum Positif Di Indonesia)," *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam* 12, no. 2 (2021): 257, <https://doi.org/10.21043/yudisia.v12i2.12260>.

Qur'an and Hadiths.<sup>20</sup> Al-Qur'an has told us: "Nor should the Believers all go forth together; if a contingent from every expedition remained behind, they could devote themselves to studies in religion, and admonish the people when they return to them, thus they (may learn) to guard themselves (against evil)". (Q.S. 9:122). In the terminology of the Al-Qur'an and Sunnah, *fiqh* is a broad and in-depth knowledge of the commandments and reality of Islam and has no special relevance to certain sections of science. On the contrary, the terminology of the ulama is specifically applied to a deep understanding of Islamic laws.

In shar'i terms, *fiqh* science is defined as a science that talks about shar'i *amali* (practical) laws whose application is sought through a deep understanding of detailed arguments.<sup>21</sup> In another version, *fiqh* is also referred to as a collection (*majmu'*) of sharia laws relating to the deeds of *mukallaf* and taken from its *tafshili* arguments. In essence, the object of discussion in *fiqh* is the act of *mukallaf* seen from the point of view of syara' law. These actions are grouped into three major groups, namely worship, *mu'amalah*, and *uqubah*.<sup>22</sup>

*Fiqh* science aims to provide lessons, knowledge, or instructions about the law, which law is ordered and which law is prohibited, which law is allowed and which law is not allowed and shows how to carry out an order and others.<sup>23</sup> In the case of marriage *ihwal*, for example, new cases were found, such as marriage contracts by telephone, use of contraceptives, family planning, and joint search of property by husband and wife. Textually, the answer to this problem is not found in the Al-Kitab or Sunnah. The role of Islamic jurists and intellectuals is to seek legal certainty by examining the values contained in the Al-Qur'an and Sunnah, and the tool used is the science of *fiqh* as one of the product of Islamic law.

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<sup>20</sup> Arip Purkon, "Political Parties and Islamic Law Positivation in Contemporary Indonesian Governance," *Humanities & Social Sciences Reviews* 9, no. 2 (2021): 75–86, <https://doi.org/10.18510/hssr.2021.928>.

<sup>21</sup> Fauna Alwy, "Reformulation of the Government Compilation of Islamic Law: Strengthening the Concept of Gender-Sensitive Regulations in Indonesia," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 11, no. 4 (2018): 355, <https://doi.org/10.25041/fiatjustisia.v11no4.983>.

<sup>22</sup> Supardin Supardin and Abdul Syatar, "Adultery Criminalization Spirit in Islamic Criminal Law: Alternatives in Indonesia's Positive Legal System Reform," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021): 913–27, <https://doi.org/http://dx.doi.org/10.22373/sjkh.v5i2.9353>.

<sup>23</sup> Alwy, "Reformulation of the Government Compilation of Islamic Law: Strengthening the Concept of Gender-Sensitive Regulations in Indonesia."



Muslims are not people who are wild without rules, but people who apply *aqidah* and sharia.<sup>24</sup> *Fiqh* controls the journey of civilization of the people with sharia laws so that the rhythm of civilization is in accordance with what Islam wants and what Islam commands. The laws of *fiqh* grew along with the growth of Islam, this *amaliyah* law in the Prophet Muhammad era was formed from the laws contained in the Al-Qur'an and as a law that came out of the Prophet Muhammad as a fatwa on a case or a decision on a dispute or an answer to a question.<sup>25</sup>

According to Hasbi Asy-Shidieqy, there are two types of *fiqh*, namely:

1. *Nabawi fiqh* (explicitly indicated by the Al-Qur'an and hadith)
2. *Fiqh ijthadi* (the results of the *ijthad* of the *mujtahids*)

Basically, *fiqh* covers all fields of shariah science and should be returned to its original meaning as intended in the Al-Qur'an, At-Taubah verse 122. The term *fiqh* has a general meaning, including laws related to *aqidah* such as the obligation of faith, and moral science, and laws related to human deeds, such as the law of worship and *muamalah*.

All provisions of this syara law are grounded or based on detailed arguments. This means that the detailed arguments are the basis/footing of a sharia legal provision that can be returned to the source of its formation one by one, both in nature and in special sources. Jurisprudence is *zhan*, in contrast to knowledge that is not *zhan*. However, because *zhan fiqh* is strong, it approaches science so that in the above definition science is also applied to *fiqh*. The word *fiqh* that developed among scholars specifically means understanding in depth. The word *fuqaha* or its cognate appears in the Al-Qur'an 20 times, most of them refer to the meaning of deep understanding.

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<sup>24</sup> Agus Moh Najib, "REESTABLISHING INDONESIAN MADHHAB 'Urf and the Contribution of Intellectualism," *Al-Jāmi'ah: Journal of Islamic Studies* 58, no. 1 (2020): 171–208, <https://doi.org/10.14421/ajis.2020.581.171-208>.

<sup>25</sup> Rokhmad and Susilo, "Conceptualizing Authority of the Legalization of Indonesian Women's Rights in Islamic Family Law."

## Fatwa

Etymologically, the word fatwa comes from the Arabic “*al-Fatwa*”. According to Ibn Mansur, a word fatwa is a *mashdar* form of the word *fata*, namely, *fatwan*, which means young, new, explanation, and enlightenment.<sup>26</sup> Etymologically, fatwa means an answer to something impossible in matters of sharia and Islamic legislation or an explanation of a legal problem.<sup>27</sup> Ibrahim al-Fayumi articulated the fatwa as a strong young man so that the person who issued the fatwa can be said to be a *mufiti*, because that person is believed to have the power to provide explanations and answers to the problems he faces. If explored in depth, the word fatwa is also mentioned in the Al 'Quran, Al-Shaffat/37:11 as follows:

“Just ask their opinion: are they the more difficult to create, or the (other) beings We have created? Them have We created out of a sticky clay!”<sup>28</sup>

From the definition above, there are two basic important things, namely:

- a. Fatwa is responsive; it is a legal opinion issued after a question or request for a fatwa (Based on demand).
- b. In terms of legal force, fatwas as a legal answer are not binding. The non-binding provisions are mentioned as an attempt to distinguish between fatwas and *qaddha* (court decisions) or power. In other words, people who ask for a fatwa, either individuals, institutions, or the wider community do not have to follow the content or the law given to them.

From the definition stated above, it can be concluded that a fatwa is an explanation and advice from Islamic jurists which is poured in both oral and written form with the aim that Muslims know exactly what legal issues are and the results of the decision are not binding on the requester for the fatwa (*mustafti*). In other words, a fatwa is a process of grounding religious teachings on an ongoing reality which then demands two forms of expertise and expertise, namely the expertise to

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<sup>26</sup> Supena, “Konstruksi Epistemologi Fikih Pandemi: Analisis Fatwa-Fatwa MUI.”

<sup>27</sup> Louis Ma'luf, *Al-Munjid Fi al-Lughah wa Al-A'lam* (Cet. XXIX; Beirut: Dar al-Masyriq, 1987), h. 568.

<sup>28</sup> Kementerian Agama RI, *Al-Qur'an Dan Terjemahannya* (Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an Badan Litbang dan Diklat Kementerian Agama RI, 2019), <https://lajnah.kemenag.go.id/unduhan/category/3-terjemah-al-qur-an-tahun-2019>.



understand teachings and the expertise to understand reality.<sup>29</sup> In the Qur'an Surah An-Nahl/16:43 stated that:

*“And before thee also the messengers We sent were but men, to whom We granted inspiration: if ye realize this not, ask of those who possess the Message.”*<sup>30</sup>

Some of these fatwas are based on the arguments of the texts and the results of their own *ijtihad*. The use of a logical basis or *ra'yu* in giving a fatwa is allowed as long as the logic is valid and does not violate the text. Therefore, *al-Qiyas* as an instrument of *fiqh* is also allowed in the fatwa.<sup>31</sup> The existence of a good *nas* basis from the Al-Qur'an and Hadith as well as the fatwas of the companions proves that the fatwa is a process of explaining a legal issue that has been recognized as valid in Islam. Therefore, it can be understood that the elements of the fatwa contain *Mustafti*, *mufti*, *al-ifta*, and *fatawa*. As in the Al-Qur'an, An-Nisa/4:176 stated that:

*“They ask thee for a legal decision. Say: Allah directs (thus) about those who leave no descendants or ascendants as heirs. If it is a man that dies, leaving a sister but no child, she shall have half the inheritance: If (such a deceased was) a woman, who left no child, Her brother takes her inheritance: If there are two sisters, they shall have two-thirds of the inheritance (between them): if there are brothers and sisters, (they share), the male having twice the share of the female. Thus doth Allah make clear to you (His law), lest ye err. And Allah hath knowledge of all things.”*<sup>32</sup>

- a. Fatwas are strongly influenced by changes in the times, places, conditions, and traditions of society

In the history of writing legal theorists, three figures strongly shouted the code of ethics for this fatwa, namely Imam al-Qaraafi, Ibnul Qayyim, and Ibn Aabidin. All three figures are considered to have sharpened this code of ethics with very monumental works. In his book *Al-Ihkam fi tamyizil Fatawa'Anil Ahkaam wa Tasarrufatil Qadi Wal Imam*, Imam al-Qaraafi has shown the danger of freezing fatwas on the *ijtihad* of scholars. One of his statements considered sharp in this regard is:

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<sup>29</sup> Abdul Wahid Haddade, *Kode Etik Berfatwa: Merumuskan Format Ideal Fatwa Keagamaan* (Cet.I; Makassar: Alauddin University Press, 2013), h. 11.

<sup>30</sup> Kementerian Agama RI, *Al-Qur'an Dan Terjemahannya*.

<sup>31</sup> Abdul Karim Zaidan, *Usul al-Da'wah* (Cet.III; 1976), h. 157.

<sup>32</sup> Kementerian Agama Republik, *Al-Hidayah Al-Qur'an Tafsir Per Kata Tajwid Kode Angka*, h. 106.

“Do not freeze yourself (commitment to) on what is written in the books of scholars during your lifetime. However, what you have to do is if someone comes to you from an area that is not your area to ask for a fatwa from you, then ask the local tradition and then give him a fatwa based on the regional tradition, not based on your regional tradition, and don't give a fatwa based on what is written on the books first. You have to know that this is actually the right and clear behavior and know also that a very fanatical attitude towards the opinions of scholars is forever a heresy in religion and ignorance of the core intentions of Islamic scholars.”

In his book "*I'lamul Muwaqqi'in*", Ibnul Qayyim made a special article regarding the need to change the fatwa due to changes in conditions, traditions, times, and places, by including theory and its application.<sup>33</sup> Ibnul Qayyim stated that because the ulama ignored this code of ethics, there was a distortion of sharia based on *maslahah*, which also resulted in the occurrence of persecution in the community. One of the most popular statements of Ibn al-Qayyim in this regard is:

“Whoever gives fatwas to people only based on written books regardless of their differences in traditions, differences in time, conditions, and contexts that surround them, then has gone astray and misled, even the crime of a *mufti* like this is greater than the crime of a doctor who treats all people from different regional backgrounds, characters, situations, and places based solely on a medical book. A stupid doctor or *mufti* is the most dangerous person for religion and human health”

As for Ibn'Abidin, his statements regarding this matter are recorded in a very monumental work and are widely used as references in fatwa dialectic discourses with social reality, one of his statements is very clear, namely:

“The freezing of a *mufti* or judge with the opinions of ulama written in various books and ignoring or not taking into account the traditions of society and clear social contexts and not knowing about the conditions of society will result in the loss of the rights of many people and the occurrence of public persecution”.

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<sup>33</sup> Nurjaman and Witro, “The Relevance of the Theory of Legal Change According to Ibnu Qayyim Al-Jauziyyah in Legal Products by Fatwa DSN-MUI Indonesia.”

“If there is a scholar who has memorized all the *fiqhi* books of a school, then he still has to learn fatwa, because there are many problems that must be answered by considering the traditions of the times and not violating the teachings of sharia.”

b. Fatwa must be free from bias of certain *mazhab*

Regarding this case, Imam Nawawi commented that:

“Everyone who finds authentic hadith, then he says: the content of this hadith is the Shafii *mazhab*, in fact, it can only be done by people who have reached the level of *mujtahid*. Even this he (*mujtahid*) may do so if he is sure that this hadith is not known to Shafii or he does not know its validity.”

Ibn Salah also commented that:<sup>34</sup>

“Any scholar from the Shafi'i *mazhab* who finds a hadith that contradicts his *mazhab*, then he must pay attention to the following code of ethics; First, if he is a *mujtahid*, whether absolute *mujtahid* or *mujtahid* in the *fiqh* chapter in question, then he has the right to follow the content of the hadith. Second, if he is not a *mujtahid* but he finds a tendency in himself to leave the hadith, after finding research, but he does not find the right answer to answer the scholars who do not agree with him, then he must find out whether there is a *mujtahid* practicing that hadith or not. If he finds that there is a *mujtahid* who practices it, then he is allowed to practice the hadith and he is considered old enough to leave his *mazhab*.”

c. The *Qati'* and *Mufti* texts are not allowed to state that something is unlawful or obligatory except after verifying the *Qati'i* evidence.

The meaning of this ethics code is that the scholars' opinions are referred to as fatwas and should not be stated as sharia that can impress its position and as a law that must be carried out by people of every age and place.<sup>35</sup>

The urgency of the fatwa cannot be separated from how far the benefits of the fatwa are in human life. Al-Qur'an and Al-Hadith are basically still global, so they

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<sup>34</sup> Mahjuddin, *Masailul Fiqhiyah Berbagai Kasus Yang Dihadapi Hukum Islam Masa Kini* (Jakarta: Kalam Mulia, 2005).

<sup>35</sup> Abd. Rauf Aminn, *Pendekatan Marginal dalam Kajian Hukum Islam* (Cet. I; Yogyakarta: Cakrawala Publishing Yogyakarta, 2009), h. 105-117.

require analytical details so that Muslims know the real problem. Al-Qur'an and Al-Hadith of the Prophet Muhammad still need a detailed elaboration of the issues raised earlier, as long as the problem is still of a *zhanniy* nature.

Therefore, in this context, the presence of a concrete and responsible religious fatwa (especially fiqhiyah issues) is very important. In essence, religious fatwas are the result of decisions by Islamic religious experts and general science (related to religion) in giving, issuing, and taking legal decisions responsibly and consistently. Fatwa provides clarity, and concreteness to mankind in terms of understanding, and reasoning Islamic teachings. Thus, the fatwa should contain several main elements:

1. Fatwa as sharia decision making being disputed
2. The fatwa as a way out of the chaos of differences of opinion between the scholars and the fatwa must have a strong connotation
3. The fatwa should lead to the peace of the people.<sup>36</sup>

## **Jurisprudence**

Jurisprudence is the decision of a judge or Religious Court, which is one of the characteristics of Islamic law products.<sup>37</sup> The judge's decision is taken or determined based on the examination of the case before the court, or the provisions of the syar'i law delivered through a *qadhi* or a judge appointed for it. In contrast to fatwas, religious court decisions are binding on the litigants. To a certain extent, it is dynamic because it is an attempt to provide an answer or settle a case that is submitted to the court at a certain time.<sup>38</sup>

When viewed from the point of view of the time and place of enactment of a court decision, court decisions have the opportunity to be used in a certain number of times and places. This is because the court's decision has gone through a process and has obtained permanent legal force. It can be used by other judges to be able to

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<sup>36</sup> Rohadi Abdul Fatah, *Analisis Fatwa Keagamaan Dalam Fiqih Islam* (Cet.I; Jakarta: PT Bumi Aksara, 2006), h. 27.

<sup>37</sup> Fariana, "Legal Politics as a Catalyst in Forming Sharia Economic Legal System in the Indonesia's New Order and Reform Era."

<sup>38</sup> Ahmad Rofiq, *Hukum Islam di Indonesia* (Jakarta; Raja Grafindo Persada, 1999), h. 8.

decide on the same case even though they are in different places and times. However, a note that the socio-cultural conditions of the community have not changed much.<sup>39</sup>

The product of jurisprudential thought is the result of Islamic legal thought from the decisions of the Religious Courts, the decisions of the High Religious Courts, and the decisions of the Supreme Court, so that they are used as the result of the formulation of Islamic law which then gives birth to permanent and binding legal decisions.

As one of the legal bases in Indonesia, jurisprudence plays an important role in the growth and development of Islamic law. The position of jurisprudence in the application of Islamic law is very important because jurisprudence is structured systematically and methodologically to be able to understand the main sources of Islamic law, namely the Al-Qur'an and hadith. Al-Qur'an and hadith contain basic rules or principles, so tools are needed to better understand these basic teachings such as jurisprudence. The application of jurisprudence as part of the types of products of Islamic legal thought can produce various Islamic law materials as compiled in the Islamic Law Compilation in Indonesia.<sup>40</sup>

## **Laws**

Laws or statutory regulations are regulations made by citizens of the country where the law is enforced. The violation of the law will result in sanctions. Thus, the binding power of the law is broader than court decisions. Because it is decided by the institution, the people involved in its formulation are not limited to fuqaha or ulama, but also politicians and other scholars.

As a collective product (collective *ijtihad*), laws are relative of a higher quality and better reflect the legal awareness of the community. This is because they are formulated with more comprehensive considerations. However, on the dynamic side, legislation tends to be dynamic, because changing a law requires time, costs, and careful preparation.

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<sup>39</sup> Patimah, *Hubungan Antara Hukum Islam dan Hukum Adat Dalam Sistem Hukum Nasional* (Cet. I; Makassar: Alauddin University Press, 2014), h. 115-116.

<sup>40</sup> Supardin, *Materi Hukum Islam* (Cet. I; Makassar: Alauddin University Press), h. 28.

### 3.3. The Contribution of Legislation as a Product of Islamic Law in Indonesia

Religious Court judges must be able to play a role in interpreting the actual law so that the new laws can be applied in accordance with the needs of the development of conditions, time, and place. In addition, Religious Court judges must be able to play a role so that the law applied is in accordance with the public interest and the benefit of today's society.<sup>41</sup> The role of the Religious Courts in the renewal of Islamic law can be seen in the construction of the Religious Courts' process in implementing Islamic law reform. It can be seen that *fiqh* is no longer adequate to meet the needs of the community due to changing conditions, situations, and developments of the times. In addition, many articles in positive law are not yet clear and interpretations must still be made if they are applied to make concrete laws.

In carrying out *ijtihad* to obtain new laws, Religious Court judges must absolutely not deviate from the principle of *maqashid sharia'h*,<sup>42</sup> namely realizing human benefit in the world and the hereafter. From the decisions of the Religious Courts, it can be seen that the Religious Courts have played an active role in implementing Islamic law reform in Indonesia.<sup>43</sup>

The birth of products of legal thought cannot be separated from the results of other legal products. The law was born after receiving a positive response from the community, especially among the legislative and judicial institutions. A society that obeys the law means that it has implemented laws and regulations because the law is part of the order of life in the nation, state, and society. The law covers various aspects, both legal, political, and other socio-cultural aspects.

The results of the product of legal thought have been stated in laws and other regulations within the framework of Islamic law which includes laws, government regulations, presidential decrees/presidential regulations or presidential instructions, ministerial decrees/regulations or instructions, and institutions other high. These

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<sup>41</sup> Lina Kushidayati, "The Development of Islamic Law in Indonesia," *Qudus International Journal of Islamic Studies* 1, no. 2 (2014): 163–80, <https://doi.org/10.21043/QIJIS.V1I2.185>.

<sup>42</sup> Mouez Khalfaoui, "Work between Obligation and Right in Muslim Culture: Is There a Paradigm Shift?," *Journal of Islamic Ethics* 5 (2021): 1–22, <https://doi.org/10.1163/24685542-12340064>.

<sup>43</sup> Abdul Manan, *Reformasi Hukum Islam di Indonesia* (Cet. I; Jakarta: PT Raja Grafindo Persada, 2006), h.300-305.



regulations cover Religious Courts; Islamic family law (marriage, inheritance, and endowment); socio-economic worship; Islamic education and health; sharia economics/Islamic economics; and other regulations. The Religious Courts Institution in its development is increasingly complex, especially with the unification of judicial institutions in the Court.<sup>44</sup>

### **3.4. The Contribution of Islamic Law Products in Indonesia**

The spirit of the actual legislation of the Al-Qur'an shows a clear direction towards the progressive realization of fundamental values that accept the existing social conditions.<sup>45</sup> From the dynamics of the development of Islamic legal thought products, both through the study of classical *fiqh* books, fatwas of scholars, judges' decisions in court, and through legislation, it shows results that can be felt by Muslims. It is undeniable that many traditional Islamic boarding schools have contributed greatly to the understanding of Islamic law for the lower middle-class people.

Although the law products are still at the level of pure study of understanding the books of classical *fiqh* without being accompanied by the development and critical study, it has greatly increased awareness of diversity among Muslims. While the results of the ulema's fatwas from both Islamic organizations and the Indonesian Ulema Council,<sup>46</sup> although not optimal, the results of some of these fatwas have provided many legal answers to the actual problems that have arisen, including religion, marriage, economics, culture, politics, medicine and science.

The strategic role of judges provides legal certainty for Muslims in solving family law problems. With the establishment of the Religious Courts down to the regional level, it is easier for justice seekers to resolve these family law problems. Likewise, the legalization of Islamic law as positive law in the form of law will strengthen the position of Islamic law in the state situation. Thus, Islamic law has

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<sup>44</sup> Supardin, *Materi Hukum Islam* (Cet. I; Makassar: Alauddin University Press), h. 26.

<sup>45</sup> Rokhmad and Susilo, "Conceptualizing Authority of the Legalization of Indonesian Women's Rights in Islamic Family Law."

<sup>46</sup> Dinar Fatmawati, "Islam and Local Wisdom in Indonesia," *Journal of Sosial Science* 2, no. 1 (2021): 20–28, <https://doi.org/10.46799/jsss.v2i1.82>.

strong binding power for its adherents, either through the fatwas of the scholars, or the decisions of judges.<sup>47</sup>

#### 4. Conclusion

Islamic law products are the result of the work of *ijtihad* of scholars, *fiqh* experts/Islamic law experts regarding Islamic law itself, which is related to the practice of sharia, namely human actions (*mukallaf*). The four products of Islamic legal thought contain social values that grow in society, in the course of Islamic history, namely *fiqh*, fatwas, jurisprudence, and laws, each of these Islamic law products has characteristics and characteristics in the application of Islamic law in Indonesia. The application of Islamic law products in Indonesia implicitly creates problems, but it can be explicitly understood that Islamic law products in Indonesia have generally been implemented as regulated by law.

The dynamics of the development of Islamic legal thought products, both through the study of classical *fiqh* books, fatwas of scholars, judges' decisions in court as well as legislation, show results that can be felt by Muslims. The classical *fiqh* books with their critical analysis have greatly increased the awareness of diversity among Muslims. Meanwhile, the results of ulema's fatwas from both Islamic organizations and the Indonesian Ulema Council have provided many legal answers to the actual problems that have arisen. The establishment of the Religious Courts has made it easier for justice seekers in solving legal problems. Likewise, the legalization of Islamic law as positive law in the form of law will strengthen the position of Islamic law in the state situation. Thus, Islamic law has strong binding power for its adherents, either through the fatwas of the scholars, or the decisions of judges.

The types of products of Islamic legal thought in Indonesia, which include products of *fiqh* thought, products of ulema's fatwa thought, products of court decision thinking (jurisprudence), and products of legal thought, presumably can be applied and enforced honestly and fairly. To be able to realize honesty and justice in

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<sup>47</sup> Intan Cahyani, *Problematika Penerapan Produk Pemikiran Hukum Islam Sebelum dan Sesudah Lahimya UU Nomor 7 Tahun 1989* (Cet. I; Makassar: Alauddin University Press, 2011), h. 51.

the application of laws and regulations in Indonesia depends on law enforcement officers. However, the wider community should also comply with all applicable laws and regulations, so that the state's goals can be achieved, namely to create a just and prosperous society.

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