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40 Reformulation of Islamic Law in Indonesia: Study on Indonesian Ulama Council's Fatwa

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Abstrak

Salah satu lembaga tempat para ulama melakukan ijtihad dengan produk pemikiran hukum Islam berupa fatwa adalah Majelis Ulama Indonesia (MUI). Dari sekian banyak fatwa yang telah dikeluarkan MUI, ada beberapa fatwa yang direformulasikan seperti fatwa *miqat* haji dan umroh, penentuan awal Rarabulan, Syawal, Zuhijjah, arah kiblat, aborsi, sumbangan dana sosial berhadiah (SDSB), dan penggunaan vaksin meningitis bagi jamaah haji dan umrah. MUI mereformulasikan fatwa dikarenakan faktor perubahan sosial budaya masyarakat serta kemajuan ilmu pengetahuan dan teknologi. MUI sangat memperhatikan kondisi perubahan sosial budaya dan politik masyarakat serta kemajuan ilmu pengetahuan dan teknologi sebagai bahan pertimbangan dalam mereformulasikan fatwanya. Hal seperti itu sangat relevan dengan proses pembaruan hukum Islam di Indonesia yang telah berlangsung semenjak tahun 70-an sampai sekarang ini.

Kata Kunci: Reformulasi, Hukum Islam, Fatwa, MUI.

Abstract

One of the institutions where ulama perform ijtihad with Islamic legal thought products in the form of fatwas is the Indonesian Ulama Council (MUI). Of the many fatwas that have been issued by the MUI, there are a number of fatwas that are formulated such as the fatwa of the pilgrimage and umrah pilgrimage, the initial determination of Ramadan, Shawwal, Zuhijjah, qibla direction, abortion, donation of social funds with prizes (SDSB), and the use of meningitis vaccines for hajj and umrah pilgrims. MUI reformulates the fatwa due to socio-cultural changes in the community and advances in science and technology. MUI is very concerned about the condition of social, cultural and political changes in society and the progress of science and technology as a material consideration in formulating fatwa. Such a thing is very relevant to the process of renewing Islamic law in Indonesia which has been going on since the 70s until now.

Keywords: Reformulation, Islamic Law, Fatwa, MUI.

Introduction

In the period after the Prophet, the area of Islam expanded, the problems faced were also increasingly complex, thus forcing people to solve their own problems based on the Qur'an and Hadith. It turns out that not all problems that arise can be solved with the text of the Koran or Hadith explicitly so that it requires *ijtihad*.¹ *Ijtihad* is an important activity, because the reality of life and the conditions of society are always changing and developing.² Among the results of the *ijtihad* of the *ulema* was a *fatwa*. *Ulama fatwas* usually tend to be dynamic because they are a response to new developments that are being faced by the community requesting *fatwas*.³

One of the institutions where *ulama* perform *ijtihad* with Islamic legal thought products in the form of *fatwas* is the Indonesian *Ulema Council* (MUI). The Indonesian *Ulema Council* (MUI) is a forum for deliberation by Muslim clerics, *zuama*, and intellectuals, who protect all Indonesian Muslims. Institutionally, MUI has the competence in solving and answering every problem that always arises and is faced by the community. MUI has a role as an institution providing *fatwas* for Muslims, both requested and unsolicited. As an institution providing *fatwa*, MUI accommodates and channels the aspirations of Indonesian Muslims which are very diverse in terms of the flow of understanding, thinking, and religious organizations.⁴ Referring to the four typologies of *fatwas* in Indonesia, according to Nico J.G. Kaptein, MUI is an institution that produces collective *fatwas*.⁵

Until 2018, there have been approximately 200 *fatwas* issued by MUI.⁶ The *fatwa* issued by the MUI is a legal aspect of Islamic teachings.⁷ *Fatwas* include the areas of faith and religious flow, worship, social and cultural, food, medicine, cosmetics, science and technology, and *fatwas* in the field of Islamic finance.⁸ Of the many *fatwas* that have been issued by the MUI, there are a number of *fatwas* that are re-fatwated or reformulated such as the *fatwa* of the pilgrimage and umrah pilgrimage, *fatwa* for the initial determination of Ramadan, Shawwal, Zulhijjah, *fatwa* on qibla, *fatwa* on abortion, *fatwa* on donation of donated social

¹ Asmawi Mahfudz, *Pembaharuan Hukum Islam: Telaah Manhaj Shah Wali Allah Al-Dihlawi* (Yogyakarta: Teras, 2010), 1-2.

² Yusuf al-Qardhawi, *Ijtihad Kontemporer Kode Etik dan Berbagai Penyimpangan*, terj. Abu Barzani (Surabaya: Risalah Gusti, 1995), 6.

³ M. Atho Mudzhar, *Membaca Gelombang Ijtihad Antara Tradisi dan Liberasi* (Yogyakarta: Titian Ilahi Press, 2000), 91.

⁴ Asrorun Ni'am Sholeh, *Metodologi Penetapan Fatwa Majelis Ulama Indonesia: Penggunaan Prinsip Pencegahan dalam Fatwa* (Jakarta: Emir, 2016), 13.

⁵ Niki Alma Febriana Fauzi, "Fatwa di Indonesia: Perubahan Sosial, Perkembangan, dan Keberagaman", *Jurnal Hukum Novelty*, Vol. 8, No. 1 (2017): 112.

⁶ "Index Fatwa Majelis Ulama Indonesia dari 1975 – Sekarang" on <https://mui.or.id/fatwa>, accessed August 2019.

⁷ M. Atho Mudzhar, "Tantangan Studi Hukum Islam di Indonesia Dewasa Ini", *Jurnal Indo-Islamika*, Vol. 2, No. 1, (2012): 92.

⁸ See Marwan Amin, et.al, *Himpunan Fatwa Majelis Ulama Indonesia Sejak Tahun 1975* (Jakarta: Emir, 2015), and M. Ichwan Syam, et.al, *Himpunan Fatwa Keuangan Syariah Dewan Syariah Nasional MUI* (Jakarta: Erlangga, 2014).

funds (SDSBB), and ¹ fatwa on the use of meningitis vaccine for pilgrims and umrah.⁹

The fatwa on *miqat* Hajj and Umrah issued in 1980 was re-issued ²² by the Indonesian Ulema Council in 1981, the fatwa on qibla in the same year was re-issued, the fatwa on 1991 SDSB was re-issued in 1993, the fatwa on abortion in 2000 was issued again in the year 2005, ¹ the fatwa on the use of meningitis vaccine for pilgrims and umrah in 2009 was re-issued in 2010, and the fatwa for the initial determination of Ramadan, Shawwal, Zulhijjah in 1980 was also re-issued in 2003.¹⁰

The fatwa reformulation conducted by MUI certainly has a reason. Why does the MUI reform its fatwas and how is the relevance of the MUI fatwa reformulation to the reform of Islamic law in Indonesia? Those are the questions that will be discussed in this article.

This research is a qualitative research, with descriptive analysis. Primary data are MUI fatwas. The research approach used is a historical approach and legal sociology.

Indonesian Ulama Council

¹³ The Indonesian Ulema Council is a forum in which the ulama, *zu'ama* and Indonesian Muslim scholars have gathered. Based on Islam and aiming to create a quality society, and a country that is safe, peaceful, just and prosperous spiritually and physically blessed by Allah SWT.¹¹

The idea of establishing the MUI emerged in the Indonesian Missionary Workshop held by the Indonesian Islamic Da'wah Center on November 26-29, 1974. At that time a consensus was born on the need for the ulema council as a vehicle to carry out effective and efficient mechanisms in efforts to maintain and foster continuity in the participation of the Ummah. Indonesian Muslims towards development.¹²

² The Indonesian Ulema Council was finally ² born in Jakarta on July 26, 1975 AD in a meeting of religious scholars who was attended by the regional Ulema Council, leaders of national Islamic organizations, spiritual leaders from four generations, as well as several Islamic figures who were present as individuals. The mark of the establishment ² of the Indonesian Ulema Council was enshrined in the form of the signing of the charter of the establishment of the Indonesian Ulema Council, which was signed by 53 ulama, consisting of 26 chairmen of the Indonesian Ulema Council Dati I, 10 clerics from elements of central Islamic

⁴¹ ⁹ Maruf Amin, et.al, *Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975* (Jakarta: Erlangga, 2015).

¹⁰ ³⁵ 144, 149, 249, 259, 368, 370, 419, 479, 818, 881, 147, 1046.

¹¹ Mashudi, *Konstruksi Hukum dan Respon Masyarakat terhadap Sertifikasi Produk Halal* (Yogyakarta: Pustaka Pelajar, 2015), 33.

¹² Bahrul Ulum, *Ulama dan Politik: Nalar Politik Kebangsaan Majelis Ulama Indonesia (MUI)* (Yogyakarta: Pustaka Pelajar, 2015), 88-89

organizations. 4 scholars from the Islamic Spiritual Service AD, AU, AL. and the National Police, as well as 13 scholars who came from as individuals.¹³

Some reasons or background for the establishment of MUI include; 1) In various countries, especially in Southeast Asia, when the Ulama Council or the Ulema or Mufti Council was formed as the highest advisor in the religious field who had a strategic role. 2) As an institution or "address" that represents Indonesian Muslims if there are meetings of international scholars, or if there are guests from abroad who want to exchange ideas with Indonesian scholars. 3) To assist the government in providing religious considerations in the implementation of development, as well as a connecting bridge and translator of communication between umara and Muslims. 4) As a forum for meeting and gathering of scholars throughout Indonesia to realize ukhuwwah Islamiyah, and 5) As a forum for deliberation for the ulama, zuama and Indonesian Muslim scholars to discuss the problems of the Ummah.¹⁴ MUI can be called a fatwa institution which can be a source of law in a material sense. As a source of material law, it has an important function and role in the formation of positive law or statutory law in Indonesia, considering that the majority of Indonesians are Muslim.¹⁵

MUI Fatwa Reformulation and Its Relevance with Islamic Law Reform in Indonesia

Among the MUI fatwas that were rearranged and issued again were fatwas about the *Miqat* of Hajj and Umrah. *Miqat* referred to in this fatwa is *makani* miqat, which are places that have been determined to start the ihram and the intention of the pilgrimage or umrah.¹⁶ There are some *makani miqats* that have been determined in Jurisprudence namely Dhulhulaifah, *miqat* residents of Medina. Al-Juhfah is the population of Sham. Qarn Al-Manazil is the *miqat* for the people of Najed. Yalamlam miqatnya residents of Yemen. Dzatu 'Irqin is the population of Iraq.¹⁷ These *miqats* cover all sides of Mecca in the north, east, south and west. So that anyone who enters Mecca must pass through one of these miqat or equal to it.

The pilgrims from Indonesia are divided into two waves of departure. The first wave was the one who landed in Medina first and then left for Makkah. For these pilgrims it is clear that the *miqat* is Dhulhulaifah or Bir Ali, as are the residents of Medina. The second wave was Indonesian pilgrims who landed in Jeddah to then head to Makkah and only after the pilgrimage procession ended would they go to Medina. Determination of *Miqat* for the second wave of pilgrims is then a polemic, considering that in the list above, the name Jeddah is not as *miqat*.

¹³ M. Anwar Abbas, dkk, *Pedoman Penyelenggaraan Organisasi MUI* (Jakarta: Sekretariat MUI, 2010), 40.

¹⁴ *Ibid.*, 41-42.

¹⁵ Slamet Suhartono, "Eksistensi Fatwa Majelis Ulama Indonesia dalam Perspektif Negara Hukum Pancasila" *Jurnal al-Ihkam*, Vol. 12, No. 2, (2017): 459-460.

¹⁶ Abdul Aziz Dahlan (Ed.), *Ensiklopedi Hukum Islam* (Jakarta: PT Ictiar Baru Van Hoeve, 2006), Vol. 29, 475-476.

¹⁷ Abd al-Rahman al-Jazairi, *Kitab al-Fiqh ala al-Mazahib al-Arbaah* (Beirut: Dar al-Fikr, 2006), 329.

There is an opinion that because of Indonesia's position in the south of Saudi Arabia, the *miqat* is the same as the population of Yemen, namely in Yalamlam. How to carry out the ihram? Performed on the plane when the plane crossed over Yalamlam. Because the problem of *miqat* has caused unrest among the people, the MUI issued a fatwa on *miqat* for Hajj and Umrah for residents who came from Indonesia.

The fatwa was issued on March 29, 1980 AD, which contained that Indonesian pilgrims either by sea or air may start their ihram from Jeddah, without having to pay dam. Indonesian pilgrims who will continue their journey first to Medina will start their ihram from Zulhulaifah.¹⁸

The fatwa adheres to a number of Ibn Hajar's opinions that the Hajj Pilgrims coming from Yemen may start ihram after arriving in Jeddah because the distance between Jeddah and Mecca is equal to the distance of Yalamlam-Mecca. An-Nasyili Mufti Mecca and others agreed with Ibn Hajar. Likewise, according to the Maliki and Hanafi schools, pilgrims who perform two *miqats* fulfill their ihram from the second *miqat* without paying dam. According to Ibn Hazm, pilgrims who do not go through one of the *miqats* may ihram from where he likes, both on land and at sea.¹⁹

Then because there is still debate among the people especially related to the use of the "King Abdul Aziz" Airport by pilgrims from Indonesia as a substitute for the Jeddah airport pushing to review the fatwa of the Indonesian Ulema Council, the MUI discussed the *miqat* law for Hajj and Umrah for Indonesian people going through King Abdul Aziz airport in Jeddah. The fatwa was issued on 19 September 1981, the contents of which did not change the Indonesian Ulema Council fatwa on 12 Jumadil Awal 1400 H / 29 March 1980 AD regarding the legality of Jeddah as a *Miqat*. On the basis of the above "King Abdul Aziz" Airport is also valid as a *Miqat*. May do Ihram before *Miqat*. Those who do Ihram from Indonesia should maintain health and stay away from the prohibitions of Ihram.²⁰

The reason used by MUI is that the "King Abdul Aziz" Airport is as follows: 1) It is located north to the Medina road, not between the city of Jeddah and Mecca; 2) The distance is 32 km.; 3) Not the slightest reduction in the distance between Mecca Mecca; 4) Direct telephone conversation on 18 September 1981 between the Director of Indonesian Hajj Development (Drs. H. Husein Segaf, MA) and the Jeddah Hajj Attache Staff (Marlan) confirmed that the distance between "King Abdul Aziz" Airport and Mecca was at least 85 Km.²¹

What the MUI has done by re-issuing the fatwa on the same problem is because there has been a change in the airport where pilgrims and Umrah came from Indonesia. Yusuf al-Qardhawi explained that among the factors that changed the fatwa was the change in tradition that was the basis of the previous fatwa. As is known, Islamic Jurisprudence always pays attention to human traditions. Jurisprudence originating from the Shari'a always pays attention to the needs and

¹⁸ Maruf Amin, et.al, *Himpunan Fatwa*, 145.

¹⁹ *Ibid.*, 144.

²⁰ *Ibid.*, 150.

²¹ Maruf Amin, et.al, *Himpunan Fatwa*, 149.

benefit of humans. Tradition is also considered as the proposition of fiqh followers.²²

The next fatwa that was reviewed³⁰ by the MUI was the fatwa regarding the Determination of the Beginning of Ramadan, the Beginning of Shawwal / Eid al-Fitr and the Beginning of Zulhijjah / Eid Al-Adha. The fatwa came as a response to the differences between the holidays in Indonesia and in Saudi Arabia. There are two kinds of responses about this incident, namely there are community groups who advocate that the holiday falls on Friday, because it has received certain information that *wuquf* is on Thursday, not Friday as previously announced. But there are those who still maintain the original decision, namely the feast of prayer on Saturday, December 13, 1975. The decision of the Minister of Religion at that time was to reinforce the decision of the feast of prayers held that Saturday, after hearing the considerations of the leaders of the ulema council and experts on reckoning and rukyah.²³ It seems that the incident repeated several times and caused unrest in the community.

To provide an answer to the real problem as explained above, the MUI fatwa was issued regarding the initial determination of Ramadan, Shawwal and Zulhijjah on July 27, 1980, the contents of which were first, regarding the initial determination of Ramadan and the beginning of Shawwal / Eid al-Fitr among the fuqaha', which is the first stream that holds to *matla'* (the place where the sun rises and the sun sets). This flow is emphasized by Imam Shafi'i and the two schools that do not hold are *matla'* (jumhur fuqaha). Secondly, to realize ukhuwwah Islamiyah, the MUI Fatwa Commission draws conclusions so that in the initial determination of Ramadan and the beginning of Shawwal / Eid al-Fitr based on the opinion of jumhur, so that *rukyyat* that occurs in an Islamic state can be applied internationally (applicable to other Islamic countries). This requires the opportunity to form institutions with the status of "International Qadi" which are adhered to by all Islamic countries. Before that, the respective government decrees apply. And third, in contrast to the problem of the initial determination²⁰ of Ramadan and the beginning of Shawwal / Eid al-Fitr is the problem of the determination of the beginning of the month of Zulhijjah / Eid al-Adha. In this case it applies with the *matla'* of each country. In this case the scholars have consensus. Thus, Indonesia is not allowed to follow Eid al-Adha prayers in other countries with different eyes.²⁴

Judging from its contents, this fatwa calls for discussion relating to *matla'* (the coverage area of the *rukyyatul hilal* as the basis for determining Early Ramadan, Early Shawwal / Eid Al-Fitr and Early Zulhijjah / Eid Al-Adha). The scholars differed on local *matlak* and global⁴⁵ *matlak*. The first group stated no local matrices in determining the appearance of the new moon to determine the beginning of Ramadan and Shawwal. The second group, said the local *matla'* applies.²⁵

²² Yusuf al-Qardhawi, *Faktor-faktor Pengubah Fatwa*, terj. Arif Muandar Riswanto (Jakarta: Pustaka al-Kautsar, 2009), 86.

²³ Hamka, *Hamka Membahas Soal-soal Islam* (Jakarta: Pustaka Panjimas, 1985), 310-311.

²⁴ Maruf Amin, et.al, *Himpunan Fatwa*, 147-148.

²⁵ Wahbah al-Zuhaili, *Al-Fiqh al-Islam wa Adillatuh* (Beirut: Dar al-Fikr, 1985), Vol. II, 605-610.

Related to this *matla'* problem, the Indonesian Ulema Council (MUI) feels it is necessary to issue a fatwa about which opinions can be used by the public in relation to the initial determination of Ramadan and Shawwal. From the aforementioned fatwa, it appears that the MUI refers more to the opinion of the *jumhur*, so that *ru'yah* that occurs in Islamic countries can be applied internationally (applicable to other Islamic countries). Although at the end of the fatwa ruling there is an exception that specifically for the determination of the Eid al-Adha feast, a local *matla'* is used. So that the Indonesian people are not justified in Eid al-Adha prayers following other countries with different *matla'*.

Then after the issuance of the fatwa, Indonesian people were still shocked by the variety of the implementation of Eid al-Fitr such as the Eid al-Fitr holiday in 1985, 1992, 1993, 1994, 1998,²⁶ 2000, and 2002.²⁷ This can be seen in the consideration of the fatwa that Indonesian Muslims in carrying out Ramadan fasting, Eid al-Fitr and Eid al-Adha prayers, sometimes are not the same so that it often causes negative images and impacts on the Islamic scholars and da'wah.²⁸

This situation inspired the MUI to re-enact the initial determination of Ramadan, Shawwal, and Zuhijjah. Thus, was born MUI fatwa No. 2 of 2004, the contents of which are; first, the initial determination of Ramadan, Shawwal, and Dhu al-Hijjah is based on the *ru'yah* and reckoning methods by the Government of Indonesia or the Minister of Religion and applies nationally. Second, all Muslims in Indonesia are obliged to obey the Indonesian Government's decree regarding the initial stipulation of Ramadan, Shawwal, and Dhu al-Hijjah. Third, in determining the beginning of Ramadan, Shawwal, and Dhu al-Hijjah, the Minister of Religion must consult with the Indonesian Ulama Council, Islamic mass organizations and related agencies. Fourth, the results of rukyat from regions that allow hilal rukyat even outside the territory of Indonesia which is the same as Indonesia can be used as guidelines by the Minister of Religion of the Republic of Indonesia.²⁹

In addition to issuing a decision, the MUI also issued recommendations that the Indonesian Ulema Council endeavor to establish criteria for the initial determination of Ramadan, Shawwal, and Dhu al-Hijjah to be used as guidelines by the Minister of Religion by discussing it with Islamic mass organizations and related experts.³⁰

In terms of the contents of the fatwa, the second fatwa issued by the MUI emphasizes the aspect of the use of rukyat and reckoning as a method of determining the beginning of the month of Ramadan, Shawwal, and Zuhijjah. This is different from the previous fatwa which emphasizes the aspect of *matla'*. This can

²⁶ Susiknan Azhari, "Fenomena Perbedaan Idul Fitri Masa Orde Baru: Sebuah Survey Historis," *Profetika: Jurnal Studi Islam*, Vol. 2, No. 1, (2000): 92.

²⁷ Susiknan Azhari, *Penggunaan Sistem Hisab dan Rukyat di Indonesia: Studi tentang Interaksi Muhammadiyah dan NU* (Jakarta: Badan Litbang dan Diklat Departemen Agama RI, 2007), 147-149.

²⁸ Maruf Amin, et.al, *Himpunan Fatwa*, 211.

²⁹ *Ibid.*, 214.

³⁰ *Ibid.*

be understood from the consideration of the issuance of a fatwa as conveyed by the MUI, as well as being a reality of Muslims at that time who often experienced differences between the feast of Eid al-Adha and Eid al-Fitr. Differences have the effect of having peace in the wider community,³¹ causing unrest and ruining the devotion of worship.³² For this reason, it appears that consideration of social change is again a factor that is responded to by the MUI. This situation was conveyed by Atho Muzhar in his research on the MUI fatwa, that the fatwa issued by the MUI revolved around three kinds, between a fatwa supporting the government, a fatwa against the government, and a neutral fatwa.³³

Next is the fatwa on the Social Funds Donation Award (SDSB). The birth of the fatwa can be seen that on December 28, 1985, the Government gave permission to a foundation to hold this lottery gambling called Porkas (from the English term "forecast") which aims to get funding for national sports. In 1987, the name of Porkas was changed to KSOB (Sports³⁴ Donation Coupon Award) and TSSB (Social Donation Award with Prizes). On January 1, 1989, KSOB and TSSB were stopped and replaced by a new game called the Donation of Social Funds with Prizes (SDSB).³⁴

From the beginning, Muslims have protested the existence of the lottery because it is considered a gamble that is forbidden by Islam. Even so, the central MUI was silent. In fact, the Chairperson of the Central MUI Fatwa Committee, Ibrahim Hosen, wrote a book explaining his views on Porkas. Even though he stated that it was a personal opinion, the community still highlighted it as a representation of the MUI voice.

After Muslim students held a demonstration, finally on November 23, 1991, the MUI issued a fatwa that lottery gambling (SDSB) had a lot of harms and the law was haram, after previously this problem had continued to block, because for more than five years, since 1985.³⁵ The contents of the fatwa are as follows: first, that SDSB is considered to have many disadvantages and that the law is haram. Second, that after checking with Bank Muamalat Indonesia Management there was no purchase of shares by the SDSB Foundation. Third, appeals to the public, especially Muslims to be calm and not be provoked by things that have a negative impact.³⁶

MUI stated the argument for the fatwa in the form of the word of God which means "They ask you about *khamr* and gambling. Say: In both of them there

³¹ T. Djamaluddin, "Analisis Visibilitas Hilal Untuk Usulan Kriteria Tunggal di Indonesia" dalam *Matahari dan Lingkungan Antariksa*, ed. Suratno, et.al. (Jakarta: Dian Rakyat, 2010), 67-68.

³² Susiknan Azhari, *Penggunaan Sistem Hisab dan Rukyat di Indonesia*, (Jakarta: Balitbang Depag RI, 2007), 174-178.

³³ M. Atho Muzhar, *Fatwa-fatwa Majelis Ulama Indonesia* (Jakarta: INIS, 1993), 142-143.

³⁴ "Peran MUI Pasca-Soeharto" dalam <https://fahmina.or.id/peran-mui-pasca-soeharto>.

³⁵ M. Atho Muzhar, "Fatwa MUI Sebagai Obyek Kajian Hukum Islam dan Sumber Sejarah Sosial" dalam *Fatwa Majelis Ulama Indonesia (MUI) dalam Perspektif Hukum dan Perundang-undangan*, Ed. Nahar Nahrawi, et.al. (Jakarta: Balitbang Kemenag RI, 2012), xxx.

³⁶ Maruf Amin, et.al, *Himpunan Fatwa*, 368.

is a great sin and some benefits for humans, but both sins are greater than the benefits.”³⁷

MUI again issued a fatwa for the same theme on November 12, 1993 which stated: first, that gambling in all its forms is forbidden by religion. In this connection, the Indonesian Ulema Council and the Indonesian Muslim Intellectuals Association called on all people, especially Muslims, not to involve themselves with all forms of gambling, both at home and abroad. Second, the delivery activities contained on various problems in society lately can lead to a situation that is not favorable to national development. Therefore, the Indonesian Ulema Council and Indonesian Muslim Scholars Association called on the whole community, especially the younger generation, to increase a sense of kinship and a spirit of solidarity in order to jointly maintain national unity and unity.³⁸

If examined closely, this fatwa was issued by the MUI in response to the extremely volatile social conditions resulting from the legalization of the Porkas and SDSB lottery model as a supporting fund for sporting activities in Indonesia which was launched by the Government (Social Department). What was conveyed by the MUI through the first fatwa actually wanted to emphasize that the SDSB was forbidden. This assertion occurred, because for some quite a long time, the MUI did not respond to Muslim unrest related to the legality of SDSB according to Islamic law. Especially amidst the demands of the community to ensure that the SDSB is haram, the chairman of the Fatwa Commission, Prof. Ibrahim Husein wrote a book explaining that SDSB or Porkas is not gambling so the law is not illegal.³⁹

Of course, it can be understood that the implementation of Porkas and SDSB policies is a government program that is difficult to be denied by MUI. However, as in the first fatwa which states that SDSB has many disadvantages and is unlawful, in the second fatwa, MUI seems to only want to reinforce that gambling in all its forms is forbidden by religion. Again, what was done by the MUI by issuing a second fatwa on the same theme, occurred due to the social conditions of the people who wanted the strengthening of gambling in all its forms including Porkas and SDSB. Changes in socio-political and economic conditions have clearly become one of the factors that influence changes in fatwa.⁴⁰

This fatwa is certainly one of the neutral fatwas and even tends to go against the government. The three characteristics of the MUI fatwa mentioned by Atho Muzhar occur because of the socio-cultural and political influences that surround them.⁴¹ In the case of a repeat of the fatwa on SDSB, there does not appear to be a significant change in terms of the content of the fatwa, because the contents of the second fatwa only reinforce what was decided in the previous fatwa.

³⁷ *Ibid.*, 369.

³⁸ *Ibid.*, 370.

³⁹ Sahim Hosen, *Apakah Judi Itu?* (Jakarta: Lembaga Kajian Ilmiah IIQ 1987), hlm. 20.

⁴⁰ Yusuf al-Qardhawi, *Faktor-faktor Pengubah Fatwa*, terj. Arif Munandar Riswanto (Jakarta: Pustaka Kautsar, 2009), 113.

⁴¹ M. Atho Mudzhar, *Membaca Gelombang Ijtihad antara Tradisi dan Liberasi* (Yogyakarta: Titian Ilahi Press, 2000), 123-125.

Next is the fatwa on abortion. Spontaneous or forced abortions are performed within the first 12 weeks of pregnancy. Abortion can also be interpreted as a termination of pregnancy by eliminating or expanding the fetus before birth which can be done spontaneously or by expulsion of the fetus by force.⁴² Fatwa concerning abortion is a fatwa¹¹ resulting from the Sixth National Conference of the Indonesian Ulema Council Number: 1 / National Conference VI / MUI / 2000 concerning Abortion that took place on 23-27 Rabbi'ul akhir 1421 H./25-29 July 2000 AD.

The fatwa arose because at that time in the midst of society arose the pros and cons of the law of abortion, namely abortion (fetus) without medical reasons, before the spirit was blown, so they questioned again about the problem. The fundamental issue at the heart of the debate in the real abortion issue is whether a fetus in a mother's womb can be categorized as human or not. Related to this problem, religion has many reasons for defending the unborn life.⁴³

Finally, to respond to the community's anxiety, the MUI issued a fatwa¹⁶ stating that an abortion (abortion) after or before the spirit is blamed is prohibited, except if there are medical reasons, such as to save the life of the mother. Including haram helping or allowing abortion.

Five years later, MUI again issued a fatwa on abortion, namely the fatwa of¹⁰ the Indonesian Ulema Council Number 4 of 2005. The fatwa was issued based on the consideration that lately more abortions had taken place by the community without regard to religious guidance. Many abortions are carried out by parties who have no competence so that it poses a danger to the pregnant mother and to the community in general so that it raises public questions about the law of having an abortion, is it absolutely unlawful or may¹¹ it be under certain conditions.⁴⁴

With the above considerations, the MUI issued a fatwa containing the⁹ abortion forbidden since the implantation of the blastocyst in the mother's uterine lining. Abortion is permissible due to aging, whether it is emergency or intestinal, such as pregnant women suffering from severe physical illness such as advanced cancer, tuberculosis with cavern and other severe physical ailments that must be⁹ determined by the Team of Doctors. Likewise, the circumcision associated with pregnancy that can allow abortion such as the fetus that is conceived is detected to have genetic defects which, if born later, are difficult to cure, pregnancy due to rape on condition that the abortion is performed before the fetus is 40 days old. However, unlawful abortion is carried out in pregnancy that occurs due to adultery.⁴⁵

In the second fatwa, it seems that the MUI is more detailed when conducting a study of abortion law than the first fatwa where the MUI only mentions the rise of abortion in society, but in the second fatwa, to the explanation

⁴² Maria Ulfa Anshor, *Fikih Aborsi Wacana Penguatan Hak Reproduksi Perempuan* (Jakarta: Penerbit⁴⁷ Kompas, 2006), 33.

⁴³ Fuad Mustafid, "Studi atas Pandangan Kaum Agamawan, Praktisi Kesehatan dan Respons MUI terhadap Masalah Aborsi" *Al-Mazahib*, Vol. 3, No. 1, Juni 2015: 92.

⁴⁴ Maruf Amin, et.al, *Himpunan Fatwa*, 479.

⁴⁵ *Ibid.*, 486.

of how the law conducts an abortion due to certain conditions such as the health of the fetus, the health of the fetus, even to the abortion of the fetus conceived by women victims of rape.

The consideration used by the MUI in issuing this second fatwa is of course the development of social conditions in the community, where pregnancy does not only occur due to a legal relationship between a husband and wife, but can also occur in women who are raped. It is likely that the MUI must issue a fatwa on abortion, but with more detailed provisions. Social, economic, and political conditions are indeed one of the factors that change the fatwa as stated by Yusuf al-Qardhawi.⁴⁶

Next is the fatwa about Qibla. Qibla is defined as the direction intended by a Muslim when performing prayers.⁴⁷ All scholars have agreed that facing the Qibla is a prerequisite for the prayer.⁴⁸ Fatwa regarding Qibla was issued by MUI on February 1, 2010, namely the fatwa of the Indonesian Ulema Council Number: 03 of 2010.

The birth of the MUI fatwa no. 3 of 2010 was caused by the outbreak of an issue which stated that not a few mosques in Indonesia were allegedly heading in the wrong direction.⁴⁹

Based on the circulation of information in the community about the inaccuracy of the direction of the qibla of some mosques / mosques in Indonesia, which then caused the community to become uneasy and question the qibla direction law, the MUI then issued a fatwa stating: The Qibla for those who pray and can see the Kaaba is facing the building of the Kaaba. The Qibla for those who pray and cannot see the Kaaba is the direction of the Kaaba. The geographical position of Indonesia, which is located in the eastern part of the Kaaba / Mecca, is that the direction of Indonesian Muslims is facing west.⁵⁰

What the MUI stated above is actually a positive response to the anxiety felt by Muslims about the reality on the ground that the qibla direction for mosques and musalla is less precise. The situation is known after the development of science in the field of astronomy or Islamic astronomy, where the general public began to know about how to verify the direction of Qibla. Unfortunately, there was a dictum in the fatwa that caused the community to become restless, namely that the Qibla direction for Indonesians who were east of the Kaaba was facing West. While it is well known among astronomers that the qibla for the Indonesian people is West to North.

The fatwa dictum received mixed reception in the community between groups who agreed with the Indonesian mecca enough to face West with the group

⁴⁶ Yusuf al-Qardhawi, *Faktor-faktor Pengubah Fatwa*, terj. Arif Muandar Riswanto (Jakarta: Pustaka Jautsar, 2009), 113.

⁴⁷ Arwin Juli Rahmadi Butar-butar, *Kakbah dan Problematika Arah Kiblat* (Yogyakarta: Museum Astronomi Islam, 2013), 4.

⁴⁸ Al-Sayyid Sabiq, *Fiqh al-Sunnah* (Kairo: al-Fath li Jam al-Arabi, 1995), Vol. I, 98.

⁴⁹ Ahmad Izzuddin, "Arah Kiblat dan Fatwa MUI" dalam *Fatwa Majelis Ulama Indonesia (MUI) dalam Perspektif Hukum dan Perundang-undangan*, Ed. Nahar Nahrawi, dkk. (Jakarta: Balitbang Kemenag RI, 2012), 552.

⁵⁰ Maruf Amin, et.al, *Himpunan Fatwa*,. 257.

wanting the mecca for Indonesia to be west to north as many people understood. So, the source of the problem of Fatwa number 3 of 2010 concerning Qibla is the existence of a part in the provision of law number 3 which states "The geographical position of Indonesia which is in the eastern part of the Kaaba / Mecca, so that the qibla of Indonesian Muslims is facing westward".

In order to respond to the community's unrest, the MUI then formulated a fatwa with fatwa number 05 of 2010 concerning the direction of Qibla whose contents Qibla for people who pray and can see the Kaaba is facing the building of the Kaaba, Qibla for those who pray and cannot see Ka 'bah is the direction of the Kaaba, the Qibla of Indonesian Muslims is facing northwest with positions varying according to the location of each region.⁵¹

If we look closely, the emergence of the MUI fatwa with the theme of the Qibla direction for the second time is due to the religious response in the community about the direction of kiblat for Indonesian Muslims. because there is a dictum in the fatwa decision that is felt by the public, especially astronomers, is less in accordance with the Shari'a and science. In fact, according to astronomers, that for the territory of Indonesia, the direction of Qibla in accordance with astronomical calculations is that the West is inclined to the North varying according to the coordinates of each place.⁵²

From the above explanation, it can be concluded that the reformulation of Qibla fatwa is caused by changes in MUI knowledge as a result of the development of science and technology as stated by Ibn Qayyim that fatwas can change due to changing times, places, social conditions, intentions, and customs.⁵³ According to Yusuf al-Qardhawi, fatwas can also change due to factors of knowledge, human needs, human capabilities, socio-economic political situation, and factors of opinion and thought.⁵⁴

Next is the fatwa on the use of meningitis vaccine for pilgrims or umrah. A vaccine is a suspension of a living disease, but has been weakened or turned off to cause immunity,⁵⁵ or microorganisms or toxoids that are altered such that the pathogenicity or toxicity is lost but still contains antigenicity (substances that stimulate the formation of anti-substances).⁵⁶ Vaccinations are injections with germs or germ products to produce immunity and protect against disease.⁵⁷ Meningitis is an inflammatory pain that occurs in meninges, the membrane or

⁵¹ 49, 267-268.

⁵² Departemen Agama RI, *Pedoman Penentuan Arah Kiblat* (Jakarta: Dirjen Binbagais, 2000), hlm. 66-74.

⁵³ Ibn Qayyim al-Jauziyyah, *I'lam al-Muwaqqi'in an Rabb al-Alamin* (Beirut: Dar al-Kutub al-Ilmiyyah, 1996), Vol. III, 11.

⁵⁴ Yusuf al-Qardhawi, *Faktor-faktor Pengubah Fatwa*, terj. Arif Munandar Riswanto (Jakarta: Pustaka al-Kauter, 2009), 94-121.

⁵⁵ Med. Ahmad Ramali dan K. St. Pamoentjak, *Kamus Kedokteran*, (Jakarta: Djambatan, 2003), 374.

⁵⁶ I.G.N. Ranu dkk. (Peny.), *Pedoman Imunisasi di Indonesia* (Jakarta: Satgas Imunisasi-Ikatan Dokter Anak Indonesia, 2001), 9.

⁵⁷ Anonim, *Kamus Kesehatan*, terj. Arum Gayatri (Jakarta : Arcan, 1995), 261.

1 membrane that lines the brain and supporting nerves.⁵⁸ Meningitis can be caused by various organisms such as viruses, bacteria, or fungi that spread into the blood and move into brain fluid.⁵⁹ Meningitis vaccine is a mandatory vaccine that must be done by prospective pilgrims to protect the risk of contracting meningococcal meningitis, an infection that occurs in the lining of the brain and spinal cord and blood poisoning.

This fatwa regarding the use of meningitis vaccine for pilgrims or umrah appears in MUI fatwa number 5 of 2009, as the final decision of a series of Fatwa Commission meetings. The meetings were held on 6, 13 and 19 June 2009, and 9 and 16 July 2009.⁶⁰ The background to the birth of this fatwa is the obligation of the Saudi Arabian government to all people who will visit the country, including for the benefit of hajj and / or umrah, to carry out the meningitis vaccination to prevent the spread of meningitis.

According to the doctors that to prevent the transmission of meningitis can only be done with meningitis vaccination because there is no other drug that can replace the vaccine. Doctors in Indonesia vaccinate meningitis for pilgrims and umrah with a meningitis vaccine named brand / trade name Mencevax ACW135Y produced by Glaxo Smith Kline Beecham Pharmaceutical Belgium, which in its manufacturing process uses material made with enzymes from pig pancreas and glycerol from lard because at that time no other meningitis vaccine had been found which in the manufacturing process did not use the media material that could replace the vaccine. Because there are elements of the use of enzymes from pigs, there is then a debate about their use.

23 With the need for community answers to the issue of whether or not the use of the brand meningitis vaccine, then the MUI issued a fatwa containing the use of meningitis vaccine that uses material from pigs and or in the process of making contact / contact with pig material was forbidden. The use of meningitis vaccine, specifically for compulsory hajj and / or obligatory hajj, is permissible (permissible), if there is an urgent need. Provisions may use the illicit meningitis vaccine only temporarily as long as a halal Meningitis vaccine has not been found or the government of the Kingdom of Saudi Arabia still requires the use of the vaccine for pilgrims and or umrah.⁶¹

A year later, on July 16, 2010, MUI issued a fatwa regarding the use of the meningitis vaccine for pilgrims or umrah. The fatwa in question is MUI fatwa number 6 of 2010. The reason the MUI discusses the same topic in its fatwa is the fact that meningitis is still a health threat to pilgrims and umrahs in which to prevent transmission of dangerous diseases can only be done through meningitis vaccination. . Until now the Saudi Arabian government also still requires all people who will visit the country, including for the benefit of Hajj and / or Umrah, to carry out the meningitis vaccination to protect pilgrims so as not to be infected with the dangerous virus. And the most important thing is because at that time there were

⁵⁸ J. B. Suharjo B. Cahyono, *Vaksinasi* (Yogyakarta: Kanisius, 2010), hlm. 140.

⁵⁹ *Ibid.*, 18.

⁶⁰ "Fatwa MUI Tentang Vaksin Meningitis" on *Kedaulatan Rakyat*, 23 July 2009.

⁶¹ Maruf Amin, et.al., *Himpunan Fatwa*, 824.

already several manufacturers producing meningitis vaccines originating from halal materials namely Novartis Vaccine which is Kline and Diagnostics S.r.l. with the vaccine produced by Menveo Meningococcal Vaccine which has the name of production Menveo Meningococcal Group A, C, W135 and Y Conyugate Vaccine and Zheijiang Tianyuan Bio Pharmaceutical Co. Ltd., with its production vaccine Meningococcal Vaccine which has the name Meningococcal Vaccine production. For these reasons, MUI then re-issued a fatwa on the meningitis vaccine, which contained two vaccines made from halal material.⁶²

What is done by the MUI by re-enacting the permissibility of using the meningitis vaccine whose process is in contact with unclean goods, in this case pigs, because it has been found that vaccines made from holy, certainly become a necessity. This was very well recognized by the fatwa commission, and was explicitly stated in the dictum of the first fatwa ruling, that the ability to use vaccines made from unclean was only due to an emergency that is not yet found a holy meningitis vaccine. From the explanation above, it can be seen that the advancement of science and technology is a factor that has played a role in the reformulation of the MUI fatwa. With the discovery of a meningitis vaccine that uses sacred or unclean material, then the law of permissibility to use an unclean-based vaccine is annulled and returned to the original law of haram. There is a fiqh rule which reads "violence can allow forbidden".⁶³ There are also rules that read to change and the difference in fatwa is in line with changing times, places, social conditions, intentions, and customs that apply.⁶⁴

Relevance of MUI Fatwa Reformulation with Islamic Law Reform in Indonesia

Azyumardi Azra as quoted by Ahmad Rofik said that the reform movement in Islam both individual and group movements at a certain time to make changes in the understanding of religion that has been established with a newer understanding.⁶⁵ Islamic law as a social institution is inseparable from what is called reform. Renewal of Islamic law in Indonesia has occurred since the 70s. The reform was marked by the birth of several laws such as Law No. 1 of 1974 concerning Marriage, Law No. 7 of 1989 concerning Religious Courts, and Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law. The birth of the Marriage Law, the Law of the Religious Courts, KHI Inpres, and others is a picture of how the reform of Islamic law in Indonesia took place. Some of the contents of these regulations are considered to renew the provisions of Islamic law in classical Jurisprudence. Obligations to register marriages,⁶⁶ divorce must be before the court,⁶⁷ the existence of a mandatory will for adopted

⁶² *Ibid.*, 892.

⁶³ Wahbah al-Zuhaili, *Nadhariyyah al-Dharurah al-Syar'iyah* (Beirut: Muassasah Risalah, 1982), 225.

⁶⁴ Ibn Qayyim al-Jauziyyah, *I'lam al-Muwaqqi'in an Rabb al-Alamin* (Beirut: Dar al-Kutub al-Ilmiyyah, 1996), Vol. III, 11.

⁶⁵ Ahmad Rofik, *Pembaharuan Hukum Islam di Indonesia* (Yogyakarta: Gama Media, 2001), 97.

⁶⁶ Anonim, *Undang-undang Perkawinan* (Surabaya: Arkola, tt.), 1.

⁶⁷ Roichan A. Rasyid, *Hukum Acara Peradilan Agama* (Jakarta: Rajawali Press, 1994), 262.

children is a few examples of Islamic law reform that has occurred.⁶⁸ Later, the Zakat Act, Waqf Law, Hajj Law, Sharia Economic Law Compilation, and so on.

Reform of several fatwas conducted by MUI above shows the dynamics in Islamic legal thinking as a consequence of Islamic law reform. The dynamics are reflected in the changes in the fatwa. Changes in the fatwa are not all in the form of fundamental changes to the legal provisions, but in some fatwas, the contents of the fatwa only add or reinforce the previous fatwa. It can be seen for example when the MUI reviews the decisions on *miqat* for Hajj and Umrah, the second fatwa ruling only complements and reinforces the previous fatwa. In the first fatwa it is stated that Indonesian pilgrims may take ihram from Jeddah without paying dam, while in the second fatwa there is an additional that the King Abdul Aziz airport is also valid for starting ihram. It also added that pilgrims may retire from Indonesia.

In the initial fatwa stipulation of Ramadhan, Shawwal and Zulhijjah, a different topic of fatwa study was seen. If in the first fatwa the topic is certainty about whether or not fasting and feast by following the results of rukyat in other countries, then in the second fatwa, the topic of fatwa study is the method of determining the combination of rukyat with reckoning and the authority of the existing determination of the government. This means that the second fatwa, even though it has the same theme, is actually adding and changing the legal provisions in the first fatwa. The amendment, although not explicitly mentioned, is contained in the provisions of the law in the second fatwa stating that the results of the rukyat of other countries can be used as long as the matrices are the same as Indonesia. This means that the provisions on the use of the global *matla'* as mentioned in the first fatwa amended by the second fatwa.

For the SDSB fatwa, the MUI seems to only strengthen the legal provisions contained in the first fatwa. In the first fatwa it was stated that SDSB contained a lot of *madharat* and haram, while in the second fatwa, gambling in all its forms was haram. It was alleged that the mention of the sentence in the second fatwa was intended to be forbidden of the SDSB and such which in fact became the government's policy. MUI does not seem to want to explicitly mention that SDSB or the like is haram, because MUI knows that the fundraising model is government policy.

In the case of the fatwa on abortion, it is clear that the MUI with the fatwa both wanted to add an incomplete abortion legal provisions in their first fatwa. In the first fatwa only mentioned that abortion in general is unlawful, but in the second fatwa, MUI wants to convey that for certain cases, abortion laws which are prohibited can be changed to be allowed.

Whereas in the Qibla fatwa, MUI seems too quick to draw conclusions without considering the progress of science and technology that has developed rapidly. In the first fatwa it was stated that the Qibla direction for Indonesia was west. In fact, with the willingness of science and technology, all astronomers and general public already know that the direction of Qibla for Indonesia is west

⁶⁸ Abdurrahman, *Kompilasi Hukum Islam* (Jakarta; Akademika pressindo, 1992), 164.

oblique to the north. In this case, the second fatwa actually looks to be a correction of the first fatwa, so the content of the first fatwa becomes invalidated.

Finally, in the case of the meningitis vaccine fatwa for pilgrims and umrah from Indonesia, it is seen that the MUI intentionally changed the legal provisions in the first fatwa which stated that the existing meningitis vaccine, though mixed with unclean and haram barriers, became lawful because of an emergency. But along with advances in science and technology, with the discovery of a meningitis vaccine that is not mixed with unclean and unclean goods, according to the MUI, the ability to use unclean vaccines in the first fatwa becomes invalidated and returns to the original law, namely haram. Here, the second MUI fatwa can be interpreted as nullifying the legal provisions in the first fatwa.

If we see several forms of renewed fatwas, then it can be concluded that the MUI is very responsive to social change and science and technology. MUI is very concerned about socio-cultural and political factors to be considered in issuing its fatwa. This can be proven by keeping the door open for changes to fatwas that have been issued before, even some of them have fatwas that have changed in a not too long time ago such as renewing the fatwa towards the qibla and the meningitis vaccine. The MUI fatwa has a positive contribution to the transformation of contemporary Islamic law, whether related to the social, cultural, food, medical, science and technology fields, and worship, and the decision of the Indonesian Fatwa Commission ulama regarding *masail diniyyah asasiyyah, wataniyyah, masail waqiiyyah muasirah, masail qanuniyyah*.⁶⁹

From the fact that there are various changes in the MUI fatwa above, it appears that MUI's legal thinking is dynamic. Because the truth that is found by a person or group of mujatid is relative, not absolute, and remains open to the possibility of study and change. From this fact, it can also be concluded that the MUI wants that the law in question must always be up to date. The results of ijtihad in the past time actually do not apply to similar cases if they occur at different times and conditions. Changes in time and conditions that occur in Indonesia with a variety of cases, really want a legal solution that is grounded, in accordance with the conditions of reality and the needs of the Indonesian people. Therefore, what has been done by MUI is actually very relevant to the need for Islamic law reform in Indonesia.

Conclusion

MUI reformulated the fatwa due to the socio-cultural changes of the community and the progress of science and technology. Fatwas undergoing reformulation or restructuring can be mapped into three categories. Firstly, strengthen previous fatwas such as fatwas about SDSB and *miqat*. Second, adding the previous fatwa content such as abortion fatwa. Third, cancel the previous fatwa such as the direction of Qibla and the fatwa of meningitis vaccine. The fourth is to cancel some of the contents and add previous fatwas

⁶⁹ La Jamaa, "Fatwas of the Indonesian Council of Ulama and its Contributions to the Development of Contemporary Islamic Law in Indonesia", *Indonesian Journal of Islam and Muslim Societies*, Vol. 8, No.1 (2018): 53.

such as fatwas regarding the initial determination of Ramadan. Shawwal and Zulhijj:²⁶

The fatwa reformulation carried out by the MUI shows the dynamic nature of its ijthad. MUI is very concerned about the condition of social, cultural and political changes in society and the progress of science and technology as a material consideration in improving its fatwa. Such conditions are very relevant to the process of renewing Islamic law in Indonesia which has been going on since the 1970 until now.

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