

The Implementation of the Indonesian Ulema Council's Fatwa on the Prohibition of Smoking in Brebes District from the *Istishan* Perspective

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Abstract: This research aims to explore the implementation of the fatwa of the Indonesian Ulema Council (MUI) regarding the prohibition of smoking through an *istishan* approach. The *istishan* approach as a method for determining Islamic law is used to understand how the flexibility of Sharia can be applied in diverse social and cultural contexts. This research is a field study, where data are obtained from events as they occur in the field. The sample in this study is alumni of the Integrated Islamic Elementary School Harum Brebes, serving as the object or case study. Data collection was conducted through interviews with alumni of the Integrated Islamic Elementary School in Harum Brebes, followed by the analysis and interpretation of the results. The findings of this study indicate the dynamics of understanding and attitudes of alumni towards the fatwa, as well as how the values of public interest are interpreted in everyday life practices. The main contribution of this research lies in strengthening the perspective of *istishan* as an alternative approach in bridging the gap between Islamic legal norms and social realities, especially on contemporary issues such as smoking. This study is expected to serve as a reference for policymakers, educational institutions, and religious authorities in formulating more contextual and effective strategies for implementing fatwas.

Keywords: Application; Fatwa; Indonesian Ulema Council; Tobacco is Haram; *Istishan*.

Introduction

Islamic law is flexible, dynamic, and elastic, which achieves a balance between Islamic law principles and human development. Islamic Shari'a regulates various patterns of human life so that it can be a solution to problems that develop in society.¹ One of the problem solvers amid the problems of the people is the creation of fatwas because the fatwa has a strategic position and is very important, a fatwa giver (*mufti*), so the method of issuing a fatwa is by exploring the laws of Sharia from the arguments of Sharia (*ijtihad*). In other words, a fatwa cannot be separated from the discussion and existence of *ijtihad*. because fatwas are given for the public interest, while fatwas are issued by scholars who have expertise in discussing Islamic law.²

The Indonesian Ulema Council's (MUI) fatwa on the prohibition of smoking has become one of the products of contemporary *ijtihad* that has generated various responses in society. Cigarettes, which were previously categorized as *makruh*, are now officially ruled haram due to considerations of negative impacts on the health, environment, and economy of the people. Several

¹ Fauzi Ahmad Syarif et al., "Kontroversi Fatwa Merokok Dalam Perspektif Fiqih Islam," *Madani: Jurnal Ilmiah Multidisiplin* 1, no. 12 (2024): 37-41. <https://doi.org/10.5281/zenodo.10471059>

² Rahmawati, Nurjannah A, dll, *Pendekatan Studi Hukum Islam dalam Teori dan Praktik* (Depok: PT. Raja Grafindo Persada, 2023), 56.

studies have discussed this aspect. Iswahyudi (2020)³ Discusses the epistemology of *maslahat* in smoking law, with a case study of the fatwa of Sheikh Ihsan Jampes and the Muhammadiyah Tarjih Council⁴. Meanwhile, Nurul Huda Prasetya (2020)⁵ Comparing the MUI fatwa on the prohibition of smoking with the concept of *shadz ad-dzāriyāt* in fiqh through the interpretation of Ibn Kathir. Another study by Rizki Fathul Anwar Sabani (2022)⁶ This research is motivated by the views of the pros and cons of cigarette consumption in Indonesia. This study aims to analyze the *hadith la dharara wala dhiraran* which is the basis for the fatwa on the prohibition of smoking. This research applies a qualitative approach through the method of *takhrij* and *hadith commentary* as well as comparative analysis of the views of the scholars..

However, the research of the study generally has not specifically cited the application of the fatwa with the *stihian* approach, as a method of Islamic legal *istinbath*. *Stihsan* is one of the methods that allows flexibility in responding to the complex social reality of Muslims. In addition, there has not been a study that specifically addresses the Implementation of the fatwa prohibiting cigarettes in communities with an Islamic educational background since the beginning, such as the Integrated Islamic Elementary School (SDIT), which can reflect the implementation of Islamic values since elementary school age.

Therefore, this study has a position and research contribution. First, it fills the gap in studies that link the *gray* approach to the implementation of the fatwa on the prohibition of cigarettes. Second, its focus on alumni of SDIT Harum Brebes provides a new empirical contribution in understanding how early Islamic education influences the acceptance and implementation of religious norms in real social contexts. Thus, this study not only expands the academic discourse on fatwas and Islamic law but also offers a contextual approach in looking at the effectiveness of fatwas among the younger generation of Muslims.

This study is urgent to conduct, considering the Fatwa of the Indonesian Ulema Council (MUI) that states the prohibition of smoking for children, pregnant women, and in public places is not just an ordinary decision; it is a legal statement that invites much discussion. The uniqueness of this fatwa lies in its approach, which does not outright prohibit smoking absolutely for everyone, but rather limits it to certain conditions that clearly pose dangers (*mudarat*). Such a nuanced and contextual approach strongly implies the use of one important *ijtihad* methodology in Islamic law, namely, *Istihsan*.

Research on this fatwa from the perspective of *Istihsan* becomes very urgent and relevant by using a deeper legal reasoning method, and *Istihsan* is strongly suspected to be the key. Understanding how *Istihsan* is applied here will reveal the complexities and richness of Islamic legal methodology in responding to modern issues. This will help us see how fatwas can produce specific laws (not a blanket ban) to preserve the public interest.

³ Iswahyudi Iswahyudi, "The *Maslahat* Epistemology in Cigarette Law: Study on The Fatwa Law on Cigarettes Between Sheikh Ihsan Jampes and The Majelis Tarjih of Muhammadiyah," *Justicia Islamica* 17, no. 2 (2020): 243–60, <https://doi.org/10.21154/justicia.v17i2.1970>.

⁴ Fatwa Majelis Tarjih Dan Tajdid Pimpinan Pusat Muhammadiyah No. 6/Sm/Mtt/Iii/2010 Tentang Hukum Merokok

⁵ Studi Fatwa, Majelis Tarjih, and Tentang Merokok, "A. Pendahuluan" 5, no. 9 (n.d.): 134–51.

⁶ Rizki Fathul Anwar Sabani, "Analisis Hadis *Lā Dharara Walā Dhirāran* Sebagai Dasar Fatwa Keharaman Rokok," *Jurnal Penelitian Ilmu Ushuluddin* 2, no. 2 (2022): 268–93, <https://doi.org/10.15575/jpiu.v2i2.13693>.

In addition, this research will demonstrate how fiqh (Islamic jurisprudence) is able to adapt and remain relevant amidst the evolving times. When a new issue arises, such as the recently understood health impacts of smoking, *Istihsan* allows scholars to formulate laws that uphold the objectives of sharia (*maqasid sharia*) such as the protection of life (*hifzh al-nafs*), even if it means going beyond the rigid analogy of old cases. This proves the flexibility of Islamic law in serving the needs of the community.

Fatwas are often misunderstood, either regarded as too harsh or overly lenient. By analyzing them through the lens of *Istihsan*, this study can explain the nuances and rationality behind these fatwas. The public will understand why the prohibitions are specific and based on considerations of real danger, rather than just general prohibitions without strong justification. This is crucial for enhancing public understanding and reducing the potential for misunderstanding. This study will contribute valuable insights to contemporary *ushul fiqh*, Islamic law in Indonesia, and our understanding of how religious authorities respond to modern social and scientific challenges, especially in its implementation in the Brebes community, taking school alumni as a sample. Thus, this research is not only academically significant but also practically relevant to understanding the dynamics between religion, health, and society.

Method

The method used in this study is field research, which involves data obtained from events that occur in the field as they are. Based on this problem, this study is classified as qualitative descriptive research, which aims to describe, record, analyze, and interpret what is being studied through observation, interviews, and studying documentation.⁷ Based on the nature of the problem, this research falls into the category of qualitative descriptive. This means that our main objective is not to test hypotheses or statistically measure the relationships between variables, but rather to describe, document, analyze, and deeply interpret various aspects of the objects or subjects being studied. Therefore, it will strive to present a rich and detailed picture, capturing the nuances and complexities of the data found related to the implementation of the fatwa of the Central Java MUI.

Research conducted by taking samples from alumni of SDIT Harapan Umat Brebes in Brebes Regency on the implementation of the MUI Fatwa regarding the prohibition of smoking from the perspective of *Istishan*. The data sources used by the researcher are primary and secondary data. The initial data is also a type of data obtained directly from respondents and information through interviews and observations,⁸ This research conducted interviews with 5 informants. The secondary data in this study consists of books related to the research object, such as reports, journals, theses, dissertations, legislation, and others.⁹

Results and Discussion

MUI Fatwa on the Haram of Cigarettes

Fatwa comes from the Arabic الفتوى, which means advice, answer, or opinion. What is meant is an official decision or direction taken by an institution or individual with recognized authority,

⁷Mardalis, *Research Methods: A Proposal Approach* (Cet. 7; Jakarta: Bumi Aksara, 2004), p. 26.

⁸ Sugiyono, *Statistics for Research* (Bandung: CV. Alfabet, 2002), p. 34.

⁹ Zainuddin Ali, *Legal Research Methods* (Jakarta: Sinar Grafika, 2011), p. 106.

delivered by a *mufti*, as a response or answer to a question posed by a fatwa requestor (*mustafti*) who has no attachment. Thus, the fatwa seeker does not have to follow the content or ruling of the fatwa given to him.¹⁰

The ruling on giving a fatwa is *fardu kifayah* if someone else can give a fatwa besides him. But if no one else can give a fatwa and the issue is quite urgent, he is obliged to give a fatwa at the event. The MUI Fatwa Commission has determined how to discuss and apply the law to a problem. The MUI Fatwa Commission on this matter has issued a decree stipulating that in discussing and applying the law of a problem, it must be based on the Qur'an, sunnah, *ijma*, and *qiyas*.¹¹

Thus, can find the problem discussed with the four sources of law, then the ruling is based on them. But if it cannot find it through the four, then *ijtihad* is done.¹² MUI follows the method taken by previous scholars and Imams, which is based on the Qur'an, sunnah, *ijma*, and *qiyas*. In addition, MUI also follows various processes or methods known in the science of useful fiqh, including *jum'u* (collecting or compromising existing opinions), *tarnish* (choosing arguments or opinions that are stronger), *ijtihad jamaica* (*ijtihad* that gets approval from the scholars).

Since the establishment of the Indonesian Ulema Council (MUI) on July 26, 1975, in article 4 of MUI's Articles of Association, it has been affirmed that one of MUI's functions is to give fatwa on religious and social issues to the government as well as to Muslims in general.¹³ MUI's fatwas are determined because, in addition to fulfilling fatwa requests from individuals or institutions (*mustafti*), it is also issued fatwas, advice (*taqiyah*), or recommendations to respond to various problems in the life of society, nation, and state, primarily focused on various policies (policies) either which have been established (legalized) in multiple laws and regulations or not yet, and especially those in the process of discussion to be legalized or established into laws and regulations.¹⁴ MUI fatwa is not a state law with sovereignty that can be imposed on all people to obey it. MUI fatwa also has no sanction, and MUI fatwa is only binding and attended by the Muslim community who feel they have been forced to MUI itself. Because the legality of the MUI fatwa can not and can not be forced to be followed by all Muslims.

The Indonesian Ulema Council (MUI) issued a controversial fatwa. The third Ijtima' Ulama of the MUI Fatwa Commission, January 24- 26, 2009, which took place in West Sumatra, determined that smoking is haram for children and pregnant women, and if carried out in public places. The prohibition of smoking is confined because smoking is harming oneself. Because smoking has more harms than benefits. However, this MUI fatwa is not a legal legislation that requires the Indonesian people to follow and obey it.¹⁵ Even the fatwa of Indonesian scholars does not need Indonesian Muslims to follow constitutionally because it is not included in the hierarchy of laws and regulations. Public compliance, especially among Muslims, is only bound by the values of

¹⁰ Fatwa, Tarjih, and Merokok, "A. Pendahuluan."

¹¹ Muhammad Suhufi, "Fatwa Dan Aktualisasi Hukum Islam Di Indonesia" 8, no. 1 (2010): 55-68.

¹² Mussyaffa Amin Ash Shabah, Valisa Nur Ajizah, and Uswatun Khasanah, "Perilaku Perokok Terhadap Kesadaran Kesehatan Lingkungan Dalam Perspektif Fatwa MUI," *Student Research Journal* 1, no. 2964-3252 (2023): 01-14.

¹³ Muhammad Hadi Prayitno and Zamroni Ishaq, "JOSH : Journal of Sharia," *Jurnal of Sharia* 02, no. Difabel (2022): 161-83, <http://ejournal.insud.ac.id/index.php/josh/article/view/180/168>.

¹⁴ Oga Satria, "The Fatwa of Smoking in the Kerinci Manuscripts," *Penamas* 33, no. 2 (2020): 277-92, <https://doi.org/10.31330/penamas.v33i2.432>.

¹⁵ Jajang Herawan, Mugni Muhit, *Refleksi Ilmu Ushul Fiqih : Teori dan Implementasinya*, (Purbalingga, CV Eureka Media Aksara, 2023), 63.

compliance with Islamic rules. The basis for determining the prohibition of smoking is found in the words of Allah SWT in Q.S. Al-Araf/7: 157.

الَّذِينَ يَتَّبِعُونَ الرَّسُولَ النَّبِيَّ الْأُمِّيَّ الَّذِي يَجِدُونَهُ مَكْتُوبًا عِنْدَهُمْ فِي التَّوْرَةِ وَالْإِنْجِيلِ يَأْمُرُهُمْ بِالْمَعْرُوفِ وَيَنْهَاهُمْ
عَنِ الْمُنْكَرِ وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ وَيَضَعُ عَنْهُمْ إِصْرَهُمْ وَالْأَغْلَالَ الَّتِي كَانَتْ عَلَيْهِمْ فَالَّذِينَ
آمَنُوا بِهِ وَعَزَّرُوهُ وَنَصَرُوهُ وَاتَّبَعُوا النُّورَ الَّذِي أُنزِلَ مَعَهُ أُولَئِكَ هُمُ الْمُفْلِحُونَ

Translation: (That is,) the people who follow the Messenger (Muhammad), the unlettered Prophet (who cannot read or write) whose name they find written in the Torah and the Gospel that are with them. He commands them to do what is right, forbids them from what is wrong, makes lawful to them all that is good, prohibits them from all that is bad, and relieves them from their burdens and the shackles that are upon them.¹⁶ As for those who believe in him, honor him, assist him, and follow the light that has been sent down with him (the Qur'an), they are the ones who are successful.¹⁷

The Indonesian Ulama Council (MUI) held the third Fatwa Commission Ulama Ijtima' in West Sumatra, which resulted in a controversial fatwa regarding the law on smoking. This fatwa specifically states that smoking is haram for children and pregnant women, as well as when done in public places. The basis for this legal ruling is the consideration that smoking brings more harm (*mudarat*) than its benefits. The dangers posed by cigarettes to one's health and those around them are the main reasons behind the prohibition. However, it is important to emphasize that the MUI fatwa is not a binding state law that must be followed by all Indonesian citizens constitutionally. The status of this fatwa does not fall within the hierarchy of laws and regulations in Indonesia. Therefore, compliance from the public, especially among Muslims, is more tied to religious values and beliefs in the teachings of Islam itself, rather than to the coercion of state law. This fatwa serves more as a moral and spiritual guide that is expected to influence the behavior of the faithful based on religious awareness.

The Haram of Cigarettes in the Light of *Istihsan*

Etymologically, *istihsan* means (considering something better), or (the existence of something is better), or (following something better), or (looking for something better to follow because it is told to do so). From the meaning, according to the discussion, a person who faces two things that are both good. But something prompts him to abandon one of them and decide to take the other because it is better to practice. Among the Hanbalis, there are three definitions, as stated by Ibn Qudamah: (1) The mujahid shifts the ruling on a matter from its counterpart because there is specific evidence in the Qur'an or Sunnah; (2) *Istihsan* is anything that a mujahid considers better based on his reasoning; (3) Evidence that arises in the mujahid that he is unable to explain.

From the first definition of *istihsan*, which applies among Hanbali scholars, we can conclude that a mujtahid does not determine the law as it is determined in a case similar to that because he

¹⁶ In the sharia of the Prophet Muhammad (peace be upon him), there is no longer a heavy burden imposed on the Children of Israel, such as the requirement to commit suicide for repentance, the obligation of qisas for intentional murder without an alternative to paying blood money (compensation), the amputation of limbs for committing errors, and the necessity to dispose of or cut fabric that has been contaminated.

¹⁷ Ministry of Religious Affairs of the Republic of Indonesia, *Al-Qur'an Al-Karim and its Translations*, p.170

follows other arguments in the Qur'an and Sunnah. Other scholars may have objections because what the mujahid considers better, according to him, is not necessarily better in reality. As stated by Ibn Subki, if the argument in the mujahid is accurate, then the method is acceptable. There is no anxiety in explaining the idea, but if the statement is not valid, then the process of istihsan is rejected. Smoking can trigger heart disease.¹⁸

The habit of smoking can also cause other dangerous diseases, including lung cancer and impotence, and can even cause death due to lung cancer. The nicotine in it causes the heart to work more in need of oxygen, but carbon monoxide reduces oxygen uptake by the blood; at the same time, tar further aggravates the situation by reducing the ability of air storage by the lungs.¹⁹ Islam does not prohibit anyone from carrying out actions related to one's habits as long as they do not harm others.

Islam only teaches its followers not to do activities that can harm themselves and others around them. An example is smoking, smoking can harm oneself because the habit can damage health. Even in every pack of cigarettes, it says, "Smoking can cause cancer, heart attack, impotence, and pregnancy, and fetal disorders". In cigarette packs, it also says smoking can kill you. As explained in Q.S. An-Nisa' 4:29.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

Translation: O you who have believed, do not consume one another's wealth unjustly or send it [in bribery] to the rulers so that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful]. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful.²⁰

Smoking can lead to destruction, which damages the entire body because it leads to cancer, respiratory diseases, heart disease, digestive diseases, adverse effects on the fetus, and damage to the reproductive system. Smoking can cause damage to the body and a reduction in health. Apart from damaging health, cigarettes are also contributing to the drain of wealth. Because people who are addicted to smoking will not stand not smoking, smoking can also close the mind.

The hobby of smoking is included in the act of *tabdzir* (waste) and is a waste of wealth, using something that is not beneficial in the world and the hereafter. They do not get anything from cigarettes except only momentary tranquillity, the danger of life-threatening diseases, as well as money wasted for nothing. Imam Ash-Shukany said about this verse, "The one who *wastes* is likened to a shaitan, and whatever is likened to a shaitan is to him a shaitan, and every shaitan is a denier (of Allah, peace be upon him), so the one who wastes is a denier." (Imam Ash-Shukany, in his *Fathul Qadir*).

So, the prohibition of smoking is *muwafaqah bil maqashid ash Shari'ah* (by the objectives of *Shari'ah*), which requires the safeguarding of five essential things (basic), namely religion, life,

¹⁸ Heri Firmansyah, "Kajian Metodologis Terhadap Fatwa MUI Tentang Rokok," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 4, no. 1 (2019), <https://doi.org/10.22515/al-ahkam.v4i1.1829>.

¹⁹ Ririn Adrida, "Hukum Mengonsumsi Rokok Elektrik Dan Bahan-Bahan Berbahaya Dalam Alquran (Melalui Pendekatan Ushul Fiqih)," *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam*, 2022, 521-34, <https://doi.org/10.30868/am.v10i02.2830>.

²⁰ Ministry of Religious Affairs of the Republic of Indonesia, *Al-Qur'an Al-Karim and its Translations*, p.83

property, reason, and offspring. Imam al Qarafi al Maliki added six, namely honour. Islam prohibits taking actions that can harm oneself and others. Cigarettes can be categorized as haram objects and goods that must be avoided and kept away as far as possible.

As explained above, do not kill yourself, do not bring yourself to destruction and avoid actions that can harm you. which is the *causa law* ('*illat al-ḥukm*'), according to MUI scholars, namely because smoking is an act that harms yourself. Cigarettes contain substances that can damage the body. Using the *masalikul 'illat* mechanism in the usual fiqh *qiyas* method, the reason for harming oneself does not meet the requirements and qualifications as '*illat al-ḥukm*. It is too general (*gair mundaabit*).

In this case, MUI stuck to the rule of *al-hukm yadurru ma'a 'illatihi wujudan wa'adaman* (the law is bound by its '*illat*, existence and absence). *Istihsan* is etymologically a masdar form of استحسن which means considering something good.²¹ Or think something is good.²² Another meaning of *istihsan* is following something that is better or looking for something better to follow because it is told to do so.²³ Therefore, by the grace of Allah, the opportunity has been opened for the mujtahid to move the legal event from the provisions of *qiyas* to other legal requirements that can realize *maslahat* and reject *mafsadat*.

According to al-Syatibi, the *istihsan* that the imams of the madhhab have used is not just based on pure logic and following lust, but everything is returned to the general purpose of *shari'ah* in various events that are raised, which have a contextual nature to achieve *maqasid shari'ah*.²⁴ For example, it is permissible to examine the body for the sake of health. This is an exception to the general rule that forbids it. Husain Hamid Hassan explained that the basis for the use of *istihsan* according to Imam Malik, which is returned to the nash from two aspects:²⁵ First, the method of *istihsan* is taken from the proposition of shares using a form of induction that can provide *Kathi* benefits, not expressing the opinion of reason or just according to lust. Secondly, the method of *istihsan* is that the mujtahid reverts to the Shar'i arguments derived from the induction of the various Shar'i texts. *Ijma'* and '*urf* have been recognized as *valid* by the Shar'i texts.²⁶

The arguments used by the Hanafi Mazhab in the use of *istihsan*, as found in the Quran Az-Zumar/39: 18 and 55:

الَّذِينَ يَسْتَمِعُونَ الْقَوْلَ فَيَتَّبِعُونَ أَحْسَنَهُ أُولَئِكَ الَّذِينَ هَدَاهُ اللَّهُ وَأُولَئِكَ هُمْ أُولُوا الْأَلْبَابِ

Translation: (That is) those who listen to the words and follow what is best among them.²⁷ They are the ones who have been guided by Allah and they are the ones who possess reason.²⁸

²¹ Moh. Fauzi, Ilmu Fiqih Sosiologis, (Semarang, CV Rafi Sarana Perkasa), 2021.

²² sultoni Trikusuma, Nawir Yuslem, And Ahmad Qarib, "Implementation of The Decree of The Third Indonesian Ijtima' Ulama Fatwa Commission 2009 on the Prohibition of Cigarettes (Comparative Study of The Views of Ulama And Elite Al Washliyah , Nahdlatul Ulama , And Muhammadiyah In Medan City)" 7838 (2019): 117-21.

²³ Syarifudin, H. Amir. *Ushul Fiqh Volume II*. Vol 1. (Jakarta: Prenada Media, 2014), 75.

²⁴ H Darmawati, "Darmawati H. Istihsan Dan Pembaruan Alam," *Al-Fikr* 15, no. 1 (2011): 164.

²⁵ Hassan, Husain Hamid. "Nazariyat al-Maslahat fi al-Fiqh al-Islamiyah." (*Egypt: Dar al-Wahdat al-'Arabiyyah* 1981), p 589

²⁶ Noer Dini Camelia, Win Yuli Wardani, and Febrina Heryanti, "The Circulation of Illegal Cigarettes in Indonesia In The" 9, no. 14 (2024): 32-45.

²⁷ Mereka mendengarkan ajaran-ajaran Al-Qur'an dan ajaran yang lain, lalu mengikuti ajaran-ajaran Al-Qur'an karena meyakini sebagai yang terbaik.

²⁸ Ministry of Religious Affairs of the Republic of Indonesia, *Al-Qur'an Al-Karim and its Translations*, p.480.

وَاتَّبِعُوا أَحْسَنَ مَا أُنزِلَ إِلَيْكُمْ مِنْ رَبِّكُمْ مِنْ قَبْلِ أَنْ يَأْتِيَكُمُ الْعَذَابُ بَغْتَةً وَأَنْتُمْ لَا تَشْعُرُونَ²⁹

Translation: Follow the best of what has been revealed to you from your Lord (the Qur'an) before the punishment comes to you suddenly, while you do not realize it.²⁹

The first verse, according to them, praises those who follow the best opinion, while the second verse prescribes following the best of what Allah has revealed.³⁰ If following the best way did not have the force of proof, Allah would not have indicated that. This shows that *Islam* is nothing but an attempt to make the best acceptable in the religion. (What is considered reasonable by the Muslims is also good in the sight of Allah). *Istihsan*, referred to by the Hanafiyah scholars, is judging based on more substantial evidence. According to NU scholars, there is a general *nash* (decree) that serves as a legal reference, namely "the prohibition of doing anything that can bring *mafsadat* (damage) and *mudharat* (harm). As the Word of Allah Swt in the Qur'an letter al-Baqarah verse 195 which reads:

وَأَنْفِقُوا فِي سَبِيلِ اللَّهِ وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ

Translation: Spend in the way of Allah, and do not throw yourselves into destruction, and do good. Indeed, Allah loves those who do good.³¹

From the Hadith narrated by Ibn Majah, Meaning: Abi Sa'id reported that Said ibn Sunan akl-Khudri (may Allah be pleased with him) said: "Do no harm to yourself, and do no harm to others". This hadith is Hasan, narrated by Ibn Majah, al-Daruquthni, and in Musnad other than them. It was described by Imam Malik in al-Muwatha' from Amr ibn Yahya, from his father, from the Prophet (may Allah's peace and blessings be upon him), and Abu Sa'id's father was killed (Ibn Majah).

Despite the contradiction of the two *texts* above, Nahdlatul Ulama agrees that everything that brings *mudharat* (harm) is haram. But the problem is whether smoking brings *mudharat* or even benefits. In this case, different opinions are issued in examining and scrutinizing the substance of cigarettes from the aspects of *benefit* and *harm*. This difference of view is a new round of ideas about the law of smoking with multiple arguments. If all agree that smoking brings *maslahat* or smoking gets relatively small harm, all will decide on the direction of *mubah* or *makruhnya* smoking. If smoking brings great *harm*, it will also agree with the haram law.³²

Mufti Egypt thinks that the original law of smoking is *permissible*. Still, prohibition and obscenity arise due to other factors, such as if it causes *madharat* (much or trim) to the soul or property or even both. Or because it causes *madharat* and ignores the rights of others. If there are elements like that, then the law is *makruh* or *haram*, according to the impact it raises, then if there is no negative impact like that, the *hukm* is *halal*.³³ In this case Allah SWT emphasizes in the letter

²⁹ Ministry of Religious Affairs of the Republic of Indonesia, *Al-Qur'an Al-Karim and itsTranslations*, p.483.

³⁰ Jasser Auda. *Maqasid al-Syariah as a Philosophy of Islamic Law*. (London: IIIT, 2008), 324.

³¹ Department of Religious Affairs of the Republic of Indonesia, *al-Qur'an and its translation*, p.30.

³² Wahbah al-Zuhaili. *Ushul Fiqh al-Islami*. (Beirut: Dar al-Fikr, 2005), 490.

³³ Abu Ishaq. *Al-Muwafaqat fi Ushul al-Syariah*. (Beirut: Dar al-Kutub al-Ilmiyyah), 2000.

Al-Baqoroh/2:195, "And spend (your wealth) in the way of Allah, and do not bring yourselves down to destruction, and do good, for surely Allah loves those who do good."³⁴

This verse explains the prohibition of spending property on needs that do not bring benefits, such as cigarettes, because they only make themselves and others suffer, leading to destruction, as continued in the verse, which has a broad meaning, including killing yourself, which is forbidden in Islamic teachings. As Allah Swt says in Surah An-Nisa/4:29.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

Translation: O you who have believed, do not consume one another's wealth unjustly or send it [in bribery] to the rulers so that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful]. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful.³⁵

Thus, consuming cigarettes in the context of the verse above is indicative of a futile act and can bind the perpetrator to suicide. although the impact is not as direct as someone who drinks insect poison or hangs their neck on a rope, the act is done intentionally, namely, inhaling harmful toxins in cigarettes.³⁶ Explicitly, the word *dukhon*, which means tobacco or cigarettes, is not found in the Qur'an and Al-Hadith. In contrast to *khamr*, which is located in the book of Allah or the Sunnah of the Prophet.

This is where the problem arises and causes controversy of opinion around the law of smoking. While what is used as a reference is the perception, most of the ulama in Indonesia are of the idea that the law of tobacco is *makruh*.³⁷ The differences of opinion of scholars are addressed in this study as a natural reality of Islamic jurisprudence and an intellectual property of Islam. However, the *istishan* approach used in this study is actually a bridge to respond to these differences wisely, namely by considering that the general benefits and health losses due to cigarettes have been scientifically proven. Thus, although cigarettes are not explicitly mentioned in the text, the use of *istishan* allows for the adoption of laws based on real harm, while still considering the social and psychological conditions of the individual.

Besides cigarettes being *makruh* law, there are also various other regulations approved by Indonesian ulama, such as *mubah* and *haram*, and there are even those who justify smoking depending on the cause of the person smoking. Thus, the Indonesian state has several Islamic schools and their respective leaders whose *ijtihad* differs in determining the law of smoking.

Implementation of the prohibition of smoking in SDIT Harum Brebes Alumni

Smoking is one of the actions that can open up opportunities for disease to enter the human body, but not as one of the causes of disease. However, smoking can trigger the emergence of types of illnesses that result in death. Activities that cause harm to the body are included in the act of sin. Therefore, smoking can be categorized as an item that must be avoided because it can cause

³⁴ Ministry of Religious Affairs of the Republic of Indonesia, *Al-Qur'an Al-Karim and itsTranslations*, p.30.

³⁵ Ministry of Religious Affairs of the Republic of Indonesia, *Al-Qur'an Al-Karim and itsTranslations*, p.83.

³⁶ Fuad Luthfi, A Fauzi Aseri, and Masyithah Umar, "Legal Theory Pendekatan Sosio-Legal Terhadap Fatwa : Analisis Kedudukan Dan Peran Fatwa Mui Di Indonesia," 2024, 2226-45.

³⁷ Muhammad Maulana Hamzah, "Peran Dan Pengaruh Fatwa Mui Dalam Arus Transformasi Sosial Budaya Di Indonesia," *Millah: Journal of Religious Studies* 17, no. 1 (2018): 127-54, <https://doi.org/10.20885/millah.vol17.iss1.art7>.

damage to the organs of the body. Thus, MUI issued a fatwa in its annual session, where MUI forbade smoking in public places for children and pregnant women.

Smoking behaviour is something that is still widely practised and followed by people, especially in Indonesian society itself, even though the dangers of smoking are often written in magazines, newspapers and even cigarette labels. Even though cigarettes, such as lung cancer, hypotension, and fetal disorders cause dangers to tobacco health. However, Indonesian people are not too concerned about the effects of smoking. Based on the results of in-depth interviews conducted with several informants, it was found that responses to the fatwa were very diverse, reflecting different social, psychological dimensions and religious understanding.

Most of the interviewees understood and accepted the prohibition of smoking that was issued by MUI. As expressed by MFAA: "Because the fatwa comes from MUI directly, as Muslims we must agree, of course there are many pros and cons. For example, Muhammadiyah has forbidden it, while NU has not. As long as its use is within reasonable limits and in ethical conditions, there is no problem. Like what is in the MUI fatwa, so if I agree."³⁸

This acceptance of fatwas based on religious authority reflects the normative dimension of compliance, but is still accompanied by contextual interpretations that consider ethical values and social conditions. This view is in line with the *istihsan* approach, particularly *istihsan bil 'urf*, which adjusts the law based on prevailing social customs and ethics.

Meanwhile, other respondents such as AMA said: "Still undecided, rather than agreeing with patenting, it is more like 4 conditions that are likened to marriage. Marriage can be obligatory, *sunnah*, *mubah*, and *haram*. Well, in my personal opinion, smoking is also like that; it can be allowed, it can be *haram*, depending on the conditions. He can be allowed if he is stressed, rather than leading to more mushroom things. Whereas it can become *haram* when he endangers the needs of others".³⁹

AMA's view shows the flexibility of understanding Islamic law that is unique to *istihsan*, which is the ability to adjust the law based on individual *maslahat* and context. This attitude shows that people do not accept fatwas absolutely, but consider situational aspects. MZT also voiced doubts about the total implementation of the fatwa: "I think it will be hard to realize it, because the biggest contributor to the excise tax is cigarettes. There will definitely be many pros and cons for the state. But I don't agree. Then, regarding not being allowed to smoke in public places, I also disagree. what should not be done is in smoke-free areas."⁴⁰

This statement reflects the structural awareness and political-economic realities that pose challenges to the implementation of the fatwa. It also shows that some people view fatwas as having to be realistic and consider social benefits as a whole.

In addition, the health hazards caused by smoking are a strong reason for some interviewees to accept the prohibition of smoking. As stated by MHS: "Agree with what was said by MUI because the context of the regulation is for children and pregnant women, so agree that it should be prohibited."⁴¹ And LA adds: "It's okay, because for those who don't smoke, it makes them very

³⁸ Interview by MFAA Alumni of SDIT Harapan Umat Brebes Batch 1, Date December 9, 2023.

³⁹ Interview by AMA Alumni of SDIT Harapan Umat Brebes Batch 2, Date December 9, 2023

⁴⁰ Interview by MZT Alumni of SDIT Harapan Umat Brebes Batch 3, Date December 9, 2023.

⁴¹ Interview by MHS Alumni of SDIT Harapan Umat Brebes Batch 2, Date December 9, 2023.

uncomfortable, especially in public places. Moreover, the danger for passive smokers is greater than for active smokers."⁴²

Some respondents even linked their acceptance to the results of scientific research: "I agree because medically it affects things like cancer, pancreas, diabetes, many other things like that. Then, from a psychological perspective, interpersonal relationships will also be negatively affected. Many scientific journals say smoking is harmful to health." (MMA, MHS, LA)

This view reflects that public understanding of the dangers of smoking also strengthens the authority of the fatwa. From an *istihsan* perspective, this shows the application of *istihsan bil masalah*, which is a legal decision taken based on consideration of real benefits that are proven empirically.⁴³

However, respondents such as MZT and MFAA proposed a moderate approach: "I agree, but I still think it should be balanced with exercise". "If you look at the composition of making cigarettes cause illness/health problems, what causes it is if you smoke too much. Up to more than 1 pack a day, it can get sick quickly. If it's just a stress reliever, probably not."

This indicates that some people still assess the prohibition of smoking proportionally, not absolutely, and depending on one's physical and psychological condition. This is in line with *istihsan al-shakhsi*, which is a legal approach tailored to individual circumstances.

Based on the results of the interview above, we can conclude that both active smokers and passive smokers agree on the opinion that smoking can affect the health of the body, but because the act of smoking is one of the things that is very natural in the State of Indonesia. Hence, smokers feel indifferent and don't even care too much about the health consequences that arise afterwards. The active smoker has a pro and con view of health. Because there may be some who think that if he smokes but is balanced with sports activities, it will minimize the risk of disease.

Although the law of smoking is not in the Qur'an and Hadith, it is clear that the consequences of smoking for health can have harmful impact. Thus, although MUI has issued a fatwa regarding the prohibition of tobacco, because the fatwa has a non-binding nature, many Indonesian people still do not care about the fatwa. Therefore, although the act of smoking is not to blame, it would be better if he left the cigarette because of the consequences that will occur if he is addicted to smoking.⁴⁴ Thus, avoiding smoking habits includes motivating yourself, exercising regularly, holding back or delaying if you want to smoke, and so on.

The results showed that SDIT Harum Brebes alumni have a fairly good understanding of the MUI fatwa on the prohibition of smoking. All respondents know that smoking has been ruled haram by MUI, and they understand that the main reason for the fatwa is because of the health hazards and the harm it causes. However, the application of the fatwa in daily life is not fully in line with their understanding and the assumption that fatwas are not binding in positive law.

Analysis from the perspective of *istihsan* shows that there is a wide range in the acceptance of fatwas based on consideration of individual and social conditions. In this context, *istihsan* is not interpreted as a justification for deviant behavior, but as a method of Islamic law that considers reality and opens up space for legal policies that are not rigid. The application of *istihsan* can be seen

⁴² Interview by LA Alumni of SDIT Harapan Umat Brebes Batch 3 , Date December 9, 2023

⁴³ *Fatwa MUI Nomor 4 Tahun 2009 tentang Pengharaman Rokok bagi Anak, Ibu Hamil, dan Tempat Umum*

⁴⁴ Government Regulation of the Republic of Indonesia Number 109 of 2012 concerning the Control of Materials Containing Addictive Substances in the Form of Tobacco Products.

in the attitude of some alumni who, despite understanding the prohibition of smoking, still take a gradual approach in avoiding smoking in order to maintain emotional stability or social relationships, while still having awareness of the principle of *maslahat*.

The uniqueness of this finding lies in the integration between understanding normative law and social reality through the *istihsan* approach. Unlike previous studies that tend to stop at the aspect of social acceptance of fatwas, this study shows that the internalization of Sharia values instilled early on through formal Islamic education (SDIT) plays an important role in shaping moderate and contextual religious attitudes. Alumni who can actualize these values in personal moral decisions, such as leaving cigarettes, reflect the process of *istinbath*, which is applicable and dynamic.

Thus, this research confirms that fatwa cannot be separated from educational strategies and contextual legal approaches. The *istihsan* approach provides room for the development of fatwas that are more responsive to educational backgrounds, local culture, and individual capacity in practicing sharia.

Conclusion

This fatwa specifically states that smoking is haram for children and pregnant women, as well as when done in public places. The basis for this legal ruling is the consideration that smoking brings more harm (*mudarat*) than its benefits. The dangers posed by cigarettes to one's health and those around them are the main reasons behind the prohibition. However, it is important to emphasize that the MUI fatwa is not a binding state law that must be followed by all Indonesian citizens constitutionally. The status of this fatwa does not fall within the hierarchy of laws and regulations in Indonesia. Therefore, compliance from the public, especially among Muslims, is more tied to religious values and beliefs in the teachings of Islam itself, rather than to the coercion of state law. This fatwa serves more as a moral and spiritual guide that is expected to influence the behavior of the faithful based on religious awareness.

The fatwa of the Indonesian Ulema Council (MUI) that prohibits smoking is a religious legal ruling based on considerations of harm (danger or loss) caused by smoking. From an Islamic legal perspective, this decision reflects the use of the *ijtihad* method, specifically *Istihsan*, where scholars choose laws that bring greater public welfare (good) and avoid harm, even if it may deviate from strict analogy (*qiyas*) if considered more beneficial. Formally in the legal system of Indonesia, this MUI fatwa is not a piece of legislation that is constitutionally binding or carries criminal/civil legal sanctions. Its status is not equivalent to laws, government regulations, or regional regulations. Therefore, the Indonesian society as a whole is not obliged to adhere to this fatwa based on state legal compulsion. For Muslims, this fatwa has moral and religious authority. Compliance with this fatwa is based on the values of obedience in Islamic teachings and personal awareness of *syara'* law (religious law). In this context, the fatwa serves as a religious guideline that is expected to be voluntarily implemented by individuals and Muslim communities as a form of obedience to the religious norms formulated by leading scholars. Thus, the legal consequences of this fatwa are more of a theological and socio-religious consequence, rather than a consequence of the state's positive law.

Bibliography

- Amirullah, A., Islamy, A., & Hamzah, H. (2022). Moderasi Fikih Muamalah di Indonesia: Analisis terhadap Paradigma Fatwa Dewan Syariah Nasional. *Al-Bayyinah*, 6(1), 95-108. <http://dx.doi.org/10.35673/al-bayyinah.v6i1.2634>
- Ibrahim, Adrida, Ririn. "Hukum Mengonsumsi Rokok Elektrik Dan Bahan-Bahan Berbahaya Dalam Alquran (Melalui Pendekatan Ushul Fiqih)." *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam*, 2022, 521-34. <https://doi.org/10.30868/am.v10i02.2830>.
- Camelia, Noer Dini, Win Yuli Wardani, and Febrina Heryanti. "THE CIRCULATION OF ILLEGAL CIGARETTES IN INDONESIA IN THE" 9, no. 14 (2024): 32-45.
- Darmawati, H. "Darmawati H. Istisnā dan Pembaruan Alam." *Al-Fikr* 15, no. 1 (2011): 164.
- Fatwa, Studi, Majelis Tarjih, and Tentang Merokok. "A. Pendahuluan" 5, no. 9 (n.d.): 134-51.
- Firmansyah, Heri. "Kajian Metodologis Terhadap Fatwa MUI Tentang Rokok." *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 4, no. 1 (2019). <https://doi.org/10.22515/al-ahkam.v4i1.1829>.
- Hamzah, Muhammad Maulana. "Peran Dan Pengaruh Fatwa Mui Dalam Arus Transformasi Sosial Budaya Di Indonesia." *Millah: Journal of Religious Studies* 17, no. 1 (2018): 127-54. <https://doi.org/10.20885/millah.vol17.iss1.art7>.
- Hassan, Husain Hamid. "Nazariyat al-Maslahat fi al-Fiqh al-Islamiyah." *Egypt: Dar al-Wahdat al-'Arabiyah* 1981,
- Iswahyudi, Iswahyudi. "The Maslahat Epistemology in Cigarette Law: Study on The Fatwa Law on Cigarettes Between Sheikh Ihsan Jampes and The Majelis Tarjih of Muhammadiyah." *Justicia Islamica* 17, no. 2 (2020): 243-60. <https://doi.org/10.21154/justicia.v17i2.1970>.
- Jasser Auda. *Maqasid al-Syariah as a Philosophy of Islamic Law*. (London: IIIT), 2008.
- Jajang Herawan, Mugni Muhit, *Refleksi Ilmu Ushul Fiqih : Teori dan Implementasinya*, (Purbalingga, CV Eureka Media Aksara), 2023
- Luthfi, Fuad, A Fauzi Aseri, and Masyithah Umar. "Legal Theory PENDEKATAN SOSIO-LEGAL TERHADAP FATWA: ANALISIS KEDUDUKAN DAN PERAN FATWA MUI DI INDONESIA," 2024, 2226-45.
- Mardalis, *Research Methods: A Proposal Approach* (Cet. 7; Jakarta: Bumi Aksara, 2004).
- Ministry of Religious Affairs of the Republic of Indonesia, *Al-Qur'an Al-Karim and its Translations*
- Moh. Fauzi, *Ilmu Fiqih Sosiologis*, (Semarang, CV Rafi Sarana Perkasa), 2021.
- Majelis Ulama Indonesia (MUI). *Fatwa MUI Nomor 4 Tahun 2009 tentang Pengharaman Rokok bagi Anak, Ibu Hamil, dan Tempat Umum* .
- Muhammadiyah, *Fatwa Majelis Tarjih Dan Tajdid Pimpinan Pusat Muhammadiyah No. 6/Sm/Mtt/Iii/2010 Tentang Hukum Merokok*
- Prayitno, Muhammad Hadi, and Zamroni Ishaq. "JOSH : Journal of Sharia." *Jurnal of Sharia* 02, no. Difabel (2022): 161-83. <http://ejournal.insud.ac.id/index.php/josh/article/view/180/168>.
- Peraturan Pemerintah Republik Indonesia Nomor 109 Tahun 2012 Tentang Pengamanan Bahan yang Mengandung Zat Adiktif Berupa Produk Tembakau.
- Rahmawati, Nurjannah A, dll, *Pendekatan Studi Hukum Islam dalam Teori dan Praktik* (Depok: PT. Raja Grafindo Persada), 2023.
- Sabani, Rizki Fathul Anwar. "Analisis Hadis Lā Dharara Walā Dhirāran Sebagai Dasar Fatwa Keharaman Rokok." *Jurnal Penelitian Ilmu Ushuluddin* 2, no. 2 (2022): 268-93. <https://doi.org/10.15575/jpiu.v2i2.13693>.
- Satria, Oga. "The Fatwa of Smoking in the Kerinci Manuscripts." *Penamas* 33, no. 2 (2020): 277-92. <https://doi.org/10.31330/penamas.v33i2.432>.
- Shabah, Mussyaffa Amin Ash, Valisa Nur Ajizah, and Uswatun Khasanah. "Perilaku Perokok Terhadap Kesadaran Kesehatan Lingkungan Dalam Perspektif Fatwa MUI." *Student Research Journal* 1, no. 2964-3252 (2023): 01-14.
- Suhufi, Muhammad. "Fatwa Dan Aktualisasi Hukum Islam Di Indonesia" 8, no. 1 (2010): 55-68.

- Syarif, Fauzi Ahmad, Universitas Islam, Negeri Sumatera, and Utara Medan. "Kontroversi Fatwa Merokok Dalam Perspektif Fiqih Islam." *Madani : Jurnal Ilmiah Multidisiplin* 1, no. 12 (2024): 37-41.
- Sugiyono. *Statistics for Research*. Bandung: CV. Alfabet, 2002.
- Syarifudin, H. Amir. *Ushul Fiqh Volume II*. Vol 1. (Jakarta: Prenada Media), 2014.
- Al-Syatibi, Abu Ishaq. *Al-Muwafaqat fi Ushul al-Syariah*. (Beirut: Dar al-Kutub al-'Ilmiyyah), 2000.
- Trikusuma, Sultoni, Nawir Yuslem, and Ahmad Qarib. "IMPLEMENTATION OF THE DECREE OF THE THIRD INDONESIAN IJTIMA ' ULAMA FATWA COMMISSION 2009 ON THE PROHIBITION OF CIGARETTES (COMPARATIVE STUDY OF THE VIEWS OF ULAMA AND ELITE AL WASHLIYAH , NAHDLATUL ULAMA , AND MUHAMMADIYAH IN MEDAN CITY)" 7838 (2019): 117-21.
- Wahbah al-Zuhaili. *Ushul Fiqh al-Islami*. (Beirut: Dar al-Fikr), 2005.
- Zainuddin Ali, *Legal Research Methods* (Jakarta: Sinar Grafika, 2011).