



**THE MAŞLAĤAT EPISTEMOLOGY IN CIGARETTE LAW:  
STUDY ON THE FATWA LAW ON CIGARETTES**

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**Abstract:** Sheikh Ihsan Jampes gives the fatwa of the cigarette law as *makrūh*, while Majelis Tarjih gave the fatwa *ḥarām*. Although Sheikh Ihsan's fatwa is individual, this fatwa deserves to be a comparison for the collective fatwa of the Majelis Tarjih. This is because the Sheikh Ihsan's fatwa is a complete picture of the NU fatwa in general. This paper is based on two important questions, which the arguments are used by the two in fatwas formulating the cigarette law and whether there are conceptual differences from these arguments or not. To answer these two questions, this paper uses descriptive-critical-analysis method with a critical hermeneutic approach. This article finds that both fatwa of Sheikh Ihsan Jampes and Majelis Tarjih have the same argument in deciding the cigarette law, namely the argument of utility or usefulness (*maşlahat*). However, the two fatwas are different in formulating the *maşlahat* model used. Shaykh Ihsan used *maşlahat tahşiniyyāh* while Majelis Tarjih put it in the shade of *maşlahah ḍarūriyyah*. This article implies the various variants of the different choices of cigarette law and also provides insight into the epistemology that underlies these differences in law. This article are usefull to enrich information for smokers to choose between continuing or leaving smoking. Epistemology, as is well known, is the opening door to one's actions. This article also provides a perspective for policy-makers between legalizing or banning cigarettes based on the theory of *maşlahat*.

**Abstrak:** Syeikh Ihsan Jampes memberi fatwa hukum rokok sebagai makruh, sementara Majelis Tarjih memberi fatwa harm. Walau fatwa Syeikh Ihsan bersifat individual, fatwa ini layak menjadi pembanding bagi fatwa Majelis Tarjih yang kolektif. Hal ini disebabkan karena fatwa Syeikh Ihsan adalah gambaran lengkap bagi fatwa NU pada umumnya. Tulisan ini dilandasi oleh dua pertanyaan penting yaitu argumentasi apakah yang digunakan oleh kedua fatwa tersebut dalam merumuskan huk.um rokok serta apakah ada perbedaan konseptual dari argumentasi tersebut. Untuk menjawab dua pertanyaan tersebut, metode yang digunakan adalah diskriptif-analisis-kritis dengan pendekatan hermeneutika kritis. Artikel ini menemukan jawaban bahwa fatwa Syeikh Ihsan Jampes dan fatwa Majelis Tarjih memiliki argumen yang sama dalam memberi hukum rokok yaitu argumentasi utilitas atau kebermanfaatn (maşlahat). Hanya saja, kedua fatwa tersebut berbeda dalam merumuskan model maşlahat yang digunakan. Syeikh Ihsan menggunakan maşlahah tahşiniyyh sementara Majelis Tarjih meletakkannya dalam naungan maşlahah darriyyah. Artikel ini memberi implikasi, tidak saja dari berbagai varian pilihan hukum rokok yang berbeda, tetapi juga memberi

pengetahuan tentang epistemologi yang mclatari pcrbcdaan hukum tersebut. Artikel ini mencerdaskan para perokok untuk mcngambil pilihan antara melanjutkan merokok atau meninggalkannya. Epistemologi, seperti diketahui, adalah pintu pembuka bagi tindakan seseorang. Artikel ini juga memberi perspektif bagi pengambil kebijakan antara melegalkan rokok atau melarangnya yang didasarkan kepada teori masalahat.

**Keywords:** *Fatwa law on smoking; Syeikh Ihsan Jampes; Majelis Tarjih; maṣlahah taḥ sīniyyāh; maṣlahah darūriyyah.*

## INTRODUCTION

A work is created influenced by its historical impulses. According to Heidegger, a work is produced by an author who already has a fore structure of understanding<sup>1</sup>. On the other hand, work is a manifested evidence of the author's ideology to convey the reader. A critical attitude of the reader is needed to allow a dialogical process between the work produced in space and history that is different from the history of the reader. For this reason, according to Gadamer, in any research involving history, a technical term called "effective history" applied, namely the fact that the actions of both the researcher and the actor (author) are historical acts in historical continuity, therefore, the research give impacts on history<sup>2</sup>.

As a socio-cultural product, a work is a response to the problems of its time. Such motive underlies the emergence of the work entitled *Irshād al-Ikhwān fī Bayāni Ahkāmī al-Qahwah wa al-Dukhān* (hereinafter referred to as *Irshādu al-Ikhwān*), a work written by Sheikh Ihsan Jampes Kediri. This work was arranged to answer the problem of coffee and cigarettes, a problem that often has a "dependency" effect on its consumers. Coffee and cigarettes almost as equal as "khomar" in giving an addictive effect.

About sixty years later, a work on the same issue was appeared, namely on cigarettes by Majelis Tarjih of Muhammadiyah through fatwa No. 6/SM/MTT/III/2010. This Fatwa Majelis Tarjih was formulated by looking at the various factors including the problem of smoking, starting from the aspects of production, distribution of materials and especially regarding the concept of *maṣlahah* and *mafsadah* in consuming it.

The two works providing the fatwas have differences. Among them are the first fatwas ideologically derived from the traditional pesantren group. As a traditional group, Sheikh Ihsan Jampes, inevitably, took referential arguments from classical books written by past scholars (medieval) as opposed to direct references from the Qur'an and hadith. Meanwhile, the second fatwa was produced by the modernist group which ideologically avoids imitation as the traditional group.

<sup>1</sup> Ricard E. Palmer, *Hermeneutics*(Evanston: Northwestern University Press, 1969), 130-131.

<sup>2</sup> Azzah Nurin Taufiqotuzzahro, "Hermeunetika Hadis Perspektif Gadamer," *Journal Living Hadis* IV (2019): 45-65, <https://doi.org/10.14421/living-hadis.2019.1616>.

As a result, references to the Koran and hadith occupied an important position. On the one hand, Sheikh Ihsan Jampes gave a fatwa individually, while Majelis Tarjih is a fatwa for groups of people who are competent in various fields of knowledge. Furthermore, the fatwa resulted a different conclusion.

Studies on Sheikh Ihsan's cigarette fatwa and Majelis Tarjih have been discussed by researchers, but these studies are still separate. These researchers prefer to juxtapose the fatwa of the Majelis Ulama Indonesia with the fatwa of the Majelis Tarjih of Muhammadiyah; between the Fatwa Majelis Tarjih of Muhammadiyah and the results of the Bahtsul Masail NU decision or a study focused on a fatwa without any comparison. These studies are as seen in Ali Trigiyatno's study on "Fatwa Hukum Merokok dalam Perspektif MUI dan Muhammadiyah",<sup>3</sup> Aba Doni Abdullah's on "Studi Komparatif Fatwa Majelis Tarjih Muhammadiyah dan Bahtsul Masail Nadlatul Ulama tentang Istimbath Hukum Merokok",<sup>4</sup> Muhammad Ihsan's on "Merokok dalam Perspektif Muhammadiyah dan Nahdlatul Ulama",<sup>5</sup> Alfian Risfil Auton's on "Fatwa Haram Merokok Majelis Tarjih Muhammadiyah",<sup>6</sup> R. Aris Hidayat's on "Kontroversi Hukum Rokok dalam Kitab *Irsyād al-Ikhwān* Karya Syekh Ihsan Muhammad Dahlan", in the *International Journal Ihya' 'Ulum al-Din*,<sup>7</sup> and others.

The various studies seem to think that the comparison between individual and organizational fatwas is not balanced equal. As a result, the comparative study between the fatwa of Sheikh Ihsan Jampes and Majelis Tarjih is hardly carried out. This comparative study is important for two reasons. First, Syeikh Ihsan reflects the scientific tradition of NU in general to provide a law of cigarettes based on *Kitab Kuning*. Second, Sheikh Ihsan's argument departs from the main principles of Islamic law, namely the theory of *maṣlahat*. The logic of *maṣlahat* Syeikh Ihsan needs to be presented as material for consideration that *maṣlahat* is something flexible, dynamic and conditional. This means that comparing individual fatwas of Sheikh Ihsan with the collective fatwas of Majelis Tarjih is valid because in fact, the collective fatwas of NU (Bahtsul Masail) for example do not come out of the logic constructed by Sheikh Ihsan. Moreover, each fatwa is followed by the largest organization NU and Muhammadiyah organization, as organizations

<sup>3</sup> Ali Trigiyatno, "Fatwa Hukum Merokok dalam Perspektif MUI dan Muhammadiyah," *Jurnal Penelitian* 8, no. 1 (2011): 57-76.

<sup>4</sup> Aba Doni Abdullah, "Studi Komparatif Fatwa Majelis Tarjih Muhammadiyah Dan Bahtsul Masail Nahdlatul Ulama Tentang Istimbath Hukum Merokok," *Tajdid* 11, no. 2 (2013): 163-80.

<sup>5</sup> Muhammad Ihsan, "Merokok Dalam Perspektif Muhammadiyah Dan Nahdhatul Ulama," *Al-Qadha Jurnal Hukum Islam Dan Perundang-Undangan* 4, no. 1 (2017): 16-33.

<sup>6</sup> Alfian Risfil Auton, "Fatwa Haram Merokok Majelis Tarjih Muhammadiyah," *IN RIGHT Jurnal Agama Dan Hak Azazi Manusia* 1, no. 2 (2012), 311-342.

<sup>7</sup> R. Aris Hidayat, "Kontroversi Hukum Rokok Dalam Kitab *Irsyād Al-Ikhwān* Karya Syekh Ihsan Muhammad Dahlan," *International Journal Ihya' 'Ulum Al-Din* 17, no. 2 (2017): 189, <https://doi.org/10.21580/ihya.16.2.1652>.

which according to Haidar Nashir have 25 million members,<sup>8</sup> or according to Burhani 35 million members.<sup>9</sup>

This paper will show a some points. First, the structure of the fatwa of Sheikh Ihsan Jampes and Majelis Tarjih of Muhammadiyah regarding smoking. Second, what epistemological arguments underlie a conclusion from the two fatwas. For this purpose, this paper is prepared using a descriptive-critical-analysis method with a critical hermeneutic approach. Through a critical hermeneutic approach, the reason behind the text will appear.

## CULTURAL BACKGROUND OF FATWA MAKER

Syeikh Ihsan, Author of the book *Irshād al-Ikhwān* was born in 1901 AD. His first name is Bakri. Bakri's father was KH. Dahlan and his mother was Artimah. KH. Dahlan was the founder of the Pesantren Jampes. His mother, Artimah was the daughter of Kiai Sholeh Banjarmelati, Kediri. Meanwhile, Bakri's father is the son of Kiai Saleh from Bogor. Kiai Saleh was a child descended from Sunan Gunung Jati.<sup>10</sup> Bakri's Grandmother, from the father's line, Isti'anah, was a descendant of the famous Ulema from Ponorogo, KH. Hasan Besari, who lived in the 17th century.<sup>11</sup> Through this line, Bakri had a lineage to Sunan Ampel.<sup>12</sup> After performing the pilgrimage in 1926, Bakri's name was changed to Ihsan. Syeikh Ihsan had devoted his life not only for teaching but also transforming the knowledge into written works<sup>13</sup>.

Syeikh Ihsan was a prolific writer. Syeikh Ihsan's works are not only read and published by Indonesian publishers but by foreign publishers<sup>14</sup>. The four works of Sheikh Ihsan were first, *Taṣrīḥ al-'Ibārāt*. This book was published in 1930. This book discusses astronomy (astronomy). This book was compiled when Sheikh Ihsan was 29 years old. Second was a work in the field of Sufism, namely *Sirāj al-Ṭālibīn*. It was published in 1932 with a thickness of approximately 800 pages. This work was composed at the age of 31 years. Third, a work in the field of Sufism, namely *Manāḥij al-Imdād* (Sharah from the book *Irshād al-'Ibād* by Zainuddin al-Malibārī), was published in 1940. This work was thicker, compared to others, which was approximately 1088 pages. Fourth was a work of fiqh, namely *Irshād*

<sup>8</sup> Haedar Nashir et al., "Muhammadiyah's Moderation Stance In The 2019 General Election Critical Views from Within," *Al-Jami'ah* 57, no. 1 (2019): 1-24, <https://doi.org/10.14421/ajis.2019.571.1-24>.

<sup>9</sup> Ahmad Najib Burhani, "Pluralism, Liberalism and Islamism: Religious Outlook of Muhammadiyah," *Studia Islamika* 25, no. 3 (2018): 433-70, <https://doi.org/DOI:10.15408/sdi.v25i3.7765>.

<sup>10</sup> Ihsan Jampes, *Kitab Kopi Dan Rokok*, terj. Ali Murtadho dan Mahbub Dje (Yogyakarta: Pustaka Pesantren, 2009), xv.

<sup>11</sup> Syamsun Ni'am, "The Debate Of Orthodox Sufism And The Study of Maqāmāt in the Sirāj Al-Ṭālibīn of Shaykh Ihsan Jampes," *Al-Jami'ah* 58, no. 1 (2020): 1-34, <https://doi.org/10.14421/ajis.2020.581.1-34>.

<sup>12</sup> Jampes, xvi.

<sup>13</sup> Jampes, xxi.

<sup>14</sup> In Egypt, the Book of *Sirāj al-Ṭālibīn* was published by, Muṣṭafā al-Bāb al-Ḥalabī.

*al-Ikhwān fī Bayān Ḥukmi al-Qahwah wa al-Dukhān*. This book is not thick, it had only 50 pages<sup>15</sup>. Sheikh Ihsan's vast knowledge of knowledge led him for being invited to teach at al-Azhar University<sup>16</sup>. At the age of 51 years, September 1952 Syeikh Ihsan died.

In contrast to Syeikh Ihsan Jampes, the presence of the Muhammadiyah organization in 1912 by Ahmad Dahlan was urged by several things; both the development of the world at that time and the encouragement of cultural organizations in Indonesia which were considered less Islamic. The genealogical line of the Muhammadiyah movement can be traced far from the pattern of the religious purification movement Aḥmad bin H{anbal (780-855 AD). Aḥmad bin H{anbal was better known as a textual thinker than contextual like his teacher Shafi'i. Ibn Taymiyyah (1263-1328 AD) was the successor to the idea of Aḥmad bin Hanbal. It was from Ibn Taymiyyah that the purification movement spread throughout the world through the ideas of Muḥammad ibn 'Abd al-Wahhāb (1703-1792 AD), Syah Waliyullah (1703-1762) to Jamaluddin al-Afghani (1839-1897 AD) and Muḥammad Abduh (1849-1905 AD). Ahmad Dahlan (born in Yogyakarta, 1868-1923 AD), accepted the idea of Islamic purification from his teacher, Ahmad Khatib, an indigenous man from Minangkabau living in Makkah<sup>17</sup>. Ahmad Dahlan also read al-Manār magazine managed by Rasyid Ridha (1865-1935 AD). The Paderi Movement also provided a perspective for Ahmad Dahlan in forming the Muhammadiyah organization. The Paderi Movement is a continuation of the reform movement occurred in West Sumatra after the return of the three hajjs (Sumanik, Miskin and Piobang) from Makkah.<sup>18</sup> The al-Afghani movement, M. 'Abduh and Rashid Ridho on the other hand also influenced Ahmad Dahlan<sup>19</sup>. Not surprisingly, Ahmad Dahlan became known as a leader of a movement against the Bid'ah.<sup>20</sup> Muhammadiyah education was even heavily influenced by M. Abduh<sup>21</sup>.

## FATWA'S STRUCTURE

The book *Irshād al-Ikhwān* was compiled at a time when he experienced an interest in the small, a useful book he found belonged to K.H. Ahmad Dahlan Semarang, a

<sup>15</sup> Jampes, *Kitab Kopi Dan Rokok*, xxiii.

<sup>16</sup> Murtadho Hadi, *Jejak Spritual Kiai Jampes* (Yogyakarta: Pustaka Pesantren, 2008), 24..

<sup>17</sup> Ahmad Jainuri, *Ideologi Kaum Reformis* (Surabaya: LPAM, 2002), 30.

<sup>18</sup> Korie Lilie Muslim, "Gugatan Terhadap Kepahlawanan Tuanku Imam Bonjol" 23, no 1 (2019), 21, <https://doi.org/10.15548/tabuah.v23i1.212>.

<sup>19</sup> Lothrop Stoddard, *Dunia Baru Islam* (Jakarta: Panitia Penerbit, 1966), 318.

<sup>20</sup> Hyung-Jun Kim, "Praxis and Religious Authority in Islam: The Case of Ahmad Dahlan, Founder of Muhammadiyah," *Studia Islamika* 17, no. 1 (2010): 69-92.

<sup>21</sup> Muslich Shabir, "Muhammad Abduh's Thought On Muhammadiyah Educational Modernism : Tracing The Influence in Its Early Development," *QIJS* 6, (2008): 127-60.

Kiai of Termas Pacitan descent<sup>22</sup>. This is the literal reason for writing *Irshā du al-Ikhwān*. The style used is the *rajāz* song style. According to him, "The language of *shi'ir* is more beautiful and easier to understand than the language of *nathr* (prose). Meanwhile, the selection of the rhythmic rhymes of *rajāz* is easier than others"<sup>23</sup>.

The book of *Irshād al-Ikhwān* consists of four parts, namely; the problem of the history of cigarettes, the problem of the argument for the prohibition of smoking on the law, the problem of halal smoking, and the conclusion. The structure of the Book titled *Irshād al-Ikhwān* can be said to be systematic. Syeikh Ihsan follows a deductive writing style, namely giving a general description of the material to be discussed, then explaining it in detail. This method will make it easier for readers.

There is a difference in position when Sheikh Ihsan discussed two chapters regarding scholars who gave *ḥarām* law and those who give *ḥalāl* law. This position adds clarity to the real author's position. There is an injustice in the discussion. In discussing the ulema who prohibited smoking, Sheikh Ihsan did not comment on anything or provided an opponent argument for what was explained. This chapter is remain as it was. This chapter contains only a description of the arguments against smoking. It seems that Sheikh Ihsan has prepared his rebuttals in the chapter on ulema who legalized smoking. Why wasn't it conducted after? Perhaps the answer is that Sheikh Ihsan has an interest. The interest is to defend the ulema who legalized smoking. In commenting on scholars who justified smoking as *ḥalāl*, Sheikh Ihsan gave detailed arguments on the *ḥalāl* issue of cigarettes. This discussion is also a precursor to criticism for those who said *ḥarām*. Finally, Sheikh Ihsan made the following legal dictum. "After I saw the debate of the scholars about the law of consuming cigarettes, then I concluded that the strong opinion that can be held is that consuming cigarettes is lawful (*makrūh*) as stated by al-Bājūrī"<sup>24</sup>.

The *makrūh* law is indeed heavier than the *mubāh* law. The reason is; first as an act that is displeasing to God, and secondly because there is no benefit. However, the law of *makrūh* is attached to cigarette because it has something in common with other objects that have the same element, namely a pungent odour like an onion. Both of them can also be eliminated the *makrūh* law, namely by brushing the teeth. Like coffee, cigarettes still have other functions, namely to make the body fresh, not easily drowsy and a sense of enthusiasm in activities.

In contrast to *Irshād al-Ikhwān*, the fatwa of the Majelis Tarjih of Muhammadiyah was formulated by a modern organization, so that the dictum

<sup>22</sup> Abdurrahman Mas'ud, *Dari Haramain Ke Nusantara* (Jakarta: Kencana Prenata Media Group, 2006), 160-161.

<sup>23</sup> Syeikh Ihsan Jampes, *Irshādu Al-Ikhwān Fi Bayāni Ahkāmī Al-Qahwa Wa Ad-Dukhān*. (Jampes: Pesantren Jampes, n.d.), 7-8.

<sup>24</sup> Jampes, 38.

decisions made were modern. Unlike Sheikh Ihsan Jampes, which was made in several pages, this Majelis Tarjih's fatwa was only about three pages plus five attachments. If Sheikh Ihsan opens a dialogue room for the reader to determine a position, then Majelis Tarjih's fatwa is "compelling" and negates the dialogical process.

*First*, the fatwa was decided at the Tarjih Majelis session on March 7, 2010, as stipulated in the form of an organizational decree with convincing considerations. Among these considerations are the development of public health and the right to a healthy life for every human being as well as corrections to the previous Majelis Tarjih fatwa which was still tolerant<sup>25</sup>.

*Second*, there are six arguments on which to base the fatwa. First, smoking includes doing *khawā'ib* (bad actions) as in Q.S. 7: 157<sup>26</sup>. The second argument is that smoking throws oneself into destruction and even suicide as written in Q.S. 2: 195 and Q.S. 4: 29. In cigarettes, there are addictive substances and have an addictive effect. This dependence causes the quantity of consumption to increase. When cigarettes are consumed in large quantities, it will cause various diseases such as cancer, heart disease, high blood pressure, miscarriage and others. Research by M. Ramadhani Firmansyah and Rustam, for example, shows that people who do not consume cigarettes and coffee will have a small risk of high blood pressure<sup>27</sup>. The third argument, smoking can harm others through the smoke produced. This argument is based on the hadith that one is prohibited from harming oneself and others. Harm to other people is because other people are considered "passive smokers" (not smoking cigarettes directly). The fourth argument, smoking can weaken the body and intoxicating. The fifth argument, smoking is a waste of money. The sixth argument, smoking violates the *maqāṣid al-shari'ah* including guarding religion, guarding the soul, protecting the offspring, safeguarding property, and maintaining reason.<sup>28</sup>

*Third*, as a Muhammadiyah cigarette fatwa decision, this organization instructs everyone, especially Muhammadiyah members, to do two things. If a person has not smoked, then he is obliged to refrain from attempted smoking and if he has already smoked or has already smoked, they must try, according to their ability, to quit smoking<sup>29</sup>. *Fourth*, for the implementation of the fatwa,

<sup>25</sup> Majelis Tarjih dan Tajdid Muhammadiyah, "Fatwa Majelis Tarjih Dan Tajdid Pimpinan Pusat Muhammadiyah No. 6/Sm/Mtt/Iii/2010 Tentang Hukum Merokok," Pub. L. No. 6/SM/MTT/III/2010, 1 (2010).

<sup>26</sup> "Allah makes lawful for you all good and forbids all that is bad"

<sup>27</sup> M. Ramadhani Firmansyah, "Hubungan Merokok Dan Konsumsi Kopi Dengan Tekanan Darah Pada Pasien Hipertensi," *Jurnal Kesehatan* 8, no. 2 (2011): 263-68.

<sup>28</sup> Muhammadiyah, Fatwa Majelis Tarjih Dan Tajdid Pimpinan Pusat Muhammadiyah No. 6/Sm/MTT/III/2010 Tentang Hukum Merokok.

<sup>29</sup> Muhammadiyah.

Majelis Tarjih emphasizes on the fatwa that will be implemented gradually, by the principle of convenience and not burdensome. *Fifth*, this fatwa is also complemented by *tauṣīyah*, advice addressed to Muhammadiyah organizations or more precisely to Muhammadiyah. *Tauṣīyah* contains three things, namely; first, the Muhammadiyah organization must be actively involved in tobacco control efforts. Second, to implement the fatwa, Muhammadiyah organization management should become a pioneer for smoking prevention. Third, providing an input to the government to ratify the Framework Convention on Tobacco Control (FCTC), making regulations on high excise taxes for tobacco businesses and prohibiting cigarette advertising in the mass media and assisting the public in efforts to diversify their businesses from tobacco plants to other businesses<sup>30</sup>. *Sixth*, the fatwa is also accompanied by *al-Muqaddimāt an-Naqliyah* (affirmation of the premises of the Koran and Hadis) and *Tahqīq al-Manāt* (Affirmation of *Shar'i* Facts). These two things are an affirmation of what is in the Majelis Tarjih decision. The arguments put forward are those related to the dictums in the fatwas. Meanwhile, the affirmation of *shar'i* facts is a factual argument consisting of evidence from medical science as well as facts about tobacco farming in Indonesia.

#### DEBATE ON MAṢLAḤAT AND MADARAT

For Sheikh Ihsan, if there are problems in religious matters while there is no authoritative text to explain it explicitly, then the way to formulate the law is to recognize the *maḍarat* elements of the problem or case. This consideration is a formal aspect that can be seen from figures such as al-Ṭūfī, al-Ghazālī and al-Shātibī.<sup>31</sup> Therefore, *ḥalāl* and *ḥarām* laws, including the problem of smoking, for Sheikh Ihsan, can be seen in this study. "As we have seen, there are different opinions in determining new things that have not been regulated by sharia. In this new problem, the basic standard is the *maḍarat* element caused. No other"<sup>32</sup>.

Similar to Sheikh Ihsan Jampes, Majelis Tarjih has a method of solving new cases in the form of *ijtihād*. The *Ijtihād* is built based on the consideration of *maqāṣid al-sharī'ah*<sup>33</sup>. For this purpose, for Majelis Tarjih, studying comparative fiqh and the philosophy of Islamic law is important. This kind of *Ijtihād* is usually called *ijtihād tarjihī* or *intiqā'i*. Namely seeing and considering the opinion of previous fiqh experts on certain issues as written in the book of fiqh; then select which argument is stronger and more relevant to current conditions. In carrying

<sup>30</sup> Gwenaël Njoto-Feillard, "Financing Muhammadiyah: The Early Economic Endeavours of a Muslim Modernist Mass Organization in Indonesia (1920s-1960s)," *Studia Islamika* 21 (2014): 1-46.

<sup>31</sup> Suansar Khatib, "Konsep Maqashid Al-Syari'ah," *MIZANI: Wacana Hukum, Ekonomi Dan Keagamaan* 5, no. 1 (2018): 47-62.

<sup>32</sup> Jampes, *Irshādu Al-Ikhwān Fī Bayāni Ahkāmī Al-Qahwa Wa Ad-Dukhān*, 29.

<sup>33</sup> Fathurrahman Djamil, *Metode Ijtihad Majelis Tarjih Muhammadiyah* (Jakarta: Logos, 1995), 28-46.



out *ijtihād*, there are no restrictions on schools of thought. This means that the opinion of anyone from any school can be taken. There is no limit to whether he is from the Sunni group or not. The criterion that determines is whether the opinion is still in the corridor of *maqāṣid al-sharī'ah* or not<sup>34</sup>. As an illustration, regarding the issue of divorce. According to the majority of scholars of *fiqh*, including the fourth school of law, *ṭalāq* (divorce) is declared to fall if it is pronounced by the husband to his wife in a conscious state and on his own accord, without having to depend on the presence of witnesses.<sup>35</sup> It is different from jurisprudence experts from the Shia school of thought, *ṭalāq* can be considered to occur when witnessed by at least two people<sup>36</sup>.

If the case at hand has not occurred or has not been answered by previous *fiqh* scholars, then *Majelis Tarjih* will carry out *ijtihād inshā'ī*. To do this, an understanding of the problem to be solved must be sufficient. Collective *Ijtihād* is therefore necessary. Collective *Ijtihād* is intended to gather various experts relating to the problem to be resolved. Again, the reference or norm for determining the law is *maqāṣid al-sharī'ah*. Various methods are used to achieve this norm such as *qiyās*, *istihsān* and others.<sup>37</sup> On the other hand, after knowing *maqāṣid al-sharī'ah*, the important thing to know in the formulation of law is a “feasibility study” (*tanqīḥ al-manāṭ*), which is a study to see whether the verse or certain traditions deserve to be applied to the new case. There may be new legal cases that are similar to legal cases contained in the Koran and Hadith. However, after thorough research, something different was found. As a result, the law of the case cannot be equated with the existing cases in the two main sources of law, *maqāṣidu al-sharī'ah* on the one hand and looking at the feasibility study on the other<sup>38</sup>.

Among the discussions that should not be left out in the discussion of *maqāṣid al-sharī'ah* is about *maṣlaḥat* and *maḍarat* or *mafsadah*.<sup>39</sup> *Maṣlaḥat* is defined as an action that is valuable. For al-Ghazali, the goal of *maṣlaḥat* was to take the side of utility and reject the dangers which are useful for maintaining the aims of the Sharia<sup>40</sup>. The scholars of *ushul fiqh* classify *maṣlaḥat* in three ways. First, *maṣlaḥah al-darūriyyah*, a primary human benefit including the maintenance of five things, namely religion, soul, mind, descent, and property. *Ushul fiqh* theorists call these five things *al-maṣāliḥ al-khamsah* (five benefits)<sup>41</sup>. The Example of *maṣlaḥah*

<sup>34</sup> Djamil, 33.

<sup>35</sup> Sayyid Sabiq, *Fiqhus Sunnah Jilid 2*, (Beirut: Darul Fikri, n.d.), 220.

<sup>36</sup> Muhammad Jawad Mughniyat, *Fiqh Al-Imām Ja'far Sādiq*, Jūz V (Beirut: Darul Fikri, 1978), 12.

<sup>37</sup> Djamil, *Metode Ijtihad Majelis Tarjih Muhammadiyah*, 34-35.

<sup>38</sup> Djamil, 37.

<sup>39</sup> Ridzwan Ahmad Akbar Sarif, “Konsep *Maṣlaḥat* Dan *Mafsadah* Menurut Imam Al-Ghazali,” *Tsaqafah: Jurnal Peradaban Islam* 13, no. 2 (2017): 353–68, <https://dx.doi.org/10.21111/tsaqafah.v13i2.1183>.

<sup>40</sup> Al-Ghazālī, *Al-Muṣṭaṣfā Fi 'Ilmi Al-Uṣūl*, Jilid 1 (Beirut: Dār al-Kutub al-Ilmiyah, n.d.), 286.

<sup>41</sup> Abū Ishāq Al-Shātibī, *Al-Muwāfaqat Fi Ushūli Al-Shari'ah* (Beirut: Dār al-Ma'rifah, 1973), 8-12.

*ḥājīyah* is that It allows not fasting for traveling. Third, *maṣlahat taḥsīniyah* is a utility having functions of the beauty of life and the goodness of its processes. Examples of this need are wearing good clothes and consuming nutritious foods<sup>42</sup>.

How did Sheikh Ihsan respond to the problem of smoking when it was connected to the three *maṣlahats*? Syekh Ihsan saw it at the *maṣlahat al-taḥsīniyah* level. Cigarettes are just tertiary, as Sheikh Ihsan said: “After I saw the debate of the scholars about the law of consuming cigarettes, then I made the conclusion that the strong opinion that can be held is that consuming cigarettes is lawful (*makrūh*) as advocated by al-Bājūrī”<sup>43</sup>.

The text contains the meaning *maṣlahat al-taḥsīniyah* due to the argument that cigarettes can be categorized as food and drink. Cigarettes are consumed because they want to get pleasure like other food or drinks. However, Sheikh Ihsan did not punish as permissibility or *mubāh*. This is because in addition to smoking has two intrinsic laws, namely benefits and harms, as well as because there are various legal perspectives among scholars. Sheikh Ihsan’s choice is *makrūh* law. The reason is the consideration of the negative elements of smoking. It’s just that negative smoking does not cause loss of primary utility (loss of life). This is different from *mubāh* which has a balance of benefit and harm (*ḥarām*)<sup>44</sup>. Al-Ghazālī explained that *mubāh* is an act where the perpetrator is not praised and criticized if he commits or leaves the action<sup>45</sup>. Meanwhile, the *ḥarām* law cannot be attached to cigarettes. The reason (*‘illat*) for cigarettes with *khamr* is not specific. The dangers of smoking are only for some people. Even though it is categorized as *makrūh*, as is the tradition of *fiqh*, Sheikh Ihsan still opens up other legal spaces, such as the following expression.

However, sometimes the law of smoking is *ḥarām* for example when a person finds out that if he or she leaves the cigarette, he/she will get harm (*ḥarām*). additionally, sometimes, the *makrūh* law can become *ḥarām*, for example, when a person buys cigarettes with the money he should use to support his family while he knows that if the money is used to buy cigarettes, his financial condition is worried to be worst<sup>46</sup>.

Following al-Bājūrī, Sheikh Ihsan divided the smoking law into three, namely obligatory if a person does not smoke, he will get his life into problems; *makrūh* if there is no motive, and it is *ḥarām* if the consumption of cigarettes results family economic problems and disturbed health conditions. Although

<sup>42</sup> Nasroen Haroen, *Ushul Fiqh 1* (Ciputat: Logos Wacana Ilmu, 1996), 116.

<sup>43</sup> Jampes, *Irshādu Al-Ikhwān Fī Bayāni Ahkāmī Al-Qahwa Wa Ad-Dukhān*, 38.

<sup>44</sup> Haroen, *Ushul Fiqh 1*, 250.

<sup>45</sup> Al-Ghazālī, *Al-Muṣtaṣfā Fī ‘Ilmi Al-Uṣūl*, Jilid 1, 75.

<sup>46</sup> Jampes, *Irshādu Al-Ikhwān Fī Bayāni Ahkāmī Al-Qahwa Wa Ad-Dukhān*, 38.

the original law is *makrūh*, the law will change according to the condition of the smoker. However, this legal transfer is personal. This view has in common with the coffee law. Cigarettes and coffee both make the perpetrator addicted. Sheikh Ihsan explained:

If you drink coffee to help worship, then drinking is also worship. If you drink it with the intention of *mubāh*, then it is permissible, if it is for the sake of *makrūh*, drinking it becomes *makrūh* and if it is for *ḥarām* purposes, it becomes *ḥarām*.<sup>47</sup>

The law of coffee is permissible (*mubāh*), but like cigarettes, its legal position can be changed. However, the effects of addiction on coffee and cigarettes are often created by the consumers themselves. For medicinal purposes, perhaps it is possible to increase the legal status of smoking. In the case of smoking, what was meant by Sheikh Ihsan by the words "leaving it will cause danger"<sup>48</sup>. It means that someone is accustomed to smoking, but after leaving it, due to the influence of nicotine, it becomes dangerous or does it mean that someone has a disease and the only medicine is cigarettes. The two possibilities that make sense for a change in legal status are the second problem. Firstly (the influence of opium), the change in the smoking law is just a game of wits. Because the effect that appears is made and caused by the activity itself.

The second possibility can be justified, not only rationally according to the principle of *maṣlahat ḍarūriyyah* to nourish the soul, but also justified by the rule of fiqh *al-ḍarāru yuzālū* (danger must be eliminated). The problem is reversed, how is the law of consuming something that in the long term he understands that something will harm him? Thus, according to the rule of fiqh, leaving something is *wājib*. In the case of cigarettes, how is the law on consuming cigarettes which contains certain substances when it is consumed in the long term will cause various dangerous diseases? Why didn't Sheikh Ihsan take this pathway of thinking?

Smoking-induced illnesses, as defenders of *ḥalāl* law, are considered unclear and probable. It is individual. It is difficult to notice this effect. In life, on the contrary, smoking makes some people excited to live in old age. In modern research, cigarettes contain harmful substances and if consumed they will harm the body. This effect does not apply individually, but for everyone. However, these effects have different implications and timing between individuals. The harmful substances are as follows.

According to medical science, cigarettes contain more than 4000 chemicals such as nicotine, tar, carbon monoxide and hydrogen cyanide. Nicotine is a potent neurotoxin and is used as an insect poison. At low temperatures, nicotine acts as a

<sup>47</sup> Jampes, 15.

<sup>48</sup> Jampes, 35.

stimulant for addiction. In the body, there is a quinine substance which functions of treating malaria, but with the amount of nicotine in the body, it will get rid of the quinine. The human body also contains benzodiazepines, a type of piercing drug so that humans can sleep soundly. However, this substance will be decreased when someone consumes nicotine. Nicotine enters the brain quickly in about 10 seconds. It can pass through the barrier in the brain and circulate to all parts of the brain, then decreases rapidly after circulating to all parts of the body within 15-20 minutes at the time of the last suction<sup>49</sup>.

The personal problem of determining the disadvantages (*maḍarat*) is indeed a common cause in the theory of Islamic jurisprudence (the proposal of fiqh). Emergency, for example, allows a person to consume prohibited food, even if it is just needed to survive. This personal law is not legally binding for the universality of law for all people. However, what the problem for Sheikh Ihsan is why the problem of individual cigarettes is covered by tertiary utilities (*maṣlahat taḥsīniyyah*) and not by primary utilities (*maṣlahat ḍarūriyyah*). To answer this, we need another category model of utility theory, namely universal utility (*maṣlahat 'al-ammah*) and personal utility (*maṣlahat al-khassah*)<sup>50</sup>.

From this perspective, Sheikh Ihsan has a reason why the umbrella for punishing smoking is *maṣlahat taḥsīniyyah* and not *maṣlahat ḍarūriyyah*, namely that the emergency or danger of smoking is only a personal nature that cannot defeat universal interest. The universal interest is that cigarettes have a function for the interests of life and religious interests such as writing books, for social activity intimacy, teaching and others. However, even though under the umbrella of *maṣlahat taḥsīniyyah*, Sheikh Ihsan realizes that there is a disadvantage and there is an element of "wasting money" from cigarettes that cannot be denied. Therefore, the legal position of smoking is not *mubāḥ* but *makrūh*. Sheikh Ihsan revealed. "Among the fiqh issues related to smoking is the statement of the scholars that buying cigarettes is considered redundant and bad"<sup>51</sup>.

Unlike Syeikh Ihsan Jampes who saw smoking in the mainstream of *maṣlahat taḥsīniyyat*, Majelis Tarjih of Muhammadiyah put it in the mainstream *maṣlahat ḍarūriyyat*. Cigarettes are therefore equated with alcohol which destroys reason and is also equated with nurturing the soul about not killing oneself or kill others. The way cigarettes work and the ingredients they contain have the potential to kill the consumer slowly. The implication can be seen that it is not a law of *makrūh*, but it is harsher, namely *ḥarām*. If you follow the logic of ijtihad formulated by Majelis Tarjih above, in fact, smoking is a problem that has been discussed by

<sup>49</sup> Suryo Sukendro, *Filosofi Rokok* (Yogyakarta: Pinus, 2007), 80-83.

<sup>50</sup> Haroen, *Ushul Fiqh 1*, 116-117.

<sup>51</sup> Jampes, *Irshādu Al-Ikhwān Fī Bayāni Ahkāmī Al-Qahwa Wa Ad-Dukhān*, 51.

previous fiqh scholars and is also listed in their books. But consistent with the perspective used, namely how the propositions and ways of thinking which are used. Majelis Tarjih saw the various weaknesses of the arguments encountered. The framework used to assess is how much *maqāṣid al-sharī'ah* has been maximally used in the formulation of law and how empirical studies through *al-tahqīq* are found. The first can be found in the Fatwa NO. 6/SM/MTT/III/2010, while the second is in *tauṣiyah* on the fatwa. The arguments of the Koran and also the arguments of the Hadith are evidence of normative verification of the *maqāṣid al-sharī'ah*. Meanwhile, empirical evidence about tobacco business and cigarette production is an attempt to *tahqīq al-manāt* from normative texts in the fatwa. Ijtihad in the Majelis Tarjih, therefore, can be called Ijtihad *inshā'ī*. For Fauzi, such a fatwa model is a collaboration between three things, namely theology, moral-ethics and juridical. However, as stated by Nasih, attachment to the text of the Majelis Tarjih idea is more stringent than rational reasoning<sup>52</sup>.

As a fatwa, critical questions can certainly be presented. First, what methods are used to explain the various terms of the Koran such as *khābāis*, *mubadhīr* and *walā tulqū* for example. Majelis Tarjih did not explain the mechanism of the various terms that were formulated to justify the smoking law. Not to mention if ontologically, these terms relate to certain social settings as the basic material of the holy book. Such studies are related to the syntagmatic logic of language. A language was initially oriented towards factual objectives when the scriptures were revealed. Therefore, the discussion of this word inevitably involves a general social analysis of Arab society as well as the specific causes of the revelation of the verse. In this way, it will appear the coherence of ideas that are supported with legal conclusions about something associated with the verse. Without this kind of work, the verses or texts of the scriptures will change their function from trying to explain the law historically to become a tool for the interests of certain groups. The reading of the text, to borrow Nasr Hamd Abu Zayd, is not productive, but is full of ideological strands<sup>53</sup>. For Farid Esack, this way of reading can be called considering the Koran as a progressive revelation<sup>54</sup>.

The attachment of the fatwa is indeed different from the dictum of the fatwa, if the fatwa only mentions the verses and surahs in the Koran, then the fatwa attachments explain the sound of the text of the Koran. What is needed in a legal decision is, as explained above, that the search for *maqāṣid al-sharī'ah*

<sup>52</sup> Ahmad Munjin Nasih, "Lembaga Fatwa Keagamaan Di Indonesia (Telaah Atas Lembaga Majelis Tarjih Dan Lajnah Bathsul Masail)," *De Jure, Jurnal Syariah Dan Hukum*, 5 (2013): 67-78.

<sup>53</sup> Nasr Hamd Abū Zayd, *Maḥūm An-Nāṣ, Dirāsah Fi Ulūmi Al-Qur'ān* (Kairo: al-Hay'ah al-Miṣriyyah al-'Ammah li al-Kutub, 1993), 22.

<sup>54</sup> Farid Esack, *Al-Qur'an, Liberasi, Pluralisme; Membebaskan Yang Tertindas*, terj. Watung A. Budiman (Bandung: Mizan, 2000), 87.

should use certain methods such as *qiyās*, *Istiḥsān*, or others. Discussions about these two things, for example, cannot be separated from the terms that encompass both of them, including *'illat*, *aṣlu*, *far'u* and various *istiḥsān*. This is not found in the fatwa decision NO. 6/SM/MTT/III/2010. Because of that, it is appropriate to question the consistency of this Majelis with its *ijtihād* mechanism. Perhaps, this question can be argued that, as a decision, it is certainly not possible to include this methodological study. This kind of answer is acceptable, but in the scientific world as well as in organizations that often call themselves “modern”, methodological studies are needed. Methodological studies do not have to be together with decision dictums but can take other forms. In this way, the decision could be understood rationally (as the Muhammadiyah organization called itself a “modern” organization). If the decision is remained like that, it is tantamount to teach *taqlid* to his followers. The public is treated to various verses, but how the verses are understood is not explained.

*Second*, the explanation that smoking is against *maqāṣidu al-sharī'ah* and violates *darūriyat al-khamsi* (safeguarding religion, reason, soul, descent and property) is based on facts compiled and summarized. Maybe almost all doctors say the same thing about the dangers of smoking. But there isn't a dictum in *ushul fiqh* that the law applies based on the reasons surrounding it<sup>55</sup>. Seeing this reason is what Ngainun Naim stated as contextual progressive reasons<sup>56</sup>. As a legal decision obtained through *ijtihād*, imitating past scholars by giving choices of law is a good example. *Bajūri*, for example, quoted by Sheikh Ihsan Jampes, although it has various weaknesses, in terms of providing alternatives, it should be appreciated. He provides legal flexibility into several laws depending on the specific cases surrounding the perpetrator. This means that *Bajuri* does not intend to universalize the law. Additionally, the fact is that the universalization of law, especially the result of *ijtihād*, invites a lot of criticism and has various weaknesses. What is expected by the Fatwa Majelis Tarjih “seems” to want to carry out this universalization? If this is applied, it will reveal authoritarianism<sup>57</sup>. The civilization will be built because it is a text civilization<sup>58</sup>.

*Third*, *taḥqīq al-manāt* in the Fatwa of Majelis Tarjih is formulated based on research and institutional reports related to cigarette production and market share. As a result of reports and research, the truth contains probability as a general

<sup>55</sup> Ibn Qayyim, *I'lām Al-Muwaqqi'in 'an Rabbil 'Alamīn*, Juz III (Beirut: Darul Fikri, n.d.), 14.

<sup>56</sup> Ngainun Naim, “Islamic Jurisprudence for Diversity: From Theological-Normative Reason to Progressive Contextual Reasoning,” *Al-'Adalah* Vol. 15, N (2018): 51-72, <http://dx.doi.org/10.24042/adalah.v%vi%i.2621>.

<sup>57</sup> Khaled Abou El-Fadl, *Atas Nama Tuhan; Dari Fikih Otoriter Ke Fikih Otoritatif* (Jakarta: PT. Serambi Semesta, 2004).

<sup>58</sup> 'Abid al-Jābirī, *Takwīn Al-Aql Al-Arabī* (Beirut: Markāz Dirāsāt al-Wihdah al-'Arabīyyah, 1989).

feature of research. Research in contemporary studies depends on the perspective and theoretical basis used. Therefore, no research is completely neutral. From this, it can be found that a study is often refuted by other studies. Something like this might happen because research cannot be comprehensive. It is simplistic by taking several selected research objects as samples. Besides different perspectives, these differences can also arise due to differences in the object of research.

*Tahqīq al-manāt*, in other words, is a correlational fact with what is revealed by the normative text as *maqāṣid al-sharī'ah*. The two must be coherent. This coherence is needed to give cases a law that have not been explained by the normative text based on the contents of the text. The question that can be asked for *tahqīq al-manāt* is how much data and research can be proven to be 75% correct. What if other studies refute the data presented. There is a nuance to a issue being debated or not in the study. Again, the purpose of this critical study is to question the aspect behind the fatwa which does not provide a legal alternative. On the other hand, the answers to these critical questions can serve to maintain the authority of legal fatwas. Why would a fatwa be issued, but it is not heeded by the fatwa target community.

The individual fatwa of Sheikh Ihsan Jampes and the Fatwa of Majelis Tarjih of Muhammadiyah with all the critical questions on both of them imply that there are other nuances of what is apparent. Something that is not visible is more dominant and even dominates over what is visible. This aspect of ideology is not visible. The choice of Sheikh Ihsan Jampes in *maṣlahat taḥsīniyyat* and the choice of Majelis Tarjih in *maṣlahat ḍaruriyyat* will clarify something that is not visible. However, the debate between the two is a reflection of the fiqh of the archipelago, which for Kisdi was marked by the consideration of *maṣlahat*, *istiḥsān* and '*urf*<sup>59</sup>.

## CONCLUSION

The argument used by Sheikh Ihsan in giving the fatwa is the argument of *maqāṣid al-sharī'ah* under the umbrella of *maṣlahat and maḍarat*. On the other hand, Majelis Tarjih argued using modern rationality, namely connecting normative texts with facts about smoking. Majelis Tarjih also based the arguments on the concept of *maqāṣid alsharī'ah*. However, in the placement of the *maqāṣid al-sharī'ah* building, Sheikh Ihsan puts the cigarette in *maṣlahat taḥsīniyyat*, while Majelis Tarjih considers it in the corridor of *maṣlahat ḍarūriyyat*. As a result of taking this law, Sheikh Ihsan explained that the smoking law was a *makrūh*, while Majelis Tarjih gave it as a *ḥ arām*.

<sup>59</sup> Abdurrohman Kasdi, "Reconstruction of Fiqh Nusantara: Developing the Ijtihad Methodology in Formulating Fiqh from Indonesian Perspective," *QIJIS* 7, no. 2 (2019): 239-66, <https://doi.org/DOI : 10.21043/qjjs.v7i2.4797>.

This paper has the disadvantage of not analyzing the ideological perspective of each fatwa maker. By knowing the ideological aspects, it will be able to provide an overview of the scientific pathways that influence it, such as the al-Shāfi'ī's pathway or the Hānbalī's for example. This paper also has not provided an analysis of the implications of each fatwa for religious life in society. Researchers in the same field can make these two themes as study material so that a fatwa will become an interesting study from different points of view.

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