

The Majelis Ulama's Fatwa on Freedom of Expression On Social Media: The Perspective of *Maqashid Sharia*

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DOI: <http://dx.doi.org/10.29240/jhi.v7i2.5235>

Received: 21-06-2022

Revised: 16-09-2022

Accepted: 09-10-2022

Cite this article:

Arisandy, D., Asmuni, A., & Albani Nasution, M. (2022). The Majelis Ulama's Fatwa on Freedom of Expression On Social Media: The Perspective of Maqashid Sharia. *Al-Istinbath: Jurnal Hukum Islam*, 7(2 November), 467-486. doi:<http://dx.doi.org/10.29240/jhi.v7i2.5235>

Abstract

This article criticizes MUI Fatwa Number 24 of 2017 concerning guidelines for naming through social media, wherein the decision of its legal provisions the fatwa has given many restrictions that can be understood as an effort to close the space for freedom of expression and opinion on social media, the impact of which social media users feel afraid and restrained to views. The existence of this fatwa is fundamental because it provides clues regarding the rights of free speech for social media users from an Islamic perspective. This paper uses Jasser Auda's maqasheed sharia approach, namely system theory, as a normative analysis in criticizing fatwas against the interpretation of *ghibab* behavior, the concept of *tabayyun*, the public domain in the torso of the general provisions of fatwas. This article argues that the performance of the behavior of the *ghibab*, the concept of *tabayyun*, the public domain, in the general conditions of the fatwa body is very influential in the understanding of Islamic law itself towards a direction that is contrary to the purpose of maqasheed sharia, namely the law for the benefit of the people. This is because the interpretation of the fatwa is not ideal for realizing the goal of protecting the human right to opinion for social media users in a country that applies the concept of democracy. This argument is based on the researchers' reading of the MUI Fatwa using a system theory that says the purpose of the law is to achieve the universal benefit, which is inseparable from all points of view of

Islamic law. In the end, this article concludes that there is a need to reconstruct the interpretation of the *ghibab* concept of *tabayun*, the public domain in the Majelis Ulama's fatwa.

Keywords: Fatwa; *maqashid sharia*; freedom of expression; social media

Introduction

Throughout 2019 to 2021, criminal cases in the ITE Law have moved massively against the people of Indonesia. Safenet recorded that there were cases that ensnared lecturers, activists, journalists and the public.¹ Cases that have been tried in court leading to imprisonment are rampant in Indonesian courts. This is recorded by the SAFEnet Institution (*Southeast Asia Freedom of Expression Network*), including the case of Muhammad Hisbun Payu alias Iss.² In 2017, the Indonesian Ulema Council (MUI) issued a fatwa to provide a solution because of the increasing problems caused by Muslims in interactions on online platforms.³ MUI assesses that social media users often consume and disseminate information that is not necessarily true and useful, even though it is not intentional and/or they do not understand it so that it leads to mafsadah (badness). This article aims to look at fatwa Number 24 of 2017 concerning Muamalah Guidelines through Social Media (Social Media Fatwa) from Jasser Auda's *maqashid sharia* theory,⁴ especially on how the concepts of backbiting and tabayun contained in the fatwa have fulfilled the objectives of Islamic law.

Cases of criminalization of social media users are rolling very quickly. Punishment is considered a solution to reduce criticism of certain people, to silence expressions through social media that are considered unpleasant for people who object to certain posts. So the ITE Law (Articles 28 and 45) which has been revised into Law no. 19 of 2016 and Law no. 40 in 2008 concerning Racial and Ethnic Discrimination (Article 16) is increasingly being used to solve social media problems.⁵ This can put netizens in a dangerous condition in the eyes of ITE law.

¹ SAFEnet, "Kasus – SAFEnet," accessed June 24, 2020, <https://id.safenet.or.id/category/kasus/>.

² SAFEnet, Kasus Iss – SAFEnet (n.d.).

³ Anggi Ratna Anggraini and J. Oliver, "Eksistensi Fatwa MUI Nomor 24 Tahun 2017 Sebagai Pedoman Dalam Penggunaan Media Sosial Bagi Masyarakat Islam," *Journal of Chemical Information and Modeling* 53, no. 9 (2019): 1689–99, <https://doi.org/10.1017/CBO9781107415324.004>.

⁴ Jasser Auda, *Maqasid Al-Shariah As Philosophy Of Islamic Law: A System Approach* (London: The Internasional Institute of Islamic Thought, 2007).

⁵ Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik" (Jakarta, 2008).

Various studies on the ITE Law illustrate that the law is found to be ambiguous both in terms of substance and philosophy.⁶ No wonder this regulation is sued seven (7) times in the Constitutional Court, which the highlight is article 27 paragraph (3) regarding defamation. However, judicial review efforts always fail because the Constitutional Court considers that the article on defamation is constitutional and does not conflict with democracy, human rights, and the principles of the rule of law. MUI feels that the development of communication technology is very important for the community in order to provide easy access to information via the internet. However, MUI is still wary of the use of social media which is not accompanied by responsibility, so that some people use social media as a place to spread false news, hate speech, backbiting, Namimah (bringing into conflict), gossip, distorting facts, hostility, confusion, and false information which has an impact on social disharmony.⁷

The social media fatwa uses the argument of *ghibab* (backbiting) and *tabayun* as a way out of the problem of defamation which has not been able to be resolved by the ITE Law. The concept of *tabbayun* is the obligation of Muslims to search for information received before believing and spreading it.⁸ Meanwhile, the concept of *ghibab* (backbiting) is forbidding of talking about something about a friend that we don't like even though what is being said is the truth. *Ghibab* and *tabayun* in classical fiqh books are included in *muamalah* affairs. Therefore, the benefit and harmonious relationships between individuals are the main goal of this concept. This article argues that the use of these two concepts in the MUI Fatwa is not placed in an ideal position because it does not achieve the goal of protecting the right to speak in the context of a democratic country. This argument is based on the author's reading of the Fatwa using the theory of Jasser Auda's Maqashid Sharia system which says that the purpose of law is to achieve universal benefit which is inseparable.

Studies so far related to Islamic law and the internet have been widely discussed by scholars,⁹ especially in terms of providing space for expression on

⁶ Jayyidan Falakhi Mawaza and Abdussatar Khalil, "Masalah Sosial Dan Kebijakan Publik Di Indonesia (Studi Kasus UU ITE No. 19 Tahun 2016)," *Journal of Governance Innovation* 2, no. 1 (2020): 22–31, <https://doi.org/10.36636/jogiv.v2i1.386>.

⁷ Majelis Ulama Indonesia, "Hukum Dan Pedoman Bermuamalah Melalui Media Sosial," Pub. L. No. 24 Tahun 2017, 1 (2017).

⁸ Muhammad Resky and Zulhas'ari Mustafa, "Hate Speech Di Media Sosial Dalam Tinjauan Fatwa Majelis Ulama Indonesia (MUI) Nomor 24 Tahun 2017," *Sbautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab Dan Hukum*, January 4, 2020, <https://doi.org/10.24252/SHAUTUNA.V11i1.12423>.

⁹ Fajrina Eka Wulandari, "Hate Speech Dalam Pandangan UU ITE Dan Fatwa MUI," *Abkam: Jurnal Hukum Islam*, 2017, <https://doi.org/10.21274/ahkam.2017.5.2.251-271>.

online platforms, which scholars fear will bring immorality.¹⁰ Al-Kandari and Dashti's findings in Saudi Arabia show that some scholars give fatwas that the internet is corrupting humans. Based on the content analysis method of fatwa production in Saudi Arabia, Al-Kandari and Dashti show the debate regarding the potential of the internet to cause divisions in society. Another finding is that in principle the internet can be used as a tool to spread da'wah, but very few Muslims use the internet as a medium of da'wah, therefore it is feared that non-Muslims will instead use the internet to spread criminal content.¹¹

Furthermore, another study by Liat Shetret explained that the internet has the potential to be used as a communication tool for the international terrorist network (Al-Qaida) where the internet is equipped with features for it.¹² The findings from Liat Shetret's research report explain that the development and application of complex and disciplined theories of cultural intelligence and cult theory to control international terrorist activities using the internet as a means of cross-international communication.¹³ Therefore, social media surveillance is an important issue in the Islamic world. Unlike the two previous researchers, Alexandre Caeiro showed that the production of fatwas in Europe was carried out by European Muslims on the basis of the fundamental teachings of Islam.¹⁴ Fatwa production carried out by Islamic fundamentalist groups in Europe who entered through immigrant channels has reduced fatwas from the historical context of Islam.¹⁵

In Indonesia, studies linking fatwas, the internet and freedom of speech in particular are not widely available. From the literature available so far, the study of fatwas related to the internet does not specifically discuss punishment in the context of Islamic law. The available research on building a bridge between fatwas and communication on the internet can be seen in Syafiq Hasyim's writing stating that MUI has an important role in maintaining democracy in Indonesia, but the production of fatwas carried out by MUI is also inseparable from the influence of the domestic socio-political situation.¹⁶ The

¹⁰ Ali A. Al-Kandari and Ali Dashti, "Fatwa and the Internet: A Study of the Influence of Muslim Religious Scholars on Internet Diffusion in Saudi Arabia," *Prometheus* 32, no. 2 (April 3, 2014): 127–44, <https://doi.org/10.1080/08109028.2014.998929>.

¹¹ Al-Kandari and Dashti, 147.

¹² Liat Shetret, "Use of the Internet for Counter-Terrorist Purposes" (Global Center on Cooperative Security, February 4, 2011), <http://www.jstor.org/stable/resrep20358>.

¹³ Shetret.

¹⁴ Muhammad Khalid Masud, "The Significance of Istiftā' in the Fatwā Discourse," *Islamic Studies* 48, no. 3 (February 4, 2009): 341, <http://www.jstor.org/stable/20839171>.

¹⁵ Alexandre Caeiro, "The Making of the Fatwa: The Production of Islamic Legal Expertise in Europe," *Archives de Sciences Sociales Des Religions* 56, no. 155 (February 4, 2011): 81–100, <http://www.jstor.org/stable/41239676>.

¹⁶ Syafiq Hasyim, "Fatwas and Democracy: Majelis Ulama Indonesia (MUI, Indonesian Ulema Council) and Rising Conservatism in Indonesian Islam," *TRaNS: Trans -Regional and -*

birth of fatwas that do not support democracy is the impact of conservatism in Indonesia. This fatwa will later be on the anti-democratic side with narratives that curb freedom of expression on social media. Syafiq said MUI must involve other institutions so that democratic ideas can be accommodated when producing fatwas in Indonesia.¹⁷

Furthermore, a study conducted by Ahmad Faizal said that technology and informatics greatly affect freedom of opinion and also conveying information using the media: This freedom is disturbing to individuals, ethnic groups, religions, races and between groups.¹⁸ Ahmad Faizal's study aims to discuss hate speech using social media which is regulated by the criminal law policy of spreading hate speech according to the Criminal Code Law Number 1 of 1946, in which the arrangement still has many juridical weaknesses.¹⁹ As in Umarwan's study, he states that the position of the fatwa is very urgent as a medium in broadcasting Islamic law, but its existence in Indonesia is not in the order of positive law, although there are intersections and incompatibility between the two, it is necessary to address it wisely.²⁰

The studies above show that the development of discussions related to Islamic law, especially the fatwa on freedom of expression on social media which has not shown partiality to the rights of its users to express opinions freely that are protected by law. Many articles show fundamentalist nuances that are still strong in fatwa production. To demonstrate this, this article uses the theory of the *Maqashid Sharia* system developed by Jasser Auda to criticize the MUI fatwa.

This study is different from previous studies. This research is written based on an analysis of the interpretation of the general provisions of the body of a fatwa produced by the MUI, in which this study focuses on the problem of interpreting *ghibah* behavior, the concept of *tabayyun* and the public domain. The authors assess that there is a discrepancy in the interpretation of general provisions on the body in producing law. Of course the law leads to a flexible rubber fatwa creating confusion for Muslims who implement fatwas as a legal basis in everyday life.

National Studies of Southeast Asia 8, no. 1 (May 8, 2020): 21–35, <https://doi.org/10.1017/trn.2019.13>.

¹⁷ Hasyim.

¹⁸ Ahmad Faizal Azhar and Eko Soponyono, “Kebijakan Hukum Pidana Dalam Pengaturan Dan Penanggulangan Ujaran Kebencian (Hate Speech) Di Media Sosial,” *Jurnal Pembangunan Hukum Indonesia* 2, no. 2 (2020): 275–90, <https://doi.org/10.14710/jphi.v2i2.275-290>.

¹⁹ Azhar and Soponyono.

²⁰ Umarwan Sutopo, “Dialektika Fatwa Dan Hukum Positif Di Indonesia: Meneguhkan Urgensi Dan Posisi Fatwa Di Masyarakat Muslim Nusantara,” *Justicia Islamica* 15, no. 1 (December 29, 2018): 87–108, <https://doi.org/10.21154/justicia.v15i1.1435>.

This study identified that MUI producing fatwas gave rise to interpretations that were very impartial to human rights and the purpose of *maqasid sharia* in protecting the mind and soul, so the interpretation of *ghibab*, *tabayyun*, and *the public domain* has the potential to be misinterpreted so that it can be understood as if Islamic law cannot answer problems in the digital age. The writing of this article uses normative research methods²¹ with the main problem in this study is the MUI decision regarding *tabbayun* obligations, prohibiting *ghibab* (backbiting), interpreting the meaning of information, and interpreting the meaning of the public domain. These understandings have some differences compared with the laws and regulations in force in Indonesia and have implications for social media users in Indonesia.²² Normative-qualitative analysis was conducted by interpreting and constructing the statements contained in the document as a policy that refers to the MUI Fatwa regulations. It was normative because this research was based on existing regulations as legal norms. The approach used in this research was a statute approach and a conceptual approach.²³

This study analyzes and also criticizes the Fatwa that regulates social media in Indonesia using the *maqasid sharia* approach with 6 features of system theory, namely cognitive nature, interrelatedness, wholeness, openness, multidimensionality, and purposefulness in which this system theory will read the definitions of the general formulations/stipulations in the fatwa which are found to have biased meanings when interpreted for current conditions.²⁴

Discussion

Fatwas in the Islamic Legal System

If viewed in general, the fatwa has an understanding that it is the answer to the problems that currently happen in the community that are contemporary in nature and are being discussed for which the law has not been met.²⁵ MUI produces fatwas on social media using three forms of legal *istinbath*, namely the *bayani* method, the *ta'lili* method, and the *istishlahi* method.²⁶

²¹ Zainal Asikin Amiruddin, *Pengantar Metode Penelitian Hukum* (Jakarta: Rajawali Pers, 2004), 26.

²² Majelis Ulama Indonesia, *Fatwa MUI Nomor 24 Tahun 2017 Tentang Hukum dan Pedoman Bermuamalah Melalui Media Sosial*, 11.

²³ M Syamsudin, *Operasional Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2007).

²⁴ Jasser Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah* (Bandung: PT Mizan Pustaka, 2015), 46.

²⁵ Ahmad Mukhlis, Aan Suhendri, and Muhammad Dimiyati, "Metode Penetapan Hukum Dalam Berfatwa," *Al-Istinbath: Jurnal Hukum Islam* 3, no. 2 (December 29, 2018): 167, <https://doi.org/10.29240/jhi.v3i2.444>.

²⁶ Zainul Mun'im, "The Epistemology of MUI's Fatwas on Covid-19: Bayani and Burhani Eclecticism," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (May 30, 2022): 1, <https://doi.org/10.29240/jhi.v7i1.3216>.

The linguistic method (*bayani*) is a method used to provide explanations to the text of the Qur'an and Sunnah in order to provide legal considerations resulting from a linguistic analysis approach.²⁷ This analysis is such as the meaning of *lafaz*, the side of the use of meaning, the clear and vague side of the meaning, the side of the use of *lafaz* and the suitability of the purpose of the creation of the *nash*.²⁸

The method of reasoning (*ta'lili*) relies on logic.²⁹ This reasoning departs from the idea that God's provisions in regulating human behavior must have a purpose of reason (*'illat*) and wisdom.³⁰ Then *'illat* is divided into three, namely *'illat tasyri'i*, *'illat qiyasi*, and *'illat istishani*. The use of the *istishlahi* method is to find out the *syara'* law, the benefits and harms contained in the legal provisions.³¹ The procedure for putting the law of *kulli* in an event whose law is not yet in the texts, not yet in *ijma*, but also not possible in *qiyas* or *istishsan*.³² In depth, the fatwa is mentioned in the QS. Ash-Shaffat: 11. The verse shows that there are two forms of understanding fatwas as responsive, namely as legal answers (Legal opinions) that arise when there are questions about the fatwa (Based on demand), but from a legal perspective, fatwas are not binding on Muslims in Indonesia. Non-binding provisions are referred to as efforts to distinguish between *fatwa* and *qaddha* (court decisions) or power decisions.³³

MUI's efforts in producing fatwas are aimed at ensuring that Muslims have guidelines regarding the relationship between human beings, both individuals and groups, in using social media to run peacefully. The unrest of MUI clerics who see uploads of fake news (hoax) on social media, and does not stop there; social media is filled with slanderous content, blasphemy, and also hostile speech. The MUI also found that such content can breed hatred between ethnic groups, can lead to blasphemy against religion, race, where conditions on social media can have a direct impact on the life of the nation and state. Zarella explained that social media is a place where people communicate with their

²⁷ Ma'ruf Amin, *Fatwa Dalam Sistem Hukum Islam* (Jakarta: Elsas, 2008), 44.

²⁸ Frina Oktalita and Darlin Rizki, "Analysis of MUI Fatwa Number 17 of 2020 Regarding Kaifiat Prayer Guidelines for Health Workers Who Wear Personal Protection Equipment (PPE) When Treating and Handling Covid-19 Patients," *Al-Istinbath: Jurnal Hukum Islam* 6, no. 2 (November 11, 2021): 247, <https://doi.org/10.29240/jhi.v6i2.3332>.

²⁹ Al Yasa Abu Bakar, *Abli Waris Sepertalian Darah: Kajian Perbandingan Terhadap Penalaran Haqairin Dan Penalaran Fikih Mazhab* (Jakarta: INIS, 1998), 16.

³⁰ Al Yasa Abu Bakar, "Metode Istinbath Fiqih Di Indonesia (Kasus-Kasus Majelis Muzakarah Al-Azhar)" (IAIN Sunan Kalijaga, 1987).

³¹ Amin, *Fatwa Dalam Sistem Hukum Islam*, 47.

³² Muhammad Syukri Albani Nasution and Rahmat Hidayat Nasution, *Filsafat Hukum & Maqashid Syariah* (Prenada Media, 2020), 66.

³³ Abdul Wahid Haddade, *Kode Etik Berfatwa; Merumuskan Format Ideal Fatwa Keagamaan* (Makasar: Alauddin University Press, 2013), 11.

friends, whom they know in the real world and the virtual world.³⁴ This is the reason MUI issued a fatwa.³⁵

MUI considers that in the use of social media, people often do not have an attitude of responsibility, so that false information, slander, *ghibab* (backbiting), fighting, gossip, distorting facts, hate speech, hostility, and confusion become negative narratives on social media. This fatwa implies that in *muamalah*, every Muslim is required to maintain faith, piety and virtue (*mu'asyarabilmu'ruf*), brotherhood (*ukhuwwah*), reminding each other in the truth (*al-haq*) and inviting to goodness (*al-amr bi al-ma'ruf*) and prevent evil (*al-nahyu 'an al-munkar*).³⁶

Muslims who are *muamalah* on social media must always be encouraged not to commit kufr and immorality, maintain brotherhood (*ukhuwwah*) both with Muslims and non-Muslims to strengthen harmony with fellow religious people with the government. Maintain behavior, feelings of others, so that there are no misunderstandings where we ourselves feel that feelings are very difficult to maintain.³⁷

The government hopes that the presence of a fatwa can be the first step to prevent hoaxes and blasphemy actions on social media. This is proven on every occasion; President Joko Widodo often reminds to maintain social media manners because ignorance will cause a commotion in the community.³⁸

In the field of practical technology, those who carry information are also required to have knowledge and ethical skills as stated in the Qur'an. This is reflected in various contextual forms of *ahlakul karimah* in the use of social media, including being sourced correctly, wisely, checking facts, not making fun or riddicule of people, avoid prejudice, and avoid excessive storytelling.³⁹ Delivering information from the right sources, also not fabricating and manipulating facts are stated in the QS. Al-Hajj: 30. The verse prohibits lying, which prohibits social media users from giving false testimony and telling lies in

³⁴ R Aditya, "Pengaruh Media Sosial Instagram Terhadap Minat Fotografi Pada Komunitas Fotografi Pekanbaru," *Jurnal Fisip* 2 (2015): 1–14.

³⁵ Majelis Ulama Indonesia, Fatwa MUI Nomor 24 Tahun 2017 Tentang Hukum dan Pedoman Bermuamalah Melalui Media Sosial.

³⁶ "Kementerian Komunikasi Dan Informatika," accessed October 6, 2022, https://www.kominfo.go.id/content/detail/9829/mui-keluarkan-fatwa-bermuamalah-di-media-sosial/0/sorotan_media.

³⁷ K dan Shaltc Reivich, *The Reselience Faktor* (New York: Broadway, 2003), 159.

³⁸ "Kementerian Komunikasi Dan Informatika," accessed October 6, 2022, https://www.kominfo.go.id/content/detail/9870/pemerintah-akan-bantu-sosialisasi-fatwa-mui-soal-penggunaan-medsos/0/sorotan_media.

³⁹ Indra Satriani, "Eksistensi Fatwa MUI No. 24 Tahun 2017 Sebagai Pedoman Dalam Penggunaan Media Sosial Bagi Masyarakat Islam," *Al Qodiri: Jurnal Pendidikan, Sosial Dan Keagamaan* 18, no. 1 (April 6, 2020): 129–48, <http://ejournal.kopertais4.or.id/tapalkuda/index.php/qodiri/article/view/3691>.

producing content on social media because bad content will have fatal consequences for the recipient.

Islam also pays great attention to the ethics of using social media, resisting the desire to spread false information on social media that the clarity of which is not yet known. This is evidenced by the regulation of ethics in the use of social media referring to QS. Al-Ahzab: 70. Believers are obliged to convey the right words both in interpersonal communication, group communication, and mass communication through social media to convey true news according to the facts that occur.

The importance of being wise, giving good advice, as well as clear, structured, easy-to-understand arguments, is listed in the QS. An-Nahl: 125. Regarding the behavior, way of thinking, the ability to understand the social media networks of other people's friendship, various kinds of information can be conveyed so that the information conveyed can be easily read and digested with a concrete understanding of grammar and good vocabulary, listed in the QS. An-Nisa: 9 and QS. Al-Isra 28. The importance of checking facts, cross checking to achieve the truth of the data as raw material for information to be conveyed, not backbiting, *kidzib*, slander or namimah, refers to the QS. Al-Hujarat: 6. Careless behavior in saying or giving narration to certain people and spreading it to the public will have bad consequences and also lead to defamation. The prohibition of making fun of, insulting, berating and then growing hatred comes from the QS. Al-Hujarat: 11.

The virtual world tends to have the potential to behave freely without limits. Therefore, it is very possible for its users to carry out actions that lead to negative behavior that targets others, but this is done anonymously, meaning that the perpetrators cannot be known, in other words they use a pseudonym. This act is usually an attempt of flaming and trolling.

The obligation to avoid prejudice is contained in the QS. Al-Hujarat: 12. From the point of view of legal language, people who convey information using social media should adhere to the "principle of the presumption of innocence". Subjective and baseless prejudice will be harmful because it triggers bullying and kills the character of others.

Maintaining and filtering the information obtained and disseminate it as a means of *da'wah* in the midst of dry Islamic scientific treasures are important. Technological modernization and accelerated progress are the topics of competition. Every person and nation is competing in the modernization of technology into a global culture. Modernity gives birth to industrial society with changes in mindset, work patterns and consumption patterns; and will soon be followed by the birth of the information society, which tore apart the boundaries of political, socio-cultural and economic areas, in which every problem faced with religion demands dialectical, not normative solutions. In

Islamic law, for example, there are several principles that allow the existence of several principles that make the teachings of Islamic law develop in an actual and transformative way:

First: *Qiyas*, which is a dynamic analogy method. Second: *Al-Masblabah Al-Mursalah*, the principle of law that emphasizes benefit factors and social reality. Third: Recognizing the value of *`urf*, making it possible to ground the law. Fourth: *Al-hukmu yadurru ma`a al-illah wujudan wa adaman*, the law develops based on the presence or absence of *illat*, making it possible to ground the legal changes dynamically and proportionally.

The law produced by the fatwa is interpreted textually by social media users according to their abilities, educational background, and experience, in which it is understood that before expressing opinions on social media, users must filter the narratives / content to be published. Not all social media users understand the legal provisions intended by the fatwa itself. The fatwa does not formulate the difference between expressing opinions, expressing, conveying aspirations and insulting or defaming because the benchmark of politeness in opinion still refers to one's feelings, where feelings cannot be read using legal science.

Freedom of thought is a human need in showing its existence in life. However, if the provisions for expressing opinions in public are limited by the conditions set by the fatwa where the content does not provide spaces for freedom of thought for citizens (social media users), so that human needs for self-existence will be curbed.⁴⁰ Furthermore, when viewed from the maqasid shari'a, the human mind must be protected to think and express opinions in the public domain because thinking is an effort to maintain reason, and thinking and then expressing opinions to participate in building the nation and state by expressing ideas, in which the citizens feel that there is something less relevant to the decisions of public policy organizers in taking policies that are considered very detrimental to citizens. Thus, citizens must be protected (*hibdz al-Nafs*) when expressing their opinions in the public domain as part of the rights of citizens who have people's sovereignty and rule of law (democracy). The restraint in expressing opinions in Indonesia has been deeply felt by social media users, where repressive actions carried out by the apparatus with the excuse of suppressing the number of hoaxes actually have an impact on the liberties of civilians. For example, some youtubers were reported to youtube, and youtube blocked accounts of social media activists, and several journalists were arrested by the police for violating the ITE Law. The impact of the above, according to various survey institutions, including The Economist Intelligence Unit (EIU),

⁴⁰ David Houghton, Andrew Pressey, and Doga Istanbuloglu, "Who Needs Social Networking? An Empirical Enquiry into the Capability of Facebook to Meet Human Needs and Satisfaction with Life," *Computers in Human Behavior* 104 (March 2020): 106153, <https://doi.org/10.1016/j.chb.2019.09.029>.

the 2021 report showed a very significant decline in civil liberties, pluralism and trust in the government so that the democracy index in Indonesia experienced a very drastic decline.⁴¹

Fatwa and Social Media: The Concept of Freedom of Expression in Indonesia

The important point of freedom of expression in cyberspace is how the content is built, whether it is related to the content, message or purpose of the content. Everyone who obtains content/information through social media is not allowed to distribute it immediately before it is verified and the *tabayun* process is carried out and its usefulness is ensured, such as the *tabayun* process for content/information can be carried out step by step by ensuring the aspect of the source of information (*sanad*), which includes personality, reputation, feasibility and reliability, and ensuring the correctness of the content (*matan*), which includes the content and intent. Regarding ensuring the truth of information, among others, it can be done by asking the source of the information if it is known and requesting clarification from parties who have the authority and competence. *Tabayun* efforts that must be carried out in a closed manner to related parties, are not carried out openly in the public domain (such as through social media groups), which can cause content/information that is not yet clear to be circulated to the public Content/information containing praise, flattery, and or positive things about a person or group are not necessarily true, therefore *tabayun* must also be done.

The content created presents useful information. Content/information is created as a means of enjoining *amar ma'ruf nahi munkar*. The ways to ensure that the content is useful include the ability to promote goodness (*al-birr*) and piety (*al-taqwa*). Brotherhood (*ukhuwah*) and love (*mahabbah*) can be strengthened, knowledge can be increased, and Islamic teachings can lead to the fulfillment of sharia. Do not arouse hatred (*al-baghdla*), hostile (*aladawah*). It is different for what is justified by the Shari'a by law, it is forbidden for all Muslims, both individually and collectively, to seek disgrace, any stain that is displeasing to others. It is suggested to produce reconciliation of warring (*ishlah dzati al-bain*). It is prohibited to provide content related to individuals or groups of fraud, shame, hate speech, gossip, and other similar work for economic gain, such as buzzer activities for profit.⁴²

⁴¹ "Dua Tahun Terakhir, Demokrasi Indonesia Alami Penurunan – Universitas Padjadjaran," accessed October 11, 2022, <https://www.unpad.ac.id/2022/01/dua-tahun-terakhir-demokrasi-indonesia-alami-penurunan/>.

⁴² Majelis Ulama Indonesia, Fatwa MUI Nomor 24 Tahun 2017 Tentang Hukum dan Pedoman Bermuamalah Melalui Media Sosial.

MUI compiles the basics for the birth of a fatwa on guidelines for muamalah through social media.⁴³ MUI quotes the words of the Prophet "Indeed, lying shows the culprit to evil, and badness points to the fire of Hell. A person always lies and tries to always lie so that he is written with Allah as a liar."⁴⁴ (Narrated by Muslim)

Prohibition: Every Muslim when doing *muamalah* through social media is forbidden to do *ghibab* (backbite), slander, pit against each other, and spread enmity. Bullying acts, expressing hatred towards anyone, creating feelings of hostility based on ethnicity, religious differences, racial differences, or between one group and another, spreading hoaxes even if it is based on good cause, spreading pornography, an act of disobedience, disseminating content that is judged to be correct but at the wrong time and place, and producing, enabling the public to access something that is prohibited.⁴⁵

The general provisions of the MUI fatwa regarding the meaning of communication are "information, statements, ideas, and signs that contain values, meanings, and messages, both data, facts and explanations that can be seen, heard, and read which are presented in various packages and formats according to with the development of information and communication technology electronically or non-electronically".⁴⁶

However, the information must have legal requirements to be declared as reliable information by the recipient of the information because the information must have good quality and be used by the recipient in making a decision. Information through online media such as e-journals, online-based newspapers, of course, has passed various reviews by reviewers, so that those who publish are ready to take responsibility for the information published for public consumption. Information and communication, both individually and in general, need to be distinguished in the fatwa so that the interpretation of information can be distinguished from the interpretation of communication, to avoid misunderstandings. However, in the MUI fatwa, there is no division of what is meant by detailed information. Information has so many meanings that it requires reasoning and reflection (cognition) of the text for the sake of revealing the meaning of the information, thereby reducing the implications for the implementation of the fatwa that was born.⁴⁷

⁴³ Fajrina Eka Wulandari, "Hate Speech Dalam Pandangan UU ITE Dan Fatwa MUI," *Ahkam: Jurnal Hukum Islam* 5, no. 2 (November 1, 2017), <https://doi.org/10.21274/ahkam.2017.5.2.251-271>.

⁴⁴ Majelis Ulama Indonesia, *Fatwa MUI Nomor 24 Tahun 2017 Tentang Hukum dan Pedoman Bermuamalah Melalui Media Sosial*, 4.

⁴⁵ Ikhwanuddin Harahap, "Pendekatan Al-Maslahah," *Yurisprudencia: Jurnal Hukum Ekonomi*, 2017, 64.

⁴⁶ Majelis Ulama Indonesia, *Fatwa MUI Nomor 24 Tahun 2017 Tentang Hukum dan Pedoman Bermuamalah Melalui Media Sosial*.

⁴⁷ Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*.

Giving understanding to "information" in the general provisions of the fatwa must be holistic so that the role in the narratives of the fatwa does not become an individualistic interpretation, but leads to a universal dimension (wholeness) because the impact of the narrative certainly leads to the understanding of the whole community. This universal dimension (Maqasid al 'Ammah) can be accepted by many people because it has justice and freedom⁴⁸ Content/information verification guidelines that require social media users to do *tabbayun* to the sender of content, both positive and negative information, are too protective and unproductive. The word of God in Surah Al-Hujarat verse 6 does explain the obligation to do *tabbayun* when someone comes to us who is known to be wicked with news because indeed the position of that person is known to be wicked, of course, it must be questioned when providing information to us. Surat al-hujarat is reflected in Islamic communication related to the sources, the attitude of the listeners (recipients of news) and the misinformation they get.⁴⁹

According to M. Quraish Shihab in Al-Misbah, *at-tabbayun* means "research seriously".⁵⁰ Of course, what is meant by doing *tabbayun* in this fatwa is that there is no limit or absolute truth, except if the information provided by *tabbayun* is the information which is around or close to the recipient of the information so that it is easy to know what to do (*tabbayun*). However, of course it will be difficult if the information obtained is sourced from electronic mass media sources such as: Tempo, liputan6.com, Kompas, JPNN, and other electronic media, where the news and information contained in the media are news/information sourced from outside the area/reach of the information consumer.⁵¹ The mass media mentioned above also do not position themselves as media to be *tabbayun* because the news published by the mass media must have gone through a very strict journalistic review process.⁵² Because press organizations promote freedom of opinion, expression, the press is obliged to follow the Press Law.

In the case of cyber media or print media, they are under the press council, of course, they are no longer required to accept *tabbayun* from their readers. It is different with media whose origins are not clear, such as information from "WhatsApp", "Youtube", "Tiktok", "Facebook" and the like, because in principle the position of the application is not information media, but communication media, so the MUI Fatwa does not detailing and distinguishing

⁴⁸ Auda, 46.

⁴⁹ Thorik Gunara, *Komunikasi Rasulullah: Indahnya Berkomunikasi Ala Rasulullah* (Bandung: Simbiosis Rekatama Media, 2009), 91.

⁵⁰ M. Quraish Shihab, "Tafsir Al-Misbah" (Jakarta: Lentera Hati, 2002), 678.

⁵¹ Getcraft.id, "10 Media Digital Top Indonesia Yang Populer Di Mata Pembaca," 2020, <https://crafters.getcraft.com/id-articles/10-media-digital-top-indonesia-yang-populer-di-mata-pembaca>.

⁵² Dewan Pers, "Pedoman Pemberitaan Media Siber" (Jakarta, 2012).

between the two, so it is very multi-interpretation for Muslims who want to be guided by the MUI Fatwa.

Based on the criticism above, the understanding referred to by the fatwa regarding *tabbayun* is not whole (Wholeness) because it does not see from various sides the explanation of the Sharia texts and the behavior of people who use social media, so it does not accommodate behavior in practice, and will also lead to various misunderstandings because thinking holistically (holistic) will develop a horizon of thought that starts from the logic of language towards thinking holistically (holistic), which by thinking thoroughly will reach other things that have not been thought of outside the process of interrelated cause-and-effect thinking.⁵³

Ghibah

The fatwa explains that *ghibah* (backbiting) is "delivering factual information about a person or group that he does not like". This interpretation gave rise to controversy in the community.⁵⁴

The contents of this fatwa only highlight an action that is prohibited by using the arguments that prohibit *ghibah*. Meanwhile, *ghibah* (backbiting) is allowed if it is for the sake of maintaining justice, reason and openness that the implementation is not given an explanation. Imam al-Nawawi explained that there is a category of *ghibah* (backbiting) allowed. *Ghibah* can be justified by the Shari'a, but this permission is conditional only if there is no other way for example, first, "At-tazhallum" (complaints for being wronged). It means that those who are wronged are allowed to mention about themselves who have been wronged and may report to the authorities. The second one is "al-isti'anah" (asking for help). It aims to prevent evil so that immorality does not occur.

In accordance with the above formulation, it can be understood that now people trust other communities more to fight for justice and truth, so that, for the current conditions, people complain about perceived injustice through posting content on social media as evidence against the injustices they see and feel. Moreover, the publics no longer complain about injustice to law enforcement because they consider that law enforcement to be very complicated and will be a waste of time, especially since the injustice is carried out by people with positions and power. The reason for the above is because the community considers law enforcement in Indonesia to be handled more quickly if the case has been posted to social media and has been published in the media such as the

⁵³ Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*, 87.

⁵⁴ Mohammad Syifa Amin Widigdo and Homaidi Hamid, "The Power of Fatwā in Indonesia: An Analysis of MUI's Controversial Fatwās," *Afkaruna* 14, no. 2 (2018): 153, <https://doi.org/10.18196/aiijis.2018.0085.146-165>.

"no viral no justice" phenomenon.⁵⁵ The third one is "al-istifta" (asking for a fatwa). It means asking for a fatwa and advice like the word asking for advice to the mufti (giver of fatwa)". The fourth one is "at-tahdzir" (warning). It means warning Muslims from bad deeds and giving advice to them. The fifth is the people who show the nature of wickedness and immoral acts they do. Finally, the sixth is giving nicknames to other people so that they are easy to recognize, such as aliases or certain characteristics.

Based on the above basis, it can be understood that *ghibab* must be seen from various dimensions, whether in terms of the public interest or for bad interests. Taking appropriate arguments based on current conditions and adjusting the present to the arguments needs to be done carefully. Understanding (cognition) of a behavior with related events and propositions, where of course the behavior of social media users is related to an event before it becomes behavior. Therefore, quoting the thoughts of Jasser Auda, that every cause-and-effect relationship must be considered as part of the whole event (wholeness), this is often referred to as holistic (overall picture).⁵⁶

Islamic law as the first guideline for Muslims in acting and behaving, of course, must have an attitude of openness.⁵⁷ This openness will create a legal system that interacts with environmental conditions that are outside the system so that the development of the law will be in accordance with the need to regulate social media users. This openness is intended to be able to see backbiting that occurs in the community, and be able to sort out whether things that occur involve *ghibab* that is allowed or backbiting that is not allowed.

Formulation of the definition of "Public Domain" in the fatwa

According to the Fatwa, the public domain is: "public open areas, twitter, facebook, social media groups, and the like. The forum for discussion groups on social media is included in the category of the public domain". This is contrary to the Decree of the three Ministers regarding "Guidelines for the implementation of certain articles in the ITE Law". The SKB explained that publicly known media are the media that have settings which can be accessed by the public, meaning that the content broadcast on the chat group application with the nature of a group that anyone can join without the need for permission from the group administration. Thus, the public intended by the fatwa is very different from what is meant by the SKB. Spreading content through limited and closed groups such as alumni groups is not in the public domain even though it contains hundreds or thousands of members. Thus, it shows that the

⁵⁵ "Fenomena "No Viral No Justice", Ini 4 Kasus Yang Baru Ditangani Polisi Setelah Viral Di Medsos," accessed October 11, 2022, <https://nasional.kompas.com/read/2021/12/17/17514801/fenomena-no-viral-no-justice-ini-4-kasus-yang-baru-ditangani-polisi-setelah>.

⁵⁶ Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*, 46.

⁵⁷ Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*.

fatwa must be immediately upgraded to keep up with legal developments in Indonesia.

The public domain is a place for people to express aspirations and expression. The presence of social media makes people very active in democracy and behaves transparently to the public. Therefore MUI must provide a space for the community to be able to express their aspirations freely and free from intimidation that focuses on religious violations (sin) which does not necessarily convey aspirations and democracy which are prohibited by religion. In this context, it is necessary to evaluate the fatwa. Even more dangerous, the silence of thinking can make you think sluggishly in understanding religious teachings, which in turn will damage religion itself. Imprisoned thinking can also make human souls become independent, imprisoned by the system. It can even give birth to weak generations (*dzurriyatan dhi'afan*) because they experience restraints in thinking.

Conclusion

The MUI Fatwa Number 24 of 2017 should provide justice and freedom because the overall picture of a violation of the law must be seen from why the violation occurred. The fatwa should provide a dynamic space to see the situation and the environment in order to have an impact on legal justice for the people of Indonesia. MUI also in producing social media law does not see the legal hierarchical structure (interrelated). For example, efforts to promote *maqasid al-ammah* (general maqasid) include maintaining universal behavior (*tasyri'*) namely justice, tolerance, equal rights, convenience, in order to answer current problems. The fatwa in question is produced without considering the priority of justice for citizens, so that it does not produce the intended output/purpose of *maqasid sharia*. In fact, the fatwa seems to only focus on the political intentions or conditions that are going on. The MUI fatwa from the positive side has protected the country's sovereignty from criticism from social media users. However, the negative side of this fatwa has an impact on curbing freedom of opinion and expression.

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