

## Consistency of the Indonesian Ulama Council in Using *Istiṣlāḥ* as a Method for Legal *Istinbath*

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### Abstract

This article aimed to analyze the consistency of the Indonesian Ulama Council (MUI) in using *Istiṣlāḥ* (public interest) as a method for legal determination when issuing fatwas. There were fatwas where the use of *Istiṣlāḥ* was very evident with the goal of safeguarding human lives, while in other fatwas, the opposite seemed to be the case. The objective of this study was to analyze the background of the emergence of fatwas and the consistency of MUI in using *Istiṣlāḥ*. This article is a normative legal study with an *usul al-fiqh* (principles of Islamic jurisprudence) approach. The data used represented secondary data in the form of Fatwa No. 14 of 2020 and Circular No.: Kep-1702/DP MUI/IX/2020 as the primary legal materials. Other legal materials, such as books and scholarly articles, were also used. The data obtained were analyzed descriptively using the techniques of reduction, display, and verification. The research results indicated the following: first, the emergence of both *ijtihād* products was caused by two conflicting government objectives; the desire to prohibit gatherings during worship and the desire to allow gatherings during regional elections. Second, these fatwas and circulars demonstrated inconsistency in the use of *Istiṣlāḥ*. In Fatwa No. 14 of 2020, MUI showed consistency in using *Istiṣlāḥ*. On the other hand, MUI appeared inconsistent in using the same method even though the primary

goals of both ijtihad products were the same, preventing the spread of Covid-19 through mass gatherings.

**Keywords:** Indonesian Ulama Council; fatwa, *istişlah*; circular

## Introduction

A fatwa is a product of ijtihad issued by a mufti as a response or explanation to emerging issues amid the community.<sup>1</sup> One of the fatwa institutions that plays a significant role in resolving Islamic matters in Indonesia is the Indonesian Ulama Council (*Majelis Ulama Indonesia or MUI*).<sup>2</sup> MUI serves as an organization that accommodates knowledgeable scholars and Muslim intellectuals across Indonesia. MUI, as a fatwa-issuing institution, has been suspected of often serving as a conduit for the government's voice.<sup>3</sup> This became particularly evident during the COVID-19 pandemic in Indonesia. At that time, the government requested MUI to issue a fatwa regarding the regulation of religious practices during the COVID-19 pandemic. Meanwhile, during the high transmission period of the COVID-19 pandemic, simultaneous regional elections were scheduled. Ultimately, MUI issued a fatwa in accordance with the government's request, known as Fatwa Number 14 of 2020. Through this fatwa, MUI prohibited Muslims from participating in congregational religious practices that could lead to mass gatherings. However, following that, MUI also issued Circular Letter Number: Kep-1702/DP MUI/IX/2020, which allowed for in-person regional elections, inevitably resulting in gatherings.

The presence of MUI fatwas as responses to the doubts of the Muslim community in Indonesia has been palpable.<sup>4</sup> Referring to Jamaa, MUI is considered to have made an extraordinary contribution to the development of contemporary Islamic law in Indonesia through its fatwas.<sup>5</sup> This contribution has been observable since MUI's establishment in 1975 to the present day.

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<sup>1</sup> Abdul Manan Ismail and Ahmad Syukran Baharuddin, "Moderation in Fatwas and Ijtihad: An Analysis of Fatwas Issued by the MKI Malaysia Concerning the Covid-19 Pandemic," *AHKAM: Jurnal Ilmu Syariah* 22, no. 1 (June 30, 2022): 113, <https://doi.org/10.15408/ajis.v22i1.22299>.

<sup>2</sup> Doli Witro, Atang Abdul Hakim, and Koko Komaruddin, "Characteristics and Essence of Fatwas on Islamic economic Law in Indonesia," *Abkam: Jurnal Hukum Islam* 9, no. 1 (August 1, 2021): 157, <https://doi.org/10.21274/ahkam.2021.9.1.155-174>.

<sup>3</sup> Saifuddin Zubaidi, "Cigarette Fatwas, Contestation of Religious Authority and Politics in Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 20, no. 1 (June 10, 2020): 75, <https://doi.org/10.18326/ijtihad.v20i1.61-78>.

<sup>4</sup> Elsy Renie, "The Urgency of Fatwa in the Law of Sharia Economics in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 20, no. 2 (December 15, 2021): 201, <https://doi.org/10.31958/juris.v20i2.4059>.

<sup>5</sup> La Jamaa, "Fatwas of the Indonesian Council of Ulama and Its Contributions to the Development of Contemporary Islamic Law in Indonesia," *Indonesian Journal of Islam and Muslim Societies* 8, no. 1 (2018): 29, <https://doi.org/10.18326/ijims.v8i1>.

Various fatwas in the field of Islamic law have been produced, including those related to issues surrounding COVID-19. According to Kurniawan et al., the majority of MUI fatwas are based on the principle of *Istiṣlāḥ* (consideration of public interest), stemming from the theory of *maqāshid al-syarī'ah* (objectives of Islamic law). For instance, MUI Fatwa No. 14 of 2020 aligns with the theory of *maqāshid as-syarī'ah* by Imam al-Syāthibi.<sup>6</sup> Mun'im found that MUI employs the epistemology of *bayāni* and *burhāni* in fatwas related to the conduct of Friday prayers and congregational prayers, as well as the procedures for handling deceased bodies during the COVID-19 pandemic.<sup>7</sup> Risdianto suggested that the application of *Istiṣlāḥ* theory in these fatwas is consistent with the theory of *Istiṣlāḥ* by Imam al-Ghazālī.<sup>8</sup> Abubakar et al. found that one of the considerations for public interest in fatwa formulation is the preservation of life (*ḥifẓ al-Naṣl*), which must have *'illat* (legal reasons) which are obvious and measurable (*ẓāhirun mundhabithun*).<sup>9</sup>

The use of the principle of *Istiṣlāḥ* is also evident in the fatwas issued by the National Sharia Council of the Indonesian Ulama Council (DSN MUI).<sup>10</sup> According to Mustofa, fatwas related to Islamic finance (from 2000 to 2012) often apply the principle of *fikih al-ḥājah qad tunazzalu manzilab al-darūrah āmmah kānat aw kbāsshah* in determining Shariah financial regulations. This demonstrates that this principle is considered appropriate and essential in addressing issues related to sharia finance.<sup>11</sup> Meanwhile, Sholihin found that fatwas issued by DSN-MUI regarding Shariah banking products are characterized by eclectic-

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<sup>6</sup> Edi Kurniawan, Alhusni, and Syed Arif Asyraf Bin Syed Zaiful Hamzah, "Beribadah Di Tengah Wabah Covid-19: Analisis Terhadap Fatwa Majelis Ulama Indonesia No 14 Tahun 2020 Berdasarkan Teori Maqāshid Al-Sharī'ah Al-Shāthibi," *Jurnal Fiqh* 19, no. 1 (June 30, 2022): 83, <https://doi.org/10.22452/fiqh.vol19no1.4>.

<sup>7</sup> 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>.

<sup>8</sup> Risdianto, "Masalah Mursalah Al-Ghazālī Sebagai Dasar Hukum Fatwa MUI Nomor 14 Tahun 2020 Tentang Penyelenggaraan Ibadah Dalam Situasi Terjadi Wabah Covid 19", *Jurnal Misykat Al-Anwar Kajian Islam Dan Masyarakat* 4, no. 1 (2021): 76, <https://doi.org/https://jurnal.umj.ac.id/index.php/MaA16/index>.

<sup>9</sup> Ali Abubakar, Juliana Juliana, and Maisyarah Rahmi Hasan, "The Right of a Child Outside the Legal Marriage of a Biological Father: The Analysis of Ḥifẓ Al-Naṣl as Law 'Illat," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (June 30, 2021): 153, <https://doi.org/10.22373/sjhh.v5i1.9256>.

<sup>10</sup> Ayu Rahayu Nurhalizah and Ach Fageh, "Future Gold Commodity: Indonesian Ulema Council Vs Lajnah Daimah Lil Buhuts Al-'Ilmiyyah Wal Ifta," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (January 31, 2022): 7, <https://doi.org/10.31958/juris.v21i1.3647>.

<sup>11</sup> Imam Mustofa, "Analisis Penggunaan Kaidah Al-Hajjah Qad Tunazzalu Manzilab Al-Darurah Dalam Fatwa Dewan Syariah Majelis Ulama Indonesia," *Analisis: Jurnal Studi Keislaman* 18, No. 2 (March 1, 2019): 2, <https://doi.org/10.24042/Ajsk.V18i2.3425>.

pragmatic reasoning.<sup>12</sup> MUI fatwas have not been without criticism, including Fatwa No. 24 of 2017 regarding guidelines for naming through social media. Arisandy et al. argued that when analyzed based on the theory of *maqāshid al-yyari'ah* by Jasser Audah, this fatwa is not appropriately applied in a democratic country like Indonesia due to the infringement of freedom of expression on social media for netizens.<sup>13</sup>

Nevertheless, in its implementation, some of these fatwas did not proceed smoothly as expected. For example, MUI Fatwa No. 14 of 2020 was not strongly adhered to by the urban community in Medan because it was considered merely an advisory rather than an obligation.<sup>14</sup> This also occurred with the MUI fatwa regarding the legal status of the Astrazeneca Covid-19 vaccine, which was published in digital media. In essence, digital media provides an opportunity for netizens to express their responses, comments, judgments, and even build opinions as part of their freedom of expression on social media. Most social media users did not support this fatwa due to their limited knowledge of Islamic jurisprudence (*fiqh*).<sup>15</sup>

As mentioned earlier, among the justifications used by MUI in its fatwas related to Covid-19 is *Istislah* (consideration of public interest). For example, in MUI Fatwa No. 14 of 2020 regarding the Conduct of Worship during the Covid-19 Pandemic and Circular Letter No: Kep-1702/DP MUI/IX/2020 regarding the Implementation of Regional Elections, there seems to be an imbalance in the application of *Istislah* methodology. In Fatwa No. 14 of 2020, Muslims were restricted and even prohibited from congregational worship during the Covid-19 pandemic on the grounds of safeguarding lives (*hifz al-Nafs*) from the threat of Covid-19, as a measure to support the government's policy during the outbreak. As a result, many places of worship were closed, and security forces were deployed to prevent people from worshipping inside them. However, in Circular Letter No: Kep-1702/DP MUI/IX/2020 regarding the implementation of regional elections in 2020, while MUI initially criticized the

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<sup>12</sup> Muhammad Sholihin, "Fatwa Antara Makharij Fiqhiyah Dan Market Needs: Eklektisisme Pragmatis Di Balik Fatwa DSN MUI Di Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 5, no. 1 (May 9, 2020): 71, <https://doi.org/10.29240/jhi.v5i1.1412>.

<sup>13</sup> Danil Putra Arisandy, Asmuni Asmuni, and Muhammad Syukri Albani Nasution, "The Majelis Ulama's Fatwa on Freedom of Expression On Social Media: The Perspective of Maqashid Sharia," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 (December 1, 2022): 481, <https://doi.org/10.29240/jhi.v7i2.5235>.

<sup>14</sup> Ramadhan Syahmedi Dkk Dhiauddin Tanjung, "Implementasi Fatwa MUI Nomor 14 Tahun 2020 Tentang Penyelenggaraan Ibadah Dalam Situasi Terjadinya Wabah Covid-19 Di Kota Medan," *Jurnal Al-Maslahab: Jurnal Hukum Islam Dan Pranata Sosial Islam* 9, no. 2 (2021): 627, <https://doi.org/http://dx.doi.org/10.30868/am.v9i02.2179>.

<sup>15</sup> Mutimmatul Faidah, "Astrazeneca Vaccine Fatwa And Netizen's Responses: Indonesian Experience," *Journal Of Contemporary Islam And Muslim Societies* 6, No. 1 (August 19, 2022): 55, <https://doi.org/10.30821/Jcims.V6i1.11242>.

government's desire to hold simultaneous elections, it ultimately allowed the elections to proceed under strict health protocols. Consequently, this circular letter served as a basis for encouraging the predominantly Muslim population to exercise their voting rights in the elections, despite the high prevalence of Covid-19. Based on these two MUI *ijtihad* products, the consistency of MUI in using *Istislah* as the basis for legal rulings is questioned. Why did the consideration of public interest manifest as an obligation to safeguard lives from the Covid-19 threat in one case and not in the other? Therefore, this article aims to analyze the consistency of MUI in the use of *Istislah* as the basis for legal rulings.

This study is important because the government has the authority and power to control the population. However, during certain times, such as the Covid-19 pandemic, the government struggled to control the population.<sup>16</sup> The government faced challenges in preventing mass gatherings, which served as a means of Covid-19 transmission. These mass gatherings often occurred during the practice of Islamic worship. In this context, the Muslim community was more obedient to the advice of religious scholars than to the government.<sup>17</sup> Therefore, the government turned to MUI as an institution trusted by the community to assist in conveying their messages to the public.

This article is a normative legal study with a jurisprudential approach. The data used were secondary data, including Fatwa No. 14 of 2020 regarding the Conduct of Worship during the Covid-19 Pandemic and Circular Letter No: Kep-1702/DP MUI/IX/2020 regarding the Implementation of Regional Elections in 2020 as the primary legal materials. Other legal materials, such as books and scholarly articles, were also used. The collected data were analyzed through descriptive analysis using the techniques of reduction, display, and verification.

## Discussion

### *Istislah* as a Method for Legal *Istinbath*

Linguistically, *Istislah* (derived from the same root as *istaf'ala*) originates from the word *al-shalah*, which is subsequently derived from it, resulting in the term *al-mashlahah* (benefit or welfare). The words *al-shalah* and *al-mashlahah* both carry meanings of goodness, truth, validity, and the like. *Al-shalah* stands in

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<sup>16</sup> Muhamad Beni Kurniawan, "Politik Hukum Pemerintah Dalam Penanganan Pandemi Covid-19 Ditinjau Dari Perspektif Hak Asasi Atas Kesehatan," *Jurnal HAM* 12, no. 1 (April 22, 2021): 37, <https://doi.org/10.30641/ham.2021.12.37-56>.

<sup>17</sup> Muazzinah Muazzinah, Zakki Fuad Khalil, and Cut Zamharira, "Integrasi Antara Pemerintah dan Ulama dalam Penanganan Covid-19 di Aceh," *Jurnal EL-RYASAH* 12, no. 2 (January 15, 2022): 267, <https://doi.org/10.24014/jel.v12i2.13871>.

contrast to the word *al-fasād*, which signifies harm or corruption.<sup>18</sup> Simply put, *al-ṣalāh* encompasses all actions that support and lead to goodness for humanity.<sup>19</sup> It can also be understood as pursuing *maṣlahah* (benefit) and avoiding *mafsadah* (harm).<sup>20</sup> In essence, *Istiṣlāh*, both in its literal and conceptual sense, represents a form of benefit.<sup>21</sup> The term *Istiṣlāh* is also referred to as *maṣlahah mursalah*. In terminology, scholars have provided various definitions. Ibn Hājib (d. 1249 CE) offered a rather general definition, considering it as benefit without a specific textual basis (*nash*). Al-Ghazālī (d. 504 AH) defined *Istiṣlāh* as benefit for which no specific evidence either accepts or rejects.<sup>22</sup> Referring to Al-Syaukānī's (d. 1250 AH) definition, it denotes benefit where it is unknown whether the *Shari'ah* accepts or rejects it.<sup>23</sup> Meanwhile, Husain Hamid Hassan (d. 2020 CE) defined it as genuine benefit that falls within the scope of global considerations by the *nash* but is not explicitly detailed.<sup>24</sup> Al-Zuhailī (d. 2015 CE) defined *Istiṣlāh* as the determination of legal rulings along with their objectives, without finding specific evidence that accepts or rejects them, with the purpose of realizing a benefit and eliminating harm.<sup>25</sup> Based on these various concepts of *Istiṣlāh*, there is no substantive difference in the definitions, only differences in wording (*khilāf lafẓi*). In essence, *Istiṣlāh* or *maṣlahah mursalah* (unrestricted benefit) refers to a benefit for which there is no clear textual evidence accepting or rejecting it. When applied to the method of legal deduction, it involves the determination of legal rulings based on considerations of *maṣlahah* (benefit or welfare) without specific textual evidence either accepting or rejecting that benefit. Thus, this benefit is solely based on the reasoning of the mujtahid scholar according to certain criteria.

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<sup>18</sup> Majd al-Din Muhammad Ibn Ya'qub al-Fairuz Abadi, *Al-Qamus Al-Mubith* (Beirut: Muassasah al-Risalah, 1996), 373.

<sup>19</sup> Musda Asmara and Reti Andira, "'Urgensi Talak Di Depan Sidang Pengadilan Perspektif Masalah Mursalah,'" *Al-Istinbath: Jurnal Hukum Islam* 3, no. 2 (2018): 215, <https://doi.org/http://dx.doi.org/10.29240/jhi.v3i2.626>.

<sup>20</sup> Fahd Mani' Muhammad, "'Al-Mashlahah Wa Atsaraha Fi Nawazilil Ibadat,'" *Jurnal Dirasat Islamiyah Lil Banin Bi Aswan* 4, no. 4 (2021): 37, <https://doi.org/https://doi.org/https://dx.doi.org/10.21608/fisb.2021.211464>.

<sup>21</sup> Ahmad Tahani Yusuf Al-Audh, "'Qaidatun: Al-Mashlahah Al-Ammah Muqoddamatun Alal Mashlahatil Khassah Wa Tathbiqatuha Fil Ibadat Wal Mu'amalat, Dirasah Washfiyyah Ushuliyyah Fiqhiyyah,'" *Jurnal Universitas Al-Jazirah, Fakultas Tarbiyyah Qism Al-Lughob Al-Arabiyyah Wa Ad-Dirasat Al-Islamiyyah.*, 2021: 64, <https://doi.org/https://doi.org/http://repo.uofg.edu.sd/handle/123456789/3760>.

<sup>22</sup> Al-Ghazali, *Al-Mustashfa Min Ilmi Al-Ushul*, n.d., 274

<sup>23</sup> Muhammad bin Ali Asy Syaokani, *Irsayadu Al-Fuhul* (Riyadh: Dar al-Fadhilah, 2000), 75

<sup>24</sup> Husain Hamid Hassan, *Nazhariyah Al-Maslahah Fi Al-Fiqh Al-Islami* (Kairo: Dar an-Nahdhah al 'Arabiyah, 1971), 3

<sup>25</sup> Wahbah al-Zuhaily, *Ushul Al-Fiqh Al-Islami* (Damascus: Dar al-Fikr, 1986), 756

Scholars have established criteria for *Istislah* that can serve as the basis for deriving Islamic legal rulings. In general, *Istislah* must not contradict stronger textual evidence, must be rational, and must have general applicability.<sup>26</sup> Al-Ghazālī (d. 504 AH) specified that *Istislah* should be essential (*dharūrī*), definitive (*qath'ī*), and comprehensive (*kuullī*).<sup>27</sup> Al-Būthī (d. 2013 CE) asserted that *Istislah* falls within the scope of the objectives of *Shari'ah* (*maqāshid al-Syari'ah*), does not contradict the primary sources of Islamic law (*the Qur'an, Sunnah, ijma', and qiyas*), and does not conflict with a superior and higher form of benefit (*awla*). In terms of its position, *Istislah* is considered disputed evidence among scholars (*dalil mukhtalaf*) and is placed after qiyas as a supplementary source (not an independent evidence).<sup>28</sup> *Istislah* serves as a method within legal deduction and is not a primary source or independent evidence of law. Therefore, *Istislah* requires support from the primary sources of law in its determination and application.<sup>29</sup> While, most scholars position *Istislah* as supplementary evidence, some scholars occasionally give it a greater weight than other evidence in its application. For example, Al-Thūfī (d. 716 AH) held the view that if there is a conflict between *Istislah* and *qath'ī* evidence, *Istislah* should take precedence.<sup>30</sup> *Qath'ī* evidence, such as the Qur'an and Sunnah, is even theoretically and essentially used for the benefit of humanity and not the other way around. Arguments related to the text but irrelevant to benefit should be referred to the concept of *Istislah*.<sup>31</sup> A similar viewpoint is presented by Sheikh 'Izzuddin bin Abdissalaam (d. 660 AH), who stated that all the laws prescribed by Allah SWT serve a purpose and have objectives aimed at achieving benefits, whether explicitly or implicitly within the existing texts.<sup>32</sup> Allah SWT's commands and

<sup>26</sup> Mariani Mariani, "Reactualization of the Marriage Age Limit in Indonesia (in the Perspective of Maslahah Mursalah)," *Lambung Mangkurat Law Journal* 7, no. 1 (March 31, 2022): 97, <https://doi.org/10.32801/lamlaj.v7i1.309>.

<sup>27</sup> Farkhan Muhammad, "Kehujjahan Istislah/Maslahah Mursalah sebagai Dalil Hukum: Perspektif 4 Madzhab," *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 9, no. 9 (2022), 3594, <https://doi.org/http://dx.doi.org/10.31604/jips.v9i9.2022.3589-3609>.

<sup>28</sup> Hj Nur Asiah, "Maslahah Menurut Konsep Imam Al-Ghazali," *Jurnal DIKTUM: Jurnal Syariah Dan Hukum* 18, no. 1 (2020): 122, <https://doi.org/https://doi.org/10.35905/diktum.v18i1.663>.

<sup>29</sup> Ridwan Ahmad Akbar Sarif, "Konsep Maslahat Dan Mafsadah Menurut Imam Al-Ghazali," *Jurnal Tsaqafah* 13, no. 2 (2017): 353, <https://doi.org/http://dx.doi.org/10.21111/tsaqafah.v13i2.1183>.

<sup>30</sup> Miftaakhul Amri, "Konsep Maslahat Dalam Penetapan Hukum Islam (Telaah Kritis Pemikiran Hukum Islam Najamuddin At-Thufi)," *Jurnal Et-Tijarie* 5, no. 2 (2018): 53, <https://doi.org/https://doi.org/10.21107/ete.v5i2.4585>.

<sup>31</sup> Agus Hermanto, "Konsep Maslahat Dalam Menyikapi Masalah Kontemporer (Studi Komparatif Al-Tufi Dan Al-Ghazali)," *Jurnal Al-Adalah* 14, no. 2 (2017): 440, <https://doi.org/https://doi.org/10.24042/adalah.v14i2.2414>.

<sup>32</sup> Abdul Ghofur Dkk Muhammad Agus Mushodiq, "Jalb Masalih Izzuddin Dan Relevansinya Dengan Fatwa NU Terkait Salat Jum'at Masa Pandemi Covid-19," *Jurnal Al-*

prohibitions fall within the scope and context of *Istislah*, both for the worldly life and the hereafter.<sup>33</sup> Human benefit lies in the objectives of the religion (*maqāshid al-syarī'ah*) because Islamic law aims to safeguard what is beneficial for humanity.<sup>34</sup>

Regarding the validity of *istislah*, in practice, the majority of scholars utilize it as evidence in legal rulings, both among classical and contemporary scholars.<sup>35</sup> In fact, *istislah* is considered the most dominant evidence in resolving contemporary legal issues. Al-Qarafi (684 AH) mentioned that in reality, most scholars employ the *Istislah* method in determining legal rulings. Some take the *munāsib* approach, considering *istislah* as not requiring strong textual support. Additionally, others adopt the *qiyas* approach, such as Imam Shafi'i.<sup>36</sup> Even Imam Shafi'i did not use the terms *istislah* or *maṣlahah mursalah*, but their practice is found in the application of *qiyas*.

### The Background of the Emergence of Fatwa No. 14 of 2020 and Circular Letter No: Kep-1702/DP MUI/IX/2020"

At the time when Fatwa No. 14 of 2020 and Circular Letter No: Kep-1702/DP MUI/IX/2020 were issued, Indonesia and several other countries in the world were grappling with the Covid-19 pandemic. Fatwa No. 14 of 2020 was established on March 16, 2020, and Circular Letter No: Kep-1702/DP MUI/IX/2020 was issued on September 29, 2020. Referring to Husein et al., the trend in the development of the Covid-19 virus in 2020 posed a global threat, including in Southeast Asia, such as Indonesia.<sup>37</sup> The entry of the Covid-19 virus into Indonesia had a significant impact on various aspects of the

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*Istinbath: Jurnal Hukum Islam* 6, no. 1 (2021): 16-17, <https://doi.org/http://dx.doi.org/10.29240/jhi.v6i1.2193>.

<sup>33</sup> Ahmad Thohari, "Epistemologi Fikih Lingkungan: Revitalitas Konsep Maslahah," *Az-Zarqa* 5, no. 2 (2013): 149, <https://doi.org/https://doi.org/10.14421/azzarqa.v5i2.1317>.

<sup>34</sup> Abdul Hafidz, "Konsep Maqasid Shari'ah Perspektif 'Allal Al-Fasy," *CENDEKIA: Jurnal Studi Keislaman* 6, no. 1 (2020): 1, <https://doi.org/https://doi.org/10.37348/cendekia.v6i1.78>.

<sup>35</sup> Zainal Azwar, "Pemikiran Ushul Fikih Al-Ghazali Tentang Al-Maslahah Al-Mursalah (Studi Eksplorasi Terhadap Kitab Al-Mustashfa Min 'Ilmi Al-Ushul Karya Al-Ghazali)," *FITRAH: Jurnal Kajian Ilmu-Ilmu Keislaman* 1, no. 1 (May 31, 2016): 47, <https://doi.org/10.24952/fitrah.v1i1.327>.

<sup>36</sup> Achmad Musyahid, "Diskursus Maslahat Mursalah Era Milenial (Tinjauan Filosofis Terhadap Konsep Maslahat Imam Malik)," *Jurnal Mazhabuna: Jurnal Perbandingan Mazhab* 1, no. 2 (2019): 135, <https://doi.org/https://doi.org/10.24252/mh.v1i2.10625>.

<sup>37</sup> Amir Mahmud Husein et al., "Predicting the Spread of the Corona Virus (COVID-19) in Indonesia: Approach Visual Data Analysis and Prophet Forecasting," *International Journal of Artificial Intelligence Research* 4, no. 2 (December 21, 2020): 151, <https://doi.org/10.29099/ijair.v5i1.192>.



nation's life, including economics, education, religion, and governance.<sup>38</sup> In the religious domain, for instance, it affected the pattern of worship. This ranged from organizing social distancing measures during congregational prayers to prohibiting congregational prayers altogether to avoid gatherings.<sup>39</sup> In the field of education, there was a transition from face-to-face learning to online learning, which eventually impacted the economic landscape. Parents who did not have Android smartphones were compelled to purchase them along with internet packages. This shift also affected children's behavior and their abilities to comprehend the lessons being taught. Among the consequences of online learning on children's behavior was an increased interest in online gaming. Moreover, with online learning, children became acquainted with various social media platforms such as WhatsApp, Facebook, Twitter, and Instagram.<sup>40</sup>

To curb the spread of the Covid-19 pandemic, the government implemented several policies primarily aimed at breaking the chain of transmission through the prevention of mass gatherings.<sup>41</sup> However, in practice, these policies encountered challenges from some segments of society, particularly among Muslims. They perceived that the government's policies hindered the practice of certain religious obligations, such as Friday prayers and other worship activities. The government's advice to close places of worship during the Covid-19 period in some regions was not adhered to by the public.<sup>42</sup> Hence, the efforts to prevent the spread of the virus were ineffective. To address this non-compliance among the public, the government sought the support of MUI (Indonesian Ulema Council) to issue a fatwa, leading to the issuance of Fatwa No. 14 of 2020.

Upon closer examination of MUI Fatwa No. 14 of 2020 on Worship Organization in the Covid-19 Pandemic Situation, one of the considerations mentioned is the global threat posed by the spread of the Covid-19 virus to

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<sup>38</sup> Muhammad Saud et al., "Social Support through Religion and Psychological Well-Being: COVID-19 and Coping Strategies in Indonesia," *Journal of Religion and Health* 60, no. 5 (October 10, 2021): 3309, <https://doi.org/10.1007/s10943-021-01327-1>.

<sup>39</sup> Nurul Azizah, "The Rational Action of Elite: Mitigation the Covid-19 and Community Resistance in Pesantren Salafiyah Syafi'iyah Situbondo," *Analisa: Journal of Social Science and Religion* 7, no. 2 (December 30, 2022): 249, <https://doi.org/10.18784/analisa.v7i2.1657>.

<sup>40</sup> Yolanda Savitr Sri Siswati, Adila Kasni Astiena, "Evaluation of Online-Based Student Learning: Models During New Normal Pandemic Covid-19 in Indonesia," *Journal of Nonformal Education* 6, no. 2 (2020): 154, <https://doi.org/https://doi.org/10.15294/jne.v6i2.25599>.

<sup>41</sup> Amalia Azmi Sitorus, "Disinkronisasi Kebijakan Pemerintah Indonesia dalam Penanganan Covid-19," *Jurnal Renaissance* 6, no. 1 (July 10, 2021): 721, <https://doi.org/10.53878/jr.v6i1.137>.

<sup>42</sup> Riyanti Djalante et al., "Review and Analysis of Current Responses to COVID-19 in Indonesia: Period of January to March 2020," *Progress in Disaster Science* 6 (April 2020): 100091, <https://doi.org/10.1016/j.pdisas.2020.100091>.

various countries, including Indonesia, leading the World Health Organization (WHO) to declare it as a pandemic. The fatwa also states that it is due to this pandemic situation that MUI deemed it necessary to issue a fatwa regarding the conduct of worship during the Covid-19 pandemic as guidance for the public. However, during roughly the same period, there was also the simultaneous occurrence of a democratic event, the simultaneous regional elections, which required face-to-face participation and consequently resulted in mass gatherings. In other words, the government faced a dilemma. On one hand, the government prohibited gatherings for worship, and on the other hand, it would be instructing the public to participate in mass gatherings through the regional elections. The government received reactions and even criticism from the predominantly Muslim population as they were required to participate in the regional elections in person, despite previous prohibitions on gatherings. In response, the government once again sought MUI's legitimacy to ensure public compliance and participation in offline regional elections. This led to the issuance of Circular Letter No: Kep-1702/DP MUI/IX/2020. This circular letter was cited as a justification for allowing the public to participate in the regional elections offline. Thus, both of MUI's *ijtihad* products were motivated by two conflicting desires of the government: the desire to prohibit congregational gatherings in worship and the desire to allow congregational gatherings for the regional elections.

### The Application of the *Istiṣlāḥ* Method in Fatwa Number 14 of 2020

As previously conveyed, Fatwa Number 14 of 2020 is based on both general and specific evidence from the Qur'an and Sunnah, supplemented by principles related to *istiṣlāḥ*.<sup>43</sup> Referring to Risdianto, the application of the theory of *istiṣlāḥ* or *maṣlaḥah mursalah* in the Fatwa MUI No. 14 of 2020 aligns with the theory of *maṣlaḥah mursalah (Istiṣlāḥ)* by Imam al-Ghazālī. Al-Ghazālī asserted that anything that can ensure and protect the existence of the five fundamental elements of religion (*al-dharūriyyāt al-khamsah*) is referred to as *maṣlaḥah*. Conversely, anything that can disrupt and harm these five elements is called *mafsadah*.<sup>44</sup> Kuriawan et al. has even concluded in their study that the fatwa is in line with the theory of *maqāshid al-syari'ah* by Imam al-Syāthib.<sup>45</sup>

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<sup>43</sup> Irdlon Sahil, "Analisa Hukum Islam Dalam Meninggalkan Sholat Jum'at Pada Masa Pandemi Corona Virus Disease 2019 (Covid-19)," *Jurnal Mutamasith* 3, no. 2 (2020): 13, <https://doi.org/https://doi.org/10.47971/mjhi.v3i2.238>.

<sup>44</sup> Risdianto, "Maslahah Mursalah Al-Ghazālī Sebagai Dasar Hukum Fatwa MUI Nomor 14 Tahun 2020 Tentang Penyelenggaraan Ibadah Dalam Situasi Terjadi Wabah Covid 19," *Jurnal Misykat Al-Anwar Kajian Islam Dan Masyarakat* 4, no. 1 (2021): 83, <https://doi.org/https://jurnal.umj.ac.id/index.php/MaA16/index>.

<sup>45</sup> Edi Kurniawan, Alhusni, and Syed Arif Asyraf Bin Syed Zaiful Hamzah, "Beribadah Di Tengah Wabah Covid-19: Analisis Terhadap Fatwa Majelis Ulama Indonesia No 14 Tahun

The application of the *Istislah* method is evident in several points of the fatwa. For instance, point (1) emphasizes the obligation to make an effort to protect oneself from all forms of diseases that pose a threat as part of preserving the five essential principles of religion (*al-dharuriyyat al-kebamsah*). This point asserts that any effort aimed at preserving the five fundamental elements of religion (*al-dharuriyyat al-kebamsah*) is obligatory. This point explicitly applies the principle of *Istislah*, which seeks to realize the welfare of the community as a result of *maqashid al-syar'ah*. Based on the theory of *maqashid al-syar'ah* in the study of Islamic jurisprudence, the purpose of legislating laws is to preserve the five essential aspects: the preservation of life (*hifz al-nafs*), the preservation of wealth (*hifz al-mal*), the preservation of intellect (*hifz al-'aql*), the preservation of lineage (*hifz al-nasl*), and the preservation of religion (*hifz al-din*).<sup>46</sup> Thus, this point represents an implementation of *maqashid al-syar'ah* in terms of preserving life (*hifz al-nafs*).

Point (2), on the other hand, emphasizes the obligation to isolate individuals in the community who have contracted the Covid-19 virus to prevent its transmission to others. Individuals who have contracted the Covid-19 virus are allowed to replace Friday prayer with the Dhuhr prayer at home because Friday prayer involves gatherings and can be a source of virus transmission. Furthermore, they are prohibited from engaging in voluntary acts of worship that involve physical contact with others, such as congregational prayer and attending religious gatherings. This point specifically applies to individuals who have contracted Covid-19 to ensure self-isolation and prevent the spread of the virus. For this reason, they are allowed to replace Friday prayer with the Dhuhr prayer, and it is even forbidden for them to engage in voluntary acts of worship that involve physical contact with others. This point aligns closely with the principle of the *istislah* guideline, including the principle of *Lā dharara wa lā dhirāra* (Do not harm yourself or others).<sup>47</sup>

In the meantime, point (4): "In the event that an individual is in an area with a high or very high potential for transmission, as determined by authorized parties, they are allowed to skip the Friday prayer and replace it with the Dhuhr prayer at their place of residence. They should also refrain from congregational prayers for the five daily prayers, Sunnah prayers, Tarawih, and Eid prayers in mosques or other public places." Point (6): "When an individual is in an area with a low potential for transmission, as determined by authorized parties, they

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2020 Berasaskan Teori Maqāshid Al-Sharī'ah Al-Shāṭibi," *Jurnal Fiqh* 19, no. 1 (June 30, 2022): 83, <https://doi.org/10.22452/fiqh.vol19no1.4>.

<sup>46</sup> Kazi Md Tarique, Rafikul Islam, and Mustafa Omar Mohammed, "Developing and Validating the Components of Maqasid Al-Shari'ah -Based Performance Measurement Model for Islamic Banks," *International Journal of Islamic and Middle Eastern Finance and Management* 14, no. 2 (April 6, 2021): 366, <https://doi.org/10.1108/IMEFM-12-2018-0432>.

<sup>47</sup> Jalāluddīn Al-Suyūthī, *Al-Ayḥāb Wa Al-Naẓḥāir* (Beirūt: Dār al-Fikr, 1980), 173

are still obligated to perform their religious duties as usual and are required to take precautions to avoid exposure to the Corona virus. This includes avoiding direct physical contact (handshakes, hugs, kissing hands), bringing their own prayer mats, and frequently washing hands with soap." Both points are directed towards individuals who have not been exposed to the Covid-19 virus to enhance their efforts to protect their lives (*hifẓ al-Nafs*). There is a slight difference at the level of legal requirement (*iqtidhā' al-hukm*) between these two points. In point (4), if someone is in an area with a high or very high potential for transmission, the legal requirement is at the level of being allowed to skip the Friday prayer and replace it with the *Dhuhr* prayer. The legal requirement (*iqtidhā' al-hukm*) in this point is softer (lenient) and, therefore, falls under the category of a *mubāh* ruling (permissible to skip Friday prayer) and replace it with the *Dhuhr* prayer. In the principles of Islamic jurisprudence, the *mubāh* ruling represents a choice or option (*takhyīr*) between doing something or leaving it.<sup>48</sup> Therefore, it can be understood that it is permissible to either skip the Friday prayer or perform it.

However, in point (6), "When the spread of Covid-19 is uncontrolled in an area and poses a threat to life, Muslims are not allowed to hold Friday prayers in that area until the situation returns to normal. They are obliged to replace it with the *Dhuhr* prayer at their respective locations." In this point, the legal requirement is at a firm level in the form of prohibition (*nahy*), which means it is not allowed (prohibited) to conduct the Friday prayer. This prohibition is reinforced by the subsequent sentence that mandates its replacement with the *Dhuhr* prayer. In this regard, MUI applies the principle applicable to the wording of command (*amr*), which is *al-amru 'an al-syai' nahyun 'an diddih* (a command regarding something implies the prohibition of its opposite).<sup>49</sup> Based on this principle, when MUI states "not allowed to perform the Friday prayer," it should be understood as "obliged to replace it with the *Dhuhr* prayer," rendering the statement "obliged to replace it with the *Dhuhr* prayer" in the fatwa unnecessary. Nevertheless, MUI deems it necessary to include this statement as reinforcement (*ta'kid*) to prevent any misunderstandings among the public. In other words, to ensure that the public both conducts the Friday prayer and replaces it with the *Dhuhr* prayer.

Based on the description above, it is clear that MUI (*Indonesian Ulama Council*) is very consistent in applying the principle of *istishlah* in fatwa No. 14 of 2020. In determining its legal ruling, MUI considers the aspect of *maslahah*, which is to save human lives from the danger of the Covid-19 virus. In fact, in certain circumstances, the effort to preserve life (*hifẓ al-nafs*) must take

<sup>48</sup> Abu Zahrah, *Ushul Al-Fiqh* (Mesir: Dar al-Kutub al-Ilmiyyah, 1986), 46

<sup>49</sup> Saif al-Din Al-Āmidī, *Al-Ihkām Fī Ushūl Al-Abkām* (Beirut: Dār al-Fikr, 2003), Juz 2,

precedence over the preservation of religion (*hifz al-din*). The method of *Istinbath* used in this fatwa is accurate and in line with the principles of legal determination, especially those related to *istishlah*. In addition to the principles mentioned above, this fatwa also applies other principles such as *al-masyaaqqoh tajlibu at-taisir* (hardship begets ease).<sup>50</sup> This principle means that if there is something burdensome or difficult for a *mukallaf* (a responsible adult) in carrying out Shariah rules, then Shariah (Allah) provides leniency until a *mukallaf* can do it.<sup>51</sup> It can also be understood that when a *mukallaf* faces difficulty or hardship, Shariah (Allah) then brings forth new rules that ease the situation. The ease granted to the *mukallaf* in carrying out the Shariah is called *rukhsah*.<sup>52</sup> This is in line with the statement of Allah; "Allah intends for you ease and does not intend for you hardship" (Quran, al-Baqarah (2): 185) and the statement of Allah; "Allah does not burden a soul beyond that it can bear" (Quran, al-Baqarah (2): 286). In connection with these verses, At-Thabari (310 H) explained that in worship, a servant can perform it according to their capability and does not need to impose something that could harm oneself or others like their family members. If a servant pushes themselves beyond their limits, it means they have made things difficult for themselves. This means they have violated the *rukhsah* (leniency) that Allah has granted as an expression of His mercy.<sup>53</sup>

Fatwa MUI No. 14 of 2020 is also in line with the principle of *Al-Dhararu Yuzaal* (harm must be eliminated).<sup>54</sup> This principle is an implementation of several verses from the Quran and sayings of the Prophet Muhammad, including the statement of Allah; "He has only forbidden to you dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], there is no sin upon him. Indeed, Allah is Forgiving and Merciful" (Quran, al-Baqarah: 173) and the hadith of the Prophet Muhammad; "Abu Sa'id bin Sinan narrated that the Messenger of Allah (SAW) said: 'Do not harm

<sup>50</sup> Al-Suyûthî, *Al-Ayyâb Wa Al-Nazhâir*, 160

<sup>51</sup> Sahari Sahari, "Implementasi Al-Masyaaqqoh Al-Tajlibu Al-Taisiir di Tengah Pandemi Covid-19," *AQLAM: Journal Of Islam And Plurality* 5, no. 2 (2020): 141, <https://doi.org/http://dx.doi.org/10.30984/ajip.v5i2.1367>.

<sup>52</sup> Amiroh Abdurrahman 'Ali Imar, "Qaidah Al-Masyaaqqah Tajlibu At-Taisir Wa Tathbiqaatuha Fi Fiqhi An-Nawazil (Corona Unmuzajan)," *Ad-Duriyyat Al-Majallah Al-Ilmiyyah Bi Kuliyatil Adab Al-Misriyyah* 4, no. 46 (2022): 192, <https://doi.org/https://dx.doi.org/10.21608/jartf.2022.192231>.

<sup>53</sup> Samr Musthafa As-Syarqawi, "Qaidah Al-Masyaaqqah Tajlibu At-Taisir Wa Ta'tsiruha Ala Nazilati i'thai Az-Zakah Wa Naqluha LilMutadharririn Min Al-Kawwaraat At-Thabi'iyah," *Jurnal Dirasat Islamiyah Lil Banat Bil Mutadharrah* 22, no. 2 (2020): 70, [https://doi.org/https://doi.org/https://journals.ekb.eg/article\\_180576.html](https://doi.org/https://doi.org/https://journals.ekb.eg/article_180576.html).

<sup>54</sup> Al-Suyûthî, *Al-Ayyâb Wa Al-Nazhâir*, 173

yourself nor harm others.” (Reported by Ibn Mājah and Dār al-Quthni).<sup>55</sup> This hadith is then used as a fundamental principle in Islamic jurisprudence. Furthermore, the principle of *Dar’u al-Mafāsīd Muqaddamun ‘alā Jalbi al-Mashālih* (preventing harm takes precedence over achieving benefit) is also employed. This principle means that in the determination of a legal ruling when there is a conflict between *maslahah* (benefit) and *mafsadah* (harm), the law that prioritizes preventing harm (*mafsadah*) is given precedence.<sup>56</sup> This is in line with the statement of Al-Suyūthī (911 H), that when there is a conflict between *mafsadah* and *maslahah*, the action that a mujtahid (Islamic jurist) should take is to prioritize preventing harm because Allah's attention to prohibitions is stronger than His commandments.<sup>57</sup> In addition to using the principles of *istislah*, the provisions of fatwa MUI No. 14 of 2020 also refer to the wisdom of past scholars and leaders (*uli al-amri*). Al-Dzahabi (748 H), as cited by Nurdin et al., mentioned that mosque closures had occurred in Egypt and Andalusia in the past. People were not allowed to pray in the mosques because of a severe epidemic during a large-scale pandemic at that time.<sup>58</sup>

The use of *Istislah* as legal evidence is one of the methods of establishing Islamic law based on the consideration of *maslahah* (public interest) as a fruit (*tsamarah*) of *maqāshid al-Shari’ah* (objectives of Islamic law).<sup>59</sup> It is similar to the methods of *qiyas* (analogy) and *istihsan* (juridical preference).<sup>60</sup> In the *qiyas* method, a mujtahid (Islamic jurist) refers to the consideration of *illat* (cause) in the determination of legal rulings. In this regard, scholars of *usul al-fiqh* (principles of Islamic jurisprudence) establish the principle of *al-hukmu yaduru*

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<sup>55</sup> Fatahillah Fatahillah and Azme Haqqi, Abdurrahman Raden Aji, Matali, “Application Of The Principles Of The Shafi’i Mazhab ‘Ad-Dharar Yuzalu’ In Plastic Surgery,” *Proceeding International Conference on Innovation in Science, Education, Health and Technology* 1, no. 1 (2022): 240, <https://doi.org/http://pedirresearchinstitute.or.id/index.php/icischt/article/view/214>.

<sup>56</sup> Nasiri and Miftahul Ulum, “The Concept Of Maslahah By Al-Imam Malik And Al-Imam Al-Tufi,” *Veteran Law Review* 2, no. 1 (May 28, 2019): 58, <https://doi.org/10.35586/velrev.v2i1.689>.

<sup>57</sup> Badrah Uyuni, “Implementation of Maqashid Sharia in Controlling the Growth of the Covid-19 Virus,” *Tabdzib Al-Akblaq: Jurnal Pendidikan Islam* 4, no. 1 (June 24, 2021): 67, <https://doi.org/10.34005/tahdzib.v4i2.1432>.

<sup>58</sup> Muhammad Saddam Nurdin Dkk Alif Jumai Rajab, “‘Tinjauan Hukum Islam Pada Edaran Pemerintah Dan MUI Dalam Menyikapi Wabah Covid-19,’” *Jurnal Bustanul Fuqaha: Jurnal Bidang Hukum Islam* 1, no. 2 (2020): 164, <https://doi.org/https://doi.org/10.36701/bustanul.v1i2.143>.

<sup>59</sup> Adi Nur Rohman, “The Existence of Maslahah Mursalah as The Basis of Islamic Law Development in Indonesia,” *KRTHA BHAYANGKARA* 13, no. 2 (December 26, 2019): 251, <https://doi.org/10.31599/krtha.v13i2.9>.

<sup>60</sup> Moh. Muhlis Anwar M. Asrorun Niam Sholeh, Muhammad Fauzinudin Faiz, “A Critical Analysis of Islamic Law and Fatwa of MUI (Majlis Ulama Indonesia) & NU (Nahdlatul Ulama) on A Gold-Backed Cryptocurrency (OneGram),” *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 17, no. 2 (2022): 524, <https://doi.org/http://doi.org/10.19105/al-Ihkam.v17i2.6511>.

*ma'a al-Allah wujudan wa 'adaman* (the ruling depends on the presence or absence of *illat*, the existence of a ruling because of the presence of *illat*, and the absence of a ruling because of the absence of *illat*).<sup>61</sup> Understanding *illat* means recognizing and comprehending the purpose of legislating the law in Islamic jurisprudence (*maqāṣid al-Sharī'ah*), which is *maṣlahah* (promoting goodness and preventing harm to humanity).<sup>62</sup> On the other hand, the *istihsan* method is a subset of the application of *qiyas*, which, in the terminology of Hanafī scholars, is referred to as *al-qiyās al-mustahsan*, where one adheres to *qiyas* even when its *illat* is weak, but its application leads to greater *maṣlahah* (benefit).<sup>63</sup> In other words, both methods also rely on considerations of *maṣlahah*.

When applied to the present and future, the *Istiṣlah* method is seen as a solution-oriented approach in addressing emerging issues in Islamic law.<sup>64</sup> Through this method, Islamic law can be applied flexibly without solely relying on clear textual evidence (*nash*) while still meeting the criteria set by scholars. This is because legal issues that arise within society will continue to evolve with changing times and circumstances, whereas the Quran and Sunnah may not provide direct guidance on these new issues. As for the *qiyas* method, it may not necessarily be applicable to new cases due to its limitations in comparison to cases already covered by the texts of the Quran and Sunnah.<sup>65</sup> Therefore, the use of the *Istiṣlah* method is highly needed and considered most suitable for addressing contemporary legal issues. For example, the use of the *Istiṣlah* method in Fatwa No. 14 of 2020, while not serving as independent evidence, remains highly relevant to the demands of the situation and circumstances. According to this method, a legal ruling can change from obligatory (*wajib*) to permissible (*mubāh*) or even prohibited (*haram*). Such changes still occur within the framework of *maṣlahah* and make Islamic law adaptable to every time and place (*ṣāliḥ li-kullī zāman wa makān*).<sup>66</sup> This is in line with the principle that *Tagayyuru al-fatwā wakhtilāfuhā biḥasbi tagayyuri al-aẓminah, wa al-amkinah wa al-aḥwāl wa al-niyyāt wa al-'awā'id* (a fatwa can change according to changes in time, place, circumstances, intentions, and customs).

<sup>61</sup> Ibn Subkī, *Jam'u Al-Jawāmi'* (Semarang: Karya Toha Putra, n.d.), 257

<sup>62</sup> Ansori Ansori, "Position of Fatwa in Islamic Law: The Effectiveness of MUI, NU, and Muhammadiyah Fatwas," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 1 (July 29, 2022): 59, <https://doi.org/10.18326/ijtihad.v22i1.53-72>.

<sup>63</sup> Al-Sarakhsi, *Uṣūl Al-Sarakhsi* (Bierūt: Dār al-Kutub al-'Ilmiyyah, 2005), Juz 2, 204

<sup>64</sup> Lathifah Munawaroh, Ahmad Munif, and Ahmad Rofiq, "Disharmony of Sirri Marriage Registration Regulation on the Family Card (Analyzing The Ministry of Interior Affairs' Regulation No. 9/2016)," *Fiat Justisia: Jurnal Ilmu Hukum* 17, no. 1 (March 29, 2023): 93, <https://doi.org/10.25041/fiatjustisia.v17no1.2851>.

<sup>65</sup> Asrizal Sa'in et al., "Islamic Law in Indonesia: Baḥtsul Masā'il Ijtihad and the Production of Knowledge," 2021, 37, <https://doi.org/10.2991/assehr.k.211014.007>.

<sup>66</sup> Ibn Qayyim Al-Jawziyyah, *I'lam Al-Muwaqī'in 'an Rabb Al-'Alāmin* (Berūt: Dār al-Jail, 1973), 368.

### Inconsistencies in the Use of *Istishlāḥ* by MUI

In contrast to Fatwa MUI No. 14 of 2020, inconsistencies are apparent in MUI's application of *Istishlāḥ* in Circular No.: Kep-1702/DP MUI/IX/2020. Upon examining the points outlined in this circular, initially, MUI explicitly emphasized the priority of safeguarding human lives (*ḥifẓu an-nafsi*) based on the principle of *dar'u al-mafāsīd muqaddamun 'alā jalbi al-maṣāliḥ* (preventing harm takes precedence over achieving benefit). This is evident in the second point of MUI's circular: "...In the interest of preserving human lives (*ḥifẓu an-nafsi*), which should take precedence, as is the case now, in accordance with the principle (*dar'u al-mafāsīd muqaddamun 'alā jalbi al-maṣāliḥ*) and in line with the constitutional mandate, as stated in the Preamble to the 1945 Constitution, which states that the state's duty is to protect the entire Indonesian nation, the implementation of the 2020 regional elections must be postponed until the transmission of Covid-19 subsides." However, in the third point of the circular, MUI still allowed the possibility of conducting offline regional elections during the Covid-19 pandemic, albeit with strict health protocols in place. More comprehensively, this point states: "If the Government, the General Election Commission (KPU), and the People's Representative Council (DPR) decide to proceed, they must establish and enforce strict Health Protocol rules during the Regional Elections to prevent mass gatherings that could lead to the spread of Covid-19. Law enforcement should be carried out rigorously, with severe penalties for violators, including campaign organizers, supporting parties, and even disqualification of regional election candidate pairs."

The above point is not consistent with the second point of the circular, let alone with Fatwa No. 14 of 2020. This point serves as a loophole for parties involved, especially those with vested interests, to proceed with simultaneous offline regional elections during the Covid-19 pandemic. The message conveyed through this circular is that MUI allows for the offline conduct of regional elections, with the condition that strict health protocols are adhered to. However, the reality is that the spread of Covid-19 remains high. According to government regulations and the Fatwa MUI No. 14 of 2020, the public should practice self-isolation, avoid direct physical contact with others, and refrain from engaging in activities that result in mass gatherings, including congregational worship and similar events. Nonetheless, MUI has provided an opportunity for such gatherings to take place with the condition of strict health protocols. Consequently, simultaneous regional elections proceeded as planned, and mass gatherings were inevitable during the execution. Statements made in the previous points of the circular were seemingly disregarded.

In light of this, MUI is considered inconsistent in the application of *Istishlāḥ* and deviates from the principles of *Istishlāḥ* applied in the second point of the circular and Fatwa No. 14 of 2020. The inclusion of the third point is also



seen as contradictory to the opening of the 1945 Constitution, as quoted by MUI itself in its circular. Furthermore, this point lacks logical consistency when compared to other government policies related to Covid-19. If simultaneous regional elections can be conducted offline with strict health protocols, one might argue that congregational worship, face-to-face schooling, and similar activities should also be allowed as long as the same health protocols are followed. However, the reality does not align with this perspective, as congregational worship and in-person schooling continue to be prohibited.

## Conclusion

Based on the discussion in this article, several conclusions can be drawn. Firstly, Fatwa No. 14 of 2020 regarding the Conduct of Worship During the Covid-19 Pandemic and Circular No.: Kep-1702/DP MUI/IX/2020 regarding the Implementation of Regional Head Elections (*Pilkada*) are grounded in two conflicting government objectives. Fatwa No. 14 of 2020 is rooted in the government's desire to prohibit gatherings during worship, while Circular No.: Kep-1702/DP MUI/IX/2020 is based on the government's wish for people to participate in regional elections, which inherently leads to mass gatherings. Secondly, these fatwas and circulars demonstrate inconsistency in the application of *Istislah*. In Fatwa No. 14 of 2020, MUI maintains consistency in the use of *Istislah*. On the other hand, MUI appears inconsistent in applying the same method, even though the primary goal of both ijihad products is to prevent the spread of Covid-19 through mass gatherings.

To the Indonesian Ulama Council (MUI), especially members of the Fatwa Commission, it is imperative to maintain consistency in the use of evidence or methods for legal determination when issuing fatwas. Additionally, MUI should strive to remain independent in its fatwa issuance, free from any external influences or interests. Holding steadfast to the pursuit of truth in promoting the welfare of the community should be a paramount principle.

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