



Research Article

© 2022 Ansori.

This is an open access article licensed under the Creative Commons Attribution-NonCommercial 4.0 International License (<https://creativecommons.org/licenses/by-nc/4.0/>)

Received: 2 July 2022 / Accepted: 26 August 2022 / Published: 2 September 2022

Controversial Fatwas from Indonesian Ulema Council: A Study of the Legal Sociology Perspective

Ansori Ansori

Universitas Islam Negeri Profesor Kiai Haji Saifuddin Zuhri Purwokerto,
Jl. A-Yani No. 40-A Purwokerto 53126,
Indonesia

DOI: <https://doi.org/10.36941/ajis-2022-0139>

Abstract

Indonesian Ulema Council (MUI) as a fatwa provider in Indonesia has produced many fatwas, and not all fatwas can be received by the public, some fatwas such as celebrating Christmas together, SMS with prizes, and abstentions. This research is sourced from MUI fatwas which are considered controversial. The results of the study indicate that there are various factors that cause controversial MUI fatwas in the community. First, in the input process, there were several cases that generated controversy in the community before being issued a fatwa. Second, the performance process of legal discovery in the MUI institution itself, which has various opinions from scholars, so controversy becomes something that is unavoidable. Third, in the output process, several MUI fatwas invited controversy due to the low level of socialization and public acceptance of MUI.

Keywords: Community; Controversial Fatwa; Indonesian Ulema Council

1. Introduction

There are at least four kinds of products of Islamic legal thoughts that have been known in the history of Islamic law, namely fiqh books, ulema fatwas, religious court decisions, and legislations in Islamic countries (Mudzhar, 1993). These Islamic legal products are dynamic because they are the results of the fukahas' *ijtihad* in order to solve the problems faced by Muslims around them (Mahfudz and Aibak, 2010). Without refreshment and renewal, Islamic laws will be static (Arief, 2003). Among the factors that encourage the need for the reconstruction of Islamic law are socio-cultural, political, economic changes, as well as the development of science and technology (Ni'am, 2016). The response to these factors also gives birth to one of the products of Islamic laws, namely fatwas.

One of the institutions that has the authority to issue fatwas in Indonesia is the Indonesian Ulema Council (MUI) (Mudzhar, 1993), an institution that acts as the heir to the duties of the Prophets, fatwas givers, guides and servants of the people, the movement *islah wal tajdid*, as well as enforcers of *Enjoining (what is) right and forbidding (what is) evil* (MUI, 2001). The latest data based on a book on a collection of nfatwas made by the Indonesian Ulema Council from 1975-2015, show that the number of the fatwas has reached 247 pieces (Ni'am, 2016). If it is added with some fatwas

made after the data were issued, then the number must have been higher.

From one of the many fatwas that have been issued by the Indonesian Ulema Council, not all of them can be accepted without polemics and controversies in the community. Some fatwas have inflicted on controversies. The authors drew a conclusion of the controversial fatwas from the observations made so far through print and electronic media (Kisihandi, 2015), namely fatwas on the celebration of Christmas together, SMS with prizes, abstention, yoga exercise, the smoking ban, Qibla, infotainment, Social Security Administering Body (BPJS), statements made by Basuki Tjahja Purnama (Ahok), and fatwa on the use of non-Muslim religious attributes (MUI, 1981; MUI, 2008).

The fatwas were variously responded by the community. Even fatwas related to blasphemy cases have been used as the basis for large-scale mass action movements done by various Islamic organizations. The fatwa on the ban on the use of Christmas attributes also triggered some sweeping actions by radical organizations such as the Islamic Defenders Front (FPI) and others.

In fact, in determining a fatwa, the Indonesian Ulema Council has outlined that before the fatwa is determined, a comprehensive study should be carried out by asking the opinions from the imams, *mu'tabar* ulema, as well as anything related to fiqh experts about the issues of which the fatwa is made. In the method of determining a fatwa, it seems that it a basis for ascertaining fatwas in general used by mujtahids has been adopted (Amin, 2008).

The basis for the determination of fatwas above is intended to result in a fatwa that meets the criteria of a legal *istinbath* method as outlined by the ulemas. It is expected that the produced fatwa will be in accordance with what is desired by *Syari'* namely giving solutions to people's problems appropriate with *maqashid al-syari'ah* representing the relationship between Islamic laws and current ideas about human rights, development, and civility (Auda, 2015). But what happened in the community is that some fatwas become polemics and got controversial responses. Why did the fatwas get controversial responses in the community? The answer to this question will be explored in this paper.

2. Indonesian Ulema Council at a Glance

The Indonesian Ulema Council was established in Jakarta on 17 Rajab 1395 H or May, 26 1975 in a meeting of ulemas attended by the regional Ulema Council, leaders of national-level Islamic organizations, spiritual leaders from four generations, as well as several Islamic figures who were personally present. The sign of the establishment of the Indonesian Ulema Council was enshrined in the form of the charter of the Indonesian Ulema Council signed by 53 ulemas (Syam, 2001).

In issuing its fatwas, the Indonesian Ulema Council has some basis and nature, namely the determination of fatwas which are based on texts, are responsive, proactive, and anticipatory, and the activities in determining fatwas are carried out collectively by the Fatwa Commission (Syam, 2001). The Indonesian Ulema Council also has its own method in regulating its fatwas. a. Before a fatwa is stipulated, the opinion of the imam of school and ulemas on the issue of which the fatwa is made and their propositions will be carefully examined. b. Problems that have a clear law must be presented as it is; c. Dealing with the matters disputed among the madhhab ulemas, the determination of the fatwa is based on the results of efforts to find a common ground between the opinions of the madhhab ulemas by means of *al-jam' wa al-taufiq*, and if the efforts are not successful, then the fatwa is determined based on the results of *tarjih* through the *muqaranah al-mazahib* method by using the rules of *usul al-fiqh al-muqaran*; d. In the case that no legal opinion is found among the madhhab ulemas, the determination of the fatwa is based on the results of collective *ijtihad* through the *bayani*, *ta'lili* (*qiyasi*, *istihsani*, *ilhaqi*), *istislahi*, and *sadd al-zari'ah* methods. e. The determination of the fatwa always has to give attention to the general benefits and the objectives of the Shari'a (Syam, 2001).

The Indonesian Ulema Council also has the authority and territory in its fatwas. a. It has the authority to issue fatwas on religious matters in general, particularly fiqh and *aqidah* issues concerning the truth and purity of the faith of Indonesian Muslims. b. It is also authorized to release fatwas on religious matters as mentioned above dealing with Indonesian Muslims nationally or

religious issues in an area suspected to be spread to other regions. c. Regarding an issue for which the fatwa decision has been made, the Regional Indonesian Ulema Council only has the right to implement it. d. If due to certain factors the fatwa as referred to above cannot be implemented, the Regional the Indonesian Ulema Council may publish a different fatwa in consultation with the the Indonesian Ulema Council. e. In the event that there is no fatwa, the Regional the Indonesian Ulema Council has the authority to issue the fatwa. f. Especially for very serious problems which *aremusykil* and sensitive, before maing a fatwa, the Regional Indonesian Ulema Council should first consult with the Indonesian Ulema Council (Syam, 2001).

3. Fatwa as Social Muslim Engineering

A law works by giving a guide to person's actions or relationships among people in society (Syam, 2001). For the sake of the guidance, the law describes its work in its functions, namely: *The first* is to make norms that provide designations and determine the relationship among people; the *second* is to settle disputes; and *the third* is to ensure the survival of the community, if a change occurs (Syam, 2001).

Therefore, the law is classified as a means to exercise social control, namely the process of influencing people to behave in accordance with the expectations of society (Soekanto, 1975). As described above, the control by law is carried out in various ways and through the formation of the bodies needed. In such performance, the law can be referred to as a means to make formal social controls (Ali, 2011).

In carrying out its performance as the social control, the law does not show its performance in a single fashion or it is not autonomous at all (Ali, 2011). The law works in interrelated processes along with others that take place in society. Interrelated means that the law controls and is controlled by various processes in society, and the operation of the law is also conditioned by the processes that contain greater energy (Ridwan, 2017).

Based on this explanation, the social control is carried out by mobilizing various activities, which involve the use of state power as a politically organized institution through the institutions it establishes. The aspect of this legal work seems static, that is, it merely solves the problems it confronts concretely, namely regulating existing social relations. This situation is different from the law as a means of social engineering, of which its orientation is not aimed at solving existing problems, but wishes to cause changes in the community members' behavior.

What appears to be static is that a law as a means of social control just maintains the pattern of relationships and methods that exist today. In fact, it is only the static nature that can be seen attached to the law as a means of social control, while for the rest this social control is quite full of dynamics and changes. It should also be noted that what was introduced as the above changes is mainly related to institutional issues, namely the factors of change that burdens the work of legal institutions so that adjustments are needed on the part of these institutions. The process can be in the diagram below:

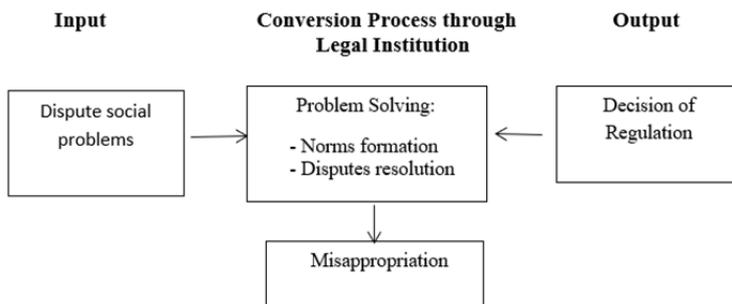


Figure 1: Process illustrated

The diagram above illustrates the current flow of problem solving as well as normal dispute resolution and some deviations that occur. The occurrence of such irregularities or deviations is caused by the fact that a matter or a case does not continue in processing, because of other reasons. The reasons for such deviations include: *first*, the system is not equipped to process it; and the *Second*, the existing facilities are not able to complete the incoming inputs (Suryadi, 2010).

In this position, fatwas are parts of the law with the same function as the law (Yulianti, 2015). A fatwa has a function to act out the expected (ideal) conditions based on the provisions of the Shari'a. Unlike the law in general, the subject of this fatwa is the Muslim community. Since the excavation of the laws is based on The Qur'an and Hadiths which are guidelines for Muslims, as well as guidelines in the lives of Muslims, indirectly, fatwas also function as an instrument of Social Muslim Engineering (Matnuh, 2017).

If it is correlated with fatwas, the legal formulation and discovery process which is then determined through them have the same stages and frameworks as the legal work process. Excavation and determination of fatwas pass through stages of input, institutional, and output processes. These three processes are important for the existence of Islamic laws in Indonesia.

In the first stage, namely input process, it is the initial one in the work process of extracting fatwas. It is the stage of initiation of the Muslim community to ask for a fatwa or legal provision on a problem that has not yet been regulated in the constellation of the Islamic law. It is a response to social dynamics and ongoing development of technology and science. Therefore, a reconstruction of Islamic legal norms is needed so that it is in line with the demands of social changes.

In the second stage, namely institutional process, this stage is legal excavation and discovery carried out by the the Indonesian Ulema Council institution, or what is often referred to as the *istinbath* or *ijtihad* process. This process implements the stage of legal institution, so that the determination and stipulation of a fatwa has an authoritative legitimacy in establishing laws for problems occurring in society. In this stage, the validity of the law has shifted to the one that is tied to organizational institutions, organizational reactions, and legal organizational management.

The law that is institutionalized through the organization is enacted with an open system, meaning that the law can be interpreted as something that works within and is influenced by its interaction with human, social, political, economic, and technological factors. Likewise in the stage of *istinbath*, in the law implemented by the Indonesian Ulema Council institution, in addition to the consideration of *nash syar'i* as the basis for the determination of the fatwa, the processes of extracting and finding the fatwa may also be influenced by non-syara' factors. These non-syara' factors play an important role as a consideration for the fatwa so that the resulting fatwa is able to realize the objectives of the law and the syara' itself.

In the third stage, it is the output process. It is the final stage of the process of legal finding of a fatwa. This stage begins with the process of socializing the fatwa. Although in the final stage, this process has an important role in the work of fatwa institutions, the understanding and acceptance of the fatwa by the community is also determined by the socialization process of the fatwa.

4. Analysis of the Factors Causing Controversial Fatwas

Based on the fatwa framework consisting of input processes, institutional processes, and output processes, if it is correlated with the existence of MUI fatwas, especially on controversial fatwas in the community, some of the factors that cause these fatwas to be controversial can be mapped out. However, the three processes are interrelated and not separate from each other. The three processes serve to form a configuration work in producing a fatwa decree.

Furthermore, based on the framework described above, the factors causing fatwas that result in controversies can be elaborated as follows.

The first is the MUI fatwa on the Joint Christmas Celebration. This fatwa resurfaced in late 2012. The fatwa on the prohibition of Christmas together was actually issued in 1981 (Tim Penyusun, 2015). The fatwa was motivated by a phenomenon that has often occurred since 1968 when Eid al-Fitr fell on

January 1-2 and December 21-22. Because Lebaran celebrations are close to Christmas, then many agencies hold Christmas and Halal Bihalal celebrations at the same time. Religious lectures were given alternately by the ustadzs, then the priests.

This opinion is based on the arguments from the verses of The Qur'an, the hadiths, as well as the fikhiyah rules (Tim Penyusun, 2015). Before formulating this fatwa, the Indonesian Ulema Council first explained the difference between the association among fellow believers in worldly issues related to worship and faith. This fatwa was intended as a guide for the people to celebrate Christmas together, where in the 1980 it was widely practiced by Muslims, so that there was no confusion between aspects of faith and worship between Muslims and Christians. But in another respect, the Indonesian Ulema Council still allows Muslims to cooperate and associate with people of other religions in terms of worldly problems (Ni'am, 2016).

After the stipulation of a haram fatwa or a ban on celebrating Christmas together, there was a polarization among the community. Some people supported it because of anxiety and concern about the contamination of the aqidah and beliefs of Muslims while others rejected it on the pretext that these concerns would not happen. In addition, those who rejected this fatwa based on the fact that plurality and diversity of culture, religion, ethnicity, and race are a necessity for the Indonesian state. Therefore, the issuance of the fatwa regarding the prohibition of celebrating Christmas together, for some people will only provide a dividing line among religions in Indonesia.

By looking at the historical aspects and the background of the issuance of the ban on joint Christmas celebrations through the fatwa, the authors think that this controversy occurred in the stage of the input process driven by a sociological background. This sociological aspect can be seen in the implementation of Eid al-Fitr, which at that time often coincided with the time of Christmas celebration (Khazin, 2007). While at the institutional process, the legal politics adopted by Indonesian Ulema Council prioritizes efforts to maintain the aqidah and beliefs of Muslims so that they are not mixed with other religions. Meanwhile, at the output processes, this fatwa was issued when the practice of celebrating Christmas together had been carried out and even included in the agendas of activities of community institutions, both non-state society (civil society) and state institutions. Therefore the issuance of the fatwa increasingly invited controversy in the community.

The authors consider that there is a contradiction (*gap*) between the sociological facts of the Indonesian people emerging at that time and the legal politics adopted by the Indonesian Ulema Council during the legal study process. Indonesian society is characterized by a tradition of pluralism due to differences in ethnicity and beliefs (Shihab, 1997). The legal politics of the Indonesian Ulema Council to maintain the purity of aqidah was more dominant than the sociological facts at that time, as a result the legal political configuration of the Council through its fatwa decree issued a prohibition or stipulation that it was forbidden for Muslims to celebrate Christmas together. The authors think that the issued fatwa does not provide any space for considering sociological aspects as one of the considerations for the fatwa, so that when this fatwa was issued there was controversy among the public.

The second is the fatwa on SMS with prizes. It is a fatwa Number 9 of 2008 (Tim Penyusun, 2015). The issue of the fatwa regarding SMS with prizes was motivated by the rise of SMS quizzes with prizes in various media, especially television. A row of SMS Quiz events, such as *Super Show*, *Prank*, *Crossword*, *guess*, *score*, Infotainment and Spectacular which was broadcast on a TV station was evidence of the proliferation of SMS quizzes with prizes. At sports events, SMS Quiz with Prizes was also not left behind. In addition, soap operas were often interspersed with SMS quizzes with prizes.

The Indonesian Ulema Council made a fatwa that the SMS with prizes is illegal because it contains elements of gambling. The fatwa is one of the fatwas made by the Ijtima Ulama's decision at the Darussalam Gontor Islamic Boarding School, on May 26, 2006 which was attended by more than a thousand ulemas. The SMS with prizes includes gambling because it contains elements of drawing fate in an easy way, waste, dissipation on unclear games, endangering other parties who suffered defeat, generating fantasy, addiction and laziness mentality where it is not different from gambling.

In the considerations of this fatwa, the Indonesian Ulema Council gave qualifications for the

prohibition of SMS with prizes. It does not absolutely prohibit SMS with prizes. There are certain notes explaining that if the SMS with prizes possesses elements of gambling (*maysir*), *tabdzir*, *gharar*, *dharar*, *ighra'* and or *israf* then the law of SMS with prizes becomes haram. The authors consider that it seems that the Indonesian Ulema Council is taking a cautious stance in determining the fatwa. If the practice of SMS with prizes does not have the elements as required in the consideration of the fatwa, then the practice of SMS with prizes becomes *mubah*. The authors assess that there are sociological aspects considered in the fatwa. This sociological aspect seems to color the institutional process. At the stage of extracting and discovering the fatwa law manifested through its institutionalization, the Indonesian Ulema Council gave enough attention to the consideration of sociological aspects of Indonesian society. If the practice of SMS with prizes continues to be carried out and legalized, there are some fears that it will shift the mentality of the Indonesian people to be lazy. In addition, the practice of SMS with prizes is not only detrimental in terms of material but also damages people's mentality, causing them to be lazy to work to earn halal sustenance.

Unfortunately at the output process stage, these sociological considerations were not well accepted by the community. According to the general public understanding, SMS with prizes is considered as a legal muamalah practice because of the word prize in fiqh is a halal transaction, whereas SMS transactions with prizes contain gambling practices because they carry *maisyir*, *gharar*, and *dharar* elements. Prize contracts are different from SMS contracts with prizes similar to lotteries (Zuhdi, 1990). It is this situation which becomes the background for this fatwa to be controversial in the community.

The third is the fatwa on *Golput*. *Golput* is a term applied to people who do not want to use their voting rights in elections (Khaeruman, 2004). It is a fatwa about using the right to vote in general elections. This fatwa is the decision made by ulemas of the 3rd Indonesian fatwa commission in 2009. At the ulema meeting, the assembly determined the law to exercise the right to vote in general elections: a. General election in the view of Islam is an effort to choose a leader or a representative who meets the ideal requirements for the realization of common goals in accordance with the aspirations of the people and the interests of the nation; b. Choosing a leader in Islam is an obligation to uphold *imamah* and *imarah* in life; c. *Imamah* and *imarah* in Islam require conditions in accordance with the provisions in order to realize the benefits in society; d. Choosing a leader who is faithful and pious, honest (*siddiq*), Trusted (*amanah*), active and aspirational (*tabligh*), has the ability (*fathanah*), and fight for the interests of Muslims is mandatory; e. Choosing a leader who does not meet the requirements as stated in point 4 (four) or does not vote at all even though there are candidates who meet the requirements is haram (Tim Penyusun, 2015)

This fatwa is quite controversial among the public. The reason is that the fatwa on the prohibition of abstentions has a very strong slice against political practice in Indonesia. This fatwa is a response to a social phenomenon that occurs in Indonesian society. At that time, the number of voters who abstained reached more than a third of the voters or 39.1% (Ulum, 2015). This condition was alarming and even dangerous if it continued when the general election was held, because it would make the elected leaders lack of legitimacy.

The authors think that the fatwa on the prohibition of abstentions to be controversial due to several factors. In the stage of input process, this fatwa was initiated due to social conditions that had lost hope towards a better political process. This social condition was formed because in reality there had been practices of corruption, collusion, and nepotism that have never ended, even wors. The practice had regenerated to the next political elite. This reality resulted in a number of people to choose abstentions. They assume that whether voting through electoral practice or not would produce the same results, namely it would not create a favorable and conducive political climate.

While in the stage of the institutional process, the authors consider Indonesian Ulema Council to try to propose arguments that are politically qualified. This can be seen in several arguments presented as the basis for the considerations in the fatwa on abstentions. In the institutional processes area, the arguments given by the Indonesian Ulema Council were also opposed by a number of community leaders such as Gus Dur, Din Syamsuddin, and Bahtiar Efendi, according to

whom the choice of abstaining is a part of the realization of human rights guaranteed by the Constitution (Zuhdi, 1990).

In stage of the output process, the issuance of the fatwa on the prohibition of abstentions was understood by the public as a state political tool to force or at least encourage its citizens to use their rights to vote in every general election. Some people think that the Indonesian Ulema Council only used the pretext of religion to succeed in the state's political agenda. Therefore, at the community level, this fatwa was stiffly resisted.

The authors consider, in fact, through this fatwa that the Indonesian Ulema Council can carry out its role as a social muslim engineering tool to promote the creation of a political awareness among the community or the ummah and to make the ummah not apathetic towards politics, as taught in Islam that leadership is obligatory (Pulungan, 2016). But unfortunately, the the people's resistance to this fatwa was very strong at the time when no improvement occurred in the political climate in Indonesia.

The *fourth* is a fatwa regarding yoga exercise. This fatwa is the result of the 3rd ijtimaa decision of the ulemas in 2009 (Tim Penyusun, 2015). The legal issue of Yoga came to the fore after news emerged about the fatwa of the National Council of Muzakarah Fatwa (AMMFK) which convened on 22-24 October 2008 in Kota Bharu Kelantan, Malaysia, which decided the prohibition of Yoga. On the fatwa, many questions and requests arose for Indonesian Ulema Council to review, discuss, and also issue a fatwa on Yoga. Due to pressure, the Indonesian Ulema Council leaders finally established a Yoga Research Team consisting of the Commission for the Study and the Fatwa Commission.

Yoga by the Indonesian people is generally understood only as a form of breathing exercise usually taught in gymnastics and fitness studios. However, after some researches and assessments made by the Team, the issue of Yoga is not as simple as it has been understood so far. From the observations, the ritual, namely yoga contains pure rituals and spiritual Hinduism. Yoga with meditation and mantras is a sport activity accompanied by meditation and reading certain mantras. Pure yoga is a sport, namely it is a sport activity that balances the body, mind, and soul that is not related to certain religious beliefs and rituals.

With a study like the one above, the Indonesian Ulema Council then stipulated that yoga, which is purely ritual and spiritual from another religion, is legal for Muslims to do. Yoga containing meditation and mantras or spiritual and ritual teachings of other religions is haram, as a preventive measure (*sadd al-dzari'ah*). Yoga which is purely a breathing exercise for the sake of health is mubah (permissible) (Tim Penyusun, 2015). It is at the input process stage that initiated a number of people to question the legal status of Yoga exercise to the Indonesian Ulema Council. If its is examined more deeply, the controversy over the fatwa banning yoga exercise issued by the Indonesian Ulema Council is not necessarily forbidden as a whole, because actually Islam also recommends sports, such as horse riding and archery (Sudrajat, 2008).

In the stage of the institutional process, the Indonesian Ulema Council provided certain classifications of which yoga exercises are allowed or prohibited by the law. If the practice of yoga is purely spiritual and contains elements of mantras or other religious beliefs, then it is haram. Meanwhile, if the practice of yoga exercise is only intended for sports and is not carried out as mantras or other religious rituals, then yoga is something that is allowed. With arguments and reasons of *sadz adzri'ah*, the Indonesian Ulema Council stipulates the legal status of yoga in Indonesia.

In the stage of the output process, this fatwa was not well accepted by the public, most people did not fully read the fatwa. The people concluded in general that the practice of yoga is prohibited by the Indonesian Ulema Council. The controversy among the community was getting stronger because the practice of yoga was already widespread in the community, even many business ventures were developing Yoga exercise in Indonesia.

Through this fatwa on the prohibition of yoga exercise, it appears that the legal politics of the fatwa related to *aqidah* is very closely guarded by the Indonesian Ulema Council. The Indonesian Ulema Council expressly did not provide another space for consideration if it is a problem of *aqidah*.

On the other hand, if the community problem is not in the area of *aqidah*, then it is still possible to have a room for dialogue in determining the direction of the policy on fatwas.

The *fifth* is the MUI fatwa on the prohibition of smoking. This fatwa is the decision of the ulema made by the 3rd Indonesian fatwa commission in 2009 in West Sumatra. The controversial fatwa is the stipulation that smoking is haram for children, pregnant women, and if it is carried out in public places (Tim Penyusun, 2015). The pros and cons of the law on smoking came out to the public after several community groups demanded clarity on the law on smoking. People feel confused because there are those who forbid, there are those who ask for a limited ban, and there are those who ask to remain in the status of *makruh*. According to health experts, cigarettes contain nicotine and other substances that are harmful to health. In addition to smokers, the act of smoking can harm other people, especially those around smokers. The law of smoking is not stated clearly and unequivocally by The Qur'an and the Hadiths. Therefore, jurists seek the solution to the issue through *ijtihad*. As it is the case with legal issues that are explored through *ijtihad*, the law on smoking is disputed by the *fukahas*.

The authors consider the controversy over the fatwa of the law on smoking to occur at every stage of the fatwa performance process. In the stage of the input process, there have been mixed opinions about the legal status of cigarettes. There are opinions that allow, limit, or even completely prohibit the law on smoking (Shihab, 1997). These various opinions in fact actually make people become restless about the legal status of cigarettes. At the end, finally a number of people asked the council for legal status.

In the stage of the institutional process, controversy also happened. Even the considerations included in the fatwa showed that at the level of legal study and discovery there were differences in opinions among the *mujtahids*. The result of *ijma* of the fatwa commission of the Indonesian Ulema Council throughout Indonesia showed that there were differences in opinions regarding the law on smoking, namely between *makruh* and *haram*. The Indonesian Ulema Council gave an explicit statement regarding the limits on which smoking is prohibited, namely when smoking is carried out by children, in public places, and by pregnant women. This debates and differences in opinions in the legal study on smoking also resulted in the controversy over the fatwa on cigarette arose in the community.

While in the area of the output process, the controversy on this fatwa also took place. After the fatwa on the legal status of cigarettes was issued, some people rejected it. There were some reasons for the refusal. *First*, most of our society are smokers, even some are addicted. *Second*, there are other views expressed by the fatwa made by certain mass organizations. *Third*, the sociological reality shows that cigarettes and cigarette companies have a very close relationship with the community's economy, both at the level of tobacco and clove farmers, workers in cigarette companies who provide a lot of people with jobs, and tax contributions given by cigarette companies to the country. From these reasons, the community's pros and cons regarding the fatwa on smoking occurred in the community.

Sixth is the fatwa on the Qibla. It is the fatwa Number 9 of 2008 (Tim Penyusun, 2015). The fatwa regarding the Qibla emerged with the research results that the majority of mosques and prayer rooms in Indonesia did not point directly to the Kaaba. This then gave rise to the fatwa regarding the Qibla that for Indonesia, which is located at east of the Kaaba, the Qibla is facing to the West. In determining the fatwa, the Indonesian Ulema Council based its decision on the verses of The Qur'an, hadiths, and the ulemas' opinions on the direction of the Qibla.

In the substance of the Fatwa Number 03 of 2010 concerning Qibla, it is stated that the Fatwa Commission after considering a) that recently there has been information that circulated in the community about the inaccuracy of the Qibla direction of some mosques/musholla in Indonesia, based on the findings of research and measurements using satellite measuring method; b) that on this information, the public becomes restless and questions the law of the Qibla direction; c) that therefore, the Fatwa Commission of the Indonesian Ulema Council deems it necessary to determine a fatwa on the direction of Qibla as a guide for the community.

In stage of the input process, this controversy is due to the difference between scientific facts and the practice of praying in Indonesian Muslim society so far. This fatwa was initiated by the scientific facts that there is a discrepancy in the qibla direction of the Indonesian people. Many pray rooms and mosques are deviated from the direction of the Kaaba that becomes the direction for Muslims. Even though the Kaaba is the qibla for Muslims when praying (Mughniyah, 2015). On the other hand, in the practice of praying for the Indonesian Muslim community so far the people believe that their direction to the Qibla is correct. They also believe that mosques and prayer rooms face to the Qibla correctly.

In the institutional processes, in the fatwa, a controversy occurred. The Indonesian Ulema Council firmly stated that the Qibla for people who area praying should be able to see the building of the Kaaba (*ainul kaaba*). Dealing with the Qibla, for those who are praying but cannot see the Kaaba, it is the direction of the Kaaba (*Jihat al-ka'bah*) which is important. Unfortunately, the decision of the fatwa is only based on the geographical perspective of the Indonesian country which is located in the East, so that the direction of the Indonesian people's qibla is the West as shown by the opinion of the Indonesian people as stated made by Ali Mustaf Ya'qub (2011), without any detailed consideration about the accuracy of the location of the Kaaba.

In the stage of the output process, this fatwa emerged in the community because it is considered that it is not in accordance with scientific facts based on the development of science and technology believed by some Muslims today. In order to reduce the public controversy regarding the direction of the Qibla, in the end, the Indonesian Ulema Council issued a fatwa regarding the Qibla, namely Fatwa No. 5 of 2010 concerning the Qibla direction. In this fatwa b it is stated that the Qibla direction for Indonesia is to face to the west and it rather is oblique to north with variations according to location as mentioned in various astronomy literatures (Ministry of Religion RI, 2000).

The Seventh is the fatwa on infotainment produced in the 8th MUI National Conference in 2010. The Indonesian Ulema Council issued a fatwa that infotainment is haram for both publishers and viewers. According to the general provision of the fatwa regarding infotainment, telling disgrace, gossiping, and other personal matters to other people and or the public are haram (Tim Penyusun, 2015). In the formulation of the fatwa, it is also stated that efforts to make news that pry and expose disgrace, bad gossip are also haram. Likewise, taking advantage of news containing disgrace and gossip is declared unlawful by the Indonesian Ulema Council. However, the Indonesian Ulema Council allowed the infotainment with the considerations that are justified by syar'i for enforcing the law, eradicating munkar to broadcast as well as to watch, read and or listen to news containing disgrace.

The controversy over the fatwa regarding Infotainment is due to the large number of shows or programs on television that present infotainment programs. This infotainment program contains a lot of gossips and spit out the disgrace and ugliness of artists in Indonesia, which are often consumed by the public at large. In the stages of the input process and the institutional processes, in this fatwa, there was no debate leading to controversy. *Ghibah* or backbiting is strictly prohibited under Islamic law (QS. Al-Hujarat; 12). But in the stage of the output process, this fatwa got opposition, especially from the television industry. They felt disadvantaged by the existence of this fatwa, because it can reduce the number of viewers of infotainment programs.

The eighth is the fatwa on Health Social Security Administering Body (BPJS). This fatwa stipulates that the implementation of the Health Social Security Administering Body is not in accordance with Islamic law. The fatwa was issued in the Ijtima's Ulema forum for the Indonesian Fatwa Commission V, held at the at-Tauhidiah Islamic Boarding School, Cikura, Tegal, Central Java on 7-10 June 2015. In its decision, the Indonesian Ulema Council determined that the implementation of Health Social Security Administering Body, especially those related to contracts between the parties, was not in line with the sharia principles, because it contains elements of *gharar*, *maisir* and *riba*. The Indonsian Ulema Council also encourages the government to establish, administer, and provide social security services based on the sharia principles and provide excellent services (Tim Penyusun, 2015).

This fatwa became one of the controversial fatwas in the public. This fatwa is a response to the practice of the Health Social Security Administering Body program implemented by the government. According to The Indonesian Ulema Council the practice of the Health Social Security Administering Body that been carried out so far contains an element of ambiguity, especially in the aspect of the contract (contract). There is a lack of clarity in the contract between the government as the manager of Health Social Security Administering Body funds and the people as payers of the Social Security Administering Body. In fact, the community as the payers of Health Social Security Administering Body is subject to a fine of 2% per month if there is a delay in payment with a maturity period of three months (for wage recipients) and 6 months (for non-wage recipients) which shall be paid together with the total outstanding contributions. As for Health Social Security Administering Body fund managers, there are no sanctions if there are problems in managing the fund. It is this unclear relationship that is not regulated in the contract or agreement between the people and the government, which results in the blurring of the reciprocal relationship between the government and the people.

Based on this reality, a number of people have asked the Indonesian Ulema Council for clarity on the legal status of the fund management. In its decision, the Indonesian Ulema Council determined that the implementation of social security by Health Social Security Administering Body, especially those related to contracts between the parties, was not in accordance with sharia principles, because it contains elements of *gharar*, *maisir* and *riba*. Through its fatwa, the Indonesian Ulema Council encourages the government to improve the management of the Health Social Security Administering Body funds to comply with sharia principles. The decision of this fatwa has indirectly created legal shocks in the social field, because in fact the Health Social Security Administering Body program has been running for quite a long time and is almost followed by the majority of the community.

In the stage of the input process, this fatwa was initiated by a group of people who felt that there was a lack of clarity in the management of the funds. In this process, according to the authors, the initiation occurred due to many cases in the field which actually harmed the people as the payers. When there are losses experienced by the community, the government as the manager of the funds does not provide compensation for the losses. The authors regard this to be the cause of controversy among the public.

In the next stage, the institutional process, no controversy occurred. This can be seen from the legal considerations made by Indonesian Ulema Council. According to the authors, if in the matter relating to the elements of *riba*, *gharar*, and *maisir*, the Indonesian Ulema Council shall be firm in giving the law. This is because the textual argument also provides firmness regarding the prohibition of any transactions containing *riba*. Assurance by some ulemas is forbidden because it contains *riba* and *maisir* (Gibtiyah, 2016).

While in the stage of the output processes, this fatwa caused massive controversy among the public. The authors consider that there is an unfavorable acceptance process of this fatwa. The global community concludes that with the issuance of this fatwa, the practice of managing the insurance given by some ulemas is forbidden because it contains *riba* and the *maisir* funds is illegal and shall not be followed. In fact, in the fatwa, the Council does not forbid the practice of insurance by some ulemas. It is forbidden because it contains *riba* and *maisir* which is already implemented in the community. On the other hand, the authors view that this fatwa also has quite strong political friction because indirectly this fatwa is counterproductive to the state policy in the implementation of the social security system mandated by the law (Law No. 24.2011, BPJS). The Council which seems to take a position *vis a vis* with this state made this fatwa even more controversial among the public.

The Ninth is the religious opinion and attitude of the the Indonesian Ulema Council regarding Basuki Tjahaya Purnama's statement. This fatwa concerns the comments of the Governor of DKI Jakarta Basuki Tjahaya Purnama (Ahok) who was suspected of blaspheming Islam for interpreting the surrah Al Maidah verse 51 (Rahmadi, 2017). In his remarks at the Kepulauan Seribu, Ahok said "So don't trust people, it's possible that in your heart you can't choose me, right? They were lied to using

Surah al Maidah 51, all kinds of things. That's the right of parents, so you feel like you can't choose because I'm afraid of going to hell, I'm being fooled like that. According to the General Chair of the Indonesian Ulema Council, Ma'ruf Amin, the statement disturbed the public, so the Council studied and showed their position. The Qur'an surrah al-Maidah verse 51, he continued, explicitly prohibits making Jews and Christians as leaders. This verse is one of the arguments for the prohibition of making non-Muslims as leaders. The Ulemas are also obliged to convey the contents of surrah al-Maidah verse 51 to Muslims that choosing Muslim leaders is obligatory. Every Muslim is obliged to believe in the truth of the contents of Surrah al-Maidah verse 51 as a guide in choosing a leader.

Ahok's statement was considered by a number of circles to have insulted religion, especially Islam. A number of Muslim communities are uneasy about what Ahok said. This public unrest led to the initiation of asking the Indonesian Ulema Council for an opinion on what Ahok had said.

In the stage of the input process, what is actually being asked for a fatwa to the Indonesian Ulema Council is a controversial case among the public. Especially at that time, the statement that was considered blasphemy was the one spoken by a non-Muslim governor who expected to be renominated, at the same time there was strengthening of identity politics as a political preference among the people. Practically, sociologically and politically, this case has attracted a lot of public attention.

In the stage of the institutional process, the authors consider that the Indonesian Ulema Council should play the role that is greatly intertwined with politics and law. Politically, the Indonesian Ulema Council has proven that in its considerations it invites Muslims to monitor blasphemy activities and report them to the authorities. This consideration, according to the author, proves that the Indonesian Ulema Council has provoked the Indonesian Muslim community to monitor Ahok. Legally, this fatwa also encourages efforts to make some law enforcement for what has been done by Ahok. The considerations are used as the basis by the Indonesian Ulema Council also indirectly invites controversy among the public. The authors think that the considerations used in the fatwa do not give attention to aspects of political and sociological risks in the future.

Next is in the stage of the output processes. This fatwa also became a prolonged controversy after a number of people established a movement called the GMPF (National Movement to Guard the MUI Fatwa). Once formed, this movement en masse held a long march and made a prosecution of the Ahok case in Jakarta. This action was even carried out more than once, thus creating national political instability. Even through this fatwa, there were several parties who make this fatwa a political tool to bring down Ahok from the position of Governor. The presence of the fatwa on Ahok's statement indirectly takes the role of pressure power against the state for the blasphemy case by Ahok, who incidentally is a non-Muslim.

The tenth is the fatwa on the use of non-Muslim religious attributes. The Fatwa was issued on December 14, 2016 regarding the law uses non-Muslim attributes. The fatwa states that using or asking/instructing to use non muslim religious attributes is haram. The fatwa does not mention Christmas and Christians explicitly. However, it is clear that the fatwa refers to Muslims who use attributes perceived as "Christian attributes", such as Santa Claus clothes and accessories.

This fatwa is a response to the social phenomenon that emerges in Indonesian society. Some companies, such as malls, shops, and others require their employees (even though Muslims) to use non-Muslim religious attributes when approaching and or celebrating holidays of other religions. This phenomenon is a statement of the attitude of a number of companies to show tolerance, respect for other religions, and participate in enlivening the atmosphere of celebrations for certain religious holidays.

A number of people then asked the Indonesian Ulema Council for a statement of their position and legal status on this phenomenon. By using the fatwa instrument, the Indonesian Ulema Council prohibits Muslims to wear non-Muslim religious attributes. The authors think that in the stage of the input process, this fatwa is a sociological response to the fact of the plurality in Indonesia. Due to the cultural, and social diversity especially religion, the behavior of the Indonesian people seems to be trying to display expressions of tolerance.

In the stage the institutional process, the considerations in the *istinbath* and *ijtihad* made by the Indonesian Ulema Council only provide considerations of *aqidah*, and do not provide spaces for sociological considerations. The authors considered that the Indonesian Ulema Council should be able to classify the use of these non-Muslim religious attributes. The Indonesian Ulema Council does not distinguish between the use of attributes under in the name of tolerance and attribute users who deliberately follow certain religious teachings. So in this area, the fatwa invites various opinions to question it.

While in the stage of the output processes, this fatwa became controversial because it was considered by a number of Muslim communities to have negated efforts to tolerate non-Muslim communities. In addition, this fatwa is also considered to have torn apart the social structure of Indonesia's pluralistic and pluralistic society. So many people oppose this fatwa based on the reasons for the tolerance and diversity of society in Indonesia.

Based on the mapping of the reading of controversial fatwas as elaborated above, the authors conclude that the cause of the fatwa controversy among the public is due to many variants. The controversy can be mapped out in the process of its making and the stages. There are several fatwas which did invite controversy both at the stages of the input, institutional, and output processes. Some fatwas have invited controversy at this input process stage, even before the issuance of the fatwa, for example in the case of a religious statement on Basuki Tjahaya Purnama's statement.

In addition, there are also fatwas that invite controversy because in the legal *istinbath* process there are various opinions, so the fatwas make some controversy and many watch them when they are issued. These fatwas can be exemplified such as the fatwa on cigarettes. And on the other hand, sometimes there are several fatwas that trigger controversy in the stage of the output process. This is due to the people's low acceptance and understanding the fatwas, such as the fatwa on Health Social Security Administering Body.

5. Conclusion

From the results of the analysis above, it can be concluded that various factors have caused fatwas to be controversial in the community. By using an analysis of the legal discovery and study process conducted by the Indonesian Ulema Council through the stage of the input process, the legal discovery process or legal *istinbath* process based on the work of institutional process and the process of socialization or output process in the community, a controversial fatwa can be mapped. *First*, in the input process, there are several problems or cases that are controversial in the community before the fatwas are issued. For example, the fatwa regarding Basuki Tjahaya Purnama's statement, when the fatwa was issued it still invited controversy. *Second*, the process of legal discovery performance in the institution itself, which has various opinions from scholars causing controversy also becomes something that is unavoidable. *Third*, in the output process of some fatwas, they result controversy because the process of socialization and the public acceptance are low. For example, the fatwa on Health Social Security Administering Body, which does not forbid Health Social Security Administering Body, but the general public perceives that the Indonesian Ulema Council prohibits it.

6. Acknowledgements

The authors declare that they have no financial or personal relationships that may have inappropriately influenced them in writing this research article.

7. Funding Information

This research received funds from the UIN Profesor Kiai Haji Saifuddin Zuhri Purwokerto.

References

- Ali, A. (2011) *Menguak Tabir Hukum*. Bogor: Ghalia Indonesia.
- Amin, M. (2008) 'Fatwa dalam Sistem Hukum Islam', Jakarta: *Elsas* [Preprint].
- Arief, A.S. (2003) *Pembaruan Pemikiran Hukum Islam antara Fakta dan Realita: Kajian Pemikiran Hukum Syaikh Mahmud Syaltut*. Yogyakarta: LESFI.
- Auda, J. (2015) *Membumikan hukum islam melalui maqasid syariah*. Edited by A. Baiquni. Bandung: Mizan Pustaka.
- Gibtiyah (2016) *Fikih Kontemporer*. Jakarta: Kencana Prenada Media Group.
- Khaeruman, B. (2004) 'Islam dan Demokrasi Mengungkap Fenomena Golput', Jakarta, PT Nimas Multima [Preprint].
- Khazin, M. (2007) *150 Tahun Kalender Masehi Hijriyah*. Jakarta: Ditjen Bimas Islam.
- Kisihandi, F. (2015) *MUI Tetapkan Fatwa BPJS Syariah, Republika*. Available at: <https://www.republika.co.id/berita/nzsok72/mui-tetapkan-fatwa-bpjs-syariah>.
- Mahfudz, A. and Aibak, K. (2010) *Pembaruan hukum Islam: telaah manhaj ijthad Shāh Wali Allāh Al-Dihlawi*. Teras.
- Matnuh, H. (2017) 'Law as a Tool of Social Engineering', in. Atlantis Press, pp. 118–120. doi:<https://doi.org/10.2991/csse-17.2018.28>.
- Mudzhar, M.A. (1993) *Fatwa-fatwa Majelis Ulama Indonesia: Sebuah Studi tentang Pemikiran Hukum Islam di Indonesia 1975-1988*. Jakarta: INIS.
- Mughniyah, M.J. (2015) *Fiqh Lima Mazhab: Ja'fari, Hanafi, Maliki, Syafi'i, Hambali*. Shaf.
- MUI (1981) *Fatwa Majelis Ulama Indonesia Tahun 1981 tentang Perayaan Natal Bersama*. Jakarta.
- MUI (2001) *Pedoman Penyelenggaraan Organisasi Majelis Ulama Indonesia*. Jakarta: Majelis Ulama Indonesia Pusat.
- MUI (2008) 'Fatwa Majelis Ulama Indonesia Nomor 9 Tahun 2008 tentang SMS Berhadiah'.
- Ni'am, M.A. (2016) 'Metodologi Penetapan Fatwa Majelis Ulama Indonesia', *Penggunaan Prinsip Pencegahan dalam Fatwa* [Preprint].
- Pulungan, J.S. (2016) 'Fiqh Siyasah: Ajaran, Sejarah, dan Pemikiran'.
- Rahmadi, D. (2017) 'Kasus penistaan agama oleh Ahok hingga dibui 2 tahun', *Merdeka.Com*. Available at: <https://www.merdeka.com/peristiwa/kasus-penistaan-agama-oleh-ahok-hingga-dibui-2-tahun.html>.
- Ridwan, R. (2017) 'Hukum Dan Perubahan Sosial: (Perdebatan Dua Kutub Antara Hukum Sebagai Social Control dan Hukum Sebagai Social Engineering)', *Jurnal Jurisprudence*, 6(1), pp. 28–39. doi:[10.23917/jurisprudence.v6i1.2993](https://doi.org/10.23917/jurisprudence.v6i1.2993).
- Shihab, A. (1997) *Islam inklusif: Menuju sikap terbuka dalam beragama*. Diterbitkan atas kerja sama AN Teve dan Penerbit Mizan.
- Soekanto, S. (1975) *Beberapa Permasalahan dalam Kerangka Pembangunan di Indonesia*. Jakarta: Yayasan Penerbit UI.
- Sudrajat, A. (2008) 'Fikih Aktual Kajian Atas Persoalan-Persoalan Hukum Islam Kontemporer'. Yogyakarta: STAIN Ponorogo Press.
- Suryadi, S. (2010) 'Fungsi Hukum sebagai Alat dan Cermin Perubahan Masyarakat', *Journal of Rural and Development*, 1(2).
- Syam, M.I. (2001) *Pedoman Penyelenggaraan Organisasi Majelis Ulama Indonesia*. Jakarta: Majelis Ulama Indonesia Pusat.
- Tim Penyusun (2015) *Tim Penyusun. Himpunan Fatwa Majelis Ulama Indonesia Sejak Tahun 1975*. Jakarta: Emir.
- Ulum, B. (2015) *Ulama dan politik: nalar politik kebangsaan Majelis Ulama Indonesia (MUI)*. Pustaka Pelajar.
- Yulianti, R.T. (2015) 'Menuju Fiqh Keluarga Progresif', *Al-Mawarid Journal of Islamic Law*, 15(2), pp. 217–226.
- Zuhdi, M. (1990) *Masail Fiqhiyah*. Jakarta: Haji Masagung.