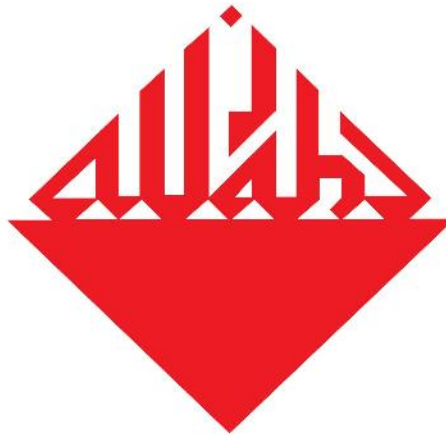


# STUDIA ISLAMIKA

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Volume 30, Number 3, 2023



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IN INDONESIA'S COVID-19 FATWAS:  
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AGAINST FATWA OF THE MECCAN ULAMA

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*Syafiq Hasyim*

## Prioritizing Life over Religion in Indonesia's Covid-19 Fatwas: The Fatwas of NU, Muhammadiyah, and MUI

**Abstract:** *The outbreak of Covid-19 in early 2020 introduced a new angle on the use of Islamic legal argument in Indonesian fatwas. The argument of prioritizing life (ḥifẓ al-ḥayā), rarely considered as a legal argument of fatwa-making, arose during the outbreak of Covid-19. This article seeks to examine the espousal of prioritizing life in Indonesian fatwas in relation to Covid-19. It uncovers the theological, social, and political reasons behind the decision to prioritize the ḥifẓ al-ḥayā. It examines fatwas on Covid-19 issued by three mainstream Islamic organizations NU, Muhammadiyah and MUI that indicate their reluctance to adopt the argument of prioritizing life in their fatwas. This article uses an interdisciplinary approach combining the interpretation of Islamic legal theory, Islamic jurisprudence, and social sciences analysis. Finally, this article demonstrates how pro-life fatwas, by adapting to the pandemic era by prioritizing life as legal argument, benefits religion in general.*

**Keywords:** Indonesian Islam, Covid-19, Fatwa, Nahdlatul Ulama, Muhammadiyah, MUI.



**Abstrak:** *Mewabahnya Covid-19 di awal tahun 2020 memperkenalkan sudut pandang baru dalam penggunaan argumentasi hukum Islam dalam fatwa-fatwa Indonesia. Argumen “mendahulukan kehidupan” (hifz al-hayā), yang jarang digunakan sebagai dalil pembuatan fatwa, muncul pada masa merebaknya Covid-19. Artikel ini berupaya mengkaji pengutamakan hidup dalam fatwa-fatwa Indonesia terkait Covid-19. Tulisan ini mengungkap alasan teologis, sosial, dan politik di balik keputusan menggunakan argumen hifz al-hayā. Artikel ini mengkaji fatwa-fatwa Covid-19 yang dikeluarkan oleh tiga organisasi Islam arus utama NU, Muhammadiyah, dan MUI yang menunjukkan keengganan mereka mengadopsi dalil mengutamakan kehidupan dalam fatwa-fatwa mereka. Artikel ini menggunakan pendekatan interdisipliner yang menggabungkan interpretasi teori hukum Islam, yurisprudensi Islam, dan analisis ilmu-ilmu sosial. Artikel ini juga menunjukkan bagaimana fatwa-fatwa pro-kehidupan, dengan cara menyesuaikan diri dengan era pandemi dengan mengutamakan kehidupan sebagai argumentasi hukum, dan bermanfaat bagi agama secara umum.*

**Kata kunci:** Islam Indonesia, Covid-19, Fatwa, Nahdlatul Ulama, Muhammadiyah, MUI.

**ملخص:** أدى تفشي فيروس كوفيد-19 في أوائل عام 2020 إلى تقديم منظور جديد لاستخدام الحجج الشرعية الإسلامية في الفتاوى الإندونيسية. إن قاعدة «وضع الحياة أولاً» (حفظ الحياة)، والتي نادراً ما تستخدم للاستدلال في الإفتاء، ظهرت أثناء تفشي فيروس كورونا. تحاول هذه المقالة دراسة قاعدة أولوية الحياة في الفتاوى الإندونيسية المتعلقة بكوفيد-19. ويكشف هذا المقال الأسباب العقائدية والاجتماعية والسياسية وراء قرار استخدام قاعدة حفظ الحياة للاستدلال. تتناول هذه المقالة فتاوى كوفيد-19 الصادرة عن المنظمات الإسلامية الرئيسية الثلاث نخبة العلماء، والمحمدية، ومجلس العلماء الإندونيسي، والتي تظهر إجماعهم عن استخدام القاعدة في فتاواهم. تستخدم هذه المقالة منهجاً متعدد التخصصات يجمع بين تفسير النظرية القانونية الإسلامية، والفقهاء الإسلامي، وتحليل العلوم الاجتماعية. وأخيراً، توضح هذه المقالة كيف أن الفتاوى المناصرة للحياة، من خلال التكييف مع عصر الوباء من خلال استخدام قاعدة الأولوية للحياة كحجة شرعية، مفيدة للدين بشكل عام.

**الكلمات المفتاحية:** الإسلام الإندونيسي، كوفيد-19، الفتوى، نخبة العلماء، المحمدية، مجلس العلماء الإندونيسي.

The presence of fatwa institutions in Indonesia, though not officially embedded in the state body as in other Muslim countries, is a phenomenon of both pre- and post-colonial (Kaptein 2005; Mueleman 2005) and Indonesia (Adams 2004; Syafiq Hasyim 2020; Ichwan 2005; Mudzhar 1993). In the pre-colonial era, several fatwas of prominent Muslim scholars, such as Hasyim Asy'ari (the founder of Nahdlatul Ulama (NU) Ahmad Dahlan (the founder of Muhammadiyah), Haji Rasul (Muhammadiyah of West Sumatera ulama, and Sayyid Uthman (mufti of Batavia), were used by Indonesian Muslims (Azra n.d.; Noer 1973). In the post-colonial era, fatwa remains highly regarded by Indonesian Muslims, although it is not recognized as a legal source in the structure of the Indonesian legal system (Adams 2012; Syafiq Hasyim 2020). This is because most Indonesian Muslims still trust in the opinion of their ulama. Fatwa is not only valued by individual Muslims, but it is often cited by the state apparatus of Indonesia in legislation and policy-making, and other governmental areas (Al-Marakeby 2022, p. 202). The tendency to adopt fatwa in Indonesian law and legal policy has increased since the establishment of Majelis Ulama Indonesia (MUI, Council of Indonesian Ulama) in 1975 (Adams 2004; Syafiq Hasyim 2016; Ichwan 2005; Mudzhar 1993). MUI plays an important role. The establishment of this ulama institution was a result of the political negotiation between the ruling regime and Indonesian ulama and was intended to be a clearing house of the divergent opinions of Indonesian Muslim organizations.

Prior to the establishment of MUI, Indonesia already had NU, Muhammadiyah, and Persatuan Islam (Persis) that already issued fatwa. But the establishment of MUI was seen as necessary by Suharto because those Islamic organizations had tended to become independent of state intervention. The establishment of MUI, which was fully supported by the Soeharto government, demonstrated that the ruling regime desired the legitimacy of fatwa from a fatwa organization which was very familiar with the affairs of government (Adams 2012; S. Hasyim 2023; Ichwan 2005; Mudzhar 1993). MUI was treated Soeharto as the partner of Indonesian government. Notably, the principal task of MUI is the issue of fatwa and Islamic recommendations (*tauṣiyya*) as requested by the state as well as the ordinary people (Adams 2004; S. Hasyim 2023). Although MUI is highly regarded by the state, it does not reduce the value of other Muslim organizations to the Muslim communities of

Indonesia. The followers of NU (*nahdliyyin*), for instance, continue to expect fatwa to be issued by their own organization as do the followers of Muhammadiyah, Persis and others. It is routine for these fatwa-institutions to discuss and issue fatwa on Islamic-related issues in response to fatwa seekers and their members. Nahdlatul Ulama's fatwa forum is called Bahsul Masa'il, Muhammadiyah's fatwa forum is called Majelis Tarjih, and MUI's fatwa forum is called Fatwa Komisi (Syafiq Hasyim 2020; Majelis Tarjih dan Tajdid Pimpinan Pusat Muhammadiyah 2018; Zahro 2004). When the Covid-19 became a pandemic in Indonesia the followers of the mainstream organizations waited for the fatwas of their ulama.

This article seeks to study the prioritization of life over religion in the fatwa-making of Indonesian mainstream Muslim organizations Covid-19 and its impact on the practice of Islam among Indonesian Muslims. The mainstream Muslim organizations are defined as NU (established in 1926 and the largest Muslim organization), Muhammadiyah (established in 1912, the second largest Muslim organization) and MUI (established in 1975, the most authoritative fatwa body in Indonesia). The article aims, in particular, to examine the use of *darūra*, within the *maṣlaḥa* theory, as the fundamental argument for their fatwas on Covid-19. Included in this examination are some fatwas that supported state policy and regulation on partial lockdown and social distancing. This examination is significant because the making of state policy and regulation on Covid-19 has also become the social and political pretexts of the fatwas on this deadly Corona virus.

This article argues that a fatwa can help the mitigation of Covid-19 when the content of fatwa supports health measures and protocols needed to fight against the disease. It strongly can happen because fatwa remains influential among Indonesian Muslims. Most Indonesian Muslims believe in fatwa as the legitimate theological source of their daily social and political lives (BPJH Kementerian Agama RI 2021; PDSI Kominfo RI 2021). In fact, on many issues, state and society seek guidance from fatwa, especially for significant events like Covid-19, vaccines, deviant groups of Islam, social and political issues like general elections, moral issues and many others. As such, the use of the *darūra* (emergency) argument, to support the prioritization of life as the theological basis of fatwa-making, can create a positive contribution to the mitigation of the Covid-19.

The spirit of prioritization of life in fatwa-making can be seen through the use of *darūra* as the legal argument. Conceptually, the theory of *darūra* is part of *maṣlaḥa* (public goodness), *maqāṣid al-sharī'ia* (the goals of sharia) or *al-darūriyyāt al-khams* (the five necessities) (Opwis 2005; al-Shatibi 1914). In the concept of *darūra* life should be protected by whatever means, including by doing prohibited things. In the context of Covid-19, in order to protect the lives of human beings, someone is permitted to change or reinterpret the order of worship. The *darūra* in general has long been discussed among classical Muslim scholars who developed discourse on *maṣlaḥa* or *maqāṣid al-sharī'a* such as al-Juwaynī (d. 1085), al-Ghazālī (d. 1111), al-Shāṭibī (d. 1388) and others. But, academically, the use of the *darūra* argument for prioritizing life (*ḥifẓ al-naḥs*) over religion (*ḥifẓ al-dīn*) is quite remarkable in the fatwa-making of Indonesian fatwa institutions. Globally, *maṣlaḥa* as the mother of *darūra* is commonly used to respond to issues of human rights. Modern Muslim scholars of this subject, such as Aḥmad al-Raysūni, Muḥammad al-Zuḥaylī and Muḥammad Uṯmān Shabir, Abdullahi al-Naim and many others, have used *maṣlaḥa* as the first principle of human rights in Islam (An-Na'im 1996; al-Raysuni, al-Zuhayli, and Shabir 2002). Using this concept, human rights, which are a feature of the Western societies can be seen in the same light as the concept of respecting human life, which is core to the goals of sharia (*maqāṣid al-sharī'a*). However, most Muslim scholars do not touch on sensitive issues. For example, when matters of religion and life contradict each other, it is more common to avoid the question of which should assume priority.

The *maṣlaḥa* theory contains five goals of sharia: Protection of religion (*ḥifẓ al-dīn*), protection of life (*ḥifẓ al-naḥs*), protection of reason (*ḥifẓ al-'aql*), protection of property (*ḥifẓ al-māl*), protection of dignity (*ḥifẓ al-'ird*). These five are also named *al-darūriyyāt al-khams* (the five of necessities in Islam). Although there is no a consensus among ulama, at the level of implementation, the protection of religion always takes precedence over the protection of life (al-Zuhayli 2006, 125). This article therefore employs the theoretical assumption of Islamic legal theory of prioritizing life over religion in line with contemporary discourses of *maṣlaḥa*, as it applies to the emergence of deadly pandemics like Covid-19 (Islamqa 2021). This perspective is not popular among the Muslim scholars of *maqāṣid* or *maṣlaḥa* theory –as

the mother discourse of *darūra* argument –or the modern developers of this theory. But the case of Covid-19 presents a lot of evidence concerning the effectiveness of employing this legal argument.

### **State Policy on Covid-19 as Pretext of Fatwa**

State policy and regulation on Covid-19, issued by the government of Indonesia, are the main reason Indonesian fatwa-makers prioritized life over religion in their fatwas on Covid-19. Social, political, and historical circumstances concerning the dangers of Covid-19 became the strong drivers for Indonesian fatwa-makers issuing fatwa that valued life more than religion. The deadly threat of Covid-19 on one hand and the state's response to it on the other hands, are the two strong drivers of the fatwas of NU, Muhammadiyah and MUI. Like many other Muslim countries in the world, Indonesia struggled to mitigate Covid-19 using all the possible tools, including Islam as the religion of most of the population. Although the response of the Indonesian government seemed to be very late in comparison to other Southeast Asian countries, such as Singapore, Malaysia, Brunei and Thailand, President, Joko Widodo (Jokowi) finally announced on 02 March 2020 that Indonesia had the first case of Covid-19. The Indonesian people were shocked by this announcement. Jokowi and his ministers had been very confident in telling their people that Indonesia would evade Covid-19. Jokowi and his government officials, repeatedly stated that the virus would not enter Indonesia, and that Indonesia would remain immune from the spread of Covid-19 (RMOL.id 2020). Matters were made even worse when the Minister of Health (2019-2020), Terawan Agus Putranto, regularly offered false advice, such as Covid-19 was just another kind of flu, or even milder than flu, or that masks were only to be used by those already infected by Covid-19 (CNBC Indonesia 2020). In short, the denial and ignorance of Jokowi's government in anticipating the outbreak of Covid-19, damaged Indonesia's preparation for and management of with this dangerous virus. As a result, many Indonesian people mistrusted their government's capacity to win the battle against the Covid-19.

The first policy of Jokowi's government in dealing with the acceleration of Covid-19 was to assign BNPB (*Badan Nasional Penanggulangan Bencana*, National Agency of Disaster Management) to lead the management of the pandemic. BNPB became the lead agency,

reporting to President Jokowi, to plan, coordinate, and decide upon a program of prevention of Covid-19. Seizing the initiative, the BNPB announced a “state national emergency” from mid-March to May 2020. This decision consolidated the authority of BNPB to execute a program of intervention under the state law of disaster emergency (Joko Widodo 2020; Oktavira 2018). Jokowi was strongly encouraged to apply a policy of total lockdown, like that seen in Wuhan (China), Italy and other countries in an effort to stem the deadly virus. For example, Jakarta governor, Anies Baswedan, appealed to the central government to lockdown the city of Jakarta because the capital had become the epicenter of Covid-19 (Bisnis.com 2021; CNN Indonesia 2021). He argued that, by totally closing the city of Jakarta, the spread of Covid-19 could be localized and managed within the city. But the central government of Indonesia rejected the idea because Jakarta was the economic center of Indonesia. The central government worried that the total lockdown of Jakarta could significantly damage the entire national economy.

Subsequently, national debates took place between those who prioritized the economy and those who prioritized human life. The first group argued that the treatment of Covid-19 should be managed in ways that did not have a negative impact on the economy (Kompas Cyber Media 2020a). They argued that the economy is an indisputable foundation of human life, so if the total lockdown were applied, the national economy would crash, and the Indonesian people would suffer significant hardship. In view of the rapid spread of the virus, on 15 March 2020, President Jokowi asked the Indonesian people to implement social distancing in order to prevent infection. But social distancing did not stop the wave of infection. In fact, despite the controversy, the Indonesian government finally agreed to adopt the policy of PSBB (*Pembatasan Sosial Berskala Besar, Large Scale of Social Restrictions*), of regional-based partial lockdown on 31 March 2020. This policy was presented as a win-win solution to the two conflicting alternatives of saving the economy or saving lives. The PSBB lockdown policy was based on the proposal of certain provinces or districts that wanted to lockdown their regions. But, at the national level, the central government could continue the operation of some functions that sustained aspects of national economic activity. The central government did not want that the implementation of PSBB will create impact for

the death of economic life. Now, the partial restriction applied during the Covid-19 pandemics is seen as the success of Indonesia to deal with this deadly disease because economy remains growing as expected (Jakarta Globe 2023).

On the basis of above discourse, what Indonesian people face, and the way of Indonesia deals with state policy are considered as social and political pretext for fatwa institutions to issue fatwas that use the argument of life prioritization. The devastating impact of Coronavirus that threatens human life becomes a reasonable reason of state to determine the situation of emergency and this is also a reason of issuing fatwa that prioritizes life. As the extent of the deadly threat of Covid-19 became clear, and the state emergency declared, there was a compelling social and political need for fatwa institutions to issue fatwas prioritizing the value of saving lives. Without the proclamation of state emergency, fatwa makers had no strong basis on which to issue the fatwa. The state alone decides what situation constitutes an emergency. State policy on social distancing and partial lockdown were two strong social and political pretexts of the fatwa because both had the potential to influence new practices of Islam. For example, both affect the public Islamic rituals of Friday prayer and daily congregational prayer (Indonesian: *shalat jama'ah*). These became impossible. Muslims were instructed to substitute midday prayer in their place. Delaying Friday prayer was inconceivable without the advent of the Covid-19 pandemic.

### **The Absence of Indonesian Fatwas and Method of Fatwa on Pandemics**

This section highlights two important issues that relates to Covid 19; the first is the absence of Indonesian fatwa on the pandemic, and the second is the method of issuing Indonesian fatwa.

Despite the creation of many fatwas on crucial issues by Indonesian fatwa-makers, fatwa on the pandemic were non-existent. Perhaps that was because Indonesia had never before had a serious pandemic. Narratives on various pandemics from the early history of Islam were understood by Indonesian Muslims from readings in the classical literature But for contemporary Indonesian Muslims, experience in dealing with a serious pandemic was unknown (Hamassa.com 2020). During the life of the Prophet Muhammad and his companions, several pandemics occurred but the Muslim community were advised to deny it (Hamassa.com 2020). Until Covid-19, Muslim people and Indonesian

Muslims looked to the way in which the Prophet Muhammad and his companions dealt with the pandemic. As the largest Muslim country in the world, Indonesian Muslims were widely aware of the discourse of pandemics in the Qur'an and the tradition of Prophet Muhammad (Ahmad 2015). But they had never experienced an actual pandemic like the Covid-19.<sup>1</sup> Of course, the sort of pandemic in the era of the Prophet Muhammad had many different characteristics from Covid19. Its fast spread and global outreach were unprecedented (World Health Organization 2020). Therefore, it is understandable that there were no immediate fatwas issued on the pandemic by these three Muslim organizations (Majelis Tarjih dan Tajdid Pimpinan Pusat Muhammadiyah 2018; MUI 2011). For Indonesian Muslims, the outbreak of Covid-19 and its fast spread presented an entirely new field for the consideration of fatwas.

Beside any lack of contemporary evidence on deadly pandemics in the nation, there was little understanding in the Indonesian community of pandemics at all before the outbreak of Covid-19. The issuance of fatwas throughout the Muslim world is typically driven by the emergence of problems and the questions for which the Muslim community (*mustaftī*, fatwa seekers) need Islamic answers. Without these catalysts fatwas are unnecessary. This dynamic relationship is evident from the fatwa records of many Muslim organizations in the issuance of their fatwas.

The lack of Indonesian fatwas on pandemics also affected the method of fatwa-*ijtihad* which had not yet considered the possibility of pandemics. The method of issuing fatwas is important to the mitigation of the pandemics. Indonesian fatwas vary in their methods of *ijtihad* (serious endeavor to decide an Islamic ruling).<sup>2</sup> Muhammadiyah, established in 1912, is a reformist Muslim organization. Its method of *ijtihad* relates directly to the Qur'an and Sunnah (Qibtiyah 2018). Muhammadiyah uses the principle of presenting *manhaj tarjih* (the paradigm of a preferred option) (Majelis Tarjih dan Tajdid Pimpinan Pusat Muhammadiyah 2018, vii; Rachmadani 2018). In this principle, Muhammadiyah follows some fundamental rules, such as non-*madhhab* affiliation, that is, using the spirit of newness (*tajdid*), tolerance and openness. For Muhammadiyah the Qur'an and *Sunna Maqbulā* (the accepted tradition of Prophet Muhammad) are the exclusive sources of fatwa.<sup>3</sup> The approach depends on *bayānī*, *burhānī* and *'irfānī*.



*Bayānī* means to locate meaning from in the textual evidence. *Burhānī* means to define meaning through the power of rational thinking. The dynamic interaction between text and context is highly considered in the creation of a fatwa. *Irfānī* means to find further meaning in light of the heart. These three approaches are actually taken from the paradigm of the modern Moroccan philosopher, Muḥammad ‘Ābid al-Jābirī (Muhammadiyah.or.id n.d.). In addition, Muhammadiyah understands that *fiqh* not only relates to particular Islamic ruling on what is *wājib* (compulsory), *sunna* (recommended), and *ḥarām* (banned), but touches also on some fundamental values, such as *maṣlaḥa*, justice, and equality. This is a novel perspective of Muhammadiyah which is taking time for the followers of Muhammadiyah to fully appreciate (Majelis Tarjih dan Tajdid Pimpinan Pusat Muhammadiyah 2018, ix). Based on these principles and approach, the fatwas and Islamic legal products of Muhammadiyah not only protects the purity of Islam but remains open to accommodating itself to new demands. It is well-known that Muhammadiyah has inclined in the direction of *Salafi* puritanism rather than Islamic *tajdid* (reform).

NU is committed to the discipline of *madhhab* (LTN 2011; Zahro 2004). NU members are obliged to follow the four schools of Islamic law (Ḥanafī, Mālik, Shāfi‘ī and Ibn Ḥanbal). As a consequence, the fatwas of NU must refer to one of these four schools. In theory, NU follows the four schools, but practically-speaking, the most highly referenced is *madhhab*, which is based on the Shāfi‘ī school. In fact, the Shāfi‘ī school of Islamic law has become the most dominant school of Islamic law, not only within NU but throughout Indonesia. Several other Islamic organizations, such as Persatuan Tarbiyah Islamiyah (Perti, Union of Islamic Education) and al-Washliyah, are also committed to *madhhab* (school of Islamic law). This is partly because, as historians have demonstrated the version of Islam first introduced to Indonesia in the 12<sup>th</sup> century was the Shāfi‘ī school (Ibrahim, Siddique, and Hussain 1985; Ricklefs 2009). In addition, the school is more deeply embedded in the traditional Muslim groups of NU because most of their ulama learned from their Shāfi‘ī teachers in Mecca and Medina. The spread of influence of the Shāfi‘ī school was most effectively carried out through the *pesantrens* (traditional Islamic boarding school). Instead of developing the early method of issuing fatwa, NU has tended to become very strict in selecting the opinions of schools of

Islam law. NU depends first upon explicit texts (*qawl manṣūṣ*) within the Shāfi‘ī school. If there are no explicit texts, the results of *takhrīj* (*qawl al-mukharraj*) will be referred to. NU believes some opinions can be quoted as sources of fatwa; those agreed between al-Nawāwī and al-Rāfi‘ī; those of al-Nawāwī; those of al-Rāfi‘ī; those of the majority of Shāfi‘ī ulama (*jumbūr*); those of the brightest ulama; and, finally, the righteous opinions of the ulama (LTN 2011).

In 1992, an important breakthrough in the method of the NU’s *ijtihād* occurred as the result of the MUNAS (National Consultancy Forum) in Lampung. This largest Muslim organization not only refers to the opinions (*qawli*), but also the methodology (*manhaj*) of the school of Islamic law in developing fatwas. As a result of this Forum, the method of NU’s *ijtihād* became more open and adaptive to new developments in social, cultural and political affairs. As a consequence, in many cases the Islamic legal opinions of NU are even more progressive and moderate than those of other Muslim organizations. However, the NU’s method of *ijtihād* was unprepared for the advent of the deadly pandemic of Covid-19.

As well as the two mainstream Muslim organizations, MUI is also an important fatwa-maker in Indonesia. In fact, MUI fatwas are the most well regarded by Indonesian government and society. MUI which was established in 1975. It employs a particular method of *ijtihād*, and has two main roles. Firstly, to issue fatwas and secondly, to issue Islamic recommendations (*tausiyya*). In doing so, MUI does not restrict itself to follow a particular *madhhab*. In the early history of this ulama organization, MUI was not only designed as open for doing a new *ijtihād* but also for following the various *madhāhib* of Islam. This is evident in the early MUI fatwas, which often refer to the Qur’an and Sunna, but also to the product of various schools of Islamic law. When the fatwa commission was led by Ibrahim Hosen, MUI used the perspectives of various *madhāhib* for the issuance of fatwas. Hosen was an open-minded Muslim scholar, accepting of divergent opinions within various schools of Islam law (Kasir 2008). However, since 2000, after the resignation of Hosen from the chairmanship of the fatwa commission, MUI has inclined towards the Shāfi‘ī school of Islamic law as its lens for *ijtihād*. This is likely because positions on the fatwa commission of the MUI have begun to be occupied by strong-minded NU ulama. Ma’ruf Amin is a locomotive person who pioneer to enter

MUI especially the fatwa commission as home for ulama who have the Islamic background of NU. Amin has been successful in ensuring that the majority members of the fatwa commission are recruited from an NU background. As consequence, the method of *ijtihād* in the fatwa commission of MUI has become much less open, committed instead to a *madhhab*. The approach of MUI's *ijtihād* has become that of the Shāfi'ī school of Islamic law, prioritizing the trustable literatures of Shāfi'ī ulama, including al-Nawāwī, al-Rāfi'ī and many others.

Based on the sources and methods of these mainstream fatwa organizations, the priorities of everyday life (*ḥifẓ al-dīn*), including the threats posed by a novel pandemic, are not found in fatwa-making. There was a fatwa issued by Hasyim Asy'ari (the founder of NU), providing a prayer that could be recited by Indonesian Muslims to try to stay safe from the danger of pandemic. But this was an individual fatwa, not an official fatwa of the NU. The Covid-19 pandemic can be seen to be the first experience of Indonesian fatwa institutions dealing with such an urgent threat to human lives. Because this is a deadly pandemic, the characteristics of fatwas differ from those for a less threatening disease. One such characteristic is the use of the *maṣlaḥa* argument, especially that of *ḥifẓ al-nafs* (the protection of life) being prioritized above the *ḥifẓ-dīn* (the protection of religion).

### Politics of Indonesian Fatwas: Neglecting Maṣlaḥa

The notion of *maṣlaḥa* (public good) is the only possible methodological justification of employing the argument of prioritization of life over religion. Through *maṣlaḥa*, the concept of *ḍarūra* becomes the direct Islamic legal foundation for using the argument of prioritization of life over religion. It has its base in the tradition of Islamic legal theory and jurisprudence. Despite the notion of *maṣlaḥa* or *ḍarūriyyāt al-khams* having long been recognized by Indonesian mainstream fatwa institutions, they failed to use this as a legal argument in their fatwa-making. The lack of dependence on *maṣlaḥa* in Indonesian fatwa-making is evident in the compilation of fatwa books of Muhammadiyah, NU and MUI. The application of *ḍarūra* in particular or *maṣlaḥa* in general is rare (LTN 2011; Majelis Tarjih dan Tajdid Pimpinan Pusat Muhammadiyah 2018; MUI 2011). Most Indonesian ulama know the theory of *maṣlaḥa* from the classical sources of Islamic legal theory, including those of the Shāfi'ī and Māliki schools of Islamic law. But the

application of *al-Mustasfā* of al-Ghazālī and *al-Muwāqāt* of al-Shāṭibī for the the argument of *maṣlaḥa* in legal opinions is different. Their use of the theory of *maṣlaḥa* is inspired by the view of Indonesian ulama that *the* theory may lead to easing the strictness of fatwa. They also argue that the *maṣlaḥa* theory is less important to the method of developing fatwa, in spite of the *maṣlaḥa*'s derivation from the concept of *istiḥsān* (juristic preference) in the Ḥanafī tradition of Islamic law.

The sequence of study of *maṣlaḥa* in most centers of Islamic learning in Indonesia, irrespective of their affiliation with NU, Muhammadiyah or other Muslim organizations is an important factor behind the rare use of *maṣlaḥa* among the Indonesian ulama in making their fatwas. *Pesantren* as the traditional center of Indonesian Muslim communities to learn on the sciences of Islam, for instance, have focused their learning more on *fiqh* (Islamic legal jurisprudence) instead of *uṣūl al-fiqh* (Islamic legal theory that becomes a place of *maṣlaḥa* for being widely discussed in the sciences of Islam). The discourse of *maṣlaḥa* has limited recognition among the elites of *pesantren* because of their higher education in the Middle East or at the Faculty of Sharia at the State Islamic University. Some classical texts of Islamic legal theory taught in the *pesantren* are intended to introduce the basic sources of Islamic legal theory within the tradition of Shāfi'ī. But *maṣlaḥa* is not elaborated in these sources. Many Indonesian ulama in the *pesantren* learn the theory of *maṣlaḥa* from contemporary *uṣūl al-fiqh* sources, such as the 'Abd Wahhāb Khallāf and Muḥammad Abū Zahrah. Having learned first from these sources, they try to trace further deep-discourses of *maṣlaḥa* to the classical texts of *uṣūl al-fiqh*, such as *al-Mustasfā* of al-Ghazālī and *al-Muwāfaqāt* of al-Shāṭibī.

The use of *maṣlaḥa* became more popular among *pesantren* communities in Indonesia with the introduction in the 1990s of Kyai Sahal Mahfudh's book, *Nuansa Fiqih Sosial* (Nuance of Social Fiqh. Mahfudh created the new terminology *fiqih sosial* (social fiqh) (Feener and Cammack 2007; M. A. S. Mahfudh 2004; S. Mahfudh 2011). This emphasizes the importance of *al-maqāṣid al-sharī'a* – the goals of sharia, which is another name of *maṣlaḥa*—as the lens through which to create *ijtihād* or fatwa. Mahfudh not only refers to the *maṣlaḥa* concept of the Shāfi'ī school of Islamic law, such as al-Juwaynī and al-Ghazālī, but also to current social and cultural *maṣlaḥa* (El-Bararah and Janah 2018; Kersten 2015; Mahfudh 2011).

Although Indonesian Muslim scholars have traditionally learned the theory of *maṣlaḥa*, they hardly ever use this as the justification of Islamic legal theory for fatwa-making. Indonesian Muslim scholars remains very cautious about applying *maṣlaḥa* as their legal rationale for challenging reasons. There is a fear among fatwa institutions in Indonesia that employing this concept will promote deviant interpretation of Islamic legal normativity. Some argue that *maṣlaḥa* contains the liberal elements of Islam because it prioritizes the goals of sharia (*maqāṣid*) that considers humanism as well as theological aspects. MUI, for example, needed to issue a special fatwa in 2005 on how to use *maṣlaḥa* as the legal foundation of creating fatwa. In it, MUI outlined the criteria for the use of *maṣlaḥa*. The social and theological context for issuing the special fatwa was MUI's understanding that *maṣlaḥa* had the potential to stimulate the rise of Islamic liberalism. MUI observed the increasing tendency of progressive Indonesian scholars of Islam to promote and employ *maṣlaḥa* as their legal worldview. MUI believed that *maṣlaḥa* could be misused by progressive Muslim groups as an Islamic legal foundation without the appropriate considerations of the ulama. Such misuse of *maṣlaḥa*, it believed, could lead to the production of misleading rulings and fatwas. MUI declared that this was a dangerous trend for Muslims in general (MUI 2011, 486). In order to demonstrate the risks, it cited the case of the misuse of *maṣlaḥa* among many young scholars of Jaringan Islam Liberal (JIL, Liberal Islam Network) in their public presentations on Islam in Indonesia in the early 2000s (Assyaukanie 2002; Gillespie 2007; Syafiq Hasyim 2015; Ichwan 2013, p. 64).

MUI promulgates three essential criteria in the use of *maṣlaḥa*. Firstly, in Islamic law, *maṣlaḥa* must aim to achieve the goal of sharia, protecting the essential needs of human beings (*al-darūriyyāt al-khamsa*): religion, reason, person, property and sustainable human generations. Secondly, *maṣlaḥa*, recognized by sharia, must conform to the explicit texts of Islam (*naṣ*). It should not be at odds with the content of explicit text. Thirdly, the only social organizations that can determine the criteria of *maṣlaḥa* are those who are sharia experts by employing the method of collective *ijtihād*. MUI seeks to assert its sole legitimacy in Indonesia to define the criteria of *maṣlaḥa* (MUI 2011, 490).

Although MUI has issued fatwa on *maṣlaḥa*, the use of *darūra* as legal and theoretical arguments for fatwas remains unconsidered. This is

understandable in view of the abhorrent discussions of *maṣlaḥa* among Muslim scholars within Indonesia's mainstream fatwa institutions. In consequence, many fatwa institutions tend to support Islamic conservatism. In order to produce moderate and progressive fatwas, not only are enlightened fatwa makers needed, but also the liberating method of *maṣlaḥa* (Syafiq Hasyim 2020; S. Mahfudh 2011). The use of *darūra* arguments emphasizing the prioritization of life over religion during the Covid-19 era demonstrates the creation of progressive fatwas.

### **The Prioritization of Life in the Content of Indonesian Fatwas**

This section seeks to elaborate on the content of MUI, NU and Muhammadiyah fatwas on Covid-19 that prioritised life over religion. In normal daily life the affairs of religion are prioritized as agreed by the majority of traditional and modern ulama of Islamic legal theory. The Covid-19 era meant the affairs of daily life assumed greater importance than those of religious practice. This is understandable as the essential human need is to save life. As an example, many Muslim countries banned Friday prayer in public driven by the primary need to avoid deadly infection. As a matter of first principle, the prioritisation of life can be justified in Islamic law by Indonesian Muslim organizations through the application of *darara* in developing fatwas relating to Covid-19.

Discussion in this section begins with the fatwas of the MUI, which issued the first fatwa in Indonesia on the pandemic. The structure of that fatwa contained three important parts.<sup>4</sup> The first, called "consideration" (Indonesian: *menimbang*), described the social and political background as context for the fatwa. MUI outlined how Covid-19 had become a global pandemic that had reached Indonesia. It referred to information released by WHO (World Health Organization) on the rapid spread of Covid-19, clearly indicating that MUI's approach to this issue was very rational. On the basis of the health information, MUI considered the Islamic measures needed to prevent or minimize the threat of the virus. The second part of MUI's statement was called "remember" (Indonesian: *mengingat*). In it, MUI uses the textual evidence of two primary sources of Islam: the Qur'an and hadith. Quotes from these sources provide the basis of the fatwa.<sup>5</sup> Historically, the consensus of Muslim scholars globally is that all legal opinions should have either

explicit or implicit reference to the Qur'an and hadith. Following the quotations from the Qur'an and hadith, MUI uses an Islamic legal maxims that emphasize *maṣlahah*, especially *darūra*. These included *la darara walā dirāra* (no harm and no damage), *dar al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ* (Warding off the corrupt takes precedence over achieving interests), *al-darūra tubīḥ al-mahdūra* (emergency makes what is forbidden permissible), as well as many others.

The importance of using the *darūra* argument is evident in the first line of the MUI fatwa:

*"Setiap orang wajib melakukan ikhtiar menjaga kesehatan dan menjauhi setiap hal yang dapat menyebabkan terpapar penyakit, karena hal itu merupakan bagian dari menjaga tujuan pokok beragama (al-darūriyyat al-khams)."*

"Each person is obliged to make a serious effort to protect well-being and to create social distance to prevent infection by disease, because this is part of the main goal of sharia."

Through the use of *darūra*, crucial problems, in determining what was and was not essential to the protection of life were solved. For example, when presented with the choice of performing the Friday prayer in a mosque with the possibility of infection, or delaying the Friday prayer and so staying safe from the infection, the *darūra* argument makes clear that delaying Friday prayer in order to preserve life should be the first priority.

MUI goes on to point out in the fatwa that infected individuals are obliged to be careful and to self-isolate so as not to transmit the disease to other people. They should delay conducting Friday prayer in public. Although Friday prayer is compulsory in Islam, it could be substituted with the prayer of *zubr* (middle day prayer) at home. The infected individual is also prohibited from performing the recommended deed (*Sunna*), which could possibly allow transmission to other people. These included congregational prayer (Indonesian: *salat jama'ah*) in mosques and other public space, Ramaḍān prayers (*tarāwīḥ*), and other similar activities, during the month of Ramadan as well as other similar Islamic activities like public sermons (*da'wa*) at other times of the year.

In addition to infected individuals, the MUI fatwa also addressed the non-infected individual. The latter group should also consider the measures. If they reside in an area of potentially high infection, as defined by authorities like the state, they could replace Friday prayer

with mid-day prayer at home and dispense with congregational prayers, like daily five-time prayers –*salat jama'ah*–, *tanāwih* and Eid al-fitr, in public spaces, such as mosques. However, the fatwa allowed those living in areas of low infection, as determined by the authorities, to perform rituals in the normal way. But they were still obliged to protect themselves from the Covid-19 infection using physical distancing, including not shaking hands, hand-washing and other recommended measures. They should perform Friday prayer at a mosque in these circumstances.

The MUI fatwa included two other important issues related to the Covid-19 pandemic. Firstly, the burial procedure from Covid-19 deaths and, secondly, the panic buying of daily essentials. The fatwa declares that the procedure of Muslim burial for those who die of Covid-19, should be done by the health authorities, but should apply the norms of sharia, including washing and shrouding the cadaver. Sharia prayer for the corpse and burial should also include prevention measures against infection from Covid-19. Secondly, the fatwa prohibits panic buying, or doing anything that damages the wider public interest, such as hardening essential items, not wearing masks or disseminating the view that the pandemic was a hoax.

Each of the elements of MUI's fatwa actually maximized the use of the *darūra* argument to save the lives during Covid-19, and supported government policy on social distancing and partial lockdown in Indonesia. The argument *darūra* can be seen as most effective when society confronts the threat of death. However, in the absence of this threat, the argument of *darūra* is seen as less useful.

A day after the official issuance of the MUI fatwa, NU, the largest Muslim organization in Indonesia, issued its own for the NU community in particular and Indonesian Muslims in general. This fatwa was not issued by the central board of NU in Jakarta but by Lembaga Bahsul Masa'il (Fatwa Institution of NU), the provincial branch of East Java NU.<sup>6</sup> Socially and politically, NU represents the strongest influence in East Java. For this reason, NU in East Java may assume the role of representing the central board of NU. Although a fatwa may be issued by a provincial branch of NU, but it can also be considered a national fatwa of NU.

NU's fatwa differed in structure from the MUI's. It began with an explanation of the background of the Covid-19 outbreak in Indonesia,



referring to WHO and ABC news about the nature of the threat of the pandemic. The fatwa reiterated that Covid-19 was a very dangerous virus due to its rapid spread and difficulty to detect.<sup>7</sup> The fatwa also referred to the BNPB statement concerning the position of Covid-19 as a national disaster (Indonesian: *bencana nasional*) and emergency. The approach of the NU fatwa in providing more of the background of Covid-19 than MUI had done, conformed to their tradition of fatwas. NU considers the importance of presenting a full description of the particular case (*taṣawwur al-ahkām*) for each fatwa. On this basis, a legal ruling is expected to be accurately made. NU fatwa makers consider that the *taṣawwur al-ahkām* should precede the decision of such legal ruling because it allows for greater precision. A good fatwa is based on an accurate social context. NU aims consistently to issue evidence-based fatwas. The commitment of implementing the notion of *taṣawwur al-ahkām* in fatwa-making is a product of the progressive movement in NU, which seeks to consider real social issues.

The discourse of *darūra*, mentioned in the NU fatwa, reinforces this central commitment. The NU fatwa quotes the Qur'anic chapter of al-An'ām (6): 17. This verse explains that only God that can erase the circumstances of *darūra*. This means that the matter of *darūra* is critical in sharia. In Islamic legal theory, the presence of *darūra* permits actions normally prohibited in Islam (*al-darūra tubīḥ al-maḥdūra*).

The NU fatwa declares the importance of being proportional in the face Covid-19 by relying on the tradition of Sunni theology. In this doctrine, a Muslim should be measured, not too fearful, as all people face their *'ajal* (time of death) therefore, God is the source of hope and comfort in all things. The notion of surrender to God in this fatwa is very important because it reminds Muslim people God's power is responsible for disease.<sup>8</sup> That said, the fatwa considers the importance of making real and serious efforts to prevent the infection of Covid-19. The fatwa seems to follow a theological doctrine saying that only God can finally determine the fate of human being, but precautionary and prevented measures should be also taken by Muslims. NU's approach reflects the Sunni doctrine. It acknowledges the balance between faith (*īmān*) and human effort. However, there is an interesting statement in this fatwa concerning Muslim's fear of things other than God. The fatwa quotes the very interesting opinion of a classical ulama who states: "fear to non-God is not prohibited as long as it is not intended

to reject doing what should be done (*wājib*) and leaving what should be left (*ḥarām*)”. This argument legitimizes the proper caution in the face of the deadly threat of Covid-19. Exercising that caution means doing everything we can to protect ourselves from infection (al-Shat 1998). By referring to Ibn Qutayba (a classical Muslim scholar, 828-889 CE), the NU fatwa acknowledges that infection can occur through skin-touch, physical closeness, and breath. On the basis of this, the NU fatwa suggests the increase of measures to protect immunity and practice a healthy lifestyle.

In addition, the NU fatwa considered the importance of a state presence. It expects that the state will respond to Covid-19 with quick, appropriate policy. The NU fatwa states that in making policy, the state should refer to public interest and also obey the government. Two Islamic legal arguments are used in this fatwa. The first is the Islamic legal maxim stating “*ṣarf al-imām ‘alā al-ra‘ya manūṭ bi al-maṣlaḥa*” (leadership should promote the public good). The second is the Quranic chapter of al-Nisā’, verse 59 verse on Muslims’ obligation to obey the government (*ūli al-amr*). On this basis, the NU fatwa seems to support Indonesian government policy on social distancing and partial lockdown, even though such policy causes changes to the practice of rituals that have a public dimension. The fatwa states that despite the Covid-19 has been stated by WHO as pandemic, but when this fatwa is issued, the spread of this virus remains sweeping the particular areas of Indonesia (not sure of the aim of this sentence). Some areas were still free from the Covid-19. This meant that an Islamic ruling on Friday prayer and other Islamic worship depended on the particular circumstances. For individuals living in a safe area, Friday prayer and other kinds of Islamic worship would continue as an obligation. Healthy individuals, living in infected areas, remained compelled to perform Friday prayer as long as they could do so in a safe environment. Those infected with Covid-19 were prohibited from attending religious activities that could potentially pass on the infection to others. Those suspected of having the infection were also permitted to not attend public Friday prayer. The fatwa also recommended avoidance of hand-shaking in daily life. The significance and difficulty of this measure is that hand-shaking is deeply rooted in Indonesian Muslim culture as a gesture of hospitality.

Finally, the NU fatwa makes four important recommendations for the government. Firstly, the government of Indonesia should decide

policy, the necessary steps and actions for prevention of the spread of Covid-19. Secondly, the government should assure the ready availability to its citizens of the tools of prevention and protection of Covid-19. Thirdly, the government bans on public activity should vary according to the particular circumstances of the region. Those differences should be carefully considered by government in implementing policy. Fourthly, the implementation of policy banning public religious activity should consider Islamic rulings. The NU fatwa also asks for all citizens to obey government policy in its fight against Covid-19 to promote the public good (Lembaga Bahtsul Masail PWNNU Jawa Timur 2020).

In short, the NU fatwa also employed the argument of *darūra* to support government policy, especially in its consequences for some Islamic rituals with a congregational dimension. Without this support, it is hard to imagine that Muslims would have felt permitted to delay Friday prayer and replace it with the *zūhr* prayer at home. The *darūra* argument can transform something that is obliged to something that is banned in Islam. Without the use of this *darūra* argument, it would be difficult, for example, to ask Muslims not to attend the mosque for daily congregational prayers. Covid-19 itself might create fear but this fear is not enough to force them to ignore their religious obligations. The *darūra* argument provides a strong *fiqh* argument that omitting public worship is allowed by sharia.

Muhammadiyah, the second largest Muslim organization, issued *Surat Maklumat Pimpinan Pusat Muhammadiyah* (Declaration Letter of Muhammadiyah Leaders) Nomor 02/MLM/1.0/H/2020. Publication of the *Maklumat* indicated again that Covid-19 was considered a very urgent issue. Muhammadiyah, also used the argument of *darūra* by quoting the Prophet Muhammad, who declared that *lā darara wa lā dirāra* (religion should not be detrimental and create detrimental effect). The *Maklumat* stressed the need to postpone all activities that involved many people, including mandatory ritual activities. The *Maklumat* suggested using information technology for those affected by the virus. But for healthy Muhammadiyah members the requirement was that they conduct the mandatory activities as usual. The *Maklumat* advised that, for those who are sick or in an emergency situation, Friday prayer could be replaced with midday prayer, and that daily congregational prayer could be done at home. Muhammadiyah also advised its members to avoid Covid-19 affected areas. It may

sound like simple advice but the use of the *darūra* argument is key. Some Muhammadiyah members conducted Friday prayer online using software such as Zoom or Google meet.<sup>9</sup> In addition the *Maklumat* paid particular attention to the operation of schools and universities. Unlike NU and MUI, this second largest Islamic organization operates huge numbers of schools and universities across Indonesia. Muhammadiyah therefore felt it important to address some issues on how educational institutions should deal with Covid-19. Schools and universities run by Muhammadiyah were advised to follow the policy of government. Muhammadiyah also advised its *amal usaha*<sup>10</sup> (non-profit-enterprises) to follow Covid-19 protocols already introduced by the Ministry of Health with coordination of Muhammadiyah bodies.

Apart from banning Friday prayer and congregational prayers in mosques, the responsible institutions of NU, Muhammadiyah and MUI also issued fatwas on the performance of congregational prayers during the month of Ramadan (the fasting month) such as *tarāwih* (congregational recommended prayer in the nights of Ramadan) and *'itikāf* (sitting in mosque) and the prayer of Eid al-fitr. Fatwa bodies of the three organizations agreed to persuade their members to conduct all prayer at home. NU and Muhammadiyah published clear Islamic legal opinions for their members not to perform the congregational prayers of *tarāwih* in the mosque (Muhammadiyah.or.id 2020; Warta Ekonomi 2020). Because of the risk of transmission of the disease. Two crucial activities related to Eid al-fitr in Indonesia that mobilize people to congregate. The first is the event of *mudik lebaran* and second is the event of *halāl bi al-halāl* (visiting and handshaking of one to another other in the Indonesian tradition after the prayer of Eid al-fitr). The *mudik lebaran* is related to the activity of people returning from big city –mostly from Jakarta-- to their hometown as the end of Ramadan approaches (Hidayat 2016). Although this is more a cultural rather than religious event, for most Indonesian Muslims, *the mudik lebaran* is considered almost an Islamic obligation. In fact, all Indonesian people, not only Muslims, go home to celebrate the *Eid al-fitr*. The tradition of *halal bil halal* is done after conducting the congregational prayer of *Eid al-fitr*.

The ministry of religious affairs, the official state agency on religious issues-would be able to restrict this activity without the support of Muslim organizations. But these organizations are responsible for

issuing fatwas prohibiting Friday prayers and other congregational prayers in mosques. The members of these organizations will obey these directives because of the use of *darūra* argument.

### **The Indonesian Fatwas and Their Limit**

The literature of Islamic legal theory discusses in depth the limitations of fatwas at the implementation level. Unlike court decisions (*qadā'*) that carry a legal binding (*ilzām*), fatwa is only a legal opinion which is non-binding even to those who ask for the fatwa to some extent (Bin Bayyah 2007; Hallaq 2005; M. Masud, Messick, and Powers 1996). The role of fatwas in the Muslim community is therefore different from the role of court decisions. The former is based on people's questions while the latter is based trial processes, making giving them more weight in the Muslim community (Bin Bayyah 2007).

The fatwas of NU, Muhammadiyah and MUI acknowledged their limits from the outset of the struggle against Covid-19. Two factors determine the limits. Firstly, the epistemological. Fatwas are not legally binding in Islamic theology. Secondly, the social and political context mean fatwas need support from political institutions because they are not legally binding. They can only be effectively applied when they receive the support of the government of Indonesia for their implementation. However, endorsing the fatwas of Indonesian fatwa institutions in fight against Covid-19, works towards the public good when law enforcers imposing the advice as law. Convincing the followers of NU, Muhammadiyah and MUI to conform to the policy of government still depends very much therefore on the government's commitment to the prevention of Covid-19 at the practical level. Implementing the fatwas of NU, Muhammadiyah and MUI on the Covid-19 faces a huge obstacle when the government of Indonesia itself is inconsistent, as was seen in the statements made by the Jokowi ministers on the problems of *mudik lebaran* (returning home annually to celebrate Eid) of *Eid al-fitr* on 24 May 2020 (Kompas Cyber Media 2020b). Initially, the government banned the activity of *mudik lebaran* to circumvent the spread of Covid-19 from Jakarta to other provinces. But this decision was then revised by the Jokowi ministers, allowing the *mudik lebaran* but within the strict requirements of the Covid-19 protocol. But *mudik lebaran* was entirely banned in the areas of PSBB (Detik News 2020c), Anies Baswedan, the governor of Jakarta, took a

different stance from the central government in managing this issue. Baswedan stated that those who did the *mudik lebaran* from Jakarta were not guaranteed an easy return to Jakarta (Detik News 2020a). Baswedan also restricted going home (Indonesian: *mudik lokal*) for Jakarta citizens (Detik News 2020b). These changing and conflicting policies of central and provincial governments did not encourage confidence in people to know or follow the right advice. They actually reflected not only inconsistency, but the ability of the government of Indonesia to manage divergent voices within government policy. It was true that those who lived in Jakarta did *mudik lebaran* to celebrate Eid al-fitr, as a fast response to the new policy of government, enabled air-transportation. But most did not follow the Covid-19 protocol. As a consequence, the epicenter of Covid-19 moved from Jakarta to other provinces like East Java, Central Java and West Java. Of course, the inconsistent implementation of government policy does not encourage confidence of the Muslim community either in fatwas. This is an inherent dilemma of fatwas in Islamic legal theory. The effectiveness of fatwa implementation depends on the authority of state, especially in a country that does not have a sharia political system. Despite this lack of popular confidence, in many cases related to Covid-19, the stance of fatwa institutions is clearer and more consistent than that of the government of Indonesia.

A further problem arose from the rather ambiguous definition of dangerous and safe areas in the fatwas. The fatwas seemed to follow the BNPB which categorized the area of Covid-19 into four zones. The first was green zone, which indicated no Covid-19 cases discovered in the area. The second, a yellow zone, which meant the discovery of Covid-19 cases, but at a manageable, low-risk level. The third, an orange zone, indicated a high risk of infection and that Covid-19 had become unmanageable. The fourth, a red zone, an even higher-risk area where the fast spread of the infection, had led to many new and unmanageable clusters (Badan Nasional Penanggulangan Bencana 2020). However, the status of zones was dependent on a testing rate which the government was unable to implement. Indonesia had the worst testing rate among countries in Southeast Asia (The Jakarta Post 2020). If the basic evidence used by MUI in defining safe and dangerous zone was then based on this categorization, all zones should have been regarded as red. Overall, the fatwas seemed to ignore the

low capacity of the state to test. The definition of zones become highly problematic, therefore.

Another complicating factor is that Indonesia is a very large, religiously, and socially complex nation. Social and religious groupings begin from the smallest unit of community (Indonesian: *Rukun Tetangga*), a sub-unit of community (Indonesian: *Rukun Warga*), to village, subdistrict, district and then to provincial and national social and religious groupings. MUI, NU and Muhammadiyah exist at all levels of these social and religious groupings. That means the authority of dealing with the prevention of Covid-19 is not a unified voice in each group. The authority is multilayered and multi-leveled. Although divergent voices suggest the implementation of democracy in Indonesia, the fight against the Covid-19 needed stronger, centralized command (Sekretariat Jenderal MPR RI 2021). The Indonesian people imagined combatting Covid-19 in the same way as China (Ihram Republika Online 2021), Vietnam (Liputan6.com 2020), and other strict countries. That meant the struggle against the pandemic demanded a more centralized role for state, which was at odds with the expectations of individual freedoms in a democratic nation. People could not freely move from one to another place or gather without the threat of the spread of Covid-19.

### **Concluding Remarks**

In the fatwas issued by Indonesia's fatwa institutions there is evident the strong support of government policy in the struggle against Covid-19. The fatwas of NU, Muhammadiyah and MUI proved useful in convincing Indonesian Muslims to follow the measures and protocols of Covid-19 prevention. They continue to be highly regarded religious references for most Indonesian Muslims, exemplified in the fatwas on vaccines. However, the strong support of NU, Muhammadiyah and MUI for all state policies became less effective when the state itself lacked the capacity to be consistent in its policies and their implementation. This can be seen as due to the limited role of fatwas in the Indonesian legal and political contexts on the one hand and the reduced capacity of the state on the other. The role of fatwas in non-Islamic countries serves only as cultural and theological advice, either to the state or society. The role of fatwa institutions acts at the persuasive level, not the coercive level, which is province of the state.

The valuable fatwas on the war against Covid-19 were insufficient without effective government policy.

The *darūra* argument, which prioritizes life over religion, was employed by the three mainstream Muslim organizations as the foundation of their fatwas at the beginning of pandemic era. This worked well to convince Indonesian Muslims of the need for some fundamental changes of Islamic practices under sharia in order to protect the value of life over religion. Without the *darūra* argument, the explanation for banning Friday and other congregational prayers would have been almost impossible within Islamic doctrine. Prioritizing life over religion was not only acceptable but also an essential principle for Indonesian Muslims to follow. It is evident that Indonesian fatwas on Covid-19 proved functional and effective in the history of Indonesia's fatwa-making. But the problem persists of the intrinsic weakness of fatwas which have no binding power in the Indonesian system of governance.

The use of the *darūra* argument could offer progress in Islamic reform. The pandemic of Covid-19 was an example of critically questioning established Islamic doctrine and rituals. Friday prayer, an obligation obliged in normal circumstances, was banned during the Covid-19 era. Islamic ritual is a symbol of submission of an individual to the greater purpose of religion. But since the pandemic, there has been greater emphasis on the prioritization of human life over the interest of religion. If we can extend this first principle the prospect of great reforms in Islam become a real possibility in the religious life of Indonesian Muslims where religion is seen as truly enabling the promise of humanity rather than perpetuating ritualistic religion for its own sake.



## Endnotes

1. There are also many classical Muslim scholars who wrote on pandemics on the basis of their experiences in experiencing pandemic. Ibn Hajar al-'Asqalānī (d. 852/1449) wrote *Badhl al-Mā'ūn fi faḍl at-Tā'ūn* and Ibn al-Wardī (d. 749/1349) wrote *Risālat al-Nabā' 'an al-Wabā'* (Ahmad 2015) The author of this book is the founder Ahmadiyah sect. This book was originally written in Urdu language, published in 1902. In 2015, this book is translated into English.
2. *Ijtihād* is understood in Indonesia as giving a serious effort to take a lega.
3. The Sunna Maqbula is the Muhammadiyah concept on sunna which is accepted among hadith scholars. Most of sunna maqbula is mutawatir hadith, but to some reasons, the hadith with ahad status is also accepted (Qibtiyah 2018)
4. This structure actually follows the structure of government policy in general. In the beginning of MUI history of fatwa making, the structure of fatwa was just the fatwa statement.
5. The verses of Qur'an are for instance, *al-Baqara* (2): 155-156, *al-Taghabun* (64): 11, *al-Tawba* (9): 51, *al-Anfal* (8): 25 and many others. All hadiths used to support the fatwa are hadiths that tell story of Prophet Muhammad in dealing with pandemics. See *Fatwa Majelis Ulama Indonesia*, No. 14, 2020.
6. Lembaga Bahsul Masa'il is fatwa body within the NU. This fatwa body exists from national to regional structure of NU organization. Further account on Lembaga Bahsul Masa'il, see (Zahro 2004).
7. See the fatwa of Provincial Branch of Nahdlatul Ulama East Java, p. 1.
8. This statement refers to Ibn Hajar al-'Asqalani in his *Fath al-Bāri*, and Abd al-Rauf al-Munawi in *Fayd al-Qadīr*.
9. Wawan Gunawan progressive young ulama of Muhammadiyah provides service for the Friday prayer during the pandemic era through the application of zoom. Wawan Gunawan was alumni of King Saud University, Saudi Arabia and one of prominent leaders in Lembaga Tarjih, the fatwa institution of Muhammadiyah.
10. *Amal usaba* is term used by Muhammadiyah that this organisation has also business activity for the sustainability of organizational life like establishing hospital, school, and university.

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## *Guidelines*

### Submission of Articles

**S***tudia Islamika*, published three times a year since 1994, is a bilingual (English and Arabic), peer-reviewed journal, and specializes in Indonesian Islamic studies in particular and Southeast Asian Islamic studies in general. The aim is to provide readers with a better understanding of Indonesia and Southeast Asia's Muslim history and present developments through the publication of articles, research reports, and book reviews.

The journal invites scholars and experts working in all disciplines in the humanities and social sciences pertaining to Islam or Muslim societies. Articles should be original, research-based, unpublished and not under review for possible publication in other journals. All submitted papers are subject to review of the editors, editorial board, and blind reviewers. Submissions that violate our guidelines on formatting or length will be rejected without review.

Articles should be written in American English between approximately 10.000-15.000 words including text, all tables and figures, notes, references, and appendices intended for publication. All submission must include 150 words abstract and 5 keywords. Quotations, passages, and words in local or foreign languages should

be translated into English. *Studia Islamika* accepts only electronic submissions. All manuscripts should be sent in Ms. Word to: <http://journal.uinjkt.ac.id/index.php/studia-islamika>.

All notes must appear in the text as citations. A citation usually requires only the last name of the author(s), year of publication, and (sometimes) page numbers. For example: (Hefner 2009a, 45; Geertz 1966, 114). Explanatory footnotes may be included but should not be used for simple citations. All works cited must appear in the reference list at the end of the article. In matter of bibliographical style, *Studia Islamika* follows the American Political Science Association (APSA) manual style, such as below:

1. Hefner, Robert. 2009a. "Introduction: The Political Cultures of Islamic Education in Southeast Asia," in *Making Modern Muslims: The Politics of Islamic Education in Southeast Asia*, ed. Robert Hefner, Honolulu: University of Hawai'i Press.
2. Booth, Anne. 1988. "Living Standards and the Distribution of Income in Colonial Indonesia: A Review of the Evidence." *Journal of Southeast Asian Studies* 19(2): 310–34.
3. Feener, Michael R., and Mark E. Cammack, eds. 2007. *Islamic Law in Contemporary Indonesia: Ideas and Institutions*. Cambridge: Islamic Legal Studies Program.
4. Wahid, Din. 2014. *Nurturing Salafi Manhaj: A Study of Salafi Pesantrens in Contemporary Indonesia*. PhD dissertation. Utrecht University.
5. Utriza, Ayang. 2008. "Mencari Model Kerukunan Antaragama." *Kompas*. March 19: 59.
6. Ms. *Undhang-Undhang Banten*, L.Or.5598, Leiden University.
7. Interview with K.H. Sahal Mahfudz, Kajen, Pati, June 11<sup>th</sup>, 2007.

Arabic romanization should be written as follows:

Letters: ' b, t, th, j, ḥ, kh, d, dh, r, z, s, sh, ṣ, ḍ, ṭ, ḡ, ' gh, f, q, l, m, n, h, w, y. Short vowels: a, i, u. long vowels: ā, ī, ū. Diphthongs: aw, ay. *Tā marbūṭā*: t. Article: al-. For detail information on Arabic Romanization, please refer the transliteration system of the Library of Congress (LC) Guidelines.

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مجلة إنءونيسية للءراساء الإسلامية



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