

## METHODS AND STAGES OF *IJTIHAD* IN *FIQH NAWAZIL*: CORRELATION AND IMPLEMENTATION IN *FATWA* OF THE INDONESIAN *ULAMA* COUNCIL RELATED TO COVID-19

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### Abstract

Fiqh, like the law in general, always faces new problems (*nawāzil*) that need solutions through *ijtihād*. To establish the law of the problem of *fiqh nawāzil*, a standard method of *ijtihād* is needed. Through this research, the author seeks to review the literature related to *ijtihād fiqh nawāzil* to be assembled into a standard method, which is then compared with the procedure of establishing fatwa of the Indonesian Ulama Council (MUI) and used as a theory to dissect MUI fatwa related to Covid-19. From the results of the study of related literature, *ijtihād fiqh nawāzil* can be conducted by three methods, namely *bayānī*, *ta'līlī*, and *istiṣlahī*, which are then practiced through three stages, namely *taṣawwur al-masalat*, *takyif fiqhī*, and *taṭbīq al-ahkām*. Although there is a slight difference in the aspect of language between the methods and stages of the *ijtihād fiqh nawāzil* with the MUI fatwa establishment procedure, both have the same substance, so it can be concluded that the fatwa establishment procedure of the MUI has included three stages of the *ijtihād fiqh nawāzil* methods. This is increasingly seen in the MUI fatwa decree related to Covid-19, especially in the Law on the Use of AstraZeneca Vaccine.

**Keywords:** *Ijtihad*, *Fiqh nawāzil*, *Fatwa*, Indonesian Ulama Council, Covid-19.

### Abstrak

*Fikih*, sebagaimana hukum pada umumnya, akan selalu menemui masalah-masalah baru (*nawāzil*) yang membutuhkan solusi melalui proses *ijtihād*. Untuk menentukan hukum dari masalah *fikih nawāzil*, diperlukan metode *ijtihād* yang baku. Melalui penelitian ini, penulis berupaya mengkaji literatur-literatur yang berkaitan dengan *ijtihād fikih nawāzil* untuk dapat dirangkai menjadi sebuah metode baku, yang kemudian dikomparasikan dengan prosedur penetapan fatwa Majelis Ulama Indonesia (MUI), serta digunakan sebagai teori untuk membedah fatwa-fatwa MUI terkait Covid-19. Dari hasil pengkajian literatur-literatur terkait, *ijtihād fikih nawāzil* dapat dilakukan dengan tiga metode, yaitu *bayānī*, *ta'līlī*, dan *istiṣlahī*, yang kemudian dipraktikkan melalui tiga tahapan, yaitu *taṣawwur al-masalat*, *takyif fiqhī*, dan *taṭbīq al-ahkām*. Meskipun terdapat sedikit perbedaan dari aspek kebahasaan antara metode dan tahapan *ijtihād fikih nawāzil* tersebut dengan prosedur penetapan fatwa MUI, keduanya memiliki substansi yang sama, sehingga dapat disimpulkan bahwa prosedur penetapan fatwa MUI telah mencakup tiga tahapan dari metode *ijtihād fikih nawāzil* tersebut. Hal ini semakin terlihat implementasinya dalam Surat Keputusan Fatwa MUI terkait Covid-19, terkecuali tentang Hukum Penggunaan Vaksin Covid-19 Produk AstraZeneca.

**Kata kunci:** *Ijtihad*, *Fikih Nawāzil*, *Fatwa*, Majelis Ulama Indonesia, Covid-19.

## INTRODUCTION

At the beginning of the emergence of Islam, every problem that occurred, especially related to jurisprudent, can be directly known through the divine treatise delivered by Rasulullah SAW (SAW). In the aftermath, new jurisprudent problems continued to emerge, but Rasulullah SAW as an intermediary for revelation, was gone. However, the problem of new jurisprudent that has never happened or is commonly called *fiqh nawāzil* is still relatively few and can still be answered thanks to the intelligence of *sahaba* and *tabi'in* in processing Al-Qur'an and *hadith*.<sup>1</sup>

Increasingly, the problem of *nawāzil* is becoming more complex, even mixed with other fields beyond the problem of pure jurisprudence. The problem of *nawāzil* certainly needs an immediate answer. This is what then makes the *ulama* try to find the answer to these problems through the process of *ijtihad* whose results are decreed to Muslims.<sup>2</sup> In this case, the method of *ijtihad* used by *ulama* tends to differ from one another, causing difficulties for the next generation in breaking the guide to *ijtihad*. Therefore, it takes a standard method in systematic *ijtihad*, especially to solve the problem of *fiqh nawāzil*, which can later be used by anyone who has qualified to become a *mujtahid* in the future.<sup>3</sup>

<sup>1</sup> al-Zuhayli, *Ushul Al-Fiqh Al-Islami*; Abu Zahrah, *Ushul Al-Fiqh*; Abdurrahman, "Sorotan Terhadap Beberapa Masalah Sekitar Ijtihad."

<sup>2</sup> Jalal al-Dīn Abd al-Rahmān bin Abū Bakr al-Suyūī, *Al-Ijtihād: Al-Radd Alā Man Akhlada Ilā Al-Ardh Wa Jabila Anna Al-Ijtihād Fi Kull A r Far* (Aleksandria: Muassasat Syabāb al-Jāmiat al-Iskandāriyyat, 1985).

<sup>3</sup> Hasbi Ash-Shiddieqy, *Pengantar Ilmu Fiqh* (Jakarta: Bulan Bintang, 1993); Hasbi Ash-Shiddieqy, *Pengantar Hukum Islam* (Semarang: PT. Pustaka Rizki Putra, 1997); Kemal A. Faruki, *Islamic Jurisprudence* (New Delhi: Adam Publisher and Distributors, 1994);

In the Indonesian context, there is a religious organization that plays a role in issuing *fatwas*, namely Indonesian Ulama Council (MUI), which was established in 1975.<sup>4</sup> In establishing *fatwas*, MUI has a procedure that is always used as a reference.<sup>5</sup> As a religious organization that plays a role in issuing *fatwas*, MUI is required to be adaptive to the problem of *fiqh nawāzil* that continues to emerge. One of them is related to Covid-19.<sup>6</sup>

Departing from this, through this study, the author tried to explain how the methods, stages, and steps of *ijtihad* in problems related to *fiqh nawāzil*? To what extent is the correlation and comparison with the procedure of *fatwa* establishment by MUI? And what is the implementation of the method of *ijtihad* in *fiqh nawāzil* that has been compared with the MUI *fatwa* procedure in *fatwas* related to Covid-19, especially about the use of AstraZeneca vaccine?

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Muhammad Kamaluddin Imam, *Ushul Al-Fiqh Al-Islami* (Aleksandria: Dar al-Mathbuat al-Jami'iyah, n.d.); 'Abd al-Wahhab Khallaf, *Mashadir Al-Tasyri' Al-Islami Fi Ma La Nashba Fihi* (Kuwait: Dar al-Qalam, 1979); Atho Mudzhar, *Membaca Gelombang Ijtihad: Antara Tradisi Dan Liberasi* (Yogyakarta: Titian Ilahi Press, 1998); Muhammad Amin Suma, *Ijtihad Ibn Taimiyyah Dalam Bidang Fikih Islam* (Jakarta: INIS, 1991).

<sup>4</sup> Muhammad Cholil Nafis, *Teori Hukum Ekonomi Syariah: Kajian Komprehensif Tentang Teori Hukum Ekonomi Islam, Penerapannya Dalam Fatwa Dewan Syariah Nasional, Dan Penerapannya Ke Dalam Peraturan Perundang-Undangan* (Jakarta: UI Press, 2011); Atho Mudzhar, *Fatwa Majelis Al-Ulamā Al-Indunisi: Dirasat Fi Al-Fiker Al-Tasyri' Al-Islami Bi Indunisiyyā 1975-1988* (Jakarta: CENSIS, 1996).

<sup>5</sup> Majelis Ulama Indonesia, "Peraturan Organisasi Majelis Ulama Indonesia," *Pedoman Penetapan Fatwa MUI*, n.d.

<sup>6</sup> Majelis Ulama Indonesia, "Pedoman Rumah Tangga Majelis Ulama Indonesia," in *Musyawarah Nasional II*, 1980; Majelis Ulama Indonesia, "Pedoman Dasar Majelis Ulama Indonesia," in *Musyawarah Nasional III*, 1985.

This research is a library research conducted by examining literature related to the methods and stages of *ijtihad fiqh nawaẓil* such as *al-Babr al-Mubīṭ fī Uṣūl al-Fiqh* by Badr al-Dīn Muhammad bin Bahādur al-Zarkasyī, *al-Mustaṣfā min Ilm al-Uṣūl* by Muhammad bin Muhammad al-Ghazālī, *al-Muwāfaqāt fī Uṣūl al-Syariat* by Ibrāhīm bin Mūsā al-Syātībī, and *Ilām al-Muwaqqiʿin an Rabb al-Ālamīn* by Syams al-Dīn Muhammad bin Abū Bakr Ibnu Qayyim, the procedure of establishing *fatwas* established and refined in the Ijtima Ulama of Fatwa Commission in Indonesia through a plenary session in Jakarta in 2003, which was then established as an Organizational Regulation that binds MUI at all levels based on the Mandate of National Deliberations XI in 2015, as well as MUI *fatwas* related to Covid-19 such as *fatwa* No. 14/2020 on the Implementation of Worship in the Situation of the Covid-19, *fatwa* No. 17/2020 on How to Pray for Health Workers Who Wear Personal Protective Equipment (APD) when Caring for and Dealing with Covid-19 Patients, *fatwa* No. 18/2020 on Guidelines for the Management of Jenazah (*Tajbiẓ Al-Jana'iz*) Infected with Covid-19, *fatwa* No. 23/2020 on the Utilization of Zakat, Infak, and Alms for the Prevention of the Covid-19 and Its Effects, *fatwa* No. 28/2020 on Takbir Guidelines and Eid Prayers during Covid-19, *fatwa* No. 31/2020 on the Implementation of Friday Prayers and Congregational to Prevent the Transmission of Covid-19, *fatwa* No. 36/2020 on Eid Prayers and Slaughter of Sacrificial Animals during the Covid-19, *fatwa* No. 2/2021 on Covid-19 Vaccine Products from Sinovac Life Sciences, Co. Ltd China and PT Biofarma, *fatwa* No. 13/2021 on the Law on the Vaccination while Fasting, *fatwa* No. 14/2021 on the Law on the Use of Astrazeneca Vaccine, *fatwa* No. 23/2021 on the Law on the Swab Test for Covid-19

Detection while Fasting, and *fatwa* No. 24/2021 on Guidance on the Implementation of Worship in Ramadan and Shawwal 1442 H, which was determined through the MUI *Fatwa* Decree in the Plenary Session of the MUI *Fatwa* Commission.

This research is descriptive-analytical, where the objects studied will be described proportionally, then the data obtained will be interpreted for further analysis. Related to the meaning of this study, the author tried to collect MUI *fatwas* related to Covid-19. From these *fatwas*, the author tried to link them to theories about the methods and stages of *ijtihad* in *fiqh nawaẓil* that have been compared with the MUI *fatwa* establishment procedure to analyze the *fatwas*.

In previous research, the author found several of them that had discussed the MUI and *fatwas* related to Covid-19. Achmad Saeful in a study entitled *Menelaah Kembali Fatwa MUI tentang Penyelenggaraan Ibadah dalam Situasi Terjadi Wabah Covid-19* tried to study the MUI *fatwa* No. 14/2020 concerning the Implementation of Worship in the Situation of the Covid-19. In this case, the author describes in more detail the description of the *fatwa* and relates it to several verses of Al-Qur'an and *hadith* as support for the establishment of the *fatwa*.<sup>7</sup>

Alif Jumai Rajab, Muhamad Saddam Nurdin, and Hayatullah Mubarak in a study entitled *Tinjauan Hukum Islam pada Edaran Pemerintah dan MUI dalam Menyikapi Wabah Covid-19* tried to review the policies of the government and the MUI towards Covid-19. In this regard, the authors try to relate the policies of the government and the MUI

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<sup>7</sup> Achmad Saeful, "Menelaah Kembali Fatwa MUI Tentang Penyelenggaraan Ibadah Dalam Situasi Terjadi Wabah Covid-19," *Syar'ie* 3, no. 2 (2020): 156–71.

towards Covid-19 with similar legal events that have occurred in the past.<sup>8</sup>

Muhammad Agus Mushodiq and Ali Imron in a study entitled *Peran Majelis Ulama Indonesia dalam Mitigasi Pandemi Covid-19: Tinjauan Tindakan Sosial dan Dominasi Kekuasaan Max Weber* tried to uncover the MUI's motives in issuing *fatwas* related to worship procedures during Covid-19 based on the theory of social action and power domination initiated by Max Weber.<sup>9</sup>

Abdur Rahman Adi Saputera in a study entitled *Menelusik Dinamika dan Eksistensi Fatwa MUI sebagai Upaya Mitigasi Pandemi Covid-19* tried to explore the values of the existence of MUI *fatwas* in efforts to mitigate Covid-19.<sup>10</sup>

From this study, the author found that the first study conducted by Achmad Saeful and the second study conducted by Alif Jumai Rajab, Muhamad Saddam Nurdin, and Hayatullah Mubarak was only limited to efforts to study and review MUI *fatwas* related to Covid-19, then related them to several verses of Al-Qur'an, *hadith*, and similar legal events that had occurred in the past. Meanwhile, the third research conducted by Muhammad Agus Mushodiq and Ali Imron and the fourth research conducted by Abdur Rahman Adi Saputera are only limited to efforts to see the extent of the role and

existence of MUI in mitigating Covid-19. In this regard, the author has not found any research that tries to dig deeper into the methods, stages, as well as the steps taken by the MUI in establishing *fatwas*, especially those related to *fiqh nawazil*, which in this case relates to Covid-19.

## DISCUSSION

### *Epistemology of Fiqh nawazil*

#### *Definition of Fiqh nawazil*

*Fiqh nawazil* is a word in Arabic composed of two words, each of which has its meaning. To understand the meaning of *fiqh nawazil*, it is necessary to know the meaning of each of its constituent words.

Etymologically, *fiqh* means a detailed understanding and knowledge of something.<sup>11</sup> In terminology, *fiqh* means knowledge about charitable *sharia* laws, which is derived from detailed arguments.<sup>12</sup>

While *nawāzil*, etymologically, is a plural form of the word *nazīlah*, which has the root of the word *nazāla - yanẓilu*, which means down.<sup>13</sup> However, *nazīlah* is more commonly used to indicate the events of disasters or misfortunes that befall humans.<sup>14</sup> From this word, qunut *nazīlah* was taken.<sup>15</sup> In terminology, *nawāzil*, in its general form, means problems that require law. With this

<sup>8</sup> Alif Jumai Rajab, Muhamad Saddam Nurdin, and Hayatullah Mubarak, "Tinjauan Hukum Islam Pada Edaran Pemerintah Dan MUI Dalam Menyikapi Wabah Covid-19," *BUSTANUL FUQAH: Jurnal Bidang Hukum Islam* 1, no. 2 (2020): 156–73.

<sup>9</sup> Muhamad Agus Mushodiq and Ali Imron, "Peran Majelis Ulama Indonesia Dalam Mitigasi Pandemi Covid-19 (Tinjauan Tindakan Sosial Dan Dominasi Kekuasaan Max Weber)," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 7, no. 5 (2020).

<sup>10</sup> Abdur Rahman Adi Saputera, "Menelusik Dinamika Dan Eksistensi Fatwa MUI Sebagai Upaya Mitigasi Pandemi Covid-19," *TAHKIM: Jurnal Peradaban Dan Hukum Islam* 3, no. 2 (2020): 59–78.

<sup>11</sup> Muhammad Murtaḍā al-Zabīdī, *Tāj al-Arūs min Jawāhir al-Qāmūs*, vol. 4 (Beirut: Dār al-Maktabat al-Hayāt, n.d.), p. 304.

<sup>12</sup> Badr al-Dīn Muhammad bin Bahādur al-Zarkasyī, *al-Babr al-Muḥīṭ fī Uṣūl al-Fiqh*, vol. 1 (Kairo: Dār al-Ṣofwat, 1992), p. 4.

<sup>13</sup> Ahmad Warson Munawwir, *Kamus Arab-Indonesia*, 2<sup>nd</sup> ed. (Surabaya: Penerbit Pustaka Progresif, 1997), p. 1409.

<sup>14</sup> Ahmad bin Muhammad al-Fayyūmī, *al-Miṣbāḥ al-Munīr fī Gharīb al-Syarḥ al-Kabīr* (Beirut: al-Maktabat al-Ilmiyyat, n.d.), p. 106.

<sup>15</sup> Muhy al-Dīn al-Nawawī, *Raḍat al-Ṭalībīn wa Umdat al-Muṭṭin*, vol. 1 (Beirut: al-Maktab al-Islāmī, n.d.), p. 254.

meaning, *nawāzil* covers all problems that need to be the result of *ijtihad* or *fatwa* to explain the law, both in the form of new and unprecedented problems, as well as problems that rarely occur or that are often repeated.<sup>16</sup>

From the meaning in this general form, *nawāzil* can be grouped as follows:

1. The problem was happened for the first time in the past and has had legal explanations, both from Al-Qur'an and *hadith* that came down because of the problem and from the *ijtihad* of sahaba, tabiin, or *ulama* afterward.
2. Problems that will occur in the future, based on the information of Rasulullah SAW.
3. The problem is unprecedented, but the *ulama* have spoken or discussed the law. This is what is commonly called the problem of *iftirādi*.
4. The problem is unprecedented, and nobody has spoken or discussed the law. This is the commonly used meaning for *nawāzil*.

Thus, when mentioned *nawāzil*, the meaning that is directly understood is a variety of new problems that occur, where the problem there is no form and law in Al-Qur'an or *hadith* directly, and there has never been a result of *ijtihad* or *fatwa* that explains the law.<sup>17</sup> In other words, *nawāzil* is a new problem that has never happened, or has occurred but in a different form.<sup>18</sup>

After knowing the meaning of each of its constituent words, it can be concluded

that the meaning of *fiqh nawāzil* is the knowledge of charitable *sharia* laws, relating to new problems that have never happened, or have occurred but in a different form, where the knowledge is obtained from detailed arguments.

From this meaning, several things need to be considered in *fiqh nawāzil*, as follows:

1. *Fiqh nawāzil*, as well as jurisprudent in general, only discusses the charitable laws of *sharia*.
2. *Fiqh nawāzil* discusses new problems that have never happened, or have occurred but in a different from before.<sup>19</sup>

Thus, *fiqh nawāzil* can be categorized in several forms. First, *nawāzil* is related to the problem of worship. Such as the legal status of dirty, even unclean, wastewater filtered using modern technology. Second, *nawāzil* related to the problem of *muamalat*. As is the law of transaction *al-ijār al-muntabā bi al-tamlīk*. Third, *nawāzil* is related to family law issues. As the law of marriage is held virtually. Fourth, *nawāzil* is related to the problem of punishment. As is the law of using DNA test results (*deoxyribonucleic acid*) as evidence of adultery.

#### *Methods and Stages of Ijtihad in Fiqh nawāzil*

Etymologically, *ijtihad* is used to denote something that requires great effort, both sensorily and meaningfully.<sup>20</sup> In terminology, *ijtihad* means to give all the ability to discover and know a law.<sup>21</sup> In other words, *ijtihad* means to exert all the ability to produce a

<sup>16</sup> Abd al-Naṣir Abū al-Baṣl, "al-Madkhal ilā Fiqh al-Nawāzil," *Abbat al-Yarmouk: Humanities and Social Sciences (AYHSS)* vol. 13, no. 1 (1997): 123–151.

<sup>17</sup> Musfir bin Alī al-Qaḥṭānī, "Manhaj Istikhraj al-Ahkām al-Fiqhiyyāt li al-Nawāzil al-Muāṣirat: Dirāsāt Taṣiliyyat Taṭbiqiyyat," vol. 1 (Umm al-Qurā University, 2000), p. 95.

<sup>18</sup> Abū al-Baṣl, "al-Madkhal ilā Fiqh al-Nawāzil," pp. 124-125.

<sup>19</sup> Helmi Basri, *Epistemologi Fiqh Nawāzil: Metode Penyelesaian Problematika Kontemporer* (Bogor: Guepedia, 2020), pp. 14-16.

<sup>20</sup> al-Zabīdī, *Taj al-Arūs min Jawābir al-Qamūs*, vol. 2, p. 329.

<sup>21</sup> al-Ghazālī, *Al-Mustaṣfā Min Ilm Al-Uṣūl*, p. 350.

law, both *aqli* and *naqli*, and both *qathi* and *dẓanni*.<sup>22</sup>

Doing *ijtihad* or issuing a *fatwa* is a great responsibility that must be shouldered by a *mujtabid*. The results of *ijtihad* and *fatwa* are legal products that will be used by Muslims, so that transparency in *ijtihad* will damage Islam itself.<sup>23</sup>

Because of the weight of responsibility carried by a *mujtabid*, not everyone can simply do *ijtihad*. However, a *mujtabid* must meet the following conditions:

1. Mastering all the rules of *sharia*. That is, a *mujtabid* is required to be able to understand the legal source, both those agreed by the *ulama* such as Al-Qur'an, *hadith*, consensus, and *qiyas* as well as those disputed by the *ulama* such as *maṣlahat mursalat*, *sadd al-dẓari'at*, and *istihṣān*.<sup>24</sup>
2. Mastering Arabic and *uṣūl fiqh*.<sup>25</sup> Because Al-Qur'an and *hadith* are the main guidelines in *ijtihad*, then indirectly, a *mujtabid* must master Arabic. In addition, mastery of the *uṣūl fiqh* is also very important, because with this knowledge the content of Al-Qur'an and *hadith* can be known.
3. Understand *qawā'id fiqhīyyat*, *qawā'id ushūlīyyat*, and *maqāṣid al-syarīat* perfectly

and be able to apply them to every problem.<sup>26</sup>

In addition to these conditions, some additional conditions must also be owned by a *mujtabid*, such as Muslim, fairness, and so on.<sup>27</sup> This is inseparable from the figure of a *mujtabid* who should not include lust when doing *ijtihad*.

Broadly speaking, *ijtihad* can be done by three methods, namely *ijtihad bayānī*, *ijtihad ta'līlī*, and *ijtihad istiṣlahī*. *Ijtihad bayānī* is explaining the laws understood from the text directly. *Ijtihad ta'līlī*, also commonly referred to as *ijtihad qiyāsī*, is to establish a law for a problem that does not have a direct word, but can be attributed to the law of other problems established under Al-Qur'an or *hadith*, because of the similarity of causes between the two problems. Thus, these two *ijtihad* methods are both still in the word vortex directly. While *ijtihad istiṣlahī* is no longer in the vortex of word directly, because *ijtihad istiṣlahī* is an attempt to dig the law based on correctness, which is inferred from Al-Qur'an and *hadith*.<sup>28</sup>

Before going through the stage of *ijtihad*, a *mujtabid* should surrender to Allah and always ask for his guidance. A *mujtabid* must also repent and ask for Allah's forgiveness.<sup>29</sup> Thus, Allah will always make it easy for a *mujtabid* to establish the law of a problem.

<sup>22</sup> al-Qaḥṭānī, "Manhaj Istikhrāj al-Ahkām al-Fiqhiyyāt li al-Nawāzil al-Muāṣirat: Dirāsāt Taṣiliyyat Taṭbīqīyyat," vol. 1, p. 150"

<sup>23</sup> Abū al-Baṣl, "al-Madkhal ilā Fiqh al-Nawāzil," p. 128.

<sup>24</sup> Jalal al-Dīn Abd al-Rahmān bin Abū Bakr al-Suyūṭī, *al-Ijtihād: al-Radd alā Man Akhlada ilā al-Ardh wa Jabāla anna al-Ijtihād fī Kullī Aṣr Farḍ* (Alexandria: Muassasat Syabāb al-Jāmiat al-Iskandāriyyat, 1985), pp. 148-149.

<sup>25</sup> Abū al-Baṣl, "al-Madkhal ilā Fiqh al-Nawāzil," p. 128.

<sup>26</sup> Ibrāhīm bin Mūsā al-Syātībī, *al-Muwafaqāt fī Uṣūl al-Syarīat* (Beirut: Dār al-Marifat, n.d.), p.p. 105-106.

<sup>27</sup> Abū al-Baṣl, "al-Madkhal ilā Fiqh al-Nawāzil," p. 129.

<sup>28</sup> Nur al-Dīn Abbasy, *al-Ijtihād al-Istiṣlahī: Maḥmūmuhu, Hujjiyatuhu, Majāluhu, Ḍawābituhu* (Beirut: Dār Ibnu Hazm, 2007), p. 67.

<sup>29</sup> Syams al-Dīn Muhammad bin Abū Bakr Ibnu Qayyim, *Ilām al-Muwaqqin an Rabb al-Ālamin*, vol. 4 (Libanon: Muassasat Jawād li al-Ṭibāah, n.d.), p. 172.

In establishing the law of the problem of *fiqh nawāzil*, a *mujtabid* must go through the following stages:

### 1. *Taṣawwur al-Masalat*

The first thing a *mujtabid* must do is to carefully understand the substance of the problem of *nawāzil* to be established by the law. This can be done by gathering as much information as possible about the problem. If the problem is related to other fields of science, then a *mujtabid* must consult an expert in the field of science.<sup>30</sup> This stage is very important so that a *mujtabid* is not wrong in recognizing the meaning of the problem to be studied, so as not to propagate errors in the law to be established.<sup>31</sup>

### 2. *Takyīf Fiqhī*

After carefully understanding the substance of the problem of *nawāzil*, the next stage that must be done is to establish the appropriate method of *ijtihad* for the problem and apply it to the problem being studied. This stage is not possible by a *mujtabid* who has not recognized the meaning of the problem being studied.<sup>32</sup> Therefore, *takyīf fiqhī* must be done after going through the process of *taṣawwur al-masalat*.

The first step that a *mujtabid* must take in the problem of *fiqh nawāzil* is to return the problem to Al-Qur'an and *hadīth*. That is, a *mujtabid* must first ascertain whether the problem is alluded to by the word or not, either form or *dalālat*. If there is a word that alludes to the problem, both form or *dalālat*, then a *mujtabid* can do the method of *ijtihad bayānī*. In this case, if there is such a word, then the problem is established by the law

based on the birth of the word (*al-mantūq*). While if it is not found to be like a word that offends directly, but by it, then the problem is established by law based on the *al-mafhūm*.<sup>33</sup> Whereas if there is no form or *dalālat*, which alludes to the problem of *fiqh nawāzil*, there are other problems that already have laws and there is a possibility that the cause can be applied to the problem, then a *mujtabid* can do the method of *ijtihad ta'hlī*.<sup>34</sup>

If the problem can not be established in the law because there is no offensive word, either form, *dalālat*, or cause, then the next step that must be done by a *mujtabid* is to look for the law of the problem in the books of the jurisprudent, which includes books that contain verses or *hadīths* of law, jurisprudence from various schools, books that collect *fatwas* or *fatwa* institutions. In particular, the books that collect *fatwas* from the results of the conference of *ulama*, the results of academy research related to the problem of *fiqh nawāzil*, and so on. This is done because there is a possibility that the problem has occurred, both in the same and different forms, and has been established by the previous *ulama*.<sup>35</sup>

If the law is still unable to be established, then the next step is to return the problem to *qawāid ushūliyyat* by doing the method of *takhrīj al-furū alā al-uṣūl*.<sup>36</sup>

If the previous steps still can not be established in the law, then the problem of *fiqh nawāzil* can certainly not be a problem that has happened before, but a new problem that will be established by the law for the first time. In this case, a *mujtabid* can use the method of *ijtihad istiṣlahī*. From the law to be

<sup>30</sup> Bastri, *Epistemologi Fiqh Nawāzil: Metode Penyelesaian Problematika Kontemporer*, pp. 129-131.

<sup>31</sup> Khālid bin Abd al-Azīz al-Said, *Taṣīl Babts al-Masāil al-Fiqhiyyat*, n.d., pp. 42-43.

<sup>32</sup> Bastri, *Epistemologi Fiqh Nawāzil: Metode Penyelesaian Problematika Kontemporer*, pp. 75-76.

<sup>33</sup> Abū al-Baṣl, "Al-Madkhal Ilā Fiqh Al-Nawāzil," p. 132.

<sup>34</sup> Abū al-Baṣl, p. 133.

<sup>35</sup> Abū al-Baṣl, pp. 133-135.

<sup>36</sup> Abū al-Baṣl.

established, a *mujtahid* then looks for the possibility of benefits and harm that will be caused, then weigh between the benefits and harm based on *qawā'id fiqhīyyat*. Next, the law is faced with *maqāṣid al-syarīat* so as not to get out of the main purpose of law establishment, namely *jalb al-manfaat* and *daru al-maḍarrat*.<sup>37</sup>

If it comes to this step a *mujtahid* still cannot establish the law of the matter, then the next step to take is *tawaqquf*. Taking *tawaqquf* step is not an embarrassing thing for a *mujtahid*, it can prevent the destruction of *sharia* from the results of *ijtihad* or *fatwas* that are not based on *ijtihad*.<sup>38</sup>

### 3. *Tatbīq al-Abkām*

The last stage that must be done by a *mujtahid* in the problem of *fiqh nawāzil* is to apply the law that has been established from the problem. The application of the law here also means placing the law according to the appropriate place, time, and person. Because it may be, that a law is not appropriate to apply to a particular place, time, and person.<sup>39</sup>

## ***Mui and Fatwas Related To Covid-19***

### *About MUI*

Although Indonesia is not an officially Islamic country, the two seem to have an inseparable bond. At the beginning of the 20th century, awareness of the bond between Islam and Indonesia was growing. Islam seems to have become the identity of the Indonesian nation, especially when dealing with foreign cultures. The number of Islamic organizations that emerged at that time also

further strengthened the reality of this bond.<sup>40</sup>

The emergence of these Islamic organizations is a positive thing for the Indonesian nation, although each other often differs, both in terms of movement orientation and rationale. However, when they see a threat to the survival of Islam in Indonesia, Muslims are united in facing it, despite mutual disdal. This then gave birth to the idea of the establishment of a container that can gather Muslims from various backgrounds.

In 1975, Suharto revived the idea of establishing a forum that gathered *ulama* from various backgrounds. Based on the President's mandate, an intensive *Ulama* Council was formed in each Level I area and some Level II areas. While at the central level, the Preparation Committee for National Deliberation I of the *Ulama* Council throughout Indonesia was formed. From the National Conference I of the *Ulama* Council held on July 21-27, 1975, MUI was born. In addition, through the same forum, MUI management was appointed for 1975-1970, where Prof. Dr. Hamka was appointed as chairman.<sup>41</sup>

As a religious organization that gathers *ulama* from all over Indonesia, MUI has a purpose and role that leads to religion. MUI has the goal of practicing Islamic teachings to participate in creating a peaceful, just and prosperous society, spiritual, and physical, which is guided by Allah in Indonesia based on Pancasila.<sup>42</sup> While the role of the MUI is

<sup>40</sup> Muhammad Cholil Nafis, *Teori Hukum Ekonomi Syariah: Kajian Komprehensif tentang Teori Hukum Ekonomi Islam, Penerapannya dalam Fatwa Dewan Syariah Nasional, dan Penyerapannya ke dalam Peraturan Perundang-undangan* (Jakarta: UI Press, 2011), p. 72.

<sup>41</sup> Nafis, pp. 75-77.

<sup>42</sup> Majelis Ulama Indonesia, "Pedoman Dasar Majelis Ulama Indonesia," in *Musyawarah Nasional III*, 1985.

<sup>37</sup> Abū al-Baṣl pp. 135-137.

<sup>38</sup> Abū al-Baṣl pp. 138-140.

<sup>39</sup> Basti, *Epistemologi Fiqih Nawāzil: Metode Penyelesaian Problematika Kontemporer*, pp. 79-82.



to issue *fatwas* and advice to the government and Muslims on problems related to religion and the nation's humanity, maintain the unity of the ummah, the institution of representation of Muslims, and as an intermediary that harmonizes relations between religious people.<sup>43</sup>

In carrying out daily activities, MUI forms several commissions. One of them is the *Fatwa* Commission which has the main task to accommodate, examine, review, and formulate *fatwas* and laws on religious issues that arise in society.<sup>44</sup> Since its establishment, MUI has studied many religious and social problems, which can be grouped into several aspects, namely worship, religious understanding, social problems of society, and science and technology.<sup>45</sup>

In carrying out its duties, the *Fatwa* Commission is based on the procedure of establishing *fatwas* established and refined in the *Ijtima Ulama* of *Fatwa* Commission in Indonesia through a plenary session in Jakarta in 2003, which was then established as an Organizational Regulation that binds MUI at all levels based on the Mandate of National Deliberations XI in 2015.<sup>46</sup>

Based on the MUI Organization Regulation on Guidelines for the Establishment of MUI *Fatwas*, *fatwas* are established through several stages, as follows:

1. Before the *fatwa* was established, a comprehensive review was conducted first, to obtain a complete description

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<sup>43</sup> Atho Mudzhar, *Fatawā Majlis al-Ulamā al-Indunsi: Dirāsāt fī al-Fikr al-Tasyrī al-Islāmī bi Indunisiyyā 1975-1988* (Jakarta: CENSIS, 1996), p. 82.

<sup>44</sup> Majelis Ulama Indonesia, "Pedoman Rumah Tangga Majelis Ulama Indonesia," in *Musyawarah Nasional II*, 1980.

<sup>45</sup> Majelis Ulama Indonesia, *Himpunan Fatwa MUI sejak Tabun 1975*, n.d.

<sup>46</sup> Majelis Ulama Indonesia, "Peraturan Organisasi Majelis Ulama Indonesia," *Pedoman Penetapan Fatwa MUI*, n.d.

of the object of the problem, the formulation of the problem, including the social impact of religion caused, and the critical point of various aspects of the law related to the problem.<sup>47</sup> The comprehensive review includes a review of the views of the *mujtabid*, the opinions of the *ulama* who are in the past, the study of related *fatwas*, and the views of fiqh experts regarding the issues to be decreed.<sup>48</sup>

2. The establishment of *fatwas* on issues that have been legal and its arguments are done by conveying the law as it is.<sup>49</sup>
3. The establishment of a *fatwa* on the problem of differences of opinion among the *ulama*, then:
  - a. The establishment of *fatwas* is based on the results of efforts to achieve common ground among opinions expressed through the method of *al-jamu wa al-tanfiq*.
  - b. If there is no meeting point between these opinions, the establishment of *fatwa* is based on the results of *tarjih* through the method of comparison using the rules of *uṣūl fiqh*.<sup>50</sup>
4. The management of *fatwas* on issues that are not found legal opinion among the *ulama* is based on collective *ijtihad* through the method of *bayānī* and *ta'līlī*, as well as the method of establishing the law that is believed by the *ulama*.<sup>51</sup>
5. In the problem that there are differences of opinion and no common ground is reached, then the establishment of *fatwas* is conveyed about the difference of opinion

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<sup>47</sup> Majelis Ulama Indonesia.

<sup>48</sup> Majelis Ulama Indonesia.

<sup>49</sup> Majelis Ulama Indonesia.

<sup>50</sup> Majelis Ulama Indonesia.

<sup>51</sup> Majelis Ulama Indonesia.

accompanied by an explanation of their respective arguments and explanations in terms of practice by taking the most carefully and wherever possible out of dissent.<sup>52</sup>

6. The establishment of *fatwas* must always pay attention to the regulatory authority of law by *sharia* and consider the general phisity and *maqāṣid al-syarāʾat*.<sup>53</sup>

In this case, point (1) in the procedure of establishing the *fatwa* can be categorized as the stage of *taṣannur al-masalat*. While points (2), (3), (4), (5), and (6) can be categorized as *takyif fiqhī* stages. As for *taṭbiq al-abkām*, although not mentioned directly in the procedure for the establishment of *fatwas*, it can be found in every *Fatwa* Decree, where MUI always provides information regarding the limits of the enactment of *fatwas* that includes the time and place of the enactment of *fatwas*, as well as for whom the *fatwa* applies.

### The Existence of MUI in the Covid-19 Problem

As a religious organization that is principled systematically, argumentatively, contextually, and applicatively, MUI is required to be adaptive to the problem of *nawāzil*.<sup>54</sup> Among them is the problem of *nawāzil* related to Covid-19.

Until now, Covid-19 is still a global problem that threatens human survival. Since it was first released on February 11, 2020, by the World Health Organization (WHO), Covid-19 has claimed millions of human lives. This is certainly responded by the governments of every country in the world, including Indonesia, by issuing various policies that can break the chain of

transmission and reduce mortality. Some policies that are almost evenly applied are restrictions on people's mobility, prohibition of leaving the house if they do not have urgent business, the obligation to use masks when traveling, maintaining distance, closing public places that have the potential to cause crowds, and so on. These policies not only apply to the scope of work and education but also religion. As a Muslim-majority country, Indonesia is certainly one of the countries that also apply these policies to the religious sphere. In this case, the Indonesian government must synergize with MUI which is considered to hold religious authority in Indonesia.

Since the Covid-19 case was first discovered in Indonesia to date, MUI has contributed a lot to Covid-19 mitigation efforts through established *fatwas*. At least 12 *fatwas* related to Covid-19 have been established by MUI, as follows:

1. *Fatwa* No. 14/2020 on The Implementation of Worship in the Situation of the Covid-19;
2. *Fatwa* No. 17/2020 on How to Pray for Health Workers Who Wear Personal Protective Equipment (APD) when Caring for and Dealing with Covid-19 Patients;
3. *Fatwa* No. 18/2020 on Guidelines for the Management of Jenazah (*Tajbiḥ Al-Jana'iz*) Infected with Covid-19;
4. *Fatwa* No. 23/2020 on the Utilization of Zakat, Infak, and Alms for the Prevention of the Covid-19 and Its Effects;
5. *Fatwa* No. 28/2020 on Takbir Guidelines and Eid Prayers during Covid-19;
6. *Fatwa* No. 31/2020 on the Implementation of Friday Prayers and Congregational to Prevent the Transmission of Covid-19;

<sup>52</sup> Majelis Ulama Indonesia.

<sup>53</sup> Majelis Ulama Indonesia.

<sup>54</sup> Majelis Ulama Indonesia.

7. *Fatwa* No. 36/2020 on Eid Prayers and Slaughter of Sacrificial Animals during the Covid-19;
8. *Fatwa* No. 2/2021 on Covid-19 Vaccine Products from Sinovac Life Sciences, Co. Ltd China and PT Biofarma;
9. *Fatwa* No. 13/2021 on the Law on the Vaccination while Fasting;
10. *Fatwa* No. 14/2021 on the Law on the Use of AstraZeneca Vaccine;
11. *Fatwa* No. 23/2021 on the Law on the Swab Test for Covid-19 Detection while Fasting;
12. *Fatwa* No. 24/2021 on Guidance on the Implementation of Worship in Ramadan and Shawwal 1442 H.

For some, some *fatwas* that have been established by MUI are certainly controversial. On the other hand, positive responses turned out to be also many popping up from other circles, because MUI is considered able to solve new problems that arise in their midst. The *fatwa* is considered worthy of application because of its rational, dynamic, and probability establishment procedures. This certainly further strengthens the principles that are firmly held by MUI.

### Implementation of Methods and Stages of *Ijtihad* in *Fiqh Nawazil* in MUI *Fatwa*

To be able to see the implementation of the method of *ijtihad* in *fiqh nawazil* in the procedure of establishing the MUI *fatwa* on Covid-19, it will be dissected by one of the MUI *fatwas*, namely *Fatwa* No. 14/2021 on the Law on the Use of Astrazenaca Vaccine, whose Decree was established by the MUI *Fatwa* Commission at the Plenary Meeting of the *Fatwa* Commission in Jakarta on March 16, 2021.

In the Decree that produced the four dictums, it is seen how MUI in applying the procedure of establishing *fatwa* as the method

and stages of the *ijtihad* in *fiqh nawazil*, namely *taṣawwur al-masalat*, *takyif fiqhī*, and *taṭbīq al-abkām*.

In conducting the *taṣawwur al-masalat* stage, MUI included several related experts in the meeting, such as the Minister of Health, and President Director of PT. Biopharmaceuticals, and Head of BPOM. MUI also pays attention to written statements from the Ministry of Health and written explanations of PT. Biopharma, the results of the *Indonesian Technical Advisory Group on Immunization* (ITAGI), as well as reports and explanations of the LPPOM MUI auditor team. This is done so that MUI gets as much related information as possible, to understand well the substance of the problem studied.<sup>55</sup>

While doing the *takyif fiqhī* stage, MUI tried to find words related to the problem studied. This can be seen in the dictum of **remembering** in the MUI Decree, where it is listed in it three verses of Al-Qur'an and seven *hadiths*, which are weighed with 12 rules that are *qawāid fiqhīyyat*.<sup>56</sup> MUI also seeks to explore the problems studied in the literature of *ulama*. This can be seen in the dictum of **attention**, where there are nine different opinions of *ulama*, which are reinforced by the previous four MUI *fatwas*, explanations from five different experts in the issues studied, as well as opinions, suggestions, and inputs in the *Fatwa* Commission meeting.<sup>57</sup>

The *ijtihad* method used is *ijtihad bayānī*. This is concluded based on some words that very clearly contain a prohibition on consuming something illegal. This is what then makes MUI establish the prohibition of

<sup>55</sup> Majelis Ulama Indonesia, "Surat Keputusan Fatwa Majelis Ulama Indonesia Nomor 14 Tahun 2021" (2021).

<sup>56</sup> Majelis Ulama Indonesia.

<sup>57</sup> Majelis Ulama Indonesia.

the *AstraZeneca* vaccine because the production stage utilizes *trypsin* derived from pigs.<sup>58</sup> Likewise, the next *fatwa* point about the ability to use the *AstraZeneca* vaccine in emergencies is also based on several other words that allow the consumption of something forbidden during an emergency.<sup>59</sup>

While the stage of *taṭbīq al-abkām* can be found in the dictum of establishing which contains four provisions, as follows:

1. General provisions explaining the intent of the *AstraZeneca* vaccine, which is a Covid-19 vaccine produced by *AstraZeneca* at SK Bioscience Co. Ltd., Andong, South Korea.
2. The law contains five points, namely:
  - a. The prohibition of the *AstraZeneca* vaccine;
  - b. The ability to use the *AstraZeneca* vaccine is based on four things, namely:
    - i. Conditions of urgent need that occupy an emergency;
    - ii. Expert information about the dangers if vaccination is not immediately done;
    - iii. The availability of halal and sacred vaccines is insufficient to realize herd immunity.;
    - iv. Guarantee the safety of the use of vaccines by the government; and
    - v. The government does not have the flexibility to choose the type of vaccine.
  - c. Invalid point (b) when the underlying thing is lost.
  - d. Appeal to the government to strive for the availability of halal and holy vaccines.

- e. Appeal to Muslims to participate in vaccination programs.
1. Recommendations that contain six points, namely:
    - a. Recommendations to the government to prioritize halal vaccines, especially for Muslims.
    - b. Recommendations to the government to optimize the procurement of halal vaccines.
    - c. Recommendations to the government to ensure other vaccines will be used to be certified halal at the first opportunity.
    - d. Recommendations to the government to ensure the safety of vaccine use.
    - e. Recommendations to the government not to use vaccines that experts say could pose a danger.
    - f. It is a call for all parties to draw closer to Allah by multiplying *istigfar*, *istigasah*, and worshiping Allah.
  2. The closing provisions contain two points, namely:
    - a. Information about the validity period of the *fatwa* since it was established can be improved and perfected if it requires improvement.
    - b. Appeal to all parties to disseminate this *fatwa*.

## CONCLUSION

Every day, the problem of *nawāzil* will continue to arise. As universal teaching whose legal content is *ṣalīḥ li-kullī zamān wamakān*, Islam must be able to answer every such problem. To establish the law of these problems, the *ijtihad* process is necessary. In doing *ijtihad*, a *mujtahid* must use the proper

<sup>58</sup> Majelis Ulama Indonesia.

<sup>59</sup> Majelis Ulama Indonesia.

method of *ijtihad* so that the results do not come out of the provisions of Islam. The *ijtihad* methods used to establish the law of the matter are *bayānī*, *ta'līlī*, and *istiṣlahī*. The *ijtihad* method is then practiced through three stages, namely *taṣanwur al-masalat*, *takyīf fiqhī*, and *taṭbīq al-ahkām*.

Meanwhile, in establishing the *fatwa*, MUI is based on the procedure of establishing *fatwas* established and refined in the Ijtima Ulama Fatwa Commission in Indonesia through a plenary session in Jakarta in 2003, which was later established as

an Organizational Regulation that binds MUI at all levels based on the Mandate of the National Deliberation XI in 2015.

Although there are differences in the aspect of language, both have a similar substance, so it can be concluded that the MUI *fatwa* establishment procedure has included three stages in the method of *ijtihad* in *fiqh nawāzil*. This is increasingly seen in the contents of the MUI *Fatwa* Decree related to Covid-19, especially about the Law on the Use of AstraZeneca Vaccine.

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