

**IBN HALDUN UNIVERSITY
SCHOOL OF GRADUATE STUDIES
DEPARTMENT OF ISLAMIC STUDIES**

MASTER THESIS

**INDONESIAN ULAMA COUNCIL AND ANALYSIS OF
THEIR FATWA IN THE HEALTH FIELD**

BAGAS MASHADI

**THESIS SUPERVISOR
ASST. PROF. TUBA ERKOÇ BAYDAR**

İSTANBUL, 2023

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THEIR FATWA IN THE HEALTH FIELD**

by

BAGAS MASHADI

**A master submitted to the School of Graduate Studies in partial
fulfillment of the requirements for the degree of Master of Islamic
Studies**

**THESIS SUPERVISOR
ASST. PROF. TUBA ERKOÇ BAYDAR**

İSTANBUL, 2023

APPROVAL PAGE

This is to certify that we have read this thesis and that in our opinion it is fully adequate, in scope and quality, as a thesis for the degree of Master of Arts in Islamic Studies.

Thesis Jury Members

Title – Name Surname

Opinion

Signature

This is to confirm that this thesis complies with all the standards set by the School of Graduate Studies of Ibn Haldun University.

Date of Submission


Seal/Signature

ACADEMIC HONESTY ATTESTATION

I hereby declare that all information in this document has been obtained and presented under academic rules and ethical conduct. I also declare that, as required by these rules and conduct, I have fully cited and referenced all material and results that are not original to this work.

Name Surname: Bagas MASHADI

Signature:



ÖZ

ENDONEZYA ÜLEMA MECLİSİ VE SAĞLIK SEKTÖRÜNDEKİ FETVALARIN ANALİZİ

Mashadi, Bagas

Temel İslam Bilimleri Yüksek Lisans Programı

Öğrenci Numarası: 204018019

Open Researcher and Contributor ID (ORCID): 0000-0001-8738-215X

Ulusal Tez Merkezi Referans Numarası: 10545908

Tez Danışmanı: Dr. Öğr. Üyesi Tuba Erkoç Baydar

Temmuz 2023, 97 sayfa

Endonezya'da birden fazla fetva kurumları bulunmaktadır. Bunlar Lajnah Bahtsul Masail Nahdlatul Ulama, Dewan Hisbah Persis, Majelis Tarjih Muhammadiyah ve Endonezya Ulema Meclisi gibi fetva kurumları mevcuttur. Endonezya Ulema Meclisi (MUI) de bir fetva kurumu olarak bu ülkedeki Müslümanlara rehberlik etme ve hükümet politikaları ile halk arasında arabuluculuk yapma sorumluluğuna sahip bir kuruluştur. Ayrıca bu kurum dini açıdan sorunları çözmek ve cevaplamak için kendi fetva komisyonu da vardır. Bu kurum Türkiye'deki Diyanet kadar önemli ve resmi bir görev yapmazsa da halk açısından gerçekten önemli görünmektedir. Bu çalışma, bir fetva kurumu olarak Endonezya Ulema Meclisini ve fetva yöntemlerini tanıtmaya odaklanacaktır. Özellikle sağlık alanındaki fetvaları da analiz edilecektir. Bu amaca ulaşmak için, çalışmamız iki bölüm ve sonuç kısmından oluşacak şekilde dizayn edilmiştir. Birinci bölümde Endonezya Ulema Meclisi'nin tanıtımı, ikinci bölümde ise sağlık alanındaki fetvalarını incelenmiştir.

Anahtar Kelimeler: Endonezya Ulema Meclisi, Fetva Kurumu, Fetva Yöntemleri, Sağlık, Endonezya

ABSTRACT

INDONESIAN ULAMA COUNCIL AND ANALYSIS OF THEIR FATWA IN THE HEALTH FIELD

Mashadi, Bagas

MA in Islamic Studies

Student Number: 204018019

Open Researcher and Contributor ID (ORCID): 0000-0001-8738-215X

National Thesis Center Reference Number: 10545908

Thesis Advisor: Asst. Prof. Tuba Erkoç Baydar

July 2023, 97 Pages

In Indonesia, there are many fatwa institutions like Lajnah Bahtsul Masail Nahdlatul Ulama, Dewan Hisbah Persis, Majelis Tarjih Muhammadiyah, Indonesian Ulama Council, and others. Indonesian Ulama Council (MUI) itself is an organization in Indonesia that has the responsibility to guide the Muslims in this country and mediate between the government policies and the people. In addition, this council also has a fatwa commission to solve and answer problems in terms of religion. Although this organization is not official like Diyanet in Türkiye, it still has an essential role for the people. This study will concentrate on introducing the Indonesian Ulama Council as a fatwa institution and its fatwa methods. Besides, it will analyze their fatwa in the field of health. To achieve this purpose, our study has been conducted in two parts and a conclusion in which the first part is about the Indonesian Ulama Council profile, and the second part is about analyzing their fatwa in the health field.

Keywords: Indonesian Ulama Council, Fatwa Institution, Fatwa Method, Health, Indonesia

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LIST OF SYMBOLS AND ABBREVIATIONS

MUI	Indonesian Ulama Council
DSN	Dewan Syariah Nasional
LPPOM	Lembaga Pengkajian Pangan, Obat-Obatan dan Kosmetika
MUNAS	Musyawahar Nasional/National Conference
NU	Nahdlatul Ulama
BM	Bahtul Masail Nahdlatul Ulama
MT	Majelis Tarjih Muhammadiyah
IIFA	The Council of the International Islamic Fiqh Academy
Persis	Persatuan Islam
DH	Dewan Hisbah
KHI	Compilation of Islamic Law
PMI	Indonesian Red Cross Society
BKKBN	The National Population and Family Planning Board
TDV	Türkiye Diyanet Vakfı
DİA	Türkiye Diyanet Vakfı İslâm Ansiklopedisi
DİB	Diyanet İşleri Başkanlığı
KH	Kyai Haji
D/d	Death
b.	Bin, ibn
ed.	Edition
PBUH	Please be upon him
H	Hijri
Vol.	Volume
p.	Page
no.	The number issued
n.d.	No date

CHAPTER I

INTRODUCTION

1.1. Subject and Important of Thesis

Fatwa is an important subject that people need as a source and guideline for their life. It could also become the inspiration for constructing a law. As we witnessed from history, asking for a fatwa is a general thing that could come from anyone, and we can see the development of this aspect in which it was by asking directly in the period of the Prophet (PBUH). Then, it evolved to be a fatwa commission later on. Throughout history, we witnessed the development of the fatwa commission. Some of them were bound with one madhhab -like the Abbasid and Ottoman empires-, and others did not follow the same way, such as the fatwa commission that is founded in Egypt and others.

The importance of asking fatwa has been mentioned in the Qur'an in its Surah al-Anbiya, verse seven, that we have to ask someone who knows if we do not know about something;

وَمَا أَرْسَلْنَا قَبْلَكَ إِلَّا رِجَالًا نُوْحِي إِلَيْهِمْ فَاسْأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ (٧)

We only sent men before you, whom We inspired. Ask those people of knowledge if you do not know.¹

Nowadays, we can find many fatwa commissions. In Indonesia, there are many fatwa commissions such as Bahtsul Masail, which belongs to Nahdlatul Ulama, Majelis Tarjih, which belongs to Muhammadiyah, Dewan Hisbah, which belongs to Persis; Indonesian Ulama Indonesia, and others. These organizations have so many followers and we would like to introduce them later in the second chapter.

¹ “Qur'an Translation of al-Anbiya,” *Quran.Com*, accessed on 4th July, 2023, <https://quran.com/21>.

Indonesian Ulama Council (MUI) is a crucial fatwa institution because they represent a bridge between the government and the people. Although they are not as official as Diyanet in Türkiye, they have an official task for determining the halal product -but such duty has been taken by the Ministry of religious affairs lately- and building the Sharia economy in this country. On behalf of such an important role, we choose this commission intending to introduce one of the fatwas commissions from Indonesia.

1.2. Literature Review

From the literature review, the case study about Indonesian Ulama Council in the Indonesian language is prevalent as we can find many articles, journals, theses, and books regarding this organization, whether it is about comparison or analysis related to *aqidah*, *ibadah* (worship), social, technology and health issue. However, this organization has not been introduced in Turkish literature, as we cannot find any scholar who has written about this topic.

For instance, the organization like Nahdlatul Ulama and Muhammadiyah have been introduced by the work of Muhammad Syauqillah in his doctoral thesis 2016 with the title “*Endonezya’da Din ve Siyaset (Nahdlatul Ulema Örneği)*” -which present Nahdlatul Ulama and their ideas from political view-, Rahmanto Dwi Saputra in his master’s thesis 2022 with the title “*Endonezya Nehdatü’l Ülema Cemaati: Tarihi ve Temel Dini Fikirleri*” -which explain about the history and the ideas of Nahdlatul Ulama- and Taufiq Kurniawan in his master’s thesis 2020 with the title “*Endonezyalı Bir Âlim Kiai Hacı Ahmed Dahlân ve Muhammediyye Cemiyeti*” -which introduce the founder, the history and the ideas of Muhammadiyah-.

In English literature, the topic of the Indonesian Ulama Council is also popular. It has been written by Indonesian and non-Indonesian scholars, which bring up some famous cases like the prohibition of the Ahmadiyya sect, the relationship of MUI and politics, halal certifications, the Sharia economy and other topics related to health like the study of vaccines, cigarette, and others. However, no study analyzes the fatwa about health on a broader level. Therefore, we would like to fill this emptiness by providing an analysis of other fatwas related to health. In addition, we will also compare the

analyzed fatwa with Nahdlatul Ulama and Muhammadiyah's view and give our opinion related to these cases.

1.3. Method and Scope of the Thesis

The method we use in this study is a literature study which consists of relevant sources such as books, articles, thesis, MUI fatwas, and, other sources from the internet to gain empirical evidence that later on would be analyzed and written systematically. This study would also provide important information about this institution, such as its profile, its general leaders and characteristics of leadership, their fatwa methods - including the procedures and forums where the fatwa are issued- and their fatwa from the standpoint of positive law.

In terms of the fatwa analysis, we will be more focused on analyzing their fatwa in the health field. In addition, we will make a little comparison of the analyzed fatwa with other' fatwa institutions such as Majelis Tarjih, which belongs to Muhammadiyah, and Bahtsul Masail, which belongs to Nahdlatul Ulama. The reason for choosing these two groups is because they have the most prominent followers, but both have different methods. In contrast, Muhammadiyah has a modern perspective view by not binding themselves to a certain madhhab and referencing directly to the primary resources, which are Qur'an and Hadith using the *uṣūl al-fiqh* to understand them. However, Nahdlatul Ulama has a conservative view by binding themselves to Shafi'i madhhab and referencing through the madhhab books first rather than entering the Qur'an and Hadith directly.

CHAPTER II

THE INDONESIAN ULAMA COUNCIL

2.1. Fatwa Commissions in Indonesia

There are some fatwa commissions that we can find in Indonesia, such as Dewan Hisbah, which belongs to Persis; Bahtsul Masail, which belongs to Nahdlatul Ulama; Indonesian Ulama Council, and Majelis Tarjih, which belongs to Muhammadiyah. Although the Salafi group is also present in this country, their fatwas are considered personal because there is no organization that unites them together in producing the fatwa.² Here, besides introducing the Indonesian Ulama Council, we will also give short knowledge about Bahtsul Masail Nahdlatul Ulama and Majelis Tarjih Muhammadiyah as we will compare the fatwas between them.

Nahdlatul Ulama is an Islamic organization founded by K.H. Hasyim Asy'ari (d. 1947) on 31st January 1926 in Surabaya, east Java.³ As the ideology, Nahdlatul Ulama follows the *Ahl al-Sunnah wa al-Jama'ah* in *aqidah* -which are Ash'aris and Maturidis-, the four madhhabs -which are Hanafi, Maliki, Shafi'I, and Hanbali- in Fiqh and Tariqah Shaikh al-Junaid al-Baghdadi (d. 279H) and al-Ghazali (d. 505H) in Sufism (Mysticism). However, in reality, they follow Ash'aris in *aqidah*, Shafi'i madhhab for Fiqh and Tariqah Abdul Qadir al-Jilani for Sufism.⁴

Bahtsul Masail is a fatwa commission that belongs to Nahdlatul Ulama. This commission was formed officially in 1990, but the practice of issuing fatwas has been done since this organization was formed in 1926.⁵ This commission has a conservative

² The Salafi's fatwa can be accessed through video on YouTube, some sites like konsultasisyariah.com, Muslim.or.id, rumaysho.com, and others.

³ nuonline, "Sejarah Singkat Berdirinya Nahdlatul Ulama," accessed on 15th June, 2021, <https://www.nu.or.id/post/read/116035/sejarah-singkat-berdirinya-nahdlatul-ulama>.

⁴ Ahmad Zahro, *Tradisi Intelektual NU: Lajnah Bahtsul Masa'il 1926-1999*, 1st ed. (Yogyakarta: LKiS, 2004), 15–20.

⁵ *Ibid.*, 3.

system in issuing the fatwa, which means that they used the book of madhhabs as their leading resource -especially the Shafi'i madhhab because most of the people in Indonesia follow this madhhab-. If they could not find the response, they would try to find the answer from the Qur'an and Hadith using the *uṣūl al-fiqh*. In addition, the cultures that are found in the society are also considered by them, which also could affect the fatwa.⁶

Muhammadiyah, -which means the followers of the Prophet Muhammad (PBUH)- is an Islamic organization in Indonesia which is founded by KH. Ahmad Dahlan (d. 1923) in Yogyakarta, the year 1912.⁷ For issuing fatwas, Muhammadiyah has a commission called Majelis Tarjih. This commission was formed in 1927, but the practice of Tarjih has been done since the early years when this organization appeared. Majelis Tarjih has a different approach than Bahtsul Masail in that, they are not conservative and use the modern method instead by not binding themselves to a certain madhhab like Nahdlatul Ulama. So, when they want to find an answer to a question, they would use *uṣūl al-fiqh* and find the answer directly from the Qur'an and Hadith, although the opinion of the madhhab would still enter into their consideration. In addition, they do not consider social culture as an essential aspect when issuing the fatwa.⁸

As a result, sometimes the fatwa of Bahtsul Masail and Majelis Tarjih could be different, like in determining the beginning of Qamariyah months, since they have other methods in which Bahtsul Masail uses the *Rukyatul Hilal* method meanwhile, Majelis Tarjih uses *Hisab* method. Since both groups are the most significant Islamic community and have different methods of issuing the fatwas, we choose them to compare with MUI in this study.

⁶ Ibid., 115–25.

⁷ Muhammadiyah, "Sejarah Singkat Muhammadiyah," *Muhammadiyah.or.Id*, accessed on 6th July, 2023, <https://muhammadiyah.or.id/sejarah-singkat-muhammadiyah/>; Asjmunni Abdurrahman, *Manhaj Tarjih Muhammadiyah: Metodologi Dan Aplikasi*, 6th ed. (Yogyakarta: Pustaka Pelajar Offset, 2012), 3–4.

⁸ Abdurrahman, *Manhaj Tarjih Muhammadiyah: Metodologi Dan Aplikasi*, 192–96.

2.2. Short History and Profile of the Indonesian Ulama Council

Majelis Ulama Indonesia (Indonesian Ulama Council) is an organization that provides such forum deliberation for all Muslim scholars in Indonesia, which also has the responsibility to guide, foster and protect the Muslims in this country. The chronological event of how this council was founded follows such steps. Sukarno (d. 1970), the first president of Indonesia, founded the Council of National Ulama in 1962. Then Suharto (d. 2008), the second president of Indonesia, took over the power from Sukarno in 1966. In 1970, Suharto built *Pusat Dakwah Islam* -the Center for Islamic Propagation- through Mohammad Dahlan, who was the Religious Affairs Minister at that time. Then, a conference was organized between 30th September and 4th October 1970. At this conference, Ibrahim Hosen mentioned the importance of collective ijtihad, and recommended establishing a fatwa commission. This idea was rejected by the first general leader of MUI, Buya Hamka, as his vision was to choose a mufti rather than collective ijtihad. After some revisions, finally, this organization was established on 26th July 1975 or 7th Rajab 1395 H, in the capital city of Indonesia which is Jakarta.⁹

The decision to build such an organization came from a discussion of scholars, intellectuals, and leaders and was signed by fifty-three people in total. They were ten scholars who came from some big Islamic organizations such as K.H. Moh. Dahlan -from Nahdlatul Ulama-, Ir. H. Basit Wahid -from Muhammadiyah-, H. Syafi'i Wirakusumah -from Syarikat Islam-, H. Nurhasan Ibnu Hajar -from Persatuan Tarbiyah Islam-, Anas Tanjung -from Al Washliyah-, K.H. Saleh Su'aidi -from Math'laul Anwar-, K.H. Qudratullah -from Gerakan Usaha Pembaruan Pendidikan Islam-, H. Sukarsono -from Perguruan Tinggi Dakwah Islam-, K.H. Hasyim Adnan -from Dewan Majelis Indonesia- and H. Zaenal Arifin Abbas -from al-Ittihadiyyah-. The rest were four scholars from Dinas Rohani Islam, some representatives from Military forces (land, sea, and sky forces), and thirteen people who were individual figures. This decision was then named "Piagam Berdirinya MUI" (The Founding Charter of MUI). In addition, this conference was declared as their first discussion,

⁹ Syafiq Hasyim, "The Council of Indonesian Ulama (Majelis Ulama Indonesia, MUI) and Religious Freedom," *Irasec* 12 (2011): 4; Sholeh, M. Asrorun Ni'am, *Metodologi Penetapan Fatwa Majelis Ulama Indonesia; Penggunaan Prinsip Pencegahan Dalam Fatwa*, ed. Andriansyah, Hijrah Saputra, and Adhika Prasetya (Ciracas, Jakarta: Emir, 2016), 69–70.

which was called Musyawarah Nasional Ulama I, and Buya Hamka -who initially rejected such an idea- was chosen to be the first general leader of this organization.¹⁰

The reason behind the necessity to build such an organization is after getting their independence for thirty years and much of the energy was spent on the political side, giving more intention to the spiritual side of the people was an important matter and what they needed. Another reason is to control the Muslims and make a peaceful country so the government can concentrate on developing the economic sector. Here, MUI has a big responsibility because they have a task to mediate between the government policy and the people in which, if they are more prone to the government, they will lose the trust of the people, and if they are more inclined to the people, their relationship with the government would be ruined.¹¹

This organization has the vision to apply Islam as a religion that upholds Pancasila's ideal of creating a peaceful society.¹² Also, the function of this organization is to give guidance to Indonesian Muslims to live according to what God wants in terms of religion and social life. Furthermore, this organization gives advice and produces fatwas for the government and the people for religious cases and provides such programs to increase the relations and the brotherhood between Muslims with other religions and an organization with other organizations.¹³

At the beginning of their journey, MUI just justified themselves as an advisor and fatwa issuer without doing any practical programs such as building schools, mosques, or hospitals or giving support to the agenda of other Islamic organizations. But since 1990, they began to do some practical programs. For instance, they sent some scholars to some regions to teach Islam. Also, they built a bank called *Bank Muamalat Indonesia*. Furthermore, they created an institution -which has the responsibility of

¹⁰ Sholeh, M. Asrorun Ni'am, *Metode Penetapan Fatwa MUI*, 70–71; "Sejarah MUI," *MUI Website*, accessed on 29th November, 2021, <https://mui.or.id/sejarah-mui/>.

¹¹ Wildan Insan Fauzi, "Hamka Sebagai Ketua Umum MUI (Majelis Ulama Indonesia) Dalam Menghadapi Masalah Sosial Politik Pada Masa Orde Baru 1975-1981," *Factum* 6, no. 2 (2017): 282–83.

¹² Pancasila is an Indonesian national principle that has five verses which are; the belief in one God, just and civilized humanity, Indonesian unity, democracy under the wise guidance of representative consultation, and social justice. See: <https://www.britannica.com/topic/equal-opportunity> accessed on 4th July, 2023.

¹³ Hasyim, "The Council of Indonesian Ulama (Majelis Ulama Indonesia, MUI) and Religious Freedom," 4–5; "Sejarah MUI."

investigating products for producing and giving halal certificates- called *Lembaga Pengkajian Pangan, Obat-obatan dan Kosmetika* (LPPOM).¹⁴

MUI's central institution is located in Jakarta. But they also have some branches at the province and regency levels. The hierarchies of the given fatwa between the main and the branch institution are as follows. The fatwa that is issued by the central institution must be followed by the branches. If they cannot apply it in their region, they should consult the main institution for further discussion. If a problem has not yet been given a fatwa by the central institution, the branch institution has the authority to produce the fatwa on its own to solve the problem in its region. But if the problem is susceptible, they should consult the central institution first before producing the fatwa.¹⁵

MUI is not only responsible for producing fatwa but also have the power in deciding halal product through LPPOM MUI. This institution is accompanied by the Fatwa Commission in doing their job, and their responsibility is to give and issue a halal certificate to the products which are considered halal so that people will not hesitate to consume them. But since 2019, LPPOM's right to produce a halal certificate has been taken by the Halal Product Assurance Agency, which works under the Ministry of Religious Affairs.¹⁶ Furthermore, In the economic sector, MUI also has DSN-MUI (*Dewan Syariah Nasional Majelis Ulama*), which is in charge of managing the Sharia economy.¹⁷

2.3. Structure of MUI Organization

As an organization, MUI is led by a general leader who also gets help from the vice leader which is three in total at the national level and less for the regional, the general secretary, and the general treasurer. Under these people, there would be leaders, secretaries, and treasurer in each division, such as the fatwa commission, economy, education, and other divisions, which have the responsibility of helping the general

¹⁴ Sholeh, M. Asrorun Ni'am, *Metode Penetapan Fatwa MUI*, 71–73.

¹⁵ Ma'ruf Amin et al., *Himpunan Fatwa MUI*, ed. Andriansyah Syihabuddin and Hijrah Saputra, Edisi terlengkap (Ciracas, Jakarta: Emir, 2020), 13.

¹⁶ "Tak Lagi MUI, Sertifikat Halal Kini Resmi Diterbitkan Kemenag." *CNN Indonesia*, 15th October, 2019, <https://www.cnnindonesia.com/ekonomi/20191016115414-92-440001/tak-lagi-mui-sertifikat-halal-kini-resmi-diterbitkan-kemenag>.

¹⁷ Amin et al., *Himpunan Fatwa MUI*, 14.

leader to achieve his goal. The available leader is also accompanied by the advisor leader to keep the organization on the correct track. To fulfill this role, the advisor leader also has some people that would work with him.¹⁸

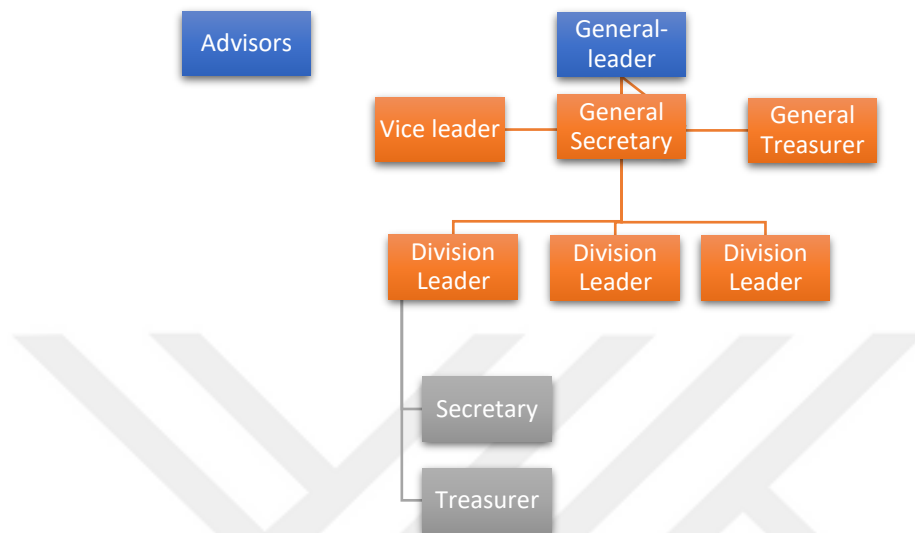


Figure 2.1. Structure of MUI Organization

In the latest regulation, agreed in 2015, a person could only be the general leader for two periods. In addition, while this person is leading this organization, he could not have any role related to politics, even only being active in a party.¹⁹ The general leader is not chosen by voting but through a discussion from a group of seventeen people at the national level and less than seventeen for the regional side. These seventeen people consist of the previous general leader and general secretary, a person from the previous advisor group, seven people from the regional MUI leaders, and five people from big Islamic organizations -in which there would be representatives from Nahdlatul Ulama and Muhammadiyah as the fixed representative-, a scholar from the university and a scholar from Islamic boarding school.²⁰

¹⁸ Majelis Ulama Indonesia, “Kepengurusan MUI,” *MUI Website*, accessed on 5th July, 2023, <https://mui.or.id/kepengurusan-mui/>.

¹⁹ Majelis Ulama Indonesia, “Pedoman Pemilihan Pengurus Majelis Ulama Indonesia” (Majelis Ulama Indonesia, 15th December, 2015), 46, https://mui.or.id/wp-content/uploads/2020/07/2.-PO_Pemilihan-pengurus-OK_43-51.pdf.

²⁰ *Ibid.*, 47–49.

2.4. MUI's Guidelines and Procedures for Issuing Fatwas

Indonesian Ulama Council has its fatwa commission which does collective ijtihad in issuing a fatwa if there is a question that comes from the society or the government instead. In a collective way means, they arrange a meeting which is led by the fatwa commission leader or the vice of its commission, written by the secretary, and attended by some scholars that are considered enough for doing a meeting so they can produce answers for the given problems. If the fatwa commission leader or the vice could not attend the meeting, the discussion could be led by other commission leaders. The question or the problem that would be discussed should be studied by the members at least a week before the meeting.²¹

The references that they follow are the Qur'an, Hadith -with the validity of *sahih* and *hasan* level-, *ijmā'*, *qiyas*, and other valid evidence such as *maslahah mursalah*, *istihsan* and *sadd al-dharā'i'*. In addition, they would consider the view of the previous scholars of madhhabs, either the correspondent or the contradicting one. Moreover, they would also consider the opinion of the expert in the field that is being discussed. With these references, MUI developed three methods. The first is called *Nash* by referencing directly to the Qur'an and Hadith. The second is called *Qauli*, by reference to the previous scholars' books, especially the four madhhabs, which are Hanafi, Maliki, Shafi'i, and Hanbali. The third and last method is called *Manhaji* by using the *uṣūl al-fiqh*, *al-qawā'id al-fiqhiyyah*, and the experts' view as the references for their fatwa.²² In the next chapter, while analyzing the fatwa, we will use these three terms - *Nash*, *Qauli*, and *Manhaji*- in determining which method they used in the fatwa.

By not binding themselves to a specific madhhab or doctrine, we could conclude that MUI's methods are not conservative and have more similarity to Majelis Tarjih Muhammadiyah's method -who did not bind themselves to a specific madhhab- rather than Nahdlatul Ulama -Bahtsul Masail's method- which follows the doctrine of Shafi'i's madhhab.

²¹ Amin et al., *Himpunan Fatwa MUI*, 9–11; Heri Firmansyah, "Qawaid Fiqhiyyah Dalam Fatwa Majelis Ulama Indonesia," *Al-Qadha* 6, no. 2 (2019): 4.

²² Amin et al., *Himpunan Fatwa MUI*, 9; Firmansyah, "Qawaid Fiqhiyyah Dalam Fatwa MUI," 4.

In producing fatwas, MUI follows such steps. First, they try to understand the problem comprehensively to know the main object of the problem so they can establish the fatwa. In addition, they also consider the impact of the fatwa on society, which means that they are cautious and very critical. In this case, they think of the benefit for the community in general and follow the *maqāṣid al-sharī'ah* method. Moreover, as we have mentioned above, they also think and use the opinion of other mujtahids from the present and the past, including the four madhhabs and the expert's opinion, as their references for the fatwa.²³ From here, we can conclude that MUI does not bind themselves to a certain madhhab, although most of the people follow the Shafi'i madhhab. The characteristics of producing the fatwa are responsive, proactive, and antipathies. Its produced fatwa has the qualities such as argumentative quality (it has the power in its argumentation), legitimized quality (the guarantee of validation of the fatwa), contextual quality (*waqi'i*), applicative (ready to be used) and moderate.²⁴ Each fatwa that has been issued and signed by the commission should be directly implemented in society.²⁵

There are two types of questions that need an answer -fatwa- which is the one in the evidence and the verdict is known precisely (*ma'lum minad-din bidh-dharurah*), and the one that has different opinions in its verdict. For the known verdict, the fatwa would be the same. For instance, the evidence of the obligatory five times prayers and the obligation of fasting in Ramadan is known precisely -*qat'i* evidence- so its verdict is delivered as it is. The establishment of a fatwa that has different opinions between the madhhabs follows such ways. *al-jam'u wat-tawfiq*, or finding an origin between the madhhab, is the first. If they cannot find the root between the madhhabs' opinions, *tarjih* or choosing one of the opinions is the method that is used. In this case, they use the principle of the comparative *uṣūl al-fiqh* methods for selecting the opinion.²⁶

In announcing the fatwas, they have two ways which are by speech and by writing. For the verdicts that are already known (*ma'lum minad-din bidh-dharurah*), such as the obligatory five prayers, could be delivered by speech or letter without the

²³ Amin et al., *Himpunan Fatwa MUI*, 10–11.

²⁴ *Ibid.*, 9.

²⁵ Firmansyah, "Qawaid Fiqhiyyah Dalam Fatwa MUI," 5.

²⁶ Amin et al., *Himpunan Fatwa MUI*, 10–13.

obligation of doing a meeting to issue such fatwa. However, the verdicts that have different opinions must be announced through the meeting of the commission.²⁷

Each fatwa institution has its format for announcing the fatwa. For MUI itself, the structure of the written fatwa follows such format. It begins with the number and the theme of the fatwa. Then, followed by *basmalah*, then followed by considerations which contain three things which are considerations, retraces, and observations points. In considerations point, they explain the background of the problem and the reason for the urgency to produce the fatwa. In the retraces point, they write the legal basis (*adillah al-ahkam*) of the verdict, such as the Qur'an and Hadith, with its translation in Indonesian language and the explanation of the relation between the given evidence and the problem. In observations point, they offer the opinions of the madhhabs and the scholars who support the given fatwa. After that, sometimes they make a recommendation, and finally, the fatwas are signed by the fatwa commission leader and the secretary.²⁸

2.5. Forums Where MUI's Fatwas Are Issued and MUI's Fatwa from the Perspective of Indonesian Positive Law

MUI's fatwa could be classified into four groups based on which forum issued the fatwa. There are MUI's Fatwa Commission, DSN-MUI, MUNAS MUI (Musyawarah Nasional), or MUI's National Conference and Ijtima' Ulama Forum.²⁹

MUI's Fatwa Commission is an organization under MUI that has the responsibility to discuss and issue³⁰ a fatwa and give answers to the given question. The first leader of the fatwa commission is Syukri Ghozali (d. 1984), the second general leader of this organization. He led the fatwa commission between 1975-1981. There were fifteen fatwas issued which related to religion, social and scientific issues. The second fatwa commission leader is Ibrahim Hosen. He replaced Syukri Ghozali, who was appointed to become the general leader of MUI. Hosen led the fatwa commission between 1981-

²⁷ Ibid., 15.

²⁸ Ibid., 12.

²⁹ Sholeh, M. Asrorun Ni'am, *Metode Penetapan Fatwa MUI*, 84.

³⁰ Ibid., 85-86.

2000. The third is Ma'ruf Amin -the seventh general leader of MUI and the vice president at the moment-. Amin led the fatwa commission between 2000-2007.

The fourth MUI's fatwa commission leader is Anwar Ibrahim. Ibrahim led the fatwa commission between 2007-2010. The fifth fatwa commission leader is Hasanuddin Abdul Fattah (d. 2022). He led this commission for two periods between 2010-2020. The latest fatwa commission leader is Asrorun Niam Sholeh, who was appointed for this role in 2020 and still leading up until now.³¹

The second forum is Dewan Syariah Nasional -DSN-MUI-. This element has the responsibility to discuss and issue fatwas in the Sharia economy sector, such as issuing fatwas for financial activities, financial products and services, and so on. It was formed in February 1999. The members of DSN are appointed by MUI, and have a four-year service period. Up until 2015, there are around a hundred fatwas that have been issued and collected under the name *Himpunan Fatwa Keuangan Syariah Dewan Syariah Nasional MUI* which was released in 2014.³²

The third forum is MUNAS MUI -National Conference of MUI-. This forum is held once in five years. In this forum, MUI's works are being evaluated, and it discusses the actual religious and national issues of the people. Unlike the first two forums, which were only attended by the MUI members, this conference has a bigger capacity, followed by scholars from Islamic groups like Muhammadiyah and Nahdlatul Ulama or scholars from Islamic boarding schools. Between 1975 and up until now, there are ten conferences that have been held, and more than forty fatwas have been issued.³³

The last MUI's fatwa forum is Ijtima' Ulama Forum. This forum is held once in six years, and the first conference was held in 2003 in Jakarta. Until now, this forum has been held four times in 2003,2009,2015, and 2021. Generally, this forum is more focused on actual issues related to nationalism -such as terrorism and caliphate issues- or sometimes related to modern Islamic jurisprudence problems -such as the juristic

³¹ Ibid., 86–89; “Komisi Fatwa,” *MUI Website*, accessed on 1st March, 2023, <https://mui.or.id/pages-2/komisi-fatwa/>.

³² Sholeh, M. Asrorun Ni'am, *Metode Penetapan Fatwa MUI*, 96–98.

³³ Ibid., 98–100.

view of interest, LGBTQ-. In addition, the scope of participants is more comprehensive, Unlike the previous three forums, which were only attended by the members of MUI itself or only by Islamic scholars, Ijtima Ulama Forum is also attended by other scholars from the universities or even independent scholars.³⁴

Regarding MUI's fatwa, it could not be considered on the same stage or level as positive laws according to the Indonesian system, which means it could not bind the people by force, and its enforcement could not use the government's power such as police or attorney's institution. In addition, the fatwa is just considered as an aspiration followed by Muslims, but it also cannot force all Muslims to follow it. As a result, if the positive law does not adopt the fatwa, it cannot bind the people by force.³⁵

On the other hand, the Sharia economy has been a trendy topic among Muslims nowadays. To get rid of the system which is built by the interest, building such a system is the foremost solution they need. MUI also concentrates on this field, and in the area of Sharia economy, the fatwa of DSN-MUI, such as the regulation of banks, insurance, and capital market on a Sharia basis, has been adopted by the positive law, which means it binds all the people in this field and up to 2020, 137 fatwas in total have been adopted by the positive law.³⁶ Here, we can understand that the Sharia economy in Indonesia is run by the regulation which is provided by the MUI.³⁷

From the explanation above, we understand that MUI's fatwas generally do not have the power to bind the people or force them to obey their rule. Instead, a fatwa is considered an aspiration as long as the positive law does not use it. But DSN-MUI's fatwa could not be viewed as an aspiration. Instead, it has the power to bind the people

³⁴ Ibid., 100–110.

³⁵ Al Fitri Johar, "Kekuatan Hukum Fatwa Majelis Ulama Indonesia (MUI) dari Perspektif Perundang-undangan di Indonesia," accessed on 30th November, 2021, https://drive.google.com/file/d/18wsglDxWKeVbMrCEd5zX8CkHkBiLw6X_/view; Slamet Suhartono, "Eksistensi Fatwa Majelis Ulama Indonesia Dalam Perspektif Negara Hukum Pancasila," *Al-Ihkam* 12, no. 2 (2017): 456–63.

³⁶ Muhammad Fawzan Azhiima, "Kedudukan Fatwa Dewan Syariah Nasional -Majelis Ulama Indonesia Sebagai Pedoman Penerapan Prinsip-Prinsip Syariah Pada Lembaga Keuangan Syariah di Indonesia" (Bachelor Thesis, Universitas Islam Negeri Syarif Hidayatullah, 2020), 68.

³⁷ Johar, "Kekuatan Fatwa MUI dari Perspektif Perundang-undangan"; Suhartono, "Eksistensi Fatwa MUI," 456–63; Diana Mutia Habibaty, "Peranan Fatwa Dewan Syariah Nasional -Majelis Ulama Indonesia- Terhadap Hukum Positif Indonesia," *Jurnal Legislasi Indonesia* 14, no. 4 (2017): 451–52.

because they have been adopted by the positive law, which has the aim to build the Sharia economy.

2.6. MUI General Leaders and Their Short Biography

After introducing the profile of MUI including the short history, organization structure, and fatwa guidelines, it is better to know who were their general leaders for these entire years. There are around nine general leaders who have been appointed since 1975. In this section, we will be giving their short biography -focusing more on Hamka as he was the first general leader- and some information about their leadership characteristics while being the general leader of this institution. Furthermore, we will provide pictures of the general leaders in the appendices section.

2.6.1. Buya Hamka (1975-1981)

Buya³⁸ Hamka was born on 17th February 1908 in Maninjau, West Sumatra. His real name is Haji Abdul Malik Karim Amrullah. His father's name is Shaikh Abdul Karim bin Amrullah, or known as Haji Rasul, who was a pioneer of Gerakan Islah (Renewal Movement) in Minangkabau, West Sumatra. Since his childhood, Hamka has learned Arabic and Islamic knowledge from some famous teachers in his hometown. At the age of sixteen, he moved to Java Island to gain knowledge from known scholars such as HOS Tjokroaminoto, RM Soerjopranoto, Ki Bagus Hadikusumo, and K.H. Fakhruddin.³⁹

He was very active on the political side throughout his life. He joined the party of Sarekat Islam in 1925. Then, in 1955 he joined the party of Masyumi.⁴⁰ However, this party was then banned in 1960. During this time, sometimes his ideas were contradicted by the government -like when he wanted to add the word 'Islamic deed' to the first verse of Pancasila-. Furthermore, Soekarno jailed him from 1964 to 1966

³⁸ Buya means father or someone that is respected, which came from the word "abi" in the Arabic language.

³⁹ "Biografi Buya Hamka," *Biografi Tokoh*, accessed on 18th January, 2022, <https://bio.or.id/biografi-buya-hamka/>.

⁴⁰ An Islamic political party that existed during the liberal democracy era and then was banned by Soekarno because of the suspicion that they supported *PRRI*, an opposition and rebellion movement that conducted a new government on 15th February 1958.

because he did not like Hamka. Therefore, to put Hamka in jail, he was accused of being pro-Malaysia. At that time, Hamka frequently went to Malaysia to teach Islam. But, from the beginning of Soeharto's era and after becoming the general leader of MUI, Hamka was not interested in political movement again and concentrated on leading the MUI instead.⁴¹

About his career on the academic side, he was a religion teacher once. Then, he became a lecturer at Jakarta Islamic University (1929) and Padang Panjang Muhammadiyah University between 1957 to 1958. Hamka was employed by the minister of religious affairs before being named as the first general leader of MUI in 1975. He resigned from his post as the MUI's general head in 1981, and on 24th July, 1981, he passed away in Jakarta at the age of 73.⁴²

Hamka was the first person to be appointed as the general leader of MUI. The reason behind this choice is that Hamka was not related to any party, and he was a famous scholar, and people respected him.⁴³ In the beginning, Hamka refused to lead this organization, but in the end, he accepted the role because of two reasons which were to avoid modernization that would be done by the government to the people and because Soeharto himself is anti-communist.⁴⁴ As the general leader of MUI, Hamka's main focus was on introducing this institution to the people, such as its function, vision, mission, and tasks. However, he faced some obstacles while doing it, and his relationship with the government was complicated.

The first obstacle he had to overcome was the negative opinions about MUI. People were thinking that MUI was just an institution controlled by the government. Also, other institutions were afraid of MUI's existence as they believed people would leave their organizations and follow MUI instead. To solve such issues, Hamka tried to explain to the people and these institutions that MUI is just a deliberation board that aims to unite all Islamic organizations in Indonesia, and they would always defend the

⁴¹ Fauzi, "Hamka Sebagai Ketua Umum MUI (Majelis Ulama Indonesia) Dalam Menghadapi Masalah Sosial Politik Pada Masa Orde Baru 1975-1981," 293; "Biografi Buya Hamka."

⁴² "Biografi Buya Hamka."

⁴³ Fauzi, "Hamka Sebagai Ketua Umum MUI (Majelis Ulama Indonesia) Dalam Menghadapi Masalah Sosial Politik Pada Masa Orde Baru 1975-1981," 286.

⁴⁴ *Ibid.*, 279.

truth even if it is contradicted by the government.⁴⁵ MUI proved this promise with some actions, such as forbidding Vasectomy and Tubectomy, which contradicted the government policy. At that time, the government was doing a “family planning” campaign, like having two children is enough. Other fatwas that opposed the government policy are forbidding Muslims from celebrating Christmas Eve and rejecting the marriage law, which allows a non-Muslim man to marry a Muslim woman. The government then asked the MUI to revise or take back their fatwa, but Hamka refused this request and chose to step down from his position to prove the integrity of this institution.⁴⁶

During Hamka’s period, MUI issued twenty-three fatwas in total. Eight of them were related to worship, eleven of them were related to the social community, and four were related to *aqidah*. Six of the fatwas came from the people’s question, four were from the government’s request, and the rest came from MUI’s initiative.⁴⁷

In the field of *aqidah*, MUI declared that Islam Jamaah⁴⁸, Ahmadiyah⁴⁹, and Jamaah Hizbullah⁵⁰ are misguided group. Despite Islam Jamaah was banned in 1971, they still operated using different names. MUI also issued a fatwa in forbidding the usage of evidence -such as verses from the Qur’an or Hadith- with the intention of religious deception. In this instance, Hamka was very strict. Furthermore, Hamka tried to deal with the Christianization movement -which was backed by donations from outside the country- by speaking directly to the president, asking to block this action. But this request was not directly granted but fulfilled later on.⁵¹

⁴⁵ Ibid., 287–88.

⁴⁶ Ibid., 289–93.

⁴⁷ Ibid., 289.

⁴⁸ This group urged people to choose a new leader (*Amirul Mukminin*), and whoever follows him will enter heaven. In addition, religion would be conducted and built directly by him. People who follow this organization must cut their relations with others who do not follow them, including parents. Praying behind the person who does not follow this organization is not accepted. Also, if their clothes were touched by others, they must be cleaned. The man who follows this organization also has to ask his wife to follow. If not, he must divorce her. A marriage would be considered legal with the permission of their leader.

⁴⁹ A group that emerged in the nineteenth century. It was founded by Mirza Ghulam Ahmad who, declared himself as the Mahdi, and al-Masih who was waited by the Muslims.

⁵⁰ This organization was part of organizations that had Shia understanding.

⁵¹ Fauzi, “Hamka Sebagai Ketua Umum MUI (Majelis Ulama Indonesia) Dalam Menghadapi Masalah Sosial Politik Pada Masa Orde Baru 1975-1981,” 290–92.

Here, we can conclude that as a scholar, Hamka was a respectful person, and as a general leader, he was courageous, full of integrity and focus. He was not afraid of defending the truth even if he had to contradict the government, and in the field of *aqidah*, he was a persistent person as he banned the misguided movements that emerged during his time. Moreover, he was the pioneer who tried to prevent the Christianization movement in this country.

2.6.2. Syukri Ghozali (1981-1984)

K.H. Syukri Ghozali was born on 6th September, 1906 in Salatiga city, Central Java. He was the second general leader of MUI and was appointed for this task in 1981 to replace the previous general leader -Hamka- who resigned from his position. Unfortunately, he could only lead this institution for two years as he passed away on 20th September 1984 at the age of seventy-seven in Jakarta. He was then replaced by his vice, Hasan Basri. Before being appointed as the general leader of MUI, Ghozali was the first leader of MUI's Fatwa Commission -he was an expert in Islamic Jurisprudence- and once a dean of Sharia faculty at IAIN Syarif Hidayatullah University.⁵²

2.6.3. Hasan Basri (1984-1990)

Hasan Basri is a scholar who was born in Banjarmasin, South Kalimantan; on 20th August 1920. He finished elementary and middle school in his homeland, and then he moved to Yogyakarta to finish his senior high school, but he never got an education from the university. At the age of twenty-one, he got married and built an elementary school in south Kalimantan where he and his wife were the teachers. Unfortunately, this school was then closed because of the war in 1944. He also was active on the political side by joining the Masyumi party as Hamka did, but this party was banned by Soekarno in 1960.⁵³

⁵² "Syukri Ghozali," *Wikipedia*, accessed on 29th January, 2022, https://id.wikipedia.org/wiki/Syukri_Ghozali; "Syukri Ghozali," *Wiki Edunitas*, accessed on 29th January, 2022, https://wiki.edunitas.com/ind/114-10/Syukri-Ghozali_109037__eduNitas.html; Sholeh, M. Asrorun Ni'am, *Metode Penetapan Fatwa MUI*, 85.

⁵³ Tokoh Indonesia, "Mantan Ketua MUI (Hasan Basri)," *Ensiklopedi Tokoh Indonesia*, 20th August, 2005, <https://tokoh.id/biografi/1-ensiklopedi/mantan-ketua-umum-mui/>; "KH Hasan Basri: Ulama

Hasan Basri became the third general leader of MUI by replacing Syukri Ghozali, who passed away in 1984. He led this institution for six years, from 1984 until 1990. During his time as the general leader, there was a concern from the public about interest from the bank. To solve this concern, Hasan Basri organized a forum discussion that conducted different opinions saying that interest is forbidden, interest is permitted, and interest is suspicious. This discussion then recommended Hasan Basri as the general leader of MUI; to bring this matter to MUI's meeting to build a bank without interest. On 1st November 1991, a bank called *Bank Muamalat Indonesia* was officially granted its work permit from Soeharto -the second president of Indonesia- and began their operation on 1st May 1992. By successfully building a bank without interest, Hasan Basri was called Indonesia's "Father of Sharia Banking." Furthermore, he made LPPOM-MUI, which has the responsibility to produce the halal certificate as we have in the profile. Hasan Basri passed away on 8th November 1998 in Jakarta at the age of seventy-eight.⁵⁴

2.6.4. Ali Yafie (1990-2000)

Muhammad Ali, known as Ali Yafie, was born in Donggala, Central Sulawesi, on 1st September 1926. He is the grandchildren of Shaikh Abdul Hafidz al-Bugisi, a known Indonesian scholar who was a teacher in Mecca. Abdul Hafidz was in the same generation as other Indonesian scholars who taught in Mecca, like Shaikh Nawawi al-Bantani (d. 1897) and Shaikh Ahmad Khatib al-Minangkabawi (d. 1916).⁵⁵ Ali Yafie did not have the chance to meet his grandfather. Still, instead, he got the inheritance of his grandfather's book in which he could study Islamic knowledge. Ali studied with so many known scholars like Shaikh Ali Mathar, Shaikh Haji Ibrahim, and Shaikh Mahmud Abdul Jawad. But his favorite teacher was Shaikh Abdul Muhammad

Yang Mendunia," *Republika.Co.Id*, 26th February, 2009, <https://republika.co.id/berita/34096/kh-hasan-basri-ulama-yang-mendunia>; Sholeh, M. Asrorun Ni'am, *Metode Penetapan Fatwa MUI*, 72.

⁵⁴ Tokoh Indonesia, "Hasan Basri"; "Hasan Basri (Ulama)," *Ensiklopedia Dunia*, accessed on 4th February, 2022, https://p2k.itbu.ac.id/ind/2-3061-2950/Hasan-Basri_108678_itbu_hasan-basri-itbu.html; Iswara N Raditya, "K.H. Hasan Basri: Politikus, Ketua MUI, & Penggagas Bank Muamalat," *Tirto.Id*, 12th August, 2018, <https://tirto.id/kh-hasan-basri-politikus-ketua-mui-penggagas-bank-muamalat-cRHT>; Sholeh, M. Asrorun Ni'am, *Metode Penetapan Fatwa MUI*, 72-73.

⁵⁵ An Indonesian scholar who was a teacher in Mecca and used to teach Muhammad Darwis -known as Ahmad Dahlan- (d. 1923), the founder of Muhammadiyah and Hasyim Asy'ari (d. 1947), the founder of Nahdlatul Ulama.

Firdaus, a scholar who came from Mecca to Sulawesi, and he spent fifteen years studying with him.⁵⁶

Ali Yafie was active in the social and political field as he joined Nahdlatul Ulama and became the people's representative several times. Later on, he joined Partai Persatuan Pembangunan -known as PPP- in 1974 because of the simplification of party policy, ordered by the New Order policy -Soeharto's regime-.⁵⁷

In the education field, Ali Yafie used to teach in several schools and universities like Universitas Muslim Indonesia, IAIN Makassar, UIN Syarif Hidayatullah Jakarta, and Universitas Islam Asy-Syafi'iyah. Ali was also known in the field of Fiqh, and was once a judge at Religious High Court in Makassar. Ali Yafie was then appointed as the general leader of MUI and led this institution for ten years between 1990-2000.⁵⁸ Ali Yafie passed away this year on 25th February 2023 at the age of ninety-six in Jakarta.⁵⁹

2.6.5. Sahal Mahfudh (2000-2014)

Sahal Mahfudh is a scholar born in Pati, Central Java on 17th December 1937. He was the third child of six children, which consisted of a brother and four sisters. He lost his father in 1944 at the age of seven and his mother one year later. In 1949 he lost his big brother in the war against the second aggression Netherlands' military. Such a problematic early life made Sahal's character strong, which he carried on during his life.⁶⁰

⁵⁶ Achmad Syahid, "Ensiklopedia Islam: Ali Yafie" (PT. Ichtar Baru Van Hoeve, 2008), <https://repository.uinjkt.ac.id/dspace/bitstream/123456789/48670/1/ALI%20YAFIE%20-%20Ensiklopedia.pdf>; "Biografi Prof. Dr. KH. Ali Yafie," *Laduni.Id*, accessed on 14th February, 2022, <https://www.laduni.id/post/read/66639/biografi-prof-dr-kh-ali-yafie>.

⁵⁷ Syahid, "Ensiklopedia Islam: Ali Yafie"; "Biografi Prof. Dr. KH. Ali Yafie."

⁵⁸ Syahid, "Ensiklopedia Islam: Ali Yafie"; "Biografi Prof. Dr. KH. Ali Yafie."

⁵⁹ Widhia Arum Wibawana, "Biodata KH Ali Yafie Yang Kini Tutup Usia," News, *Detiknews*, (26th February, 2023), <https://news.detik.com/berita/d-6589621/biografi-kh-ali-yafie-yang-kini-tutup-usia>.

⁶⁰ Taufiqur Rohman, "Biografi KH. M.A Sahal Mahfudh Sang Mujtahid Tatbiqi," *Ulama Nusantara Center*, accessed on 20th February, 2022, <https://ulamanusantaracenter.com/biografi-kh-m-a-sahal-mahfudh-sang-mujtahid-tatbiqi/>; Budi, "Biografi Dr. KH. Sahal Mahfudz., MA," *Laduni.id*, 24th January, 2023, <https://www.laduni.id/post/read/58565/biografi-dr-kh-sahal-mahfudz-ma>.

Sahal made some journeys to many places such as Pati -Central Java-, Kediri -East Java-, Rembang -Central Java- and Mecca for his education, where he learned much Islamic knowledge such as Fiqh, *Uṣūl al-Fiqh*, *Tasawuf*, logic and others. During his lifetime, Sahal led Maslakul Huda Islamic School, which his father founded. He also taught at universities, such as UNCOK -in Pati- and IAIN Walisongo Semarang. Furthermore, he became the rector of the Islamic Nahdlatul Ulama Institute (INISNU) -located in Jepara, Central Java- between 1989-2014. In 2003, he got the doctoral title of *Honorary Causa* from UIN Syarif Hidayatullah Jakarta because of his knowledge of Fiqh and his effort to develop Islamic schools and society.⁶¹

Sahal Mahfudh was also active in organizations, such as Nahdlatul Ulama and MUI. In 2000, he was appointed as the general leader of MUI, and he led this organization for fourteen years until 2014. He is the longest-ever general leader of this institution up until now. Sahal Mahfudh passed away on 24th January 2014 in Pati at the age of seventy-eight. He was then replaced by Din Syamsuddin.⁶²

2.6.6. Din Syamsuddin (2014-2015)

Muhammad Sirajuddin Syamsuddin known as Din Syamsuddin was born on 31st August 1958 in Sumbawa, West Nusa Tenggara. He finished his elementary and middle school in his town. Then, he went to east java to finish high school at Pondok Pesantren Darussalam Gontor. He completed his bachelor's at UIN Syarif Hidayatullah and continued his study, including the master's and doctoral degrees at the University of California.⁶³

Since his teenage, Din Syamsuddin has been very active in organizations. He became the leader of Ikatan Pelajar Nahdlatul Ulama (IPNU) in the Sumbawa region, and while he was at the university, he became the leader of Ikatan Mahasiswa Muhammadiyah (IMM). From 2005 until 2015, he was chosen as the leader of Muhammadiyah and led

⁶¹ Rohman, "Biografi Sahal Mahfudh"; Budi, "Biografi Sahal Mahfudz," 74; Sholeh, M. Asrorun Ni'am, *Metode Penetapan Fatwa MUI*, 74.

⁶² Rohman, "Biografi Sahal Mahfudh"; Budi, "Biografi Sahal Mahfudz."

⁶³ "Prof. Dr. KH. Muhammad Sirajuddin Syamsuddin," *Viva.Co.Id*, accessed 19th March, 2022, <https://www.viva.co.id/siapa/read/150-prof-dr-kh-muhammad-sirajuddin-syamsuddin>; "Biografi Prof. Dr. Din Syamsuddin," *Chanel Muslim*, accessed March 19, 2022, <https://chanelmuslim.com/khazanah/biografi-prof-dr-din-syamsuddin>.

this organization for ten years. From 2010 until 2014, Din became the vice general leader of MUI. In 2014, he became the general leader of MUI, replacing the previous general leader -Sahal Mahfudh- who passed away at the age of seventy-eight. He led this organization until 2015 and was then replaced by Ma'ruf Amin in the next period.⁶⁴ Din was also active in politics. For seven years (from 1993 until 2000), he was involved in the Golkar party, but then he resigned and left the political world to concentrate more on the academician and social sides. He lectured at several universities, such as Jakarta Muhammadiyah University, Prof.Dr.Hamka Muhammadiyah University, Indonesian University and Syarif Hidayatullah Islamic State University in Jakarta.⁶⁵

2.6.7. Ma'ruf Amin (2015-2020)

Ma'ruf Amin was born on 11th March 1943 in Tangerang. He is one of Shaikh Nawawi al-Bantani's⁶⁶ (d. 1813) great-grandsons. His father, Mohamad Amin, was a famous and known scholar in that region and had a lot of students. Ma'ruf began his education life in his hometown, and at the age of twelve, he went to Jombang. He continued his education at Pondok Pesantren Tebu Ireng, which was founded by Hasyim Asy'ari. His father, Mohamad Amin, was the reason for Ma'ruf to study here as his father forbade him to continue his education at *Pondok Darussalam Gontor* and also because Tebu Ireng was founded directly by Hasyim Asy'ari -founder of Nahdlatul Ulama- who was the student of Shaikh Nawawi al-Bantani in Mecca. Then, he studied at Ibn Khaldun University in Bogor.⁶⁷

On the political side, Ma'ruf Amin was active as he became a member of the regional people's representative assembly of Jakarta at the age of twenty-eight in 1971. In 1998,

⁶⁴ "Prof. Dr. KH. Muhammad Sirajuddin Syamsuddin"; "Biografi Prof. Dr. Din Syamsuddin."

⁶⁵ "Prof. Dr. KH. Muhammad Sirajuddin Syamsuddin"; "Biografi Prof. Dr. Din Syamsuddin."

⁶⁶ A famous scholar from Indonesia who studied in Mecca during the Ottoman Empire reign. Then, he became the teacher of KH. Hasyim Asy'ari -founder of Nahdlatul Ulama- and K.H. Ahmad Dahlan - founder of Muhammadiyah-.

⁶⁷ Muhamad Nurdin Fathurrohman, "Profil DR. KH. Ma'ruf Amin - Ulama, Ketua Umum Majelis Ulama Indonesia Dan Rais 'Aam PBNU," *Biografi Tokoh Ternama*, 2nd February, 2017, <https://biografi-tokoh-ternama.blogspot.com/2017/02/profil-khmaruf-amin-ulama-ketua-umum-majelis-ulama-indonesia-dan-raais-aam-pbnu.html>; Sholeh, M. Asrorun Ni'am, *Metode Penetapan Fatwa MUI*, 75.

he joined *Kebangkitan Bangsa Party* (PKB), and in 2019, he was chosen to be the vice president of Indonesia together with the present president, Joko Widodo.⁶⁸

On the religious side, Ma'ruf Amin was also active at Nahdlatul Ulama and MUI. From 2001 until 2007, he led MUI's fatwa commission. Between 2015 and 2020, Amin became the head leader of Nahdlatul Ulama -he was chosen for this task in the thirty-third national meeting of this organization-. Furthermore, between these years too, he became the general leader of MUI.⁶⁹

2.6.8. Miftachul Akhyar (2020-2022)

Miftachul Akhyar was born on 30th June 1953. He is the ninth son of thirteen children. His father's name is K.H. Abdul Ghoni who teaches at Pesantren Tahsinul Akhlaq Rangkah. He went to several *pondok pesantren* (Islamic boarding schools), which are *Pondok Pesantren Rejoso*, *Pondok Pesantren Tambakberas*, *Pondok Pesantren Lasem*, *Pondok Pesantren Sidogiri*, and *Majelis Ta'lim Sayyid Muhammad bin Alawi al-Makki*.⁷⁰

Akhyar is also a teacher at Pondok Pesantren Miftachus Sunnah in Surabaya, east-java. Since his childhood, he grew up in the environment of Nahdlatul Ulama and since then, he has been active in this organization. From 2000 until 2018, he became the leader of Nahdlatul Ulama at the regional level, which is in Surabaya between 2000-2005, and for the east-java province between 2007-2018.⁷¹

Between 2015-2020, he was chosen to be the vice leader of Nahdlatul Ulama at the national level with Ma'ruf Amin. But, in 2018, he stepped up to become the general leader as Ma'ruf Amin resigned from his position as he prepared himself for the president and vice-president election together with Joko Widodo in 2019.⁷²

⁶⁸ Fathurrohman, "Profil Ma'ruf Amin."

⁶⁹ Ibid.

⁷⁰ "Biografi KH. Miftachul Akhyar," *Laduni.Id*, accessed on 9th April, 2022, <https://www.laduni.id/post/read/59669/biografi-kh-miftachul-akhyar>.

⁷¹ Ibid.

⁷² Ibid.

In 2020, Akhyar was chosen to lead MUI between 2020-2025. In 2021, he became the head leader of Nahdlatul Ulama between 2021-2026, he was chosen for this task in the thirty-fourth national meeting of this organization. After this election, many people from Nahdlatul Ulama advised him not to have two same positions at the same time as he became the general leader for both MUI and Nahdlatul Ulama. The people want him to be focused only on Nahdlatul Ulama. So, on 9th March 2022, Akhyar resigned from being the general leader of MUI.⁷³ MUI itself at the beginning rejected this resignation, but after the discussion, Akhyar agreed that he would lead MUI for two years until 2022.⁷⁴

2.6.9. Muhammad Cholil Nafis (2022-Present)

Muhammad Cholil Nafis was born on 1st June 1975. He completed his elementary school at Madrasah Ibtidaiyyah Pesantren Salafiyat Syafi'iyah in Sampang, Madura, between 1981-1987. Then he went to Pasuruan, East Java, to continue his secondary school at Madrasah Tsanawiyah Pesantren Sidogiri between 1987-1990. He finished high school at Madrasah Aliyah Negeri al-Miftah in Pamekasan, Madura, between 1990-1993. Nafis completed his bachelor's in two places which are Ibnu Sa'ud Islamic University and Sekolah Tinggi Agama Islam Az-Ziyadah, Jakarta between 1996-2000. He continued his master's degree at Universitas Islam Negeri Syarif Hidayatullah, Jakarta, between 2001-2003, and he completed his doctoral degree at the University of Malaya, Malaysia, between 2008-2010.⁷⁵

Since 2004, Nafis has taught Islamic economy and finance at several universities like Indonesia University, Syarif Hidayatullah Islamic State University, Pembina Rohani Islam Institutes, and Sekolah Tinggi Al-Qur'an Al-Hikam. He is also active in the Nahdlatul Ulama organization and was appointed for several essential roles, such as

⁷³ Ibid.; Dedik Priyanto, "Resmi! KH Miftachul Akhyar Mundur Dari Ketum MUI," *Kompas.Tv*, 9th March, 2022, <https://www.kompas.tv/article/268790/resmi-kh-miftachul-akhyar-mundur-dari-ketum-mui>.

⁷⁴ Tim Detikcom, "Ini Alasan Miftachul Akhyar Mundur dari Ketua Umum MUI," *Detiknews*, 22nd March, 2022, <https://news.detik.com/berita/d-5976461/ini-alasan-miftachul-akhyar-mundur-dari-ketua-umum-mui>.

⁷⁵ "Profil Cholil Nafis," *CholilNafis.com*, accessed on 11th April, 2023, <https://cholilnafis.com/profil/>.

the secretary of Bahtsul Masail between 1999-2004, vice-chief of Bahtsul Masail between 2005-2015, and chief of affairs for the period 2022-2027.⁷⁶

Nafis is also active in the Indonesian Ulama Council. Before becoming the general leader in 2022 by replacing the previous leader Miftachul Akhyar who resigned from his position because he became the general leader of Nahdlatul Ulama, Nafis was once a secretary of this organization between 2005-2010. He was also one of the members of Dewan Syariah Nasional (DSN-MUI) between 2015-2020.⁷⁷

After introducing all the general leaders of MUI since the beginning, we can conclude that there are five of nine of MUI's leaders who had passed away -Buya Hamka (d. 1981), Syukri Ghozali (d. 1984), Hasan Basri (d. 1998), Sahal Mahfudh (d. 2014) and Ali Yafie (d. 2023)-, and four of them that are still alive and active in MUI and other organization with different roles.

⁷⁶ Ibid.

⁷⁷ Ibid.

CHAPTER III

FATWA ANALYSIS OF INDONESIAN ULAMA COUNCIL IN THE HEALTH SECTOR

3.1. Analyzing MUI's Fatwa in Health Sector

Before we begin this chapter, we would like to give a general view of MUI's fatwa. They classified their fatwas into *aqidah*, *ibadah* (worship), social, cultural, health, and technology. Hundreds of fatwas have been issued in which most of them are about prayer, social life, health, and technology. However, this chapter would only concentrate on the fatwas related to health.

In this chapter, we will also analyze some fatwas that MUI has issued in the field of health by providing the background of the fatwa cases and giving information about which method they used for the fatwa. In addition, we will make a little comparison with other fatwas commissions such as Majelis Tarjih Muhammadiyah -which has a modern perspective by referencing the Qur'an and Hadith and not binding themselves to certain madhhab- and Bahtsul Masail Nahdlatul Ulama -which has the conservative way by attaching themselves to Shafi'i madhhab and preferring to get the references from the madhhab first and then Qur'an and Hadith if they could not find the evidence-

Here is the list of fatwas related to health from 1975 up until 2023 that have been archived at the National level. Therefore, there would be some fatwas that are not listed, like the fatwa of euthanasia, and others, as it was still discussed at the regional level. Some fatwas can be accessed online through MUI official website (mui.or.id) in the fatwa section. However, these fatwas are written only in the Indonesian language so, for people who do not understand Indonesian would need a translation to understand them.

Here, we will organize these fatwa according to the issued year and provide information about the date, the number, and in which forum the fatwa was issued. However, not all fatwa has a number, especially those that were published before 2000. In this case, we could only give information about the forum and the published year;

1. Drug abuse (Fatwa Commission, 10th February 1976)
2. Mechanical slaughter of animals (Fatwa Commission, 18th October 1976)
3. Anti-Menstrual Pills (Fatwa Commission, 12th January 1979)
4. Wills of donating cornea (Fatwa Commission, 13th June 1979)
5. Test-tube Baby (Fatwa Commission, 13th June 1979)
6. Sex change and enhancement surgery (2nd National Conference, 1st June 1980)
7. Food and drinks which are mixed with unclean matter (*najis*) (2nd National Conference, 1st June 1980)
8. Leprosy (Fatwa Commission, 12th April 1982)
9. Rabbit meat (Fatwa Commission, 12th March 1983)
10. Kids adoption (National Conference, 7th March 1984)
11. Eating and cultivating frogs (Fatwa Commission, 12th November 1984)
12. Removal and use of heart valves (Fatwa Commission, 29th June 1987)
13. Putting corpse in the museum (Fatwa Commission, 5th February 1988)
14. Alcohol in drinks (LP POM, 1st October 1993)
15. Eating and cultivating crickets and worms (Fatwa Commission, number 139, 18th April 2000)
16. Abortion I (6th National Conference, number 1, 29th July 2000)
17. Making cosmetics and medications with components derived from human organs (6th National Conference, number 2, 29th July 2000)
18. Cloning (6th National Conference, number 3, 29th July 2000)
19. IPV vaccine usage -for polio- (Fatwa Commission, 8th October 2002)
20. Bacto Soytone and Mameno usage in MSG (LP POM, 16th December 2000)
21. Crab (LP POM, 15th June 2002)
22. Preparation of corpse in an emergency situation (Fatwa Commission, 31st December 2004)
23. Abortion II (Fatwa Commission, number 4, 21st May 2005)
24. Death penalty in certain crimes (7th National Conference, number 10, 29th July 2005)

25. Corpse Preservation and Usage for Research (Fatwa Commission, number 12, 3rd December 2007)
26. Cigarette (3rd *Ijtima* ' Ulama, 24th-26th January 2009)
27. Corpse autopsy (Fatwa Commission. Number 6, 6th June 2009)
28. Alcohol usage (Fatwa Commission, number 11, 18th November 2009)
29. Standardization of halal animal slaughter (Fatwa Commission, number 12, 2nd December 2009)
30. Microbe usage and the food that contains such substance (Fatwa Commission, number 1, 19th January 2010)
31. Using recycled water (Fatwa Commission, number 2, 27th January 2010)
32. Meningitis vaccine usage for people who will go on pilgrimage (Fatwa Commission, number 6, 16th July 2010)
33. Luwak/civet coffee⁷⁸ (Fatwa Commission, number 7, 20th July 2010)
34. How to pure yeast extract from the residual processing of beer (Fatwa Commission, number 10, 3rd March 2011)
35. Food and drinks coloring come from cochineal insects (Fatwa Commission, number 33, 10th August 2011)
36. Status of a child who born outside the marriage and their treatment (Fatwa Commission, number 11, 10th March 2012)
37. Using halal animal placenta for cosmetics and medicine that is used outside the body (Fatwa Commission, number 30, 20th July 2011)
38. Hair shine (Fatwa Commission, number 23, 31st May 2012)
39. Snail usage -not for food- (Fatwa Commission, number 24, 31st May 2012)
40. Vasectomy and Tubectomy (it has been discussed four times, Fatwa Commission, 1979, National Conference Forum, 1983, *Ijtima* ' Ulama, 2009 and *Ijtima* ' Ulama, 2012)
41. Formalin and similar dangerous substance used for preservation (Fatwa Commission, number 43, 18th October 2012)
42. Fur, hair, and horns usage from the animals that have been slaughtered in a halal way (Fatwa Commission, number 47, 7th November 2012)
43. Using halal animal placenta for medicine ingredients (Fatwa Commission, number 48, 7th November 2012)

⁷⁸ A coffee that is excreted from fermented mongoose dung.

44. Farm animals' status which was fed with unclean matters *-najis-* (Fatwa Commission, number 52, 29th November 2012)
45. Standardization of halal cosmetics and their usage (Fatwa Commission, number 26, 13th July 2013)
46. Shellac usage for food, medicine, and cosmetics (Fatwa Commission, number 27, 13th July 2013)
47. Breastmilk donation (*istirdha*) (Fatwa Commission, number 28, 13th July 2013)
48. Medicine and treatment (Fatwa Commission, number 30, 20th July 2013)
49. Genetic engineering and its products (Fatwa Commission, number 35, 3rd August 2013)
50. Animal skin tanning and its usage (Fatwa Commission, number 56, 31st December 2014)
51. Immunization (Fatwa Commission, number 4, 23rd January 2016)
52. Influenza vaccine status which was produced by Hualan Biological Bacterin Co. Ltd (Fatwa Commission, number 14, 15th March 2017)
53. Food and drinks products that contain alcohol/ethanol (Fatwa Commission, number 10, 28th February 2018)
54. Measles-Rubella vaccine usage status which was produced by SII (Serum Institute of India) for immunization (Fatwa Commission, number 33, 20th August 2018)
55. Cosmetics product that contains alcohol/ethanol (Fatwa Commission, number 40, 20th August 2018)
56. Self-transplantation (Fatwa Commission, number 11, 8th March 2019)
57. Organ transplantation from a dead person (Fatwa Commission, number 12, 8th March 2019)
58. Organ transplantation from a living person (Fatwa Commission, number 13, 8th March 2019)
59. Preparation guidelines for the corpse which is infected by covid19 (Fatwa Commission, number 18, 27th March 2020)
60. Sinovac Covid19 vaccine usage (Fatwa Commission, number 2, 11th January 2021)
61. Covid19 vaccination during fasting (Fatwa Commission, number 13, 16th March 2021)

62. AstraZeneca Covid19 vaccine usage (Fatwa Commission, number 14, 16th March 2021)
63. Swab-test status for detecting Covid19 during fasting (Fatwa Commission, number 23, 7th April 2021)

From the fatwa list above, we will only analyze some of them that we think it is exciting and essential, which are; Vasectomy, Tubectomy, Cigarette, Abortion, Organ Transplantation -including self-transplantation and transplantation of organs from living or dead person-, Alcohol Usage, Cloning, Anti-Menstrual Pills, Wills of Donating Cornea, Test-tube baby, Sex Change and Enhancement Surgery, Removal and Usage of Heart Valves, Abortion, Using Human Organs, Placenta, and Urine for Medicine and Cosmetic, Corpse Autopsy, Status of a child who born outside the marriage and their treatment -we take this fatwa as it is related to Abortion problem although it has nothing to do with health-, Breastmilk Donor, Medicine and Treatment and some fatwas that related to Covid-19. In addition, we would classify these fatwas into some groups to make them easier to be understood.

The pattern of how we would present each fatwa is first; we would begin by giving the definition. Then, we would provide MUI's verdict on that issue, including if there is a change from the previous fatwa. After that, we would make a short comparison between the verdict of MUI with the view of Nahdlatul Ulama's Bahtsul Masail and Majelis Tarjih Muhammadiyah. Afterward, we would present MUI's evidence. Finally, we will determine which method MUI used in the verdict and give our opinion related to the issue.

3.2. Issues That Are Related to the Beginning of Life

3.2.1. Abortion

Abortion (الإجهاض) is the act of ending a pregnancy before the fetus can live outside the mother's womb.⁷⁹ In the medical world, there are three types of abortion. The first is natural abortion (*abortus spontaneus*), which happens without any action and primarily because of the bad quality of the egg or sperm. The second is intentional

⁷⁹ Sholeh, M. Asrorun Ni'am, *Metode Penetapan Fatwa MUI*, 242.

(*abortus provocatus criminalis*) abortion which means ending an under twenty weeks pregnancy or the fetus's weight is a half kilogram which is done by the mother or the person who takes action -such as a doctor or midwife- and they are aware of their activity. The third is therapeutic abortion (*abortus provocatus therapeuticum*), which means ending a pregnancy with a medical indication, such as if the woman has a severe illness that could endanger her life or the baby itself.⁸⁰

Most of the reasons behind the action called abortions are; because they do not want to have a child, they are afraid that their career would be disturbed, they do not have enough money to raise the child, or they already have too many kids, and sometimes it is because of unwed pregnancy which could be the result of adultery or rape,⁸¹ that would give a social burden to the pregnant woman. Other reasons are medical reasons, such as the pregnancy could endanger the woman or the will-born baby would be born with a severe disability.⁸²

Action like abortion is already spread in society, which also has been banned by the government, and MUI is aware of such activity, which led them to produce a fatwa on this occasion. The first fatwa about abortion was issued in 2000, which defined that abortion is forbidden even if it is before *nafkh ar-ruh*⁸³ -the state when the spirit is given-.⁸⁴

Then, in 2005, MUI updated its fatwa by stating that abortion is allowed for some reasons. Here, they classified the reason into emergency⁸⁵ and necessity,⁸⁶ which was not written in the previous fatwa. What they mean by emergency -as we explained above- is the state in which the mother's life may be in danger due to the pregnancy or the expectant mother may have a terrible sickness. What they mean by necessity is a state like if the fetus in the womb is detected as having a severe genetic problem and could be born with a severe disability or the pregnancy of the woman came from the result of raping. Such circumstances could only be declared by the family, the raped

⁸⁰ Ibid., 242–43.

⁸¹ Forcing to have sex by force without the approval of the woman.

⁸² Sholeh, M. Asrorun Ni'am, *Metode Penetapan Fatwa MUI*, 243–44.

⁸³ A pregnancy before pasting forty days.

⁸⁴ Amin et al., *Himpunan Fatwa MUI*, 472–77.

⁸⁵ If you do not do the forbidden thing, you could endanger your life.

⁸⁶ If you do not do the forbidden thing, you could be in a big trouble or difficulty.

woman, the doctor, and the scholar. But, the chance of doing the abortion, for this reason, could only be done before exceeding forty days. However, if the pregnancy came from the result of adultery, it is forbidden to do such action except for emergencies.⁸⁷

Bahtsul Masail and Majelis Tarjih Muhammadiyah have the same opinion as MUI regarding abortion after forty days which is forbidden.⁸⁸ However, Bahtsul Masail does not share the same opinion as MUI regarding abortion from the result of rape before forty days as they consider such things as forbidden and only with emergency reasons doing abortion is allowed. Majelis Tarjih itself does not say anything in this case and only thinks abortion is prohibited.⁸⁹ Furthermore, Diyanet also forbids the case of abortion except for emergency, which is the same as Nahdlatul Ulama's opinion.⁹⁰

The evidence that MUI used in this fatwa is the Qur'an, Hadith, The previous scholars' view, and Islamic Jurisprudence Principles. From the Qur'an, they cited Surah al-Hajj verse 5 and al-Mu'minun verses 12-14, which explain how a person is created;

يَا أَيُّهَا النَّاسُ إِن كُنْتُمْ فِي رَيْبٍ مِّنَ الْبَعْثِ فَإِنَّا خَلَقْنَاكُمْ مِّن نُّرَابٍ ثُمَّ مِنْ نُطْفَةٍ ثُمَّ مِنْ عَلَقَةٍ ثُمَّ مِنْ مُّضْغَةٍ مُّخَلَّقَةٍ وَغَيْرِ مُّخَلَّقَةٍ لِّنُبَيِّنَ لَكُمْ وَتُقَرُّ فِي الْأَرْحَامِ مَا نَشَاءُ إِلَىٰ أَجَلٍ مُّسَمًّى ثُمَّ نُخْرِجُكُمْ طِفْلًا ثُمَّ لِتَبْلُغُوا أَشُدَّكُمْ وَمِنْكُمْ مَّن يُّتَوَفَّىٰ وَمِنْكُمْ مَّن يُرَدُّ إِلَىٰ أَرْذَلِ الْعُمُرِ لِكَيْلَا يَعْلَمَ مِن بَعْدِ عِلْمٍ شَيْئًا وَتَرَى الْأَرْضَ هَامِدَةً فَإِذَا أَنزَلْنَا عَلَيْهَا الْمَاءَ اهْتَزَّتْ وَرَبَتْ وَأَنْبَتَتْ مِن كُلِّ رَوْحٍ بِهِيجٌ (5)

O humanity! If you are in doubt about the Resurrection, then know that We did create you from dust, then from a sperm drop, then 'developed you into' a clinging clot 'of blood', then a lump of flesh—fully formed or unformed—to demonstrate 'Our power' to you. 'Then' We settle whatever 'embryo' We will in the womb for an appointed term,

⁸⁷ Amin et al., *Himpunan Fatwa MUI*, 530–37; Maiyusir, "Aborsi Akibat Korban Pemerkosaan Studi Komparatif Kitab Undang-Undang Hukum Pidana (KUHP) dan Fatwa Majelis Ulama Indonesia (MUI)" (Bachelor Thesis, Universitas Islam Negeri Sumatera Utara, 2020), 80–83, <http://repository.uinsu.ac.id/10813/1/Skripsi%20Maiyusir.pdf>; Andi Mutia Pilka, "Analisis Fatwa Majelis Ulama Indonesia (MUI) No. 4 Tahun 2005 Tentang Aborsi Akibat Pemerkosaan" (Bachelor Thesis, Universitas Islam Negeri Sultan Syarif Kasim, 2012), 100–101, http://repository.uin-suska.ac.id/9580/1/2012_201248AH.pdf.

⁸⁸ Husaein Eryzona, "Aborsi Menurut Majelis Tarjih Muhammadiyah Dan Lembaga Bahtsul Masail Nahdlatul Ulama" (Bachelor Thesis, Universitas Islam Negeri Sunan Kalijaga, 2009), 141–42, <https://digilib.uin-suka.ac.id/id/eprint/3425/1/BAB%20I,V.pdf>.

⁸⁹ Ulil H., "Hukum Aborsi dalam Islam," *NUonline*, 11th November, 2014, <https://islam.nu.or.id/syariah/hukum-aborsi-dalam-islam-ex63H>; Muhammad Reza Alfian, "Pandangan Ulama Indonesia Tentang Aborsi dalam Perspektif Hukum Perlindungan Anak dan HAM" (Master Thesis, Universitas Islam Negeri Syarif Hidayatullah, 2019), 111, <https://repository.uinjkt.ac.id/dspace/bitstream/123456789/50241/1/MOHAMMAD%20REZA%20ALFIAN-FSH.pdf>.

⁹⁰ Diyanet İşleri Yüksek Kurulu Başkanlığı, *Din İşleri Yüksek Kurulu Fetvalar*, 4th ed. (Ankara: Diyanet İşleri Başkanlığı Yayınları, 2018), 527, <https://dinhizmetleri.diyinet.gov.tr/Documents/FETVALAR-2018.pdf>.

then bring you forth as infants, so that you may reach your prime. Some of you 'may' die 'young', while others are left to reach the feeblest stage of life so that they may know nothing after having learned much. And you see the earth lifeless, but as soon as We send down rain upon it, it begins to stir to life and swell, producing every pleasant plant (5).⁹¹

وَلَقَدْ خَلَقْنَا الْإِنْسَانَ مِنْ سُلْطَانٍ مِّنْ طِينٍ (12) ثُمَّ جَعَلْنَاهُ نُطْفَةً فِي قَرَارٍ مَّكِينٍ (13) ثُمَّ خَلَقْنَا النُّطْفَةَ عَلَقَةً فَخَلَقْنَا
الْعَلَقَةَ مُضْغَةً فَخَلَقْنَا الْمُضْغَةَ عِظْمًا فَكَسَوْنَا الْعِظْمَ لَحْمًا ثُمَّ أَنشَأْنَاهُ خَلْقًا آخَرَ ۖ فَتَبَارَكَ اللَّهُ أَحْسَنُ الْخَالِقِينَ (14)

And indeed, We formed humankind from an extract of clay (12), then each "human" was created as a sperm drop and placed in a safe location (13), after which We formed the drop into a clinging clot "of blood," then started the clot into a lump "of flesh," then began the lump into bones, then formed the bones with flesh, and finally We created it into a new creation. Allah, the Best of Creators, is indeed Blessed (14).⁹²

Surah al-An'am verse 151, al-Isra' verse 31 and al-Furqan verse 68 which talk about prohibiting of killing souls that are not rightfully so;

وَالَّذِينَ لَا يَدْعُونَ مَعَ اللَّهِ إِلَهًا آخَرَ وَلَا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَلَا يَزْنُونَ ۖ وَمَنْ يَفْعَلْ ذَلِكَ
يَلْقُ أَثَمًا (٦٨)

They are people who do not worship any other deity but Allah, commit fornication, nor take a "human" life -- which Allah has declared sacrosanct -- unless they have a "legal" justification to do so. And anyone who engages in any of this will pay a price (68).⁹³

According to the classical scholars' view, which was also mentioned by MUI, doing an abortion before the soul is given; some of them said that it is allowed -Zaidiyyah's thought-, some of them said that it is permitted for a medical reason but *makruh* without it -the idea of scholars from Hanafi and some scholars from Shafi'i-, others said that it is *makruh* whether if there is a reason or not -the idea of some Maliki scholars-, but most of the scholars from Maliki and Hanbali said that it is forbidden. Furthermore, they also mentioned Ghazali's idea and some scholars from Shafi'i in which if the sperm and the egg are mixed and ready to have life (استعداد القبول للحياة), harming them is considered as criminal which means that it is forbidden doing abortion even before pasting forty days. Regarding abortion after the soul is given, all the madhhab have the same opinion, which is prohibited.⁹⁴

⁹¹ "Qur'an Translation of al-Hajj," *Quran.Com*, accessed on 4th July, 2023, <https://quran.com/22>.

⁹² "Qur'an Translation of al-Mu'minun," *Quran.Com*, accessed on 4th July, 2023, <https://quran.com/23>.

⁹³ "Qur'an Translation of al-Furqan," *Quran.Com*, accessed on 4th July, 2023, <https://quran.com/25>.

⁹⁴ Amin et al., *Himpunan Fatwa MUI*, 476–476; Orhan Çeker, "Çocuk Düşürme," in *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* (İstanbul: Diyanet Vakfı Yayınları, 1993), 364, <https://cdn2.islamansiklopedisi.org.tr/dosya/8/C08023779.pdf>.

And the Hadith that they mentioned is about how a person is created and forbidden from doing harmful things;

عَنْ عَبْدِ اللَّهِ، قَالَ: حَدَّثَنَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَهُوَ الصَّادِقُ الْمَصْدُوقُ " إِنَّ أَحَدَكُمْ يُجْمَعُ خَلْقُهُ فِي بَطْنِ أُمِّهِ أَرْبَعِينَ يَوْمًا، ثُمَّ يَكُونُ فِي ذَلِكَ عِلْقَةً مِثْلَ ذَلِكَ، ثُمَّ يَكُونُ فِي ذَلِكَ مُضْغَةً مِثْلَ ذَلِكَ، ثُمَّ يُرْسَلُ الْمَلَكُ فَيَنْفُخُ فِيهِ الرُّوحَ، وَيُؤَمَّرُ بِأَرْبَعِ كَلِمَاتٍ: بِكُتُبِ رِزْقِهِ، وَأَجَلِهِ، وَعَمَلِهِ، وَشَقِيٍّ أَوْ سَعِيدٍ، فَوَالَّذِي لَا إِلَهَ غَيْرُهُ إِنَّ أَحَدَكُمْ لَيَعْمَلُ بِعَمَلِ أَهْلِ الْجَنَّةِ حَتَّىٰ مَا يَكُونُ بَيْنَهُ وَبَيْنَهَا إِلَّا ذِرَاعٌ، فَيَسْبِقُ عَلَيْهِ الْكِتَابُ، فَيَعْمَلُ بِعَمَلِ أَهْلِ النَّارِ، فَيَدْخُلُهَا، وَإِنَّ أَحَدَكُمْ لَيَعْمَلُ بِعَمَلِ أَهْلِ النَّارِ، حَتَّىٰ مَا يَكُونُ بَيْنَهُ وَبَيْنَهَا إِلَّا ذِرَاعٌ، فَيَسْبِقُ عَلَيْهِ الْكِتَابُ، فَيَعْمَلُ بِعَمَلِ أَهْلِ الْجَنَّةِ، فَيَدْخُلُهَا"⁹⁵

Abdullah ibn Masood narrated that The Messenger of Allah, and he is truthful, the believed, said, "Verily the creation of each one of you is brought together in his mother's womb for forty days in the form of a *nutfah* (a drop), then he becomes an *alaqah* (clot of blood) for a like period, then a *mudghah* (a morsel of flesh) for a like period, there is sent to him the angel who blows his soul into him and who is commanded with four matters: to write down his *rizq* (sustenance), his life span, his actions, and whether he will be happy or unhappy (i.e., whether or not he will enter Paradise). By the One, other than Whom there is no deity, surely, one of you performs the actions of the people of Paradise until there is but an arm's length between him and it, and that which has been written overtakes him, and so he acts with the activities of the people of the Hellfire, and thus enters it. Surely, one of you performs the actions of the people of the Hellfire, until there is but an arm's length between him and it, and that which has been written overtakes him, and so he acts with the actions of the people of Paradise, and thus he enters it."⁹⁶

حَدَّثَنِي يَحْيَى، عَنْ مَالِكٍ، عَنْ عَمْرِو بْنِ يَحْيَى الْمَازِنِيِّ، عَنْ أَبِيهِ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: لَا ضَرَرَ وَلَا ضِرَارَ⁹⁷

Yahya narrated to me from Malik from Amr ibn Yahya al-Mazini from his father that the Messenger of Allah, may Allah bless him and grant him peace, said, There is no injury nor return of injury.⁹⁸

Some Islamic Jurisprudence Principles that they used are; emergency cases permit doing what is forbidden,⁹⁹ avoiding damage or a harmful thing is more important than taking advantage¹⁰⁰ and necessity sometimes could replace the emergency.¹⁰¹

If we analyze the evidence that has been mentioned above, we could say that MUI used all of their methods which are the method of *Nash* -by referencing directly to the

⁹⁵ Muslim Ibn al-Hajjaj, *Sahih Muslim*, ed. Muhammad Fuad Abdul Baqi (Beirut: Dar Ihya at Turats al Arabi, 1431), vol. 4, p. 2036.

⁹⁶ "Forty Hadith of An-Nawawi," *Sunnah.Com*, 9th February, 2023, <https://sunnah.com/nawawi40:4>.

⁹⁷ Anas bin Malik, *al-Muwatta*, ed. Muhammad Fuad Abdul Baqi (Beirut: Dar Ihya at Turats al Arabi, 1985), vol.2, 745.

⁹⁸ "Muwatta Malik," *Sunnah.Com*, 4th February, 2023, <https://sunnah.com/urn/514340>.

⁹⁹ الضرورة تبيح المحظورات

¹⁰⁰ درء المفاصد مقدم على جلب المصالح

¹⁰¹ الحاجة قد تنزل منزلة الضرورة

Qur'an and Hadith- to forbid killing a soul without rightful reason, *Qauli* -by mentioning the previous scholars' view- and *Manhaji* -by citing the Islamic jurisprudence principles such as *masalah mursalah*, *hifz al-nafs*, *hifz al-'aql*, *hifz al-nasl*- and the social impact in their verdict. We could also see that their verdict is both textual -*Nash* and *Qauli*- and contextual -*Manhaji*- based. Furthermore, the reason for permitting doing abortion from the result of rape before forty days is a necessity since the social environment could led to endanger the mother's life and burden her spirit or soul. In this condition, saving the mother's life -*hifz al-nafs* and *hifz al-'aql*- is more important than removing the fetus -*hifz al-nasl*-.¹⁰²

As we can see above, there is no different opinion regarding abortion after forty days. However, regarding abortion from the result of rape before forty days, MUI has its idea of allowing it. Here, MUI's fatwa regarding this issue for some reasons has relevance to the government's policy which was issued in 2014, chapter 31, number 61, saying that abortion is allowed only under two conditions. The first is for a medical emergency, and the second is if the pregnancy came from rape and this action only could be taken before the forty days of pregnancy.¹⁰³ In addition, we think that MUI's reason for allowing it is to protect women's psychology which seems to be more acceptable for society.

3.2.2. The Status and Treatment of Children Born Outside of Legal Marriage

Having a descendant or children is one of the aims of marriage. Yet, modern life teaches the young generation promiscuity, which most of them lead to free sex, and then they become pregnant. Some of them try to abort their pregnancy, and some of

¹⁰² Mohamad Abdun Nasir and Asnawi', "The Majelis Ulama's Fatwa on Abortion in Contemporary Indonesia," *The Muslim World* 101 (2011): 52; Aulia Rahmi, "Masalah Dalam Fatwa MUI Nomor 4 Tahun 2005 Tentang Aborsi Kasus Pemerkosaan" (Bachelor Thesis, Universitas Islam Negeri Sultan Syarif Kasim, 2020), 110, <http://repository.uin-suska.ac.id/27374/2/AULIA%20RAHMI.pdf>; Muhammad Fachriansyah, "Studi Kritis Terhadap Fatwa Majelis Ulama Indonesia Nomor 4 Tahun 2005 dan Teori Kesehatan Tentang Aborsi Janin Cacat" (Bachelor Thesis, Institut Agama Islam Palangka Raya, 2020), 74-75, <http://digilib.iain-palangkaraya.ac.id/2819/1/Muhammad%20Fachrisyah%20-%201602110502.pdf>; Krisna Arseno, "Tinjauan Masalah Terhadap Tindakan Aborsi Akibat Perkosaan (Studi Atas Fatwa MUI Nomor 4 Tahun 2005 Tentang Aborsi)" (Bachelor Thesis, Institut Agama Islam Negeri Ponorogo, 2020), 89-90, http://etheses.iainponorogo.ac.id/12229/1/SKRIPSI_210116007_KRISNA%20ARSENA.pdf.

¹⁰³ Riki Widodo, "Relevansi Fatwa MUI Nomor 4 Tahun 2005 dengan Peraturan Pemerintah Nomor 61 Tahun 2014 Tentang Kebolehan Aborsi," *Jurnal Tahkim* 16, no. 2 (2020): 247-50.

them continue the pregnancy and decide to born the child. Although committing adultery has emerged a long time ago, in the modern era, it has become commonplace, and there is no feeling of shame if they are pregnant outside the legal marriage.

According to Islam, a child, even if they were born because of adultery, they are still pure and have no sin. Still, the reality in society shows that children who were born because of adultery are neglected because the man who caused the birth does not do his responsibility to provide for their needs. In addition, children who were born outside the legal marriage are discriminated against as illegitimate children because the birth certificate is attributed to the mother only.¹⁰⁴

In the previous fatwa about abortion, we have explained that pregnancy because of rape could be aborted by giving more importance to the mother's life. However, if the woman commits adultery deliberately, it is forbidden to abort it. With the emergence of issues related to children born outside the legal marriage, MUI issued a fatwa, number eleven, the year 2012, to protect the child, which explains as follows;

According to Sharia; a kid born as a result of adultery is one who was born outside of a valid marriage, and committing adultery is considered a criminal (*jarimah*). By committing criminality, the people who commit adultery should be punished with *Hadd* -a punishment which is determined by the Qur'an and Hadith for people who commit criminality- and *ta'zīr* -a punishment which is determined by the government for people who commit crime-.¹⁰⁵

According to the Sharia, the child born outside the legal marriage has no relation, whether in lineage, the guardian -including for marriage- and expense with the man who caused the birth, but only has such relation with the family from the mother. In addition, as we have mentioned above that the child is still pure, and the sin that has been committed by the people who caused the birth is not borne by him. By committing such criminality, the government gives the mother *Hadd* punishment, which is

¹⁰⁴ Majelis Ulama Indonesia, "Fatwa Majelis Indonesia Nomor 11 Tahun 2012 Tentang Kedudukan Anak Hasil Zina dan Perlakuan Terhadapnya" (Majelis Ulama Indonesia, 2012), 1, <https://mui.or.id/wp-content/uploads/files/fatwa/Kedudukan-Anak-Hasil-Zina-dan-Perlakuan-Terhadapnya-final.pdf>.

¹⁰⁵ Ibid., 9.

determined by *Nash*, to safeguard the child's legal ancestry *-hifz al-nasl-*. As for the man who causes the birth, the government gives *Ta'zir* punishments which are giving the expense for the child and giving a mandatory inheritance after his death with his will. This punishment has no intention to validate a lineage relation with the man who causes the birth but to protect the born child.¹⁰⁶

Bahtsul Masail and Majelis Tarjih Muhammadiyah have similar opinions with MUI that the child born outside the legal marriage has no relation with the man who caused the birth, whether in lineage, guardian, and expense. However, if the man who caused the birth, gets married to the child's mother while she is still pregnant and the baby was born six months following this union, then the child has a bloodline connection with him. If the baby was born under six months after the marriage, then the child only has the lineage from his mother.¹⁰⁷

The evidence that MUI used in this fatwa are verses from the Qur'an regarding the forbidden of committing adultery *-al-Isra* verse 32 and *al-Furqon* verse 68-69-, the importance of lineage clarity *-al-Ahzab* verses 4-5 and *an-Nisa* verse 23- and nobody bears the sins of others *-al-An'am* verse 164 and *al-Zumar* verse 7-. MUI also mentioned some Hadith regarding the lineage of a child being determined by the owner of the bed, the child's lineage who was born from the result of adultery is with his mother, there is no inheritance relationship between the father who causes the child's birth with the child who was born outside the marriage, the forbidden of committing adultery and the child is born without sin;¹⁰⁸

حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، ح وَحَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ، أَخْبَرَنَا اللَّيْثُ، عَنْ ابْنِ شِهَابٍ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ، أَنَّهَا قَالَتْ اخْتَصَمَ سَعْدُ بْنُ أَبِي وَقَّاصٍ وَعَبْدُ بْنُ زَمْعَةَ فِي غُلَامٍ فَقَالَ سَعْدٌ هَذَا يَا رَسُولَ اللَّهِ ابْنُ أُجَيِّ عُنْبَةَ بْنِ أَبِي وَقَّاصٍ عَهْدَ إِلَيَّ أَنَّهُ ابْنُهُ انظُرْ إِلَى شَبَهِهِ وَقَالَ عَبْدُ بْنُ زَمْعَةَ هَذَا أُجَيِّ يَا رَسُولَ اللَّهِ وُلِدَ عَلَيَّ فِرَاشِ أَبِي مِنْ وَلِيدَتِهِ فَنَظَرَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَى شَبَهِهِ فَرَأَى شَبَهًا بَيْنًا بَعْثَبَةَ فَقَالَ " هُوَ لَكَ يَا

¹⁰⁶ Ibid., 10.

¹⁰⁷ Majelis Tarjih Muhammadiyah, "Fatwa Tarjih Muhammadiyah: Masalah Zina dan Akibat Hukumnya," *Tabligh.id*, accessed on 30th April, 2023, <https://tabligh.id/fatwa-tarjih-muhammadiyah-masalah-zina-dan-akibat-hukumnya/>; Alhafiz Kurniawan, "Status Nasab dan Hak Waris Anak di Luar Nikah," *NUonline*, 6th March, 2018, <https://islam.nu.or.id/bahtsul-masail/status-nasab-dan-hak-waris-anak-di-luar-nikah-CIIy>.

¹⁰⁸ "Fatwa MUI Tentang Kedudukan Anak Hasil Zina," 1–5.

عَبْدُ الْوَلَدِ لِلْفِرَاشِ وَاللِّعَاطِرِ وَالْحَجْرِ وَاحْتَجَبِي مِنْهُ يَا سَوْدَةُ بِنْتُ زَمْعَةَ " . قَالَتْ فَلَمْ يَرَ سَوْدَةَ قَطُّ وَلَمْ يَذْكَرْ
مُحَمَّدُ بْنُ رُمِحٍ قَوْلَهُ " يَا عَبْدُ " .¹⁰⁹

'A'isha (Allah be pleased with her) reported: Sa'd b. Abu Waqqas and Abd b. Zam'a (Allah be pleased with them) disputed with each other over a young boy. Sa'ad said: Messenger of Allah, he is the son of my brother 'Utba b. Abu Waqqas, as he made it explicit that he was his son. Look at his resemblance. Abd b. Zam'a said Messenger of Allah, he is my brother as he was born on the bed of my father from his slave girl. Allah's Messenger (ﷺ) looked at his resemblance and found a clear resemblance with 'Utba. (But) he said: "He is yours, O 'Abd (b. Zam'a), for the child is to be attributed to one on whose bed it is born, and stoning for a fornicator. Sauda bint Zam'a, O you should observe veil from him." So he did not see Sauda at all. Muhammad b. Rumh did not mention (the words): "O Abd."¹¹⁰

حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ، حَدَّثَنَا أَبِي، عَنْ مُحَمَّدِ بْنِ رَاشِدٍ، بِإِسْنَادِهِ وَمَعْنَاهُ زَادَ وَهُوَ وَلَدُ زَنَّا لِأَهْلِ أُمِّهِ مَنْ كَانُوا
حُرَّةً أَوْ أُمَّةً وَذَلِكَ فِيمَا اسْتُلْحِقَ فِي أَوَّلِ الْإِسْلَامِ فَمَا اقْتَسِمَ مِنْ مَالٍ قَبْلَ الْإِسْلَامِ فَقَدْ مَضَى.¹¹¹

Muhammad bin Rashid also conveyed the same tradition through a separate chain of narrators, with identical results. The phrase "he is the child of fornication for the people of his mother, whether she was free or a slave" is added in this version. The tradition of attributing a child to its parents dates back to the early days of Islam. The property divided before Islam won't be considered.¹¹²

وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ: أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «أَيُّمَا رَجُلٍ عَاهَرَ بِحُرَّةٍ أَوْ أُمَّةٍ
فَالْوَلَدُ وَلَدُ زَنَى لَا يَرِثُ وَلَا يُورَثُ»¹¹³

According to 'Amr bin Shu'aib, based on his father, the Prophet reportedly remarked, "If a man commits fornication with a freewoman or a slave woman, the child is the product of fornication, and neither he does inherit nor may anyone inherit from him."

عَنْ رُوَيْفِعِ بْنِ ثَابِتِ الْأَنْصَارِيِّ، قَالَ قَامَ فِينَا خَطِيْبًا قَالَ أَمَا إِنِّي لَا أَقُولُ لَكُمْ إِلَّا مَا سَمِعْتُ رَسُولَ اللَّهِ صَلَّى
اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ يَوْمَ حُنَيْنٍ قَالَ " لَا يَجِلُّ لِأَمْرِي يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ يَسْقِيَ مَاءَهُ زَرْعَ غَيْرِهِ " .
يَعْنِي إِثْبَانَ الْحَبَالَى " وَلَا يَجِلُّ لِأَمْرِي يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ يَقَعَ عَلَى امْرَأَةٍ مِنَ السَّبْيِ حَتَّى يَسْتَبْرَأَ مِنْهَا
وَلَا يَجِلُّ لِأَمْرِي يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ يَبِيعَ مَعْتَمًا حَتَّى يُقَسَمَ " .¹¹⁴

Narrated Ruwayfi' ibn Thabit al-Ansari: Should I tell you what I heard the Messenger of Allah (ﷺ) say on the day of Hunayn: It is not lawful for a man who believes in Allah and the last day to water what another has sown with his water (meaning intercourse with women who are pregnant); it is not lawful for a man who believes in Allah and the Last Day to have intercourse with a captive woman till she is free from a menstrual course;

¹⁰⁹ Ibn al-Hajjaj, *Sahih Muslim*, vol. 2, p. 1080.

¹¹⁰ "Sahih Muslim: The Book of Suckling," *Sunnah.Com*, accessed on 30th April, 2023, <https://sunnah.com/muslim:1457a>.

¹¹¹ Abu Dawud Sulaiman Ibn al-Asy'at, *Sunan Abu Dawud*, ed. Muhammad Muhyiddin Abdul Hamid (Beirut: al-Maktabat al-'Ashiroh, n.d.), vol. 2, p. 280.

¹¹² "Sunan Abu Dawud: Divorce," *Sunnah.Com*, accessed on 30th April, 2023, <https://sunnah.com/abudawud:2266>.

¹¹³ Muhammad b. Isa at-Tirmidzi, *Sunan At-Tirmidzi*, ed. Ahmad Muhammad Syakir, Muhammad Fuad Abdul Baqi, and Ibrahim Uthwah, 2nd ed. (Egypt: Shirkah Maktabah wa Mathbu'ah Musthofa Albani, 1975), vol. 4, p. 428.

¹¹⁴ Ibn al-Asy'at, *Sunan Abu Dawud*, vol. 2, p. 248.

and it is not lawful for a man who believes in Allah and the Last Day to sell spoil till it is divided.¹¹⁵

In addition, MUI also mentioned the previous scholars' view from the four madhhabs saying that the lineage of a child born from the result of adultery is attributed to the mother only. They also mentioned another view like the view of Ibn Abdil Barr in his *al-Tamhid* and Ibn Qudamah in his *al-Mughni*, saying that if a person committed adultery with a married woman and the woman then gives birth, the child's lineage is not connected to the person who committed the adultery but to the married couple instead with the condition that the husband accepted the child is from him;¹¹⁶

وَأَجْمَعَتِ الْأُمَّةُ عَلَى ذَلِكَ نَفْلاً عَنْ نَبِيِّهَا صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَجَعَلَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كُلُّ وَلَدٍ يُوَلَّدُ عَلَى فِرَاشِ لِرَجُلٍ لَاحِقًا بِهِ عَلَى كُلِّ حَالٍ إِلَى أَنْ يَنْفِيَهُ بِلِعَانٍ عَلَى حُكْمِ اللَّعَانِ.¹¹⁷

The people have a consensus about this thing, based on the Hadith from the Prophet (PBUH), every child should be assigned to the person whose bed it is born on, according to the Prophet, until that person rejects the infant with *li'an* (rejection), in which case the child is on that verdict.

وَأَجْمَعُوا عَلَى أَنَّهُ إِذَا وُلِدَ عَلَى فِرَاشِ رَجُلٍ، فَادْعَاهُ آخِرًا، أَنَّهُ لَا يَلْحَقُهُ.¹¹⁸

The general view among scholars is that a child belongs to the person whose bed it is born on. It is not ascribed to him if another individual declares themselves to be the child's father.

Furthermore, MUI mentioned some principles from *uṣūl al-fiqh* -such as; prohibition, demands the damage from the prohibited thing¹¹⁹ and there is no *ijtihad* in front of *Nash*¹²⁰- and the principles of Islamic jurisprudence, such as; the law of means is to follow the law of achievement to be addressed¹²¹, enduring specific damage is a must to avoid damage to general¹²² and other similar principles which we have mentioned in previous fatwas.¹²³

¹¹⁵ “Sunan Abu Dawud: Marriage,” *Sunnah.Com*, accessed on 30th April, 2023, <https://sunnah.com/abudawud:2158>.

¹¹⁶ “Fatwa MUI Tentang Kedudukan Anak Hasil Zina,” 5–9.

¹¹⁷ Yusuf b. Abdullah Ibn Abdil Barr, *al-Tamhid Li Ma Fi al-Muwatta Minal Ma'ani Wa'l Asanid*, ed. Mustafa b. Ahmad al-Alawi and Muhammad Abdul Kabir al-Bakri, vol. 24 (Morocco: Wizarah Umumul Awqaf wa'l Syuun al-Islamiyyah, 1967), vol. 8, p. 183.

¹¹⁸ Ibn Qudamah al-Makdisi, ed., *al-Mughni Li Ibn Qudamah* (Kairo: Maktabatu'l Qahirah, 1968), vol. 6, p. 345.

¹¹⁹ الأصل في النهي يقتضي فساد المنهي عنه

¹²⁰ لا اجتهاد في مورد النص

¹²¹ للوسائل حكم المقاصد

¹²² يتحمل الضرر الخاص لدفع الضرر العام

¹²³ “Fatwa MUI Tentang Kedudukan Anak Hasil Zina,” 5–6.

In this fatwa, MUI used all their three methods which are *Nash* -by mentioning Qur'an verses and Hadith about the prohibition of committing adultery and how to determine the status of the born child-, *Qauli* -by citing the previous scholars' view regarding this issue- and *Manhaji* -by using the principle of *sadd al-dharā'ī*' with other *uṣūl al-fiqh* and Islamic jurisprudences principles-.

Regarding this issue, other groups -like Salafiyah- agree with MUI in forbidding the case of marrying a pregnant woman as the result of adultery, even if the person is the one who commits it.¹²⁴ We think that this idea is more acceptable than the view of Nahdlatul Ulama and Muhammadiyah in allowing the child who was born after six months of marriage to be attributed to the person who committed adultery and married the pregnant woman even if the intention is to protect the born child. The reason is, as MUI has mentioned about Wahbah al-Zuhaili's opinion in his *Ahkam al-Aulad al-Natijin 'an al-Zina*, about attributing the lineage of a child who was born outside the marriage to the person who committed the adultery and married the woman while she is pregnant could lead to open the door of adultery itself. At the same time, the Sharia instructs us to close every possible way, which could lead us into committing forbidden things.

3.2.3. Breastmilk Donor (*Istirdha*)

Newborn babies generally need breastmilk to sufficient their nutrition. However, sometimes they do not have such occasions in some cases, like if the mother is dead while giving birth, the birthmother is unknown or run away from her responsibility, the breastmilk from the birthmother is limited, and others. Seeing how vital breastmilk is for newborn babies, the issue of breastmilk donors -*istirdha*- emerged in the society, and MUI has issued a fatwa number twenty-eight, the year 2013, regarding this topic and explained as follows;

A mother could give her breastmilk to another's newborn baby and vice versa, which means the child could receive breastmilk from another's mother -not his biological mother-. Such a case emerged a long time ago, as happened to the Prophet Muhammad

¹²⁴ Yusuf Omar Ali As-Shamaly, "Bagaimanakah Hukum Menikahi Wanita Hamil," *Pesantren Islam Al-Irsyad*, 7th June, 2022, <https://pesantrenalirsyad.org/bagaimanakah-hukum-menikahi-wanita-hamil/>.

-PBUH- with Halimah. The permission to give breastmilk to another's child has two conditions that have to be fulfilled, which are the mother who will provide the breastmilk should be healthy physically, and mentally and the mother should not be in the pregnant state.¹²⁵

Giving breastmilk from different mothers gives the result of *mahram* relationship, including from the biological and the breastmilk mother, which means it is forbidden to get married to them whether they are from the ascendant - *uṣūl*- or descendant - *furu'*- as it has been determined by the Sharia. For instance, from the ascendant side, a boy could not get married to his father's and mother's sister or even his grandmother and her sisters and so on. From the descendant side, the boy could not get married to his sister, his sister's and brother's girls, and so on. The same condition is also applied to girls, and these situations include the family of both mothers.¹²⁶

Mahram relationship is applied if the child who received the breastmilk is under two-year-old; according to Hijri year, the breastmilk mother's identity is known definitely, the child has consumed a minimum of five times the amount of breastmilk which are consumed fully, and the way of feeding could be directly from the breast of the mother or by dairy. Another condition, a Muslim mother could give her breastmilk to a non-Muslim baby as it is considered a good deed between the people. Regarding the payment, they could receive it with the condition that it is not for commercial but for childcare services.¹²⁷

According to the classical view, there are different opinions regarding how the *mahram* relationship is determined. Hanafi and Maliki scholars have the opinion that such a relationship occurred once breastfeeding without thinking of the amount received. However, Shafi'i and Hanbali scholars think that breastfeeding should be done a minimum of five times.¹²⁸ Nahdlatul Ulama and Muhammadiyah agree with MUI's opinion in allowing the breastmilk donor and the *mahram* relationship to also

¹²⁵ Majelis Ulama Indonesia, "Fatwa Majelis Indonesia Nomor 28 Tahun 2013 Tentang Seputar Masalah Donor Air Susu Ibu (Istirdla')" (Majelis Ulama Indonesia, 2013), 5, <https://mui.or.id/wp-content/uploads/files/fatwa/No.-28-Seputar-Masalah-Donor-ASI.pdf>.

¹²⁶ Ibid., 6.

¹²⁷ Ibid.

¹²⁸ Osman Kasıkcı, "Rada'," in *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* (İstanbul: Diyanet Vakfı Yayınları, 2007), 385, <https://islamansiklopedisi.org.tr/rada>.

occur after receiving the breastmilk five times.¹²⁹ Here we see that all three groups take the opinion of Shafi'i and Hanbali scholars regarding the *mahram* relationship issue.

The evidence that MUI used in this fatwa are some verses from the Qur'an -such as al-Baqarah verse 233, Ali Imran verse 23, al-Maidah verse 2, and al-Mumtahanah verse 8- and some Hadith regarding the mahram relationship on how and when it is occurred and the laws that come up after;

عَنْ ابْنِ مَسْعُودٍ، قَالَ لَأَرْضَاعٍ إِلَّا مَا شَدَّ الْعِظْمَ وَأَنْبَتَ اللَّحْمَ. فَقَالَ أَبُو مُوسَى لَا تَسْأَلُونَا وَهَذَا الْحَبْرُ فِيكُمْ.¹³⁰

'Abd Allah bin Mas'ud said, "Fosterage is not valid except by what strengthens the love, and grows flesh." Abu Musa said, "Do not ask us so long as this learned man is among us."¹³¹

حَدَّثَنَا مُسْلِمُ بْنُ أَبِرَاهِيمَ، حَدَّثَنَا هَمَّامٌ، حَدَّثَنَا قَتَادَةُ، عَنْ جَابِرِ بْنِ زَيْدٍ، عَنْ ابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي بِنْتِ حَمْرَةَ " لَا تَحُلْ لِي، يَحْرُمُ مِنَ الرَّضَاعِ مَا يَحْرُمُ مِنَ النَّسَبِ، هِيَ بِنْتُ أَخِي مِنَ الرَّضَاعَةِ " .¹³²

Narrated Ibn `Abbas: The Prophet (ﷺ) said about Hamza's daughter, "Foster relations are viewed like blood relations (in marital relationships), so I am not legally allowed to marry her. She is my foster brother's daughter".¹³³

حَدَّثَنَا مُحَمَّدُ بْنُ كَثِيرٍ، أَخْبَرَنَا سُفْيَانُ، عَنْ أَشْعَثِ بْنِ أَبِي الشَّعَثَاءِ، عَنْ أَبِيهِ، عَنْ مَسْرُوقٍ، أَنَّ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - قَالَتْ دَخَلَ عَلَيَّ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَعِنْدِي رَجُلٌ، قَالَ " يَا عَائِشَةُ مَنْ هَذَا " . قُلْتُ أَخِي مِنَ الرَّضَاعَةِ. قَالَ " يَا عَائِشَةُ، انْظُرِي مَنْ إِخْوَانُكَ، فَإِنَّمَا الرَّضَاعَةُ مِنَ الْمَجَاعَةِ " . تَابِعَهُ ابْنُ مَهْدِيٍّ عَنْ سُفْيَانَ.¹³⁴

Narrated by Aisha: Once the Prophet (ﷺ) came to me while a man was in my house. He said, "O `Aisha! Who is this (man)?" I replied, "My foster brothers," He said, "O `Aisha! Be sure about your foster brothers because adoption is only legal if it occurs during the suckling time (before the age of two).¹³⁵

¹²⁹Mahbub Ma'afi Ramdhan, "Masalah Donor Asi (1)," *NUonline*, 18th March, 2015, <https://islam.nu.or.id/bahtsul-masail/masalah-donor-asi-1-y2e2k>; Suara Muhammadiyah, "Hukum Susuan Dan Donor Asi," *Suara Muhammadiyah*, 22nd September, 2021, <https://suaramuhammadiyah.id/2021/08/18/hukum-susuan-dan-donor-asi/>.

¹³⁰ Ibn al-Asy'at, *Sunan Abu Dawud*, vol. 2, p. 222.

¹³¹"Sunan Abu Dawud: Marriage," *Sunnah.Com*, accessed on 1st May, 2023, <https://sunnah.com/abudawud:2059>.

¹³² Muhammad b. Isma'il al-Bukhari, *Sahih al-Bukhari*, ed. Muhammad b. Zuhair an-Nashir, 1st ed. (Beirut: Dar Thuqun al-Najah, 1442), vol. 3, p. 170.

¹³³"Sahih Bukhari: Witnesses," *Sunnah.Com*, accessed on 1st May, 2023, <https://sunnah.com/bukhari:2645>.

¹³⁴ al-Bukhari, *Sahih al-Bukhari*, vol. 3, p. 170.

¹³⁵"Sahih Bukhari: Witnesses," *Sunnah.Com*, accessed on 1st May, 2023, <https://sunnah.com/bukhari:2647>.

عَنْ ابْنِ عَبَّاسٍ، قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «لَا رَضَاعَ إِلَّا مَا كَانَ فِي الْحَوْلَيْنِ»¹³⁶

Narrated by Ibn 'Abbas (RA): Sucking is only appropriate for infants during their first two years of life.¹³⁷

حَدَّثَنَا يَحْيَى بْنُ يَحْيَى، قَالَ: قَرَأْتُ عَلَى مَالِكٍ، عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرٍ، عَنْ عَمْرَةَ، عَنْ عَائِشَةَ، أَنَّهَا قَالَتْ: " كَانَ فِيهَا أَنْزَلَ مِنَ الْقُرْآنِ: عَشْرُ رَضَعَاتٍ مَعْلُومَاتٍ يُحْرَمْنَ، ثُمَّ نُسِخْنَ، بِخَمْسِ مَعْلُومَاتٍ، فَتَوَقَّى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، وَهُنَّ فِيهَا يُفْرَأُ مِنَ الْقُرْآنِ " ¹³⁸

'A'isha (Allah be pleased with her) reported that it had been revealed in the Holy Qur'an that ten clear sucklings make the marriage unlawful, then it was abolished (and substituted) by five sucklings, and Allah's Apostle (ﷺ) died, and it was before that time (found) in the Holy Qur'an (and recited by the Muslims).¹³⁹

MUI also mentioned the previous scholars' views -Ibn Qudamah in his *al-Mughni*, al-Shirazi in his *al-Muhaddzab*, and Muhammad bin al-Hasan in Sarakhsi's *al-mabsut*- regarding the cause of mahram relationship is breastmilk regardless of the way of feeding -even if it is not directly- and the prohibition of selling breastmilk. In addition, they also mentioned some Islamic jurisprudences principles, such as the law of means is to follow the law of achievement to be addressed, the original law of having sex is forbidden¹⁴⁰ and the leader's action must benefit the people¹⁴¹;

ويثبت التحريم بالوجور لأنه يصل اللبن إلى حيث يصل بالارتضاع ويحصل به من إنبات اللحم وانتشار العظم ما يحصل بالرضاع ويثبت بالسعوط لأنه سبيل لفظ الصائم فكان سبيلاً لتحريم الرضاع كالفم.¹⁴²

The application of *mahram* law -because of breastfeeding- can go through the *al-wajur* process -putting milk into the throat without direct breastfeeding- because this process causes the entry of breast milk to the baby like the process of direct breastfeeding. The entry of breast milk -with the *al-wajur* process- also plays a role in the growth of flesh and bones, like the process of direct breastfeeding. The mahram relationship -because of breastfeeding- also applies through the *al-sa'uuth* process -putting breast milk in through the nose- because that can break the fast, so it can be analogous to entering breast milk through the mouth.

¹³⁶Ali b. Umar al-Darīqutni, *Sunan al-Darīqutni*, ed. Syu'aib al-Arnawut et al., 1st ed. (Beirut: Muassasatu al-Risalah, 2004), vol. 5, p. 307.

¹³⁷"Marriage," *Sunnah.Com*, accessed on 1st May, 2023, <https://sunnah.com/bulugh/8/198>.

¹³⁸Ibn al-Hajjaj, *Sahih Muslim*, vol. 2, p. 1075.

¹³⁹"Sahih Muslim: The Book of Suckling," *Sunnah.Com*, accessed on 1st May, 2023, <https://sunnah.com/muslim:1452a>.

¹⁴⁰الأصل في الأيضاع التحريم

¹⁴¹تصرف الإمام على الرعية منوط بالمصلحة

¹⁴²Ibrahim b. Ali al-Shirazi, *al-Muhaddhab fi Fiqhi al-Imam al-Shafi'i* (Beirut: Dar al-Kutub al-Ilmiyah, n.d.), vol. 3, p. 143.

ولأن هذا يصل به اللبن إلى حيث يصل بالارتضاع، ويحصل به من إنبات اللحم وإنشاز العظم ما يحصل من الارتضاع، فيجب أن يساويه في التحريم، والأنف سبيل الفطر للصائم. فكان سبيلا للتحريم، كالرضاع بالفم.¹⁴³

Things like this -putting breast milk without direct processing- causes breastmilk to enter the baby's stomach, is no different from the process of direct breastfeeding in growing flesh and bones, so the laws of both -direct or indirect breastfeeding- are the same which is the applied of mahram relationship (because of breastfeeding).

وذهب جماعة من أصحابنا إلى تحريم بيعه، وهو مذهب أبي حنيفة ومالك؛ لأنه مائع خارج من آدمية، فلم يجز بيعه، كالعرق، ولأنه من آدمي، فأشبهه سائر أجزاءه.¹⁴⁴

Some of our friends -scholars of the Hanbali school- have the opinion that selling breastmilk is forbidden. This opinion is in accordance with the schools of Abu Hanifah and Malik. The reason for its prohibition is that breastmilk is a liquid that comes out of a woman, so it cannot be sold like sweat. Another reason, breastmilk is part of humans - which should not be sold-

استحقاق لبن الأدمية بعقد الإجارة دليل على أنه لا يجوز بيعه، وجواز بيع لبن الأنعام دليل على أنه لا يجوز استحقاقه بعقد الإجارة.¹⁴⁵

The right to receive wages from breastmilk because of an *Ijarah* contract is an argument for not being allowed to buy and sell breast milk, just as the ability to sell animal milk is an argument for not being able to enter into an *Ijarah* contract to obtain milk from the animal.

As we can see above, MUI uses their three methods which are *Nash* -in determining how the *mahram* relationship occurs-, *Qauli* method -by provides the previous scholars' which explain the prohibition of selling breastmilk and breastfeeding could be done directly or indirectly in occurring *mahram* relationship- and *Manhaji* method -by citing some Islamic jurisprudences principles-.

Here, we understand that all three groups have the same opinion that the *mahram* relationship occurs after receiving breastmilk five times, and this opinion belongs to Shafi'i and Hanbali school. As we also know, most of the people in Indonesia are following the Shafi'i madhhab, so taking this opinion is the best option, and it is safer than determining the *mahram* relationship after receiving it only once, which sometimes could be done by accident. About the prohibition of selling breastmilk, it

¹⁴³ al-Makdisi, *al-Mughni Li Ibn Qudamah*, vol. 8, p. 173.

¹⁴⁴ Ibid., vol. 4, p. 196.

¹⁴⁵ Muhammad b. Ahmad al-Sarakhsi, *al-Mabsut* (Beirut: Dar Al Maarifa, 1993), vol. 15, p. 119.

seems this opinion is more logical to be accepted as the aim is for helping each other and not becoming rich with these things.

3.3. End-of-Life Issues

3.3.1. Corpse Autopsy

An autopsy is an operation by dissecting the corpse or dead body and examining its organs and structure to determine the cause of death or observing the disease effect and establishing the evolution and mechanism of the disease process. The Greek word *autopsia*, which means "the act of seeing oneself," is where the phrase autopsy originated."¹⁴⁶ As we can understand from the definition, the autopsy is used for examination, investigation, research, and education. With the development of dynamics in society and culture inside the society, the question of autopsy emerged, and MUI issued a fatwa with the related issue, number six on 6th June 2009.

By reflexing on their previous fatwas which are about putting corpses in the museum -which was issued on 5th February 1988-, corpse preservation for research -which was issued on 29th November 2007-, and using corpses for research -which was issued on 3rd December 2007- and some discussion which was held on 6th June 2009, MUI stated as follows;

There are two types of autopsy, which are forensic autopsy -an examination to know the disease before the death- and clinical autopsy -an examination which is conducted by the law on the victim of murder or suspicious death-. Both actions are applied with the aim of medical legality, such as determining the cause of the death, examination, research, or education. Basically, the corpse's right, like keeping the body's honor and not ruining it, must be fulfilled. However, if the autopsy is needed, such action could be applied and should fulfill the requirements such as the approval of Sharia and the experts; the autopsy is the only way to get the knowledge, as we have explained above, the corpse's rights should be fulfilled immediately and the approval to apply it -whether it is with the wills that he has written before, the guardian's or even

¹⁴⁶ The Editors of Encyclopedia Britannica, "Autopsy," Encyclopedia, *Britannica*, (3rd April, 2023), <https://www.britannica.com/topic/autopsy>.

the government's approval.¹⁴⁷ Regarding this fatwa, unfortunately, we could not find an official statement from Nahdlatul Ulama and Muhammadiyah.

The evidence that MUI used in this fatwa are some verses from the Qur'an and Hadith related to corpse treatment and the prohibition of ruining the corpse body. They also mentioned some principles of *uṣūl al-fiqh* and Islamic jurisprudence, such as when two risks or damages conflict with one another, the risk with the lesser risk must be taken to prevent the greater risk¹⁴⁸, the honor of a living person is higher than the dead person¹⁴⁹ and submission of evidence is the obligation for the one who accuses, and giving a swear is the obligation for the person who denies it.¹⁵⁰

As we analyze the evidence above, MUI used the *Nash* and *Manhaji* methods. Here, we see that MUI emphasizes the Islamic jurisprudence principle to approve autopsy with some requirements which should be fulfilled. We think that MUI's opinion by setting some requirements for autopsy rather than allowing it freely or directly forbidding it, seems to be more acceptable as the benefit of such an operation is huge, although the corpse's honor would be a little bit ruined.

3.4. Issues That Are Related to Treatment

3.4.1. Vasectomy and Tubectomy

Vasectomy is a surgical action by cutting or binding the spermatozoa ducts with the purpose of stopping the flow of spermatozoa so the semen will not contain this substance at the time of ejaculation without reducing the volume of the semen. In other words, it is an attempt to tie or cut the male seed canal (vas deferens) so the man will not possibly get anyone pregnant. As for Tubectomy, it is a surgical action by binding or cutting both fallopian tubes so the woman generally cannot be pregnant again.¹⁵¹ In

¹⁴⁷Majelis Ulama Indonesia, "Otopsi Jenazah" (Majelis Ulama Indonesia, 2009), 544–45, <https://mui.or.id/wp-content/uploads/files/fatwa/47.-Otopsi-jenazah.pdf>.

¹⁴⁸إذا تعارضت مفسدتان أو ضرران روعي أعظمهما ضررا بارتكاب أخفهما

¹⁴⁹حرمة الحي أعظم من حرمة الميت

¹⁵⁰البينة على المدعي واليمين على من أنكر

¹⁵¹Muhyiddin, "Fatwa MUI tentang Vasektomi (Tanggapan Ulama dan Dampaknya terhadap Peningkatan Medis Operasi Pria (MOP))," *Al-Ahkam Jurnal Pemikiran Hukum Islam* 24, no. 1 (2014): 70.

this case, we understand that both actions have the same aim to prevent pregnancy, which is also used for the family planning campaign to control the population.

This issue has emerged since the beginning year when MUI was founded. Until now, MUI has discussed and issued a fatwa about this case four times (in 1979, 1983, 2009, and 2012). In 1979, the beginning year when the family planning campaign was incessantly promoted, MUI declared that Vasectomy and Tubectomy are forbidden. The reasons are both actions were considered as the effort of sterilization which is prohibited in Islam, and there was no valid evidence if Tubectomy or Vasectomy could be recanalized again in Indonesia.¹⁵²

MUI rediscussed this issue in their *Musyawarah Nasional* forum, which was conducted between 17-30 October 1983, and strengthened its previous fatwa (still forbidding it) but in case of emergency, like if the pregnancy would be a danger, it is permissible to have these operations. MUI again rediscussed this case in their *Ijtima' Ulama* Commission which was conducted in January 2009 at Padang Panjang, West Sumatra. This time, the health department of the country and BKKBN (*Badan Kependudukan dan Keluarga Berencana Nasional*), or we could say the National Population and Family Planning Agency proposed and asked MUI to revise their fatwa about vasectomy from banning it to allowing it. The government considered that Vasectomy is the most effective effort to support the planning family campaign and has a lower risk than Tubectomy or other contraception things. The percentage of men who did Vasectomy is really low and they think that the fatwa that was issued by MUI hindered them from doing it. The government argued that vasectomy has the possibility to be recanalized so the argument for permanent sterilization could be rejected. However, this argumentation was considered weak as there was no valid proof for the case, so, this time the fatwa of vasectomy was still forbidden.¹⁵³ Here, we see that MUI remains objective in issuing its fatwa and considers every opinion carefully.

During the fourth *Ijtima' Ulama* forum, which was conducted at Cipasung, Tasikmalaya, in 2012, the government raised again the issue of Vasectomy, and this

¹⁵² Amin et al., *Himpunan Fatwa MUI*, 822; Muhyiddin, "Fatwa MUI tentang Vasektomi," 71.

¹⁵³ Muhyiddin, "Fatwa MUI tentang Vasektomi," 71.

time, they strengthened their argument by providing successful recanalization evidence with the testimony of a person called Njoto Djatmiko who did a vasectomy in 1988 in his first marriage and did recanalization in 1999 for his second marriage in which he got two children -the first was born in 2000 and the second in 2006-. Other evidence that the government provided was professional medical proof of the successful recanalization, which was conducted by *Perhimpunan Dokter Spesialis Urologi Indonesia* (IAUI), or called the Association of Urology Specialists in Indonesia. This strong evidence was considered as the new '*illat* of vasectomy verdict, which then made MUI revise its fatwa by saying that vasectomy is forbidden unless for an emergency and it is allowed if the recanalization is possible.¹⁵⁴

The new verdict about Vasectomy, which was issued by MUI got some responses from other fatwa commissions like Majelis Tarjih and Bahtsul Masail. While Majelis Tarjih supports the MUI's decision and adds other conditions, such as the doctor should be a male doctor and the one who will do the vasectomy and women for Tubectomy. In addition, they must have a positive motivation for it. However, Bahtsul Masail still forbids such action as they consider the proof which was provided in the meeting was still not strong enough and still considered in the level of *mutawahhamah* (speculation to medical theory), which does not reach the level of *muhaqqah* (definitive according to law).¹⁵⁵ According to The Council of the International Islamic Fiqh Academy, sterilization, such as Vasectomy and Tubectomy is also forbidden except for emergencies.¹⁵⁶ Diyanet also shares the same opinion in this case.¹⁵⁷

If we analyze which method that MUI used in the verdict of Vasectomy, we could say that they used the *Nash* method with the Qiyas principle,¹⁵⁸ by finding the same '*illat* in some verses in the Qur'an al-An'am verses 137 and 151 and al-Isra verse 31, which explain the prohibition of killing children;

¹⁵⁴ Ibid., 72.

¹⁵⁵ Ibid., 86–88.

¹⁵⁶ The Council of the International Islamic Fiqh Academy, "Birth Control," *The Council of the International Islamic Fiqh Academy*, 15th December, 1988, <https://iifa-aifi.org/en/32328.html>.

¹⁵⁷ *Din İşleri Yüksek Kurulu Fetvalar*, 526; Din İşleri Yüksek Kurulu Başkanlığı, "Gebeliği Engellemek İçin Vazektomi, Kordon Bağlatma vb. Yöntemlerin Uygulanması Caiz Midir?," *Din İşleri Yüksek Kurulu*, 12th July, 2017, <https://kurul.diyaret.gov.tr/Cevap-Ara/998/gebeligi-engellemek-icin-vazektomi-kordon-baglatma-vb-yontemlerin-uygulanmasi-caiz-midir>.

¹⁵⁸ Selfi Wahyu Putri, "Analisis Hukum Islam terhadap Perubahan Fatwa MUI Tahun 1979,2009,2012 tentang Penggunaan Alat Kontrasepsi Vazektomi," *Journal Riset Hukum Keluarga Islam* 1, no. 2 (2021): 85, doi:<https://doi.org/10.29313/jrki.v1i2.577>.

وَكَذَلِكَ زَيْنَ لِكَثِيرٍ مِّنَ الْمُشْرِكِينَ قَتَلُوا أَوْلَادَهُمْ شُرَكَاءُهُمْ لِيُرَدُّوهُمْ وَلِيَلْبِسُوا عَلَيْهِمْ دِينَهُمْ وَلَوْ شَاءَ اللَّهُ مَا فَعَلُوهُ ۗ فَذَرُّهُمْ وَمَا يَفْعُرُونَ (١٣٧)

Similar to how the pagans' demonic allies have encouraged them to slaughter their children, which would only result in their destruction and cause them to lose their faith. They would not have done it if it had been Allah's Will. Leave them and their lies, then.
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قُلْ تَعَالَوْا أَنلُ مَا حَرَّمَ رَبُّكُمْ عَلَيْكُمْ ۖ أَلَّا تُشْرِكُوا بِهِ شَيْئًا ۖ وَبِالْوَالِدَيْنِ إِحْسَابًا ۖ وَلَا تَقْتُلُوا أَوْلَادَكُمْ مِمَّنْ إِمْلَقْتُمْ ۖ نَحْنُ نُرْزُقُكُمْ وَإِيَّاهُمْ ۖ وَلَا تَقْرُبُوا الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَّنَ ۖ وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ ۗ ذَٰلِكُمْ وَصَّاكُم بِهِ لَعَلَّكُمْ تَعْقِلُونَ (١٥١)

Say, "Come!" O Prophet. Let me repeat what your Lord has commanded you not to do: do not join other people in worshipping Him. Honor your parents at all costs. Do not murder your kids out of concern for their future. We take care of them and you. Do not approach indecencies in a public or private setting. Do not take a "human" life -- deemed precious by Allah -- unless you have a "legal" reason to. He has told you to do this, so maybe you will understand.¹⁶⁰

وَلَا تَقْتُلُوا أَوْلَادَكُمْ حَسْبِيَ إِمْلَقٌ ۖ نَحْنُ نُرْزُقُهُمْ وَإِيَّاكُمْ ۖ إِنَّ قَتْلَهُمْ كَانَ خِطَاً كَبِيرًا (٣١)

Do not murder your kids out of concern for their future. We take care of both them and you. Killing them is unquestionably a horrific sin.¹⁶¹

In addition, they provide the verse from the Qur'an verse 119 of Surah An-Nisa and Hadith about the prohibition of changing God's; creation;

وَلَا ضِلَّالَةٌ لَهُمْ وَلَا مَدِينَةٌ لَهُمْ ۗ وَنَاوَرَتْهُمُ فَلْيَبْتَئِكُنَّ ءَادَانَ الْأَنْعَامِ ۗ وَنَاوَرَتْهُمُ فَلْيَغْيِرُنَّ خَلْقَ اللَّهِ ۗ وَمَنْ يَتَّخِذِ الشَّيْطَانَ وَلِيًّا مِّنْ دُونِ اللَّهِ فَقَدْ خَسِرَ خُسْرًا مُّبِينًا (١١٩)

Without a doubt, I will deceive them and give them false hope. In addition, they will cut off cattle's ears on my command and change Allah's creation. And whoever chooses Satan as a guardian rather than Allah has undoubtedly lost a great deal.

قال عبد الله: «لعن الله الواشمات والمستوشمات، والمتنمصات، والمتفلجات للحسن، المغيرات خلق الله تعالى» مالي لا لعن من لعن النبي صلى الله عليه وسلم، وهو في كتاب الله¹⁶²

According to 'Abdullah, Allah has cursed women who engage in tattooing, have themselves inked, shave their faces, remove their facial hair, artificially widen the space

¹⁵⁹ "Qur'an Translation of al-An'am," *Quran.Com*, accessed on 4th July, 2023, <https://quran.com/6>.

¹⁶⁰ Ibid.

¹⁶¹ "Qur'an Translation of al-Isra," *Quran.Com*, accessed on 4th July, 2023, <https://quran.com/17>.

¹⁶² al-Bukhari, *Sahih al-Bukhari*, vol. 7, p. 164.

between their teeth, and alter the traits that Allah has given them. So why would I not curse people that the Prophet has already cursed? And Allah's Book contains that.¹⁶³

Other than the *Nash* method with *Qiyas*, MUI also used the *Manhaji* method by using the expert's view in their consideration list, as we could see above, which had an impact on the changing of MUI's fatwa about vasectomy in 2012; although there are positive reactions and rejections from other fatwas commission.

To complete this topic, we should understand that the case of vasectomy is in the field of *ijtihad*, which does not have any explicit evidence in prohibiting this case where it may provide different opinions. In addition, in case the *'illat* changes, the decision could also be changed, which we already noticed above. Furthermore, People already do such operations to prevent pregnancy despite the prohibition from MUI, and with the changed fatwa, we think that it will increase in the following years.

For the case of Vasectomy, MUI's opinion seems to be more logical to be accepted. However, in the case of Tubectomy, although sometimes after the operation, it could not be reverted to the original condition and another possibility, such as the emergence of another disease related to the operated organs could emerge, it seems that MUI's opinion directly forbidding such action is not the best decision, and it would be better to be given more option according to the situation.¹⁶⁴ The reason is patients who do Tubectomy mostly because of age -which is dangerous if she got pregnant in the current state- or already do a cesarean operation three times which most doctors have advised -in which if the patient does more than three times, high risks such as infection, bleeding, and another injury could emerge-.¹⁶⁵

¹⁶³“Sahih Bukhari: About Tattoo,” *Hadith Colletion*, accessed on 11th June, 2022, <https://Hadithcollection.com/sahihbukhari/sahih-bukhari-book-72-dress/sahih-bukhari-volume-007-book-072-Hadith-number-815>.

¹⁶⁴ Irawan Sapto Adhi, “Keuntungan dan Kerugian Kontrasepsi Vasektomi,” *Kompas.com*, 20th October, 2020, <https://health.kompas.com/read/2020/10/20/193200468/keuntungan-dan-kerugian-kontrasepsi-vasektomi?page=all>; Irawan Sapto Adhi, “Keuntungan dan Kerugian Kontrasepsi Tubektomi,” *Kompas.com*, 21st October, 2020, <https://health.kompas.com/read/2020/10/21/210300368/keuntungan-dan-kerugian-kontrasepsi-tubektomi?page=all>.

¹⁶⁵“Operasi Caesar Lebih dari Tiga Kali, Ini Potensi Risikonya,” *Halodoc.com*, 15th December, 2022, <https://www.halodoc.com/artikel/operasi-caesar-lebih-dari-tiga-kali-ini-potensi-risikonya>.

3.4.2. Tube Baby - Artificial Insemination

Sometimes, with all the effort that has been made, some couples still cannot have a child whether, it is because of less fertile (*subfertile*), or not fertile (*infertile*), or even have uterine disease. With the development of technology, people who face these kinds of problems could use the tube baby program to pursue the dream of having a child.¹⁶⁶

Tube baby or artificial insemination is fertilization that occurs in animals or humans without sexual intercourse. Two ways have been developed in the medical world, which are *Fertilization in Virto* (FIV) -by taking the husband's sperm and wife's ovum and mixing them in a tube, then after fertilization, it would be transferred to the wife's womb- and *Gamet Intra Felopian Tuba* (GIFT) -by taking the husband's sperm and wife's ovum and mix them in a tube, then after the fertilization, it would be transferred to the wife's oviduct (fallopian tube)-. The second technic looks more natural because the sperm only could fertile the ovum in the fallopian tube after ejaculation in sexual intercourse.¹⁶⁷

With the emergence of this issue in society, in 1979, MUI discussed this issue and gave the fatwa as follows. First, if the sperm and ovum are from a husband and a wife that have the legality of marriage and the fertilized thing is transferred to the wife's womb or fallopian tube, this thing is allowed as it is considered as an attempt that does not violate the Sharia. The difference is just the place of fertilization.¹⁶⁸

Second, if the sperm and ovum situation is the same as in the first condition, but the fertilized thing is transferred to a different wife -like if the husband has two wives whereas the ovum is from the first wife and the fertilized thing is transferred to the second wife-, this situation is considered as forbidden with the principle of *sadd al-dharā'i* which could lead to a big problem such as in inheritance, especially between the child and the mother that has the ovum and the mother that gives the birth.¹⁶⁹

¹⁶⁶ Sholeh, M. Asrorun Ni'am, *Metode Penetapan Fatwa MUI*, 231.

¹⁶⁷ Ibid., 232.

¹⁶⁸ Amin et al., *Himpunan Fatwa MUI*, 825.

¹⁶⁹ Ibid.

Third, if the sperm is from a dead husband that has been frozen, doing such a thing is forbidden with the principle of *sadd al-dharā'i'* which could lead to some problems like the lineage of the child and inheritance.¹⁷⁰ Fourth, if the sperm and the ovum are from foreign people, which means there is no legal marriage between them, in this case doing a baby tube is forbidden because it has no difference with committing adultery. In addition, doing such things from sperm or ovum donors is also prohibited as it has the same situation as the fourth situation.¹⁷¹

Bahtsul Masail and Majelis Tarjih Muhammadiyah have the same opinion as MUI's regarding this issue. Still, Bahtsul Masail adds another requirement in which the sperm should be extracted in a *muhtaram* way -which means it is extracted in the way that is permissible according to Sharia-.¹⁷² In addition, The Council of the International Islamic Fiqh Academy and Diyanet also share the same opinion in this case.¹⁷³

The evidence that MUI used in this case are; Surah al-Isra verse 70 -which explains the honor of a human- in which doing baby tube with the sperm and ovum donors could humiliate the humans' dignity, *sadd al-dharā'i'* principle of avoiding damage or harm thing is more important than taking advantage and Hadith; which forbid placing sperm in other's wives.

عَنْ رُوَيْفِعِ بْنِ ثَابِتِ الْأَنْصَارِيِّ، قَالَ: كُنْتُ مَعَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ حِينَ افْتَتَحَ حُنَيْنًا، فَقَامَ فِيْنَا خَطِيْبًا فَقَالَ: " لَا يَجْلُ لِمَرْءٍ، يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ يَسْقِيَ مَاءَهُ زَرْعَ غَيْرِهِ..."¹⁷⁴

From Ruwayfi ibn Tsabit al-Anshori, that the Messenger of Allah, may Allah bless him and grant him peace, in the middle of the Hunayn war said, a person who believes in Allah and the afterlife is not permitted to fertilize other people's plants (their wives) with his sperm.

¹⁷⁰ Ibid.

¹⁷¹ Ibid., 825–26.

¹⁷²Alhafiz Kurniawan, "Hukum Bayi Tabung," *NUonline*, 5th December, 2020, <https://islam.nu.or.id/bahtsul-masail/hukum-bayi-tabung-UotDz>; Majelis Tarjih Muhammadiyah, "Fatwa Tarjih Muhammadiyah: Hukum Bayi Tabung Dan Kloning," *Tabligh.Id*, accessed on 15th April, 2023, <https://tabligh.id/fatwa-tarjih-muhammadiyah-hukum-bayi-tabung-dan-kloning/>.

¹⁷³The Council of the International Islamic Fiqh Academy, "Test-Tube Babies (In Vitro Fertilization)," *The Council of the International Islamic Fiqh Academy*, 16th October, 1986, <https://iifa-aifi.org/en/32254.html>; *Din İşleri Yüksek Kurulu Fetvalar*, 526.

¹⁷⁴Ahmad bin Hanbal, *Musnadu'l Imam Ahmad b. Hanbal*, ed. Syu'aib al-Arnawut, 1st ed. (Beirut: Muassasatu al-Risalah, 2001), vol. 28, p. 199.

As we analyze the evidence above, we can conclude that MUI uses the method of *Nash* -by citing a verse from the Qur'an and a Hadith- and *Manhaji* -by using *sadd al-dharā'ī* 'principle-. In addition, we agree with their opinion regarding this issue with an additional condition in which if the aim is to choose a child with the wished gender while having a child with normal intercourse is still possible, then it is forbidden as this condition is out of emergency.¹⁷⁵

3.4.3. Cloning

Modern technology, which is developing day by day, has allowed us to make an exact copy of living things by doing nucleus transfer which is known as cloning. This type of process is unnatural, like what generally happens -it does not require the meeting of sperm and ovum-. Some experiments have been done -like cloning a sheep- with the result of producing the same thing that has the exact similarity with the cloned thing. Despite the success of doing these experiments, many of the cloning are dead because of some issues like lung disability or weakness of immune.¹⁷⁶

The success of cloning on animals gives the possibility to do the same thing on humans. With the emergence of this issue in society, MUI feels that they have to explain whether such a thing is allowed or not. In their fourth MUNAS year 2000, MUI gave a fatwa on this issue.

Cloning is not considered as a creation, but it is just a provision, and cloning on animals or plants is allowed as long as it is done for good and not bad things. But doing cloning on humans is forbidden, although some people might argue that they are doing it for good such as producing organs for transplantation that people need. In some ways, maybe this type of argument could be accepted, but this necessity could also be provided by donors.¹⁷⁷

¹⁷⁵“Hukum Bayi Tabung dalam Islam, Berikut ini Penjelasan,” *Orami.co.id*, 15th November, 2022, <https://www.arami.co.id/magazine/hukum-bayi-tabung>.

¹⁷⁶ Sholeh, M. Asrorun Ni'am, *Metode Penetapan Fatwa MUI*, 236–37.

¹⁷⁷ Amin et al., *Himpunan Fatwa MUI*, 871–72.

In spite of the fact that cloning could help humans, MUI still considers it forbidden because it has some negative things, such as removing the lineage of the child, which led to the neglected law for the child. In addition, the marriage system which is known as the legal system for having offspring, and its purpose might be lost as they could have a child without making sexual relations. Furthermore, the relationship between man and woman could also be damaged.¹⁷⁸ Additionally, Bahtsul Masail, Majelis Tarjih Muhammadiyah, The Council of the International Islamic Fiqh Academy, and Diyanet share the same opinion as MUI in allowing the cloning of animals and plants but forbidding it for humans.¹⁷⁹

The evidences that MUI used for this fatwa are The Qur'an, and principles of Islamic jurisprudence. From the Qur'an they cited surah al-Jatsiyah verse 13, al-Isra verse 70, ar-Ra'd verse 16, and al-Mu'minun verses 12-14, which talk about how the human is created, their honor, and God's power;

وَسَخَّرَ لَكُمْ مَّا فِي السَّمٰوٰتِ وَمَا فِي الْاَرْضِ جَمِيعًا مِنْهُ ۗ اِنَّ فِيْ ذٰلِكَ لَآيٰتٍ لِّقَوْمٍ يَّتَفَكَّرُوْنَ (۱۳)

By His generosity, He also subjugated for you everything in the heavens and everything on earth. This contains cues for reflective folks, without a doubt (13).¹⁸⁰

وَلَقَدْ كَرَّمْنَا بَنِيْٓ اٰدَمَ وَحَمَلْنٰهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنٰهُمْ مِنَ الطَّيِّبٰتِ وَفَضَّلْنٰهُمْ عَلٰى كَثِيْرٍ مِّمَّنْ خَلَقْنَا تَفْضِيْلًا (۷۰)

Indeed, We have elevated the descendants of Adam above the majority of Our other creatures, given them good and lawful sustenance, and carried them on land and in the sea (70).¹⁸¹

قُلْ مَنْ رَبُّ السَّمٰوٰتِ وَالْاَرْضِ قُلْ اللّٰهُ ۗ قُلْ اَفَاتَّخَذْتُمْ مِنْ دُوْنِهٖٓ اَوْلِيَاءَ لَا يَمْلِكُوْنَ لَآنْفُسِهِمْ نَفْعًا وَلَا ضَرًّا ۗ قُلْ هَلْ يَسْتَوِي الْاَعْمٰى وَالْبَصِيْرُ اَمْ هَلْ نَسْتَوِي الظُّلُمٰتُ وَالنُّوْرُ ۗ اَمْ جَعَلُوْا لِلّٰهِ شُرَكَاءَ خَلَقُوْا كَخَلْقِهٖ فَتَشْبِهُهٗ الْخَلْقُ عَلَيْهِمْ ۗ قُلْ اللّٰهُ خَلَقَ كُلَّ شَيْءٍ وَهُوَ الْوٰحِدُ الْقَهَّارُ (۱۶)

"Who is the Lord of the heavens and the earth?" you should ask them, O Prophet. Say "Allah!" Why, then, have you appointed lords alongside Him who are unable to even

¹⁷⁸ Ibid., 872.

¹⁷⁹ Heri Ruslan, "Hukum Kloning (2)," *Republika.co.id*, 3rd November, 2012, <https://khazanah.republika.co.id/berita/mcwsha/hukum-kloning-2>; "Fatwa Tarjih Muhammadiyah: Hukum Bayi Tabung Dan Kloning"; The Council of the International Islamic Fiqh Academy, "Human Cloning," *The Council of the International Islamic Fiqh Academy*, 3rd July, 1997, <https://iifa-aifi.org/en/32539.html>; Zülfikar Doğan, "Diyanet: İnsan Kopyalamak Haram," *Miliet.Com.Tr*, 23rd March, 2000, <https://www.miliet.com.tr/pembenar/diyanet-insan-kopyalamak-haram-5326857>.

¹⁸⁰ "Qur'an Translation of al-Jathiyah," *Quran.Com*, accessed on 4th July, 2023, <https://quran.com/45>.

¹⁸¹ "Qur'an Translation of al-Isra."

advance or defend themselves? "Are the sighted and the blind equal? Or are darkness and light; compatible? Or have they bonded with partners of Allah who reportedly created something akin to His, leading them to confuse the two creations? Say, "Allah is the One, the Supreme, the Creator of all things (16).¹⁸²

وَلَقَدْ خَلَقْنَا الْإِنْسَانَ مِنْ سُلْطَةٍ مِنْ طِينٍ (12) ثُمَّ جَعَلْنَاهُ نُطْفَةً فِي قَرَارٍ مَكِينٍ (13) ثُمَّ خَلَقْنَا النُّطْفَةَ عَلَقَةً فَخَلَقْنَا
الْعَلَقَةَ مُضْغَةً فَخَلَقْنَا الْمُضْغَةَ عِظْمًا فَكَسَوْنَا الْعِظْمَ لَحْمًا ثُمَّ أَنْشَأْنَاهُ خَلْقًا آخَرَ ۚ فَتَبَارَكَ اللَّهُ أَحْسَنُ الْخَالِقِينَ
(14)

And indeed, We made humankind from a clay extract (12), placed each "human" as a sperm drop in a safe location (13), developed the drop into a clinging clot of blood, developed the clot into a lump of flesh, developed the lump into bones, then clothed the bones with flesh, and finally We brought it into being as a new creation. Allah, the Best of Creators, is indeed Blessed (14).¹⁸³

The Islamic jurisprudence principle that they used is avoiding damage or harm thing is more important than taking advantage.¹⁸⁴

As we analyze the evidence above, although MUI mentioned some verses from the Qur'an, they are not directly related to cloning cases. In addition, they do not mention any opinion from classical scholars, as we know that cloning is a modern issue. Therefore, we can conclude that MUI used the *Manhaji* method in issuing this fatwa by referencing *sadd al-dharā'i'* and the Islamic jurisprudence principle, which is avoiding damage or harmful thing is more important than taking advantage.

A scholar called Ayatullah Mohammad Hussain Fazlullah (d. 2007), -a Shia scholar- considers that cloning a human is allowed as he thinks that doing such a thing does not change God's; position and several advantages could be taken to build human generations. However, Shaikh Yusuf al-Qaradawi (d. 2022) considers it forbidden, which is similar to MUI's fatwa.¹⁸⁵ With all the reasons that have been mentioned by MUI in their evidence, it seems that siding with MUI's opinion would give us more ease in this case.

¹⁸²“Qur'an Translation of al-Mu'minun.”

¹⁸³“Qur'an Translation of al-Ra'd,” *Quran.Com*, accessed on 4th July, 2023, <https://quran.com/13>.

¹⁸⁴ درء المفساد مقدم على جلب المصالح

¹⁸⁵Nur Asiyah, “Hukum Melakukan Kloning Pada Manusia (Studi Perbandingan Fatwa Syaikh Yusuf Qaradhawi dan Syaikh Muhammad Husein Fadhlullah)” (Bachelor Thesis, Universitas Islam Negeri Ar-Raniry Darussalam, 2016), 60, <https://repository.ar-raniry.ac.id/id/eprint/5903/1/Nur%20Asiyah.pdf>.

3.4.4. Sex Change and Enhancement Surgery

Changing sex has been a major issue that spread between society, and the worse thing is people are making contests that are similar to miss universe for transexual people to choose who is the most beautiful among the finalists. MUI stated in their 2nd National Conference on 1st June 1980 that changing sex from male to female or vice versa is not permitted because it contradicts the Sharia. In addition, if a person has done such a thing, he or she would be considered in the same state before the operation is done. Furthermore, if a person were born with both sexes, then enhancement surgery would be done, which is determined by the more dominant characteristic in that person.¹⁸⁶ Here, Nahdlatul Ulama and Muhammadiyah agree with MUI's opinion regarding the prohibition of sex change surgery.¹⁸⁷

As evidence, MUI cited a verse from Surah An-Nisa number 19 saying that “...*If you happen to dislike them, you may hate something which Allah turns into a great blessing.*” Here, we see that MUI used the *Nash* and *Manhaji* methods by citing a verse from the Qur'an and using the Sharia principle for issuing this fatwa. Here, we find the opinion of the three groups in forbidding sex change surgery is more acceptable as it could cause big problems in society. In addition, MUI's opinion regarding sex enhancement surgery, as explained above, is not considered changing God's; creation seems more logical that it can help them in finding their true identity to continue their life.

3.4.5. Some Fatwas Which Are Related to Covid-19

The 2019 Corona Virus Disease, also known as COVID-19, is an illness that targets the human respiratory system and initially appeared in China. This disease has become a pandemic around the world up until now, and unfortunately, many people have died

¹⁸⁶Majelis Ulama Indonesia, “Operasi Perubahan/Penyempurnaan Kelamin” (Majelis Ulama Indonesia, 1980), 561, <https://mui.or.id/wp-content/uploads/files/fatwa/Operasi-Perubahan-atau-Penyempurnaan-Kelamin.pdf>.

¹⁸⁷Ahmad Muntaha AM, “Operasi Ganti Kelamin Atau Transgender Dalam Kajian Fiqih,” *NUonline*, 1st February, 2022, <https://islam.nu.or.id/thaharah/operasi-ganti-kelamin-atau-transgender-dalam-kajian-fiqih-kfL0z>; Heri Ruslan, “Hukum Mengubah Jenis Kelamin (2-Habis),” *Republika.Co.Id*, 10th October, 2012, <https://khazanah.republika.co.id/berita/mbnym9/hukum-mengubah-jenis-kelamin-2habis#:~:text=Majelis%20Tarjih%20dan%20Tajdid%20PP%20Muhammadiyah%20memutuskan%20bahwa%20melakukan,dan%20perubahan%20kelamin%20adalah%20haram.>

because of it. To prevent this virus spread, many vaccines have been produced, such as *Sinovac*, *AstraZeneca*, and others. In addition, the government has applied the vaccine campaign to make sure all people get this opportunity. In addition, for security in traveling, the government has made a rule that Swab-test -a test to detect Covid-19- is a mandatory requirement for using general transportation like trains and planes. However, this campaign and new rule, have to face a difficulty, which is Ramadhan time. Therefore, the government asks MUI to issue some fatwas regarding these vaccines, vaccination, and swab-test during Ramadhan.

First, we will begin with the vaccines *Sinovac* and *AstraZeneca*. *Sinovac* vaccine is a covid-19 vaccine, which is produced by *Sinovac Life Sciences Co. Ltd.*, China, and *PT. Bio Farma (persero) Indonesia*, and they ask halal certificate from MUI for its usage. There are three products that they produced which are *CoronaVac*, *Vaksin Covid-19*, and *Vac2Bio*. After MUI investigate these products, they determine that these products are permitted to be used, and they have gained a certificate from MUI too.¹⁸⁸

AstraZeneca is covid-19 vaccine that is produced by *SK Bioscience Co.Ltd*, South Korea. This type of vaccine is forbidden to be used because it contains a substance called *trypsin* which comes from pigs. However, using this vaccine is permitted for emergencies -like in a situation where if the patient is not vaccinated, he could lose his life or with the limitation of halal vaccine and only this vaccine that is left and ready to be used-. Furthermore, this permission could only be gained if the government gives a guarantee to the user. If any of these conditions are not available, then it is forbidden to be used.¹⁸⁹

Secondly, vaccination; is a process of giving a vaccine which could be done by injection into muscle -*intramuscular injection*- or consumed through the mouth to

¹⁸⁸ Majelis Ulama Indonesia, “Fatwa Majelis Indonesia Nomor 02 Tahun 2021 Tentang Produk Vaksin Covid-19 dari Sinovac Life Sciences co. Ltd. China dan PT. Bio Farma (Persero)” (Majelis Ulama Indonesia, 2021), 1–8, <https://mui.or.id/wp-content/uploads/2021/01/Fatwa-MUI-Nomor-2-Tahun-2021-tentang-produk-vaksin-covid-19-dari-Sinovac-Bio-Farma.pdf>.

¹⁸⁹ Majelis Ulama Indonesia, “Fatwa Majelis Indonesia Nomor 14 Tahun 2021 Tentang Hukum Penggunaan Vaksin Covid-19 Produk Astrazeneca” (Majelis Ulama Indonesia, 2021), 1–12, <https://mui.or.id/wp-content/uploads/2021/03/Fatwa-MUI-No-14-Tahun-2021-tentang-Hukum-Penggunaan-Vaksin-Covid-19-Produk-AstraZeneca-compressed.pdf>.

increase the antibody to prevent a specific disease. Doing vaccination; by *intramuscular injection* during Ramadhan will not break the fasting. As long as this vaccination; does not cause any harm to the user, it is permitted to be done.¹⁹⁰

Regarding swab-test,

Swabs and PCR are inseparable test methods to diagnose Covid-19. The swab is a way to obtain examination material (sample). The swab is done on the nasopharynx or oropharynx. This collection is done by rubbing the nasopharyngeal cavity or oropharynx using a tool such as a special cotton swab.¹⁹¹

This kind of test will not break the fasting either, and the Muslims could do such tests during the fasting to fulfill the requirement for traveling and other things.¹⁹²

Regarding two vaccines which are *AstraZeneca* and *Sinovac* vaccines, Muhammadiyah shares the same opinion as MUI as they follow what has been determined by MUI, which is forbidden for *AstraZeneca* -because it has a substance called *trypsin* which comes from the pig- and permitted for *Sinovac*.¹⁹³ However, Nahdlatul Ulama values both vaccines as halal, so they could be used by the people, and they determine the substance called *trypsin* inside the *AstraZeneca* vaccine comes from mushrooms and not from pig.¹⁹⁴

¹⁹⁰Majelis Ulama Indonesia, “Fatwa Majelis Indonesia Nomor 13 Tahun 2021 Tentang Hukum Vaksinasi Covid-19 Saat Berpuasa” (Majelis Ulama Indonesia, 2021), 7, <https://mui.or.id/wp-content/uploads/2021/07/Fatwa-MUI-Nomor-13-Tahun-2021-tentang-Hukum-Vaksinasi-Covid-Saat-Berpuasa.pdf>.

¹⁹¹Hermina Padang, “Difference Between Rapid Test, Swab Test, and PCR,” *Hermina Hospital*, 2nd September, 2020, <https://herminahospitals.com/en/articles/perbedaan-rapid-test-swab-test-dan-pcr.html>.

¹⁹²Majelis Ulama Indonesia, “Fatwa Majelis Indonesia Nomor 23 Tahun 2021 Tentang Hukum Tes Swab Untuk Deteksi Covid-10 Saat Berpuasa” (Majelis Ulama Indonesia, 2021), 9, <https://mui.or.id/wp-content/uploads/2021/04/Fatwa-MUI-No-23-Tahun-2021-tentang-Hukum-Tes-Swab-Untuk-Deteksi-Covid-19-Saat-Berpuasa1.pdf>.

¹⁹³Afandi, “Terkait Vaksin AstraZeneca, Sikap Muhammadiyah Selaras Dengan MUI,” *Muhammadiyah.or.Id*, 2021, <https://muhammadiyah.or.id/vaksin-astrazeneca-mengandung-babi-sikap-muhammadiyah-selaras-dengan-mui/>; Adam, “MUI Nyatakan Halal Vaksin Sinovac, Muhammadiyah: Kalau BPOM Nyatakan Aman, Masyarakat Tidak Perlu Ragu,” *Muhammadiyah.or.Id*, 2021, <https://muhammadiyah.or.id/mui-nyatakan-halal-vaksin-sinovac-muhammadiyah-kalau-bpom-nyatakan-aman-masyarakat-tidak-perlu-ragu/>.

¹⁹⁴Alhafiz Kurniawan, “PBNU Keluarkan Fatwa Terkait Kehalalan Vaksin AstraZeneca,” *NUonline*, 30th March, 2021, <https://www.nu.or.id/nasional/pbnu-keluarkan-fatwa-terkait-kehalalan-vaksin-astrazeneca-TfTvo>; Tim Detikcom, “PWNU Jatim Tegaskan Vaksin Sinovac Dan Astrazeneca Halal,” *Detiknews*, 19th March, 2021, <https://news.detik.com/berita-jawa-timur/d-5499432/pwnu-jatim-tegaskan-vaksin-sinovac-dan-astrazeneca-halal>.

Regarding vaccination; during fasting, Nahdlatul Ulama and Muhammadiyah agree with MUI that it will not break the fasting.¹⁹⁵ However, Nahdlatul Ulama has a different opinion about swab tests during fasting, as they say that it will break the fasting, and they suggest that people do it during the night¹⁹⁶, whereas Muhammadiyah shares the same opinion as MUI that it will not break the fasting.¹⁹⁷

The evidence that MUI used in the fatwas regarding the two vaccines are some verses from the Qur'an and Hadith, which explain the prohibition of destroying yourself, the order to only consume the permitted things, emergencies could permit prohibited things, and an attempt to avoid disease. They also mentioned some Islamic jurisprudence principles, most of them are the same as we have mentioned in previous fatwas. In addition, they said the earlier scholars' view regarding the prohibition of pig utilization and the permission of doing treatment using unclean items in emergencies;

(وَخُنْزِيرٍ) لِأَنَّهُ أَسْوَأُ حَالًا مِنْهُ إِذْ لَا يَجُوزُ الْإِنْتِفَاعُ بِهِ فِي حَالَةِ الْإِخْتِيَارِ بِحَالٍ مَعَ صَلَاحِيَّتِهِ لَهُ فَلَا يَرُدُّ نَحْوُ الْحَشَرَاتِ؛ وَلِأَنَّهُ مَنْدُوبٌ إِلَى قَتْلِهِ مِنْ غَيْرِ ضَرَرٍ.¹⁹⁸

And (the next unclean item is) pigs. Because they are in worse condition than dogs. It is not permissible to use them in normal conditions -*hal al-ikhtiyar*- right away even though they could be used, and it is not the same as insects. In addition, it is recommended to kill them even if it does not harm them.

جَازَ التَّدَاوِي بِالنَّجَاسَاتِ إِذَا لَمْ يَجِدْ طَاهِرًا يَفُومُ مَقَامَهَا، لِأَنَّ مَصْلَحَةَ الْعَافِيَةِ وَالسَّلَامَةَ أَكْمَلُ مِنْ مَصْلَحَةِ اجْتِنَابِ النَّجَاسَةِ.¹⁹⁹

If a clean object cannot be used in its place, treatment with an unclean object is acceptable. Here, the advantages of avoiding filthy objects are given precedence over the advantages of health and safety.

وَالتَّدَاوِي بِالنَّجِيسِ جَائِزٌ عِنْدَ فَقْدِ الطَّاهِرِ الَّذِي يَفُومُ مَقَامَهُ.²⁰⁰

¹⁹⁵ “LBM PBNU Tetapkan Vaksinasi Covid-19 Pada Siang Ramadhan Tak Batalan Puasa,” *NUonline*, 12th April, 2022, <https://www.nu.or.id/nasional/lbm-pbnu-tetapkan-vaksinasi-covid-19-pada-siang-ramadhan-tak-batalan-puasa-XMfkO>; Ilham, “Vaksin Saat Puasa, Bolehkah?,” *Muhammadiyah.or.Id*, 2021, <https://muhammadiyah.or.id/vaksin-saat-puasa-bolehkah/>.

¹⁹⁶ Alhafiz Kurniawan, “Apakah Tes Swab Membatalkan Puasa?,” *NUonline*, 30th August, 2020, <https://islam.nu.or.id/bahtsul-masail/apakah-tes-swab-membatalkan-puasa-B21t4>.

¹⁹⁷ Sayyidah Nuriyah, “Tes Swab, Merokok Dan Onani Saat Berpuasa,” *PWMU*, 23rd April, 2021, <https://pwmu.co/188367/04/23/tes-swab-merokok-dan-onani-saat-berpuasa/>.

¹⁹⁸ Ibn Hajar al-Haitami, *Tuhfatu al-Muhtaj fi Sharhi al-Minhaj* (Egypt: al-Maktab al-Tijarah al-Kubra, 1983), vol. 1, p. 290.

¹⁹⁹ al-'Izz Ibn Abdussalam, *Qawa'id al-Ahkam Fi Mashalih al-Anam*, ed. Taha Abdurrauf Sa'ad (Kairo: Maktaba al-Kulliyat al-Azhariyyah, 1991), vol. 1, p. 95.

²⁰⁰ Muhammad b. Ahmad al-Khathib al-Shirbini, *Mughni al-Muhtaj Ila Ma'rifati Ma'ani Alfadzi al-Minhaj*, 1st ed. (Beirut: Dar al-Kutub al-Ilmiyah 1994), vol. 1, p. 233.

When a clean thing cannot be used in its place, treatment with unclean objects is acceptable.

وتباح المحرمات عند الاضطرار إليها... وسبب الإباحة الحاجة إلى حفظ النفس عن الهلاك؛ لكون هذه المصلحة أعظم من مصلحة اجتناب النجاسات، والصيانة عن تناول المستحبات.²⁰¹

Clause: forbidden things are permitted in emergencies, ... the reason for this permission is to protect the soul from destruction because the benefit is greater than the benefit of staying away from unclean things and protecting them from getting dirty.

As we can see above, MUI used all three methods which are *Nash* -by mentioning some Qur'an verses and Hadith-, *Qauli* -by mentioning the previous scholars' view- and *Manhaji* -by mentioning some Islamic jurisprudence principles-. Here, we can see that MUI permits using the *AstraZeneca* vaccine by referencing the previous scholars' view, which explains the permission of using unclean items for medicine in emergencies.

Regarding the evidence that MUI used in the fatwas that related to the Swab test and attempting vaccine during fasting, MUI mentioned some verses from the Qur'an and Hadith related to fasting, which explained its necessity and what can break it. They also mentioned the experts' view on how the swab test is operated and some Islamic jurisprudences principles, such as what breaks the fasting is something that comes in but not something that goes out and what breaks the ablution is something that goes out and not something that comes in.²⁰² In addition, they also mentioned the previous scholars' view regarding what can break the fasting and giving medicine through the rectum will break the fasting but not through the meat;

قَالَ الرَّافِعِيُّ: وَضَبَطَ الْأَصْحَابُ الدَّاحِلَ الْمُفْطِرَ بِالْعَيْنِ الْوَاصِلَةَ مِنَ الظَّاهِرِ إِلَى الْبَاطِنِ فِي مَنْفَذٍ مَفْتُوحٍ عَنْ قَصْدٍ مَعَ ذِكْرِ الصَّوْمِ.²⁰³

Imam Rafi'i said: the Shafi'i scholars provide a limit -*dhabit*- about something that enters the stomach which could break the fasting is something that enters from the outside through a cavity that is opened on purpose and in a state of not forgetting to be fasting.

الرابع: الإمساك عن دخول عين جوفاً كباطن الأذن والإحليل بشرط دخوله من منفذ مفتوح، ولا يضر تشرب المسام بالدهن والكحل والاعتسال.²⁰⁴

²⁰¹al-Makdisi, *al-Mughni Li Ibn Qudamah*, vol. 9, p. 416.

²⁰²إنما الصيام مما دخل وليس مما خرج، والوضوء مما خرج وليس مما دخل

²⁰³Abu Zakariyya Muhyiddin al-Nawawi, *Al-Majmu' Sharh al-Muhadzab* (Damascus: Dar al Fikr, n.d.), vol. 6, p. 313.

²⁰⁴Ibn Hajar al-Haitami, *al-Minhaj al-Qawim*, 1st ed. (Beirut: Dar al-Kutub al-Ilmiyyah 2000), 246.

The fourth pillar: to restrain something from entering the stomach, such as the inner ear and bladder, with the condition that it enters through an open body cavity. Something that is absorbed through the pores, such as topical oil, kohl, and bathing water, does not break the fasting.

لو اوصل الدواء إلى داخل لحم الساق أو غرز فيه سكيناً أو غيرهما فوصلت مخرجه لم يفطر بلا خلاف لأنه لا يُعدُّ عضوًا مجوفًا.²⁰⁵

If the medicine is put into the calf or through the knife to reach the brain, then the fasting will not be broken because that place does not include part of the stomach.

(لا حُقْنَةُ) وَهِيَ مَا يَدْخُلُ فِي الدُّبُرِ أَوْ الْقَبْلِ مِنْ دَوَاءٍ فَلَا يُحْرَمُ (فِي الْأَطْهَرِ) لِانْتِفَاءِ التَّغْذِي؛ لِأَنَّهَا لِإِسْهَالِ مَا انْعَقَدَ فِي الْمَعْدَةِ، وَالثَّانِي: نُحْرَمُ كَمَا يَحْصُلُ بِهَا الْفُطْرُ.²⁰⁶

(*huqnah*) namely, something like medicine that enters through the rectum or foreskin does not cause a person to become a *mahram* -according to a strong opinion- because it is not considered to provide nutrition, and *huqnah*'s function is to facilitate defecation. The second opinion, *huqnah* causes *mahram* as it breaks the fasting.

As we can see above, MUI references the verses from the Qur'an, Hadith, the previous scholars' view, Islamic jurisprudences principal, and the expert's view about swab test operation in determining that doing covid vaccine and swab test during fasting will not break it. Here we see that they used all their method, which are *Nash*, *Qauli*, and *Manhaji* methods. Regarding MUI's opinion about the four topics above, we accept their opinion, and we do not have criticism in these cases.

3.5. Issues That Are Related to Organ Transplantation

3.5.1. Removal and Usage of Heart Valves

Heart diseases or cardiovascular diseases -such as coronary artery, cardiac arrest, congestive heart failure, peripheral artery, and stroke- have been an important issue in the medical world. Sometimes, with the failure of the heart to give the sick person hope to live his life again, replacing the heart is mandatory. In December 1985, a heart specialist hospital called *Harapan Kita* had asked MUI regarding the removal and usage of heart valves from a dead patient for the patient who had cardiovascular sickness.

²⁰⁵ al-Nawawi, *al-Majmu' Sharh al-Muhadzab*, vol. 6, p. 314.

²⁰⁶ al-Shirbini, *Mughni al-Muhtaj Ila Ma'rifati Ma'ani Alfadzi al-Minhaj*, vol. 5, p. 127.

After listening to the explanation from Dr. Tarmizi Hakim, a heart surgeon from *Harapan Kita Hospital*, on 16th May 1987 and several discussions with the members who attended the meeting, MUI gave the verdict regarding this issue on 27th June 1987. They stated that if the final condition and no other choice is available, taking the heart valves from a dead person for the sake of a living person who has cardiovascular disease is allowed with permission from the related person, which could be a will that he has written during his life and also with the permission from the heirs.²⁰⁷

Bahtsul Masail and Majelis Tarjih Muhammadiyah have no verdict regarding this specific issue. However, they give their opinion regarding organ transplantation, which we will explain in the next section.

As evidence, MUI cited several verses from the Qur'an -such as al-Maidah verse 2 and al-Baqarah verse 195, which explain a command to help each other and do good things- and al-Isra verse 70, which explain the honor of a human;

...وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ...

Cooperate in goodness and righteousness, but refrain from doing so when it comes to evil and wrongdoing.²⁰⁸

...وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ

And do good, for Allah certainly loves the good-doers. (195).²⁰⁹

Some Hadith, explain suggestions to find the cure and the honor of a human;

عَنْ جَابِرٍ، عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ: لِكُلِّ دَاءٍ دَوَاءٌ، فَإِذَا أُصِيبَ دَوَاءُ الدَّاءِ بَرَأَ بِإِذْنِ اللَّهِ عَزَّ وَجَلَّ²¹⁰

From Jabir, he narrated that Prophet has said: Each disease has a treatment option; therefore if the medication is effective for the illness, it will be cured with the help of God Almighty.

عَنْ عَائِشَةَ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «كَسْرُ عَظْمٍ الْمَيِّتِ كَكَسْرِهِ حَيًّا»²¹¹

²⁰⁷ Majelis Ulama Indonesia, “Pengambilan dan Penggunaan Katup Jantung” (Majelis Ulama Indonesia, 1987), 573–76, <https://mui.or.id/wp-content/uploads/files/fatwa/Pengambilan-dan-penggunaan-Katup-jantung.pdf>.

²⁰⁸ “Qur’an Translation of al-Maidah,” *Quran.Com*, accessed on 4th July, 2023, <https://quran.com/5>.

²⁰⁹ “Qur’an Translation of al-Baqarah,” *Quran.Com*, accessed on 4th July, 2023, <https://quran.com/2>.

²¹⁰ Ibn al-Hajjaj, *Sahih Muslim*, vol. 4, p. 1729.

²¹¹ Ibn al-Asy’at, *Sunan Abu Dawud*, vol. 3, p. 212.

From Aisha, she narrated that Prophet has said: Breaking a dead person's bones is equivalent to breaking them when they are still alive.

And some references from the classical Islamic jurisprudence book which is Sharh al-Muhazzab which explains the permission of doing surgery on a corpse to rescue the wealth or the living person's life;

وان بلع الميت جوهرة لغيره وطالب بها صاحبها شق جوفه وردت الجوهرة²¹²

If the corpse swallowed a jewel that belonged to others during his life and if the owner asked for it back, then the corpse's stomach would be dissected to take the jewel back.

وان ماتت امرأة وفي جوفها جنين حي شق جوفها لانه استبقاء حي باتلاف جزء من الميت فأشبهه إذا اضطر الي أكل جزء من الميت²¹³

If a pregnant woman passes away and there is a living baby inside her stomach, then the woman's stomach must be dissected because such things are determined as rescuing a living person by damaging some parts of the corpse's body. This permission is similar to eating corpse meat in emergencies.

As we can see above, MUI used all these three methods which are *Nash* -by citing verses from the Qur'an and Hadith, *Qauli* -by citing the opinion of previous scholars that belong to Shafi'i madhhab- and *Manhaji* -by listening to the explanation from an expert heart surgeon-. Regarding our opinion, we will give it together in our next section, which is about organ transplantation.

3.5.2. Organ Transplantation

Protecting the soul, mind, and descendant is one of the main visions of the Sharia. Hence, protecting the health of our body is an important that we have to do throughout our lives. Therefore, if we do not care about our bodies, some illnesses might occur in the future, which are sometimes serious that may destroy one of the organs. In this kind of situation, replacing the broken organ becomes mandatory, whereas if not, the ill person might die. Sickness like kidney failure, heart failure, and other disease-related to a failed organ needs transplantation to continue life. With the development of technology, this operation becomes easier and has a higher success probability which could help the patients and the guardians to reduce their worries.

²¹²al-Nawawi, *al-Majmu' Sharh al-Muhadzab*, vol. 5, p. 300.

²¹³Ibid., vol. 5, p. 301.

Medical treatment like transplantation could be used to replace the same organ that has the same function to restore its ability. With the emergence of such an issue, doctors and patients are curious about its permit, and the government, especially the Ministry of Health, has asked about it to MUI. In 2019, MUI issued a fatwa about self-transplantation and organ or tissue transplantation from a living person or a dead person to another living person, which we would explain as follows.

Before we explain these transplantations, MUI classified them according to the need level into three, which are emergency, necessity, and additional need. Emergency *-ad-dharurah-* as we have explained in the abortion section, is the state in which if you do not do it, you will be in danger, whereas necessity *-al-hajah-* is the state in which if you do not do it, you will be in big trouble. In case of additional need *-tahsiniyat-* it is the state of need for perfection and beauty in human life.²¹⁴

Self-transplantation means taking an organ or tissue of a living person and applying them to himself. Such an operation is allowed if the level of needs reaches the level of necessity or emergency, it will not harm him, and the operation would be done by experts with competency and credibility in this field. However, if the level of needs is just an additional need which means just for perfection, then it is forbidden.²¹⁵

A person is not allowed to give or sell an organ or tissue from his body to another person because they do not belong to him (*haqqul milk*). Therefore, the transplantation organs without any valid reason is forbidden.²¹⁶ However, organ transplantation from a living person to another living person may be carried out if the following conditions are fulfilled, which are; if there is an emergency that is justified by the Sharia and transplantation is the only way to survive, there will be no breakdown from the donor at all, the organ that would be transplanted is not a vital organ that influences the person's life, the aim is not commercial but to help with the agreement from the donor,

²¹⁴ Majelis Ulama Indonesia, "Fatwa Majelis Ulama Indonesia No. 11 Tahun 2019 tentang Transplantasi untuk Diri Sendiri" (Majelis Ulama Indonesia, 2019), 6, <https://mui.or.id/wp-content/uploads/2019/06/Fatwa-MUI-No.-11-Tahun-2019-tentang-Transplantasi-Untuk-Diri-Sendiri.pdf>.

²¹⁵ Ibid., 6–7.

²¹⁶ Majelis Ulama Indonesia, "Fatwa Majelis Indonesia Nomor 13 Tahun 2019 Tentang Transplantasi Organ atau Jaringan Tubuh dari Pendoror Hidup untuk Orang Lain" (Majelis Ulama Indonesia, 2019), 6–7, <https://mui.or.id/wp-content/uploads/2019/06/Fatwa-MUI-No.-13-Tahun-2019-tentang-Transplantasi-dari-Pendoror-Hidup.pdf>.

there is a recommendation from the health expert department about the safety and its high success probability and at last, the transplantation is hosted by the state. The permission for this transplantation could not be used for some organs like reproductive organs, genital organs, and the brain. MUI came to such a decision after hearing the explanation from the Ministry of Health on 13th December 2018 and discussing it with other members who attended the meeting on 20th December 2018.²¹⁷

The exact requirement is also applied to the transplantation from a dead person. However, because the person is already dead, this time, vital organs have permission to be transplanted because it is not considered vital anymore for him. In addition, the condition to determine whether the person is considered dead if he is irreversible brain dead. Brain death occurs when irreversibility, loss of consciousness happens, loss of brain stem reflexes, irreversible abdominal respiratory function, and irreversible stoppage of blood flow.²¹⁸

Regarding self-transplantation, we could not find any opinion from Bahtsul Masail and Majelis Tarjih in this case. However, Bahtsul Masail and Majelis Tarjih have a different opinion in the case of transplantation from a living person as they consider it forbidden -including for double organs which could work with one, like kidneys- as they think that such action is only harming the living person.²¹⁹ Regarding organ transplantation from a dead person, Bahtsul Masail at the beginning considered it as forbidden, but they revised their fatwa in 1989 by saying that it is permissible in emergencies with the additional requirement that both people have to be in the same religion, which means a Muslim could not give his organ to a non-Muslim and vice

²¹⁷ Ibid.

²¹⁸ Majelis Ulama Indonesia, “Fatwa Majelis Indonesia Nomor 12 Tahun 2019 Tentang Transplantasi Organ atau Jaringan Tubuh dari Pendoron Mati untuk Orang Lain” (Majelis Ulama Indonesia, 2019), 6–7, <https://cangkokginjal.com/wp-content/uploads/2019/07/Fatwa-MUI-No.-12-Tahun-2019-tentang-Transplantasi-dari-Pendoron-Mati.pdf>.

²¹⁹ Nova Fitriani, “Hukum Transplantasi Organ Dalam Keadaan Hidup pada Penderita Gagal Ginjal” (Bachelor Thesis, Universitas Islam Negeri Ar-Raniry Darussalam, 2016), 63, <https://repository.ar-raniry.ac.id/eprint/5902/1/Nova%20Fitriani.pdf>; Bagas Mashadi, “الاختلاف الفقهي بين نهضة العلماء، والمحمدية والسلفية: دراسة نظرية وتطبيقية” (Bachelor Thesis, Istanbul 29 Mayıs University, 2020), 29.

versa to keep the Muslim's honor.²²⁰ Still, Majelis Tarjih allows such action without such requirements to be fulfilled.²²¹

The Council of the International Islamic Fiqh Academy also shares the same opinion as MUI in the case of self-transplantation. As for the transplantation from a living person to a living person, The Fiqh Academy and Diyanet also share the same opinion as MUI. However, transplanting organs that have two pieces and could work with one, like the kidneys, is still under consideration for The Fiqh Academy. In the case of transplanting an organ from a dead person to a living person, The Fiqh Academy and Diyanet also share the same opinion as MUI.²²²

The evidence that MUI used in self-transplantation fatwa are; some verse from the Qur'an like al-Isra verse 70, at-Tin verse 4 -which explain the human's honor-, Yunus verse 66 -which reminds us that everything in this world belongs to Allah-, al-Maidah verse 2 -a command to help each other in doing good things-, al-Hasyr verse 9, al-Maidah verse 32, al-Baqarah verse 173, 195 and 207 -which explain about keeping yourself and others from bad things to achieve God's; pleasant-.

In addition, they also mention several Hadith that explain about every sickness has its medicine and the Prophet's action in curing the Sahabah's wound during the war - Badar and Uhud- and some Islamic jurisprudence principles like; harmful things should be removed, emergency cases permit doing what is forbidden, harm things could not be removed by other harm things²²³, harm things should be eliminated as

²²⁰Zahro, *Tradisi Intelektual NU*, 260–66; Hasbullah Ma'ruf, "Transplantasi Organ Tubuh Manusia Perspektif Nahdlatul Ulama dan Persatuan Islam" (Bachelor Thesis, Universitas Islam Negeri Sunan Kalijaga, 2015), 83–84, <https://digilib.uin-suka.ac.id/id/eprint/19080/1/BAB%20I,%20V,%20DAFTAR%20PUSTAKA.pdf>; Mochamad Syaiban, "Transplantasi Organ Tubuh Orang Muslim Kepada Orang Non-Muslim Menurut Hukum Islam (Studi Bahtsul Masail Nahdlatul Ulama)" (Bachelor Thesis, Universitas Islam Negeri Syarif Hidayatullah, 2010), 67–68, <https://repository.uinjkt.ac.id/dspace/bitstream/123456789/28986/1/MOCHAMAD%20SYAIBAN-FSH.pdf>.

²²¹Majelis Tarjih dan Tajdid Pimpinan Pusat Muhammadiyah, *Tanya Jawab Agama 1*, 1st ed. (Yogyakarta: Suara Muhammadiyah, 2019), 162–64.

²²²The Council of the International Islamic Fiqh Academy, "A Human Receiving the Organs of Another Human, Dead or Alive (Organ Transplantation)," *The Council of the International Islamic Fiqh Academy*, 11th February, 1988, <https://iifa-aifi.org/en/32287.html>; *Din İşleri Yüksek Kurulu Fetvalar*, 524–25.

²²³الضرر لا يزال بالضرر

possible²²⁴, hardship brings ease²²⁵, using other's rights without permission is forbidden²²⁶ and others.

MUI also mentioned some opinions from the previous scholars in determining that the human organ that has been cut is pure, the prohibition of self-injury, and the definition of emergency, necessity, and additional need;

Ibn Hajar al-Haitami's opinion in his *Tuhfatul Muhtaj* about the pureness of human limb which has been detached;

(والجزء المنفصل من الحي كميته) طهارة ونجاسة فيد الأدمي طاهرة خلافا لكثيرين²²⁷

(The limb that has been detached is like the body) in case of pureness and uncleanness. The hand of a person (which has been detached) is pure, unlike what the others said.

The opinion of al-'Izz bin Abdussalam in his *Qawaidu al-Ahkam fi Mashalihi al-Anam* about the prohibition of injuring yourself;

وليس لأحد أن يتلف ذلك من نفسه، لأن الحق في ذلك كله مشترك بينه وبين ربه²²⁸

No one is not allowed to harm himself because the right over his body is combined with the right of himself and his God;

Shaikh Ahmad al-Dardir's opinion in his *al-Sharh al-Kabir* and Wahbah al-Zuhaily in his *al-Fiqh al-Islami wa Adillatuh* about the emergency;

المباح ما أذن فيه، وإن كان قد بجنب (للضرورة)، وهي الخوف على النفس من الهلاك علما أو ظنا

The allowed things which are permitted to be consumed and sometimes could become compulsory in an emergency, which means a fearful condition of self-ruination that is determined by knowledge or presumption.

تعريف الضرورة وحكمها: هي الخوف على النفس من الهلاك علما (أي قطعاً) أو ظنا. فلا يشترط أن يصبر حتى يشرف على الموت، وإنما يكفي حصول الخوف من الهلاك ولو ظنا²²⁹

²²⁴ الضرر يدفع بقدر الإمكان

²²⁵ المشقة تجلب التيسير

²²⁶ لا يجوز لإنسان أن يتصرف في حق الغير إلا بإذنه

²²⁷ al-Haitami, *Tuhfatu al-Muhtaj fi Sharhi al-Minhaj*, vol. 1, p. 299.

²²⁸ Ibn Abdussalam, *Qawa'id al-Ahkam Fi Mashalih al-Anam*, vol. 1, p. 130.

²²⁹ Wahbah bin Musthofa al-Zuhaily, *al-Fiqh al-Islami wa Adillatuhu*, 4th ed. (Damascus: Dar al Fikr, n.d.), vol. 4, p. 2602.

The definition of emergency and its verdict: a fearful condition of self-ruination which is determined with knowledge (doubtless) or presumption. Therefore, there is no requirement to be patient until near-death conditions and have a fear of self-ruination, even if the presumption is enough.

Imam al-Haramain al-Juwaini's opinion in his *al-Burhan* about the definition of necessity and additional needs;

ما يتعلق بالحاجة العامة ولا ينتهي إلى حد الضرورة²³⁰

(Necessity) is every single thing related to need in general but not at the level of emergency.

ما لا يتعلق بضرورة خاصة ولا حاجة عامة ولكنه يلوح فيه غرض في جلب مكرمة أو في نفي نقبض لها²³¹

An additional need is every single thing that does not relate to a special emergency and need in general, but it is required to get dignity and to remove the contempt in it.

The evidence that MUI used in the transplantation from a living person and a dead person are the same as in the self-transplantation but with some additional opinion from the previous scholars -Alauddin Abu Bakr Mas'ud al-Kasani in his *Badi' al-Shanai*, Muhammad al-Syaukani in his *Fathul Qadir*, al-Shirazi in his *al-Muhadzzeb*- that allows doing such action which are;

حَامِلٌ مَاتَتْ فَاضْطَرَبَ فِي بَطْنِهَا وَلَدٌ فَإِنْ كَانَ فِي أَكْثَرِ الرَّأْيِ أَنَّهُ حَيٌّ يُسَقُّ بَطْنُهَا لِأَنَّ أَبْنَاءَنَا بَيْنَيْنِ فَتَحْتَارُ أَهْوَاهُمَا وَشَقُّ بَطْنِ الْأُمِّ الْمَيِّتَةِ أَهْوَنُ مِنْ إِهْلَاكِ الْوَلَدِ الْحَيِّ.²³²

If a pregnant woman died and there is a fetus in her womb, which is predicted to be still alive, then the woman's stomach would be operated on to rescue the baby. Because such a situation gives a difficult choice, whether to keep the honor of the corpse or save the baby, we choose the milder consequence in which doing an operation on the mother's stomach has a milder consequence than leaving the baby that is still alive.

As we can see above, MUI used all there three methods which are *Nash* -by citing verses from the Qur'an that explain human honor and prohibition of harming yourself-, *Qauli* -by mentioning the previous scholars' view in allowing to do transplantation-

²³⁰ Abdul Malik bin Abdullah al-Juwaini, *Al-Burhan Fi Usul al-Fiqh*, ed. Sholahuddin Ibn Muhammad, 1st ed. (Beirut: Dar al-Kotob al-Ilmiyh1997 ,), vol. 2, p. 79.

²³¹ Ibid.

²³² Alauddin al-Kasani, *Bada'i al-Shanai Fi Tartib al-Sharai'* (Beirut: Dar al-Kotob al-Ilmiyh1986 ,), vol. 5, p. 130.

and *Manhaji* -by using the Islamic jurisprudence principles and considering the experts' view in this case-.

Now we will determine our view related to these cases according to each case. Regarding self-transplantation, we agree with MUI's opinion that it is permitted if needed, except only for perfection. Regarding the case of transplantation from a dead person, including the removal and usage of heart valves, all three organizations have the same opinion in allowing it, as there is no big risk in doing such action to gain the advantages. Although Nahdlatul Ulama adds a requirement that both people have to be in the same religion, we do not agree with this requirement because the aim of rescuing life is more important than keeping the Muslim body's honor.

Regarding the case of transplantation from a living person, we see that both Muhammadiyah and Nahdlatul Ulama forbid such action, whereas MUI permits it in several cases -like in the double organs that could work with one, such as kidneys-. We can conclude that both Muhammadiyah and Nahdlatul Ulama prioritize the rights of the living person and God's; rights rather than helping each other. MUI itself still considers the benefit that could be taken rather than directly forbidding the case. By reflecting on the statistic regarding this issue, such as the successful percentage of kidney transplantation (87%)²³³ and liver transplantation (88%).²³⁴ As both operations have a high percentage of success, we think that such action should be permitted as it could save other person's life and give them a chance to live in a better way with a note that it should be conducted by the expert directly and fulfill the compulsory requirement that has been determined by MUI.

3.5.3. Wills of Donating Cornea

A human usually writes a will during his life, whether it is related to inheritance or sometimes about giving or donating one of his organs to others who need them. On

²³³Editor Medis Siloam Hospitals, "Tinggi! Ini Keberhasilan Transplantasi Ginjal Di Indonesia," *Siloam Hospitals*, March 29, 2023, <https://www.siloamhospitals.com/informasi-siloam/artikel/keberhasilan-transplantasi-ginjal>.

²³⁴InfoSehat FKUI, "Tingkat Keberhasilan Transplantasi Hati Anak di Indonesia Setara dengan Jepang," *Fakultas Kedokteran Universitas Indonesia*, January 14, 2020, <https://fk.ui.ac.id/infosehat/tingkat-keberhasilan-transplantasi-hati-anak-di-indonesia-setara-dengan-jepang/>.

13th June 1979, MUI issued a fatwa related to the will of donating cornea to answer a question that was conducted by *Palang Merah Indonesia*, or known as the Indonesian Red Cross Society,²³⁵ an organization from Central Java. MUI stated that if someone has the will to donate his cornea to help others during his life when he passes away, this will could be granted with the agreement and witnessed by the heir and must be done by the surgeon only.²³⁶

According to Nahdlatul Ulama, such wills are not considered valid and would be rejected as the requirement of will, which is *mutlak milik* or ownership, is not present.²³⁷ However, in doing this transplantation, Nahdlatul Ulama has two views; some of their scholars allow such action, and some forbid it.²³⁸ On the other hand, Muhammadiyah sees such wills as *mubah* or permitted, and doing the cornea transplantation is also allowed, which is the same as MUI's opinion.²³⁹

As for the evidence, there is a Hadith narrated by Aisha, saying that “*Breaking a dead person's bones is equivalent to breaking them when they are still alive.*”²⁴⁰ However, MUI still thinks prioritizing the living person is more important than breaking the corpse's honor.²⁴¹ Here we see that MUI used the *Nash* -by mentioning a Hadith although it contradicts their verdict- and the *Manhaji* method -by using the Sharia principle- for issuing this fatwa. Regarding the issue, we think that the opinion of MUI and Muhammadiyah in allowing such action is more acceptable as it could help others and give them benefits to get a better life.

²³⁵The biggest humanities organization in Indonesia that helps victims of conflicts, disasters, and health crises.

²³⁶Majelis Ulama Indonesia, “Wasiat Menghibahkan Kornea Mata” (Majelis Ulama Indonesia, 1979), 558, <https://mui-jateng.or.id/wp-content/uploads/2018/03/04.-Wasiat-menghibahkan-Kornea-Mata.pdf>.

²³⁷Mita Ayu Lestari and Supardin, “Wasiat Penggunaan Organ Tubuh Mayat; Studi Komparasi Pandangan Nahdlatul Ulama Dan Muhammadiyah,” *Shautuna* 2, no. 3 (2021): 658.

²³⁸Ibid.; Alhafiz Kurniawan, “Hukum Cangkok Mata,” *NUonline*, 8th December, 2020, <https://islam.nu.or.id/bahtsul-masail/hukum-cangkok-mata-H7gWc>.

²³⁹Lestari and Supardin, “Wasiat Penggunaan Organ Tubuh Mayat; Studi Komparasi Pandangan Nahdlatul Ulama Dan Muhammadiyah,” 658.

²⁴⁰Muhammad bin Yazid Ibn Majah, *Sunan Ibn Majah*, ed. Syu'aib al-Arnawut, 1st ed. (Lebanon: Dar al-Risalah al-Alamiyah, 2009), vol. 2, p. 541; “Chapters Regarding Funerals,” *Sunnah.Com*, accessed on 12th April, 2023, <https://sunnah.com/ibnmajah/6>.

²⁴¹“Wasiat Menghibahkan Kornea Mata,” 557–58.

3.6. Other Health-Related Issues

3.6.1. Making Cosmetics and Medications with Components Derived from Human Organs

Medicine and Cosmetics are needed by humans and could be considered primary needs for sick people and women. Some medicine and cosmetic sometimes contain some substances that come from human organs such as the placenta. In addition, some doctors have the opinion that human urine could cure some diseases. With the emergence of such issues, MUI issued a fatwa in their sixth National Conference in 2000, which is as follows;²⁴²

What they mean by using medicine in this fatwa is consuming -like drinking the urine- and not using it for the external body. In addition, what they mean by using cosmetics is applying them for the outside of the body with the aim of body or skin treatment so that they will become smooth and beautiful. Therefore, using a medicine that contains a substance that belongs to a human organ -*juz' u al-insan*- is forbidden. In addition, using human urine is also forbidden. Furthermore, cosmetic that contains the substances that have been mentioned above are also forbidden. However, if the case is considered an emergency by the Sharia, it is permitted to use them except for consuming medicine that has the substance from a human organ.²⁴³ About using animal placenta as the ingredient for cosmetic and external medicine, if the placenta comes from a halal animal, then it is permitted, but if it comes from carrion, then it is forbidden to be used.²⁴⁴

Regarding the opinion of Bahtsul Masail and Majelis Tarjih in this case, unfortunately, we could not find them. However, we could only find the opinion from Nahdlatul Ulama's scholars about using animal placenta for cosmetic and external medicine,

²⁴²Majelis Ulama Indonesia, "Fatwa Musyawarah Nasional VI Majelis Ulama Indonesia Nomor 02 Tahun 2000 Tentang Penggunaan Organ Tubuh, Ari-Ari dan Air Seni Manusia Bagi Kepentingan Obat-obatan dan Kosmetika" (Majelis Ulama Indonesia, 2000), 609, <https://mui.or.id/wp-content/uploads/files/fatwa/Penggunaan-Organ-Tubuh.pdf>.

²⁴³ Ibid., 611–12.

²⁴⁴ Majelis Ulama Indonesia, "Fatwa Majelis Ulama Indonesia No. 30 Tahun 2011 Tentang Penggunaan Plasenta Hewan Halal Untuk Bahan Kosmetika Dan Obat Luar" (Majelis Ulama Indonesia, 2011), 6, <https://mui.or.id/wp-content/uploads/files/fatwa/No.-30-Penggunaan-Plasenta-Hewan-Halal-utk-Bahan-Kosmetika-dan-Obat-Luar.pdf>.

which most of the scholars consider it forbidden because the resource of the animal placenta is not known, whether it is halal or not.²⁴⁵

The evidence that MUI used in this fatwa is a verse from the Qur'an -al-Maidah verse 3- about permitting forbidden things in emergencies, some Hadith regarding each sickness has its cure, and information about the Urainah tribe who drank camel urine and milk to recover from their sickness, Zuhri's opinion in prohibiting to consume human urine, the opinion of Muhammad b. Muhammad al-Ruini's opinion in his *Mawahib al-Jalil fi Mukdashari al-Khalil* and Muhammad b. Ahmad's opinion in his *Hasyiyah ad-Dasuqi 'Ala as-Sharhi al-Kabir* about allowing the placenta to be used and an Islamic jurisprudence principle which is emergency cases permit doing what is forbidden;

حَدَّثَنَا سُلَيْمَانُ بْنُ حَرْبٍ، قَالَ حَدَّثَنَا حَمَادُ بْنُ زَيْدٍ، عَنْ أَيُّوبَ، عَنْ أَبِي قِلَابَةَ، عَنْ أَنَسٍ، قَالَ قَدِمَ أَنَسٌ مِنْ عُكْلٍ أَوْ عَرَيْنَةَ، فَاجْتَمَعُوا الْمَدِينَةَ، فَأَمَرَ هُمُ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِلِقَاحٍ، وَأَنْ يَشْرَبُوا مِنْ أَبْوَالِهَا وَالْبَائِنِهَا، فَانْطَلَقُوا، فَلَمَّا صَحُّوا قَتَلُوا رَاعِي النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَاسْتَأْفُوا النَّعَمَ، فَجَاءَ الْخَبْرُ فِي أَوَّلِ النَّهَارِ، فَبَعَثَ فِي آثَارِهِمْ، فَلَمَّا ارْتَفَعَ النَّهَارُ جِيءَ بِهِمْ، فَأَمَرَ فَفَطَعَ أَيْدِيَهُمْ وَأَرْجُلَهُمْ، وَسَمَرَتْ أَعْيُنُهُمْ، وَالْقُوا فِي الْحَرَّةِ يَسْتَسْفُونَ فَلَا يُسْفُونَ.²⁴⁶

Narrated Abu Qilaba: Anas said, "Some people of `Ukl or `Uraina tribe came to Medina, and its climate did not suit them. So, the Prophet (ﷺ) ordered them to go to the herd of (Milch) camels and to drink their milk and urine (as a medicine). So they went as directed, and after they became healthy, they killed the shepherd of the Prophet and drove away all the camels. The news reached the Prophet (ﷺ) early in the morning, and he sent (men) in their pursuit, and they were captured and brought at noon. He then ordered them to cut their hands and feet (and it was done), and their eyes were branded with heated pieces of iron; they were put in Al-Harra, and when they asked for water, no water was given to them."²⁴⁷

وَقَالَ الرَّهْرِيُّ: " لَا يَحِلُّ شَرْبُ بَوْلِ النَّاسِ لِشِدَّةِ نَزْلِ، لِأَنَّهُ رَجَسٌ، قَالَ اللَّهُ تَعَالَى: {أَجَلٌ لَكُمْ الطَّيِّبَاتُ} [المائدة: 4] وَقَالَ ابْنُ مَسْعُودٍ، فِي السَّكَّرِ: «إِنَّ اللَّهَ لَمْ يَجْعَلْ شِفَاءَكُمْ فِيمَا حَرَّمَ عَلَيْكُمْ»²⁴⁸

Zuhri (d. 124H/742) said, "It is not lawful to drink human urine to cure an illness, because it is unclean; Allah says: '...It is lawful for you which are good...' (QS. al-Ma'idah [5]: 5)";

²⁴⁵ Tri Yuana Devi, "Pandangan Tokoh Agama Nahdlatul Ulama (NU) Di Kecamatan Jenangan Kabupaten Ponorogo Terhadap Penggunaan Placenta Hewan Halal Sebagai Bahan Kosmetik Dan Obat Luar" (Bachelor Thesis, Institut Agama Islam Negeri Ponorogo, 2020), 91, <http://etheses.iainponorogo.ac.id/12079/1/UPL0UD%20DEV1.pdf>.

²⁴⁶ al-Bukhari, *Sahih al-Bukhari*, vol. 1, p. 56.

²⁴⁷ "Sahih Bukhari: Ablutions," *Sunnah.Com*, accessed on 4th May, 2023, <https://sunnah.com/bukhari:233>.

²⁴⁸ al-Bukhari, *Sahih al-Bukhari*, vol. 7, p. 110.

and Ibn Mas'ud (d. 32H/650) said about sacrificial (liquor), "Allah does not make your medicine something that is forbidden for you".

(فَرَحٌ): نَقَلَ ابْنُ رُشْدٍ فِي رَسْمِ سَمَاعِ مُوسَى مِنْ كِتَابِ الصَّلَاةِ جَوَازَ أَكْلِ الْمَشِيمَةِ وَهِيَ بِمِيمَتَيْنِ وَعَاءُ الْوَلَدِ، وَأَقْتَى الصَّائِغُ بِمَنْعِ أَكْلِهِ. وَأَقْتَى بَعْضُ شُيُوخِ ابْنِ عَرَفَةَ بِأَنَّهُ إِنْ أَكَلَ الْجَنِينَ أَكَلَتْ أَنْطَرَ ابْنُ عَرَفَةَ.²⁴⁹

Ibn Rushd launched Musa's opinion from the prayer chapter about the permissibility of eating the placenta. Meanwhile, as-Shoigh gave a fatwa forbidding eating it. And some of Ibn Arafah's teachers gave a fatwa that if the fetus is halal to be eaten, then the law of the placenta is also lawful.

وَجُرُؤُهُ الْمَشِيمَةُ وَهِيَ وَعَاءُ الْوَلَدِ فَهِيَ طَاهِرَةٌ وَيَجُوزُ أَكْلُهَا كَمَا لِابْنِ رُشْدٍ وَصَوَّبَهُ الْبُرْزُلِيُّ قَائِلًا: هُوَ ظَاهِرُ الْمُدَوَّنَةِ خِلَافًا لِغَيْرِهِ الصَّائِغِ الْقَائِلِ بِعَدَمِ جَوَازِ أَكْلِهَا وَقَالَ ابْنُ جَمَاعَةَ: إِنَّهَا تَابِعَةٌ لِلْمَوْلُودِ.²⁵⁰

And between the animal parts is the placenta, the fetal cord. The placenta is sacred, and it is permissible to eat it, as was the opinion of Ibn Rushd and confirmed by al-Burzuli; he said: this opinion is found in the book *al-Mudawwanah*, different from the opinion of Abdul Hamid as-Shaigh, who stated: it is not permissible to eat the placenta. And the opinion of Ibn Jama'ah: the law of the placenta follows (the law of) the fetus."

Here, we see that MUI used their three methods in this case which are *Nash* -by mentioning a verse from the Qur'an and some Hadith-, *Qauli* -by mentioning Zuhri's opinion about the prohibition of urine and other scholars in permitting the animal placenta to be used- and *Manhaji* -by mentioning an Islamic jurisprudence principle-. In this case, it seems that MUI's fatwa is more acceptable because we think forbidding such cases is the safest way until the emergency comes.

3.6.2. Cigarette

Nowadays, cigarette has become a trendy topic among people, especially Muslims, regarding whether it is *halal* or forbidden. Until now, there has been no consensus between the fatwa commission, and there is still debate between them. From the perspective of health, a cigarette has more negative impact than positive. However, some people might argue that cigarette makes them concentrate more and remove their stress -it is the effect of substances inside the cigarette such as nicotine and others-. From the economic side, cigarette has been a big income of money for the country,

²⁴⁹ Muhammad b. Muhammad al-Ruini, *Mawahib Al-Jalil Fi Muktashari al-Khalil* (Beirut: Dar al Fikr, 1992), vol. 3, p. 228.

²⁵⁰ Muhammad b. Ahmad al-Dasuqi, *Hashiyah al-Dasuqi 'ala al-Sharhi al-Kabir* (Beirut: Dar al Fikr, n.d.), vol. 1, p. 49.

and tobacco farmers have taken many advantages of selling cigarettes. Still, on the other hand, it is also considered a waste of money.²⁵¹

In the case of cigarettes, MUI discussed this topic in their *Ijtima Ulama Forum* in 2009. They considered cigarettes as forbidden -for children, pregnant women, and smoking in public places- and *makruh* -for the other categories-.²⁵² On the other hand, Bahtsul Masail and Majelis Tarjih have their own opinion regarding cigarettes. Bahtsul Masail's verdict says that cigarette is *mubah* (allowed) and *makruh* -as there is no *qath'i* evidence that forbids the cigarette-, whereas Majelis Tarjih says that cigarette is *haram* -by citing the same evidence as in MUI's fatwa-.²⁵³

The evidence that they use in this case is some verses from the Qur'an, Hadith, and some Islamic jurisprudence principles (*qaidahtul fiqhiyyah*). The verses from the Qur'an are verse 157 of Surah al-A'raf -which talks about ordering for good and forbidding from doing bad things-

الَّذِينَ يَتَّبِعُونَ الرَّسُولَ النَّبِيَّ الْأُمِّيَّ الَّذِي يَجِدُونَهُ مَكْنُوزًا عِنْدَهُمْ فِي التَّوْرَةِ وَالْإِنْجِيلِ أَمْرُهُمْ بِالْمَعْرُوفِ وَيَنْهَاهُمْ
عَنِ الْمُنْكَرِ وَيُجِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ وَيَضَعُ عَنْهُمْ إِصْرَهُمْ وَالْأَغْلَالَ الَّتِي كَانَتْ عَلَيْهِمْ فَالَّذِينَ
آمَنُوا بِهِ وَعَزَّرُوهُ وَنَصَرُوهُ وَاتَّبَعُوا النُّورَ الَّذِي أُنزِلَ مَعَهُ ۗ أُولَٰئِكَ هُمُ الْمُفْلِحُونَ ﴿7:157﴾

People who adhere to the *ummi* Prophet, who is mentioned in both the Torah and the Gospel. He commands them to do good and forbids them from doing bad. He frees them from their loads and the chains that bound them, and he makes the good things legal for them and forbids the evil things. Therefore, those who support him, trust in him, and follow the light; that has been sent down with him will thrive.²⁵⁴

Al-Isra's verses 26-27, which talks about the forbidding of wasting-;

إِنَّ الْمُبَذِّرِينَ كَانُوا إِخْوَانَ الشَّيَاطِينِ ۗ وَكَانَ الشَّيْطَانُ لِرَبِّهِ كَفُورًا (٢٧) وَعَاءتِ دَا أَلْفُرَبِي حَقَّهُ وَالْمُسْكِينِ وَآئِينَ
السَّبِيلِ وَلَا تُبَذِّرْ تَبْذِيرًا (٢٦)

²⁵¹ Husaini, "Hukum Rokok Analisis Al-Qur'an dan Fatwa MUI," *Jurnal Syarah* 7, no. 1 (2018): 91.

²⁵² "Hasil-Hasil Ijtima' Ulama Komisi Fatwa Majelis Ulama Indonesia III Tahun 2009 Di Padang Panjang," 2009, 140–42, <https://mui.or.id/wp-content/uploads/files/fatwa/Ijtima-Ulama-2009.pdf>; Husaini, "Hukum Rokok Analisis Al-Qur'an dan Fatwa MUI," 92–93.

²⁵³ "Bahtsul Masail Tentang Hukum Rokok," *NUonline*, accessed on 8th January, 2023, <https://islam.nu.or.id/syariah/bahtsul-masail-tentang-hukum-merokok-70mqA>; Majelis Tarjih Muhammadiyah, "Fatwa Majelis Tarjih Dan Tajdid Pimpinan Pusat Muhammadiyah Tentang Hukum Merokok" (Majelis Tarjih Muhammadiyah, 2010), <http://tarjih.muhammadiyah.or.id/muhfile/tarjih/download/Fatwa%20Hukum%20Merokok.pdf>.

²⁵⁴ "Qur'an Translation of al-A'raf," *Quran.Com*, accessed on 4th July, 2023, <https://quran.com/7>.

Give your close family members your due, along with the underprivileged and "needy" travelers. Additionally, avoid wasting money. (26) Without a doubt, the wasteful are the devils' "like brothers." The Devil is constantly unthankful to his Lord (27).²⁵⁵

And a Hadith about forbidding harming yourself;

حَدَّثَنِي يَحْيَى، عَنْ مَالِكٍ، عَنْ عَمْرِو بْنِ يَحْيَى الْمَازِنِيِّ، عَنْ أَبِيهِ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ:
لَا ضَرَرَ وَلَا ضِرَارَ²⁵⁶

Yahya narrated to me from Malik from Amr ibn Yahya al-Mazini from his father that the Messenger of Allah, may Allah bless him and grant him peace, said, "There is no injury nor return of injury."²⁵⁷

The Islamic jurisprudence principles that have been used are about harmful things should be removed,²⁵⁸ and the verdict depends on the reason -*illat*-.²⁵⁹

As we analyze the three fatwas above, MUI used the *Nash* method -by referencing the Qur'an and Hadith which forbid wasting, and the *Manhaji* method, which is *maslahah mursalah* with the collaboration of modern knowledge such as sociology medicine in their verdict.²⁶⁰ In addition, we could conclude that MUI's fatwa is the middle between the fatwa of Bahtsul Masail -which consider that cigarette is not forbidden- and Majelis Tarjih Muhammadiyah -which consider cigarette as forbidden- by saying that cigarette is forbidden for pregnant woman, children and smoking in public places and *makruh* for the other categories.

However, from our perspective, it would be better if we forbid cigarettes for all, not only for pregnant women, and children, or smoking in public places. Although declaring smoking is forbidden needs strong evidence, we consider the opinion of Majelis Tarjih's fatwa to be more suitable in this case. Some reasons why we have this opinion are because people who do not smoke feel uncomfortable with cigarette smoke, and also, it is considered a waste of money. Unfortunately, in our society, people prefer to buy cigarettes rather than use the money to support their families despite the price of cigarettes being expensive. According to the data from *Badan*

²⁵⁵“Qur'an Translation of al-Isra.”

²⁵⁶bin Malik, *al-Muwatta*, vol. 2, p. 745.

²⁵⁷“Muwatta Malik.”

²⁵⁸الضرر يزال

²⁵⁹الحكم يدور مع علته وجودا وعدمًا

²⁶⁰Husaini, “Hukum Rokok Analisis Al-Qur'an dan Fatwa MUI,” 96.

*Pusat Statistik*²⁶¹ (Central Bureau of Statistics) in 2016, cigarettes became the second most needed thing by the people after rice which resulted in poorness, whereas if they spent the money on other main needs, they would not be considered as poor.²⁶² If MUI had been more assertive, people would have reconsidered buying the cigarette.

Another reason is that, according to science, being a passive smoker is more dangerous than being an active smoker. Many people, especially children, have to suffer sicknesses like cancer just because their parents smoke.²⁶³ According to World Health Organization 2020 data, in Indonesia, more than 225.700 people die each year because of smoking or other things related to tobacco.²⁶⁴ Here, we see that cigarette is not only harmful to ourselves but also to our environment.

3.6.3. Anti-Menstrual Pills

Anti-menstrual pills are medicine that has the effect of postponing the menstrual period for women. Although it has some negative effects like nauseous, vomiting, abdominal pain, headache, and others,²⁶⁵ some women still consider consuming it in some conditions, like in Hajj or Umrah, to fulfill the fasting in Ramadhan, and so on. MUI issued a fatwa regarding consuming anti-menstrual pills in 1979 which is as follows.

Consumption of anti-menstrual pills for Hajj is allowed. However, consuming it to fulfill the fasting in Ramadhan is considered *makruh*, but for the women who feel that replacing *-qadha-* the fasting outside Ramadhan is hard, then it is permitted. Consumption of anti-menstrual pills outside these two conditions is determined by its

²⁶¹A Non-ministerial government agency directly responsible to the President for giving information about statistics in several cases.

²⁶²Feerika, "Rokok vs Kemiskinan," *Badan Pusat Statistik*, 16th February, 2016, <https://www.bps.go.id/news/2016/02/16/133/rokok-vs--kemiskinan.html>.

²⁶³Tim Promkes RSST - RSUP dr. Soeradji Tirtonegoro Klaten, "Bahaya Perokok Pasif," *Kementrian Kesehatan Direktorat Jenderal Pelayanan Kesehatan*, 22nd July, 2022, https://yankes.kemkes.go.id/view_artikel/372/bahaya-perokok-pasif.

²⁶⁴"Pernyataan: Hari Tanpa Tembakau Sedunia 2020," *World Health Organization*, 30th May, 2020, <https://www.who.int/indonesia/news/detail/30-05-2020-pernyataan-hari-tanpa-tembakau-sedunia-2020#:~:text=Setiap%20tahun%2C%20sekitar%20225.700%20orang,lain%20yang%20berkaitan%20dengan%20tembakau>.

²⁶⁵"Efek Samping Obat Penunda Haid," *Alodokter*, accessed on 22nd March, 2023, <https://www.alodokter.com/komunitas/topic/penunda-diet>.

intention. If the intention violates the Sharia, then it is forbidden.²⁶⁶ Unfortunately, MUI did not cite any evidence in this fatwa.

Bahtsul Masail and Majelis Tarjih Muhammadiyah are also allowing the consumption of anti-menstrual pills, including during fasting during Ramadhan, Hajj, and Umrah, as long as there is a negative impact on the body.²⁶⁷ As no group forbids consuming such medicine, therefore, we do not have any problem in this case, so it would help the women in completing their deeds without any problem in some situations.



²⁶⁶ Majelis Ulama Indonesia, “Pil Anti Haid” (Majelis Ulama Indonesia, 1979), <https://mui.or.id/wp-content/uploads/files/fatwa/03.-Pil-Anti-Haid.pdf>.

²⁶⁷ Bilal Fahrur Rozie, “Mengkonsumsi Obat Penunda Haid Menurut Perspektif Fikih,” *Rahma.id*, 12th January, 2023, <https://rahma.id/mengkonsumsi-obat-penunda-haid-menurut-perspektif-fikih/>.

CHAPTER IV

CONCLUSION

Indonesian Ulama Council is an organization that provides forum deliberation for all Muslim scholars in this country and they have the responsibility to guide, foster, and protect the Muslims who live here. Although this organization is not as official as Diyanet in Türkiye, they have an important role in helping the people with their religious life.

From the perspective of issuing fatwas, MUI uses the collective *ijtihad* method. The references that they follow are the Qur'an, Hadith -with the validity of Sahih and Hasan level-, *Ijmā'*, *Qiyas*, *maslahah mursalah*, *istihsan*, *sadd al-dharā'i'*, the previous scholars' or madhhab's view and the experts' opinion in the considered field. By not binding themselves to specific madhhab, we can conclude that their methods are not conservative and have more similarity to Majelis Tarjih Muhammadiyah's method rather than Nahdlatul Ulama -Bahtsul Masail's- methods in which they are more conservative by binding themselves to Shafi'i's madhhab.

As we have analyzed these fatwas, we find that most of the time, MUI tries to apply their three methods which are *Nash*, *Qauli*, and *Manhaji* if possible, especially if the issues have been discussed in Classic Fiqh such as Abortion, Breastmilk Donor and the legal standing of kids born outside of legally valid marriage. In the modern issues which have not been discussed in Classic Fiqh, most of the time, MUI emphasizes the Islamic Jurisprudences principle, *uṣūl al-fiqh*, and the experts' view in determining the fatwas like in the case of permission for organ transplantation and the prohibition for Tubectomy, Vasectomy, and cigarette to get the best option for the people and gain the benefit without taking any risk.

Regarding the comparison between the fatwas of MUI, Nahdlatul Ulama, and Muhammadiyah, we have three conclusions. The first is MUI could take the middle

way between the other two groups -like in the case of cigarettes-. The second is MUI could have a more open perspective than the other two groups, especially in modern cases, and they consider the expert's view and people's needs -like in the case of organ transplantations, allowing abortion from the result of rape before forty days, and wills of donating cornea-. The third is MUI could be very firm with their consideration -like in the case of the status of children who are born outside the marriage- in which the lineage could not be connected to the father even if he married the woman in her pregnancy period, unlike the other two groups as it could open the door of adultery.

For the case of whether MUI could balance themselves between the government policy and the people's trust, we find that they keep themselves to be objective in each case. However, sometimes the government gives them a hard time -like in the case of Vasectomy and Tubectomy- in which the government thinks that MUI's fatwa prevents the success of the planning family program.

Regarding the view of our agreement with MUI's fatwa, sometimes the MUI's fatwa seems to be more acceptable, like in the case of organ transplantations, allowing abortion for a woman from the result of rape before forty days, forbidding the marriage of a man who causes the pregnancy of a woman outside the legal marriage as it could bring to a big problem and others. Meanwhile, sometimes Muhammadiyah fatwa seems to be more logical to be accepted, like in the case of forbidding cigarette.

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APPENDICES

APPENDIX A

A. Logo of MUI, LPPOM-MUI and DSN-MUI



Figure A.1. Logo of MUI



LPPOM MUI
"Terdepan dalam Solusi Jaminan Halal"

Figure A.2. Logo of LPPOM MUI



Figure A.3. Logo of DSN MUI

APPENDIX B

B. Figures of MUI Head Leader



Figure B.1. Picture of Hamka



Figure B.2. Picture of Syukri Ghozali



Figure B.3. Picture of Hasan Basri



Figure B.4. Picture of Ali Yafie



Figure B.5. Picture of Sahal Mahfudh



Figure B.6. Picture of Din Syamsuddin



Figure B.7. Picture of Ma'ruf Amin



Figure B.8. Picture of Miftachul Akhyar



Figure B.9. Picture of Cholil Nafis

CURRICULUM VITAE

Personal Information:

Name – Surname: Bagas Mashadi

Education:

2015-2020 BA in Islamic Studies, Istanbul 29 Mayıs University, Turkey

2020-2023 MA in Islamic Studies, Ibn Haldun University, Turkey

Teaching Experience:

September 2021 – June 2022, Teaching Fellow, HUM101, Ibn Haldun University

July 2022 – Present, Arabic and Qur'an Hadits Teacher at MA Mu'allimin Muhammadiyah Yogyakarta, Indonesia

Awards and Scholarships:

Turkish Government Undergraduate Scholarship (2015 - 2020)

Ibn Haldun University's Full Scholarship for Graduate Studies (2020 - present)