IMPLEMENTATION OF THE DECREE OF THE THIRD INDONESIAN *IJTIMA' ULAMA FATWA* COMMISSION 2009 ON THE PROHIBITION OF CIGARETTES (COMPARATIVE STUDY OF THE VIEWS OF *ULAMA* AND ELITE AL WASHLIYAH, NAHDLATUL ULAMA, AND MUHAMMADIYAH IN MEDAN CITY)

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ABSTRACT

Ulama MUI Fatwa Commission in Indonesia has held the Third Ijtima 'in 2009. There's haraam in the fatwa. The era of Fatwa is over two decades, but tobacco marketing is increasing and many people are still smoking. This study aims to determine how the Implementation of Ijtima 'Ulama Decisions of Indonesian MUI Fatwa Commissions in 2009 concerning the prohibition of cigarettes by Al Washliyah ulama and elite, Nahdlatul Ulama, and Muhammadiyah City of Medan, find out what ijtihad products have been produced by ulemas and elites Al Washliyah, Nahdlatul Ulama, and Muhammadiyah to implement the Fatwa Commission Ijtima 'Ulama Decision, and find out what factors are obstacles and what efforts have been made by ulama and elites. Researchers restrict the population to be examined by assessing Al Washliyah, Nahdlatul Ulama and Muhammadiyah's ulama and elite of Islamic organizations as the relevant population, this is qualitative analysis. Data sources obtained from library studies and interviews. The results were analyzed using qualitative methods. The results showed that the three main Islamic social organizations, Muhammadiyah and al-Washliyah, were split in two in their dealings with tobacco legislation, while Nahdlatul Ulama was in approval of cigarettes.

KEYWORDS: *Ijtima' Ulama Decree, Al Washliyah, Nahdlatul Ulama, Smoking Prohibition.*

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INTRODUCTION

Islam is a religion that emphasizes the practical purpose of creating moral goodness, of building a right society, of religiously expressing consciousness through the commands and prohibitions that come from Allah. As Fazlur Rachman has pointed out. Therefore is Islam understood from both sources by the Qur'an and Hadith.

Allah SWT has given all the instruments to understand the Qur'an so that it could be used as a guide in life. The instruments is point out to intellectual. Intellectual is Allah's creation to develop something. Human civilization, humanity developed because of the used of intellectual. The power of rationality, especially when the mind is directed by Islam, is indeed extraordinary. It is for the sake of developing this revealed religion that Allah equips men with intellectual to find the path of goodness.[2]

People live and change in dynamic space and time. Human issues, along with human findings, continue to develop. The Qur'an and Hadith are not able to find these problems literally. Here is where the role and function of the scholars as the Prophet's successor, which is to view the Quran and the Hadith to solve different human problems..

Today, it is difficult to find scholars who are qualified in all fields. Among scholars today are experts in the Hadith, but not experts in Sufism, or experts in language (nahwu and sharaf) but not experts in Fikih (Jurisprudence).

Indonesian *Ulama* Council (MUI) was established on 17 Rajab 1395 H or 26 July 1975 AD, in Jakarta as a result of the Indonesian *Ulama* National Conference which took place on 12-18 Rajab 1395 H, or on 21-27 July 1975 at the Jakarta Convention Center. This meeting was organized by a committee appointed by the Minister of Religion with Decree No. 28 of 1 July 1975, chaired by Lieutenant General. Retired. H. Soedirman and the Advisory Team consisting of Prof. Dr. Hamka, KH. Abdullah Syafe`i and KH. M. Syukri Ghazali.[3]

The MUI issued a *fatwa* to meet Islamic concerns for new problems, which must be resolved due to the concerns of the Muslim community. The problem is whether or not Muslims follow the *fatwa*s of the MUI. Naturally, the Muslims hear and follow (sami'na waatha'na) MUI *fatwa*s, which were *ijtihad* by a group of scholars.

In 2009, *Ijtima` Ulama* of the Third Indonesian *Fatwa* Commission in 2009 stated about the prohibition of cigarettes. According to the author, it is necessary to research how to socialize *fatwa*s during the community,

as well as how the Muslim community responds. This question arises because the author found that not a few people smoked after the MUI *fatwa* on the prohibition of cigarettes 7 years ago.

Ijtima` Ulama of Indonesian Commission on *Fatwa* the Prohibition of Smoking

In the case of *furu'* and *ushul*, Ibn Taymiyah confirmed the fact that there was *ijtihad*. He said that "there are no salaf *ulama* whose differentiates between *ushul* and *furu'*," and that even the divisions of religion into two are unknown in the days of *Sahaba* and *tabi'in*," and that *Mujtahid* s who exert their power and ability to seek the truth in the cases of *Ushul* and *Furu* have no sinfulness.

Their view of *qath'i* starts with this question whether or not it is an argument (*daleel*) *Ushul* students find *aqidah* postulates like qath'i's dalil, therefore *ijtihad* is not necessary. They conclude that in kalam philosophy, in *Mujtahid* only one reality exists. Indeed the category of mutakalimin considers the science of *kalam* as *zhanniyat*, because the verses in the Qur'an are *mutasyabihat* verses. This is why *ijtihad* is necessary to solve these problems. They argue that every *Mujtahid* is true but he still gets a reward even if he makes a mistake. *Ushul ulama* denied this view, however. Although both of them state that every *Mujtahid* is true the truth here is limited in the field of *fiqh*. In Harun Nasution's view, the definition of *ijtihad* as mentioned above is *ijtihad* in the narrow sense. *Ijtihad* refers to economics, *aqidah*, soufism and philosophy in general.[4]

Az-Zuhaili has chosen the interpretation put forward by Al-Baidhawi, which is to practice all the efforts and abilities to find Shar'i law. According to him, the definition is most suitable for *ijtihad* in the *Ushul* terminology. Because in its interpretation discovery of law includes Dhanni and qhat'i laws and *ijtihad* against the' aqli and naqli' arguments.[5]

In the meantime, the importance of jtihad is associated with istinbath, according to Ibrahim Husein. *Istinbath '* derives from the word' *Nabath*' (water which emanates first from the spring). According to the word, "*istinbath,*" the sense of "*muradif*" (synonym), means "something is going to be concealed."[6] In the meantime, according to the majority of *ulama ushul fiqh*, *ijtihad* must do all the abilities (to the maximum) of a *fiqh* expert to gain an understanding of the zhanni level of Sharia law.[7]

When we look at the various ways in which *ijtihad* has been defined, we can conclude that the difference and variation in meanings suggest whether the classical concept of *ijtihad* can be updated or

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[2]Muhammad Yusuf Musa, *Islam; Suatu Kajian Komprehensif* (Jakarta: Rajawali Pers, 1988), h. 8.

[3]Muhammad Atho Mudzhar, *Fatwa-Fatwa Majelis Ulama Indonesia; Sebuah Studi Tentang Pemikiran Hukum Islam di Indonesia 1975-1988* (Jakarta: INIS, 1993), h. 63.

[4]Harun Nasution, *Islam Ditinjau Dari Berbagai Aspeknya* (Jakarta: UI-Press, 1985).

[5]Az-Zuhaili, *Ushul al Fiqh al Islami* (Damaskus: Dar Al-Fikr, 1986), cet I, h. 1038.

[6]Ibrahim Husein, *Ijtihad Dalam Sorotan* (Bandung: Mizan, 1991), h. 25.

[7]Al-Jurjani Syarief Ali Muhammad, *Al-Ta'rifat* (Jeddah: al-Haramain, t.th), h. 10.

whether new elements that are more relevant to the current definitions of *ijtihad* can also be included.

Ijtihad is one of the main foundations of the discovery of laws from Hadith and the Qur'an. Although primary sources of Islamic law, the Qur'an and Hadith do not describe any legal issues in depth. In contrast to changing times, the *Mujtahid* must urgently try to find solutions and responses to new problems that do not find legal answers in the Qur'an and Hadith. From here, *ijtihad* is a must in Islam as a religion that can be a guide in every generation.

The *Sahaba ijtihad* during the prophet's time in the problems they have encountered when guidance is not found in the Qur'an or the Sunna. When Allah's Messenger learns their *ijtihad*, he acknowledges be an Iqrar or a Prophet's decree.This includes *ijtihad* ' Amr Bin Ash' while he was praying in *Junub*'s state. He didn't take a bath due to the cold weather, but he did tayammum (Act of dry ablution using a purified sand or dust). The Prophet also justified Amr's behavior after he heard the action.[8]

Atsar from Umar sent Abu Musa al-Ash'ari the following: "Then use your knowledge to solve problems which are not present in the Qur'an and the Sunnah, for example by qiyas and knowing it by example. Then choose the most beloved of Allah SWT, as the truth"[9]

The source of primary law was limited to the Qur'an and the Prophet Hadith when Rasulullah SAW was still alive. After he was dead, *Sahaba* first referred to the Qur'an in response to a new problem, then to the Hadith when it is not written there. Therefore, besides the Qur'an and the Sunnah of the Prophet, the source of Islamic Law is at present *ijtihad*. The Caliphs and the *Sahaba* also made *ijtihad* on the basis of these two primary sources. They also followed the *tabi'in* in the *Sahaba*h's footsteps. The problem is because the number of texts in the Hadith and the Qur'an is restricted by their number.

Ijtihad's role in Islam is very significant. *Ijtihad* is a way to acquire wisdom, the Prophet's legacy. The more a man has the better *ijtihad*, the more he gets the legacy. *Ijtihad* is one way of maintaining Islam's continuity and sustainability because the *Shariah* texts are limited in number while problems are numerous and no solution except with *ijtihad* is considered to solve these problems.

In Islam, *ijtihad* played a very important role, according to as-Syathibi, since *ijtihad* protects religion and the *Mujtahid* (people who commit *ijtihad*) defend religion. *Ijtihad* is also a prerequisite for people who are qadhi or imam.

The scope of *ijtihad* and *majalul ijtihad* are issues that can be implemented by *ijtihad*. Al-Ghazali limits *ijtihad*'s scope only to any syariah rule without

proof of *qath'i*. 'The *qath daleel* ' law of syariah may not use *ijtihad*, according to him.

Al-Amidi claims that *ijtihad* is only applicable to the *Shariah* laws of *dhanni daleel*. In his opinion, a law with a *qath'i daleel* basis is not included in *ijtihad*. The *ijma' sarih* or *ulama*'s agreement that explicitly agrees to a certain law quoted by *mutawatir* is one of the *qath'i daleels*.[10]

Az-Zuhaili also describes his perspective on the scope of the *ijtihad*. He argues that in dharurah and Bidahah the law is known by religions (certainly true based on reason not covered by *ijtihad*). According to the syariah laws, there are two types of law, first: *ma la yajuzu al ijtihadu fihi* (laws which can not be decided by *ijtihad*). Second, *ma yajuzu al ijtihadu fihi* (laws to which *ijtihad* can apply)

Az-Zuhaili explained that laws that were known with clarity (*ma'lumah min ad in bi dharurah*) or from reasons considerations (heresy) and that law were decided on the basis of the argument of *qath'hi as-tsubut*, and *qathi ad-dalalalah* were included in the category *of la yajuzu al ijtihad* or not approved *ijtihad*. For example: the law must pray five times a day, fast for the *Ramadan* month, pay *zakat* and *hajj*. Similarly, the banned adultery, *khamr* drinks and without right killing other people.

For each Muslim who was decided by the argument of *qath'i* from the Qur'an or Hadith, the laws above are known with certainty. Also included in this category are penalties that have been determined in terms of levels and measurements, such as the verse' *az-zaniyatu wa zani fajliduu kulla wahidin minhuma mi'ata jaldah'* (and against women and men who commit adultery, whip as many as a hundred lashes) not allowed to commit *ijtihad* in respect of the amount of lashes for adulterers[11] Likewise, the verse "*aqiimus sholata wa aatu az zakah*" (set up prayer and pay zakat). The purpose of a verse prayer is not allowed for *ijtihad* because it was clarified in the Hadith of the Sunnah or of the Prophet. The scope of *ijtihad* does not include this.

The Islamic law normative includes prayers, fasting, zakat payment and hajj. Nearly every Islamic law regulating human relations with Allah is normative in his opinion.This depends on awareness whether or not Islamic law, which usually applies, is obeyed. In relation to the formally-juridical Islamic law, Daud Ali claimed that it regulates human relations with human beings and objects with human beings. In the process of transition to positive law must be based on statutory regulations, such as marriage law, inheritance law, and endowment law.[12]

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[8]Asy-Syaukani, *Irsyad al-Fuhul ila Tahqiq al-Haq min 'Ilm al-Ushul* (Damaskus: Dar al-Kitab al-'Arabi, 1999), juz II, h. 221.

[9]Jalaldddin as-Suyuthi, *Al-Asybah wa an-Nazhair,*

[10]*Ibid*

[11]Az-Zuhaili, *Ushul al-Fiqh al-Islami* (Damaskus: Dar Al-Fikr, 1986), cet I, h. 1052.

[12]Muhammad Daud Ali, *Hukum Islam; Pengantar Ilmu Hukum dan Tata Hukum di Indonesia* (Jakarta: Rajawali Pers, 1990), cet. iii, h. 5-6.

The role of *ijtihad* and politics in achieving beneficial laws that apply across the Muslim community becomes significant. Since the interests of the Ummah as a whole are concerned, the study should involve numerous competent parties and the interdisciplinary approach should be collectively carried out to ensure comprehensive outcomes. To solve problems together, according to space and time demand credible *ijtihad* institutions are required, as long as they remain within the Islamic Shari'a system. If the collective *ijtihad* is implemented effectively, the result for the potential application of Islamic law will be very strong, so that the possibility of Islamic law being made effective will be evident and will be able to respond to challenges.

RESEARCH METHODS

This type of work is known as a study on literature, which gathers information on the subject of research, data collected from books, scientific papers, theses, dissertations, and encyclopedias.

The study method the degree of informal associative description was used to complete this analysis.[13] The survey approach is used to examine the symptoms of social-economic or political institutions in a group or also the causal entity, to identify research problems with which connections are varied or more. The survey method is a test that finds factual data from current symptoms. Causal relations are the formulations of problem research that require causal relations, so independent variables and dependent variables are important in this study.[14] In 2009 the *Ijtima* Decree ' *Ulama* of the Third Indonesian *Fatwa* Commission, on the Prohibition of Cigarettes, is being implemented It uses an analytical approach with causal, associated explanatory levels (the Comparative Analysis of *Ulama* and Elite Al-Washliyah's View, Nahdlatul Ulama and Muhammadiyah City of Medan). Literature used to collect data in this analysis.

RESULTS AND DISCUSSIONS
Ijtima Decree Third Indonesian Commission *Ulama Fatwa* in 2009 on the prohibition of cigarettes

By practice, the ethical issue of cigarettes is not specifically addressed both in the Qur'an's scriptures and the Prophet's Hadith. This is why the smoking-law issue has become a polemic of controversy. This is because the cigarette itself was only discovered in the Hijri tenth century. Not a few scholars say that cigarettes are *haraam* and *macrooh*, but some declare halal, detailing between the three and there are among those who tawaqquf or not decide on the law. No mention of smoking law in the primary legal sources of the Qur'an and Hadith causes differences in the views of experts in the law about

[13]Moh. Nazir, *Metodologi Penelitian; Sebuah Pendekatan* (Jakarta: Kencana Media Group, 2013), h. 67

[14]Burhan Bungin, *Penelitian Kualitatif; Komunikasi, Kebijakan, Ekonomi, dan Ilmu Sosial Lainnya* (Yogyakarta: Pustaka Pelajar, 1995), h. 109

smoking. During the time of Prophet, *Sahaba*, *Tabi'in* and *salaf ash-shali,* no tobacco or cigarettes had ever been found in h. So we can not consider experts on *fiqh* from the past who refer to cigarette law (*mutaqaddimin*).

Nevertheless, in the books of *muta'akhirin* we find discussions of smoking. As for the cigarettes that exist now that they are called "natin," Sulaiman Al Bujairomi said in his Hasyyiah: "May Allah curse the people who made them, including the poor bid'ah." In the past, our teacher Az Ziyadi said cigar has not breakfasted, as he has not understood the nature of cigarettes. He then discarded his former *fatwa* when he saw the stain in the filter used to inhale it and believed the cigarette break the fast.

As the cigarettes and their explanations of the essence of the smoke and the effects are not based on accurate scientific measurements, smoking is a new case and there are no clauses for *Takhri* and *Tarjih* scholars from various schools of *fiqh*, then there are differing opinions about the law. Some state that it is *haraam*, some people believe the law is *macrooh* and even halal. However, some detail the smoking law based on certain criteria and some who do not determine the law (tawaqquf).

CONCLUSIONS

There is no argument in fact, that the smoking legal issue is specifically addressed, both the Qur'an and the Prophet's Hadith texts. *Fiqh* scholars, therefore, do not agree with the law on cigarettes. *Fiqh* scholars ' views on cigarette law can be divided into three opinion parties. First the views that prohibit smoking are: Muhammad al-Jamali al-Maghribi; Muhammad bin Sulaiman al-Maliki; Ibrahim el-Waïdz; Muhammad bin Ali bin ' Allan as Shiddiqi; Muhammad bin Jafar al Kattani; al-Qaljubi, al Bujairami; Ibrahim al Laqqani al Maliki; Ibn Hajar al Haitami. Second, opinions that state smoking is halal, include: 'Ali al Ajhuri; Abdul Ghani an Nabulsi; Salamah ar Radhi as Syadzilli; Mahmud bin Salamah ar Radhi; Abul Hasanat al Laknawi; Abul Wafa al 'Ardhi; Muhammad bin Ismail al Amir as Shan'ani; Ahmad Kaukab Zadah; Mar, i bin Yusuf al Hanbali; Yasin al Fadani. Third, opinions that state smoking is *macrooh*, including: al Bajuri in his Hasyiyah 'ala Syarh al Ghayah; Abd Hamid as Syarwani; Wahbah az Zuhaili; Abu Sahal Muhammad bin al Wa'iz al Hanafi.

The three largest Islamic Community Organizations in Indonesia in addressing the cigarette legal problem are divided into two. Muhammadiyah and al Washliyah have similarities in determining the prohibition of smoking, while Nahdlatul Ulama adheres to smoking is *macrooh*.

Ijtima 'Ulama of the third Indonesian MUI *fatwa* commission agreed that there were differences of opinion regarding smoking laws, namely between *macrooh* and *haraam* (*khilaf ma baina al makruh wa al haram)*. However, the *ijtima' Ulama* agreed that smoking is *haraam* if done in:
   a. Public area;
   b. By children; and

c. By pregnant women.

The decision of the third Indonesian *Fatwa* Commission *Ulama ijtima* of 2019 on smoking prohibition may be concluded by Al Washliyah, Nahdlatul Ulama, and Muhammadiyah Ulama and Elite Medan, as follows:

1. Al Washliyah scholars and elites through the PB Al Washliyah *Fatwa* Council issued a *fatwa* on the prohibition of cigarettes in 2011 in Banda Aceh. However, the *fatwa* has not yet become an organization-binding decision because it has not been decided in the Al Washliyah Conference; this has led to the weak implementation of the MUI *fatwa* and PB Al Washliyah's *fatwa* on the prohibition of smoking.

2. The Muhammadiyah scholars and elites through the *Tarjih* Council also issued a *Tarjih* decision on the prohibition of smoking in 2012. However, like Al Washliyah, the *Tarjih* Assembly's decision on the prohibition of smoking cannot be implemented optimally because the organization is not yet binding. This is because the *Tarjih* Council's decision has not been tanfiz by the Muhammadiyah Central Board.

3. Whereas the Nahdlatul Ulama *ulama* and elite, despite understanding the reasons of the MUI *Fatwa* Commission in deciding smoking prohibition, have never discussed it again in a bahsul masail post *ijtima 'ulama* of the third *fatwa* commission. Nahdlatul Ulama still adheres to the previous discussion about smoking is *macrooh*. This certainly reduces the possibility of implementing *ijtima'* ulama's decision on the *fatwa* commission on the prohibition of smoking.

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