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Between Conservatization and Modernization of Human Rights: A Study of MUI's Fatwa on Ahmadiyah

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ABSTRACT

This paper analyzes the legal protection of children with special needs during the COVID-19 pandemic. This legal sociology research uses a qualitative approach. The research location is in Medan, North Sumatra province. The results show that the legal protection of children with special needs in Medan City, North Sumatra province related to education, rehabilitation, and social assistance is still not fulfilled even though there are regional regulations in the province of North Sumatra. This is due to inadequate facilities and infrastructure that hinder the fulfillment of these rights. This is contrary to Islamic law, where children's rights must be guaranteed, protected, and fulfilled by maqashid al-syari'ah, namely the maintenance of offspring. It also contradicts Article 5 paragraph (1) of Law Number 8 of 2016 concerning Persons with Disabilities, that persons with disabilities have the same rights in life and livelihood.

Keywords: Children's Rights, Pandemic Covid-19 , Special Needs

ABSTRAK

Paper ini menganalisis tentang perlindungan hukum anak-anak berkebutuhan khusus pada masa pandemi covid 19 dalam perspektif hukum Islam. Penelitian sosiologi hukum ini menggunakan pendekatan kualitatif. Lokasi penelitian di Medan provinsi Sumatra Utara. Hasil penelitian menunjukkan bahwa perlindungan hukum anak-anak berkebutuhan khusus di Kota medan provinsi Sumatera Utara terkait dengan pendidikan, rehabilitas dan bantuan sosial masih belum terpenuhi walaupun sudah ada peraturan daerah provinsi Sumatera Utara. Hal tersebut dikarenakan sarana dan prasarana yang belum memadai sehingga menghambat pemenuhan hak-hak tersebut. Hal tersebut bertentangan dengan hukum Islam, dimana hak anak harus dijamin, dilindungi dan dipenuhi sesuai dengan maqashid al-syari'ah, yaitu pemeliharaan keturunan. Selain itu juga bertentangan dengan Pasal 5 ayat (1) Undang-undang Nomor 8 tahun 2016 tentang Penyandang Disabilitas, bahwa penyandang disabilitas mempunyai hak yang sama dalam hidup dan penghidupan.

Kata Kunci: Hak Anak, Kebutuhan Khusus, Pandemi Covid-19

Introduction

Human rights are a concept of modern ethics with high respect for humans and humanity. This concept leads us to the moral demands of treating their fellow human beings. According to Jack Donnelly, human rights are natural right that is believed to belong justifiably to every person because of their human aspect (Donnelly, 2003, p. 7). Therefore, human rights are inalienable and stick independently. They are a normative element that adheres to every person as a dignity which in its application lies in the scope of equality and freedom right (Byers, 2011, p. 303; Donnelly, 1982, p. 5). The awareness of the importance of human rights in global discourse emerged along with the extent of placing humans as the center of development. Since 1948, the United Nations has been proclaiming human rights standards and campaigning it (Freeman, 2002, p. 51-52). And in 1966, the United Nations, through its Human Rights Commission has made an international agreement known as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights (Messer, 1997, p. 293). Since then, the United Nations has formally adopted both agreements and the Universal Declaration of Human Rights (UDHR) as the legal basis for the UN member states. This was known as the International Bill of Human Rights (Neier, 2012, p. 111). These agreements and declarations are a great advantage for the oppressed groups to demand justice as a whole person in every country.

The concept of human rights has received various responses in the Islamic world. Some conservative scholars argue that human rights declared by the United Nations are incompatible with sharia. Some of them are Wahbah al-Zuhaili and 'Abd al-Qadir 'Audah who refused the right to convert from Islam as one of the human rights. According to al-Zuhaili and 'Audah, Muslims who convert from Islam (*murtad*) receive various punishments. The first punishment is *'uqūbah aṣliyyah* (original punishment) in the form of capital punishment. The second punishment is *'uqūbah badaliyyah* (replacement punishment) in the form of *ta'zīr* such as whipped, exiled, fined, and other *ta'zīr*. The third punishment is *'uqūbah tabā'iyyah* (additional punishment). There are two kinds of this punishment: to seize his property or to limit

his social rights (Zuhaili, 2005, p. 153-158). On the other side, contemporary scholars try to re-*ijtihad* on Islamic law with current methods to adjust it with the development of human rights. Some of them are Abdullah Ahmed an-Na'im, Farid Essack, Abdullah Saeed, Jasser Auda, and other contemporary scholars (Asani, 2002, p. 52-60). What contemporary scholars are contemplating is a response to the changing socio-cultural and political context of human rights. They depart from a general rule: *tagayyur al-fatawā wa ikhtilāfuhā bi-ḥasb tagayyur al-azminah wa al-amkinah wa al-aḥwal wa al-niyyāt wa al-'awāid* (the dynamic of fatwas in Islamic law depends on the change of the time, place, circumstances, intentions, and traditions) (Al-Jauziyyah, 2004, I; p. 41-42). These responses serve as a reference for researchers in studying the relationship between Islam and human rights, especially in the right to religious freedom.

The opinion of conservative scholars has become one of the researchers' reasons when they argue that Islamic culture and religion have always been an impediment for human rights enforcement in many countries (Haq, 2010, p. 130; Na'im & Henkin, 2000, p. 515). According to them, this is not derived from Islam itself but comes from the fundamental understanding and interpretation of scholars against sharia (Bielefeldt, 2000, p. 103). Such as criminalization of apostates (disaffiliation from Islam) has long been extinct in the Western tradition, but in the Islamic world, this is still questionable because of the influence of sharia in the Muslim community itself. This is due to the existence of the classical *ijtihad* method, which creates a gap between the principles of tolerance in the Qur'an and Sunnah.

In the context of Indonesian Islam, human rights have become a national issue, especially the issue of the right to religious freedom. The Indonesian Council of Ulama (MUI) becomes an institution that was always highlighted because of its fatwas on a group that was considered as deviating from the orthodoxy of Sunni theology. The MUI's fatwas often become the reference of the government and the security apparatus in cracking down on certain religious groups (Ichwan, 2005, p. 52). As an institution that has the authority to issue a fatwa, MUI indirectly influences the formation of Islamic Law Compilations which contains rules on marriage, inheritance, and charity (Hooker, 2008, p. 17). According to Bagir Manan, as quoted by Zafrullah

Salim, explained that all fields of law accept unwritten principles such as fatwas, and this is recognized as one of the important sources in Indonesian constitutional law (Salim, 2012, p. 26-33).

In fact, during this time, many scholars argue that the MUI often produces fatwas that do not respect the right of religious freedom. One of the most prominent issues of religious freedom in Indonesia is MUI's fatwa on Ahmadiyah which is considered intolerant. Many scholars said that the existence of this fatwa causes the diversity is not fully developed (Gillespie, 2007, p. 212; Yasin, 2009, p. 57). For example, research conducted by Rumadi Ahmad on the comparison between the fatwas of Muhammadiyah, Nahdlatul Ulama, and MUI. Rumadi concludes that MUI's fatwas on interreligious relations tend to be exclusive. According to him, the exclusive character is reflected in MUI decisions. Because of interfaith relations, the MUI's fatwas tend to look in-ward (in world looking) rather than looking outward. Rumadi provides the example of fatwas such as the fatwa on Ahmadiyah, the fatwa on the prohibition of Christmas celebration for Muslims, adoption of children, and the other fatwas related to other religious freedoms (Ahmad, 2016, p. 24). Even, Hooker adds several other cases, namely the MUI's fatwas on the digression of several groups and interreligious marriage (Hooker, 2008, p. 26).

MUI's fatwa on Ahmadiyah which is considered tend to be exclusive and intolerant by some scholars are not certainly depart from empty argumentation. MUI has procedures, principles, and methodologies that have been mutually agreed upon in issuing a fatwa, but as explained by Atho Mudzhar that MUI is sometimes inconsistent with the basics and principles that have been determined by itself (Hasyim, 2011, p. 8; Mudzhar, 1993, p. 85-87). It is necessary to research the legal arguments of MUI in issuing fatwas on religious freedom, especially the fatwa on Ahmadiyah.

Research Method

This study is going to examine the role of MUI in conservatizing and modernizing religious rights. The main sources are obtained from MUI's fatwa

compilation since 1975 and several books of tafsir, hadith, and fiqh. The data collection technique of this research is the documentation method by collecting personal and official documents that are included in the category of primary and secondary data sources. In addition, this study also uses the interview method as one of the data collection techniques. Interviews were conducted with informants from the Indonesian Council of Ulama (MUI).

This research uses the normative approach with the analytical theory of religious freedom that was developed by Tore Lindholm. The theory explains that two forums must be met in freedom of religion and belief, namely internal freedom and external freedom. Internal freedom is the freedom that cannot be intervened by the State because of its absolute freedom. Therefore, the state cannot limit this internal freedom for any reason. This internal freedom consists of the right to choose beliefs and religions and the right to change beliefs and religions. External Freedom is the right of religious freedom that can be intervened by the government in the form of law (Lindholm, 2004, p. 134-136). To give a clearer picture, here's the Lindholm theory of religious freedom:

Table 1. Distribution of Human Rights Instrument in Religion

No	Pembagian	Instrumen
1	Internal Freedom	a. The right to embrace and convert to another religion and belief. b. The right to freedom from coercion to follow another religion.
2	External Freedom	a. The right to worship, both personally and corporately, both privately and publicly. b. The right to establish a place of worship. c. The right to use religious symbols. d. The right to celebrate religious

- holidays.
- e. The right to assign religious leaders.
- f. The right to argue, teach and spread religious teachings.
- g. The right of parents to educate their children.
- h. The right to establish and manage religious organizations

Source: Tore Lindholm, *Freedom of Religion or Belief under International Humanitarian Law and International Criminal Law*, 2004.

Result and Discussion

A Brief Description of MUI's Fatwa on Ahmadiyah

Fatwa is one of the dynamical Islamic thought products. The change of it is something natural. It is formulated by doing *ijtihād* so that it may change because of the changes of argumentations, benefits (*maṣlahah*), and customs that become its base (Al-'Uthmānī, 2011, p. 8-11; Opwis, 2005, p. 220). Fatwa is more dynamic than other *ijtihād* products such as fiqh. If fiqh object involves actual and non-actual cases (*fiqh iftirāḍi*), then the fatwa's object only revolves around actual cases because it is determined by someone's request for the law of a matter (Al-Zuhailī, 1986, p. 1156; Hallaq, 1994, p. 65).

Qutb Sanu, The Vice Chairman of Majma 'al-Fiqh al-Islami in Jiddah, explained that the process of determining the fatwa must be systematic and methodologic because the fatwa has to describe the law of actual problems (Sānū, 2013, p. 30). Therefore, Yūsuf al-Qaraḍāwī added the requirement of the mufti (the person who has the right to set a fatwa) to understand the misery in the society to resulting the fatwa that is truly beneficial (Al-Qaraḍāwī, 1988, p. 32). In reality, if the law of the matter has been stated expressly in the Qur'an, hadith and it is agreed upon by the consensus of scholars, then the fatwa must be issued as is. Therefore, the fatwa applies in two

scopes: problems whose propositions are unclear in the Qur'an and hadith so that they can be used as the object of *ijtihād* and problems whose propositions are clear in the Qur'an and hadith so that they cannot be used as the object of *ijtihād*. The first scope is called *qaṭ'i* matters and the second scope is called *ẓanni* matters.

The MUI has also been issuing fatwa in these two scopes. According to the MUI, if there is a problem in which the *qaṭ'i* proposition is very clear, then it is forbidden to do *ijtihād* for any reason. MUI assumes that breaking the *qaṭ'i* matters is illegal *ijtihād* and this is not following the legal understanding of the MUI (Majelis Ulama Indonesia, 2003, p. 15). Thus, in line with the opinion of the majority of scholars, MUI also believes that Islamic law is divided into two scopes, namely the *qaṭ'i* laws and the *ẓanni* laws.

However, if the problem does not have the *qaṭ'i* proposition in the Qur'an and Sunnah, then the MUI will do *ijtihād* in accordance with the predetermined methodology. This can be seen from the guidelines and procedures for determining the fatwa which is always based on the Qur'an and Sunnah (Sunnah is defined by MUI as Hadith), *ijmā'*, and *qiyās* as the main proposition in determining the law. MUI also uses other propositions that are still disputed by four madzhab (Hanafiyyah, Malikiyyah, Shafi'iyyah, and Hanabilah). These propositions are *istiḥsan* (the enactment of partial benefit rather than general benefit) and *istiṣlah/maṣlahah mursalah* (the benefit which there is no evidence of permissibility and forbiddenness in the Qur'an and hadiths), *istiṣab* (the enactment of the law of a problem until there is an argument that changes it), *qaul al-ṣaḥābī*, *'urf* (the tradition), *syar'un man qablanā* (a law that was established for the previous ummah is also established for Muslims today), and *sadd al-ẓarā'i'* (Majelis Ulama Indonesia, 2003, p. 6). MUI also often uses fiqh principles when issuing a fatwa on a problem in society. The arguments that have been briefly described above become the arguments used by MUI.

The procedures and methodology for *ijtihād* above are established with the aim that the fatwas issued by the MUI are legal products that truly follow sharia values and are helpful for the benefit of the people. More specifically, Ma'ruf Amin in his foreword in the book *Himpunan Fatwa MUI* explained that the guidelines and

procedures for issuing this fatwa were established because giving fatwas only based on certain desires and interests or purely without being based on that argument is not justified (Majelis Ulama Indonesia, 2003, p. 12).

The practice of MUI's *ijtihad* as stated above can be found in the MUI fatwa on Ahmadiyah issued on July 28, 2005. This fatwa was signed by the Fatwa Commission Chair of MUI, namely KH. Ma'ruf Amin and Drs. Hasanuddin as his secretary (Majelis Ulama Indonesia, 2003, p. 96). This fatwa is one of the eleven fatwas issued by MUI in The Seventh MUI National Conference which was held on July 26-29, 2005. In this fatwa, there are some considerations of several facts related to the Ahmadiyah group in Indonesia. The first consideration is that until now the Ahmadiyah group has continued to develop its understanding in Indonesia, even though there was an MUI fatwa in 1980 which prohibited its existence. The second consideration is that the efforts to develop Ahmadiyah ideology have caused public unrest. The third consideration is the presence of some people asking for reaffirmation of the MUI fatwa on Ahmadiyah ideology (Majelis Ulama Indonesia, 2003, p. 100).

These several facts became the beginning consideration of MUI to establish its fatwa on the Ahmadiyah group in 2005. The second item on this fatwa is the argument. These arguments include three verses of the Quran: (1) QS. al-Ahzab verse 40, which means: *"Muhammad is not the father of any of your men, but (he is) the apostle of God, and the seal of the prophets. And God has full knowledge of all things."* (2) QS. al-An'am verse 153, which means: *"And that this is My path, a straight (one); so follow it closely and do not follow the other ways, lest ye be parted from His way. This has He instructed you with that you may guard (against evil)."* (3) QS. al-Ma'idah verse 105, which means: *"O ye who believe! Guard your souls: if ye follow (right) guidance, no hurt can come to you from those who stray. The goal of you all is to God: It is he that will show you the truth of all that ye do."* (Majelis Ulama Indonesia, 2003, p. 97-99).

The MUI also argues two hadiths that even declare the Prophet Muhammad as the last Prophet. The two hadiths include: (1) *Rasulullah said: "No Prophet after me"* (transmitted by al-Bukhāri). (2) *Rasulullah said: "Messengership and prophethood have*

been ended: for this reason, there will not be a Messenger nor a Prophet after me." (transmitted by al-Tirmizi) (Majelis Ulama Indonesia, 2003, p. 99).

Besides these two arguments (Qur'an and hadith), MUI also argues by quoting the fatwa from *Majma' al-Fiqh al-Islami* of The Organisation of Islamic Cooperation (OIC) which decides that Ahmadiyah, either the Qodiyah or Lahore, is an apostate group because of their belief on the prophethood of Mirza Ghulam Ahmad (Majelis Ulama Indonesia, 2003, p. 99). Based on those considerations and arguments that have been explained, then MUI states the following fatwa decisions. The first decision is reaffirming the MUI's fatwa in The Second National Conference in 1980 which declared Ahmadiyah to be outside of Islam and the Muslims who followed it is an apostate. The second decision is an order for those who joined the Ahmadiyah to return immediately to the true Islam which is in line with the Qur'an and hadith. The last decision is a recommendation to the government to ban the spread of Ahmadiyah ideology throughout Indonesia. (Majelis Ulama Indonesia, 2003, p. 99).

The MUI's fatwa was also accompanied by an explanation of the facts of Ahmadiyah are discovered by the MUI in their various books. The facts on various references indicate that Mirza Ghulam Ahmad has recognized himself as a Prophet and Apostle that was appointed by God. These facts also show that the followers of Ahmadiyah, either the Qodiyah or Lahore, believe and agree on the recognition of Mirza Ghulam Ahmad as a Prophet and Apostle (Majelis Ulama Indonesia, 2003, p. 101-110). Therefore, in this fatwa, MUI amended its fatwa on Qodiyah of Ahmadiyah group in 1980 by stipulating that all followers of Ahmadiyah (Qodiyah and Lahore) had apostatized and deviated from Islamic teachings. The MUI also included the decisions of Islamic countries such as Pakistan and India and Islamic organizations such as DDII (Dewan Dakwah Islamiyah Indonesia), HTI (Hizbut Tahrir Indonesia), SI (Syarikat Islam), FPI (Front Pembela Islam), MMI (Majelis Mujahidin Indonesia), PERTI (Persatuan Tarbiyah Islamiyah), FUI (Forum Umat Islam) and al-Washliyah that all agreed to punish Mirza Ghulam Ahmad and his followers as apostates (Majelis Ulama Indonesia, 2003, p. 111-112). This attachment is intentionally included as supporting evidence of the MUI fatwa on Ahmadiyah. These attachments explain that the MUI seeks to

strengthen its fatwa on Ahmadiyah groups by referring to the decisions of other religious organizations. MUI is going to show that its own fatwa decision regarding the deviations of the Ahmadiyah group is following the fatwa of the majority of Muslims.

The Islamic Law Arguments of MUI

The MUI conducts research and factual reviews of the cases being investigated before deciding on its legal status. This is a standard procedure that has been established in the fatwa determination procedure. This also applies to issuing fatwas on Ahmadiyah. MUI conducts research on books written and published by Ahmadiyah. The research is carried out to find the real facts. According to Ma'ruf Amin, the Chairman of the MUI, in every fatwa related to deviant groups, MUI always tries to invite related groups as a form of clarification on the issues that are currently spreading (Amin, 2016). However, the invitations from the MUI were not attended by all the parties who had been invited, so it is not uncommon for MUI to hold meetings without the presence of the related groups (Yanggo, 2016). Therefore, MUI has a Review Commission to carry out a factual review of the groups being studied. This is a clarification effort from MUI before issuing its fatwa. The findings of the Review Commission are quoted as an attachment to the fatwa on the Ahmadiyah group. This effort is a precautionary step and a clarifying effort. The explanation above shows that in issuing a fatwa, MUI did not immediately make a legal decision before conducting an examination or study.

MUI's research on books written by Ahmadiyah figures gave rise to several findings. The first is Ahmadiyah Qadiyan was heretical because it believes Mirza Ghulam Ahmad to be a Prophet as he admits in his writings. This finding is not surprising because the MUI fatwa on Ahmadiyah in 1980 has confirmed this. The second finding is Ahmadiyah Lahore was heretical for several reasons: (1) Mirza Ghulam Ahmad claims to be a prophet in his writings. Thus, Ahmadiyah Lahore has faith in people who claim to be prophets. Therefore, the legal status of followers is the same as the person who is followed. (2) Before splitting into two groups, the followers of Ahmadiyah recognized Mirza's prophethood, including the Ahmadiyah leader in Lahore, Muhammad Ali. (3) Ahmadiyah Lahore and Qodiyan believe that Mirza Ghulam

Ahmad received revelations from Allah which must be followed and everything he wrote was the truth that must be followed (Majelis Ulama Indonesia, 2003, p. 108-109).

MUI concluded although Ahmadiyah Qadiyan and Lahore have differences in several respects, they agree that Mirza Ghulam Ahmad received revelations and they have their prophetic concept. This is the basis for the MUI to issue a fatwa on Ahmadiyah. Therefore, MUI's fatwa on Ahmadiyah focuses on prophetic issues in the Ahmadiyah belief. This can also be seen from the various arguments presented in the fatwa. These arguments are three quotes from the verses of the Qur'an and two hadiths. The three verses do not all contain the descriptions of prophecy. Only one verse discusses it, namely QS. al-Ahzab verse 40, which means: *"Muhammad is not the father of any man among you, but he is the messenger of Allah and the Seal of the Prophets; and Allah is ever Aware of all things."* (Majelis Ulama Indonesia, 2003, p. 113)

Al-Tabari explained that there are differences among the scholars in interpreting this verse. Some scholars read the word *khatam* as the ring of the Prophets or seal of the Prophets, while other scholars read *khatam* as "the cover or the last of the Prophets (Al-Ṭabarī, 2005, VI: p. 183). Ahmadiyah uses the first reading method. This has implications for the interpretation of the verse as a whole. According to Ahmadiyah, this verse only describes the last Prophet, but it explains that Muhammad is the most glorious Prophet among other Prophets, he is not the last and the cover of Prophet. This can be understood from the meaning of *khatam* as a ring that is always attached to the most beautiful finger. In interpreting the word *khatam*, the Ahmadiyah congregation explains the following:

"Khatam comes from the word khatama which means to stamp or print on an item. This is the crux of the word. The second meaning is that he reaches the end of the object, or covers the object, or protects what is written in the writing by marking or imprinting a glimmer of clay on it or with a seal of any kind. Khatam also means a stamped ring which means the most perfect decoration or jewelry. Therefore, the word

khatam al-nabiyyin means the seal of the Prophets and the most perfect of the Prophets." (Hanafi, 2011, p. 19-23).

In general terms, MUI understands this verse by using the second reading method. MUI interprets the word *khatam* as "the cover and the last of the Prophets". Thus, MUI explains that this verse is an affirmation that the Prophet Muhammad was the last Prophet or the closing of the Prophets. In other words, there is no prophet after the prophet Muhammad. This kind of interpretation is the interpretation of the majority of classical scholars such as Al-Ṭabarī, al-Rāzī, and al-Qurṭūbī (Al-Qurṭūbī, 2006, XVII: p. 195; Al-Rāzī, 1981, XV: p. 215; Al-Ṭabarī, 2005, VI: p. 183). Contemporary scholars such as Wahbah al-Zuhaili also explain the same thing with more comprehensive arguments in their commentaries. According to them, this verse confirms that there will be no more prophets and messengers after Prophet Muhammad (Al-Zuhailī, 2009, XXII: p. 355-356).

This discussion shows that MUI's interpretation of this verse is conservative because it is following the opinion of the majority of classical scholars. More specifically, MUI's argument is very similar to Ibn Kathīr's interpretation. This suitability can be seen from the use of the same hadith by the MUI and Ibn Kathīr to support their interpretation. The two hadiths are as follows: (1) "*Rasulullah said: apostolate and prophecy have stopped. Therefore, there will be no more apostles and prophets after me.*" (narrated by Imam al-Tirmīzī). (2) "*will be no more prophets after me.*" (narrated by Imam al-Bukhāri) (Al-Dimsyaqī, 1998, VI: p. 381).

The two hadiths above contain the same meaning, namely the statement that there is no Prophet after Muhammad. The first hadith was narrated by Imam al-Tirmīzī and the second hadith was narrated by Imam al-Bukhāri. As explained earlier, this hadith was also quoted by Ibn Kathīr when interpreting the verse 40 surah al-Ahzab above (Al-Dimsyaqī, 1998, VI: p. 389). This shows that there is no difference between the interpretation of MUI and the majority of scholars. MUI's argument departs from the arguments presented by Ibn Kathīr in his commentary.

There are two other verses that merely discuss the dangers of heretical sects for Muslims. These two verses are just the support of the previous verse discussing

prophethood. In another sense, these two verses do not directly address the issue of prophecy which is the subject of MUI's fatwa on Ahmadiyah. The two verses are QS. al-An'am verse 153, which means: "And that this is My path, a straight (one); so follow it closely and do not follow the other ways, lest ye be parted from His way. This has He instructed you with that you may guard (against evil)" and QS. al-Ma'idah verse 105, which means: "O ye who believe! Guard your souls: if ye follow (right) guidance, no hurt can come to you from those who stray. The goal of you all is to God: It is he that will show you the truth of all that ye do." According to al-Ṭabarī, the first verse above (verse 153 surah al-An'am) affirms and commands to follow Islam (religion in accordance with the way of Allah) rather than other religions such as Judaism, Christianity, and paganism (Al-Ṭabarī, 2005, XI: p. 228-229).

This fatwa also argues by quoting the fatwa from Majma' al-Fiqh al-Islāmī of The Organisation of Islamic Cooperation (OIC) on Ahmadiyah. This is a new argument for MUI in its fatwas on freedom of religion and belief. So far, MUI has never quoted a fatwa from other organizations. The OIC's fatwa quoted by the MUI ruled that the Ahmadiyah sect who believed in Mirza Ghulam Ahmad as a prophet after the Prophet Muhammad and received revelations were apostates because they denied the definite teachings of Islam (*qaṭ'i*) and the teachings agreed upon by the majority of classical scholars. According to this OIC's fatwa, Ahmadiyah Qadiyan and Lahore are both heretical, even though the latter sect only believes that Ghulam Ahmad is just a shadow of the Prophet Muhammad.

There are three items of Islamic legal arguments used by MUI in its fatwa on the Ahmadiyah, namely the Qur'an, hadith, and *ijma'*. In various *uṣūl al-fiqh* books, the three arguments are categorized as sources of law (*al-adillah al-syar'iyyah*) which are agreed upon by the majority of the scholars (al-Zuhaili, 2005). This discussion shows that MUI's legal argument in this fatwa is following the standard doctrine among the majority of scholars (*jumhūr al-fuqahā'*).

Based on the above arguments, MUI decided to issue a fatwa concerning the deviance of the Ahmadiyah groups (Qadiyan and Lahore) on July 28, 2005, at the VII National Conference of MUI. The first decision of this fatwa is reaffirming the MUI's

fatwa in The Second National Conference in 1980 which declared Ahmadiyah to be outside of Islam and the Muslims who followed it is an apostate. The second decision is an order for those who joined the Ahmadiyah to return immediately to the true Islam which is in line with the Qur'an and hadith. The last decision is a recommendation to the government to ban the spread of Ahmadiyah ideology throughout Indonesia. (Majelis Ulama Indonesia, 2003, p. 99)

This discussion shows that MUI's perspective in using its arguments is closer to the perspective of classical scholars. This can be seen from the MUI's interpretation of *naqli* arguments which refer to the interpretation of the majority of classical scholars. In the context of Islamic law, the role of MUI on Ahmadiyah tends to lead to the conservatization of the arguments.

The Human Rights Argument of MUI

The MUI's fatwa regarding the Ahmadiyah begins with the affirmation that Ahmadiyah continues to spread its understanding in Indonesia, even though there was an MUI's fatwa deciding its deviance in 1980. According to Atho Mudzhar, the MUI's fatwa on the Ahmadiyah Qadiyan in 1980 was issued, not only because the teachings of the Qadiyan were contrary to Islam, but also because the teachings of the Qadiyan had caused divisions among the Islamic community and endangered social stability. Therefore, this 1980 fatwa urged the government to withdraw the recognition of the Qadiyan movement in Indonesia, which was granted by the Minister of Justice in 1953 (Mudzhar, 1993, p. 115-116). Therefore, some people asked for a reaffirmation of the legal status of Ahmadiyah. For this reason, the MUI considers it necessary to issue a fatwa that defines Ahmadiyah as a heretical sect and its followers are categorized as apostates. The fatwa decision also contains a recommendation for the government to ban the spread of Ahmadiyah doctrine throughout Indonesia and put a freeze on the Ahmadiyah organization and all its activities (Majelis Ulama Indonesia, 2003, p. 99).

Indirectly, the recommendation in this MUI's fatwa recommends the government to limit the Ahmadiyah group's human rights in religion. As known, the right to teach and spread religion is guaranteed in the sixth article of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion

or Belief which was declared by the United Nations on November 25, 1981. The article explains one of the religious rights is the right to write, publish and spread various relevant publications in the field of religion. This article also emphasizes that teaching a religion or belief is one of the religious rights of a person. This human right is also included in General Comment 22 on the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which emphasizes that freedom of religion includes freedom to hold religious seminars or schools, and freedom to produce and disseminate religious texts or publications (Keith, 1999, p. 103). Meanwhile, the right to establish and manage an organization is affirmed and guaranteed in The Constitution No. 39 of 1999 concerning Human Rights which explains that everyone has the right to assemble and associate for peaceful purposes (Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia., 1999). This shows that religious right is not only guaranteed by international human rights treaties but also guaranteed in Indonesian law.

The MUI's recommendation to the government for banning the spread of Ahmadiyah doctrine and its organization is indirectly a recommendation for the government to limit the religious rights of the Ahmadiyah. The religious rights which are recommended to be limited are the religious rights in the external forum. This is seen from the recommendations written in the fatwa. There are two components of the religious rights in the external forum which the fatwa intends to limit, namely the right to teach and spread religion and the right to establish and manage religious organizations.

Theoretically, MUI's recommendation to limit the spread of Ahmadiyah's religious doctrines and practices is following the instruments of international human rights. The religious rights that are recommended to be limited are religious rights covered in the external forum. As explained earlier, the external forum is the rights of religious freedom that can be intervened by the government because these rights threaten public order and the human rights of others (Lindholm, 2004, p. 180-181). The reasons and considerations for limiting the right to freedom of religion in the external forum are confirmed in Article 18 (paragraph 3) of the ICCPR and Article 28 (J)

of the 1945 Constitution of the Republic of Indonesia, as follows: (1) *"Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."* (2) *"In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society."* (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945., 2003; Raoul Wallenberg Institute, 2004, p. 32)

According to Lindholm, the main purpose of the "public order" clause is to impose restrictions on the manifestation of religion in the public sphere if a certain danger arises and threatens the safety of people and property. The state is given the authority to take necessary and proportional measures such as prohibiting or dissolving a religious event to protect public safety (Lindholm, 2004, p. 209). Therefore, this MUI's fatwa recommends the government limit religious rights because it can disturb public order. This can be understood in his consideration which explains that the development of Ahmadiyah ideology in Indonesia has caused public unrest (Majelis Ulama Indonesia, 2003, p. 96).

The legality of this constitution is one of the arguments of the MUI in recommending the government to ban the activities of the Ahmadiyah that deviate from the interpretation of the majority of classical scholars of the Quran and Sunnah. MUI believes that religious understanding which deviates from the interpretation of the majority of ulama is considered to disturb public order. Chuzaimah T. Yanggo, as Deputy Chair of the Fatwa Commission, explained that the Ahmadiyah group is considered to be disturbing the community and threatening public order based on the fact that their beliefs are distorted and cause horizontal conflict in the community (Yanggo, 2016).

The argument for public order in the MUI's fatwa on Ahmadiyah leads to an element of the theory of modernization of law. The theory of modernization of law is a

theory that has a paradigm that modern society must be governed by modern law. Therefore, a developing society needs laws that can compensate for it. Through this theory, the direction of the evolution of law from classical law to modern law is not difficult to notice. One direction of movement is towards laws that protect human rights as has been done by MUI.

This discussion shows that the MUI fatwa on the Ahmadiyah group uses human rights arguments that have been regulated in various instruments of international human rights. Theoretically, this study shows the major role of MUI in the discourse of human rights. MUI plays a role in modernizing arguments in the human rights discourse. This can be understood from MUI's arguments which are following the instruments of international human rights.

Conclusion

This research has attempted to study the arguments of MUI's fatwa on Ahmadiyah and to examine the relationship between the substance of the fatwa and human rights. This research shows that MUI has a dual role in its fatwa against Ahmadiyah. MUI plays a role as an agent of modernization and an agent of conservatism in the discourse of human rights, particularly in the right of religion. The role of MUI as an agent of modernization can be understood from the fact that some of its fatwa arguments are human rights arguments. MUI recommended banning Ahmadiyah religious activities because they could disrupt public order. The reason for disturbing public order is a reason that is permitted in international human rights instruments.

MUI's role as an agent of conservatization can be understood from the arguments of Islamic law in its fatwa. MUI is always based on the authority of the fiqh literature and classical *uṣūl al-fiqh* in arguing. As in classical literature, there are not a few legal arguments (legal reasoning) that are considered irrelevant with modern perspectives. Therefore, basing his argument only on the authority of classical literature is an effort to bring society to a conservative understanding in the discourse of human rights.

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