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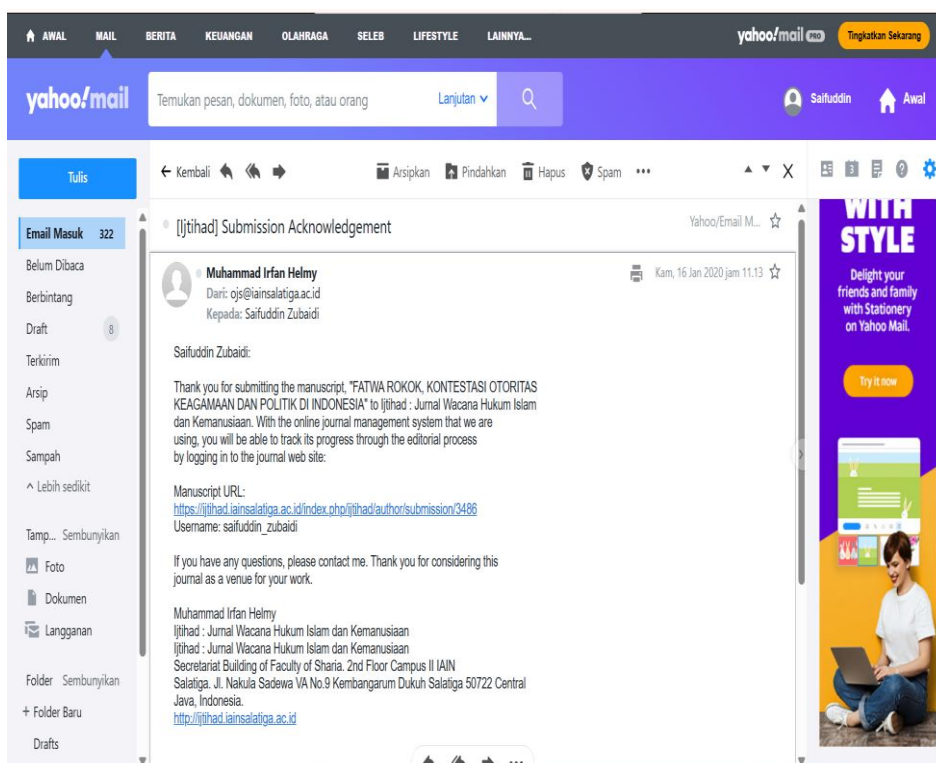
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FATWA ROKOK, KONTESTASI OTORITAS KEAGAMAAN DAN POLITIK DI INDONESIA

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Pendahuluan

Semenjak dimaklumkan fatwa tentang rokok oleh Majelis Ulama Indonesia (MUI) pada tahun 2009 yang lalu, praktik merokok terutama di Indonesia sebagai negara berpenduduk mayoritas beragama Islam, masih menjadi isu hangat untuk diperbincangkan. Tidak tanggung-tanggung, persoalan rokok ini sudah masuk ke wilayah percaturan ekonomi, politik, maupun perdebatan dalam budaya dan keagamaan. Setidaknya terdapat tiga isu penting terkait fatwa rokok dan problematika praktik merokok di kalangan masyarakat Muslim Indonesia. Isu yang paling utama untuk di perbincangkan adalah diskursus fatwa rokok yang telah berlangsung lama di kalangan Ulama salaf, setidaknya hal ini tercermin dalam beberapa literatur Fiqih klasik maupun modern.

Terkait dengan diskursus fatwa rokok dalam literatur fiqih tersebut adalah bagaimana polarisasi gerakan Islam (Islamism) di Indonesia, turut mengambil peran dalam praktik fatwa rokok. Karakter moderat sampai yang radikal dalam gerakan tersebut memposisikan mereka pada derajat hukum *mubah* sampai *haram* terhadap rokok. Isu yang sangat krusial dalam praktik fatwa rokok ini adalah bagaimana kekuatan politik ikut serta dalam mengambil peran dalam bentuk kebijakan dan undang-undang, sehingga isi fatwa menjadi kekuatan yang mengikat. Kontestasi berbagai agen sosial tentang fatwa rokok tersebut semakin menarik perhatian, karena berlangsung di atas landasan budaya merokok masyarakat Muslim yang sudah terbangun sejak Republik Indonesia ini belum lahir.

Kekentalan budaya merokok di kalangan masyarakat Indonesia ini setidaknya tercermin dari ungkapan Pamoedya Ananta Tour dalam sebuah kata pengantar di buku ‘*Kretek, The Culture and Haritage of Indonesia’s Clove Cigarettes*’, “orang merokok karena mereka merasa ada sesuatu yang hilang ketika tidak merokok, demikian juga ketika rokok tanpa dibumbui cengkih, maka seperti ada sesuatu yang hilang dan hambar”.(Hanusz, 2011: XIV) Petikan kata Pramodya Ananta Tour ini menunjukkan bahwa rokok adalah bagian penting dari kehidupan masyarakat Indonesia, karena rokok adalah rasa, dan rasa adalah unsur penting dari budaya. Seperti halnya rasa, rokok kretek menurut Pram akan menjadikan hidup menjadi tidak hambar.

Rokok sebagai bagian dari budaya mempunyai sejarah sekaligus fungsi sosial seperti Fungsi kebersamaan dan ritus (Hanusz, 2011), mewarnai dunia sains dan politik (Brandt, 2007: 3-5), atau melintasi sejarah manusia pra modern di Eropa dan Amerika. (Burns, 2007: 4) Maka sangat sulit untuk memisahkan kisah hidup manusia dengan budaya merokok dengan berbagai ritus dan problematikannya, karena rokok adalah bagian dari identitas budaya mereka.

Hadirnya fatwa tentang rokok yang dikeluarkan oleh kesepakatan Ulama di bawah bendera Majelis Ulama Indonesia (MUI) pada tanggal 26 Januari 2009 di Padang Panjang, menjadi episode baru dalam perdebatan rokok dengan tradisi yang sudah terbangun lama di Indonesia. Meskipun fatwa tersebut memberikan hukum *haram* secara terbatas, tetapi pada tanggal 06 Maret 2010 Majelis Tarjih dan Tajdid (MTT) Muhammadiyah dengan tegas memfatwakan *haram* secara mutlak. Jauh sebelum beberapa ketetapan tersebut di atas, Persatuan Islam (PERSIS) pada tanggal 10 Mei 1987 di Bandung, dengan tegas menyatakan fatwa *makruh* terhadap hukum merokok. Hal ini menjadi jelas bagaimana polarisasi Ulama dalam fatwa rokok terjadi di Indonesia, karena di kutub yang lain Nahdlatul Ulama masih pada ketetapan bahwa hukum merokok adalah antara *mubah*, *makruh*, sampai *haram*, tergantung *illat* (penyebab ketetapan hukum) dalam hukum rokok. Jalan berliku perdebatan hukum rokok ini sangat terkait dengan bagaimana proses produksi fatwa dengan berbagai aspek yang menjadi pertimbangan hukum, diantaranya adalah aspek sosio antropologis masyarakat Indonesia.

Dalam konteks hukum Islam terkait dengan persoalan rokok, Majelis Ulama Indonesia (MUI) mempunyai posisi yang sangat strategis dalam masalah ini, akan tetapi alih-alih memberikan solusi atas perdebatan tersebut, justru fatwa MUI tentang rokok memberikan warna baru diskursus tentang rokok, karena ternyata dalam naskah penetapan hukum tersebut, MUI menetapkan hukum *haram* terhadap rokok, meskipun secara terbatas. Hal ini ditunjukkan dengan rekomendasi kepada pemerintah dan DPR untuk membuat Undang-Undang pembatasan ruang gerak industri rokok. Lahirnya Peraturan Pemerintah No. 109 Tahun 2012 tentang pengamanan bahan yang mengandung zat adiktif berupa tembakau bagi kesehatan, bukan satu hal yang kebetulan, karena selain banyak mengadopsi konvensi *Framework Convention on Tobacco Control (FCTC)*, juga selaras dengan isi Fatwa MUI tentang rokok.

Sekalipun secara formal Negara Indonesia bukan merupakan Negara Islam, fatwa merupakan salah satu bentuk tata nilai yang dalam masyarakat muslim mempunyai otoritas legal dalam mengatur kehidupan bermasyarakat dan beragama, selain juga sebagai manifestasi identitas Islam di tengah masyarakat yang plural. Dalam ranah

kehidupan beragama Islam, fatwa di beberapa negara muslim bahkan dijadikan sebagai acuan pokok norma yang di anut dan ditaati oleh seluruh muslimin. Fatwa tidak hanya sebagai himbauan moral saja, akan tetapi juga mempunyai instrument politis maupun yuridis untuk dimanifestasikan oleh umat Islam.(Peterson,1997)

Di Indonesia, Fatwa bisa dijadikan sebagai penegas identitas ideologis, bahkan politis terkait dengan fatwa rokok yang dianut sebagai sumber legitimasi peng-*haram*-an atau peng- *halal*-an rokok. Produk fatwa sangat dekat dengan kepentingan politik, ekonomi, juga budaya masyarakat dimana fatwa tersebut diproduksi,(Saifuddin, 2014) sehingga produk fatwa sangat dipengaruhi oleh bagaimana Ulama sebagai pemegang otoritas agama berelasi dengan berbagai lembaga dan agen sosial yang ada di masyarakat.(Kaptein, 2004:17) Maka fatwa rokok menjadi semakin rumit ketika dinamika keberagamaan Islam di Indonesia yang diwarnai dengan ketegangan antara Muslim lokal yang cenderung moderat dengan Islam transnasional yang cenderung radikal (Wahid, 2009: 20) terlibat dalam proses memproduksi fatwa.

Jika fatwa dianggap sebagai sebuah arena ketegangan antar berbagai agen dan kepentingan (politik ekonomi, kultur, ideologi), maka sebagai pemegang otoritas keagamaan, bagaimana posisi ulama di Indonesia?. Secara rinci rumusan masalah dalam kajian ini adalah *pertama*, bagaimana Fatwa sebagai representasi Ulama bernegosiasi dengan kebijakan politik ekonomi terkait industri rokok di Indonesia?. *Kedua*, bagaimana fatwa rokok terutama Fatwa MUI sebagai representasi Ulama bernegosiasi dengan agen-agen ideologi Islam di Indonesia ?. *Ketiga*, bagaimana fatwa rokok mengakomodasi kepentingan industri (pengusaha) rokok di Indonesia ?

Modalitas dan Praktik Sosial dalam Fatwa Rokok: Sebuah Telaah Teoritis

Problematika dan dinamika dalam memproduksi fatwa rokok di Indonesia adalah salah satu titik tolak bagaimana fatwa itu diproduksi, dan bagaimana fatwa tersebut berimplikasi pada kehidupan sosial, budaya, dan politik di sebuah negara. Dalam berbagai literatur, sebuah fatwa itu lahir berangkat dari fenomena di masyarakat, kemudian ada relasi baik itu negosiasi maupun kontestasi antar berbagai agen, struktur, maupun sistem sosial. Di dalam literatur fatwa setidaknya terdapat dua unsur penting, yaitu persoalan yang lahir dari proses sosial yang di pecahkan melalui proses penyelesaian hukum (*istifta’*).(Masoud, 2009) Bagian yang lain adalah keberadaan Ulama sebagai pemberi fatwa (*Mufti*), baik secara personal maupun kelembagaan. Efektifitas fatwa sangat tergantung

bagaimana sebuah fatwa diproduksi, dan sejauh mana kapasitas *mufti* dalam praktek fatwa.

Secara sosiologis, kapasitas *mufti* baik personal maupun lembaga mempunyai peran penting dalam menimbang efektifitas fatwa, karena dalam domain keagamaan Islam ulama adalah pemegang otoritas. Otoritas keagamaan yang dimiliki oleh ulama akan lebih efektif ketika didukung oleh praktek dan strategi kekuasaan yang menyatu dalam otoritas tersebut. Dalam hal ini sumber daya yang dimiliki *mufti* baik personal maupun impersonal menjadi faktor penting dalam proses negosiasi dan kontestasi dengan berbagai agen yang terlibat diseperti produksi fatwa. Sumber daya (*capital*) *mufti* yang dimaksud di sini adalah berupa Kharisma, keilmuan Islam, posisi dalam struktur sosial, jaringan sosial, dan kepercayaan masyarakat terhadap eksistensi *mufti*.. Selaras dengan pandangan Pierre Bourdieu, bahwa modal (*capital*) atau sumber daya yang di miliki *mufti* tidak selalu berupa materi (ekonomi), tetapi dalam banyak hal modal bisa dalam bentuk sosial, budaya, bahkan modal simbolik.(Bourdieu, 1998:19-20)

Dengan menggunakan cara pandang Boudieu seperti ini sebetulnya praktik fatwa dapat dijelaskan seperti halnya praktik sosial lainnya dimana modal (sosial, ekonomi, budaya, simbolik) dioperasikan dalam sebuah arena (*Field*) untuk dikonversikan menjadi kekuasaan yang dominan.(Bourdieu, 1998: 34) Di dalam ranah yang lebih homogen (*champ*), modal tersebut juga dikontestasikan dalam rangka disposisi sosial, yang ujungnya juga dominasi dan penguasaan wacana.(Haryatmoko, 2016:50) Keberadaan Majelis Ulama Indonesia sebagai *mufti* di dalam fatwa rokok, menurut perspektif ini memainkan fungsinya sebagai bagian dari agen sosial yang berkontestasi dengan agen-agen yang lain, seperti lembaga pemerintah, pelaku industri rokok, komunitas-komunitas peduli rokok yang tumbuh di tengah-tengah masyarakat, dan tentu saja pluralitas fatwa rokok yang dikeluarkan oleh berbagai organisasi kemasyarakatan (ormas) Islam di Indonesia.

Akumulasi modal dan mempertahankan dominasi ulama di era kontemporer seringkali dilakukan melalui lembaga-lembaga pengkaderan ulama atau lembaga pendidikan. Selain instrumen lembaga pengkaderan, perkembangan teknologi media juga menjadi instrumen penting dalam menegaskan identitas ke-ulama-an dan sekaligus otoritas keagamaan yang dimilikinya. Penegasan identitas ke-ulama-an tersebut disampaikan melalui pendapat-pendapat keagamaan baik secara lisan maupun tulisan melalui media yang sedang berkembang.(Zaman, 2010:38-39)

Efektifitas otoritas keagamaan MUI dalam perpektif ini tidak hanya ditentukan oleh akumulasi berbagai modal

yang dimiliki oleh ulama, tetapi juga ditentukan oleh bagaimana modal tersebut dikonversikan menjadi kekuasaan yang mampu mendominasi dan memengaruhi perilaku masyarakat dalam waktu dan tempat tertentu.(Bourdieu, 1996:125) Keberadaan agen-agen sosial seperti diuraikan di atas, kemudian membentuk ruang-ruang baru dimana hukum agama (*fatwa*) dikontestasikan dalam ruang publik (*religious public Sphere*).(Eickelman & Anderson, 2003: 1-2) Di dalam nuansa yang lain bahkan Bourdieu, seperti yang dipahami oleh David Gartman, mengibaratkan praktik sosial seperti ini layaknya pasar dimana kelompok dominan selalu melakukan distingsi dan mereproduksi modal dengan cara menyuplai gaya hidup, memenuhi permintaan (*demand*) konsumen, untuk mempertahankan dominasinya.(Gartman, 2002:260)

Di dalam asumsi seperti inilah muncul dimensi ketiga dari fatwa, selain *istifta* ' dan *mufti*, yaitu implementasi fatwa. Dalam dimensi ini kekuatan sumber daya (*capitatal*) dari *mufti* dihadapkan pada ruang sosial (*field*), dimana disposisi dan reposisi sosial diciptakan, ruang dimana proses mendominasi dan didominasi dipraktikkan nyaris seperti alami, sehingga kepatuhan pencari fatwa (*mustafti*) terhadap fatwa yang dikeluarkan oleh *mufti* menjadi pilihan yang utama. Tidak hanya sampai di situ saja, bahkan fatwa yang dikeluarkan oleh *mufti*-pun mengalir mengikuti irama yang diciptakan oleh kelompok atau agen-agen sosial dominan. Hal inilah yang oleh Bourdieu disebut sebagai “*habitus*”.(Bourdieu, 1998:25)

Implementasi fatwa sebagai sebuah praktik sosial, dengan demikian dapat dijelaskan dengan menghubungkan antara agen-agen sosial yang terlibat di dalam produksi fatwa, dengan pengelolaan sumber daya (*capital*) yang dimilikinya, bagaimana mereka memperebutkan dominasi, sehingga mendapatkan posisi dominan, dikaitkan dengan arena (*field*) dimana fatwa itu diimplementasikan. Asumsi teori ini merujuk pada logika praktik sosial yang dikembangkan oleh Bourdieu bahwa praktik sosial adalah relasi antara habitus, modal dan arena.(Bourdieu, 1996:101) Praktik sosial seperti ini secara metodologis dapat ditelusuri melalui pemeriksaan keterlibatan masing-masing agen sosial dalam fatwa, sumber daya yang dimiliki, dan bagaimana sumber daya tersebut dioperesikan dalam ruang sosial tertentu.

Dengan memanfaatkan studi literatur dengan didukung oleh beberapa data skunder, studi ini setidaknya menemukan tiga wacana penting yang akan di bahas dalam mengkonstruksi dan mengembangkan konsep dalam kajian ini, yakni diskursus rokok dalam literatur Fiqih, wacana developmentalisme di Indonesia sebagai latar latar

kebijakan Pemerintah dalam mengontrol konsumsi tembakau, dan wacana fatwa sebagai representasi ulama sebagai pemegang otoritas keagamaan.

Diskursus Rokok dalam Literatur Fiqih

Munculya rokok atau produk tembakau di dunia Arab sebagai pusat peradaban dunia Islam berawal dari Sudan sekitar abad ke- 11 Hijriyah atau dua abad setelah ditemukannya Benua Amerika oleh Christoper Colombus yang juga sudah menemukan warga setempat yang mengkonsumsi tembakau. Berawal dari Sudan, kemudian menyebar ke wilayah Barat dan Timur Jazirah Arab.(Ibnu Al Shiddiq, 1985:5-6) Berangkat dari sejarah masuknya tembakau di wilayah Jazirah Arab tersebut, dapat dikatakan bahwa munculnya hukum tembakau yang kemudian dikemas dalam bentuk rokok tersebut, jauh setelah masa *tasyri*’ pada masa dinasti Bani Umayyah, dimana hukum Islam dibahas dan dikodifikasikan sesuai madzhab fiqih.(Surjaman, 1991:vi-vii) Melihat jarak masa yang begitu panjang antara sejarah masuknya tembakau di Jazirah Arab dengan masa *tasyri*’, maka dapat dipastikan juga bahwa hukum tentang produk tembakau yang berupa rokok tersebut belum dibahas secara eksplisit (*sharih*) dalam sumber utama hukum Islam (Alqur’an dan Sunnah).

Tidak adanya sumber yang eksplisit (*sharih*) tentang hukum rokok di dalam sumber ajaran Islam (Al-Qur’an dan Sunnah) tersebut menjadikan hukum rokok menjadi perdebatan (*ihtilaf*) di kalangan ulama fiqih. Terdapat tiga ketetapan hukum terhadap rokok, yakni *mubah*, *haram*, dan *makruh*, yang masing-masing mempunyai alasan (*reasoning*)-nya sendiri, baik didasarkan atas *qiyas* dengan dalil *naqli* maupun berdasarkan atas pertimbangan logika sosiokultural yang melatarbelakanginya. Bagi Ulama yang menetapkan hukum *haram* terhadap rokok, setidaknya ada empat alasan yang mendasarinya. *Pertama*, alasan kesehatan dengan didasarkan atas rekomendasi ahli kedokteran yang otoritatif. Jika memang otoritas kedokteran mengatakan bahwa rokok membahayakan kesehatan, maka hukum rokok adalah *haram*.(Jampes, 2013:9)

Dikutip dalam kitab Hasyiyah Syeikh Syihabuddin Ahmad ibn Ahmad ibn Salamah al Qalyubi, seorang Ulama dari mazhab Syafi’i, bahwa diantara barang tidak najis, tetapi tidak boleh untuk dikonsumsi (*haram*) adalah rokok, karena dapat mendatangkan berbagai macam penyakit bagi tubuh dan membahayakan kesehatan.(Alqalyuby, 1956:69) Pendapat ini juga didukung oleh Sheikh Ibrahim Al Laqani Al Maliki, bahwa diantara barang yang menyebabkan hilangnya akal ketika dikonsumsi, adalah rokok. Dua pendapat ini memberikan jawaban yang

menyimpulkan bahwa setiap makanan atau minuman yang mendatangkan bahaya bagi kesehatan tubuh dan menghilangkan akal, maka hukumnya *haram* untuk dikonsumsi, sebagaimana yang disampaikan oleh Syeikh Sulaiman ibn Muhammad ibn Umar Al Bujairamy.(Al Bujairami, 1996:233) Alasan menghilangkan akal ini juga menjadi alasan *kedua* kenapa rokok dihukumi *haram*, berdasarkan atas hadits dari Ummu Salamah bahwa “Rasulullah melarang mengkonsumsi makanan atau minuman yang memabukkan dan menghilangkan akal atas rekomendasi ahli kesehatan”.(Jampes, 2013:9)

Alasan *ketiga*, yang mendasari hukum *haram* atas rokok adalah karena baunya yang tidak menyenangkan atau tidak disukai banyak orang. Hukum ini didasarkan atas qiyas terhadap bau bawang, baik itu bawang putih maupun bawang merah. Aroma orang yang merokok tidak lebih baik dari aroma bawang yang dalam sebuah hadits disebutkan sebagai salah satu aroma yang tidak disukai oleh Rasulullah. Alasan yang *keempat*, adalah rokok mengakibatkan pemborosan secara ekonomi. Diantara pendapat yang menyatakan alasan ini adalah Syeih Mahmud Shaltut dalam kitab “Al-Fatawa”, yang menyatakan bahwa “jika uang yang dibelanjakan untuk membeli rokok lebih bermanfaat dan berfaedah untuk keperluan yang lain maka tidak diperkenankan (عدم ابحاثه) untuk membeli rokok dan mengkonsumsinya”.(Shaltut, 2001:384)

Jika dilihat dari argumentasi yang dibangun oleh para ulama yang mengharamkan rokok di atas, maka dapat ditemukan dua hal yang menjadi sumber perdebatan. Pertama, dasar hukum haram bagi rokok di atas memakai metode *qiyas*, dimana penetapan hukum didasarkan atas kesamaan *kausa (illat)*(Muhtarom, 2015:3) antara hukum pokok (*ashl*) dengan hukum dari kasus yang datang lebih kemudian (*far’*). (Nashirudin, 2015:22) Proses pencarian kesamaan *illat untuk menentukan hukum (ta’lilu al ahkam)* ini dapat dilihat dari perbandingan antara bau rokok dengan bau bawang. Argumentasi kedua, yang dibangun oleh para ulama yang mengharamkan rokok adalah pertimbangan tujuan dari ditetapkannya hukum (*maqashid al Syari’ah*). Pendekatan *maslahah* ini dipandang lebih fleksibel dalam menjawab dinamika sosial yang berkembang. Hal ini dapat dilihat dalam alasan keempat diharamkannya rokok dalam Kitab *Al Fatawa* karya Syeikh Mahmud Shaltut seperti paparan di atas.

Dua argumentasi di atas membuka peluang untuk menghadirkan hukum lain selain hukum *haram* pada rokok, seiiring dengan dinamika sosial, dan kondisi sosio kultural di berbagai wilayah. Setidaknya Syeikh Abdul Hayyi ibn Muhammad Ibn Al Shadiq dalam kitab “*Hukmu al Dukhan wa al Thabah*” menjelaskan beberapa hal terkait dengan

hukum rokok yang cenderung *mubah*.(Ibnu Al Shiddiq, 1985:32-56) Dasar utama yang digunakan untuk menghukumi *mubah* bagi rokok adalah tidak adanya dalil yang eksplisit tentang *halal* atau *haram* bagi rokok. Para ulama dari wilayah “*Maghribi*” cenderung memberi hukum *haram* pada rokok, tetapi para ulama “*Masyriqi*” cenderung menghalalkan rokok, bahkan jikalau para wanita menjadikan rokok sebagai bagian dari kebutuhan sehari-hari, suami wajib memberikan karena hal itu sebagai bagian dari nafkah.(Ibnu Al Shiddiq, 1985: 10)

Penjelasan pertama terkait dengan hal ini adalah jika alasan haram bagi rokok karena rokok merupakan barang yang berbahaya bagi kesehatan, maka argumentasi tersebut terbantahkan oleh fakta bahwa ada banyak perokok aktif yang justru sehat dan berumur panjang. Jika ada riset yang kemudian menyatakan rokok sangat berbahaya bagi kesehatan dari sample yang diteliti, maka secara metodologis riset tersebut belum bisa diberlakukan secara umum (*general*). Kedua, barang berbahaya bagi kesehatan tubuh yang mengakibatkan dihukumi *haram* terdiri dari dua macam, yakni bahaya dari substansi barang tersebut (لذاته) dan bahaya dari timbul dari luar barang tersebut (لغيرذاته). Rokok adalah barang berbahan baku tembakau yang secara substansi merupakan tanaman yang halal dan bersih, meskipun jika dikonsumsi oleh orang dalam kondisi tertentu bisa berbahaya. Sekalipun demikian berbahayanya rokok bagi orang secara kasuistik tidak bisa dijadikan sebagai alasan hukum *haram* secara mutlak bagi rokok.

Dalam penjelasan yang hampir sama, M. Arfin Hamid menjelaskan bahwa “rokok” adalah satu hal, dan “merokok” adalah hal yang berbeda, meskipun saling berhubungan.(Hamid, 2017:52) Secara substansial hukum rokok adalah *mubah* (لذاته), tetapi merokok bisa menjadi *haram* (لغيرذاته) ketika dilakukan oleh orang yang rentan terhadap asap rokok. Posisi inilah mengharamkan rokok secara mutlak seperti halnya arak (*khamr*) menjadi tidak relevan.

Penjelasan ketiga, terkait dengan lemahnya argumentasi hukum *haram* rokok karena alasan baunya yang tidak sedap atau mengarah ke perbuatan jorok (*khaba’its*), adalah metode *qiyas* yang dipakai untuk menyamakan rokok dengan bawang. Mebandingkan rokok dengan bawang yang dianggap jorok dan bau menurut Abdul Hayyi ibn Al shiddiq kurang tepat, karena Rasulullah SAW sendiri hanya membenci baunya, dan bukan mengharamkannya. Ketika datang hadits tentang ketidaksukaan Rasulullah terhadap bau bawang, masyarakat muslim ramai-ramai mengharamkan bawang, tetapi setelah Rasulullah mengetahui opini yang berkembang tersebut, Rasulullah menegaskan bahwa “ wahai manusia sungguh tidak patut saya mengharamkan sesuatu yang dihalalkan oleh Allah,

saya hanya tidak suka dengan baunya”.(Ibnu Al Shiddiq, 1985: 56) Menyamakan rokok dengan bawang secara tidak langsung juga menghukumi rokok menjadi *mubah* (لذاته).

Satu hal yang penting untuk dicatat juga bahwa perbuatan jorok yang mengarah ke haram tidak bisa dilihat dari satu budaya tertentu. Bisa jadi di satu daerah rokok dianggap sesuatu yang jorok, tetapi di daerah yang lain rokok dianggap bukan sesuatu yang jorok dan menjijikkan. Hal ini karena konsep bersih dan jorok adalah bagian dari konstruksi budaya, dan terkait dengan struktur sosial.(Douglas, 1966:viii) Jadi dengan demikian, menurut argumentasi ini, hukum *makruh* terhadap rokokpun menjadi tidak mutlak, kalau yang dijadikan *kausa (illat)* adalah persoalan jorok.

Dari perdebatan hukum rokok dalam kajian kitab fiqih di atas, hukum “rokok” dan “merokok”, sangat dipengaruhi oleh fakta sosial dimana fatwa hukum itu diproduksi. Perdebatan wacananya dengan demikian berkembang, tidak hanya sekedar hukum *halal*, *haram*, dan *makruh* terhadap rokok dan merokok, tetapi dalam konteks masyarakat seperti apa fatwa hukum tersebut diterapkan. Maka dalam kajian ini pendekatan sosiologis, terutama terkait dengan struktur ekonomi, sosial, dan politik, menjadi sangat penting untuk dilakukan. Keterkaitan antara fakta sosiologis, norma hukum Islam yang ditetapkan, dengan realita politik, akan sangat menentukan efektifitas dari sebuah fatwa.

Rokok dalam Kebijakan Pembangunan di Indonesia

Di Indonesia, rokok sudah menjadi bagian dari warna penting dalam kehidupan masyarakat. Sejak zaman pra kemerdekaan rokok sudah dijadikan sebagai teman dalam bercengkrama, bersosialisasi, bahkan sebagai pemanis dalam perbincangan intensif mempersiapkan bentuk bangsa pasca kemerdekaan. Setelah Indonesia merdeka, rokok juga merupakan salah satu komoditas dominan dalam roda perokonomian Indonesia. Memasuki era orde baru, momentum perkembangan rokok semakin kelihatan dengan didukung oleh kebijakan pemerintah dan peluang industrialisasi di negara-negara dunia ketiga. Mark Hanusz mencatat setidaknya ada tiga moment penting dalam perkembangan industri rokok pada era orde baru.(Hanusz, 2011:29) *Pertama*, pada tahun 1970 an harga minyak dunia mengalami kenaikan yang sangat signifikan akibat dari terbentuknya kartel negara-negara pengeksport minyak yang tergabung dalam OPEC.

Indonesia sebagai negara penghasil minyak juga mendapatkan “berkah” dari *booming* harga minyak tersebut.

Efek dari semua itu adalah meningkatnya tingkat perekonomian masyarakat Indonesia, yang secara makro mempengaruhi laju pertumbuhan ekonomi negara dan stabilitas politik. Hal ini mendorong negara-negara di dunia mulai melihat Indonesia sebagai salah satu negara dunia ketiga yang patut diperhitungkan di kawasan Asia Tenggara. Dalam keadaan yang demikian banyak investor asing masuk ke Indonesia, yang berpengaruh pada proses industrialisasi di berbagai sektor. Secara perlahan namun pasti terjadi pergeseran sistem produksi masyarakat dari sektor primer (pertanian) ke sektor sekunder (Industri).

Kedua, proses industrialisasi yang terjadi pada era tahun 1970 an tersebut sangat berpengaruh pada pertumbuhan industri rokok di tanah air, terutama di pulau Jawa. Di pulau Jawa, terutama Jawa Tengah dan Jawa Timur mulai berdiri pabrik rokok yang memproduksi rokok dengan tenaga mesin. Efek dari industrialisasi rokok ini adalah secara kualitas dan kuantitas produksi rokok semakin meningkat. Produk rokok tidak hanya mampu bermain di pasar lokal, tetapi rokok produksi Indonesia juga mampu bersaing di dunia internasional.

Ketiga, kebijakan pemerintah orde baru untuk menggalakkan transmigrasi menjadikan pemerataan di segala bidang, tidak hanya dalam persebaran penduduk, tetapi juga dalam persebaran kultur, dan konsumsi rokok. Pada *moment* inilah pasar rokok melebar dan dikonsumsi tidak hanya di pulau Jawa sebagai produsen, tetapi sudah mulai merambah ke daerah tujuan transmigrasi, yakni Sumatra, dan Kalimantan, termasuk di kawasan Indonesia Timur.

Hingga lebih dua dasawarsa pasca runtuhnya rezim orde baru saat ini, industri rokok masih menjadi bagian penting dari perekonomian Indonesia. Dari data yang dihimpun oleh *Kata Data News and Research*, terdapat kenaikan pendapatan cukai rokok dari tahun ke tahun dalam tujuh tahun terakhir. Dalam data tersebut dijelaskan bahwa semenjak tahun 2010, kontribusi cukai rokok sebesar 63,3 triliun, hingga tahun 2017 naik menjadi 149,9 triliun, atau naik 250% lebih dalam jangka waktu tujuh tahun terakhir. Hal ini menunjukkan bahwa potensi ekonomi dari cukai tembakau dan produk turunannya sangat potensial dalam meningkatkan laju pertumbuhan ekonomi nasional.

Melihat potensi yang besar yang ada dalam industri rokok, maka tidak mengherankan jika sampai saat ini pemerintah tidak bisa lepas dari ketergantungan industri rokok yang menyumbang devisa negara hingga 10 % dari APBN tersebut, satu nilai yang fantastis dalam era kebijakan “pembangunan”. Developmentalism (kebijakan pembangunan) adalah satu sistem yang dibangun atas ide negara-negara Eropa dan Amerika yang diterapkan di

negara-negara dunia ketiga pasca perang dunia II. Kebijakan ini diambil untuk mendorong ketertinggalan secara ekonomi, sosial, politik dan budaya negara-negara bekas jajahan atau negara-negara di Selatan, agar lebih maju secara bertahap.(Shareia, 2015:78) Dalam kebijakan ini pertimbangan pertumbuhan ekonomi makro sangat diperhatikan oleh pelaku pasar di tingkat ekonomi global.(Pereira, 2012)

Efek dari aplikasi teori-teori pembangunan di berbagai negara adalah terdapat beberapa kemajuan dalam bidang ekonomi, terutama industrialisasi, dan sekaligus dampak negatif yang sangat bervariasi.(Escobar, 1995:04) Di Indonesia, selain menciptakan pertumbuhan ekonomi yang gradual, juga memunculkan kesenjangan yang luar biasa akibat dari gagalnya efek tetesan ke bawah (*trickle down effect*) yang diharapkan dari kebijakan tersebut.(H. Wahid, 1999:39) Maka kritik teori pembangunanpun menjadi sangat intensif dilakukan oleh para ilmuwan sosial yang mencoba menawarkan berbagai tawaran teori yang bisa memecah kebuntuan.

Di antara tawaran teori itu adalah tentang konsep pembangunan yang melebar dari hanya sekedar pembangunan di sektor ekonomi, menjadi pembangunan di sektor kemanusiaan.(Nussbaum & Sen, 1993:2) Pada konsep inilah rokok sebagai salah satu komoditi potensial di Indonesia menjadi sangat problematis. Di satu sisi rokok menjadi salah satu sumber devisa negara, tetapi di sisi yang lain rokok dianggap sebagai salah satu sebab gagalnya pembangunan manusia yang berkualitas, karena dianggap sebagai sumber dari segala penyakit degenerasi.

Selain persoalan ekonomi dan budaya, rokok juga menjadi perbincangan serius terkait dengan isu kesehatan dunia. Pada tahun 2003 badan kesehatan dunia WHO dengan beberapa anggotanya menandatangani kesepakatan pengendalian produk tembakau. Kesepakatan itu lalu dikenal dengan *Framework Convention on Tobacco Control (FCTC)*. Sepuluh tahun kemudian tepatnya tahun 2013, FCTC telah diratifikasi oleh 170 negara di dunia, dan Indonesia adalah satu-satunya negara di Asia yang belum meratifikasi konvensi tersebut. Lagi-lagi persoalan ekonomi menjadi salah satu alasannya karena 95% penghasilan pajak cukai berasal dari produk turunan tembakau (rokok), selain juga masalah kultur.

Terdapat dua persoalan yang dihadapi bangsa Indonesia di era reformasi, terkait dengan masalah rokok ini. pertama dari sisi internal rokok sudah menjadi bagian sejarah sosial bangsa Indonesia. Selain itu rokok juga mempunyai andil besar dalam pembangunan ekonomi bangsa. Kedua, dari sisi eksternal, ada tekanan internasional yang memaksa seluruh bangsa untuk mengendalikan konsumsi tembakau, baik atas nama kesehatan dunia atau

kepentingan politik ekonomi.

Pada akhirnya teori pembangunan akan mengalami pergeseran wajah sesuai dengan kondisi sosiologis dan politis pada tiap negara. Dalam konteks Indonesia mutakhir, penanganan isu tentang rokok lebih sering menggunakan pendekatan *post-development*.(Escobar, 1995: 221) Isu lokalitas menjadi pertimbangan penting dalam menyelesaikan persoalan rokok yang juga menjadi perhatian internasional tersebut. Sekalipun tekanan internasional begitu kuat tentang pembatasan konsumsi produk tembakau lewat FCTC, tetapi sampai saat ini Indonesia belum meratifikasi konvensi tersebut. Satu hal yang tentunya sangat problematis bagi pemerintah Indonesia, karena secara ekonomis sangat menguntungkan, secara medis sangat merugikan, dan secara kultur terjadi banyak ketegangan, terutama terkait dengan ideologi keagamaan yang sekarang sedang berkembang.

Fatwa Rokok dan Otoritas Keagamaan di Indonesia.

Rokok dalam khazanah keilmuan Islam di Indonesia sudah menjadi isu penting semenjak negara ini belum merdeka. Kitab karya Syeikh Ihsan Jampes berjudul “*Irsyad al Ikhwan li Bayani Syurbi al Qahwah wa al Dukhan*” menjelaskan bagaimana perdebatan hukum terjadi di kalangan ulama *salaf* tentang hukum rokok. (Jampes, 2013:04) Dengan syair ber irama *rajaz* dan sederhana beliau memberikan penjelasan secara bijak bagaimana menghukumi rokok, dari yang *makruh*, *mubah*, hingga *haram*, dengan pendekatan historis antropologis. Diantara ulama yang menghalalkan rokok di situ disebutkan Abdul Ghani Al Nablisy dalam kitab *al Shulhu Baina al Ikhwan fi Hukmi Ibahati al Dukhan*, Imam Mahmud ibn Salamah al Radhi dalam kitab *Ta'yidu al I'lan bi Adami Tahrimi al Dukhan*, dan ada beberapa ulama yang lain. Kitab klasik ini sekaligus dijadikan sebagai sumber legitimasi para kaum santri tradisional dalam memperlakukan rokok.

Di kalangan masyarakat Islam Indonesia hukum tentang merokok sudah sangat jelas. Majelis Ulama Indonesia (MUI) dan Majelis Tarjih dan Tajdid (MTT) Muhammadiyah cenderung mengharamkan rokok, meskipun tidak serta merta fatwa tersebut mengurangi jumlah pengkonsumsi rokok. Persoalan sebenarnya bukan pada hukum halal atau haram, tetapi bagaimana norma agama Islam tersebut mempunyai nilai koersif. Impresi pada nilai koersif inilah yang sekarang menjadi isu aktual dalam ketegangan ideologi di Indonesia, termasuk memasukkan pandangan normatif Islam (*syar'i*) ke dalam hukum positif.

Pada dasarnya fatwa adalah praktek etika yang dalam bahasa antropologi lahir dan berkembang seiring dengan proses sosial. Keberadaan etika tidak bisa dikendalikan dan ditekan oleh siapapun, karena etika dibangun di atas agen otoritas yang *include* dalam proses yang berjalan secara alami.(Agrama, 2010:5) Dalam prakteknya etika yang dipraktekkan dalam bentuk fatwa selalu dikendalikan oleh otoritas yang terlembagakan. Dalam posisi inilah fatwa menjadi koersif dan nyaris menyamai hukum positif. Dalam pandangan Hussein Ali Agrama, memaknai otoritas dan lembaga hukum adalah satu hal yang sangat problematis, karena otoritas yang bermakna kewenangan yang di dapat secara alami dalam proses sosial, senyatanya adalah dibangun dalam relasi kuasa para agen otoritas. Dalam kondisi seperti ini sangat sulit membedakan lembaga hukum dan otoritas yang sama-sama koersif.

Meskipun secara formal lembaga fatwa tidak mempunyai wewenang yang bersifat koersif, akan tetapi secara kultural fatwa masih dijadikan sebagai sumber legitimasi dalam masyarakat muslim. Perdebatan mengenai siapa yang memegang hak atas otoritas keagamaan, dan bagaimana otoritas tersebut dipertahankan bahkan dilestarikan menjadi penting untuk diperbincangkan. Di dalam menjelaskan ulama dan otoritas keagamaan di era kontemporer, Muhammad Qasim Zaman mengatakan bahwa otoritas keagamaan yang dimiliki oleh ulama dibangun secara terus menerus melalui proses sosial, terutama melalui lembaga-lembaga pengkaderan ulama atau lembaga pendidikan. Selain instrumen lembaga pengkaderan, perkembangan teknologi media juga menjadi instrumen penting dalam menegaskan identitas keulamaan dan sekaligus otoritas keagamaan yang dimilikinya. Penegasan identitas keulamaan tersebut disampaikan melalui pendapat-pendapat keagamaan baik secara lisan maupun tulisan melalui media yang sedang berkembang.(Zaman, 2010:56)

Hal ini menjadi problematis ketika publik Islam tidak dalam satu ideologi yang sama, atau sudah terpolarisasi menjadi berbagai macam faham. Di Indonesia otoritas keagamaan tidak bisa dialamatkan pada satu figur dengan label ideologi tertentu, apalagi kalau sudah berkaitan dengan persoalan politik atau hal-hal yang bersifat sensitif. Ilustrasi Nico Kaptein dalam merekam fatwa di Indonesia, secara jelas menggambarkan problematika tersebut. Kaptein juga menjelaskan bagaimana otoritas keagamaan itu dikonstruksi melalui berbagai instrumen dan simbol keagamaan dan identitas kearaban. (Kaptein, 2004:11-12) Dalam hal ini lagi-lagi teknologi media juga menjadi faktor penting dalam mengkonstruksi otoritas keagamaan. Pada tahap inilah fatwa tentang rokok kemudian menjadi sebuah arena “pertarungan” dalam memperebutkan otoritas keagamaan, karena di sana terdapat agen-agen budaya atau struktur

dominan yang mendukung eksistensi ulama sebagai elit agama.

Pada masa pemerintahan orde baru, relasi Ulama dan pemerintah (negara) dibangun dalam pola hubungan dominatif dimana lembaga ulama dibentuk untuk mendukung kebijakan-kebijakan pemerintah yang terkait dengan persoalan keagamaan Islam. Selain itu keberadaan Ulama yang terlembagakan menjadikan kontrol pemerintah melalui struktur keulamaan yang dalam masyarakat Islam Indonesia yang mayoritas, mempunyai posisi yang sangat strategis. Lahirnya lembaga Majelis Ulama Indonesia (MUI) pada tanggal 26 Juli 1975 yang di bentuk oleh pemerintah orde baru adalah sebuah strategi politik korporatisme untuk mengontrol gerakan politik yang berbasis pada agama Islam.(Porter, 2002:2) Sampai pada tahap ini otoritas keagamaan para Ulama tidak bisa dilepaskan dari kekuasaan, baik melalui sumber daya politik, maupun melalui produksi wacana keagamaan.

Di era reformasi, dimana polarisasi Ulama sudah terjadi sedemikian massifnya, institusi ulama tidak lagi hanya terpusat pada lembaga bentukan pemerintah yang didukung oleh kekuasaan, akan tetapi juga ulama-ulama yang lahir dari proses politik, maupun dari proses kebudayaan. Apa yang sudah di bahas pada poin di atas setidaknya memberi gambaran bagaimana otoritas keagamaan menjadi wacana penting dimana ulama dari berbagai kalangan terlibat di dalamnya. Pada posisi inilah praktik fatwa rokok di Indonesia di letakkan, dimana sumber daya (*modality*) yang dimiliki oleh ulama sebagai pemegang otoritas keagamaan mempunyai peran penting dalam memproduksi fatwa yang efektif.

Kesimpulan

Sebagai gambaran akhir dari paper ini, poin penting yang harus digaris bawahi adalah munculnya fatwa rokok di Indonesia, bukanlah sesuatu yang tiba-tiba, dan bahkan terus berhenti, tetapi ada diskursus yang rumit, bagaimana fatwa tersebut diproduksi, dan bagaimana produk fatwa tersebut dinegosiasikan dalam ranah sosial. Selain itu fatwa tentang rokok, baik itu *haram*, *halal*, atau *makruh*, masih terus berkembang seiring dengan dinamika pertarungan wacana di arena kehidupan masyarakat Indonesia.

Ulama sebagai pemegang otoritas fatwa tentu saja bukan satu-satunya agen sosial yang memproduksi wacana untuk memutlakkan fatwanya, tetapi ulama harus berbenturan dengan kebijakan yang diambil oleh negara dalam mengelola sumber daya sosial, ekonomi, dan politik. Pada saat yang lain efektifitas kontrol kekuasaan yang dimiliki

oleh fatwa juga harus berbenturan dengan modal ekonomi yang dimiliki oleh para produsen rokok, dan yang paling krusial adalah bagaimana ulama sebagai agen sosial menyelesaikan problem identitas yang selalu melekat di tubuh mereka.

Ulama sebagai produsen Fatwa rokok di Indonesia mau tidak mau harus berurusan dengan kekuasaan dan modal politik kebijakan pembangunan yang berkembang di Indonesia. Ulama juga harus bersinggungan dengan budaya yang membingkai mereka, wacana yang mereka produksi, dan tentu saja, kebudayaan yang datang dari luar atau trans- nasional. Pada posisi inilah modalitas ulama dinegosiasikan dan dikontestasikan dalam arena praktik fatwa rokok.

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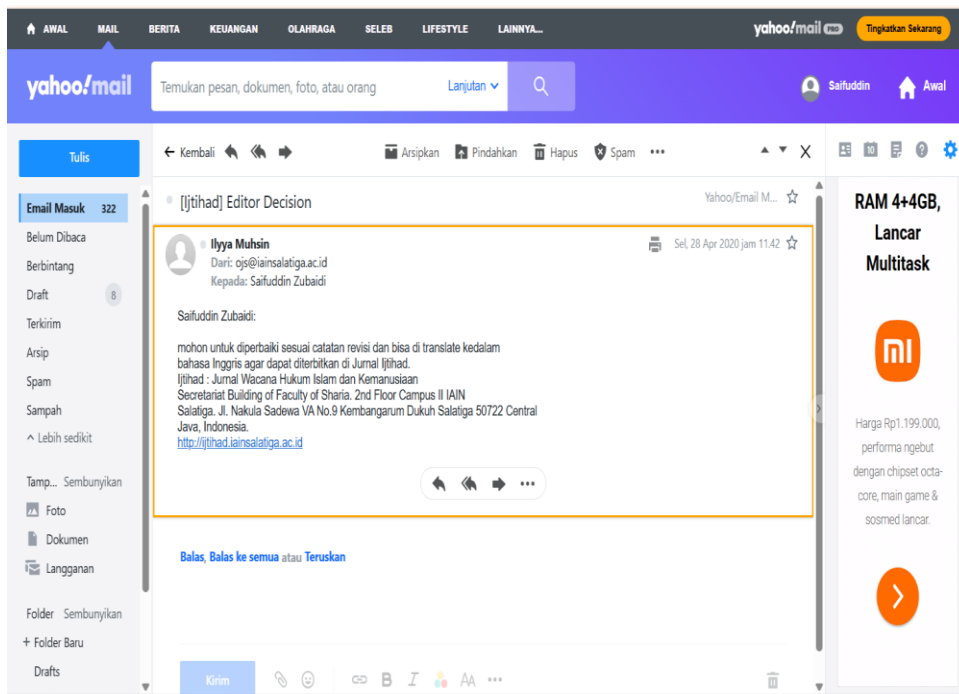
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2. Bukti Konfirmasi Review dan Hasil Review Pertama (28 April 2020)



Fatwa rokok, kontestasi otoritas keagamaan dan politik di Indonesia

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Abstract

The issuance of legal fatwa is always followed by the presence of new issues related to the implementation of the fatwa. The same is true of the smoking ruling was issued by the Council of Indonesian Scholars (MUI) at the *ijtima' ulama* Conference in Padang Panjang in 2009. More than a decade of debate on this subject is still a polemic in the community. Although the fatwa in Indonesia does not have the power of binding, for Muslims the idea of religious morality remains a consideration in daily life.

Through a literature study, this study will reveal how the problematic relations between various social agencies related to the issuance of the cigarette fatwa. Discourse debate in the study of fiqh will begin the explanation of this study, followed by development policies in Indonesia related to the problem of cigarettes, and end with the position of the ulema as the holder of religious authority in the matter of smoking.

This study illustrates that the practice of fatwas will be effective when ulama as religious authority holders, with their "capital", are able to negotiate and contest with various social agents in the cigarette fatwa arena.

Abstraksi

Keluarnya fatwa hukum selalu diikuti oleh hadirnya persoalan baru terkait dengan pelaksanaan fatwa tersebut. Begitu juga fatwa rokok yang dikeluarkan oleh Majelis Ulama Indonesia dalam sidang *ijtima' Ulama* di Padang Panjang tahun 2009 silam. Lebih dari satu dekade perdebatan mengenai hal ini masih menjadi polemik di masyarakat. Meskipun fatwa di Indonesia tidak mempunyai kekuatan mengikat, tetapi bagi ummat muslim bayangan tentang moral agama tetap menjadi pertimbangan dalam menjalani kehidupan sehari-hari.

Melalui studi literatur, kajian ini akan mengungkap bagaimana problematika relasi antar berbagai agen sosial terkait dengan keluarnya fatwa rokok tersebut. Perdebatan wacana dalam kajian fiqh akan mengawali penjelasan kajian ini, disusul dengan kebijakan pembangunan di Indonesia terkait dengan problematika rokok, dan diakhiri dengan poisisi ulama sebagai pemegang otoritas keagamaan dalam masalah rokok.

Kajian ini memberikan gambaran bahwa praktik fatwa akan efektif ketika ulama sebagai pemegang otoritas keagamaan, dengan "modal" yang mereka miliki, mampu bernegosiasi dan berkontestasi dengan berbagai agen sosial dalam arena fatwa rokok.

Kata kunci: Fatwa Rokok, Modal, Praktik Fatwa, Ulama
Pendahuluan

Semenjak dimaklumkan fatwa tentang rokok oleh Majelis Ulama Indonesia (MUI) pada tahun 2009 yang lalu, praktik merokok terutama di Indonesia sebagai negara berpenduduk mayoritas beragama Islam, masih menjadi isu hangat untuk diperbincangkan. Tidak tanggung-tanggung, persoalan rokok ini sudah masuk ke wilayah percaturan ekonomi, politik, maupun perdebatan dalam budaya dan keagamaan. Setidaknya terdapat tiga isu penting terkait fatwa rokok dan problematika praktik merokok di kalangan masyarakat muslim Indonesia. Isu yang paling utama untuk di perbincangkan adalah diskursus fatwa rokok yang telah berlangsung lama di kalangan ulama *salaf*, setidaknya hal ini tercermin dalam beberapa literatur fiqh klasik maupun modern.

Terkait dengan diskursus fatwa rokok dalam literatur fiqh tersebut adalah bagaimana polarisasi gerakan Islam

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Commented [h2]: Sebaiknya dikasih keterangan dalam bahasa Inggris (consensus of Islamic scholars, misalnya)

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(*Islamism*) di Indonesia, turut mengambil peran dalam praktik fatwa rokok. Karakter moderat sampai yang radikal dalam gerakan tersebut memposisikan mereka pada derajat hukum *mubah* sampai *haram* terhadap rokok. Isu yang sangat krusial dalam praktik fatwa rokok ini adalah bagaimana kekuatan politik ikut serta dalam mengambil peran dalam bentuk kebijakan dan undang-undang, sehingga isi fatwa menjadi kekuatan yang mengikat. Kontestasi berbagai agen sosial tentang fatwa rokok tersebut semakin menarik perhatian, karena berlangsung di atas landasan budaya merokok masyarakat muslim yang sudah terbangun sejak Republik Indonesia ini belum lahir.

Kekentalan budaya merokok di kalangan masyarakat Indonesia ini setidaknya tercermin dari ungkapan Pamoedya Ananta Tour dalam sebuah kata pengantar di buku ‘*Kretek, The Culture and Haritage of Indonesia’s Clove Cigarettes*’, “orang merokok karena mereka merasa ada sesuatu yang hilang ketika tidak merokok, demikian juga ketika rokok tanpa dibumbui cengkih, maka seperti ada sesuatu yang hilang dan hambar”.(Hanusz, 2011: XIV) Petikan kata Pramoeudya Ananta Tour ini menunjukkan bahwa rokok adalah bagian penting dari kehidupan masyarakat Indonesia, karena rokok adalah rasa, dan rasa adalah unsur penting dari budaya. Seperti halnya rasa, rokok kretek menurut Pram akan menjadikan hidup menjadi tidak hambar.

Rokok sebagai bagian dari budaya mempunyai sejarah sekaligus fungsi sosial seperti fungsi kebersamaan dan ritus (Hanusz, 2011), mewarnai dunia sains dan politik (Brandt, 2007: 3-5), atau melintasi sejarah manusia pra modern di Eropa dan Amerika. (Burns, 2007: 4) Maka sangat sulit untuk memisahkan kisah hidup manusia dengan budaya merokok dengan berbagai ritus dan problematikannya, karena rokok adalah bagian dari identitas budaya mereka.

Hadirnya fatwa tentang rokok yang dikeluarkan oleh kesepakatan ulama di bawah bendera Majelis Ulama Indonesia (MUI) pada tanggal 26 Januari 2009 di Padang Panjang, menjadi episode baru dalam perdebatan rokok dengan tradisi yang sudah terbangun lama di Indonesia. Meskipun fatwa tersebut memberikan hukum *haram* secara terbatas, tetapi pada tanggal 06 Maret 2010 Majelis Tarjih dan Tajdid (MTT) Muhammadiyah dengan tegas memfatwakan *haram* secara mutlak. Jauh sebelum beberapa ketetapan tersebut di atas, Persatuan Islam (PERSIS) pada tanggal 10 Mei 1987 di Bandung, dengan tegas menyatakan fatwa *makruh* terhadap hukum merokok. Hal ini menjadi jelas bagaimana polarisasi ulama dalam fatwa rokok terjadi di Indonesia, karena di kutub yang lain Nahdlatul Ulama masih pada ketetapan bahwa hukum merokok adalah antara *mubah*, *makruh*, sampai *haram*, tergantung *illat* (penyebab ketetapan hukum) dalam hukum rokok. Jalan berliku perdebatan hukum rokok ini sangat terkait dengan

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bagaimana proses produksi fatwa dengan berbagai aspek yang menjadi pertimbangan hukum, diantaranya adalah aspek sosio antropologis masyarakat Indonesia.

Dalam konteks hukum Islam terkait dengan persoalan rokok, Majelis Ulama Indonesia (MUI) mempunyai posisi yang sangat strategis dalam masalah ini, akan tetapi alih-alih memberikan solusi atas perdebatan tersebut, justru fatwa MUI tentang rokok memberikan warna baru diskursus tentang rokok, karena ternyata dalam naskah penetapan hukum tersebut, MUI menetapkan hukum *haram* terhadap rokok, meskipun secara terbatas. Hal ini ditunjukkan dengan rekomendasi kepada pemerintah dan DPR untuk membuat Undang-Undang pembatasan ruang gerak industri rokok. Lahirnya Peraturan Pemerintah No. 109 Tahun 2012 tentang pengamanan bahan yang mengandung zat adiktif berupa tembakau bagi kesehatan, bukan satu hal yang kebetulan, karena selain banyak mengadopsi konvensi *Framework Convention on Tobacco Control (FCTC)*, juga selaras dengan isi Fatwa MUI tentang rokok.

Sekalipun secara formal Negara Indonesia bukan merupakan Negara Islam, fatwa merupakan salah satu bentuk tata nilai yang dalam masyarakat muslim mempunyai otoritas legal dalam mengatur kehidupan bermasyarakat dan beragama, selain juga sebagai manifestasi identitas Islam di tengah masyarakat yang plural. Dalam ranah kehidupan beragama Islam, fatwa di beberapa negara muslim bahkan dijadikan sebagai acuan pokok norma yang dianut dan ditaati oleh seluruh muslimin. Fatwa tidak hanya sebagai himbauan moral saja, akan tetapi juga mempunyai instrument politis maupun yuridis untuk dimanifestasikan oleh umat Islam.(Peterson,1997)

Di Indonesia, Fatwa bisa dijadikan sebagai penegas identitas ideologis, bahkan politis terkait dengan fatwa rokok yang dianut sebagai sumber legitimasi peng-*haram*-an atau peng- *halal*-an rokok. Produk fatwa sangat dekat dengan kepentingan politik, ekonomi, juga budaya masyarakat dimana fatwa tersebut diproduksi,(Saifuddin, 2014: 33-52) sehingga produk fatwa sangat dipengaruhi oleh bagaimana ulama sebagai pemegang otoritas agama berelasi dengan berbagai lembaga dan agen sosial yang ada di masyarakat.(Kaptein, 2004:17) Maka fatwa rokok menjadi semakin rumit ketika dinamika keberagamaan Islam di Indonesia yang diwarnai dengan ketegangan antara Muslim lokal yang cenderung moderat dengan Islam transnasional yang cenderung radikal (Wahid, 2009: 20) terlibat dalam proses memproduksi fatwa.

Jika fatwa dianggap sebagai sebuah arena ketegangan antar berbagai agen dan kepentingan (politik ekonomi, kultur, ideologi), maka sebagai pemegang otoritas keagamaan, bagaimana posisi ulama di Indonesia?. Secara rinci

rumusan masalah dalam kajian ini adalah *pertama*, bagaimana fatwa sebagai representasi ulama bernegosiasi dengan kebijakan politik ekonomi terkait industri rokok di Indonesia?. *Kedua*, bagaimana fatwa rokok terutama fatwa MUI sebagai representasi ulama bernegosiasi dengan agen-agen ideologi Islam di Indonesia ?. *Ketiga*, bagaimana fatwa rokok mengakomodasi kepentingan industri (pengusaha) rokok di Indonesia ?

Modalitas dan praktik sosial dalam fatwa rokok: sebuah telaah teoritis

Problematika dan dinamika dalam memproduksi fatwa rokok di Indonesia adalah salah satu titik tolak bagaimana fatwa itu diproduksi, dan bagaimana fatwa tersebut berimplikasi pada kehidupan sosial, budaya, dan politik di sebuah negara. Dalam berbagai literatur, sebuah fatwa itu lahir berangkat dari fenomena di masyarakat, kemudian ada relasi baik itu negosiasi maupun kontestasi antar berbagai agen, struktur, maupun sistem sosial. Di dalam literatur fatwa setidaknya terdapat dua unsur penting, yaitu persoalan yang lahir dari proses sosial yang di pecahkan melalui proses penyelesaian hukum (*istifta’*).(Masoud, 2009: 341-66) Bagian yang lain adalah keberadaan ulama sebagai pemeberi fatwa (*mufti*), baik secara personal maupun kelembagaan. Efektifitas fatwa sangat tergantung bagaimana sebuah fatwa diproduksi, dan sejauh mana kapasitas *mufti* dalam praktek fatwa.

Secara sosiologis, kapasitas *mufti* baik personal maupun lembaga mempunyai peran penting dalam menimbang efektifitas fatwa, karena dalam domain keagamaan Islam ulama adalah pemegang otoritas. Otoritas keagamaan yang dimiliki oleh ulama akan lebih efektif ketika didukung oleh praktek dan strategi kekuasaan yang menyatu dalam otoritas tersebut. Dalam hal ini sumber daya yang dimiliki *mufti* baik personal maupun impersonal menjadi faktor penting dalam proses negosiasi dan kontestasi dengan berbagai agen yang terlibat diseputar produksi fatwa. Sumber daya (*capital*) *mufti* yang dimaksud di sini adalah berupa Kharisma, keilmuan Islam, posisi dalam struktur sosial, jaringan sosial, dan kepercayaan masyarakat terhadap eksistensi *mufti*.. Selaras dengan pandangan Pierre Bourdieu, bahwa modal (*captal*) atau sumber daya yang di miliki *mufti* tidak selalu berupa materi (ekonomi), tetapi dalam banyak hal modal bisa dalam bentuk sosial, budaya, bahkan modal simbolik.(Bourdieu, 1998:19-20)

Dengan menggunakan cara pandang Boudieu seperti ini sebetulnya praktik fatwa dapat dijelaskan seperti halnya praktik sosial lainnya dimana modal (sosial, ekonomi, budaya, simbolik) dioperasikan dalam sebuah arena (*Field*) untuk dikonversikan menjadi kekuasaan yang dominan.(Bourdieu, 1998: 34) Di dalam ranah yang lebih homogen (*champ*), modal tersebut juga dikontestasikan dalam rangka disposisi sosial, yang ujungnya juga dominasi

dan penguasaan wacana.(Haryatmoko, 2016:50) Keberadaan Majelis Ulama Indonesia sebagai *mufti* di dalam fatwa rokok, menurut perspektif ini memainkan fungsinya sebagai bagian dari agen sosial yang berkontestasi dengan agen-agen yang lain, seperti lembaga pemerintah, pelaku industri rokok, komunitas-komunitas peduli rokok yang tumbuh di tengah-tengah masyarakat, dan tentu saja pluralitas fatwa rokok yang dikeluarkan oleh berbagai organisasi kemasyarakatan (ormas) Islam di Indonesia.

Akumulasi modal dan mempertahankan dominasi ulama di era kontemporer seringkali dilakukan melalui lembaga-lembaga pengkaderan ulama atau lembaga pendidikan. Selain instrumen lembaga pengkaderan, perkembangan teknologi media juga menjadi instrumen penting dalam menegaskan identitas ke-ulama-an dan sekaligus otoritas keagamaan yang dimilikinya. Penegasan identitas ke-ulama-an tersebut disampaikan melalui pendapat-pendapat keagamaan baik secara lisan maupun tulisan melalui media yang sedang berkembang.(Zaman, 2010:38-39)

Efektifitas otoritas keagamaan MUI dalam perpektif ini tidak hanya ditentukan oleh akumulasi berbagai modal yang dimiliki oleh ulama, tetapi juga ditentukan oleh bagaimana modal tersebut dikonversikan menjadi kekuasaan yang mampu mendominasi dan memengaruhi perilaku masyarakat dalam waktu dan tempat tertentu.(Bourdieu, 1996:125) Keberadaan agen-agen sosial seperti diuraikan di atas, kemudian membentuk ruang-ruang baru dimana hukum agama (*fatwa*) dikontestasikan dalam ruang publik (*religious public Sphere*).(Eickelman & Anderson, 2003: 1-2) Di dalam nuansa yang lain bahkan Bourdieu, seperti yang dipahami oleh David Gartman, mengibaratkan praktik sosial seperti ini layaknya pasar dimana kelompok dominan selalu melakukan distingsi dan mereproduksi modal dengan cara menyuplai gaya hidup, memenuhi permintaan (*demand*) konsumen, untuk mempertahankan dominasinya.(Gartman, 2002:260)

Di dalam asumsi seperti inilah muncul dimensi ketiga dari fatwa, selain *istifta*’ dan *mufti*, yaitu implementasi fatwa. Dalam dimensi ini kekuatan sumber daya (*capiatal*) dari *mufti* dihadapkan pada ruang sosial (*field*), dimana disposisi dan reposisi sosial diciptakan, ruang dimana proses mendominasi dan didominasi dipraktikkan nyaris seperti alami, sehingga kepatuhan pencari fatwa (*mustafti*) terhadap fatwa yang dikeluarkan oleh *mufti* menjadi pilihan yang utama. Tidak hanya sampai di situ saja, bahkan fatwa yang dikeluarkan oleh *mufti*-pun mengalir mengikuti irama yang diciptakan oleh kelompok atau agen-agen sosial dominan. Hal inilah yang oleh Bourdieu disebut sebagai

“*habitus*”.(Bourdieu, 1998:25)

Implementasi fatwa sebagai sebuah praktik sosial, dengan demikian dapat dijelaskan dengan menghubungkan antara agen-agen sosial yang terlibat di dalam produksi fatwa, dengan pengelolaan sumber daya (*capital*) yang dimilikinya, bagaimana mereka memperebutkan dominasi, sehingga mendapatkan posisi dominan, dikaitkan dengan arena (*field*) dimana fatwa itu diimplementasikan. Asumsi teori ini merujuk pada logika praktik sosial yang dikembangkan oleh Bourdieu bahwa praktik sosial adalah relasi antara habitus, modal dan arena.(Bourdieu, 1996:101) Praktik sosial seperti ini secara metodologis dapat ditelusuri melalui pemeriksaan keterlibatan masing-masing agen sosial dalam fatwa, sumber daya yang dimiliki, dan bagaimana sumber daya tersebut dioperesikan dalam ruang sosial tertentu.

Dengan memanfaatkan studi literatur dengan didukung oleh beberapa data skunder, studi ini setidaknya menemukan tiga wacana penting yang akan di bahas dalam mengkonstruksi dan mengembangkan konsep dalam kajian ini, yakni diskursus rokok dalam literatur fiqih, wacana developmentalisme di Indonesia sebagai latar latar kebijakan Pemerintah dalam mengontrol konsumsi tembakau, dan wacana fatwa sebagai representasi ulama sebagai pemegang otoritas keagamaan.

Diskursus Rokok dalam Literatur Fiqih

Dua Abad setelah ditemukannya benua Amerika oleh Christoper Colombus, dimana konsumsi tembakau sudah ditemukan, tembakau baru masuk ke kawasan Arab melalui Sudan, yakni sekitar abad ke-11 Hijriyah. Dari Sudan lalu menyebar ke wilayah barat dan timur jazirah Arab.(Ibnu Al Siddiq, 1985:5-6) Masuknya tembakau di wilayah jazirah Arab tersebut di sekitar abad XI Hijriyah tersebut menunjukkan bahwa munculnya hukum tembakau yang kemudian dikemas dalam bentuk rokok , terjadi jauh setelah masa *tashri’* pada masa dinasti Bani Umayyah, dimana hukum Islam dibahas dan dikodifikasikan sesuai madzhab fiqih.(Surjaman, 1991:vi-vii) Hal ini juga menunjukkan bahwa hukum tentang produk tembakau tersebut belum dibahas secara eksplisit (*şarih*) dalam sumber utama hukum Islam (Al-Qur’an dan Sunnah).

Tidak adanya sumber yang *şarih* tentang hukum rokok di dalam sumber ajaran Islam (Al-Qur’an dan Sunnah) tersebut menjadikan hukum rokok menjadi perdebatan (*ikhtilaf*) di kalangan ulama fiqih. Terdapat tiga ketetapan hukum terhadap rokok, yakni *mubah*, *haram*, dan *makruh*, yang masing-masing mempunyai alasan (*reasoning*)-nya

sendiri, baik didasarkan atas *qiyas* dengan dalil *naqli* maupun berdasarkan atas pertimbangan logika sosiokultural yang melatarbelakanginya. Bagi ulama yang menetapkan hukum *haram* terhadap rokok, setidaknya ada empat alasan yang mendasarinya. *Pertama*, alasan kesehatan dengan didasarkan atas rekomendasi ahli kedokteran yang otoritatif. Jika memang otoritas kedokteran mengatakan bahwa rokok membahayakan kesehatan, maka hukum rokok adalah *haram*.(Jampes, 2013:9)

Dikutip dalam kitab Hasyiyah Syeikh Syihabuddin Ahmad ibn Ahmad ibn Salamah al Qalyubi, seorang ulama dari mazhab Syafi’i, bahwa diantara barang tidak najis, tetapi tidak boleh untuk dikonsumsi (*haram*) adalah rokok, karena dapat mendatangkan berbagai macam penyakit bagi tubuh dan membahayakan kesehatan.(Al Qalyuby, 1956:69) Pendapat ini juga didukung oleh Sheikh Ibrahim Al Laqani Al Maliki, bahwa diantara barang yang menyebabkan hilangnya akal ketika dikonsumsi, adalah rokok. Dua pendapat ini memberikan jawaban yang menyimpulkan bahwa setiap makanan atau minuman yang mendatangkan bahaya bagi kesehatan tubuh dan menghilangkan akal, maka hukumnya *haram* untuk dikonsumsi, sebagaimana yang disampaikan oleh Syeikh Sulaiman ibn Muhammad ibn Umar Al Bujairamy.(Al Bujairami, 1996:233) Alasan menghilangkan akal ini juga menjadi alasan *kedua* kenapa rokok dihukumi *haram*, berdasarkan atas hadits dari Ummu Salamah bahwa “Rasulullah melarang mengkonsumsi makanan atau minuman yang memabukkan dan menghilangkan akal atas rekomendasi ahli kesehatan”.(Jampes, 2013:9)

Alasan *ketiga*, yang mendasari hukum *haram* atas rokok adalah karena baunya yang tidak menyenangkan atau tidak disukai banyak orang. Hukum ini didasarkan atas qiyas terhadap bau bawang, baik itu bawang putih maupun bawang merah. Aroma orang yang merokok tidak lebih baik dari aroma bawang yang dalam sebuah hadits disebutkan sebagai salah satu aroma yang tidak disukai oleh Rasulullah. Alasan yang *keempat*, adalah rokok mengakibatkan pemborosan secara ekonomi. Diantara pendapat yang menyatakan alasan ini adalah Syeikh Mahmud Shaltut dalam kitab “Al-Fatawa”, yang menyatakan bahwa “jika uang yang dibelanjakan untuk membeli rokok lebih bermanfaat dan berfaedah untuk keperluan yang lain maka tidak diperkenankan (*adamu ibahatihi*) untuk membeli rokok dan mengkonsumsinya”.(Shaltut, 2001:384)

Jika dilihat dari argumentasi yang dibangun oleh para ulama yang mengharamkan rokok di atas, maka dapat ditemukan dua hal yang menjadi sumber perdebatan. Pertama, dasar hukum haram bagi rokok di atas memakai metode

qiyas, dimana penetapan hukum didasarkan atas kesamaan *kausa (illat)* (Muhtarom, 2015:3) antara hukum pokok (*aşl*) dengan hukum dari kasus yang datang lebih kemudian (*far’*). (Nashirudin, 2015: 21-26) Proses pencarian kesamaan *illat untuk menentukan hukum (ta’lilu al ahkam)* ini dapat dilihat dari perbandingan antara bau rokok dengan bau bawang. Argumentasi kedua, yang dibangun oleh para ulama yang mengharamkan rokok adalah pertimbangan tujuan dari ditetapkannya hukum (*maqashid al Shari’ah*). Pendekatan *maslahah* ini dipandang lebih fleksibel dalam menjawab dinamika sosial yang berkembang. Hal ini dapat dilihat dalam alasan keempat diharamkannya rokok dalam kitab *Al Fatawa* karya Syeikh Mahmud Shaltut seperti paparan di atas.

Dua argumentasi di atas membuka peluang untuk menghadirkan hukum lain selain hukum *haram* pada rokok, seiiring dengan dinamika sosial, dan kondisi sosio-kultural di berbagai wilayah. Setidaknya Syeikh Abdul Hayyi ibn Muhammad Ibn Al Şidiq dalam kitab ”*Hukmu al Dukhan wa al Thabah*” menjelaskan beberapa hal terkait dengan hukum rokok yang cenderung *mubah*. Dasar utama yang digunakan untuk menghukumi *mubah* bagi rokok adalah tidak adanya dalil yang eksplisit tentang *halal* atau *haram* bagi rokok. Para ulama dari wilayah “*Maghribi*” cendrung memberi hukum *haram* pada rokok, tetapi para ulama “*Mashriqi*” cenderung menghalalkan rokok, bahkan jikalau para wanita menjadikan rokok sebagai bagian dari kebutuhan sehari-hari, suami wajib memberikan karena hal itu sebagai bagian dari nafkah. (Ibnu Al Şiddiq, 1985: 10)

Penjelasan pertama terkait dengan hal ini adalah jika alasan haram bagi rokok karena rokok merupakan barang yang berbahaya bagi kesehatan, maka argumentasi tersebut terbantahkan oleh fakta bahwa ada banyak perokok aktif yang justru sehat dan berumur panjang. Jika ada riset yang kemudian menyatakan rokok sangat berbahaya bagi kesehatan dari *sample* yang diteliti, maka secara metodologis riset tersebut belum bisa diberlakukan secara umum (*general*). Kedua, barang berbahaya bagi kesehatan tubuh yang mengakibatkan dihukumi *haram* terdiri dari dua macam, yakni bahaya dari substansi barang tersebut (*li dhatihi*) dan bahaya dari timbul dari luar barang tersebut (*li gairi dhatihi*). Rokok adalah barang berbahan baku tembakau yang secara substansi merupakan tanaman yang halal dan bersih, meskipun jika dikonsumsi oleh orang dalam kondisi tertentu bisa berbahaya. Sekalipun demikian berbahayanya rokok bagi orang secara kasuistik tidak bisa dijadikan sebagai alasan hukum *haram* secara mutlak bagi rokok.

Dalam penjelasan yang hampir sama, M. Arfin Hamid menjelaskan bahwa “rokok” adalah satu hal, dan

“merokok” adalah hal yang berbeda, meskipun saling berhubungan.(Hamid, 2017: 46-54) Secara substansial hukum rokok adalah *mubah (li dhatihi)*, tetapi merokok bisa menjadi *haram (li gairi dhatihi)* ketika dilakukan oleh orang yang rentan terhadap asap rokok. Posisi inilah mengharamkan rokok secara mutlak seperti halnya arak (*khamr*) menjadi tidak relevan.

Penjelasan ketiga, terkait dengan lemahnya argumentasi hukum *haram* rokok karena alasan baunya yang tidak sedap atau mengarah ke perbuatan jorok (*khaba'ith*), adalah metode *qiyas* yang dipakai untuk menyamakan rokok dengan bawang. Membandingkan rokok dengan bawang yang dianggap jorok dan bau menurut Abdul Hayyi ibn Al Şiddiq kurang tepat, karena Rasulullah SAW sendiri hanya membenci baunya, dan bukan mengharamkannya. Ketika datang hadits tentang ketidaksukaan Rasulullah terhadap bau bawang, masyarakat muslim ramai-ramai mengharamkan bawang, tetapi setelah Rasulullah mengetahui opini yang berkembang tersebut, Rasulullah menegaskan bahwa “ wahai manusia sungguh tidak patut saya mengharamkan sesuatu yang dihalalkan oleh Allah, saya hanya tidak suka dengan baunya”.(Ibnu Al Şiddiq, 1985: 56) Menyamakan rokok dengan bawang secara tidak langsung juga menghukumi rokok menjadi *mubah (li dhatihi)*.

Satu hal yang penting untuk dicatat juga bahwa perbuatan jorok yang mengarah ke haram tidak bisa dilihat dari satu budaya tertentu. Bisa jadi di satu daerah rokok dianggap sesuatu yang jorok, tetapi di daerah yang lain rokok dianggap bukan sesuatu yang jorok dan menjijikkan. Hal ini karena konsep bersih dan jorok adalah bagian dari konstruksi budaya, dan terkait dengan struktur sosial.(Douglas, 1966) Jadi dengan demikian, menurut argumentasi ini, hukum *makruh* terhadap rokokpun menjadi tidak mutlak, kalau yang dijadikan *kausa (illat)* adalah persoalan jorok.

Dari perdebatan hukum rokok dalam kajian kitab fiqih di atas, hukum “rokok” dan “merokok”, sangat dipengaruhi oleh fakta sosial dimana fatwa hukum itu diproduksi. Perdebatan wacananya dengan demikian berkembang, tidak hanya sekedar hukum *halal*, *haram*, dan *makruh* terhadap rokok dan merokok, tetapi dalam konteks masyarakat seperti apa fatwa hukum tersebut diterapkan. Maka dalam kajian ini pendekatan sosiologis, terutama terkait dengan struktur ekonomi, sosial, dan politik, menjadi sangat penting untuk dilakukan. Keterkaitan antara fakta sosiologis, norma hukum Islam yang ditetapkan, dengan realita politik, akan sangat menentukan efektifitas dari sebuah fatwa.

Rokok dalam Kebijakan Pembangunan di Indonesia

Di Indonesia, rokok sudah menjadi bagian dari warna penting dalam kehidupan masyarakat. Sejak zaman pra kemerdekaan rokok sudah dijadikan sebagai teman dalam bercengkrama, bersosialisasi, bahkan sebagai pemanis dalam perbincangan intensif mempersiapkan bentuk bangsa pasca kemerdekaan. Setelah Indonesia merdeka, rokok juga merupakan salah satu komoditas dominan dalam roda perokonomian Indonesia. Memasuki era orde baru, momentum perkembangan rokok semakin kelihatan dengan didukung oleh kebijakan pemerintah dan peluang industrialisasi di negara-negara dunia ketiga. Mark Hanusz mencatat setidaknya ada tiga moment penting dalam perkembangan industri rokok pada era orde baru.(Hanusz, 2011:29) *Pertama*, pada tahun 1970 an harga minyak dunia mengalami kenaikan yang sangat signifikan akibat dari terbentuknya kartel negara-negara pengekspor minyak yang tergabung dalam OPEC.

Indonesia sebagai negara penghasil minyak juga mendapatkan “berkah” dari *booming* harga minyak tersebut. Efek dari semua itu adalah meningkatnya tingkat perekonomian masyarakat Indonesia, yang secara makro mempengaruhi laju pertumbuhan ekonomi negara dan stabilitas politik. Hal ini mendorong negara-negara di dunia mulai melirik Indonesia sebagai salah satu negara dunia ketiga yang patut diperhitungkan di kawasan Asia Tenggara. Dalam keadaan yang demikian banyak investor asing masuk ke Indonesia, yang berpengaruh pada proses industrialisasi di berbagai sektor. Secara perlahan namun pasti terjadi pergeseran sistem produksi masyarakat dari sektor primer (pertanian) ke sektor sekunder (Industri).

Kedua, proses industrialisasi yang terjadi pada era tahun 1970 an tersebut sangat berpengaruh pada pertumbuhan industri rokok di tanah air, terutama di pulau Jawa. Di pulau Jawa, terutama Jawa Tengah dan Jawa Timur mulai berdiri pabrik rokok yang memproduksi rokok dengan tenaga mesin. Efek dari industrialisasi rokok ini adalah secara kualitas dan kuantitas produksi rokok semakin meningkat. Produk rokok tidak hanya mampu bermain di pasar lokal, tetapi rokok produksi Indonesia juga mampu bersaing di dunia internasional.

Ketiga, kebijakan pemerintah orde baru untuk menggalakkan transmigrasi menjadikan pemerataan di segala bidang, tidak hanya dalam persebaran penduduk, tetapi juga dalam persebaran kultur, dan konsumsi rokok. Pada *moment* inilah pasar rokok melebar dan dikonsumsi tidak hanya di pulau Jawa sebagai produsen, tetapi sudah mulai

merambah ke daerah tujuan transmigrasi, yakni sumatra, dan kalimantan, termasuk di kawasan Indonesia Timur.

Hingga lebih dua dasawarsa pasca runtuhnya rezim orde baru saat ini, industri rokok masih menjadi bagian penting dari perekonomian Indonesia. dari data yang dihimpun oleh *Kata Data News and Research*, terdapat kenaikan pendapatan cukai rokok dari tahun ke tahun dalam tujuh tahun terakhir. Dalam data tersebut dijelaskan bahwa semenjak tahun 2010, kontribusi cukai rokok sebesar 63,3 trilyun, hingga tahun 2017 naik menjadi 149,9 trilyun, atau naik 250% lebih dalam jangka waktu tujuh tahun terakhir. Hal ini menunjukkan bahwa potensi ekonomi dari cukai tembakau dan produk turunannya sangat potensial dalam meningkatkan laju pertumbuhan ekonomi nasional.

Melihat potensi yang besar yang ada dalam industri rokok, maka tidak mengherankan jika sampai saat ini pemerintah tidak bisa lepas dari ketergantungan industri rokok yang menyumbang devisa negara hingga 10 % dari APBN tersebut, satu nilai yang fantastis dalam era kebijakan “pembangunan”. Developmentalism (kebijakan pembangunan) adalah satu sistem yang dibangun atas ide negara-negara Eropa dan Amerika yang diterapkan di negara-negara dunia ketiga pasca perang dunia II. Kebijakan ini diambil untuk mendorong ketertinggalan secara ekonomi, sosial, politik dan budaya negara-negara bekas jajahan atau negara-negara di Selatan, agar lebih maju secara bertahap.(Shareia, 2015) Dalam kebijakan ini pertimbangan pertumbuhan ekonomi makro sangat diperhatikan oleh pelaku pasar di tingkat ekonomi global. (Pereira, 2012)

Efek dari aplikasi teori-teori pembangunan di berbagai negara adalah terdapat beberapa kemajuan dalam bidang ekonomi, terutama industrialisasi, dan sekaligus dampak negatif yang sangat bervariasi.(Escobar, 1995) Di Indonesia, selain menciptakan pertumbuhan ekonomi yang gradual, juga memunculkan kesenjangan yang luar biasa akibat dari gagalnya efek tetesan ke bawah (*trickle down effect*) yang diharapkan dari kebijakan tersebut. (Wahid, 1999) Maka kritik teori pembangunanpun menjadi sangat intensif dilakukan oleh para ilmuwan sosial yang mencoba menawarkan berbagai tawaran teori yang bisa memecah kebuntuan.

Di antara tawaran teori itu adalah tentang konsep pembangunan yang melebar dari hanya sekedar pembangunan di sektor ekonomi, menjadi pembangunan di sektor kemanusiaan.(Nussbaum, 1993) Pada konsep inilah rokok sebagai salah satu komoditi potensial di Indonesia menjadi sangat problematis. Di satu sisi rokok menjadi salah satu sumber devisa negara, tetapi di sisi yang lain rokok dianggap sebagai salah satu sebab gagalnya pembangunan manusia yang berkualitas, karena dianggap sebagai sumber dari segala penyakit degenerasi.

Selain persoalan ekonomi dan budaya, rokok juga menjadi perbincangan serius terkait dengan isu kesehatan dunia. Pada tahun 2003 badan kesehatan dunia WHO dengan beberapa anggotanya menandatangani kesepakatan pengendalian produk tembakau. Kesepakatan itu lalu dikenal dengan *Framework Convention on Tobacco Control (FCTC)*. Sepuluh tahun kemudian tepatnya tahun 2013, FCTC telah diratifikasi oleh 170 negara di dunia, dan Indonesia adalah satu-satunya negara di Asia yang belum meratifikasi konvensi tersebut. Lagi-lagi persoalan ekonomi menjadi salah satu alasannya karena 95% penghasilan pajak cukai berasal dari produk turunan tembakau (rokok), selain juga masalah kultur.

Terdapat dua persoalan yang dihadapi bangsa Indonesia di era reformasi, terkait dengan masalah rokok ini. pertama dari sisi internal rokok sudah menjadi bagian sejarah sosial bangsa Indonesia. Selain itu rokok juga mempunyai andil besar dalam pembangunan ekonomi bangsa. Kedua, dari sisi eksternal, ada tekanan internasional yang memaksa seluruh bangsa untuk mengendalikan konsumsi tembakau, baik atas nama kesehatan dunia atau kepentingan politik ekonomi.

Pada akhirnya teori pembangunan akan mengalami pergeseran wajah sesuai dengan kondisi sosiologis dan politis pada tiap negara. Dalam konteks Indonesia mutakhir, penanganan isu tentang rokok lebih sering menggunakan pendekatan *post-development*. (Escobar, 1995: 221) Isu lokalitas menjadi pertimbangan penting dalam menyelesaikan persoalan rokok yang juga menjadi perhatian internasional tersebut. Sekalipun tekanan internasional begitu kuat tentang pembatasan konsumsi produk tembakau lewat FCTC, tetapi sampai saat ini Indonesia belum meratifikasi konvensi tersebut. Satu hal yang tentunya sangat problematis bagi pemerintah Indonesia, karena secara ekonomis sangat menguntungkan, secara medis sangat merugikan, dan secara kultur terjadi banyak ketegangan, terutama terkait dengan ideologi keagamaan yang sekarang sedang berkembang.

Fatwa Rokok dan Otoritas Keagamaan di Indonesia.

Rokok dalam khazanah keilmuan Islam di Indonesia sudah menjadi isu penting semenjak negara ini belum merdeka. Kitab karya Syekh Ihsan Jampes berjudul “*Irsyad al Ikhwani li Bayani Syurbi al Qahwah wa al Dukhan*” menjelaskan bagaimana perdebatan hukum terjadi di kalangan ulama *salaf* tentang hukum rokok. (Jampes, 2013:04) Dengan syair ber irama *rajaz* dan sederhana beliau memberikan penjelasan secara bijak bagaimana menghukumi

rokok, dari yang *makruh*, *mubah*, hingga *haram*, dengan pendekatan historis antropologis. Diantara ulama yang menghalalkan rokok di situ disebutkan Abdul Ghani Al Nabliisy dalam kitab *al Shulhu Baina al Ikhwan fi Hukmi Ibahati al Dukhan*, Imam Mahmud ibn Salamah al Radhi dalam kitab *Ta'yidu al I'lan bi Adami Tahrimi al Dukhan*, dan ada beberapa ulama yang lain. Kitab klasik ini sekaligus dijadikan sebagai sumber legitimasi para kaum santri tradisional dalam memperlakukan rokok.

Di kalangan masyarakat Islam Indonesia hukum tentang merokok sudah sangat jelas. Majelis Ulama Indonesia (MUI) dan Majelis Tarjih dan Tajdid (MTT) Muhammadiyah cenderung mengharamkan rokok, meskipun tidak serta merta fatwa tersebut mengurangi jumlah pengkonsumsi rokok. Persoalan sebenarnya bukan pada hukum halal atau haram, tetapi bagaimana norma agama Islam tersebut mempunyai nilai koersif. Impresi pada nilai koersif inilah yang sekarang menjadi isu aktual dalam ketegangan ideologi di Indonesia, termasuk memasukkan pandangan normatif Islam (*shar'i*) ke dalam hukum positif.

Pada dasarnya fatwa adalah praktek etika yang dalam bahasa antropologi lahir dan berkembang seiring dengan proses sosial. Keberadaan etika tidak bisa dikendalikan dan ditekan oleh siapapun, karena etika dibangun di atas agen otoritas yang *include* dalam proses yang berjalan secara alami.(Agrama, 2010: 2-18) Dalam prakteknya etika yang dipraktekkan dalam bentuk fatwa selalu dikendalikan oleh otoritas yang terlembagakan. Dalam posisi inilah fatwa menjadi koersif dan nyaris menyamai hukum positif. Dalam pandangan Hussein Ali Agrama, memaknai otoritas dan lembaga hukum adalah satu hal yang sangat problematis, karena otoritas yang bermakna kewenangan yang di dapat secara alami dalam proses sosial, senyatanya adalah dibangun dalam relasi kuasa para agen otoritas. Dalam kondisi seperti ini sangat sulit membedakan lembaga hukum dan otoritas yang sama-sama koersif.

Meskipun secara formal lembaga fatwa tidak mempunyai wewenang yang bersifat koersif, akan tetapi secara kultural fatwa masih dijadikan sebagai sumber legitimasi dalam masyarakat muslim. Perdebatan mengenai siapa yang memegang hak atas otoritas keagamaan, dan bagaimana otoritas tersebut dipertahankan bahkan dilestarikan menjadi penting untuk diperbincangkan. Di dalam menjelaskan ulama dan otoritas keagamaan di era kontemporer, Muhammad Qasim Zaman mengatakan bahwa otoritas keagamaan yang dimiliki oleh ulama dibangun secara terus menerus melalui proses sosial, terutama melalui lembaga-lembaga pengkaderan ulama atau lembaga pendidikan. Selain instrumen lembaga pengkaderan, perkembangan teknologi media juga menjadi instrumen penting dalam

menegaskan identitas keulamaan dan sekaligus otoritas keagamaan yang dimilikinya. Penegasan identitas keulamaan tersebut disampaikan melalui pendapat-pendapat keagamaan baik secara lisan maupun tulisan melalui media yang sedang berkembang. (Zaman, 2010)

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Hal ini menjadi problematis ketika publik Islam tidak dalam satu ideologi yang sama, atau sudah terpolarisasi menjadi berbagai macam faham. Di Indonesia otoritas keagamaan tidak bisa dialamatkan pada satu figur dengan label ideologi tertentu, apalagi kalau sudah berkaitan dengan persoalan politik atau hal-hal yang bersifat sensitif. Ilustrasi Nico Kaptein dalam merekam fatwa di Indonesia, secara jelas menggambarkan problematika tersebut. Kaptein juga menjelaskan bagaimana otoritas keagamaan itu dikonstruksi melalui berbagai instrumen dan simbol keagamaan dan identitas kearaban. (Kaptein, 2004:11-12) Dalam hal ini lagi-lagi teknologi media juga menjadi faktor penting dalam mengkonstruksi otoritas keagamaan. Pada tahap inilah fatwa tentang rokok kemudian menjadi sebuah arena “pertarungan” dalam memperebutkan otoritas keagamaan, karena di sana terdapat agen-agen budaya atau struktur dominan yang mendukung eksistensi ulama sebagai elit agama.

Pada masa pemerintahan orde baru, relasi ulama dan pemerintah (negara) dibangun dalam pola hubungan dominatif dimana lembaga ulama dibentuk untuk mendukung kebijakan-kebijakan pemerintah yang terkait dengan persoalan keagamaan Islam. Selain itu keberadaan Ulama yang terlembagakan menjadikan kontrol pemerintah melalui struktur keulamaan yang dalam masyarakat Islam Indonesia yang mayoritas, mempunyai posisi yang sangat strategis. Lahirnya lembaga Majelis Ulama Indonesia (MUI) pada tanggal 26 Juli 1975 yang di bentuk oleh pemerintah orde baru adalah sebuah strategi politik korporatisme untuk mengontrol gerakan politik yang berbasis pada agama Islam. (Porter, 2002) Sampai pada tahap ini otoritas keagamaan para ulama tidak bisa dilepaskan dari kekuasaan, baik melalui sumber daya politik, maupun melalui produksi wacana keagamaan.

Di era reformasi, dimana polarisasi Ulama sudah terjadi sedemikian massifnya, institusi ulama tidak lagi hanya terpusat pada lembaga bentukan pemerintah yang didukung oleh kekuasaan, akan tetapi juga ulama-ulama yang lahir dari proses politik, maupun dari proses kebudayaan. Apa yang sudah di bahas pada poin di atas setidaknya memberi gambaran bagaimana otoritas keagamaan menjadi wacana penting dimana ulama dari berbagai kalangan terlibat di dalamnya. Pada posisi inilah praktik fatwa rokok di Indonesia di letakkan, dimana sumber daya (*modality*) yang dimiliki oleh ulama sebagai pemegang otoritas keagamaan mempunyai peran penting dalam memproduksi fatwa yang

efektif.

Kesimpulan

Sebagai gambaran akhir dari paper ini, poin penting yang harus digaris bawahi adalah munculnya fatwa rokok di Indonesia, bukanlah sesuatu yang tiba-tiba, dan bahkan terus berhenti, tetapi ada diskursus yang rumit, bagaimana fatwa tersebut diproduksi, dan bagaimana produk fatwa tersebut dinegosiasikan dalam ranah sosial. Selain itu fatwa tentang rokok, baik itu *haram*, *halal*, atau *makruh*, masih terus berkembang seiring dengan dinamika pertarungan wacana di arena kehidupan masyarakat Indonesia.

Ulama sebagai pemegang otoritas fatwa tentu saja bukan satu-satunya agen sosial yang memproduksi wacana untuk memutlakkan fatwanya, tetapi ulama harus berbenturan dengan kebijakan yang diambil oleh negara dalam mengelola sumber daya sosial, ekonomi, dan politik. Pada saat yang lain efektifitas kontrol kekuasaan yang dimiliki oleh fatwa juga harus berbenturan dengan modal ekonomi yang dimiliki oleh para produsen rokok, dan yang paling krusial adalah bagaimana ulama sebagai agen sosial menyelesaikan problem identitas yang selalu melekat di tubuh mereka.

Ulama sebagai produsen fatwa rokok di Indonesia mau tidak mau harus berurusan dengan kekuasaan dan modal politik kebijakan pembangunan yang berkembang di Indonesia. Ulama juga harus bersinggungan dengan budaya yang membingkai mereka, wacana yang mereka produksi, dan tentu saja, kebudayaan yang datang dari luar atau trans- nasional. Pada posisi inilah modalitas ulama dinegosiasikan dan dikontestasikan dalam arena praktik fatwa rokok.

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**3. Bukti Konfirmasi Submit Revisi Pertama,
Respon kepada Reviewer,
dan Artikel yang Diresubmit
(03 Mei 2020)**

Cigarette fatwas, contestation of religious authority and politics in Indonesia

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Abstract

The issuance of non-binding advisory opinions (*fatwas*) is always followed by the presence of new issues related to the implementation of the fatwa. The same is true of the smoking ruling was issued by the Council of Indonesian Scholars (MUI) at the Conference in Padang Panjang in 2009. More than a decade of debate on this subject is still a polemic in the community. Although the fatwa in Indonesia does not have the power of binding, for Muslims, the idea of religious morality remains a consideration in daily life.

Through a literature study, this study will reveal how the problematic relations between various social agencies related to the issuance of the cigarette fatwa. Discourse debate in the study of fiqh will begin the explanation of this study, followed by development policies in Indonesia related to the problem of cigarettes, and end with the position of the ulama as the holder of religious authority in the matter of smoking.

This study illustrates that the practice of fatwas will be effective when ulama as religious authority holders, with their "capital", can negotiate and contest with various social agents in the cigarette fatwa arena.

Abstraksi

Keluarnya fatwa hukum selalu diikuti oleh hadirnya persoalan baru terkait dengan pelaksanaan fatwa tersebut. Begitu juga fatwa rokok yang dikeluarkan oleh Majelis Ulama Indonesia dalam sidang *ijtima' Ulama* di Padang Panjang tahun 2009 silam. Lebih dari satu dekade perdebatan mengenai hal ini masih menjadi polemic di masyarakat. Meskipun fatwa di Indonesia tidak mempunyai kekuatan mengikat, tetapi bagi ummat muslim bayangan tentang moral agama tetap menjadi pertimbangan dalam menjalani kehidupan sehari-hari.

Melalui studi literatur, kajian ini akan mengungkap bagaimana problematika relasi antar berbagai agen sosial terkait dengan keluarnya fatwa rokok tersebut. Perdebatan wacana dalam kajian fiqh akan mengawali penjelasan kajian ini, disusul dengan kebijakan pembangunan di Indonesia terkait dengan problematika rokok, dan diakhiri dengan posisi ulama sebagai pemegang otoritas keagamaan dalam masalah rokok.

Kajian ini memberikan gambaran bahwa praktik fatwa akan efektif ketika ulama sebagai pemegang otoritas keagamaan, dengan “modal” yang mereka miliki, mampu bernegosiasi dan berkontestasi dengan berbagai agen sosial dalam arena fatwa rokok.

Kata kunci: Fatwa Rokok, Modal, Praktik Fatwa, Ulama

Introduction

Since being issued of the *fatwa* on smoking by the Indonesian Council of Ulama (MUI) in 2009, the practice of smoking especially in Indonesia as a Muslim-majority country, has been a hot topic for discussion. No half-hearted,

the issue of smoking has entered the area of economic, political, and debate in culture and religion. There are at least three important issues related to cigarette fatwas and smoking practice problems in the Indonesian Muslim community. The most important issue to be discussed is the long-standing cigarette *fatwa* discourse among *salaf* scholars, at least this is reflected in some classical and modern *fiqh* literature.

Related to the discourse of cigarette *fatwa* in the *fiqh* literature is how the polarization of the Islamic movement (Islamism) in Indonesia, also took part in the practice of cigarette *fatwa*. The moderate to radical character in the movement positions of them establish to the degree of *mubah* to *haram* against cigarettes. A crucial issue in the practice of cigarette fatwa is how political forces participate in taking a role in the form of policies and laws, so that the contents of fatwas become binding forces. The contestation of various social agents about the *fatwa* of cigarettes is increasingly attracting attention, because it takes place on the foundation of the smoking culture of the Muslim community that has been established since the Republic of Indonesia was not yet born.

The viscosity of smoking culture among Indonesian people is at least reflected in the expression of Pamoedya Ananta Tour in an introduction in the book 'Kretek, The Culture and Haritage of Indonesia's Clove Cigarettes', "people smoke because they feel something is missing when they don't, so too when cigarettes are not seasoned with cloves, something is missing and tasteless" (Hanusz, 2011: XVI). Pramoeodya Ananta Toer's words quote shows that smoking is an important part of Indonesian people's lives, because smoking is a taste, and taste is an important element of culture. Like taste, according to Pram, clove cigarettes will make life bland.

Cigarettes as part of culture have a history as well as social functions such as the function of togetherness and rite (Hanusz, 2011), coloring the world of science and politics (Brandt, 2007: 5-7), or crossing pre-modern human history in Europe and America (Burns, 2007: 4). So it is very difficult to separate the story of human life with the culture of smoking with various rites and problems, because smoking is part of their cultural identity.

The presence of a fatwa on cigarettes issued by an ulama agreement under the banner of Council of Indonesian Scholars (MUI) on January 26, 2009 in Padang Panjang, became a new episode in the cigarette debate with a long-established tradition in Indonesia. Although the fatwa provides forbidden prohibited laws, but on March 6, 2010 the Majelis Tarjih and Tajdid (MTT) Muhammadiyah explicitly proclaimed haram absolutely. Long before some of the above issuance, the Islamic Association (PERSIS) on May 10, 1987 in Bandung, explicitly declared a *makruh* on

smoking. This becomes clear how the polarization of ulama in cigarette fatwa occurs in Indonesia, because in other poles Nahdlatul Ulama is still determined that the law of smoking is between *mubah*, *makruh*, until *haram*, depending on illat (the cause of legal determination) in cigarettes. The winding road of the cigarette legal debate is closely related to how the process of fatwa production with various aspects of legal considerations, including the socio-anthropological aspects of Indonesian society.

In the context of Islamic law about issue of cigarettes, the Indonesian Ulama Council (MUI) has a very strategic position on this, but instead of providing a solution to the debate, the MUI fatwa on cigarettes provides a new color of discourse on cigarettes, because it turns out in the legal stipulation text, MUI stipulates the prohibited law against cigarettes, albeit limitedly. This is indicated by recommendations to the government and the House of Representatives (DPR) to make a law limiting the movement of the cigarette industry. Government Regulation (PP) No. 109 of 2012 concerning safeguarding material containing addictive substances in the form of tobacco for health, is not a coincidence, because besides adopting many Framework Convention on Tobacco Control (FCTC), it is also in harmony with the contents of the MUI *Fatwa* on cigarettes.

Even though formally the State of Indonesia is not an Islamic State, *fatwa* is a form of value system that in Muslim societies has legal authority in regulating social and religious life, as well as manifesting Islamic identity in a pluralistic society. In the realm of Islamic life, fatwas in several Muslim countries are even used as a reference point for norms that are adhered by all Muslims. Fatwa is not only a moral appeal, but also has political and juridical instruments to be manifested by Muslims (Peterson, 1997). The dialectic between ideality and reality reasoning becomes an important issue in the matter of the determination of law (Arif, 2018), because on one side of the norm with its assertiveness presupposes the ideal order, while the flexible reality goes according to local logic and local wisdom.

In Indonesia, *Fatwa* can be used as an affirmation of ideological identity, even politically related to cigarette *fatwa* which is held as a source of legitimacy forbidding or halting cigarettes. *Fatwa* products are very close to the political, economic, and cultural interests of the communities where the fatwas are produced (Saifuddin, 2014: 33-52), so fatwa products are strongly influenced by how scholars as holders of religious authority relate to various institutions and social agents in society (Kaptein, 2004: 17). So the cigarette *fatwa* becomes even more complicated

when the dynamics of Islamic diversity in Indonesia are characterized by tensions between local Muslims who tend to be moderate with transnational Islam that tends to be radical (Wahid, 2009: 20), involved in the process of producing fatwas.

If the fatwa is considered as an arena of tension between various agents and interests (economic politics, culture, ideology), then as a holder of religious authority, what is the position of the ulama in Indonesia? In detail the formulation of the problem in this study is first, how does the fatwa as a representation of ulama negotiate with the political economy policies related to the cigarette industry in Indonesia ?. Second, how about cigarette fatwa especially MUI fatwa as a representation of ulama negotiating with Islamic ideological agents in Indonesia? Third, how does the cigarette fatwa accommodate the interests of the cigarette industry (entrepreneur) in Indonesia?

Modalities and social practices in cigarette fatwas: a theoretical study

The problems and dynamics in producing cigarette *fatwa* in Indonesia is one of the starting points for the fatwa being produced, and how the fatwa has implications for social, cultural and political life in a country. In a variety of literature, a fatwa was born departing from phenomena in society, then there is a relationship both negotiation and contestation between various agents, structures, and social systems. In the fatwa literature there are at least two important elements, namely problems that are born from social processes that are solved through the process of legal settlement (*istifta* ') (Masoud, 2009: 341-66). The other part is the existence of ulama as the giver of *fatwa* (*mufti*), both personally and institutionally. The effectiveness of a *fatwa* depends greatly on how a *fatwa* is produced, and the extent of the mufti's capacity in the practice of the fatwa.

Sociologically, the capacity of the mufti both personal and institutional has an important role in weighing the effectiveness of the *fatwa*, because in the Islamic religious domain, the ulama is the authority holder. The religious authority possessed by the *ulama* will be more effective when it is supported by the practices and strategies of power that are united in that authority. In this case the resources possessed by *mufti* become an important factor in the process of negotiation and contestation with various agents involved around the production of fatwas. The mufti resources are in the form of charisma, Islamic scholarship, position in social structure, social networks, and community trust in the existence of *mufti*. In line with Pierre Bourdieu's view, that resources owned (capitals) *Mufti* is not always material

(economic), but in many ways capital can be in the form of social, cultural, even symbolic capital (Bourdieu, 1998: 19-20).

By using Boudieu's perspective like this actually the practice of fatwa can be explained as well as other social practices where capital (social, economic, cultural, symbolic) is operated in an *arena* (Field) to be converted into dominant power (Bourdieu, 1998). In a more homogeneous field (champ), the capital is also contested in the context of social disposition, which ultimately also dominates and mastery of discourse (Haryatmoko, 2016: 50). The existence of the Indonesian Ulema Council as a mufti in the fatwa of the cigarette, according to this perspective, plays its function as part of social agents contesting with other agents, such as government agencies, cigarette industry players, cigarette care communities that grow in the midst of society , and of course the plurality of cigarette fatwas issued by various Islamic social organizations in Indonesia.

Capital accumulation and maintaining the dominance of scholars in the contemporary era are often carried out through *ulama* educational institutions. In addition to the institution of the cadre institution, the development of media technology has also become an important instrument in asserting the identity of the *ulama* and at the same time its religious authority. The affirmation of the identity of the *ulama* was conveyed through religious opinions both verbally and in writing through the developing media (Zaman, 2010: 38-39).

The effectiveness of MUT's religious authority in this perspective is not only determined by the accumulation of various capital owned by *ulama*, but also determined by how the capital is converted into power that is can dominate and influence people's behavior in a certain time and place (Bourdieu, 1996: 125). The existence of social agents as described above, forms new spaces where religious law (*fatwa*) is contested in the “religious public sphere” (Eickelman dan Anderson, 2003:1-2). In another views even Bourdieu, as understood by David Gartman, likens this social practice like a market where the dominant group always distorts and reproduces capital by supplying lifestyles, meeting consumer demands, to maintain its dominance (Gartman, 2002: 260).

It is in this assumption that the third dimension of the fatwa appears, in addition to the *istifta* and *mufti*, namely the implementation of the *fatwa*. In this dimension, the power of resources (capiatal) of the *mufti* is confronted with the social space (field), where social disposition and reposition are created, the space where the process of dominating and being dominated is practiced almost as natural, so that the compliance of *fatwa* seekers (*mustafti*) to the fatwa

issued by the mufti, become the main choice. Not only that, even the *fatwa* issued by the *mufti*-flowed to the rhythm created by dominant groups or social agents. This is what Bourdieu called "habitus" (Bourdieu, 1998: 25).

The implementation of *fatwa* as a social practice can thus be explained by linking between social agents involved in *fatwa* production, with managing their resources, how they fight for dominance, so as to gain a dominant position, linked to the arena (field) where the fatwa was implemented. The assumption of this theory refers to the logic of social practice developed by Bourdieu that social practice is the relation between habitus, capital and arena (Bourdieu, 1996: 101). This social practice is methodologically traceable through examining the involvement of each social agent in the fatwa, the resources they own, and how these resources are operated in a particular social space.

By utilizing the literature study supported by some secondary data, this study at least found three important discourses that will be discussed in constructing and developing the concepts in this study, namely cigarette discourse in fiqh literature, discourse on developmentalism in Indonesia as the background of Government policy in controlling consumption tobacco, and fatwa discourse as a representation of scholars as holders of religious authority.

Cigarette Discourse in Fiqh Literature

Two centuries after the discovery of the American continent by Christoper Colombus, where tobacco consumption has been found, tobacco has only entered the Arab region through Sudan, which is around the 11th century *Hijriyah*. From Sudan then spread to the western (*Magribi*) and eastern (mashriqi) regions of the Arabian peninsula (Ibnu Al Shiddiq, 1985: 5-6). The entry of tobacco in the Arabian peninsula around the XI century *Hijriyah* shows that the emergence of tobacco or cigarettes legal, occurred long after the *Tashri* ' era during the Umayyad dynasty, where Islamic law was discussed and codified according to the Islamic school of law (*madhab*) (Surjaman, 1991: vi-vii). It also shows that the law regarding tobacco products has not been explicitly discussed (*şarih*) in the main sources of Islamic law (*Al-Qur'an and Sunnah*).

The absence of an *şarih* source on cigarette law in the sources of Islamic teachings (*Al-Qur'an and Sunnah*) makes cigarette law a debate (*ikhtilaf*) among fiqh scholars. There are three legal provisions for cigarettes, namely

mubah, *haram*, and *makruh*, each of which has its own reasons, both based on analogy (*qiyas*) with the *naqli* argument (*dalil naqly*) and based on consideration of the sociocultural logic underlying it. For scholars who set unclean laws against cigarettes, there are at least four underlying reasons. First, health reasons are based on authoritative recommendations from medical experts. If indeed the medical authorities say that smoking endangers health, then the law of cigarettes is *haram* (Jampes, 2013: 09).

Quoted in the book of Hasyiyah Shaykh Syihabuddin Ahmad ibn Ahmad ibn Salamah al Qalyubi, an ulama from the Shafi'i school, that among the goods is not unclean, but should not be consumed (*haram*) is a cigarette, because it can bring various diseases to the body and endanger health (Alqalyuby, 1956: 69). This opinion is also supported by Sheikh Ibrahim Al Laqani Al Maliki, that among the items that cause loss of mind when consumed, are cigarettes. These two opinions provide answers which conclude that any food or drink that poses a danger to the health of the body and removes the mind, is forbidden to be consumed (*haram*), as conveyed by Sheikh Sulaiman ibn Muhammad ibn Umar Al Bujairamy (Al Bujairami, 1996: 233). The reason for removing mind is also the second reason why cigarettes are punished forbidden, based on the hadith from Umm Salamah that "The Messenger of Allah forbids consuming intoxicating foods or drinks and removes the mind based on the recommendations of health experts" (Jampes, 2013:10).

The third reason, which underlies the *haram* on cigarettes is because it smells unpleasant or disliked by many people. This law is based on *qiyas* about the smell of onions, both garlic and onion. The smell of someone who smokes is no better than the scent of onions which in a hadith is mentioned as one of the scents that is not liked by the Messenger of Allah. The fourth reason, is that smoking results in economic waste. Among the opinions stating this reason is Shaykh Mahmud Shaltut in the book "Al-Fatawa", which states that "if the money spent to buy cigarettes is more useful and useful for other purposes then it is not permitted (*adamu ibahatihi*) to buy cigarettes and consume them" (Shaltut, 2001: 384).

If seen from the arguments built by the scholars who forbid smoking above, then it can be found two things that are a source of debate. First, the unlawful legal basis for cigarettes above uses the *qiyas* method, where the determination of the law is based on the common cause (*illat*) (Muhtarom, 2015: 03) between the main law (*asli*) with the law of the case that came later (*far 'i*) (Nashirudin, 2015: 21-26). The process of finding the similarity of *illat* to

determine the law (*ta'lilu al ahkam*) can be seen from the comparison between the smell of cigarettes and the smell of onions. The second argument, which was built by the scholars who forbid smoking is a consideration of the purpose of the enactment of the law (*maqashid al Shari'ah*). This *maslahah* approach is seen as more flexible in responding to the evolving social dynamics. This can be seen in the fourth reason forbidding cigarettes in the book of Al Fatawa by Shaykh Mahmud Shaltut as described above.

The two arguments above open up opportunities to present other laws besides illicit laws on cigarettes, along with social dynamics, and socio-cultural conditions in various regions. At least Sheikh Abdul Hayyi ibn Muhammad Ibn Al Şidiq in the book "Hukmu al Dukhan wa al Thabah" explains several things related to the cigarette law that tends to change. The main basis used to punish the *mubah* for cigarettes is the absence of an explicit argument about *halal* or *haram* for cigarettes. The scholars of the "*Maghribi*" region tend to impose unlawful laws on cigarettes, but the scholars of "*Mashriqi*" tend to justify smoking, even if women make cigarettes as part of their daily needs, husbands are obliged to give because it is part of their living (Ibnu Al Shiddiq, 1985: 10).

The first explanation related to this is that if the reason is unlawful for cigarettes because smoking is an item that is harmful to health, then the argument is refuted by the fact that there are many active smokers who are actually healthy and live longer. If there is research which then states that smoking is very dangerous for the health of the sample studied, then the methodological research cannot be applied in general. Second, goods dangerous to bodily health that result in being punished *haram* consists of two kinds, namely the danger of the substance of the item (*li dhatihi*) and the danger from arising from outside the item (*li gairi dhatihi*). Cigarettes are goods made from tobacco which are in substance a *halal* and clean plant, even if consumed by people in certain conditions can be dangerous. Even so the danger of cigarettes for people in a casuistic manner can not be used as an absolutely unlawful legal reason for cigarettes.

In a similar explanation, M. Arfin Hamid explained that "cigarette" is one thing, and "smoking" is a different thing, although it is interconnected (Hamid, 2017: 46-54). Cigarette is substantially *mubah* (*li dhatihi*), but smoking can be *haram* (*li gairi dhatihi*) when it is done by people who are vulnerable to cigarette smoke. This position forbids smoking absolutely as well as wine (*khamr*) being irrelevant.

The third explanation, related to the weak legal argumentation forbidden by cigarettes for reasons that it smells

unpleasant or leads to dirty acts (*khaba'ith*), is the *qiyas* method used to equate cigarettes with onions. Comparing cigarettes with onions that are considered dirty and smell according to Abdul Hayyi ibn Al Shiddiq is not quite right, because the Prophet Muhammad himself only hated the smell, and not forbid it. When the hadith came about the Prophet's dislike of the smell of onions, the Muslim community was busy forbidding the onions, but after the Prophet learned of the growing opinion, Rasulullah asserted that, " I should not forbid something that is *halal* by Allah, I just do not like the smell "(Ibnu Al Shiddiq, 1985: 56). Equating cigarettes with onions indirectly also punish cigarettes into *mubah* (*li dhatihi*).

One thing that is important to note is that dirty acts that lead to *haram* cannot be seen from one particular culture. It may be that in one area cigarettes are considered something dirty, but in other areas smoking is considered not something dirty and disgusting. This is because the concept of clean and dirty is part of cultural construction, and is related to social structure (Douglas, 1966: viii). So according to this argument, the law of *makruh* against cigarettes becomes not absolute, if what is made *causa (illat)* is a dirty issue.

From the cigarette legal debate in the study of jurisprudence above, the law "cigarette" and "smoking", is strongly influenced by social facts where the *fatwa* was produced. The debate over the discourse thus developed, not just *halal*, *haram*, and *makruh* against cigarettes and smoking, but in the context of what kind of community the fatwa was applied. So in this study a sociological approach, especially related to economic, social and political structures, becomes very important to do. The relationship between sociological facts, established Islamic legal norms, and political reality, will greatly determine the effectiveness of a *fatwa*.

Cigarettes in Development Policy in Indonesia

In Indonesia, cigarettes have become an important part of people's lives. Since pre-independence times, cigarettes have been used as friends in chatting, socializing, and even as a sweetener in intensive conversation to prepare the nation's post-independence form. After Indonesia's independence, cigarettes are also one of the dominant commodities in the wheels of Indonesia's economy. Entering the new order era, the momentum of the development

of cigarettes is increasingly visible, supported by government policies and opportunities for industrialization in third world countries. Mark Hanusz noted that there were at least three important moments in the development of the cigarette industry in the new order era (Hanusz, 2011: 29). First, in the 1970s the world oil price experienced a very significant increase as a result of the formation of a cartel of oil exporting countries incorporated in OPEC.

Indonesia as an oil producing country also gets a "blessing" from the booming oil prices. The effect of all was the increase in the level of the Indonesian economy, which macro influence the economic growth rate of the country and political stability. This encourages countries in the world to begin to look at Indonesia as one of the third world countries to be reckoned with in the Southeast Asian region. In such a situation many foreign investors entered Indonesia, which influenced the process of industrialization in various sectors. Slowly but surely there will be a shift in the community's production system from the primary sector (agriculture) to the secondary sector (industry).

Second, the process of industrialization that occurred in the era of the 1970s was very influential on the growth of the cigarette industry in the country, especially on the island of Java. On this island, especially Central Java and East Java, cigarette factories have been established which produce cigarettes with mechanical power. The effect of the industrialization of cigarettes was that the quality and quantity of cigarette production was increasing. Cigarette products were not only able to play in the local market, but cigarette production in Indonesia was also able to compete internationally.

Third, the policy of the New Order government to promote transmigration made equity in all fields, not only in population distribution, but also in the distribution of culture and cigarette consumption. At this moment the cigarette market was widened and consumed not only in Java as a producer, but has begun to spread to the transmigration destinations, namely Sumatra and Kalimantan, including in Eastern Indonesia.

Until more than two decades after the collapse of the current New Order regime, the cigarette industry is still an important part of the Indonesian economy. from data compiled by Kata Data News and Research, there has been an increase in cigarette excise revenue from year to year in the past seven years. In the data it is explained that since 2010, the contribution of cigarette excise tax amounted to 63.3 trillion, until 2017 it rose to 149.9 trillion, or an increase of 250% over the past seven years. This shows that the economic potential of tobacco excise and its derivatives is very potential in increasing the rate of national economic growth.

Seeing the great potential that exists in the cigarette industry, it is not surprising that until now the government cannot escape the dependence of the cigarette industry which contributes to the country's foreign exchange up to 10% of the state budget, a fantastic value in the era of "development" policy. Developmentalism (development policy) is a system that is built on the ideas of European and American countries that are implemented in third world countries after World War II. This policy was taken to encourage economic, social, political and cultural underdevelopment in the countries of the former colonies or countries in the South, so that they could progress gradually (Shareia, 2015: 78). In this policy consideration of macroeconomic growth is highly considered by market players at the global economic level (Pereira 2012: 347-66).

The effect of the application of development theories in various countries was that there was some progress in the economic field, especially industrialization, and at the same time a very varied negative impact (Escobar, 1995: 04). In Indonesia, in addition to creating gradual economic growth, it also raises extraordinary gaps due to the failure of the trickle down effect expected from the policy (H. Wahid, 1999: 39). Then the criticism of development theory becomes very intensive carried out by social scientists who try to offer various theories that can break the deadlock.

Among the proposals of the theory is the concept of development which widens from merely development in the economic sector, to development in the humanitarian sector (Nussbaum dan Sen, 1993: 02). It is on this concept that smoking as one of the potential commodities in Indonesia becomes very problematic. On the one hand smoking is one of the sources of foreign exchange, but on the other hand smoking is considered as one of the causes of the failure of quality human development, because it is considered as a source of all degenerative diseases.

In addition to economic and cultural issues, smoking is also a serious conversation related to world health issues. In 2003 the WHO world health agency with several of its members signed a tobacco product control agreement. The agreement was then known as the Framework Convention on Tobacco Control (FCTC). Ten years later in 2013, FCTC was ratified by 170 countries in the world, and Indonesia was the only country in Asia that had not ratified the convention. Again, the economic problem is one of the reasons because 95% of excise tax revenue comes from tobacco-derived products (cigarettes), as well as cultural issues.

There are two problems faced by the Indonesian people in the reform era, related to this cigarette problem. First, the internal side of cigarettes has become part of the social history of the Indonesian people. Over all cigarettes

also have a big role in the nation's economic development. Second, from the external side, there is international pressure that forces the entire nation to control tobacco consumption, either in the name of world health or economic political interests.

In the end the development theory will experience a face shift in accordance with the sociological and political conditions in each country. In the current Indonesian context, handling issues about smoking more often uses a post-development approach (Escobar, 1995). The issue of locality is an important consideration in solving the problem of smoking which is also an international concern. Even though international pressure is so strong about limiting the consumption of tobacco products through the FCTC, Indonesia has yet to ratify the convention. One thing that is certainly very problematic for the Indonesian government, because it is economically very profitable, medically very detrimental, and culturally there is a lot of tension, especially related to religious ideologies that are now developing.

Cigarette Fatwa and Religious Authority in Indonesia.

Cigarettes in the treasure of Islamic scientific in Indonesia have been an important issue since the country was not yet independent. Sheikh Ihsan Jampes' book entitled "*Irshadu al ikhwan fi bayani Syurbi al Qahwah wa al Dukhan*" explains how the legal debate occurred among the scholars about the law of cigarettes (Jampes, 2013). With a *rajaz* rhythm he gives a clever explanation of why he smokes cigarettes, from shabby, transformed, to illegal, with an anthropological historical approach. Among the scholars who legalized cigarettes there is mentioned by Abdul Ghani Al Nablisy in the book of *Shulhu Baina al Ikhwan fi Hukmi Ibahati al Dukhan*, Imam Mahmud ibn Salamah al Radhi in the book *Ta'yidu al I'lan bi Adami Tahrimi al Dukhan*, and there are several scholars others. This classic book served as a source of legitimacy for traditional students in the treatment of cigarettes.

In the Indonesian Muslim community the law on smoking is very clear. Majelis Ulama Indonesia (MUI) and Majelis Tarjih and Tajdid (MTT) Muhammadiyah tend to forbid smoking, although this does not necessarily reduce the number of cigarette consumers. The real issue is not *halal* or *haram*, but how Islamic norms have a coercive value. This impression of coercive values is now an actual issue in ideological tensions in Indonesia, including the inclusion of normative Islamic (*shar'i*) views in positive law.

Basically fatwas are ethical practices which in the language of anthropology are born and develop along with

social processes. The existence of ethics cannot be controlled and suppressed by anyone, because ethics is built on authority agents that include natural processes (Agrama, 2010: 02-18). In practice ethics that are practiced in the form of fatwas are always controlled by institutionalized authorities. In this position the *fatwa* became coercive and almost equaled the positive law. In the view of Hussein Ali Agrama, interpreting authority and legal institutions is a very problematic thing, because authority which means authority that can be experienced naturally in social processes, is actually built in the power relations of authority agents. Under these conditions it is very difficult to distinguish between legal institutions and equally coercive authorities.

Even though formally fatwa institutions do not have coercive authority, culturally fatwas are still used as a source of legitimacy in Muslim societies. The debate over who holds the right to religious authority, and how it is maintained or even preserved is important to be discussed. In explaining religious scholars and authority in the contemporary era, Muhammad Qasim Zaman said that the religious authority possessed by ulama was built continuously through social processes, especially through the cadre institutions or educational institutions. In addition to the institution of the cadre institution, the development of media technology has also become an important instrument in affirming the religious identity and religious authority. The affirmation of religious identity is conveyed through religious opinions both orally and in writing through developing media (Zaman, 2010: 56).

This becomes problematic when the Islamic public is not in the same ideology, or has been polarized into various kinds of ideas. In Indonesia, religious authority cannot be addressed to a figure with a certain ideological label, especially if it is related to political issues or sensitive matters. Nico Kaptein's illustration in recording the *fatwa* in Indonesia clearly illustrates this problem. Kaptein also explained how religious authority was constructed through various religious instruments and symbols and religious identity (Kaptein, 2004: 11-12). In this case, media technology is also an important factor in constructing religious authority. It is at this stage that the *fatwa* on smoking becomes an arena of "fighting" to get religious authority, because there are cultural agents or dominant structures that support the existence of the ulema as religious elites.

During the reign of the New Order, relations between *ulama* and the government (state) were built in a dominative pattern of relations where *ulama* institutions were formed to support government policies related to Islamic religious issues. In addition, the existence of institutionalized *ulama* makes government control through the

structure of the ulema which in the majority of Indonesian Islamic society, has a very strategic position. The birth of the Indonesian Ulema Council (MUI) on July 26, 1975, which was formed by the New Order government was a political strategy of “corporatism” to control political movements based on Islam (Porter, 2002: 02). At this stage the religious authority of the ulema cannot be released from power, either through political resources, or through the production of religious discourse.

In the reform era, where Ulema's polarization has been so massive, ulama institutions are no longer centered only on government-formed institutions supported by power, but also clerics born of the political process, as well as from the cultural process. What has been discussed in the above point at least gives an idea of how religious authority becomes an important discourse in which scholars from various circles are involved in it. It is in this position that the practice of cigarette fatwa in Indonesia is placed, where the resources (modality) possessed by ulemas as religious authority holders have an important role in producing effective fatwas.

Conclusion

As a final illustration of this paper, an important point that must be underlined is the emergence of cigarette *fatwa* in Indonesia, not suddenly, and even stopping, but there is a complicated discourse, how the *fatwa* is produced, and how the *fatwa* product is negotiated in social realm. Besides the *fatwa* about smoking, be it *haram*, *halal*, or *makruh*, is still developing along with the dynamics of discourse battle in the arena of Indonesian people's life.

Ulama as the authority holder of the *fatwa* is certainly not the only social agent producing discourse to enact their *fatwa*, but the *ulama* must clash with policies adopted by the state in managing social, economic and political resources. At other times the effectiveness of the control of power held by the *fatwa*, must also clash with the economic capital owned by cigarette manufacturers, and the most crucial thing is how scholars as social agents solve the identity problem that is always inherent in their bodies.

Ulama as fatwa producers in Indonesia inevitably have to deal with the power and political capital of development policies in Indonesia. Ulema must also intersect with the culture that frames them, the discourse they produce, and of course, cultures that come from outside or transnational. In this position the modality of the ulema was negotiated and contested in the arena of the practice of fatwa on cigarettes

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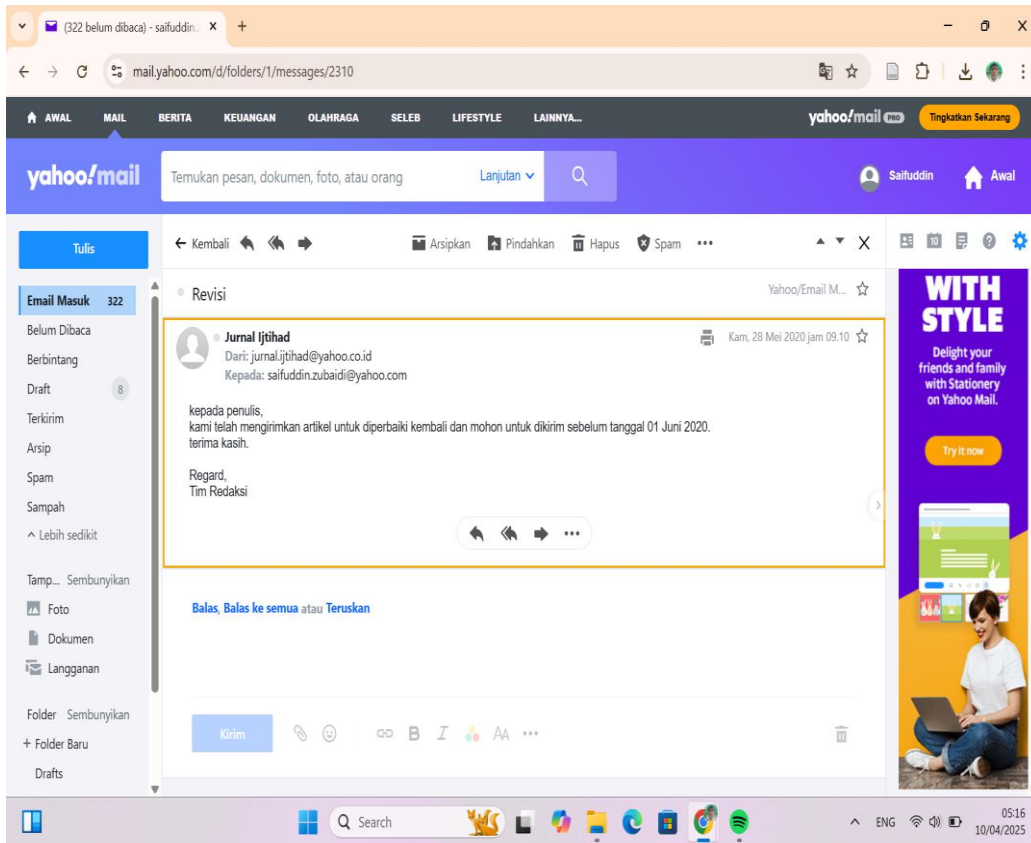
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**4. Bukti Konfirmasi Review dan
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Cigarette fatwas, contestation of religious authority and politics in Indonesia

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Abstract

The issuance of fatwa (.....) is always followed by the presence of new issues related to the implementation of the fatwa. Similarly, the smoking ruling was issued by the Council of Indonesian Scholars (MUI) at the Conference in Padang Panjang in 2009. More than a decade this subject is still debatable. Although, the fatwa in Indonesia does not have the power of binding, for Muslims, the idea of religious morality remains a consideration in daily life.

Through a literature study, this study will reveal how the problematic relations between various social agencies regarding the issuance of the cigarette fatwa. Discourse debates in the study of fiqh will begin the explanation of this study, followed by development policies in Indonesia related to the problem of cigarettes, and ended with the position of the ulema as the holder of religious authority in the matter of smoking.

This study illustrates that the practice of fatwas will be effective when ulama as religious authority holders, with their "capital", can negotiate and contest with various social agents in the cigarette fatwa arena.

Abstraksi

Keluarnya fatwa hukum selalu diikuti oleh hadirnya persoalan baru terkait dengan pelaksanaan fatwa tersebut. Begitu juga fatwa rokok yang dikeluarkan oleh Majelis Ulama Indonesia dalam sidang *ijtima' Ulama* di Padang Panjang tahun 2009 silam. Lebih dari satu dekade perdebatan mengenai hal ini masih menjadi polemik di masyarakat. Meskipun fatwa di Indonesia tidak mempunyai kekuatan mengikat, tetapi bagi ummat muslim bayangan tentang moral agama tetap menjadi pertimbangan dalam menjalani kehidupan sehari-hari.

Melalui studi literatur, kajian ini akan mengungkap bagaimana problematika relasi antar berbagai agen sosial terkait dengan keluarnya fatwa rokok tersebut. Perdebatan wacana dalam kajian fiqh akan mengawali penjelasan kajian ini, disusul dengan kebijakan pembangunan di Indonesia terkait dengan problematika rokok, dan diakhiri dengan posisi ulama sebagai pemegang otoritas keagamaan dalam masalah rokok.

Kajian ini memberikan gambaran bahwa praktik fatwa akan efektif ketika ulama sebagai pemegang otoritas keagamaan, dengan "modal" yang mereka miliki, mampu bernegosiasi dan berkontestasi dengan berbagai agen sosial dalam arena fatwa rokok.

Kata kunci: Fatwa Rokok, Modal, Praktik Fatwa, Ulama

Introduction

Since being issued of the *fatwa* on smoking by the Indonesian Council of Ulama (MUI) in 2009, the practice of smoking especially in Indonesia as a Muslim-majority country, has been a hot topic for discussion. No half-hearted, the issue of smoking has entered the area of economic, political, and debate in culture and religion. There are at least

Commented [h12]: Sebaiknya perlu diberi keterangan dalam kurung (rulings on a point of Islamic law given by a recognized authority). Boleh juga non-binding advisory opinions, tapi fatwa dalam terminology Inggris sudah spesifik islam. Pertanyaannya fatwa itu satu atau banyak? Saya kira fatwa hanya satu tentang rokok tapi yang mengeluarkan banyak lembaga. Sehingga cukup fatwa. Tapi jika tidak demikian yang dimaksud silahkan fatwas

three important issues related to cigarette *fatwas* and smoking practice problems in the Indonesian Muslim community.

The most important issue to be discussed is the long-standing cigarette *fatwa* discourse among *salaf* scholars, *at least* *this* is reflected in some classical and modern *fiqh* literature.

Related to the discourse of cigarette *fatwa* in the *fiqh* literature is how the polarization of the Islamic movement (Islamism) in Indonesia, also took part in the practice of cigarette *fatwa*. The moderate to radical character in the movement positions of them establish to the degree of *mubah* to *haram* against cigarettes. A crucial issue in the practice of cigarette fatwa is how political forces participate in taking a role in the form of policies and laws, so that the contents of fatwas become binding forces. The contestation of various social agents about the *fatwa* of cigarettes is increasingly attracting attention, because it takes place on the foundation of the smoking culture of the Muslim community that has been established since the Republic of Indonesia was not yet born.

The viscosity of smoking culture among Indonesian people is reflected in the expression of Pamoedya Ananta Tour in an introduction in the book 'Kretek, The Culture and Haritage of Indonesia's Clove Cigarettes', "people smoke, because they feel that there is something missing when they don't, so too when cigarettes are not seasoned with cloves, something is missing and tasteless ” (Hanusz, 2011: XVI). Pramoedya Ananta Toer's words quote shows that smoking is an important part of Indonesian people's lives, because smoking is a taste, and taste is an important element of culture. Like taste, according to Pram, clove cigarettes will make life bland.

Cigarettes as a part of culture have a history as well as social functions such as the function of togetherness and rite (Hanusz, 2011), coloring the world of science and politics (Brandt, 2007: 5-7), or crossing pre-modern human history in Europe and America (Burns, 2007: 4). Therefore, it is very difficult to separate the story of human life with the culture of smoking with various rites and problems, because smoking is part of their cultural identity.

The presence of a fatwa on cigarettes issued by an ulama agreement under the banner of the Council of Indonesian Scholars (MUI) on January 26, 2009 in Padang Panjang, became a new episode in the cigarette debates with a long-established tradition in Indonesia. Although the fatwa provides forbidden prohibited laws, but on March 6, 2010 the Majelis Tarjih and Tajdid (MTT) Muhammadiyah explicitly proclaimed haram absolutely. Long before some of the above issuance, the Islamic Association (PERSIS) on May 10, 1987 in Bandung, explicitly declared a *makruh* on smoking. *This* becomes clear how the polarization of ulama in cigarette fatwa occurs in Indonesia. On the other

Commented [h13]: Fatwanya 1 atau banyak?

Commented [h14]: Mungkin diganti and lebih tepat

Commented [h15]: This apa? bisa this debates, this discourses, atau apa?

Commented [h16]: Ada verb yang hilang dari how. Also took Membingungkan.

Commented [h17]: Siapa?

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Commented [h19]: This....?

sides, Nahdlatul Ulama is still determined that the law of smoking is between *mubah*, *makruh*, until *haram*, depending on *illat* (the cause of legal determination) of cigarettes. The winding road of the cigarette legal debate is closely related to how the process of fatwa production with various aspects of legal considerations, including the socio-anthropological aspects of Indonesian society.

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In terms of Islamic law about issue of cigarettes, the Indonesian Ulama Council (MUI) has a very strategic position on this, but instead of providing a solution to the debate, the MUI fatwa on cigarettes provides a new color of discourse on cigarettes, because it turns out in the legal stipulation text, MUI stipulates the prohibited law against cigarettes, albeit limitedly. This is indicated by recommendations to the government and the House of Representatives (DPR) to make a law limiting the movement of the cigarette industry. Government Regulation (PP) No. 109 of 2012 concerning safeguarding material containing addictive substances in the form of tobacco for health, is not a coincidence, because besides adopting many Framework Convention on Tobacco Control (FCTC), it is also in harmony with the contents of the MUI *Fatwa* on cigarettes.

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Even though formally the State of Indonesia is not an Islamic State, *fatwa* is a form of value system that in Muslim societies have a legal authority in regulating social and religious life, as well as manifesting Islamic identity in a pluralistic society. In the realm of Islamic life, fatwas in several Muslim countries are even used as a reference point for norms that are adhered by all Muslims. Fatwa is not only a moral appeal, but also has political and juridical instruments to be manifested by Muslims (Peterson, 1997). The dialectic between ideality and reality reasoning becomes an important issue in the matter of the determination of law (Arif, 2018), because on one side of the norm with its assertiveness presupposes the ideal order, while the flexible reality goes according to local logic and local wisdom.

In Indonesia, *Fatwa* can be used as an affirmation of ideological identity, even politically related to cigarette *fatwa* which is held as a source of legitimacy forbidding or halting cigarettes. *Fatwa* products are very close to the political, economic, and cultural interests of the communities where the fatwas are produced (Saifuddin, 2014: 33-52), hence fatwa products are strongly influenced by how scholars as holders of religious authority relate to various institutions and social agents in society (Kaptein, 2004: 17). Therefore, the cigarette *fatwa* becomes even more complicated when the dynamics of Islamic diversity in Indonesia are characterized by tensions between local Muslims

Commented [h23]: Complicated...?

who tend to be moderate with transnational Islam that tends to be radical (Wahid, 2009: 20), involved in the process of producing fatwas.

If the fatwa is considered as an arena of tension between various agents and interests (economic politics, culture, ideology), then as a holder of religious authority, what is the position of the ulema in Indonesia? In detail the formulation of the problems in this study is first, how does the fatwa as a representation of ulama negotiate with the political economy policies related to the cigarette industry in Indonesia ? Second, how about cigarette fatwa especially MUI fatwa as a representation of ulama negotiating with Islamic ideological agents in Indonesia is? Third, how does the cigarette fatwa accommodate the interests of the cigarette industry (entrepreneur) in Indonesia?

Modalities and social practices in cigarette fatwas: a theoretical study

The problems and dynamics in producing cigarette fatwa in Indonesia is one of the starting points for the fatwa being produced, and how the fatwa has implications for social, cultural and political life in a country. In a variety of literature, a fatwa was born departing from phenomena in society. There is a relationship both negotiation and contestation among various agents, structures, and social systems. In the fatwa literature, there are at least two important elements, namely problems that are born from social processes that are solved through the process of legal settlement (istifta ') (Masoud, 2009: 341-66). The other part is the existence of ulama as the giver of fatwa (mufti), both personally and institutionally. The effectiveness of a fatwa depends greatly on how a fatwa is produced, and the extent of the mufti's capacity in the practice of the fatwa.

Sociologically, the capacity of the mufti both personal and institutional has an important role in weighing the effectiveness of the fatwa, because in the Islamic religious domain, the ulama is the authority holder. The religious authority possessed by the ulama will be more effective when it is supported by the practices and strategies of power that are united in that authority. In this case, the resources possessed by mufti become an important factor in the process of negotiation and contestation with various agents involved around the production of fatwas. The mufti resources are in the forms of charisma, Islamic scholarship, position in social structure, social networks, and community trust in the existence of mufti. In line with Pierre Bourdieu's view, that resources owned (capitals) Mufti is not always material (economic), but in many ways capital can be in the form of social, cultural, even symbolic capital (Bourdieu, 1998: 19-

Commented [h24]: Movements/organisations?

Commented [h25]: Mungkin lebih tepatnya competition

Commented [h26]: Mungkin lebih baik diganti economical, political, cultural and ideological interests

Commented [h27]: Where the position of the ulama in Indonesia, as a holder of religious authority is?

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20).

By using Boudieu's perspective, the practice of fatwa can be explained as well as other social practices where capitals (social, economic, cultural, symbolic) are operated in a field to be converted into dominant power (Bourdieu, 1998). In a more homogeneous field (champ), the capital is also contested in the context of social disposition, which ultimately also dominates and mastery of discourse (Haryatmoko, 2016: 50). The existence of the Indonesian Ulema Council as a mufti in the fatwa of the cigarette, according to this perspective, plays its function as part of social agents contesting with other agents, such as government agencies, cigarette industry players, cigarette care communities that grow in the midst of society , and of course the plurality of cigarette fatwas issued by various Islamic social organizations in Indonesia.

Capital accumulation and maintaining the dominance of scholars in the contemporary era are often carried out through ulama educational institutions. In addition to the institution of the cadre institution, the development of media technology has also become an important instrument in asserting the identity of the ulama and at the same time its religious authority. The affirmation of the identity of the ulama was conveyed through religious opinions both verbally and in writing through the developing media (Zaman, 2010: 38-39).

The effectiveness of MUT's religious authority in this perspective is not only determined by the accumulation of various capital owned by ulama, but also determined by how the capital is converted into power that colud dominate and influence people's behavior in a certain time and place (Bourdieu, 1996: 125). The existence of social agents as described above, forms new spaces where religious law (fatwa) is contested in the “religious public sphere” (Eickelman dan Anderson, 2003:1-2). In another views even Bourdieu, as understood by David Gartman, likens this social practice like a marketplace where the dominant group always distorts and reproduces capital by supplying lifestyles, meeting consumer demands, to maintain its dominance (Gartman, 2002: 260).

It is in this assumption that the third dimension of the fatwa appears, in addition to the istifta and mufti, namely the implementation of the fatwa. In this dimension, the power of resources (capitals) of the mufti is confronted with the social space (field), where social disposition and reposition are created, the space where the process of dominating and being dominated is practiced almost as natural, so that the compliance of fatwa seekers (mustafti) to the fatwa issued by the mufti, become the main choice. Not only that, even the fatwa issued by the mufti-flowed to the rhythm is created

Commented [h30]: italic, karena kata champ adalah bahasa Perancis

Commented [h31]: mungkin tepatnya bodies

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by dominant groups or social agents. This is what Bourdieu called as "habitus" (Bourdieu, 1998: 25).

The implementation of *fatwa* as a social practice can thus be explained by linking **between** social agents involved in *fatwa* production, with managing their resources, how they fight for dominance, so as to gain a dominant position, linked to the arena (field) where the fatwa was implemented. The assumption of this theory refers to the logic of social practice developed by Bourdieu that social practice is the relation between habitus, capital and arena (Bourdieu, 1996: 101). This social practice is methodologically traceable through examining the involvement of each social agent in the fatwa, the resources they own, and how these resources are operated in a particular social space.

By **utilizing** the literature study supported by some secondary data, this study at least found three important discourses that will be discussed in constructing and developing the concepts in this study, namely cigarette discourse in fiqh literature, discourse on developmentalism in Indonesia as the background of Government policy in controlling consumption tobacco, and fatwa discourse as a representation of scholars as holders of religious authority.

Cigarette Discourse in Fiqh Literature

Two centuries after the discovery of the American continent by Christoper Colombus, where tobacco consumption was found, tobacco had only entered the Arab region through Sudan, which was around the 11th century *Hijriyah*. From Sudan then, it spread to the western (*Magribi*) and eastern (mashriqi) regions of the Arabian peninsula (Ibnu Al Shiddiq, 1985: 5-6). The entry of tobacco in the Arabian peninsula around the XI century *Hijriyah* shows that the emergence of tobacco or cigarettes legal, occurred long after the *Tashri* ' era during the Umayyad dynasty, where Islamic law was discussed and codified according to the Islamic school of law (*madhab*) (Surjaman, 1991: vi-vii). It also shows that the law regarding tobacco products has not been explicitly discussed (*şarih*) in the main sources of Islamic law (*Al-Qur'an and Sunnah*).

The absence of a *şarih* source on cigarette law in the sources of Islamic teachings (*Al-Qur'an and Sunnah*) makes cigarette law a debate (*ikhtilaf*) among fiqh scholars. There are three legal provisions for cigarettes, namely *mubah*, *haram*, and *makruh*, each of which has its own reasons, both based on analogy (*qiyas*) with the *naqli* argument

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(*dalil naqly*) and based on consideration of the sociocultural logic underlying it. For scholars who set unclean laws against cigarettes, there are four underlying reasons. First, health reasons are based on authoritative recommendations from medical experts. If indeed the medical authorities say that smoking endangers health, then the law of cigarettes is *haram* (Jampes, 2013: 09).

Quoted in the book of Hasyiyah Shaykh Syihabuddin Ahmad ibn Ahmad ibn Salamah al Qalyubi, an **ulama** from the Shafi'i school, that among the goods is not unclean, but should not be consumed (*haram*) is a cigarette, because it can bring various diseases to the body and endanger health (Alqalyuby, 1956: 69). This opinion is also supported by Sheikh Ibrahim Al Laqani Al Maliki, that one of the items that causes loss of mind when it is consumed, is cigarettes. These two opinions provide answers which conclude that any food or drink that poses a danger to the health of the body and removes the mind, is forbidden to be consumed (*haram*), as conveyed by Sheikh Sulaiman ibn Muhammad ibn Umar Al Bujairamy (Al Bujairami, 1996: 233). The reason for removing mind is also the second reason why cigarettes are punished forbidden, based on the hadith from Umm Salamah that "The Messenger of Allah forbids consuming intoxicating foods or drinks and removes the mind based on the recommendations of health experts" (Jampes, 2013:10).

The third reason, which underlies the *haram* on cigarettes is because it smells unpleasant or disliked by many people. This law is based on *qiyas* about the smell of onions, both garlic and onion. The smell of someone who smokes is no better than the scent of onions which in a hadith is mentioned as one of the scents that is not liked by the Messenger of Allah. The fourth reason, is that smoking results in economic waste. Among the opinions stating this reason is Shaykh Mahmud Shaltut in the book "Al-Fatawa", which states that "if the money spent to buy cigarettes is more useful and useful for other purposes then it is not permitted (*adamu ibahatihi*) to buy cigarettes and consume them" (Shaltut, 2001: 384).

If seen from the arguments built by the scholars who forbid smoking above, then it can be found two things that are a source of debate. First, the unlawful legal basis for cigarettes above uses the *qiyas* method, where the determination of the law is based on the common cause (*illat*) (Muhtarom, 2015: 03) between the main law (*asl*) with the law of the case that came later (*far '*) (Nashirudin, 2015: 21-26). The process of finding the similarity of *illat* to determine the law (*ta'lilu al ahkam*) can be seen from the comparison between the smell of cigarettes and the smell of

Commented [h36]: kata ulama nampaknya tidak populer dalam istilah Inggris. Sehingga sebaiknya dibuat italic. Atau kalau mau diganti saja Islamic scholar. Kata 'ulama' sendiri jamak, sehingga tidak tepat jika dibuat singular untuk mendapatkan tambahan artikel 'an'. Silakan cek yang lainnya juga dalam artikel ini.

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onions. The second argument, which was argued by the scholars who forbid smoking is a consideration of the purpose of the enactment of the law (*maqashid al Shari'ah*). This *maslahah* approach is seen as more flexible in responding to the evolving social dynamics. This can be analyzed in the fourth reason forbidding cigarettes in the book of Al Fatawa by Shaykh Mahmud Shaltut as described above.

The two arguments above open up opportunities to present other laws besides illicit laws on cigarettes, along with social dynamics, and socio-cultural conditions in various regions. Sheikh Abdul Hayyi ibn Muhammad Ibn Al Şidiq in the book "Hukmu al Dukhan wa al Thabah" explains several things related to the cigarette law that tends to change. The main basis used to punish the *mubah* for cigarettes is the absence of an explicit argument about *halal* or *haram* for cigarettes. The scholars of the "Maghribi" region tend to impose unlawful laws on cigarettes, but the scholars of "Mashriqi" tend to justify smoking, even if women make cigarettes as part of their daily needs, husbands are obliged to give because it is part of their living (Ibnu Al Shiddiq, 1985: 10).

The first explanation related to this is that if the reason is unlawful for cigarettes because smoking is an item that is harmful to health, then the argument is refuted by the fact that there are many active smokers who are actually healthy and live longer. If there is research which states that smoking is very dangerous for the health of the sample studied, then the methodological research cannot be applied in general. Second, goods dangerous to bodily health that result in being punished *haram* consists of two kinds, namely the danger of the substance of the item (*li dhatihi*) and the danger from arising from outside the item (*li gairi dhatihi*). Cigarettes are goods made from tobacco which are in substance a *halal* and clean plant, even if consumed by people in certain conditions can be dangerous. Even so the danger of cigarettes for people in a casuistic manner can not be used as an absolutely unlawful legal reason for cigarettes.

In a similar explanation, M. Arfin Hamid (2017: 46-54) describes that "cigarette" is one thing, and "smoking" is a different thing, although it is interconnected (Hamid, 2017: 46-54). Cigarette is substantially *mubah* (*li dhatihi*), but smoking can be *haram* (*li gairi dhatihi*) when it is done by people who are vulnerable to cigarette smoke. This position forbids smoking absolutely as well as wine (*khamr*) being irrelevant.

The third explanation, related to the weak legal argumentation forbidden by cigarettes for reasons that it smells unpleasant or leads to dirty acts (*khaba'ith*), is the *qiyas* method used to equate cigarettes with onions. Comparing

Commented [h38]: Bisa juga menggunakan proposed, offered atau yang senada

Commented [h39]: Lebih baik Sheikh Abdul Hayyi ibn Muhammad Ibn Al Şidiq (1985: 10) explains

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cigarettes with onions that are considered dirty and smell according to Abdul Hayyi ibn Al Shiddiq is not quite right, because the Prophet Muhammad himself only hated the smell, and not forbid it. When the hadith came about the Prophet's dislike of the smell of onions, the Muslim community was busy forbidding the onions, but after the Prophet learned of the growing opinion, Rasulullah asserted that, " I should not forbid something that is *halal* by Allah, I just do not like the smell "(Ibnu Al Shiddiq, 1985: 56). Equating cigarettes with onions indirectly also punish cigarettes into *mubah (li dhatihi)*.

One thing that is important to note is that dirty acts that lead to *haram* cannot be seen from one particular culture. It may be that in one area cigarettes are considered something dirty, but in other areas smoking is considered not something dirty and disgusting. This is because the concept of clean and dirty is a part of cultural constructions, and is related to social structure (Douglas, 1966: viii). Hence according to this argument, the law of *makruh* against cigarettes becomes not absolute, if what is made *causa (illat)* is a dirty issue.

From the cigarette legal debates in the study of jurisprudence above, the law "cigarette" and "smoking", is strongly influenced by social facts where the *fatwa* was produced. The debates over the discourse thus developed, not just *halal*, *haram*, and *makruh* against cigarettes and smoking, but in the context of what kind of community the fatwa was applied. Therefore based on sociological approach, especially related to economical, social and political structures, becomes very important. The relationship between sociological facts, established Islamic legal norms, and political reality, will greatly determine the effectiveness of a *fatwa*.

Cigarettes in Development Policy in Indonesia

In Indonesia, cigarettes have become an important part of people's lives. Since pre-independence times, cigarettes have been used as friends in chatting, socializing, and even as a sweetener in intensive conversation to prepare the nation's post-independence form. After Indonesia's independence, cigarettes are also one of the dominant commodities in the wheels of Indonesia's economy. Entering the new order era, the momentum of the development of cigarettes is increasingly visible, supported by government policies and opportunities for industrialization in third world

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countries.

Mark Hanusz noted that there were at least three important moments in the development of the cigarette industry in the new order era (Hanusz, 2011: 29). First, in the 1970s the world oil price experienced a very significant increase as a result of the formation of a cartel of oil exporting countries incorporated in OPEC. Indonesia as an oil producing country also gets a "blessing" from the booming oil prices. The effect of all was the increase in the level of the Indonesian economy, which macro influence the economic growth rate of the country and political stability. This encourages countries in the world to begin to look at Indonesia as one of the third world countries to be reckoned with in the Southeast Asian region. In such a situation many foreign investors entered Indonesia, which influenced the process of industrialization in various sectors. Slowly but surely there will be a shift in the community's production system from the primary sector (agriculture) to the secondary sector (industry).

Second, the process of industrialization, during the 1970s, was very influential on the growth of the cigarette industry in the country, especially on the island of Java. On this island, especially Central Java and East Java, cigarette factories have been established which produce cigarettes with mechanical power. The effect of the industrialization of cigarettes was that the quality and quantity of cigarette production was increasing. Cigarette products were not only able to play in the local market, but cigarette production in Indonesia was also able to compete internationally.

Third, the policy of the New Order government to promote transmigration made equity in all fields, not only in population distribution, but also in the distribution of culture and cigarette consumption. At this moment the cigarette market was widened and consumed not only in Java as a producer, but has begun to spread to the transmigration destinations, such as Sumatra and Kalimantan, including in Eastern Indonesia.

More than two decades after the collapse of the current New Order regime, the cigarette industry is still an important part of the Indonesian economy. Data compiled by Kata Data News and Research, there has been an increase in cigarette excise revenue from year to year in the past seven years. It is explained that since 2010, the contribution of cigarette excise tax amounted to 63.3 trillion, until 2017 it rose to 149.9 trillion, or an increase of 250% over the past seven years. This shows that the economic potential of tobacco excise and its derivatives is very potential in increasing the rate of national economic growth.

Seeing the great potential that exists in the cigarette industry, it is not surprising that the government cannot

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escape the dependence of the cigarette industry which contributes to the country's foreign exchange up to 10% of the state budget, a fantastic value in the era of "development" policy. Developmentalism (development policy) is a system that is built on the ideas of European and American countries that are implemented in third world countries after World War II. This policy was taken to encourage economical, social, political and cultural underdevelopment in the countries of the former colonies or countries in the South, so that they could progress gradually (Shareia, 2015: 78). In this policy consideration of macroeconomic growth is highly considered by market players at the global economic level (Pereira 2012: 347-66).

The effect of the application of development theories in various countries was that there was some progress in the economic field, especially industrialization, and at the same time a very varied negative impact (Escobar, 1995: 04). In Indonesia, in addition to create gradual economic growth, it also raises extraordinary gaps due to the failure of the trickle down effect expected from the policy (H. Wahid, 1999: 39). Hence, the criticism of development theory becomes very intensive carried out by social scientists who try to offer various theories that can break the deadlock.

Among the proposals of the theory **is** the concept of development which widens from merely development in the economic sector, to development in the humanitarian sector (Nussbaum dan Sen, 1993: 02). It is on this concept that smoking as one of the potential commodities in Indonesia becomes very problematic. On the one hand, smoking is one of the sources of foreign exchange, on the other hand, smoking is considered as one of the causes of the failure of quality human development, because it is considered as a source of all degenerative diseases.

In addition to economic and cultural issues, smoking is also a serious conversation related to world health issues. In 2003, the WHO world health agency with several of its members signed a tobacco product control agreement. The agreement was then known as the Framework Convention on Tobacco Control (FCTC). Ten years later in 2013, FCTC was ratified by 170 countries in the world, and Indonesia was the only country in Asia that had not ratified the convention. Again, the economic problem is one of the reasons because 95% of excise tax revenue comes from tobacco-derived products (cigarettes), as well as cultural issues.

There are two problems faced by the Indonesian people in the reform era, related to this cigarette problem. First, the internal side of cigarettes has become part of the social history of the Indonesian people. Over all cigarettes also have a big role in the nation's economic development. Second, from the external side, there is international pressure

that forces the entire nation to control tobacco consumption, either in the name of world health or economic political interests.

In the end, the development theory will experience a face shift in accordance with the sociological and political conditions in each country. In the current Indonesian context, handling issues about smoking more often applies a post-development approach (Escobar, 1995). The issue of locality is an important consideration in solving the problem of smoking which is also an international concern. Even though international pressure is so strong about limiting the consumption of tobacco products through the FCTC, Indonesia has not yet to ratify the convention. It is certainly very problematic for the Indonesian government, because it is economically very profitable, medically very detrimental effect, and culturally there is a lot of tension, especially related to religious ideologies that are now developing.

Cigarette Fatwa and Religious Authority in Indonesia.

Cigarettes, in terms of Indonesian Islamic civilization, have been an important issue since the country was not yet independent. Sheikh Ihsan Jampes in his book entitled "*Irshadu al ikhwan fi bayani Syurbi al Qahwah wa al Dukhan*" explains how the legal debate occurred among the scholars about the law of cigarettes (Jampes, 2013). With a *rajaz* rhythm he gives a clever explanation of why he smokes cigarettes, from shabby, transformed, to illegal, with an anthropological historical approach. Among the scholars who legalized cigarettes there is mentioned by Abdul Ghani Al Nablisy in the book of *Shulhu Baina al Ikhwan fi Hukmi Ibahati al Dukhan*, Imam Mahmud ibn Salamah al Radhi in the book *Ta'yidu al I'lan bi Adami Tahrimi al Dukhan*, and there are several scholars others. This classic book served as a source of legitimacy for traditional students in the treatment of cigarettes.

In the Indonesian Muslim community, the law on smoking is very clear. Majelis Ulama Indonesia (MUI) and Majelis Tarjih and Tajdid (MTT) Muhammadiyah tend to forbid smoking, although this does not necessarily reduce the number of cigarette consumers. The real issue is not *halal* or *haram*, but how Islamic norms have a coercive value. This impression of coercive values is now an actual issue in ideological tensions in Indonesia, including the inclusion of normative Islamic (*shar'i*) views in positive law.

Basically, fatwas are ethical practices which in the language of anthropology are born and developed along with social processes. The existence of ethics cannot be controlled and suppressed by anyone, because ethics is built on

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authority agents that include natural processes (Agrama, 2010: 02-18). In practice, ethics that are practiced in the form of fatwa are always controlled by institutionalized authorities. In this position, the *fatwa* becomes a coercive and almost equaled the positive law. In the view of Hussein Ali Agrama, interpreting authority and legal institutions is a very problematic thing, because authority which means **authority** that can be experienced naturally in social processes, is actually built in the power relations of authority agents. Under these conditions, it is very difficult to distinguish between legal institutions and equally coercive authorities.

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In formal,fatwa institutions do not have coercive authority, culturally fatwas are still used as a source of legitimacy in Muslim societies. **The debate over who holds the right to religious authority, and how it is maintained or even preserved is important to be discussed.** In explaining religious scholars and authority in the contemporary era, Muhammad Qasim Zaman **said** **that the religious authority possessed by ulama was built continuously through social processes, especially through the cadre institutions or educational institutions.** In addition to the institution of the cadre institution, the development of media technology has also become an important instrument in affirming the religious identity and religious authority. The affirmation of religious identity is conveyed through religious opinions both orally and in writing through developing media (Zaman, 2010: 56).

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This becomes problematic when the Islamic public is not in the same ideology, or has been polarized into various kinds of ideas. In Indonesia, religious authority cannot be addressed to a figure with a certain ideological label, especially if it is related to political issues or sensitive matters. Nico Kaptein's illustration in recording the *fatwa* in Indonesia clearly illustrates this problem. Kaptein also **explained** **how religious authority was constructed through various religious instruments, symbols and religious identity** (Kaptein, 2004: 11-12). In this case, media technology is also an important factor in constructing religious authority. It is at this stage that the *fatwa* on smoking becomes an arena of "fighting" to get religious authority, because there are cultural agents or dominant structures that support the existence of the ulema as religious elites.

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During the reign of the New Order, relations between *ulama* and the government (state) were built in a dominative pattern of relations where *ulama* institutions were formed to support government policies related to Islamic religious issues. In addition, the existence of institutionalized *ulama* makes government to control through the structure of the ulema which in the majority of Indonesian Islamic society has a very strategic position. The emergence of the

Indonesian Ulema Council (MUI) on July 26, 1975, which was formed by the New Order government was a political strategy of “corporatism” to control political movements based on Islam (Porter, 2002: 02). At this stage, the religious authority of the ulema cannot be released from power, either through political resources, or through the production of religious discourse.

In the reform era, where Ulema's polarization has been so massive, ulama institutions are no longer centered only on government-formed institutions supported by power, but also clerics born of the political process, as well as from the cultural process. these point discussions here brings an idea of how religious authority becomes an important discourse in which scholars from various circles are involved. It is in this position that the practice of cigarette fatwa in Indonesia is placed, where the resources (modality) possessed by ulemas as religious authority holders have an important role in producing effective fatwas.

Conclusion

As a final illustration of this paper, an important point that should be underlined is the emergence of cigarette *fatwa* in Indonesia, not suddenly, and even stopping, but there is a complicated discourse, how the *fatwa* is produced, and how the *fatwa* product is negotiated in social realm. Besides the *fatwa* about smoking, *haram*, *halal*, or *makruh*, is still developing along with the dynamics of discourse battle in the arena of Indonesian people's life.

Ulama as the authority holder of the *fatwa* is certainly not the only social agent producing discourse to enact their *fatwa*, but the *ulama* will face policies adopted by the state in managing social, economic and political resources. On other sides, the effectiveness of the control of power held by the *fatwa* must also clash with the economic capital owned by cigarette manufacturers. The crucial thing is how scholars as social agents solve the identity problem that is always inherent in their bodies.

Ulama as fatwa producers inevitably have to deal with the power and political capital of development policies in Indonesia. Ulema should also intersect with the culture that frames them, the discourse they produce, and of course, cultures that come from outside or transnational. In this position, the modality of the ulema was negotiated and contested in the arena of the practice of fatwa on cigarettesCatatan:

1. Silahkan dicek grammatical dan konteks penerjemahan yang pas.

2. Cek kembali spelling

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**5. Bukti Konfirmasi Submit Revisi Kedua,
Respon kepada Reviewer,
dan Artikel yang Diresubmit
(29 Mei 2020)**

Cigarette fatwas, contestation of religious authority and politics in Indonesia

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Abstract

The issuance of non-binding advisory opinions (*fatwa*) is always followed by the presence of new issues related to the implementation of the fatwa. Similarly, the smoking ruling was issued by the Council of Indonesian Scholars (MUI) at the Conference in Padang Panjang in 2009. More than a decade this subject is still a debatable. Although the fatwa in Indonesia does not have the power of binding, for Muslims, the idea of religious morality remains a consideration in daily life.

Through a literature study, this study will reveal how the problematic relations between various social agencies regarding of the issuance of the cigarette fatwa. Discourse debates in the study of fiqh will begin the explanation of this study, followed by development policies in Indonesia related to the problem of cigarettes, and ended with the position of the ulema as the holder of religious authority in the matter of smoking.

This study illustrates that the practice of fatwas will be effective when ulama as religious authority holders, with their "capital", can negotiate and contest with various social agents in the cigarette fatwa arena.

Abstraksi

Keluarnya fatwa hukum selalu diikuti oleh hadirnya persoalan baru terkait dengan pelaksanaan fatwa tersebut. Begitu juga fatwa rokok yang dikeluarkan oleh Majelis Ulama Indonesia dalam sidang *ijtima' Ulama* di Padang Panjang tahun 2009 silam. Lebih dari satu dekade perdebatan mengenai hal ini masih menjadi polemik di masyarakat. Meskipun fatwa di Indonesia tidak mempunyai kekuatan mengikat, tetapi bagi ummat muslim bayangan tentang moral agama tetap menjadi pertimbangan dalam menjalani kehidupan sehari-hari.

Melalui studi literatur, kajian ini akan mengungkap bagaimana problematika relasi antar berbagai agen sosial terkait dengan keluarnya fatwa rokok tersebut. Perdebatan wacana dalam kajian fiqh akan mengawali penjelasan kajian ini, disusul dengan kebijakan pembangunan di Indonesia terkait dengan problematika rokok, dan diakhiri dengan posisi ulama sebagai pemegang otoritas keagamaan dalam masalah rokok.

Kajian ini memberikan gambaran bahwa praktik fatwa akan efektif ketika ulama sebagai pemegang otoritas keagamaan, dengan "modal" yang mereka miliki, mampu bernegosiasi dan berkontestasi dengan berbagai agen sosial dalam arena fatwa rokok.

Kata kunci: Fatwa Rokok, Modal, Praktik Fatwa, Ulama

Introduction

Since being issued of the *fatwa* on smoking by the Indonesian Council of Ulama (MUI) in 2009, the practice of smoking especially in Indonesia as a Muslim-majority country, has been a hot topic for discussion. No half-hearted, the issue of smoking has entered the area of economic, political, and debate in culture and religion. There are at least

three important issues related to cigarette fatwa and smoking practice problems in the Indonesian Muslim community. The most important issue to be discussed is the long-standing cigarette *fatwa* discourse among *salaf* scholars, and this debates are reflected in some classical and modern *fiqh* literature.

The Islamic movement (Islamism) in Indonesia, also took part in the practice of cigarette *fatwa*. The moderate to radical character in the Islamic movement establish to the degree of issuing *fatwa mubah* to *haram* against cigarettes. A crucial issue in the practice of cigarette fatwa is how political forces participate in taking a role in the form of policies and laws, so that the contents of fatwas become binding forces. The contestation of various social agents about the *fatwa* of cigarettes is increasingly attracting attention, because it takes place on the foundation of the smoking culture of the Muslim community that has been established since the Republic of Indonesia was not yet born.

The viscosity of smoking culture among Indonesian people is reflected in the expression of Pamoedya Ananta Tour in an introduction in the book 'Kretek, The Culture and Haritage of Indonesia's Clove Cigarettes', "people smoke, because they feel that there is something missing when they don't, so too when cigarettes are not seasoned with cloves, something is missing and tasteless ” (Hanusz, 2011: XVI). Pramoeodya Ananta Toer's words quote shows that smoking is an important part of Indonesian people's lives, because smoking is a taste, and taste is an important element of culture. Like taste, according to Pram, clove cigarettes will make life bland.

Cigarettes as a part of culture have a history as well as social functions such as the function of togetherness and rite (Hanusz, 2011), coloring the world of science and politics (Brandt, 2007: 5-7), or crossing pre-modern human history in Europe and America (Burns, 2007: 4). Therefore, it is very difficult to separate the story of human life with the culture of smoking with various rites and problems, because smoking is part of their cultural identity.

The presence of a fatwa on cigarettes issued by an ulama agreement under the banner of the Council of Indonesian Scholars (MUI) on January 26, 2009 in Padang Panjang, became a new episode in the cigarette debates with a long-established tradition in Indonesia. Although the fatwa provides forbidden prohibited laws, but on March 6, 2010 the Majelis Tarjih and Tajdid (MTT) Muhammadiyah explicitly proclaimed haram absolutely. Long before some of the above issuance, the Islamic Association (PERSIS) on May 10, 1987 in Bandung, explicitly declared a *makruh* on smoking. This declaration becomes clear how the polarization of ulama in cigarette fatwa occurs in Indonesia. On the other sides, Nahdlatul Ulama is still determined that the law of smoking is between *mubah*, *makruh*, until *haram*,

depending on *illat* (the cause of legal determination) of cigarettes. The winding road of the cigarette legal debate is closely related to how the process of fatwa production with various aspects of legal considerations, including the socio-anthropological aspects of Indonesian society.

In terms of Islamic law on issue of cigarettes, the Indonesian Ulama Council (MUI) has a very strategic position on this issue, but instead of providing a solution to the debate, the MUI fatwa on cigarettes provides a new color of discourse on cigarettes, because it turns out in the legal stipulation text, MUI stipulates the prohibited law against cigarettes, albeit limitedly. This is indicated by recommendations to the government and the House of Representatives (DPR) to make a law limiting the movement of the cigarette industry. Government Regulation (PP) No. 109 of 2012 concerning safeguarding material containing addictive substances in the form of tobacco for health, is not a coincidence, because besides adopting many Framework Convention on Tobacco Control (FCTC), it is also in harmony with the contents of the MUI *Fatwa* on cigarettes.

Even though formally the State of Indonesia is not an Islamic State, *fatwa* is a form of value system that in Muslim societies have a legal authority in regulating social and religious life, as well as manifesting Islamic identity in a pluralistic society. In the realm of Islamic life, fatwas in several Muslim countries are even used as a reference point for norms that are adhered by all Muslims. Fatwa is not only a moral appeal, but also has political and juridical instruments to be manifested by Muslims (Peterson, 1997). The dialectic between ideality and reality reasoning becomes an important issue in the matter of the determination of law (Arif, 2018), because on one side of the norm with its assertiveness presupposes the ideal order, while the flexible reality goes according to local logic and local wisdom.

In Indonesia, *Fatwa* can be used as an affirmation of ideological identity, even politically related to cigarette *fatwa* which is held as a source of legitimacy forbidding or halting cigarettes. *Fatwa* products are very close to the political, economic, and cultural interests of the communities where the fatwas are produced (Saifuddin, 2014: 33-52), hence fatwa products are strongly influenced by how scholars as holders of religious authority relate to various institutions and social agents in society (Kaptein, 2004: 17). Therefore, the cigarette *fatwa* becomes more problematic when the dynamics of Islamic diversity in Indonesia are characterized by tensions between local Muslims who tend to be moderate with transnational Islam movement that tends to be radical (Wahid, 2009: 20), involved in the process of

producing fatwa.

If the fatwa is considered as an arena of contestation between various agents and economical, political, cultural, ideological intersts, where the position of the ulama in Indonesia as a holder of religious authority is ?. In detail the formulation of the problems in this study is first, how does the fatwa as a representation of ulama negotiate with the political economy policies related to the cigarette industry in Indonesia ?. Second, how about cigarette fatwa especially MUI fatwa as a representation of ulama negotiating with Islamic ideological agents in Indonesia is ?. Third, how does the cigarette fatwa accommodate the interests of the cigarette industry (entrepreneur) in Indonesia?

Modalities and social practices in cigarette fatwas: a theoretical study

The problems and dynamics in producing cigarette *fatwa* in Indonesia is one of the starting points for the fatwa being produced, and how the fatwa has implications for social, cultural and political life in a country. In a variety of literature, a fatwa was produced from phenomena in society. There is a relationship both negotiation and contestation among various agents, structures, and social systems. In the fatwa literature there are at least two important elements, namely problems that are emerged from social processes that are solved through the process of legal settlement (*istifta* ') (Masoud, 2009: 341-66). The other part is the existence of ulama as the giver of *fatwa* (*mufti*), both personally and institutionally. The effectiveness of a *fatwa* depends greatly on how a *fatwa* is produced, and the extent of the mufti's capacity in the practice of the fatwa.

Sociologically, the capacity of the mufti both personal and institutional has an important role in weighing the effectiveness of the *fatwa*, because in the Islamic religious domain, the ulama is the authority holder. The religious authority possessed by the *ulama* will be more effective when it is supported by the practices and strategies of power that are united in that authority. In this case, the resources possessed by *mufti* become an important factor in the process of negotiation and contestation with various agents involved around the production of fatwas. The mufti resources are in the forms of charisma, Islamic scholarship, position in social structure, social networks, and community trust in the existence of *mufti*. In line with Pierre Bourdieu's view, that resources owned (capitals) *Mufti* is not always material (economic), but in many ways capital can be in the form of social, cultural, even symbolic capital (Bourdieu, 1998: 19-20).

By using Boudieu's perspective, the practice of fatwa can be explained as well as other social practices where capitals (social, economic, cultural, symbolic) are operated in a field to be converted into dominant power (Bourdieu, 1998). In a more homogeneous field (*champ*), the capital is also contested in the context of social disposition, which ultimately also dominates and mastery of discourse (Haryatmoko, 2016: 50). The existence of the Indonesian Ulama Council as a mufti in the fatwa of the cigarette, according to this perspective, plays its function as part of social agents contesting with other agents, such as government agencies, cigarette industry owners, cigarette care communities that grow in the midst of society , and of course the plurality of cigarette fatwas issued by various Islamic social organizations in Indonesia.

Capital accumulation and maintaining the dominance of scholars in the contemporary era are often carried out through *ulama* educational institutions. In addition to the institution of the cadre institution, the development of media technology has also become an important instrument in asserting the identity of the *ulama* and at the same time its religious authority. The affirmation of the identity of the *ulama* was conveyed through religious opinions both verbally and non- verbally, such as through the developing media (Zaman, 2010: 38-39).

The effectiveness of MUT's religious authority in this perspective is not only determined by the accumulation of various capital owned by *ulama*, but also determined by how the capital is converted into power that could dominate and influence people's behavior in a certain time and place (Bourdieu, 1996: 125). The existence of social agents as described above, forms new spaces where religious law (*fatwa*) is contested in the “religious public sphere” (Eickelman dan Anderson, 2003:1-2). In another views even Bourdieu, as understood by David Gartman, likens this social practice like a marketplace where the dominant group always distorts and reproduces capital by supplying lifestyles, meeting consumer demands, to maintain its dominance (Gartman, 2002: 260).

It is in this assumption that the third dimension of the fatwa appears, in addition to the *istifta* and *mufti*, namely the implementation of the *fatwa*. In this dimension, the power of resources (capital) of the *mufti* is confronted with the social space (field), where social disposition and reposition are created, the space where the process of dominating and being dominated is practiced almost as natural, so that the compliance of *fatwa* seekers (*mustafti*) to the fatwa issued by the mufti, become the main choice. Not only that, even the *fatwa* issued by the *mufti*-flowed to the rhythm is created by dominant groups or social agents. This is what Bourdieu called as "habitus" (Bourdieu, 1998: 25).

The implementation of *fatwa* as a social practice can thus be explained by linking between social agents involved in *fatwa* production, managing their resources, and how they fight for dominance, so as to gain a dominant position, linked to the arena (field) where the fatwa was implemented. The assumption of this theory refers to the logic of social practice developed by Bourdieu that social practice is the relation between habitus, capital and arena (Bourdieu, 1996: 101). This social practice is methodologically traceable through examining the involvement of each social agent in the fatwa, the resources they own, and how these resources are operated in a particular social space.

By applying the literature study supported by some secondary data, this study at least found three important discourses that will be discussed in constructing and developing the concepts in this study, namely cigarette discourse in fiqh literature, discourse on developmentalism in Indonesia as the background of Government policy in controlling consumption tobacco, and fatwa discourse as a representation of scholars as holders of religious authority.

Cigarette discourse in fiqh literature

Two centuries after the discovery of the American continent by Christoper Colombus, where tobacco consumption was found, tobacco had only entered the Arab region through Sudan, which was around the 11th century *Hijriyah*. From Sudan then, it spread to the western (*Magribi*) and eastern (mashriqi) regions of the Arabian peninsula (Ibnu Al Shiddiq, 1985: 5-6). The entry of tobacco in the Arabian peninsula around the XI century *Hijriyah* shows that the emergence of tobacco or cigarettes legal, occurred long after the *Tashri* ' era during the Umayyad dynasty, where Islamic law was discussed and codified according to the Islamic school of law (*madhab*) (Surjaman, 1991: vi-vii). It also shows that the law regarding tobacco products has not been explicitly discussed (*ṣarih*) in the main sources of Islamic law (*Al-Qur'an and Sunnah*).

The absence of a *ṣarih* source on cigarette law in the sources of Islamic teachings (*Al-Qur'an and Sunnah*) makes cigarette law a debate (*ikhtilaf*) among fiqh scholars. There are three legal provisions for cigarettes, namely *mubah*, *haram*, and *makruh*, each of which has its own reasons, both based on analogy (*qiyas*) with the *naqli* argument (*dalil naqli*) and based on consideration of the sociocultural logic underlying it. For scholars who set unclean laws

against cigarettes, there are four underlying reasons. First, health reasons are based on authoritative recommendations from medical experts. If indeed the medical authorities say that smoking endangers health, then the law of cigarettes is *haram* (Jampes, 2013: 09).

Quoted in the book of Hasyiyah Shaykh Syihabuddin Ahmad ibn Ahmad ibn Salamah al Qalyubi, an Islamic scholar from the Shafi'i school, that among the goods is not unclean, but should not be consumed (*haram*) is a cigarette, because it can bring various diseases to the body and endanger health (Alqalyuby, 1956: 69). This opinion is also supported by Sheikh Ibrahim Al Laqani Al Maliki, that one of the items that causes loss of mind when it is consumed, is cigarettes. These two opinions provide answers which conclude that any food or drink that poses a danger to the health of the body and removes the mind, is forbidden to be consumed (*haram*), as conveyed by Sheikh Sulaiman ibn Muhammad ibn Umar Al Bujairamy (Al Bujairami, 1996: 233). The reason for removing mind is also the second reason why cigarettes are punished forbidden, based on the hadith from Umm Salamah that "The Messenger of Allah forbids consuming intoxicating foods or drinks and removes the mind based on the recommendations of health experts" (Jampes, 2013:10).

The third reason, which underlies the *haram* on cigarettes is because it smells unpleasant or disliked by many people. This law is based on *qiyas* about the smell of onions, both garlic and onion. The smell of someone who smokes is no better than the scent of onions which in a hadith is mentioned as one of the scents that is not liked by the Messenger of Allah. The fourth reason, is that smoking results in economic waste. Among the opinions stating this reason is Shaykh Mahmud Shaltut in the book "Al-Fatawa", which states that "if the money spent to buy cigarettes is more useful and useful for other purposes then it is not permitted (*adamu ibahatihi*) to buy cigarettes and consume them" (Shaltut, 2001: 384).

If seen from the arguments built by the scholars who forbid smoking above, then it can be found two things that are a source of debate. First, the unlawful legal basis for cigarettes above uses the *qiyas* method, where the determination of the law is based on the common cause (*illat*) (Muhtarom, 2015: 03) between the main law (*asl*) with the law of the case that came later (*far '*) (Nashirudin, 2015: 21-26). The process of finding the similarity of *illat* to determine the law (*ta'lilu al ahkam*) can be seen from the comparison between the smell of cigarettes and the smell of onions. The second argument, which was argued by the scholars who forbid smoking is a consideration of the purpose

of the enactment of the law (*maqashid al Shari'ah*). This *maslahah* approach is seen as more flexible in responding to the evolving social dynamics. This can be analyzed in the fourth reason forbidding cigarettes in the book of Al Fatawa by Shaykh Mahmud Shaltut as described above.

The two arguments above open up opportunities to present other laws besides illicit laws on cigarettes, along with social dynamics, and socio-cultural conditions in various regions. Sheikh Abdul Hayyi ibn Muhammad Ibn Al Şidiq (Ibnu Al Shiddiq 1985) explains several things related to the cigarette law that tends to change. The main basis used to punish the *mubah* for cigarettes is the absence of an explicit argument about *halal* or *haram* for cigarettes. The scholars of the "*Maghribi*" region tend to impose unlawful laws on cigarettes, but the scholars of "*Mashriqi*" tend to justify smoking, even if women make cigarettes as part of their daily needs, husbands are obliged to give because it is part of their living.

The first explanation related to this argument is that if the reason is unlawful for cigarettes because smoking is an item that is harmful to health, then the argument is refuted by the fact that there are many active smokers who are actually healthy and live longer. If there is research which states that smoking is very dangerous for the health of the sample studied, then the methodological research cannot be applied in general. Second, goods dangerous to bodily health that result in being punished *haram* consists of two kinds, namely the danger of the substance of the item (*li dhatihi*) and the danger from arising from outside the item (*li gairi dhatihi*). Cigarettes are goods made from tobacco which are in substance a *halal* and clean plant, even if consumed by people in certain conditions can be dangerous. Even so the danger of cigarettes for people in a casuistic manner can not be used as an absolutely unlawful legal reason for cigarettes.

In a similar explanation, M. Arfin Hamid (2017: 46-54) explained that "cigarette" is one thing, and "smoking" is a different thing, although it is interconnected. Cigarette is substantially *mubah* (*li dhatihi*), but smoking can be *haram* (*li gairi dhatihi*) when it is done by people who are vulnerable to cigarette smoke. This position forbids smoking absolutely as well as wine (*khamr*) being irrelevant.

The third explanation, related to the weak legal argumentation forbidden by cigarettes for reasons that it smells unpleasant or leads to dirty acts (*khaba'ith*), is the *qiyas* method used to equate cigarettes with onions. Comparing cigarettes with onions that are considered dirty and smell according to Abdul Hayyi ibn Al Shiddiq is not quite right,

because the Prophet Muhammad himself only hated the smell, and not forbid it. When the hadith came about the Prophet's dislike of the smell of onions, the Muslim community was busy forbidding the onions, but after the Prophet learned of the growing opinion, Rasulullah asserted that, " I should not forbid something that is *halal* by Allah, I just do not like the smell "(Ibnu Al Shiddiq, 1985: 56). Equating cigarettes with onions indirectly also punish cigarettes into *mubah (li dhatihi)*.

One thing that is important to note is that dirty acts that lead to *haram* cannot be seen from one particular culture. It may be considered that cigarettes are something dirty by one community, but in other communities smoking is considered not something dirty and disgusting. This is because the concept of clean and dirty is a part of cultural constructions, and is related to social structure (Douglas, 1966: viii). Hence according to this argument, the law of *makruh* against cigarettes becomes not absolute, if what is made *causa (illat)* is a dirty issue.

From the cigarette legal debates in the study of jurisprudence above, the law "cigarette" and "smoking", is strongly influenced by social facts where the *fatwa* was produced. The debates over the discourse thus developed, not just *halal*, *haram*, and *makruh* against cigarettes and smoking, but in the context of what kind of community the fatwa was applied. Therefore base on sociological approach, especially related to economical, social and political structures, becomes very important. The relationship between sociological facts, established Islamic legal norms, and political reality, will greatly determine the effectiveness of a *fatwa*.

Cigarettes in development policy in Indonesia

In Indonesia, cigarettes have become an important part of people's lives. Since pre-independence times, cigarettes have been used as friends in chatting, socializing, and even as a sweetener in intensive conversation to prepare the nation's post-independence form. After Indonesia's independence, cigarettes are also one of the dominant commodities in the wheels of Indonesia's economy. Entering the new order era, the momentum of the development of cigarettes is increasingly visible, supported by government policies and opportunities for industrialization in third world countries. Mark Hanusz noted that there were at least three important moments in the development of the cigarette

industry in the new order era (Hanusz, 2011: 29). First, in the 1970s the world oil price experienced a very significant increase as a result of the formation of a cartel of oil exporting countries incorporated in OPEC.

Indonesia as an oil producing country also gets a "blessing" from the booming oil prices. The effect of all was the increase in the level of the Indonesian economy, which macro influence the economic growth rate of the country and political stability. This encourages countries in the world to begin to look at Indonesia as one of the third world countries to be reckoned with in the Southeast Asian region. In such a situation many foreign investors entered Indonesia, which influenced the process of industrialization in various sectors. Slowly but surely there will be a shift in the community's production system from the primary sector (agriculture) to the secondary sector (industry).

Second, the process of industrialization during the 1970s, was very influential on the growth of the cigarette industry in the country, especially on the island of Java. On this island, especially Central Java and East Java, cigarette factories have been established and produced cigarettes with mechanical power. The effect of the industrialization of cigarettes was that the quality and quantity of cigarette production was increasing. Cigarette products were not only able to play in the local market, but cigarette production in Indonesia was also able to compete internationally.

Third, the policy of the New Order government to promote transmigration made equity in all fields, not only in population distribution, but also in the distribution of culture and cigarette consumption. At this moment the cigarette market was widened and consumed not only in Java as a producer, but has begun to spread to the transmigration destinations, such as Sumatra and Kalimantan, including in Eastern Indonesia.

More than two decades after the collapse of the current New Order regime, the cigarette industry is still an important part of the Indonesian economy. Kata Data News and Research (Data Box, 2017) issued data, there has been an increase in cigarette excise revenue from year to year in the past seven years. It is explained that since 2010, the contribution of cigarette excise tax amounted to 63.3 trillion, until 2017 it rose to 149.9 trillion, or an increase of 250% over the past seven years. This shows that the economic potential of tobacco excise and its derivatives is very potential in increasing the rate of national economic growth.

Seeing the great potential that exists in the cigarette industry, it is not surprising that the government cannot escape the dependence of the cigarette industry which contributes to the country's foreign exchange up to 10% of the state budget, a fantastic value in the era of "development" policy. Developmentalism (development policy) is a system

that is built on the ideas of European and American countries that are implemented in third world countries after World War II. This policy was taken to encourage economical, social, political and cultural underdevelopment in the countries of the former colonies or countries in the South, so that they could progress gradually (Shareia, 2015: 78). In this policy consideration of macroeconomic growth is highly considered by market players at the global economic level (Pereira, 2012: 347-66).

The effect of the application of development theories in various countries was that there was some progress in the economic field, especially industrialization, and at the same time a very varied negative impact (Escobar, 1995: 04). In Indonesia, in addition to creat gradual economic growth, it also raises extraordinary gaps due to the failure of the trickle down effect expected from the policy (Wahid, 1999: 39). Hence, the criticism of development theory becomes very intensive carried out by social scientists who try to offer various theories that can break the deadlock.

The other proposals of the development theory is the concept of development not only developing economic sector, but also the humanitarian sector (Nussbaum dan Sen, 1993: 02). It is on this concept that smoking as one of the potential commodities in Indonesia becomes very problematic. On the one hand, smoking is one of the sources of foreign exchange, on the other hand, smoking is considered as one of the causes of the failure of quality human development, because it is considered as a source of all degenerative diseases.

In addition to economic and cultural issues, smoking is also a serious conversation related to world health issues. In 2003 the WHO world health agency with several of its members signed a tobacco product control agreement. The agreement was then known as the Framework Convention on Tobacco Control (FCTC). Ten years later in 2013, FCTC was ratified by 170 countries in the world, and Indonesia was the only country in Asia that had not ratified the convention. Again, the economic problem is one of the reasons because 95% of excise tax revenue comes from tobacco-derived products (cigarettes), as well as cultural issues.

There are two problems faced by the Indonesian people in the reform era, related to this cigarette problem. First, the internal side of cigarettes has become part of the social history of the Indonesian people. Over all cigarettes also have a big role in the nation's economic development. Second, from the external side, there is international pressure that forces the entire nation to control tobacco consumption, either in the name of world health or economic political interests.

In the end, the development theory will experience a face shift in accordance with the sociological and political conditions in each country. In the current Indonesian context, handling issues about smoking more often applies a post-development approach (Escobar, 1995). The issue of locality is an important consideration in solving the problem of smoking which is also an international concern. Even though international pressure is so strong about limiting the consumption of tobacco products through the FCTC, Indonesia has not yet to ratify the convention. It is certainly very problematic for the Indonesian government, because it is economically very profitable, medically very detrimental effect, and culturally there is a lot of tension, especially related to religious ideologies that are now developing.

Cigarette fatwa and religious authority in Indonesia.

Cigarettes in terms of Indonesian Islamic civilization have been an important issue since the country was not yet independent. Sheikh Ihsan Jampes in his book entitled "*Irshadu al ikhwan fi bayani Syurbi al Qahwah wa al Dukhan*" explains how the legal debate occurred among the scholars about the law of cigarettes (Jampes, 2013). With a *rajaz* rhythm he gives a clever explanation of why he smokes cigarettes, from shabby, transformed, to illegal, with an anthropological historical approach. Among the scholars who legalized cigarettes there are mentioned by Abdul Ghani Al Nablisy in the book of *Shulhu Baina al Ikhwan fi Hukmi Ibahati al Dukhan*, Imam Mahmud ibn Salamah al Radhi in the book *Ta'yidu al I'lan bi Adami Tahrimi al Dukhan*, and there are several scholars others. This classic book served as a source of legitimacy for traditional students in the treatment of cigarettes.

In the Indonesian Muslim community, the law on smoking is very clear. Majelis Ulama Indonesia (MUI) and Majelis Tarjih and Tajdid (MTT) Muhammadiyah tend to forbid smoking, although this does not necessarily reduce the number of cigarette consumers. The real issue is not *halal* or *haram*, but how Islamic norms have a coercive value. This impression of coercive values is now an actual issue in ideological tensions in Indonesia, including the inclusion of normative Islamic (*shar'i*) views in positive law.

Basically, fatwas are ethical practices which in the language of anthropology are born and developed along with social processes. The existence of ethics cannot be controlled and suppressed by anyone, because ethics is built on authority agents that include natural processes (Agrama, 2010: 02-18). In practice, ethics that are practiced in the form of fatwa are always controlled by institutionalized authorities. In this position, the *fatwa* becomes coercive and almost

equaled the positive law. In the view of Hussein Ali Agrama, interpreting authority and legal institutions is a very problematic thing, because authority which means competence that can be experienced naturally in social processes, is actually built in the power relations of authority agents. Under these conditions, it is very difficult to distinguish between legal institutions and equally coercive authorities.

In formal, fatwa institutions do not have coercive authority, culturally fatwas are still used as a source of legitimacy in Muslim societies. the debate about holders of religious authority, maintaining and preserving authority is very important to be discussed. In explaining religious scholars and authority in the contemporary era, Muhammad Qasim Zaman says that the religious authority possessed by ulama was built continuously through social processes, especially through the cadre institutions or educational institutions. In addition to the institution of the cadre institution, the development of media technology has also become an important instrument in affirming the religious identity and religious authority. The affirmation of religious identity is conveyed through religious opinions both orally and in writing through developing media (Zaman, 2010: 56).

There are many problem, when the Islamic public is not in the same ideology and has been polarized into various kinds of ideas. In Indonesia, religious authority cannot be addressed to a figure with a certain ideological label, especially if it is related to political issues or sensitive matters. Nico Kaptein's illustration in recording the *fatwa* in Indonesia clearly illustrates this problem. Kaptein also explains how religious authority was constructed through various religious instruments, symbols and religious identity (Kaptein, 2004: 11-12). In this case, media technology is also an important factor in constructing religious authority. It is at this stage that the *fatwa* on smoking becomes an arena of "fighting" to get religious authority, because there are cultural agents or dominant structures that support the existence of the ulema as religious elites.

During the reign of the New Order, relations between *ulama* and the government (state) were built in a dominative pattern of relations where *ulama* institutions were formed to support government policies related to Islamic religious issues. In addition, the existence of institutionalized *ulama* makes government to control through the structure of the ulema which in the majority of Indonesian Islamic society, has a very strategic position. The emergence of the Indonesian Ulema Council (MUI) on July 26, 1975, which was formed by the New Order government was a political strategy of “corporatism” to control political movements based on Islam (Porter, 2002: 02). At this stage, the religious

authority of the ulema cannot be released from power, either through political resources, or through the production of religious discourse.

In the reform era, where Ulema's polarization has been so massive, ulama institutions are no longer centered only on government-formed institutions supported by power, but also clerics born of the political process, as well as from the cultural process. These point discussions here brings an idea of how religious authority becomes an important discourse in which scholars from various circles are involved. It is in this position that the practice of cigarette fatwa in Indonesia is placed, where the resources (modality) possessed by ulemas as religious authority holders have an important role in producing effective fatwas.

Conclusion

As a final illustration of this paper, an important point that should be underlined is the emergence of cigarette *fatwa* in Indonesia, not suddenly, and even stopping, but there is a complicated discourse, how the *fatwa* is produced, and how the *fatwa* product is negotiated in social realm. Besides the *fatwa* about smoking, *haram*, *halal*, or *makruh*, is still developing along with the dynamics of discourse battle in the arena of Indonesian people's life.

Ulama as the authority holder of the *fatwa* is certainly not the only social agent producing discourse to enact their *fatwa*, but the *ulama* will face policies adopted by the state in managing social, economical and political resources. On other sides, the effectiveness of the control of power held by the *fatwa*, must also clash with the economic capital owned by cigarette manufacturers. The crucial thing is how scholars as social agents solve the identity problem that is always inherent in their bodies.

Ulama as fatwa producers inevitably have to deal with the power and political capital of development policies in Indonesia. Ulema should also intersect with the culture that frames them, the discourse they produce, and of course, cultures that come from outside or transnational. In this position the modality of the ulema was negotiated and contested in the arena of the practice of fatwa on cigarettes.

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