

## AN ANALYSIS OF CHANGES TO TARJIH MUHAMMADIYAH'S FATWA ON SMOKING FROM MANHAJ TARJIH'S PERSPECTIVE

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### Abstract

This research aimed to reveal the approach used in the tarjih Muhammadiyah's fatwa regarding smoking law and describe the application of legal change rules in the smoking problem from Manhaj Tarjih's perspective. This research employed literature-based with a qualitative descriptive-analysis method. The results of the research showed that smoking law Fatwa Number 30 of 2005 and Fatwa Number 7 of 2007 used three approaches, including Bayani, Burhani, and Irfani. However, the Bayani approach was still more dominant than other approaches. Fatwa Number 6 of 2010 has also used three circular approaches, namely Bayani, Burhani, and Irfani, although the Irfani approach was still felt to be lacking and has not been stated explicitly. Then, the application of the four rules for changing the law in Muhammadiyah's manhaj tarjih has been perfectly fulfilled in the case of changing the law regarding the issue of smoking in the tarjih fatwa. Therefore, the changes that occurred have been accompanied by clear arguments and did not conflict with the Al-Qur'an and as-Sunnah. It is hoped that special research from the perspective of the Irfani approach was still very lacking. Furthermore, the community is expected to be mature in responding to changes in smoking laws decided by Muhammadiyah Tarjih and Tajdid Council.

**Keywords:** Smoking; Tarjih Fatwa; Manhaj Tarjih; Legal Changes; Muhammadiyah

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### INTRODUCTION

The situation and conditions of Muslims today have changed from the conditions at the time of the Prophet, His Companions, and the imams of the previous mazhab. A concrete example that can be seen is the problem of being able to earn a salary from teaching the Al-Qur'an, being an imam, muezzin, and so on. This ability is based on

changing times where Al-Qur'an teachers and religious practitioners are no longer connected to Baitul Mal. If they are busy with other activities such as trading, farming, and so on, sooner or later, the Al-Qur'an will be lost, and the Islamic teachings will be neglected.<sup>1</sup> Due to demands for changes in conditions and places, the fatwa must evolve to reveal the reality of these changes. Therefore, mujtahids will also be required to see and consider the flexibility of Islamic law regarding changes that occur and fulfill the needs and benefits of humans.<sup>2</sup> This reveals the need for new fatwas and updated explanations as well as their suitability for every condition, knowledge, and habit of society.

In this regard, Muhammadiyah is a social religious organization and an Islamic movement, preaching *amar makruf nahi munkar* and *tajdid*, based on the Al-Qur'an and as-Sunnah, and based on Islam.<sup>3</sup> Thus, of course, Muhammadiyah will be involved in the study, interpretation, and application of the teachings of the Islamic religion itself, including in resolving legal issues regarding smoking, which has become a crucial part of the lives of Indonesian people. According to Dr. Margaret Chan (Director General of WHO 2006-2017), around 5.4 million people per year die from lung, heart, and cancer diseases and others due to the tobacco epidemic caused by smoking. This is equivalent to one death in the world due to smoking every 5.8 seconds. In addition, it is also estimated that there will be 8 million deaths every year by 2030 due to smoking if control is not carried out quickly and precisely. Then, during the 20<sup>th</sup> century, there were 100 million deaths recorded due to smoking, and it is estimated that in the 21<sup>st</sup> century, around 1 billion lives will be lost due to smoking.<sup>4</sup>

Due to the many problems caused by smoking that occur in society, and these must be resolved by finding a solution, the Tarjih and Tajdid Council of Muhammadiyah Central Leadership, in carrying out these responsibilities, adhere to a principle and method called *manhaj tarjih*. *Manhaj tarjih* is a system that contains a set of insights,

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<sup>1</sup>Wahbah Mustafa Az-Zuhaili, *Ushul Fiqh Al-Islami* (Beirut: Dar al-Fikr, 1986), 835.

<sup>2</sup>Wahbah Mustafa Az-Zuhaili, *Taghayyur Al-Ijtihad* (Damaskus: Dar al-Maktabi, 2000), 5.

<sup>3</sup>Muhammadiyah, "Anggaran Dasar Muhammadiyah," Muhammadiyah.or.id, accessed August 10, 2022, <https://muhammadiyah.or.id/anggaran-dasar/>.

<sup>4</sup>WHO, *WHO Report on the Global Tobacco Epidemic, 2008: The MPOWER Package* (Geneva: World Health Organization, 2008), 7.

sources, approaches, and certain technical procedures that serve as a guideline for tarjih activities.<sup>5</sup> In the tarjih manhaj, there are three types of methods used by the Tarjih Council to resolve socio-religious problems faced by society, especially in smoking legal issues, one of which is the causation method, a method used to establish a law by taking into account the benefits and the harm it causes.<sup>6</sup> Thus, it is not surprising that the Tarjih Council continues to make improvements to its ijihad products, both decisions, fatwas, and discourse. This is to ensure that the results of the ijihad can continue to provide benefits and be relevant to developments in time and place, especially for problems that do not have a text, either in the Al-Qur'an or as-Sunnah.<sup>7</sup>

Therefore, the term legal change in socio-religious issues emerged according to the Tarjih and Tajdid Council of Muhammadiyah Central Leadership. Regarding the issue of smoking, the Tarjih Council has revised the results of its ijihad. This can be seen from the different results of ijihad, where fatwa tarjih Number 30 of 2005 and tarjih fatwa Number 7 of 2007 decided that the smoking law is permitted or permissible (mubah).<sup>8</sup> However, a revision was made to the fatwa through fatwa tarjih Number 6 of 2010, which decided that smoking is unlawful or prohibited (haram).<sup>9</sup>

Several studies have been conducted on this issue, such as the Muhammadiyah fatwa on smoking for employees, criticism of the Muhammadiyah fatwa considered inappropriate, the cigarette fatwa with a maqasid sharia approach, and the economic impact of the cigarette fatwa. There has been no research that focuses on legal changes in the Tarjih fatwa from 2005 and 2007 to 2010 regarding smoking laws. Thus, this really needs to be researched and studied so that a clear overview of the legal changes that occur is obtained. This is also a treasure trove of studies of contemporary Islamic legal thought,

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<sup>5</sup>Syamsul Anwar, "Manhaj Tarjih Muhammadiyah," *Jurnal Tajdid* 16, no. 1 (2018): 10.

<sup>6</sup>Syamsul Anwar, *Manhaj Tarjih Muhammadiyah* (Yogyakarta: Panitia Musyawarah Nasional Tarjih Muhammadiyah XXX, 2018), 30.

<sup>7</sup>Abdi Wijaya, "MANHĀJ MAJELIS TARJIH MUHAMMADIYAH DALAM TRANSFORMASI HUKUM ISLAM ( FATWA )," *Al-Risalah Jurnal Ilmu Syariah dan Hukum* 19, no. 1 (2019): 71, <https://doi.org/10.24252/AL-RISALAH.V19I1.9688>.

<sup>8</sup>Majelis Tarjih dan Tajdid, "Hukum Merokok," *Suara Muhammadiyah*, April 2007; Majelis Tarjih dan Tajdid, "Kegiatan Setelah Mengubur Mayat, Tahiyat Awal, Shalat Sunat 4 Rakaat, Hukum Merokok, Dan Qunut Nazilah," *Suara Muhammadiyah*, December 2005.

<sup>9</sup>Majelis Tarjih dan Tajdid, "FATWA MAJELIS TARJIH DAN TAJDID PIMPINAN PUSAT MUHAMMADIYAH NO. 6/SM/MTT/III/2010 TENTANG HUKUM MEROKOK," 2010.

which is normative in nature and combined with social phenomena in Indonesia. Then, the mission to change Islamic law reflects the movement of Muslim intellectuals in order to reopen the door to *ijtihad*, which is considered to have been closed so far.

## **METHOD**

This research employed a qualitative approach with a library study type of research. Meanwhile, the method used was descriptive analysis by collecting data and then classifying it into issues regarding smoking laws contained in the *tarjih fatwa*. Next, it was analyzed and identified using the theory of legal change according to the Muhammadiyah *manhaj tarjih* to find out changes in the law regarding smoking issues in the *tarjih fatwa* from the perspective of the Muhammadiyah *manhaj tarjih*.

## **RESULT AND DISCUSSION**

### **1. General description of the Muhammadiyah Tarjih and Tajdid Council**

#### **a. A Brief History of the Tarjih and Tajdid Council**

The Tarjih and Tajdid Council (TTC) is one of the assemblies formed within Muhammadiyah to carry out its functions and duties relating to legal issues experienced by members of the Muhammadiyah organization in particular and the wider community in general. The discourse on establishing this assembly was first discussed at the 16<sup>th</sup> Muhammadiyah Congress in 1927 in Pekalongan, proposed by KH. Mas Mansur.<sup>10</sup>

The birth of the Tarjih Council cannot be separated from the background of concerns about the emergence of debates and disputes in matters of religious *khilāfiyah* and the development of the quantity and quality of Muhammadiyah members from very diverse backgrounds and regions, which are feared to hinder the progress of the organization, weaken the unity of the community, and prevent abuse of religious law for the interests of certain individuals.<sup>11</sup>

Ratification of the establishment of the Tarjih Council and its rules and management structure was carried out at the 17<sup>th</sup> Congress in Yogyakarta in 1928 after an agreement

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<sup>10</sup>Hamdan Hambali; et al., *Mentjetak Kijahi Kemadjoen; Setengah Abad Perjalanan Pendidikan Ulama Tarjih Muhammadiyah* (Yogyakarta: Suara Muhammadiyah, 2021), 24.

<sup>11</sup>Fathurrahman Djamil, *Metode Ijtihad Majelis Tarjih Muhammadiyah* (Jakarta: Logos Publishing House, 1995), 64.

was reached regarding the name of the new assembly and a draft of the rules and composition of the Tarjih Council management at the central level was made.<sup>12</sup>

### **b. Manhaj Tarjih Muhammadiyah**

Etymologically, "Manhaj Tarjih" consists of two words, namely "manhaj" and "tarjih". The word "manhaj" comes from the Arabic **نَهَجٌ - نَهَجٌ - نُهَاجًا**, which means "clear or bright". The word "manhaj" itself can mean "way or method."<sup>13</sup> According to Abu Abbas Muhammad bin Yazid al-Mubradi as quoted by Asy-Syaukani, the word "manhaj" also means "straight path."<sup>14</sup> Meanwhile, the word "tarjih" comes from the words **رَجَّحَ - يُرَجِّحُ - تَرْجِيحًا**, which means "to give more consideration than others"<sup>15</sup> In terms of terms, tarjih is the mujtahid's act of prioritizing one of the two paths, which is more acceptable advantages and makes it more important to practice than the other.<sup>16</sup>

In the science of Ushul Fiqh, tarjih means strengthening one proposition over another so that it can know which one is stronger, then practices the stronger one and abandon the one that is not strong.<sup>17</sup> This is the actual meaning of the word tarjih. Still, the use of the word tarjih as a term in the Tarjih and Tajdid Council has experienced development and a shift in meaning, namely not just choosing superior opinions and arguments. Still, the word tarjih has become synonymous with ijtihad. Therefore, in the Muhammadiyah environment, tarjih is defined as an intellectual activity to respond to social and humanitarian problems from an Islamic religious perspective.<sup>18</sup>

Manhaj tarjih Muhammadiyah is a system that contains a set of insights, sources, approaches, and certain technical procedures that serve as a guideline for tarjih

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<sup>12</sup>Iwan Dwi Aprianto et al., "MAJELIS TARJIH DAN AGENDA PENGEMBANGAN PEMIKIRAN ISLAM DALAM KONTEKS PERUBAHAN MASYARAKAT DI YOGYAKARTA," *Pangadereng: Jurnal Hasil Penelitian Ilmu Sosial dan Humaniora* 6, no. 2 (2020): 293, <https://doi.org/10.36869/PJHPISH.V6I2.150>.

<sup>13</sup>Ahmad Warson Munawwir, *Kamus Al-Munawwir Arab-Indonesia Terlengkap* (Surabaya: Pustaka Progressif, 1997), 1468.

<sup>14</sup>Muhammad bin Ali bin Muhammad Asy-Syaukani, *Fathul Qadir Al-Jami' Baina Fanna Ar-Riwayah Wa Ad-Dirayah Min 'Ilm at-Tafsir* (Dar al-Wafa', 1992), 68.

<sup>15</sup>Asjmun Abdurrahman, *Manhaj Tarjih Muhammadiyah: Metodologi Dan Aplikasi* (Yogyakarta: Pustaka Pelajar, 2012), 3.

<sup>16</sup>Abdul Latif Abdullah Aziz Al-Barzanji, *At-Ta'aruf Wa at-Tarjih Baina Al-Adillah Asy-Syar'Iyyah* (Beirut: Dar al-Kutub al-Ilmiyyah, 1996), 89.

<sup>17</sup>Muhammad bin Ali bin Muhammad Asy-Syaukani, *Irsyad Al-Fuhul Ila Tahqiq Al-Haq Min 'Ilm Al-Usul* (Riyadh: Dar al-Fadilah li an-Nasyr wa at-Tauzi', 2000), 1113.

<sup>18</sup>Anwar, *Manhaj Tarjih Muhammadiyah*, 2018, 6.

activities.<sup>19</sup> In Muhammadiyah ijtihad, several approaches are used, namely the Bayani, Burhani, and Irfani approaches.<sup>20</sup> Bayani approach is to respond to existing problems with the main focus being sharia texts (Al-Qur'an and as-Sunnah). Burhani approach is to respond to problems using a developing general scientific approach. Meanwhile, the Irfani approach is to try to increase the sensitivity of conscience and sharpness of inner intuition by cleansing the soul so that the resulting decisions remain based on guidance from Allah, The Most High.<sup>21</sup>

There are four rules for changing the law in Manhaj Tarjih, namely:

- 1) There is an urgent or beneficial demand for changes to legal provisions.
- 2) The legal provisions that want to be changed do not concern the issue of mahdah worship.
- 3) The legal provisions to be changed are not qat'i legal provisions. If the law is qat'i, then it cannot be changed.
- 4) The new legal provisions resulting from the changes must also have a rationale.

Thus, changes in law are just like moving from one proposition to another.<sup>22</sup>

## **2. Approach in the Tarjih Fatwa on Smoking Problem**

The Tarjih and Tajdid Council of Muhammadiyah Central Leadership has issued a fatwa regarding the issue of smoking, which has different laws, namely fatwa Number 30 of 2005 and Number 7 of 2007, where it is stipulated that smoking is legally permitted or permissible (mubah). Meanwhile, fatwa Number 6 of 2010 was decided to be unlawful or prohibited (haram). In determining the fatwa, the Tarjih and Tajdid Councils use the approach contained in the Manhaj Tarjih to address smoking laws. The following is an explanation of the approaches used in the smoking problem in the Muhammadiyah tarjih fatwa:

### **a. Fatwa Number 30 of 2005 and Number 7 of 2007**

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<sup>19</sup>Anwar, 10.

<sup>20</sup>Sulanam, "Rilis Putusan dan Produk Fatwa Majelis Tarjih Muhammadiyah," *YUDISIA : Jurnal Pemikiran Hukum dan Hukum Islam* 10, no. 1 (2019): 85, <https://doi.org/10.21043/YUDISIA.V10I1.3850>.

<sup>21</sup>Majelis Tarjih dan Tajdid, "Keputusan Musyawarah Nasional Tarjih Muhammadiyah XXV" (Jakarta, 5-8 Juli 2000).

<sup>22</sup>Majelis Tarjih dan Tajdid PP Muhammadiyah, *Himpunan Putusan Tarjih 3* (Yogyakarta: Suara Muhammadiyah, 2018), ix.

In Fatwa Number 30 of 2005, the Tarjih and Tajdid Council answered several existing questions, including regarding smoking laws. At that time, the Tarjih Council was of the opinion that basically the law on smoking was permissible because no *nas syari'ah* prohibited it. However, some scholars argued that the law was *makruh*, arguing that smoking can cause harm (*mudharat*), both to the perpetrator and to other people. Therefore, this act must be avoided. This is also in accordance with the rules of *fiqhiyyah*:

الضَّرُّ يُزَالُ

"Harm (*mudharat*) must be removed."<sup>23</sup>

And also the rule:

لَا ضَرَرَ وَلَا ضِرَارَ

"Don't harm it, and don't be harmed it."<sup>24</sup>

Apart from these rules, this statement is also in accordance with the meaning contained in the QS. *al-A'raf*/7: 157 as follows:

وَجِلُّ هُمْ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ

"And permits for them what is lawful and forbids to them what is impure."<sup>25</sup>

According to Ibnul Qayyim, the word "*at-Tayyibāt*" means everything beneficial for the physical, spiritual, intellectual, and mind. Meanwhile, the meaning of the word "*al-Khabāis*" is everything that is not good for the physical, spiritual, intellectual and mind. Thus, the Tarjih Council stated that the law on smoking is permitted or permissible (*mubah*), but avoiding it is better than doing it. This fatwa is the same as the fatwa issued by the Tarjih Council in 2007.

From this fatwa, it can be concluded that the smoking law decided at that time was permitted or permissible (*mubah*). The approach used by the Tarjih and Tajdid Councils was the Bayani, Burhani, and Irfani approach. However, if we look further, it is found that the Bayani approach is more dominant than the other approaches. For example, classifying the act of smoking as a *khābāis* (an act that can give rise to *mafsadat* in many

<sup>23</sup>Acep Djazuli, *Kaidah-Kaidah Fikih: Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah-Masalah Yang Praktis* (Jakarta: Kencana Prenada Media Group, 2010), 9.

<sup>24</sup>Ali Ahmad An-Nadwi, *Al-Qawa'id Al-Fiqhiyyah* (Beirut: Dar al-Qalam, 1998), 288.

<sup>25</sup>Departemen Agama RI, *Al-Qur'an Dan Terjemah* (Surabaya: Fajar Mulya, 2002), 170.

aspects) is the result of the interpretation of the QS. al-A'raf: 157. Meanwhile, the use of arguments from the Burhani and Irfani approaches is still very lacking in this fatwa. Even though the elements of benefit and harm have been touched, they are not very strong. This is due to the absence of empirical studies on health, social, and economic aspects.

#### **b. Fatwa Number 6 of 2010**

In Fatwa Number 6 of 2010, the Tarjih and Tajdid Council specifically issued a fatwa regarding smoking laws. Even though a fatwa was issued in 2005 and 2007 regarding the same issue, the Tarjih and Tajdid Council felt a need to review the previous fatwa.

In deciding fatwa Number 6 of 2010, the Tarjih and Tajdid Council had previously held two activities, namely the Tarjih Halaqah on Tobacco Control Jurisprudence, which was held on Sunday 21 Rabiul Awal 1431 H/March 7, 2010 AD, and the Leadership Meeting of the Tarjih and Tajdid Council of Muhammadiyah Central Leadership on Monday 22 Rabiul Awal 1431 H/March 7, 2010 AD. From these two activities, it was decided that smoking was unlawful or prohibited (haram).

In the fatwa decision, the Tarjih and Tajdid Council used two arguments, namely *al-muqaddimāt an-naqliyyah* (affirmation of sharia premises) and *tahqiq al-mana'āt* (affirmation of sharia facts).<sup>26</sup> In the first argument, the Tarjih and Tajdid Council explained the arguments, with the main starting point being the nas syari'ah (Al-Qur'an and as-Sunnah). In this argument, there are at least six postulates used, namely:

- 1) Smoking is included in the category of *khobā'is* (dirty/unclean) acts, which are prohibited in the QS. Al-A'raf: 157 as follows:

وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ

“And permits for them what is lawful and forbids to them what is impure.”<sup>27</sup>

- 2) The act of smoking contains an element of dropping oneself to destruction (*at-tahlukah*) and is even an act of killing oneself (*qaṭl an-nafs*) slowly so that it is contrary to the prohibition in the QS. al-Baqarah: 195 and an-Nisa': 29 as follows:

وَلَا تُلْفُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ

<sup>26</sup>Majelis Tarjih dan Tajdid, “FATWA MAJELIS TARJIH DAN TAJDID PIMPINAN PUSAT MUHAMMADIYAH NO. 6/SM/MTT/III/2010 TENTANG HUKUM MEROKOK,” 4-8.

<sup>27</sup>Departemen Agama RI, *Al-Qur'an Dan Terjemah*, 170.



“And do not let your own hands throw you into destruction. And do good, for Allah certainly loves the good-doers.”<sup>28</sup>

وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

“And do not kill yourselves. Surely Allah is ever Merciful to you.”<sup>29</sup>

- 3) Spending money on cigarettes means committing an act of wasting wealth (*tabzīr*), which is prohibited in the QS. al-Isra': 26-27 as follows:

وَعَاتِ ذَا الْقُرْبَىٰ حَقَّهُ وَالْمِسْكِينَ وَابْنَ السَّبِيلِ وَلَا تُبَذِّرْ تَبْذِيرًا. إِنَّ الْمُبَذِّرِينَ كَانُوا إِخْوَانَ الشَّيَاطِينِ وَكَانَ الشَّيْطَانُ لِرَبِّهِ كَفُورًا

“And give to close relatives their due, as well as the poor and needy travelers. And do not spend wastefully. Surely, the wasteful are like brothers to the devils. And the Devil is ever ungrateful to his Lord.”<sup>30</sup>

- 4) The hadith narrated by Imam Ibn Majah, Imam Ahmad, and Imam Malik regarding the prohibition of causing harm to oneself and others states that:

لَا ضَرَرَ وَلَا ضِرَارَ

“There should be no actions that harm yourself or others.”<sup>31</sup>

- 5) Hadith narrated by Imam Ahmad and Imam Abu Dawud regarding the prohibition of intoxicating and weakening acts states that:

عَنْ أُمِّ سَلَمَةَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ كُلِّ مُسْكِرٍ وَمُفْتِرٍ

“From Umm Salamah that the Prophet SAW prohibited every intoxicant and Muftir (every substance which slackens the mind).”<sup>32</sup>

- 6) Smoking is contrary to the objectives of the shari'ah (*maqāsid ash-syari'ah*), namely the protection of religion (*hifz ad-dīn*), soul or body (*hifz an-nafs*), reason (*hifz al-'aql*), family (*hifz an-nasl*), and wealth (*hifz al-māl*).

Another argument that strengthens the prohibition on smoking is *tahqīq al-manāṭ* (affirmation of sharia facts). *Tahqīq al-manāṭ* is an empirical fact resulting from research

<sup>28</sup>Departemen Agama RI, 30.

<sup>29</sup>Departemen Agama RI, 83.

<sup>30</sup>Departemen Agama RI, 284.

<sup>31</sup>Ahmad Ibn Muhammad Ibn Hambal, *Musnad Imam Ahmad Ibn Hambal* (Kairo: Mu'assasah ar-Risalah, 1999), 55; Abu Abdillah Muhammad Ibn Yazid Ibn Majah Al-Quzwaini, *Sunan Ibnu Majah* (Beirut: Dar ar-Risalah al-'Alamiyyah, 2009), 784; Imam Malik Ibn Anas, *Muwatha' Imam Malik* (Abu Dhabi: Muassasah Zaid bin Sultan Alu Nihyan lil 'Amali al-Khairiyyah al-Insaniyyah, 2004), 1078.

<sup>32</sup>Hambal, *Musnad Imam Ahmad Ibn Hambal*, 246; Abu Dawud Sulaiman bin al-Asy'ats As-Sijistani, *Sunan Abi Dawud* (Beirut: Dar al-Kitab al-'Arabi, n.d.), 370.

by experts regarding the issue of smoking. In this dalil, six points are stated regarding the negative impacts of smoking. The six points are:

- 1) Use for consumption in the form of cigarettes constitutes 98% of the use of tobacco products and only 2% for other uses.
- 2) Cigarettes are considered a dangerous and addictive product, which recent research has proven. Academics have also agreed that tobacco consumption is a cause of death that must be addressed immediately.
- 3) Under-five mortality in the environment of parents who smoke is higher compared to parents who do not smoke, both in urban and rural areas.
- 4) It is a fact that the poorest families actually have a higher smoking prevalence than the richest income groups.
- 5) Linked to socio-economic aspects of tobacco, the data shows that the 7-fold increase in cigarette production during the 1961-2001 period is not commensurate with the constant expansion of tobacco-growing land and even tends to decrease by 0.8% in 2005.
- 6) The presentation in Halaqah Tarjih on Tobacco Control Jurisprudence revealed that Indonesia has not signed and ratified the Framework Convention on Tobacco Control (FCTC), so there is no strong basis for making efforts to control the negative impacts of tobacco on public health. In addition, tobacco excise in Indonesia is still low compared to several other countries, so the price of cigarettes in Indonesia is very low, which means it is easily accessible to poor families and even children. Hence, the prevalence of smoking remains high. Then, cigarette advertising also stimulates the desire to consume this dangerous substance.

In addition to the two arguments above, the Tarjih and Tajdid Councils also stated in their fatwa prohibiting smoking that it is obligatory to strive to maintain and improve the level of public health and create a conducive environment, namely a healthy living condition, which is everyone's right and is part of the objectives of the Sharia. Then, for people who have already become smokers, they are obliged to try according to their ability to quit the smoking habit. Therefore, health centers in the Muhammadiyah environment must provide facilities to give therapy to help people who are trying to quit

smoking, and people who have not smoked or do not smoke are obliged to prevent themselves and their families from trying to smoke.<sup>33</sup>

In this fatwa, the principles of *at-tadrīj* (gradually), *at-taisīr* (ease), and *'adam al-haraj* (not making things difficult) are also applied. Next, the Tarjih and Tajdid Council also gave a *tausiyah* (appeal) to the Muhammadiyah Association to actively participate in tobacco control efforts and become an example in creating a society free from the dangers of smoking. In addition, it is hoped that the government will sign the Framework Convention on Tobacco Control (FCTC) to strengthen tobacco control efforts by increasing tobacco excise to the highest limit permitted by law and prohibiting cigarette advertising that can stimulate the younger generation to try smoking, as well as assist and facilitate efforts to diversify and transfer businesses and crops for tobacco farmers.<sup>34</sup>

From the explanation of the fatwa above, it can be concluded that the Tarjih and Tajdid Council uses three approaches simultaneously or circularly, namely the Bayani, Burhani, and Irfani approaches. If we look at the fatwa, the argument section of *al-muqaddimāt an-naqliyyah*, it is very clear that it is a Bayani approach, which concentrates on shari'ah passages, while the argument section of *taḥqīq al-manāṭ* is a Burhani approach, which concentrates on general knowledge and is developing, both from health, social and economic aspects.

The Irfani approach is contained in the amar fatwa, which is oriented toward sensitivity towards people who smoke and people who do not smoke. Likewise, what is contained in the *tausiyah* contains appeals regarding tobacco control aimed at Muhammadiyah itself and the government. However, if we examine further, Irfani's arguments for this fatwa are still considered lacking and have not been stated explicitly.

### **3. Legal Changes on Smoking Problems in the Tarjih Fatwa from Muhammadiyah Manhaj Tarjih's Perspective**

After previously discussing the approaches used in the tarjih fatwa on smoking, the next step is to analyze the legal changes using the rules of legal change in Muhammadiyah's manhaj tarjih. In order to find out the application of the rules for

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<sup>33</sup>Majelis Tarjih dan Tajdid, "FATWA MAJELIS TARJIH DAN TAJDID PIMPINAN PUSAT MUHAMMADIYAH NO. 6/SM/MTT/III/2010 TENTANG HUKUM MEROKOK," 1-2.

<sup>34</sup>Majelis Tarjih dan Tajdid, 2-3.

changing the law, the fatwa regarding smoking laws has undergone changes. The analysis is as follows:

- a. There is an urgent/beneficial demand for changes to legal provisions, which means that if there is no demand and need to change, then the law cannot be changed or remains.

In this legal change, several reasons/'*illat* can be used as a basis, namely:

- 1) Cigarettes or smoking contain more harm than benefits. Therefore, this action falls into the category of *khabā'is*, namely, a bad and destructive action. Then, the data and facts show that poor families are more likely to consume cigarettes than rich families. This is proof that smoking is an act of *tabzīr* (waste), which can plunge people into poverty. This statement is also strengthened by the latest data from TCSC-IAKMI, which states that cigarette prices have a large contribution to poverty, amounting to 11.38% in rural areas and 12.22% in urban areas.<sup>35</sup>

Cigarettes are considered a dangerous and addictive product. According to research, cigarettes contain 4000 types of dangerous chemical compounds and can easily enter the body and cause various diseases.<sup>36</sup> Therefore, smoking is included in the category of doing *iftar* (something that weakens). Then, the activity of consuming tobacco is one of the causes of death that must be addressed immediately,<sup>37</sup> so that the act of smoking includes the behavior of throwing oneself into perdition (*at-tahlukah*), even to slow suicide (*qatl an-nafs*).<sup>38</sup> The data from WHO in 2018 stated that every year, around 225,720

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<sup>35</sup>TCSC-IAKMI, *Atlas Tembakau Indonesia 2020* (Jakarta: Tobacco Control and Support Center - IAKMI, 2020), 15.

<sup>36</sup>Alfian Risfil Auton, "FATWA HARAM MEROKOK MAJLIS TARIJH MUHAMMADIYAH," *IN RIGHT: Jurnal Agama dan Hak Azazi Manusia* 1, no. 2 (2012): 336, <http://ejournal.uin-suka.ac.id/syariah/inright/article/view/1222>.

<sup>37</sup>Syamsuriansyah Syamsuriansyah et al., "Prevalence and associated factors of Smokeless Tobacco (SLT) use among adolescents in Indonesia: GYTS 2019 data analysis," *Public Health of Indonesia* 8, no. 1 (2022): 10, <https://doi.org/10.36685/PHI.V8I1.569>.

<sup>38</sup>Nurul Huda, "STUDI FATWA MAJELIS TARIJH TENTANG MEROKOK," *AT-TUHFAH: JURNAL STUDI KEISLAMAN* 5, no. 9 (2016): 142, <https://doi.org/10.36840/JURNALSTUDIKEISLAMAN.V5I9.52>.

people, or 14.7% in Indonesia, die from smoking or other tobacco-related diseases.<sup>39</sup>

- 2) Under-five mortality in the environment of parents who smoke is higher than in the environment of parents who do not smoke, both in urban and rural areas. This fact is a very worrying condition because it has endangered oneself and others and is contrary to *maqāsid asy-syari'ah*. The above fact is proven by data showing that babies or children who are exposed to cigarette smoke can become passive smokers; as a result, they are very at risk of experiencing SIDS (Sudden Infant Death Syndrome), namely sudden infant death.<sup>40</sup>
- 3) Let's look at the socio-economic aspect of tobacco. The data obtained shows that the 7-fold increase in cigarette production during the 1961-2001 period is not commensurate with the constant expansion of tobacco plantation land and even tends to decrease by 0.8% in 2005. This is because of the high demand for tobacco supplies obtained from imports compared to exports. Then, most of the tobacco farmers only have an elementary school education; some don't even go to school and the majority of them live in houses with dirt floors. The wages for tobacco farmers are also among the lowest when compared to other agricultural products.<sup>41</sup>

In addition to the data above, TCSC-IAKMI has also released the latest data for 2020, which stated that almost Rp. 4,200 trillion or one-third of GDP is lost due to diseases caused by smoking.<sup>42</sup> Besides, there was an increase in the value of exports and imports from 2011 to 2017. The number of exports was 29,134 tons, and imports were 121,390 tons. However, this number still shows that imports dominate more than exports.<sup>43</sup> Next, cigarette prices in Indonesia are one of the lowest among Asia Pacific countries, and the excise tax on tobacco products is also low. Even though excise duties and prices increase

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<sup>39</sup>WHO, "Heart Disease and Stroke Are the Commonest Ways by Which Tobacco Kills People" (Indonesia, 2018), 1.

<sup>40</sup>P2PTM Kemenkes RI, "Awat Merokok Dapat Menyebabkan Kematian Mendadak Pada Bayi!," p2ptm.kemkes.go.id, 2018, <http://p2ptm.kemkes.go.id/infographic-p2ptm/penyakit-paru-kronik/page/25/awat-merokok-dapat-menyebabkan-kematian-mendadak-pada-bayi>.

<sup>41</sup>TCSC-IAKMI, "Petani Tembakau Di Indonesia" (Jakarta, n.d.), 3.

<sup>42</sup>TCSC-IAKMI, *Atlas Tembakau Indonesia 2020*, 49.

<sup>43</sup>TCSC-IAKMI, 59.

by around 10 %/year, tobacco products are becoming increasingly affordable because the inflation rate is still below compared to rising prices and increasing people's incomes.<sup>44</sup>

Of the four basic reasons for the urgent demand for legal change, it is considered to be in line with the rules of fiqhiyyah, namely:

الضَّرُّ يُزَالُ

"Harm (mudharat) must be removed."<sup>45</sup>

- a. The legal provisions that want to be changed do not concern the subject of mahdah worship but are outside the mahdah worship. This is because mahdah worship is worship that solely contains elements of human relationship with Allah SWT. The procedures and rules for its implementation are clearly specified in the Al-Qur'an and Hadith.<sup>46</sup> Therefore, the provisions of the mahdah worship cannot be changed.

As for smoking, it is not included in the category of mahdah worship, such as prayer, fasting, and zakat, but only included in the worldly mu'amalah category. Thus, it can experience legal changes because of the many negative impacts caused by smoking in various sectors of life, and it is desired to change the law from what is originally permissible to unlawful or prohibited (haram).

- b. The legal provisions to be changed are not *qat'i* legal provisions. If the law is *qat'i*, then it cannot be changed.

Regarding the legal provisions for smoking, basically, there are no clear and definite provisions, either from the Al-Qur'an or Hadith, so the law as long as smoking is permitted or permissible (mubah) and based on the following rules:

الْأَصْلُ فِي الْأَشْيَاءِ الْإِبَاحَةُ حَتَّى يَدُلَّ الدَّلِيلُ عَلَى التَّحْرِيمِ

"Basically, the law of everything is permissible until there is an argument that shows that it is unlawful or prohibited (haram)."<sup>47</sup>

<sup>44</sup>WHO, "Raise Tobacco Taxes and Prices for a Healthy and Prosperous Indonesia" (Indonesia, 2020), 9-10.

<sup>45</sup>Amir Muhammad Fida' Muhammad Abdul Mu'ti Bahjat, *Haqibah At-Ta'hil Al-Fiqh 'Ala Mazhab Al-Imam Ahmad: Al-Qawa'id Al-Fiqhiyyah Wa Ushul Al-Fiqh* (Madinah: Dar Thayyibah al-Khudra' li an-Nasyar wa al-Tauzi', 1440), 16.

<sup>46</sup>Indi Aunullah, *Ensiklopedi Fikih Untuk Remaja Jilid I* (Yogyakarta: Insan Madani, 2008), 152.

<sup>47</sup>Muhammad Mustafa Az-Zuhaili, *Al-Qawa'id a-Fiqhiyyah Wa Tathbiqatiha Fi Al-Mazahib Al-Arba'ah* (Damaskus: Dar al-Fikr, 2006), 190.

Therefore, the legal provisions for smoking come from the results of *ijtihad* only, and the truth resulting from that *ijtihad* does not reach the level of *qat'i*, but only reaches the level of *zanni*, both *wurūd* and *dalālah*. The arguments used in determining the legal provisions for smoking are all general in nature, both in the Al-Qur'an and Hadith. Thus, regulations related to smoking laws provide opportunities to vary and can change depending on changes in time, place, and circumstances. This is in line with the rule, which states:

لَا يُنْكِرُ تَغْيِيرَ الْأَحْكَامِ بِتَغْيِيرِ الْأَزْمَنِ وَالْأَمْكَانَةِ وَالْأَحْوَالِ

"There is no denying changes in law due to changes in time, place, and circumstances."<sup>48</sup>

- c. The new legal provisions resulting from the change must also have a rationale so that a legal change is nothing more than a transfer from one proposition to another. Legal changes on the smoking problem are the result of a new *ijtihad* product, which has a basis, both from the Al-Qur'an, Hadith and from aspects of *maqāsid asy-syarī'ah*, namely:

- 1) QS. Al-A'raf/7: 157

وَيُجِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ

"And permits for them what is lawful and forbids to them what is impure."<sup>49</sup>

This verse explains the permissibility of good things (*at-tayyibāt*) and the prohibition of bad things (*al-khabā'is*). If we look at it, Muhammadiyah believes that cigarettes are part of *al-khabā'is*, and every *al-khabā'is* is forbidden. This is also in line with the interpretation of Ibn Kathir, who stated that everything permitted by Allah SWT is good for the body and also good according to religion. Meanwhile, everything forbidden by Allah SWT is dirty and bad for the body and religion.<sup>50</sup> Rasyid Ridha also stated the same thing that something considered bad and dirty by reason and intuition (feelings), as well as something rejected by common sense

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<sup>48</sup>Shalih bin Ghanim As-Sadlan, *Al-Qawa'id Al-Fiqhiyyah Al-Kubra* (Riyadh: Dar Balansiyyah li an-Nasyr wa at-Tauzi', 1417), 426.

<sup>49</sup>Departemen Agama RI, *Al-Qur'an Dan Terjemah*, 170.

<sup>50</sup>Abu Fida' Isma'il Ibnu Katsir, *Tafsir Al-Qur'an Al-Adzim* (Beirut: Dar al-Tayyibah li an-Nasyr wa al-Tauzi', 1999), 488.

because it is harmful to the body, is unlawful or prohibited (haram).<sup>51</sup> Therefore, smoking is categorized as *al-khabā'is*, which is prohibited if these elements are fulfilled.

2) QS. al-Baqarah/2: 195

وَلَا تُقْتُلُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ

“And do not let your own hands throw you into destruction. And do good, for Allah certainly loves the good-doers.”<sup>52</sup>

This verse emphasizes the prohibition of plunging oneself into something that can cause damage to the body or spirit (*at-tahlukah*). Body damage means it can injure or damage body parts that are originally healthy and normal. Meanwhile, damage to the soul means death. Basically, this verse gives the spirit to protect the soul (*hifz an-nafs*). Suppose we draw on the issue of smoking in the context of the spirit of *al-Islām ṣāliḥ li kulli zamān wa makān*. In that case, the prohibition against exposing oneself to anything that endangers oneself is appropriate because of the many negative impacts caused by smoking. Therefore, smoking is one of the actions that lead the perpetrator to destruction (*at-tahlukah*).

3) QS. an-Nisa'/4: 29

وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

“And do not kill yourselves. Surely Allah is ever Merciful to you.”<sup>53</sup>

This verse explains the prohibition of killing oneself (*qatl an-nafs*). This verse contains the substance of the command to protect the soul (*hifz an-nafs*). Anything that will endanger life must be avoided. Therefore, prohibiting cigarettes is appropriate, considering the dangers posed by smoking, as previously explained.

4) QS. al-Isra'/17: 26-27

وَعَاتِ ذَا الْقُرْبَىٰ حَقَّهُ وَالْمِسْكِينَ وَابْنَ السَّبِيلِ وَلَا تُبَذِّرْ تَبْذِيرًا. إِنَّ الْمُبَذِّرِينَ كَانُوا إِخْوَانَ الشَّيَاطِينِ وَكَانَ الشَّيْطَانُ لِرَبِّهِ كَفُورًا

<sup>51</sup>Rasyid Ridha, *Tafsir Al-Manar* (Mesir: Al-Hai'ah al-Misriyah al-'Ammah lil Kitab., 1990), 197.

<sup>52</sup>Departemen Agama RI, *Al-Qur'an Dan Terjemah*, 30.

<sup>53</sup>Departemen Agama RI, 83.



“And give to close relatives their due, as well as the poor and needy travellers. And do not spend wastefully. Surely the wasteful are like brothers to the devils. And the Devil is ever ungrateful to his Lord.”<sup>54</sup>

This verse contains a prohibition against wasting wealth wastefully (*at-tabzīr*) so that the wealth is wasted without any benefit. With regard to smoking, it can be seen that there are no benefits that can be obtained; it will actually bring harm, be it disease or the loss of money to fulfill the desire to smoke, which is already difficult to avoid.

5) QS. al-Baqarah/2: 286

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا اكْتَسَبَتْ

“Allah does not require of any soul more than what it can afford. All good will be for its own benefit, and all evil will be to its own loss.”<sup>55</sup>

This verse means that the teachings of the Islamic religion are easy; there are no difficult elements because all the commandments are adapted to the abilities of the servant. Therefore, all forms of good done will be repaid according to their level and vice versa. The connection with the act of smoking is a form of warning to people who have already become smokers, which requires them to try according to their ability to stop this habit, which has been declared unlawful or prohibited (*haram*) by Muhammadiyah.

6) QS. al-'Ankabut/29: 69

وَالَّذِينَ جَاهَدُوا فِيْنَا لَنَهْدِيَنَّهُمْ سُبُلَنَا وَإِنَّ اللَّهَ لَمَعَ الْمُحْسِنِينَ

“As for those who struggle in Our cause, We will surely guide them along Our Way. And Allah is certainly with the good-doers.”<sup>56</sup>

This verse shows that people who have the right to receive truth and guidance are serious people. In connection with the issue of smoking, this verse is a motivation for those who have become smokers to make efforts to leave and stop this habit.

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<sup>54</sup>Departemen Agama RI, 284.

<sup>55</sup>Departemen Agama RI, 49.

<sup>56</sup>Departemen Agama RI, 404.

7) QS. at-Tahrim/66: 6

يَا أَيُّهَا الَّذِينَ آمَنُوا قُوا أَنْفُسَكُمْ وَأَهْلِيكُمْ نَارًا

“O believers! Protect yourselves and your families from a Fire of Hell.”<sup>57</sup>

This verse contains a command for believers to always distance themselves and their families from actions that can lead to disobedience that will lead to Hell and instead orders them to carry out obedience. Likewise, people who have not smoked or do not smoke are obliged to prevent themselves and their families from trying to smoke so that they stay away from things that have no benefit.

- 8) Hadith narrated by Imam Ibn Majah, Imam Ahmad, and Imam Malik regarding the prohibition of causing harm to oneself and others:

لَا ضَرَرَ وَلَا ضِرَارَ

“There should be no actions that harm yourself or others.”<sup>58</sup>

This hadith contains the prohibition against causing harm to oneself, especially to others, and the act of smoking can cause this.

- 9) Hadith narrated by Imam Ahmad and Imam Abu Dawud regarding the prohibition of intoxicating and weakening acts which reads::

عَنْ أُمِّ سَلَمَةَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ كُلِّ مُسْكِرٍ وَمُفْتِرٍ

“From Umm Salamah that the Prophet SAW prohibited every intoxicant and Muftir (every substance which slackens the mind).”<sup>59</sup>

This hadith contains the prohibition of doing something that intoxicates and weakens. Smoking contains these elements.

- 10) The aim of shari'ah (*maqāsid asy-syarī'ah*) is the protection of religion (*hifzad-dīn*), body/soul (*hifz an-nafs*), mind (*hifzal-'aql*), family (*hifzan-nasl*) and wealth (*hifzal-mal*).

This aspect emphasizes realizing benefits and rejecting mafsadat. If we look at the dangers and damage caused by smoking, then all of this includes damage to the mind,

<sup>57</sup>Departemen Agama RI, 560.

<sup>58</sup>Hambal, *Musnad Imam Ahmad Ibn Hambal*, 55; Al-Quzwaini, *Sunan Ibnu Majah*, 784; Anas, *Muwatha' Imam Malik*, 1078.

<sup>59</sup>Hambal, *Musnad Imam Ahmad Ibn Hambal*, 246; As-Sijistani, *Sunan Abi Dawud*, 370.

lineage, property, and religion, which also causes damage to the soul because it can lead to death, albeit slowly. Thus, in order to maintain the benefits and reject the benefits of smoking, smoking is condemned as an unlawful or prohibited (haram) act.

## CONCLUSION

Muhammadiyah, through its Tarjih and Tajdid Councils, has participated in resolving this problem by issuing a fatwa. However, in the fatwa issued, there is a change in the law from permitted or permissible (mubah) to unlawful or prohibited (haram). However, this change still takes into account the approach and rules for changing the law contained in the manhaj tarjih so that it has clear arguments and is in accordance with the Al-Qur'an and the Sunnah of the Prophet SAW. Further research can be developed, especially from the perspective of the Irfani approach, which is still very lacking. Furthermore, it is hoped that the public will act maturely in responding to changes in smoking laws decided by the Muhammadiyah Tarjih and Tajdid Council. This means that people who are proactive about the fatwa on smoking are unlawful or prohibited (haram), so they don't judge those who still smoke. Likewise, those who are against it should respond to the fatwa wisely because the change occurs to maintain the benefit of society itself.

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