



**Use Of Fiqh Rules In Majelis Permusyawaratan Ulama (MPU) Aceh
Fatwa On Cigarette Law**

Iskandar

Langsa State Islamic Institute

iskandardaudtb@gmail.com

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ABSTRACT

The issue of smoking law is not a new problem, there are many opinions of scholars regarding smoking law, some are pro and some are against. One of the fatwas regarding smoking is the fatwa issued by the Aceh MPU number 18 of 2014 concerning Smoking According to Islamic Views. In the fatwa issued by the Aceh MPU on December 3 2014, there are the first five points; Cigarettes are objects made from tobacco that contain nicotine. Second; The use of nicotine for a certain period of time can damage health, thirdly; Smoking for people who is prohibited by medical experts is Haram, fourth; Smoking with behavior that does not respect other people is Haram, fifth; Caregivers and educators who allow children to smoke are guilty. This research attempts to examine the Aceh mpu fatwa from the perspective of its legal basis. In determining smoking laws, the Aceh MPU uses the basis of the Qur'an, hadith, ijma', qiyas, the opinions of ulama, fiqhiyyah rules and ushuliyyah rules, and what is the focus of the study in this research is the use of fiqhiyyah rules used by the Aceh MPU in determining smoking law.

Keywords: Rules, Jurisprudence, Fatwa, Cigarettes

ABSTRAK

Persoalan hukum rokok bukanlah persoalan yang baru, sudah banyak pendapat- pendapat ulama mengenai hukum rokok ada yang pro dan ada yang kontra. Salah satu fatwa tentang rokok adalah fatwa yang dikeluarkan oleh MPU aceh nomor 18 tahun 2014 tentang Merokok Menurut Pandangan Islam. Di dalam fatwa yang dikeluarkan MPU Aceh pada tanggal 3 Desember 2014 tersebut, ada lima poin pertama; Rokok adalah benda yang terbuat dari tembakau yang mengandung zat nikotin., kedua; Pemakaian zat nikotin dalam waktu tertentu dapat merusak kesehatan, ketiga; Merokok bagi orang yang dilarang oleh ahli medis hukumnya

Haram, keempat; Merokok dengan perilaku perokok yang tidak menghargai orang lain hukumnya Haram, kelima; Pengasuh dan Pendidik yang membiarkan anak-anak merokok hukumnya berdosa. Penelitian ini berupaya untuk mengkaji fatwa mpu aceh tersebut dari sisi penggunaan dasar hukumnya. Dalam menetapkan hukum merokok mpu aceh menggunakan landasan al-qur'an, hadits, ijma', qiyas, pendapat-pendapat ulama, kaidah fihiyyah dan kaidah ushuliyyah, dan yang menjadi fokus kajian dalam penelitian ini adalah penggunaan kaidah fihiyyah yang digunakan MPU aceh dalam menetapkan hukum merokok. **Kata Kunci:** Kaidah, Fikih, Fatwa, Rokok

A. INTRODUCTION

Basically, there is no clear evidence that explains the law of smoking. Both in the Qur'an and the hadith of the Prophet. That is why the debate about the law of smoking has become a controversial polemic. This is none other than because cigarettes themselves were only discovered in the tenth century of Hijriah. Therefore, there are scholars who forbid and dislike cigarette consumption, but there are also those who allow it (Shofuranisa and Hamdan 2021). The absence of mention of the law of smoking in the primary sources of law, the Qur'an and hadith, causes differences in the views of experts in judging cigarettes. This means that basically in the naqli evidence or evidence implied in the Qur'an, it does not forbid in the textuality regarding the specifications of the prohibition of cigarettes, but includes the verse that Allah SWT said in the letter of al-Baqarah verse 195 which reads:

“Do not let yourselves fall or be destroyed by your hands.”

Then the hadith from the Prophet sallallaahu 'alaihi wasallam reads:

"It must not (cause) harm and it must not harm (other people)" [Hadith narrated by Ibn Majah, kitab Al-Ahkam 2340]

From both of these arguments, it is not clearly explained that the law of cigarettes states that the damage experienced by humans is due to the actions of their own hands. Smoking in the text is indeed not

specifically mentioned in the verse above, but the damage caused by cigarettes (such as coughing, wet lungs and even swelling) is identified by doctors that the lung damage is caused by nicotine inhaled through cigarettes. So the essence of the verse above contextually refers to damage in the human body, and this is drawn into the conclusion that contextually the cigarette (Nadira Tatya Adiba and Arsanti 2023).

Because smoking is a new case, and there has been no determination from scholars of *takhrij* and *tarjih* from various schools of *fiqh*, and their picture of the nature of smoking and its consequences is not yet perfect based on accurate scientific calculations, there are differences of opinion about the law of smoking. Among them, there are those who argue that smoking is *haram*, there are also those who argue that the law is *makruh* or even permissible. In addition, there are those who detail the law of smoking based on certain conditions and some of them who *tawaqquf* (do not determine the law). Ibn 'Abidin from the Hanafiyah school of thought stated the following.

The author states: there is a contradiction between the opinions of scholars about cigarettes, some say it is *makruh*, some say it is *haram*, and some say it is permissible". Therefore, because there is no clear explanation from either the Qur'an or the Hadith, in determining the law on cigarettes, the Aceh MPU in determine smoking laws using several *fiqhiyyah* rules which the author will explain in writing this article. This research is library research, meaning that the data and study materials used come from library sources, either in the form of books, notes or research reports from previous research and various literature related to the study topic.

B. RESULT AND DISCUSSION

Definition of Cigarettes

The definition of a cigarette according to the Big Indonesian Dictionary is a roll of tobacco (approximately the size of a little finger) wrapped in (nipah leaves, paper, etc.). According to wikipedia.org, a cigarette itself is a cylinder of paper measuring between 70 and 120 mm

long (varies depending on the country), with a diameter of around 10 mm containing chopped tobacco leaves. The cigarette is burned at one end and left to smolder so that the smoke can be inhaled through the mouth at the other end (Al-Azmi 2022).

Meanwhile, in government regulation No. 19 of 2003, the definition of cigarettes is: cigarettes are processed tobacco products in packages, including cigars or other forms produced from the *Nicotiana Tabacum*, *Nicotiana Rustica* plants and other species and their synthetics which contain nicotine and tar with or without additional ingredients.

Understanding the Principles of Fiqh

The rules of fiqh are one of the important things as a guideline for Muslims to solve legal problems they face in everyday life. Without guidelines, they cannot know the limits of whether something is permissible or not, nor can they determine which actions are more important to do or more important to leave. In doing or behaving they are bound by the signs and values they adhere to, both based on religious teachings and good traditions (Munif 2020).

The term fiqh rules is a translation of the Arabic *al-qawa'id al-fiqhiyah*. *Al-qawaid* is the plural form of the word *al-qaidah* which linguistically means basis, rule or general benchmark. This understanding is in line with Al-Ashfihani who said that *qa'idah* linguistically means foundation or basis (al-Ashfihani, 1961: 409). The word *alqawa'id* in the Qur'an is found in the letter *al baqarah* verse 127 and the letter *an-Nahl* verse 26 also means pillar, base or foundation, which supports a building. While the word *al-fiqhiyah* comes from the word *al-fiqh* which means understanding or deep understanding (*al-fahm al-amiq*). Thus, linguistically, the rules of fiqh are the basics, rules or general standards regarding the types or problems that fall into the category of fiqh.

According to the term *fiqhiyah* rules, several scholars have different interpretations, such as: (Iswahyudi 2020)

1. According to Muhammad Abu Zahrah, *fiqhiyah* rules are: A

collection of similar laws that return to the qiyas/analogy that collects them.

2. According to Al-Jurjani defines the rules of fiqh as:

A kulli (comprehensive, general) stipulation that covers all its parts. From the opinion above, it is understood that the nature of the fiqh rule is kulli or general, which is formulated from fiqh that is particular (jauziyah). So the fiqh rule is a generalization of particular fiqh laws. It can be summarized that the rules of fiqh are generalizations of fiqh law which are general in nature or aghlabiyah (covering most fiqh problems) and are expressed in the form of perfect propositions, even though they are sometimes very simple.

Use of Qawaid Fiqhiyyah in Aceh MPU Fatwa Number 18 of 2014 concerning smoking according to Islamic views

One of the elements that must be in a fatwa decree of the Aceh MPU is to contain qawaid fiqhiyyah and become one of the legal bases that will be determined in a legal fatwa. The fatwas presented in this paper are the results of fatwas issued by the Aceh MPU and have been published on the Aceh MPU website in recent years.

الضرر يزال

The principle of adh-dhararu yuzalu means that the harm that occurs must be eliminated. This principle also means that anything that causes harm should be eliminated. This principle means that anything that is harmful to oneself or others is prohibited in Islam. According to medical science, cigarettes can harm the health of smokers (active) and others around them (passive). Therefore, cigarettes should be forbidden because of the dharár element in them. In addition, smoking can cause another dharár, namely dharár mali (harm to property). Smoking is the same as wasting money (tabdzir), namely using property for something that is not useful, either in this world or in the hereafter. Allah SWT said: "Do not waste (your property) wastefully". (QS. Al-Isra': 26)

If someone has admitted that they do not find any benefits from cigarettes at all, then cigarettes should be forbidden, not in terms of their use, but in terms of waste. Because wasting wealth is no different, whether by throwing it into the sea or burning it or destroying it. According to

Yusuf Al-Qardawi, he firmly stated that the law of cigarettes is forbidden on the grounds that cigarettes can cause various kinds of dharar (diseases), both dharar that come immediately and dharar that come gradually and can also waste wealth, besides that cigarettes also have a negative effect on a person's psychology and morals (Iswahyudi 2020).

According to Yusuf Al-Qardhawi, cigarettes are haram and there are 3 reasons, namely: (Firmansyah 2019)

1. Harmful to health in the body.

There is a general rule applied by Islam that it is not permissible for a Muslim to consume food and drinks that can destroy him quickly or slowly. Because life, health, wealth, and all the blessings given by Allah to him are a trust and should not be wasted.

2. Wasting wealth on things that do not provide benefits to either religion or the world, in this case it is categorized as dharar mali.

3. Psychological danger

Some people feel calm because of smoking, according to Yusuf Al-Qardhawi it is not a benefit, but only because they are used to smoking and addicted. The habit of smoking can enslave humans and make them prisoners of habit. Smoking will reduce stamina and weaken the body.

Qaedah 1

درء المفسد اولى مه جلبى المصالح فإذا تعارضى مفسدة ومصلحة قدم دفع المفسدة

"Rejecting damage takes priority over attracting maslahah and if there is a conflict between what is mafsadah and maslahah then what takes priority is rejecting the mafsadah."

Based on the above rule, a person should prioritize rejecting harm rather than achieving benefits. That means that if in a case there is a conflict between rejecting harm and taking benefits, then what is more important is rejecting the harm. So if the harm of a case is not removed or rejected, then it is feared that greater harm or danger will arise. Therefore, banning cigarettes is better to prevent the habit of smoking which is more dangerous than just getting the benefits (Husnaini 2018).

Qaedah 2

“emergency must be rejected as much as possible”

The purpose of this rule explains that all kinds of dangers must be eliminated altogether if possible. But if it is not possible, then it should be rejected as much as possible according to the ability that is owned. Therefore, as much as possible various efforts are made to reject danger.

Analysis of Smoking Law According to the Fatwa of the Aceh MPU

Smoking is based on the meaning indicated by the Zhahir verses of the Qur'an and As-Sunnah and the correct I'tibar (logic). Evidence from the Qur'an Qs. Al-Baqarah 195. The meaning is, do not do what will destroy you. The proof of the verse is that smoking is an act of throwing yourself into destruction. While the evidence from As-Sunnah is the Hadith from the Messenger of Allah in a Sahih manner that he forbade wasting wealth. The meaning of wasting wealth is allocating it to something that is not useful. As is understood, allocating wealth by buying cigarettes is included in allocating it to something that is not useful, even allocating it to something that contains harm (Permana and Sanusi 2021).

However, through understanding the maqashid al-syari'ah (goals of religion) we can know the law of smoking, The purpose of religious guidance is to maintain five main things, namely religious teachings, soul, mind, property and descendants. 14 Every activity that supports one of them, in principle is justified or tolerated by Islam. And, conversely, the justification can take the law of obligatory (if not carried out it is sinful), or sunnah (recommended, although not sinful if ignored and if carried out it will be rewarded), or mubah (allowed, up to each individual's choice, no sin and no reward). While the level of prohibition is two: makruh (recommended to be avoided and at that time the person concerned will receive a reward, but if done it is not sinful), and haram (must be avoided, and if not, then the perpetrator is threatened with torture).

Perhaps the fairest and most valid opinion on this issue is the opinion put forward by Al Maghfur Syekhul Akbar Mahmud Syaltut,

Chancellor of Al Azhar, in his book: “Even if tobacco does not make you drunk and does not damage your mind, it still causes harm that can be felt on the health of smokers and non-smokers. Doctors have explained that the elements in it are known to contain poison. Therefore, there is no doubt that tobacco (smoking) can cause disturbances and harm, while this is something bad and forbidden according to Islam. On the other hand, spending on cigarettes turns out to be more, even though the budget can be used for something better and more useful. So from this point of view, smoking is clearly prohibited and not allowed by Islamic law.

It appears that among the ulama there are still differences regarding the law on smoking, some are of the opinion that it is makruh and some are of the opinion that it is forbidden, including the fatwa of the Aceh MPU which in issuing the law on smoking does not absolutely forbid cigarettes, only in certain conditions does the MPU forbid cigarettes as mentioned above, although the MPU fatwa uses fiqhiyah principles in its considerations, the Aceh MPU has not dared to decide to forbid cigarettes absolutely, which perhaps according to the author the Aceh MPU is taking a middle path and being careful so as not to cause conflict or disagreement in society.

C. CONCLUSIONS

The determination of the prohibition of cigarettes stipulated by the Aceh MPU No. 18 of 2014 for people who are prohibited by medical experts, smoking with the behavior of smokers who do not respect others, caregivers and educators who allow children to smoke using the legal basis of the rules of fiqhiyah which emphasizes the aspects of mafsadah and madarat caused by substances in cigarettes which are in fact dangerous. It is realized that the fatwa of the Aceh MPU is not a legal legislation that has legal force, but only relates to the aspect of the value of compliance with the rules of Islamic Law. Therefore, the fatwa prohibiting smoking is felt by society to be ineffective and needs to be reviewed with various considerations.

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