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Implementing the Fiqh of Disaster in Islamic Criminal Law Perspective and Legal Relevance of Mui's Fatwas during the COVID-19 Pandemic

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Abstract

*Islamic criminal law has co-existed as a major legal system along with other community laws. When pandemic occurred and *istinbāth al hukm* (fatwas) were issued by MUI, it was argued whether the noncompliance of these fatwas would be seen as a criminal offence under the Islamic criminal law. Islamic legal experts opine that *kejahatan* or any unlawful act that is injurious to human body, property or morals is a forbidden act and carries punishment under the category of criminal offence. This study aimed to establish how the fatwas of the MUI related to the COVID-19 pandemic in Indonesia were seen as disaster fiqh or legal maxims and whether they could be equivalent to the laws such as Law of the Republic of Indonesia, Number 24 of 2007, concerning Disaster Management; or Regulation No 21 of 2008 Implementation of Disaster Management. The fatwas of the MUI and sampled for this study were issued during 2020 and 2021. The results showed that the legal maxims in MUI fatwas during the COVID-19 pandemic were treated as a product of disaster fiqh. It was reiterated that the fiqh of disaster should be seen as a product of MUI's *ijtihad* and that it can serve as a guide for Indonesian Muslims to regulate themselves during the pandemic. This study contributes to providing insights into the legal principles used in MUI fatwas during the pandemic.*

Keywords: COVID-19, legal maxim, fiqh of disaster, *Qawâ'id fiqhiyyah*, *dharurah syar'iyah*.

Introduction

The COVID-19 pandemic globally proved a disaster to all walks of life, and not only socially, politically and economically. It made a profound effect on the religious stability of Islamic nations as well. Most Islamic nations, including Indonesia, turned to their respective laws to identify how those laws can be linked with social realities, and adapted to the natural disasters like the pandemic. Islamic law abounds with the principles of the common good (*li taḥqīq al-maṣāliḥ al- 'āmmah*). The Quran also stated that one of the objectives of sending the Messenger of Allah (PBUH) was to help

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humanity on earth (Surah Al-Anbiya'/21: 107): "We did not send you (O Muhammad) but to be compassion to the worlds."

Complying with this divine principle, all components of the Islamic law such as *sharia, fiqh, qanun, fatwa, qadha, siyasa* and *syar'iyah* need to be molded in accordance with the disaster being faced by all Muslim nations in the form of the pandemic. Such molded disaster patterns must encompass all social, economic and political subfields of *muamalah*, trade and commerce, politics, and like.

Out of these legal components, Fiqh (legal maxims) are meant to control both how humans worship God (*ibadah*) and behave with other creatures (*muamalah*) during the pandemic like situations. A fiqh was therefore an important basis for the establishment and implementation of criminal laws while the whole nation of Indonesia was facing the threat of the pandemic. All legal and jurisprudential institutions were reviewing and modifying regulations (criminal laws) that were appropriate to the needs and the conditions created by the pandemic to ensure justice. One of the legal initiatives by the government to prevent the spread of the virus was issuing a health protocol policy under the Decree of the Minister of Health of the Republic of Indonesia Number Hk.01.07/Menkes/382/2020 concerning Health Protocols for the Community in Public Places and Facilities in the Context of Prevention and Control of Corona Virus Disease, 2019.

Other regulations included Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB), Presidential Decree (Keppres) Number 7 of 2020 and No 9 of 2020 concerning the Task Force for the Acceleration of Handling COVID. Another step taken was to link these regulations with the Criminal Sanctions in the Health Quarantine Law, Law Number 4 of 1984 concerning Infectious Diseases outbreaks. These laws called for social and physical distancing, wearing masks and following the health protocols. The major objective of these policies and laws was to pressurize the public and ensure that any violation of the health protocol should be seen as criminal offense.

The National Police of the Republic of Indonesia was entrusted the task of complying with these laws and also providing security at every stage of their implementation. Accordingly, the Indonesian National Police issued a *Maklumat* National Police Chief Mak/2/III/2020 which on March 19, 2020 declaring "people's safety is the highest law" and prohibited any violations of the protocols or be ready to face criminal actions. Thus, the law imposed criminal sanctions to perpetrators of health protocol violators as per the Criminal Code.

The law also stated that before anyone violated the health protocol regulated in the Decree of the Minister of Health of the Republic of Indonesia Number Hk.01.07/Menkes/382/2020 concerning Health Protocols for the Community in Public Places and Facilities in the Context of Prevention and Control of Corona Virus Disease 2019 (COVID-19) or any other relevant law, it must first be proven that the elements of criminal liability can be applied to the person. In the past, the concerning law to punish the perpetrators was Article 93 of Law Number 6 of 2018 concerning Health Quarantine which stated: "*Anyone who does not comply with the implementation of the Health Quarantine as referred to in Article 9 paragraph (1) and/or obstructs the implementation of the Health Quarantine causing a Public Health Emergency shall be subject to a maximum imprisonment of 1 (one) year and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).*"

Furthermore, Article 9 paragraph (1) of the Health Quarantine Law stated "Everyone is obliged to comply with the implementation of Health Quarantine". Therefore, before a person can be given criminal sanctions as a result of violating health protocols, he must first fulfill the elements contained in the article. However, the real problem is when the health protocol violation seems to be "facilitated" by certain social and cultural norms often seen as constitutionally or democratic rights of the people. It was also felt that the Indonesian legal systems had come under the influence of the western law including the fiqh and shariah principles that were disregarded, considering them as outmoded.

In the midst of these sanctions and health protocols, a similar role was played by religious agencies like Muhammadiyah, Nahdlatul Ulama, and Majelis Ulama Indonesia (MUI) in Indonesia, which maximized the efforts made by ministries and other state agencies (Djalante et al., 2020). The role played by religious institutions in the time of pandemic was essential because, demographically, Indonesia is a country with the largest Muslim population in the world, where religious/ spiritual teachings play an important role in shaping citizens' attitudes and behaviors (Mawangir, 2021). Besides, at the national, provincial, district/city, and sub-district levels, religion plays an essential role in providing guidelines for living behavior for the community, especially in dealing with the problem of COVID-19. Simultaneously, research also shows that religion is one of the social entities that have a crucial impact on the COVID-19 pandemic (Kanozia & Arya, 2021; Marinucci et al., 2022). Hence, in Muslim-dominant countries, while facing the COVID-19 pandemic, it is necessary that criminal sanctions be imposed and non-compliance of the legal instruments should be seen as criminal offenses.

At the religious level, the religious institutions like Muhammadiyah, Nahdlatul Ulama, and Majelis Ulama Indonesia (MUI) initiated programs like disaster fiqh, a kind of *ijtihad*, or a health disaster mitigation program at the community level (Anshor & Muttaqin, 2022). These institutions believed that COVID-19 pandemic in religion is considered a condition of urgent need (*hajjah syar'iyah*), which occupies a *syar'i* emergency condition (*dharurah syar'iyah*), and gives birth to new world order, including an impact on worship (Rohman, Mintarti, & Taruna, 2022). Therefore it is necessary to reconstruct the jurisprudence of worship in response to emergency conditions such as the COVID-19 pandemic. Hence, the objectives of this study were:

- To analyze the fatwas issued by the MUI during the COVID-19 pandemic, with the aim of complementing the shortcomings of previous research in this area.
- To examine the legal maxims applied in the fatwas of MUI related to COVID-19 and to identify the *instinbāth al hukm* method (rescinding) carried out by MUI in these fatwas.
- To investigate the role of legal maxims in the MUI's fatwas related to the COVID-19 pandemic in Indonesia.
- To draw a comprehensive understanding of legal maxims' role in developing Islamic law, especially in contemporary problems such as the COVID-19 pandemic.

Literature Review

- *Disaster Management Policy in the Frame of Indonesian Laws and Regulations*

Indonesia has the potential for the highest disaster insecurity caused by various factors, including the potential for geophysical and hydro-meteorological hazards

(Pribadi et al., 2021). Indonesia's geographical condition has the potential to be very vulnerable and prone to earthquakes and volcanic activity, tsunamis, floods, droughts, and landslides (Djalante et al., 2020). Realizing this potential, the Indonesian government created a legal umbrella as the basis for policies in disaster management in Indonesia through the implementation of the "Law of the Republic of Indonesia, Number 24 of 2007, Concerning Disaster Management" (Akhmaddhian et al., 2022).

To support the implementation of the Law, the government also issued regulations under it, such as Regulation No 21 of 2008 Implementation of Disaster Management; Regulation No 8 of 2008, National Board for Disaster Management (BNPB); and Regulation No 46 of 2008, Guidelines for the Organization and Work Procedures of Regional Disaster Management Agencies. This regulation became the basis for the establishment of the Regional Board for Disaster Management (BPBD) at the provincial and district levels.

Disaster Management in Indonesia is not only the responsibility of BNPB but also involves other parties such as Indonesian Armed Forces and non-governmental organizations such as Muhammadiyah through the Muhammadiyah Disaster Management Center (MDMC). The Indonesian Armed Forces' commitment to disasters is a mandate of "the Law of the Republic of Indonesia, Number 34 of 2004 Indonesian Armed Forces", with the task of helping to overcome the impact of natural disasters, refugees, and humanitarian assistance (Firdaus & Almubaraq, 2022). Besides, the involvement of Muhammadiyah and other non-governmental organizations following Articles 75 (1) and 87 (1), Regulation No. 21/2008, aims to increase participation to help organize disaster-prone areas in a better direction and a sense of concern for disaster-prone areas.

- *Maslahat based Fiqh of Disaster*

The Fiqh of disaster is a new term that appears in line with the response of religion in guiding humanity, especially Muslims, in dealing with and reacting to disasters (Muzani, 2020). The term *fiqh* of the disaster emerged in the Tarjih National Deliberation activities, which gave birth to *ijtihad* of Disaster Fiqh through "Decree number 102/KEP/I.0/B/2015 dated 29 Syakban 1436 H/16 June 2015" (Nuryana & Fauzi, 2020). The Guide to the Fiqh of Disaster compiled by "Muhammadiyah's Council of Religious Affairs (Majelis Tarjih dan Tajdid Muhammadiyah)" is a follow-up to the establishment of the MDMC (Muhammadiyah Disaster Management Center) institution, which was officially established in 2007 through SK PP Muhammadiyah N0.58/KEP/LO/2007) (Syarifuddin et al., 2022).

COVID-19 caused the way of life and human behavior to change radically, which affected all aspects of life, including freedom of religion (Fitria, Diyanti, & Bone, 2022; Hartanto, Agussani, & Dalle, 2021; Mucaj & Muqaj, 2021). Facing this, a breakthrough in the law was needed, which was called *ijtihad* in Islam. *Ijtihad* was needed, especially in dealing with new problems such as disasters, to maintain the safety of human souls (Muhlisah, 2021). The product of Islamic jurisprudence reflects a religious response showing the levels of humanitarian and valuable benefits. It consequently manifested *maqāṣid shari'ah* with the aim of public benefit and maintaining *al kulliyat al khamsah* (Farkhan, 2021), one of which is protecting the soul (*ḥifz an-nafs*). Achieving benefit (*maslahat*) and preventing mischief (*mafsadat*)

is the orientation of goal and purpose (*maqāshid shari'ah*) (Qayyum, 2023). *Maslahat* is the core of the goal of *shari'ah*, namely achieving human welfare, which lies in the protection of the five benefits (*usū al-khamsah*), namely maintaining religion (*ḥifzh ad-dien*), soul (*ḥifzh an-nafs*), intellectuals (*ḥifzh al-aql*), family and descendants (*ḥifzh an-nasl*), and property (*ḥifzh al-mal*) *Maslahat* is the one grand *Illah* of all of the laws of *shari'ah* that applies universally to all relevant cases (Rosidin, Andriani, & Fitriani, 2021). There is no single prescribed law except that there is benefit in it.

- *The Concept of Qawā'id fiqhīyyah (Legal Maxim)*

The Arabic term "*qawā'id fiqhīyyah*" consists of two syllables, namely "qawā'id" and "*fiqhīyyah*" (Zuhdi & Widyawati, 2022). The term "qawā'id" is the plural form of the word "*qā'idah*," which means the basis or foundation (*al-asās*) etymologically. Thus, "qawā'id" means the basics of something. The term "*al-qawā'id*" is the plural form of "*al-qā'idah*," which means principle, while "Fiqh" refers to Islamic law (Menchik, 2022). Therefore, "*al-qawā'id al-fiqhīyah*" means the principles of Islamic law. "*Qawā'id fiqhīyyah*" is closely related to "*maqāshid*." The rule of law is a theoretical abstraction that consists mainly of statements of principles derived from detailed readings of fiqh rules on various themes (Albab & Nurwahidin, 2022). Moreover, in linguistic terms, "*rule*" refers to the principle of a house or something similar, as mentioned in the word of God: *wa ij yarfa'u ibrohimu al qawāida min al baiti wa ismāila* (Ghasemi, Ranjbar, & Eivazi, 2022).

Legally speaking, the rules of Fiqh are not binding on judges and jurists by default but become a source of persuasive influence in the formulation of legal decisions and *ijtihad* (Ibrahim & Ab Rahman, 2022). Legal maxims are divided into two types: the first type is derived from the verses of the Qur'an and hadith and has a solid legal position, while the second type is formulated by jurists (Sholeh, 2022). There is no consensus among jurists regarding the second type of legal maxim. Some commonly agreed-upon legal maxims include "certainty may not be overruled by doubt," "ijtihād does not apply in the presence of a clear text (*nash*)," "preventing an evil takes priority over securing a benefit," and "absence of liability" (Shinta & Mutian, 2022). Another legal maxim is "*al-amru idza dhōqo ittasa'a*," which means that everything can become wide if it is narrow. An example of this rule is that a debtor who agrees to his obligations but is unable to pay must be given time to enable him to pay his debts. The legal maxim "*al-umūr bi-maqāshidihā*" means that actions are judged by purpose and is a repetition of the famous hadith "actions are judged by the intentions behind them" (*innama al-a'māl bil-niyyat*) (Kamali, 2006).

- *Role of Religious Institutions and fatwas*

Religious Institutions like Majelis Ulama Indonesia (MUI) are official agencies established by the government, granting them the authority to issue *ijtihad* products through fatwas or religious appeals (Rusli & Nurdin, 2022). These fatwas of MUI help to examine social, religious, and economic issues in normal conditions. This can be seen in many scholarly studies, such as Menchik (2022), highlighting the dynamics behind the birth of fatwas from political and social aspects, focusing on fatwas born from 1975 to 1999. Simultaneously, in their study Shinta and Mutian (2022) analyzed various aspects of fatwas, including their sources, topics, and the issuance method.

They also explored the interplay between national and local fatwas. Similarly, Jamaa (2018) investigated the impact of MUI fatwas on the evolution of Islamic law in Indonesia between 1975 and 2011, highlighting their contribution to the development of contemporary Islamic legal thought. At the same time, there are in-depth studies on the fatwa of MUI related to vaccines. For instance, Sholeh (2022) highlights the progress of the fatwas of MUI in responding to COVID-19. Likewise, Harapan et al. (2021) examined vaccination coverage between Muslims and non-Muslims in Indonesia and its relation to the fatwa on the prohibition of the measles vaccine by MUI. These studies have not explicitly examined the application of legal maxim in the fatwa of MUI concerning the COVID-19 response

In response to the COVID -19 pandemic, too, the MUI issued several fatwas as guidelines for Muslims how to respond to the COVID-19 pandemic (Wulandari & Nasik, 2019). During the entire COVID duration, eight (8) fatwas were issued by using the *istinbāth al hukm* in accordance with the *qur'ān*, *hadīh*, *Ijmā* (consensus opinion), *Qiyās* (analogical deduction), *aqwāl 'ulamā* (scholar's opinion), and *qawā'id al-fiqh* (legal maxims). The source of the fatwas related to *qawā'id al-fiqh* were the quotes from Arabic fiqh texts (Albab & Nurwahidin, 2022). These *qawā'id al-fiqh* or legal maxims were presented as guidelines for urgent compliance though the violation of these *fatwas* was not seen as a criminal offence (Ibrahim & Ab Rahman, 2022) nor these institutions held any legal authority in the eye of the law. These fatwas may have imposed some restrictions and prohibitions, but according to Islamic law, any omission of an act is not considered a crime until the punishment is prescribed by Shariah or unless the act is not declared a forbidden act (Qadir Oudah, 2000).

- *Indonesian Criminal Law and Fiqh*

In Indonesia, Islamic criminal law has though co-existed as a major legal system along with community laws and civil laws; there are still apprehensions of its compliance in the religious matters, unless any act of non-compliance is also prescribed in religious scriptures. Therefore, it was a big challenge to accord any violation of the Lockdown policy or protocol as a criminal offence and prosecute offenders under the Islamic criminal law. In Islamic criminal law, a crime is defined as a legal prohibition prescribed by God, and a violation of such a prohibition result in a punishment determined by God. Islamic legal experts often use the term *kejahatan* for crime. A *kejahatan* refers to doing a forbidden act. It signifies such unlawful acts that are prohibited and injurious to human body or property or morals including evil acts, sins, acts of guilt, transgression or any other violation that is injurious to body and soul, and carries punishment for those who commit the act, and it falls under the category of criminal offence

In the context of COVID-19 prohibitions, an argument was raised that a *kejahatan* might adversely affect the rights of individuals and society and interferes with or disturbs the peace and tranquility of the state (Qadir Oudah, 2000). However, legal experts preferred the term *kejahatan* for all such acts that are considered illegal by Shariah and seemed to be committed against someone's life, body, property or morals. However, in Islamic criminal jurisprudence, *kejahatan* is called a *jurm*, means a sin, a crime, an offence or an act of disobedience, irrespective of the fact whether it is committed intentionally or inadvertently. It also denotes any unfair action or

conduct which is against the right path and justice. Since the Islamic criminal law should protect religious faith, life, property, sanctity of individual, family of human beings, it is imperative that there should be strict enforcement of punishments for offenders (Peters, 2005; Shabbir, 2002). Several studies have been carried out in the field of the Islamic criminal law in the Indonesian context which aim at making a comparison between laws and their criminal justice systems (Danner & Bernal, 1994; David & Brierley, 1978; Reichel, 1999; Zweigert & Kotz, 1998).

Based on these extant studies, the current research was designed and carried out with the view to establish how the fatwas of the MUI are seen as legal maxims and can be identified and compared to other similar religious-legal principles, and concepts.

Research Methodology

- *Research Type*

Methodologically, this research is normative legal research with a philosophical approach that refers to the purpose of law based on *maqâshid shari'ah*. The research also adopted the *instinbâth al hukm* method (*rectsvinding*) which proposed to use in fatwas of the MUI as legal maxims. Normative legal research is a type of research that seeks to identify and evaluate legal rules, principles, and concepts (Musarrofa et al., 2022). This type of research is concerned with the normative or prescriptive aspect of the law rather than the descriptive or empirical aspect. Normative legal research often involves the analysis of legal texts, such as statutes, regulations, and case law, and the application of legal principles to specific legal issues (Negara, 2023).

- *Data collection sources*

The data was collected with a philosophical approach from library archives and other published chronicles which dealt with *maqâshid shari'ah*, or a law which refers to the higher objectives and purposes of Islamic law (Alias, 2021). The philosophical approach helped to identify the relevant data sources that dealt with the underlying values and principles that inform legal rules and concepts.

- *Data analysis*

The data analysis of this research focused on interpreting the meaning of *instinbâth al hukm* contained in the fatwas of MUI and which stand out as legal maxims. The *instinbâth al hukm* enabled to analyze the process of deriving legal rulings from Islamic legal sources, such as the Quran, Hadith, and the opinions of legal scholars (Anshor & Muttaqin, 2022). The method always relies on principles of *maqâshid al shari'at*, which are the objectives and purposes of Islamic law. The data was further analyzed to understand how the *instinbâth al hukm* method was used to enable the use of fatwas of the MUI as legal maxims during the COVID-19 pandemic.

Results and Discussion

- *The Legal Instinbath Methodology in the Fatwa of MUI*

Islamic law has a transparent methodology for interpreting and verifying its sources' authority and validity and making decisions from primary sources. This methodology is known as *ush al fiqh*. *usū al fiqh* is a legal methodology, even though it is not complete (Nuryana & Fauzi, 2020). *Usū al-fiqh*, in this sense, provides standard criteria for the

correct deduction of the rules of Fiqh from the sources of *Shari'a* (Al-A'madi, 2004). *Usū al-fiqh* is primarily concerned with laying down procedural rules and principles deductively and inductively under substantive Islamic principles (Shamsuddin, Sitiris, & Yunus, 2022). In line with the development of science and technology, inevitably leads to the dynamics and application of *shari'ah*. This is because the differentiation of time, place, and environment can have a significant influence on *shari'ah* "*tagayyarul ahkām bi tagayyaril azmināt wal amkināt wal ahwāl*" - changes in the law are based on changes in time, place, and circumstances (Rohman et al., 2022). Therefore, Islamic law essentially has a way to solve various legal problems that may not have occurred in its early days. This is where the role of *ijtihad* becomes central as a method in solving and discovering Islamic law.

Ijtihad plays a role in knowing the *shari'ah* spirit contained in the Qur'an and Hadith. In this regard, several methods of *ijtihad* are known, which include: *qiyās*, *istihsān*, *al-maṣalihul mursalah*, *istishab*, *saddud ariayah*, and *al-urf*. MUI uses the *maslahat* method, which is based on the consideration of the benefit, the MUI fatwa often by quoting ulama opinion that is not well-known (Muhlisah, 2021). Islamic legal theory functions to find laws (formulate rulings) that are not explicitly mentioned in the Qur'an and as-Sunnah (Albab & Nurwahidin, 2022). Religious authority is reflected in various ways, one of which is the so-called fatwa which in the Indonesian context is through institutions such as the MUI. The MUI was born to be a "bridge" between Islamic organizations, Muslims, and the government, which since 1975 has had a significant role in helping Indonesian Muslims to overcome social problems and face several challenges and opportunities in the modern world (Ibrahim & Ab Rahman, 2022).

According to Jamaa (2018), fatwa institutions have an essential role in the modern world of Islam and cause changes to these institutions and the role they play. The influence of the fatwa on the development of Islamic law is as follows: first: the friend conducts a study of the Qur'an and Sunnah in resolving a case. If it is not found in the Qur'an and Sunnah, they do *ijtihad*. *Ijtihad* in resolving cases is called a fatwa, which is an opinion that arises because of an event that happened. Second, Companions have determined *thuruq al istinbāth* in solving the case at hand, where *thuruq al istinbath* is used to resolve the case (Zaini & Shuib, 2021).

Operationally, fatwas of MUI have been regulated by following the guidelines for fatwa regulations that underline four introductory provisions. *First*, every fatwa decision must have the basis of the Qur'an and hadith and without any conflict with the benefit of the people. Thus, all fatwas issued through the MUI are based on the Qur'an and al-Sunnah, and are in line with the needs of the people. *Second*, all fatwas issued by the MUI do not contradict *ijma'*, *qiyas*, and other legal arguments such as *maslahah mursalah* (Consideration of Public Interest) and *istihsan* (Equity in Islamic Law). The legal argumentation process uses reasoning to get a position in determining the law. *Third*, the process of issuing a fatwa is carried out by examining the data by referring to the opinions of the priests of the previous schools, both legal arguments and legal arguments that differ from theirs. *Fourth*, consideration of the views of experts is one of the processes used by the MUI in deciding a decision on a problem.

Additionally, MUI does not strictly follow one school of thought in terms of methods and opinions for issuing fatwas and does not fully explain how ulama perform *tarjih* (Wulandari & Nasik, 2019). This lack of explanation raises many problems. It seems that MUI considers the exact method used by several schools of thought. In other words, in

one legal issue, MUI uses the method in this school and uses the other school in another case. As a result, MUI is considered inconsistent because it uses different methods. Hence, the efforts made by MUI are to avoid rigidity or exclusivity in its methods. In the Indonesian context, the MUI's attempt to open its mind by considering all the methods in the 4 schools of thought can be seen as a 'reform' of the fiqh approach.

- *The Application of the Rules of Fiqh in the Fatwa of MUI During COVID-19*

The principles of Fiqh are often used in the fatwa of MUI as the basis for establishing the law in issuing its fatwas. MUI makes the rules of Fiqh as one of the arguments and legal support in taking legal certainty for the fatwas to be produced and stipulated. The results of the research conducted by the author show that the fatwas issued by the MUI during the COVID-19 pandemic from 2000 to 2021 were 8 in number, including 1) Fatwa N0.31 of 2020 concerning the Implementation of Friday Prayers and Congregations to Prevent the Transmission of the COVID-19 Outbreak. 19; 2) Fatwa N0 14 of 2020 concerning the Implementation of Worship in Situations of the COVID-19 Outbreak; 3) Fatwa N0.2 of 2021 concerning COVID-19 Vaccine Products from Sinovac Life Sciences Co. Ltd China and Bio Farma (Persero); 4) Fatwa N0.13 of 2021 concerning the Law on COVID-19 Vaccination While Fasting; 5) Fatwa N0.14 of 2021 concerning the Law on the Use of the COVID-19 vaccine for Astrazeneca Products; 6) Fatwa N0.18 of 2021 concerning Guidelines for the Management of the Body (*Tajhiz al-Janā'iz*) of Muslims infected with COVID 19; 7) Fatwa N0. 23 of 2021 concerning the Law on Swab Tests for Detecting COVID-19 While Fasting; 8) Fatwa N0.24 of 2021 concerning Guidelines for the Implementation of Worship in the Months of Ramadan and Shawwal 1442 H.

The application of legal maxim in the fatwas of MUI related to COVID-19 refers to *maqāshid syariah* (Tualle et al., 2023). This is one form of the five maintenances (*usū al-khamsah*), namely maintaining religion (*hifzh ad-dien*), soul (*hifzh an-nafs*), intellectual (*hifzh al-aql*), family and offspring (*hifzh an-nasl*), and property (*hifzh al-mal*). The maintenance of the soul (*hifzh an-nafs*) is the basis for consideration of the MUI fatwa (Settembre-Blundo et al., 2021). In ensuring the safety of the human soul during the COVID-19 pandemic, the application of the principle of *hifz al-nafs* is illustrated in many legal provisions contained in the fatwa, which can be described as follows: *First*, there is an urgent need condition (*hajjah syar'iyah*) that occupies an emergency condition called *syar'i* (*dharurah syar'iyah*). *Second*: the opinion of experts who say that there will be a danger if the COVID-19 vaccination is not immediately carried out. *Third*: The use of vaccines to realize herd immunity.

The results of the current study show that in detail, the 8 fatwas are grouped into 4 categories, namely: (1) fatwas regarding the permissibility of using the COVID-19 vaccine, totaling 3 items; (2) fatwas regarding the implementation of worship during the COVID-19 pandemic, totaling 3 items; (3) fatwa on the management of corpses confirmed by COVID-19 amounted to 1 item; 4) fatwa regarding swab is 1 item.

The fiqh rules used in the MUI fatwa during the COVID-19 pandemic amounted to nineteen (19) fatwas, namely: 1) *Adharāru yuzāl* - harm must be eliminated; 2) *Dar' al mafāsidi muqaddamun 'alâ jalbi al mashôlihi* - Avoiding mischief must take precedence over bringing; 3) *Al masyaqqatu tajlibu al Taisiru* - difficulties can attract ease; 4) *Ad dharāru yudfa 'biqodri al imkân* - all harms must be avoided as much as possible; 5) *Ad dharāru tuqaddharu*

biqodhariha – necessity is measured in accordance with its true proportions; 6) *Hurimatu al hayya wa hifzhu nafsihi hall min hifzh al mayyiti* – respecting the living and protecting their souls is more important than respecting the dead; 7) *Adharāru la yuzālu bi adharuri*- danger cannot be eliminated by harm; 8) *Innamā ashiyām mimmâ dakhala wa laisa mimmâ kharaja, wa al wudhu'u mimmâ kharaja wa laisa mimmâ dakhala* – that which breaks the fast is because of something that enters not because of something that comes out, while what breaks ablution is because of something that comes out of the body not because of something that enters; 9) *Al amr idzâ dhâqo ittasa'a wa idzâ ittasa'a dhâqo* – something when it's hard it gets loose and when it's loose it gets hard; 10) *Tasharrafu al imân 'alâ al ra'iyati manûthun bi al mashlahati* - The action of the priest (the holder of authority) towards the people must follow the benefit; 11) *Ma la yudraku kulluhu la yutraku kulluhu* - what is not obtained in its entirety should not be left entirely; 12) *Al amr bi asya'i amr biwasâ ilihî* – an order against something also means an order to carry out its means; 13) *Mâ lâ yatimmu al wâjibu illâ bihi fahuwa wâjib* – an act by which only a command must be made perfect, then the act is obligatory; 14) *Ad daf'u aula min arrafi* - prevention is more important than eliminating; 15) *Yuhtamalu adhararu alkhâssu lidafi addharari al'âm* – harm to an individual is tolerated in order to prevent a harm to the public; 16) *Lâ dharâr wa lâ dhirâr* – Don't harm yourself and harm others; 17) *Addharurothu tubihul mahzhurot* – in an emergency it is permissible to do things that are prohibited; 18) *Ma jaza li'uzrin bathola bizawalihi* - something that is allowed because of age, it will be canceled if the age is lost; 19) *Al hâjatu qod tunzalu manzilata al dhorûrati* - those needs can occupy an emergency position.

Table 1 lists these fatwas and their frequency during the COVID-19 pandemic.

Table 1. MUI fatwas during the COVID-19 pandemic

No	Contents of Qawâ'id fihiyyah	Frequency
01.	<i>Adharāru yuzāl</i>	8
02.	<i>Dar' al mafâsidi muqaddamun 'alâ jalbi al mashôlihi</i>	4
03.	<i>Al masyaqqatu tajlibu al Taisiru</i>	5
04.	<i>Ad dhararu yudfa' biqodri al imkân</i>	6
05.	<i>Ad dhararu tuqaddharu biqodhariha</i>	4
06.	<i>Hurimatu al hayya wa hifzhu nafsihi aula min hifzh al mayyiti</i>	2
07.	<i>Adhararu lâ yuzālu bi adharuri</i>	2
08.	<i>Innama ashiyam mimmâ dakhala wa laisa mimmâ kharaja. Wa al wudhu'u mimmâ kharaja wa laisa mimmâ dakhala</i>	2
09.	<i>Al amr idzâ dhâqo ittasa'a wa idzâ ittasa'a dhâqo</i>	3
10.	<i>Tasharrafu al imân 'alâ al ra'iyati manûthun bi al mashlahati</i>	2
11.	<i>Ma lâ yudraku kulluhu lâ yutraku kulluhu</i>	2
12.	<i>Al amr bi asya'i amr biwasâ ilihî</i>	2
13.	<i>Mâ lâ yatimmu al wâjibu illâ bihi fahuwa wâjib</i>	2
14.	<i>Ad daf'u aulâ min arrafi</i>	2
15.	<i>Yuhtamalu adhararu al khassu lidafi addharrai al'am</i>	2
16.	<i>Lâ dharar wa lâ dhirar</i>	1
17.	<i>Addharurothu tubihul mahzhurot</i>	1
18.	<i>Ma jaza li'uzrin bathola bizawalihi</i>	1
19.	<i>Al hâjatu qod tunzalu manzilata al dhorûrati</i>	1

The details of each fiqh method applied in the fatwas of MUI during COVID-19 are presented in Table 2. It can be explained as follows: *First*: The legal maxim used in the fatwas of MUI relies more on legal principles in urgent conditions (*dharurah*). *Second*: in terms of applying the legal maxim, all fatwas of MUI related to COVID-19 make the legal maxim one of the legal bases. *Third*: The number of legal maxims in each fatwa varies from one that only lists four (4) fiqh rules to twelve (12) legal maxims. *Fourth*, the frequency of application of legal maxim in each fatwa varies, the most being called 8 (eight) times, namely the rule that reads *Adhararu yuzâl*, and the smallest being called 1 (one) time, including the legal maxim of *La dharar wa la dharar*.

Table 2. The details of each fiqh method applied in the fatwas of MUI during COVID-19

Fatwa	The legal maxim used	Meaning	
Fatwa NO.31 of 2020	<i>Adhararu yuzâl</i>	Harm must be eliminated	
	<i>Dar' al mafâsidi muqaddamun 'alâ jalbi al mashôlihi</i>	Avoiding mischief must take precedence over bringing.	
	<i>Al masyaqqatu tajlibu al Taisiru</i>	Hardship is to be alleviated.	
	<i>Ad dhararu yudfa' biqodri al imkân</i>	Harm is to be eliminated within reasonable bounds.	
	<i>Ad dhararu tuqaddharu biqodhariha</i>	Necessity is measured in accordance with its accurate proportions.	
	<i>Al amr idzâ dhâqo ittasa'a wa idzâ ittasa'a dhâqo</i>	Something when it's hard, it gets loose, and when it's loose, it gets hard.	
	<i>Tasharrafu al imân 'alâ al ra'iyati manûthun bi al mashlahati</i>	The action of the priest (the holder of authority) towards the people must follow the benefit.	
	<i>Ma lâ yudraku kulluhu lâ yutraku kulluhu</i>	What is not obtained in its entirety must not be left entirely.	
	Fatwa NO 14 of 2021	<i>Al hâjatu qod tunzalu manzilata al dhorûrati</i>	That need can occupy an emergency position.
		<i>Addharurothu tibial mahzhurot</i>	Don't harm yourself and harm others.
<i>Adhararu yuzâl</i>		Harm must be eliminated.	
<i>Ad dhararu yudfa' biqodri al imkân</i>		Harm is to be eliminated within reasonable bounds.	
<i>Ad dhararu tuqaddharu biqodhariha</i>		Necessity is measured in accordance with its accurate proportions.	
<i>Idzâ dhâqo ittasa'a wa idzâ ittasa'a dhâqo</i>		Something when it's hard, it gets loose, and when it's loose, it gets hard.	
<i>Ma jaza li'uzrin bathola bizawalihi</i>		Something that is allowed because of age will be invalid if the age is lost.	
<i>Al amr bi asya'i amr biwasâ ilih</i>		An order for something also means an order to carry out its ingredients.	
<i>Mâ lâ yatimmu al wâjibu illâ bihi fahuwa wâjib</i>		An act that only utilizes that action is an order that must be perfected, and then the act is obligatory.	
<i>Ad dafu aula min arrafi</i>		Prevention is more important than elimination.	
<i>Yuhtamalu adhararu al khassu lidafi addharrai al'am</i>	Harm to an individual is tolerated to prevent harm to the public.		
<i>Al masyaqqatu tajlibu al Taisiru</i>	Difficulty can attract ease.		

Fatwa	The legal maxim used	Meaning
Fatwa N0.2 of 2021	<i>Adhararu yuzâl</i> <i>Al amr bi asya'i amr biwasa ilih</i>	Harm must be eliminated. An order for something also means an order to carry out its ingredients.
	<i>Mâ lâ yatimmu al wâjibu illâ bihi fahuwa wâjib</i>	An act that only employs that action is an order that must be perfected; then, the act is obligatory.
	<i>Ad daf'u aula min arrafi</i>	Prevention is more important than eliminating.
	<i>Yuhtamalu adhararu al khassu lidafi addharrai al'am</i>	Harm to an individual is tolerated to prevent harm to the public.
Fatwa N0.13 of 2021	<i>Adhararu yuzâl</i> <i>Adhararu la yuzâlu bi adharuri</i> <i>Ad dhararu yudfa' biqodri al imkân</i>	Harm must be eliminated. Danger cannot be eliminated by harm. Harm is to be eliminated within reasonable bounds.
	<i>Yuhtamalu adhararu al khassu lidafi addharrai al'am</i>	Harm to an individual is tolerated to prevent harm to the public.
Fatwa N0.14 of 2020	<i>Lâ dharâr wa lâ dhirâr</i> <i>Dar' al mafâsidi muqaddamun 'alâ jalbi al mashôlihi</i> <i>Al masyaqqatu tajlibu al Taisiru</i>	Don't harm yourself and harm others. Avoiding mischief must take precedence over bringing. Hardship is to be alleviated.
	<i>Adhararu yuzâl</i> <i>Ad dhararu yudfa' biqodri al imkân</i>	harm must be eliminated Harm is to be eliminated within reasonable bounds.
Fawa N0.18 of 2021	<i>Adhararu yuzâl</i> <i>Dar' al mafâsidi muqaddamun 'alâ jalbi al mashôlihi</i> <i>Al masyaqqatu tajlibu al Taisiru</i> <i>Ad dhararu yudfa' biqodri al imkân</i> <i>Ad dhararu tuqaddharu biqodhariha</i> <i>Hurimatu al hayya wa hifzhu nafsih</i> <i>aula min hifzh al mayyiti</i>	harm must be eliminated Avoiding mischief must take precedence over bringing. Difficulty can attract ease. Harm is to be eliminated within reasonable bounds. Necessity is measured following its proper proportions. Respecting the living and protecting their souls is more important than respecting the dead.
Fatwa N0. 23 of 2021	<i>Adhararu yuzâl</i> <i>Adhararu la yuzâlu bi adharuri</i> <i>Ad dhararu yudfa' biqodri al imkân</i> <i>Innama ashiyam mimma dakhala wa laisa mimma kharaja. Wa al wudhu'u mimma kharaja wa laisa mimma dakhala</i>	Harm must be eliminated Danger cannot be eliminated by harm. Harm is to be eliminated within reasonable bounds. What breaks the fast is because of something that enters, not because of something that comes out, while what breaks ablution is because of something that comes out of the body, not because of something that enters.
Fatwa N0.24 of 2021	<i>Adhararu yuzâl</i> <i>Dar' al mafâsidi muqaddamun 'alâ jalbi al mashôlihi</i> <i>Al masyaqqatu tajlibu al Taisiru</i> <i>Ad dhararu yudfa' biqodri al imkân</i>	harm must be eliminated Avoiding mischief must take precedence over bringing. Difficulty can attract ease. Harm is to be eliminated within reasonable bounds.

Fatwa	The legal maxim used	Meaning
	<i>Ad dhararu tuqaddharu</i>	Necessity is measured following its accurate proportions.
	<i>Al amr idzâ dhâqo ittasa'a wa idzâ ittasa'a dhâqo</i>	Something when it's hard, it gets loose, and when it's loose, it gets hard.
	<i>Tasharrafu al imân 'alâ al ra'iyati manûthun bi al mashlahati</i>	The action of the priest (the holder of authority) towards the people must follow the benefit.
	<i>Ma lâ yudraku kulluhu lâ yutraku kulluhu</i>	What is not obtained in its entirety must not be left entirely.

Judging from the legal maxim used in the fatwas of MUI, the primary/basic rules (*qawâidhul khams*) applied are only 2 of the 5 basic principles, namely, *hardship is to be alleviated*, and *the danger must be removed*. While the other 3 basic principles, namely *custom is the basis of judgment*, *harm must be eliminated*, and *acts are judged by their goals and purposes*, are not applied in the fatwa of MUI. Regarding the legal maxim of *hardship is to be alleviated*, the following rules are applied in the fatwa: *everything if it is narrow it, can become wide*, *necessity makes the unlawful lawful*, and *necessity is measured under its actual proportions*. The legal maxim of *hardship is to be alleviated*, and the following rules are applied in the fatwa, namely: *avoiding mischief must take precedence over bringing*; *harm is to be eliminated within reasonable bounds*, *harm is to be eliminated within reasonable bounds*, *prevention is more important than eliminating*, *harm to an individual is tolerated in order to prevent harm to the public* and *don't harm yourself and harm others*.

The hadith *lâ darâr* is used as a solid reference base in dealing with urgent conditions (*dharurah*). This is also seen in the fatwa of MUI, where the legal rules used are based on legal principles in urgent conditions (*dharurah*). The legal maxim is like *hardship is to be alleviated*, from the hadith *lâ dharara wa lâ dhirâr* — "no harm to self or others" (Melina & Saputra, 2022). The hadith *lâ dharara wa lâ dhirâr- don't harm yourself and harm others*- is also used as a basis for arguments for legal maxim related to urgent needs (*dharûra*) such as *don't harm yourself and harm others*. *Necessity is measured following its actual proportions*. The application of this rule is the permitted use of the COVID-19 vaccine Astrazeneca products due to a condition of urgent need (*hajah syar'iyah*), which occupies a *syar'i* emergency condition (*dharurah syar'iyah*).

The legal maxim relating to *dharurah syar'iyah* dominates every fatwa. At least it can be described as follows: The legal maxim - *hardship is to be alleviated*- applied 8 times, which means that every fatwa of MUI above always mentions the application of this legal maxim -*avoiding mischief must take precedence over bringing* - applied above 4 times, *harm is to be eliminated within reasonable bounds*-applied 6 times, *necessity is measured following its good proportions* applied 4 times, *prevention is more critical than eliminating* applied 2 times, *harm to an individual is tolerated to prevent harm to the public* applied 2 times, *Don't harm yourself and harm others* applied 1 time. There is also a legal maxim regarding *al-Tasharruf wa al-milk* -legal actions against property and ownership, where the application is *the action of the priest (the holder of authority) towards the people who must follow the benefit*.

Conclusion

The COVID-19 pandemic has presented an unprecedented challenge to the global community, and Indonesia is no exception. The government and all elements of society, including religious institutions such as the MUI, have a responsibility to mitigate the effects of the pandemic. Disaster fiqh has emerged as a critical tool for disaster mitigation for health in the Muslim community in Indonesia. In this regard, it is necessary to reconstruct the jurisprudence of worship to respond to emergency conditions such as the COVID-19 pandemic. This research has focused on normative legal research with a philosophical approach based on *maqâshid shari'ah* to understand the *instinbâth al hukm* method used by MUI in their fatwas related to the use of legal maxims during the COVID-19 pandemic. A literature review of MUI fatwas issued between 2020 and 2021 shows that legal maxims, alongside the Qur'an and Hadith, are one of the most frequently used legal bases in these fatwas.

The application of legal maxims in the fatwas of MUI can be explained by several factors. Firstly, legal maxims have relied upon more urgent conditions (*dharurah*), which is the case during the COVID-19 pandemic. Secondly, all fatwas related to COVID-19 issued by MUI always mention the legal basis of legal maxims. Thirdly, the number of legal maxims mentioned in each fatwa varies from as few as four to as many as twelve. Finally, the legal maxim most frequently applied in each fatwa is "harm must be eliminated." The frequent use of legal maxim, particularly the maxim of "harm must be eliminated," is due to the context of the pandemic, which is an emergency condition. This finding is consistent with at least six legal maxims relating to *dharurah syar'iyah*. These legal maxims serve as guiding principles for Islamic law in responding to emergencies, allowing for greater flexibility in decision-making while still adhering to Islamic principles.

One of the significant challenges of the COVID-19 pandemic has been to balance the religious and social obligations of Muslims with public health concerns. The MUI has played a critical role in providing guidance to the Muslim community in Indonesia in this regard. Through their fatwas, the MUI has provided guidance on issues such as the closure of mosques, Friday prayers, and the celebration of Eid al-Fitr. This research has highlighted the importance of legal maxims in Islamic law, particularly in urgent conditions such as disasters. Legal maxims provide a framework for decision-making that allows for flexibility while still adhering to Islamic principles. In this regard, the legal maxims relating to *dharurah syar'iyah* are particularly relevant in the context of the COVID-19 pandemic.

- *Research Implications*

The findings of this research have several implications for the Muslim community in Indonesia and the MUI. Firstly, the frequent use of legal maxims, particularly the maxim "harm must be eliminated," highlights the importance of balancing religious and social obligations with public health concerns during the COVID-19 pandemic. The MUI has played a critical role in providing guidance to the Muslim community in Indonesia, and the use of legal maxims has allowed for greater flexibility in decision-making while still adhering to Islamic principles. Secondly, the importance of disaster fiqh in responding to emergency conditions such as the COVID-19 pandemic cannot be overstated. The reconstruction of the jurisprudence of worship to respond to

emergency conditions is necessary to provide guidance to the Muslim community in Indonesia during times of crisis. Thirdly, the use of legal maxims in fatwas issued by the MUI highlights the importance of legal principles in Islamic law. Legal maxims provide a framework for decision-making that allows for greater flexibility while still adhering to Islamic principles. This finding has implications beyond the COVID-19 pandemic and highlights the importance of legal principles in Islamic law in responding to emergencies and other urgent conditions.

Fourthly, the findings of this research have implications for future research on Islamic law and its application in emergency conditions. The use of legal maxims in fatwas issued by the MUI is a promising area for future research, and further studies could explore the use of legal maxims in other contexts. Hence, the findings of this research highlight the importance of legal maxims in Islamic law, particularly in the context of emergency conditions such as the COVID-19 pandemic. Legal maxims allow for greater flexibility in decision-making while still adhering to Islamic principles and the reconstruction of the jurisprudence of worship to respond to emergency conditions is necessary to guide the Muslim community in Indonesia during times of crisis. The MUI has played a critical role in guiding the Muslim community in Indonesia, and the use of legal maxims has allowed for a balance between religious and social obligations with public health concerns.

- *Limitations and Future Research*

Despite the significant contributions of this research, there are also several limitations that need to be acknowledged. Firstly, the study only focuses on the fatwas issued by the MUI related to the COVID-19 pandemic in 2020-2021. Therefore, the findings cannot be generalized to other contexts or time periods. Future research can examine the use of legal maxims in fatwas issued by other Islamic institutions and in different contexts. Secondly, the study relied solely on a literature review of fatwas issued by the MUI, which may limit the breadth and depth of the analysis. Future research can employ other methods, such as interviews or surveys, to gain a more comprehensive understanding of the use of legal maxims in Islamic law. Thirdly, the study only examines the application of legal maxims in fatwas issued by the MUI. Future research can explore the use of legal maxims in other areas of Islamic law and jurisprudence, such as contracts, inheritance, and criminal law. Lastly, the study does not examine the impact of the fatwas issued by the MUI on the Muslim community in Indonesia. Future research can investigate the Muslim community's reception and implementation of these fatwas and their impact on public health practices during the COVID-19 pandemic.

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