

# The Contextualization of Islamic Law Paradigms in the Pandemic Time Covid-19 as the World of Religious Moderation

Abdur Rahman Adi Saputera

Fakultas Syariah, IAIN Sultan Amai Gorontalo  
email: [adisaputrabd@gmail.com](mailto:adisaputrabd@gmail.com)

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## Abstract

*This study aims to investigate the adaptive value and contextualization of Islamic law during the Covid-19 pandemic, in order to establish a more dynamic concept of religious moderation from a paradigm perspective. This type of research is a Library Research, supported by various sources of literature, also applies a descriptive-normative approach to describe the pandemic as a real phenomenon, strengthened by primary and secondary data sources, then processed using Fatwa No. 14 of 2020 and the Principle of Fiqhiyyah as analysis tools. The conclusions are made by applying inductive and deductive thinking methods. The results showed that the contextualization effort was a manifestation of the value of moderation in a textual dichotomy but integrated the essential paradigm of moderation that has been anchored in the study discourse of tolerance between religious communities only. As for the reflection of the paradigm of Islamic law during the pandemic era, namely the birth of ijtihad which is commonly configured to elaborate normative texts through progressive interpretations, harmonizing the stretch of interrelationships of text domination against the existing reality.*

**Keywords:** Contextualization, Islamic Law, Covid-19, Religious Moderation

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## INTRODUCTION

The difference between text and reality has become a necessity in dealing with various kinds of religious problems. After the Prophet and his companions left, the duties and obligations of the scholars are getting heavier, especially with the presence of various kinds of problems which are increasingly complex along with the times and the pace of modernization. It is especially entering the millennial era.<sup>1</sup> The normative understanding of Islamic teaching texts which is not accompanied by efforts to make it relevant to the reality and social context of society causes confusion and it is not surprising that it even gives birth to conservative thinking accompanied by radical actions. Basically, this problem has long been a classic and worrisome phenomenon which is very worrying, especially exacerbated by the religious spirit which is not accompanied by a reading of the existing reality. Muslims in the millennial era are accustomed to instantaneous life so that they consider a learning process to be intertwined and considered a waste of time, lazy to equip themselves with a more actual understanding coupled with the presence of various kinds of contemporary dynamics in the all-round vortex of modern life but it is not accompanied by a

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<sup>1</sup> Achmad Irwan Hamzani, Havis Aravik, dan Nur Khasanah, "Paradigm modernism Islam in reinterpretation of Islamic law," dalam *Being Muslim in a Disrupted Millennial Age* (International Conference on Islam and Muslim Societies (ICONIS) 2018, ICONIS, 2018), 244.

moderate attitude makes the conditions in question even more risky and worrying, whereas religious moderation is a necessity.<sup>2</sup>

Religious moderation is a real campaign echoed by the government, especially the Ministry of Religious Affairs through many concerts, workshops, even socialization at regional and national levels, this term is generally translated only and to be present in order to counter radicalism and extremism that have been happening lately. In several moments, including in several statements on religious moderation, the government has focused more on religious issues amidst the pluralistic diversity of state beliefs and how to build harmony among religious communities. However, lately the terminology of moderation has undergone a lot of normative developments, the evidence is that there have been many studies that discuss and even modify the study of moderation issues in various dimensions and certain aspects. Even so, the direction and purpose of this manifestation effort is essentially inseparable from the real concept of moderation, it is the attitude of *washatiyyah*, moderate, neutral, fair, and balanced.<sup>3</sup>

The Literature Review provides an overview of the extent to which research has been carried out, various points of view that may conflict with each other (controversy) regarding the research topic. The researcher found that there are several studies and articles that examine issues that are almost similar normatively-textually but in fact differ substantially from what the researchers raise. For example, a research conducted by Muhammad Murtadhlo entitled "Measuring Religious Moderation in Higher Education", the results of this study indicate that to suppress the development of exclusive understanding in the higher education environment, it is necessary: first, increasing dialogue space between student groups and between campus members. Campus should not be dominated by the interests of a particular group so that it closes the dialogue space for other groups; second, students need to be more directly involved in finding solutions to social and national problems.<sup>4</sup>

Subsequent research conducted by Syaiful Arif with the title "Religious Moderation in the Islamic State Discourse: Abdurrahman Wahid's Thought" the results of this study indicate that religious moderation does not only need to be developed in religious patterns, but in ways of thinking about the state. This is because the relationship between the state and religious understanding often leads to extreme attitudes in religion. This requires a moderate Islamic state

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<sup>2</sup> WMKFW Khairuldin, "The Application of Technology in the Dissemination of Fatwas: A Study on Religious Institutions in Malaysia," *International Journal of Civil Engineering and Technology* 9, no. 7 (2018).

<sup>3</sup> Arno Tausch, "Estimates on the Global Threat of Islamic State Terrorism in the Face of the 2015 Paris and Copenhagen Attacks," *Middle East Review of International Affairs, Rubin Center, Research in International Affairs, Idc Herzliya, Israel* 19, no. 1 (2015).

<sup>4</sup> Muhamad Murtadlo, *Menakar Moderasi Beragama di Perguruan Tinggi*, 2020.

thinking, which goes beyond the formalization of religion through the state on the one hand, and the separation of religion and state on the other. In this regard, it is important to understand KH Abdurrahman Wahid (Gus Dur) 's thoughts on this issue. Gus Dur has inherited a moderate Islamic state thinking in accordance with the principles of democratic political life and social justice.<sup>5</sup> And there are many other studies that differ substantially from the research that the authors did.

The element of moderation in the building of Islamic legal thought is one of the important things in the moderation system itself before moving on to the next stage, it is moderation in the sense that it is a real implementation. The paradigm of orthodoxy of thinking in Islam greatly reduces the performance and desire of other Muslims to develop more dynamic thinking in facing the many religious dilemmas in Islamic teachings itself. There are too many agendas that speak of the re-actualization and reconstruction of Islamic thought but in essence it is only a decoration of Muslim and non-Muslim formality while in the thought discourse for actualization of understanding of Islam itself is stagnant

Finally, Islamic law which is considered as an alternative key to dealing with the stagnation of understanding in Islam itself, is currently accused of being an inadequate instrument to deal with and answer actual problems which are increasingly intertwined with the development of space, time, place, culture, and even. acceleration towards science, even worse there are some circles who justify Islamic law as a source of backwardness of the ummah. The reason is quite simple, where the fragmented appreciation of Islamic law in various sheets of classical text is often conditioned by the realities of the past as they are without making an attempt to challenge historicity. In fact, this problem is an absolute negligence of religious actors who have been imprisoned in the paradigm of thought that always deifies the normative conservative text doctrine.<sup>6</sup>

Once again it needs to be emphasized that the understanding of the terms of religious moderation which is usually sealed in the concept of how to live up to the values of tolerance between fellow religious communities is too narrow a terminology, because in fact positive attitudes themselves are not maintained and are not even implemented properly in social life circles. religious among fellow Muslims themselves, even there tends to be a kind of turbulence in it. For example, in the momentum of the Corona virus outbreak, many Muslims accused each

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<sup>5</sup> Syaiful Arif, "Moderasi Beragama Dalam Diskursus Negara Islam: Pemikiran KH Abdurrahman Wahid," *Jurnal Bimas Islam* 13, no. 1 (2020): 73–104.

<sup>6</sup> Ahmad Imam Mawardi, *FIQH MINORITAS; Fiqh Al-Aqalliyyât dan Evolusi Maqâshid al-Syarî 'ah dari Konsep ke Pendekatan* (LKIS PELANGI AKSARA, 2010). H. 56

other of accusing each other, resulting in various kinds of internal tensions, such as friction between two groups with different paradigms of religion. First, normative text-oriented circles who highly culturize textual concepts so that they tend to be exclusively conservative, and secondly, context-oriented anti-literalists who always apply moderate values in religion and anti-conservative narratives.<sup>7</sup>

When the covid-19 virus first spreading in Indonesia, the government immediately collaborated with MUI to issue policies and *fatwa* aimed at creating the benefit of the people, such as an appeal not to pray in congregation in mosques, for someone who has been positively infected with Covid-19 or when in a highly uncontrolled zone. However, it is very ironic, the implications of the appeal issuance have drawn various kinds of opposition, criticism, and negative responses, so that some of them have triggered heated confrontations between fellow Muslims themselves, not even a few of these polemics led to debate to hostility. In fact, all of these problems are triggered by one indicator, it is the minimum volume of knowledge of the first class (text oriented) about Islamic teachings that are progressive, conditional, and comprehensive. So in this case the contribution and role of all stakeholders is needed in order to build contextualist and progressive religious thinking for the sake of creating benefit during the pandemic, especially in the building of the paradigm of Islamic law. So the objective of this research was to examine the value of adaptive power in order to position the ideal concept of religious moderation from a paradigm or thought perspective.

## RESERCH METHOD

This research was designed in the form of discourse research,<sup>8</sup> and applies a descriptive-normative approach because it was intended to describe the pandemic as a real phenomenon,<sup>9</sup> and started from the building of primary and secondary data sources as a support, then to be processed using the *Fatwa* and the Principles of *Fiqhiyyah* as a knife of analysis through a descriptive analytic method content.<sup>10</sup> The conclusions were drawn by applying inductive thinking methods

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<sup>7</sup> Abu Sadat Nasrullah, "Abu Sadat Nurullah, "Globalisation as a challenge to Islamic cultural identity," *Abu Sadat Nurullah, "Globalisation as a challenge to Islamic cultural identity," International Journal of Interdisciplinary Social Sciences* 3, no. 6 (2008): 45–52.

<sup>8</sup> Ibnu Hamad, "Lebih dekat dengan analisis wacana," *Mediator: Jurnal Komunikasi* 8, no. 2 (2007): 325–44.

<sup>9</sup> Sugiyono, *Pendekatan Kuantitatif, Kualitatif, Kombinasi, R&D dan Penelitian Evaluasi, Metodologi Penelitian* (Purwokerto: Percetakan Alfabeta, 2017). 45–46

<sup>10</sup> The content review method was used as a research technique for the purpose of describing objectively, systematically and quantitatively about manifestations that utilize a set of procedures to draw valid conclusions from certain documents related to the research focus. See Hendriyani Hendriyani, "Analisis Isi: Sebuah Pengantar Metodologi yang Mendalam dan Kaya dengan Contoh," *Jurnal Komunikasi Indonesia* 2, no. 1 (2017): 63–65, <https://doi.org/10.7454/jki.v2i1.7832>.

(drawing conclusions from things that are specific to being general) and deductive (drawing conclusions from general things to being specific).<sup>11</sup>

## DISCUSSION

### **Islamic Law: Arrangement, Reflection, and Struggle of Text Oriented Versus Context Oriented in the Pandemic Period**

Islamic law is taken from two root words, they are law and Islam. The term Islamic law itself started as the equivalent of the term Islamic Law as a concept that is usually used to be embedded in western academic terminology circles. According to A. Djazuli, what is meant by Islamic law is law that has been codified in the form of statutory rules in a certain country. Meanwhile, Abdurrahman Wahid, concluded that Islamic law in a simple sense, it was “the whole system of life in Islam”, or “the science of all things, human and divine (knowledge of all things, both those of a problem in the human world and the divine hereafter).<sup>12</sup>

Along with the outbreak of the Covid-19 pandemic throughout the world, it surely has implications for every sector of human life, including the majority of Muslims in Indonesia. Where the interrelation between the two (Sharia and Covid-19) leads to the problem of the order and implementation of worship and the typology of transmission of the virus. As reported by the statement of the WHO or the Indonesian Ministry of Health that the process of spreading the virus is through droplet splashes when sneezing, through the intensity of physical contact between a patient suffering from corona and another person, it is even said that transmission can occur through objects that have been contaminated with the virus, traces of the touch of the sufferer. Ironically, this virus is not easy to detect because it has an incubation period with an estimated time span of at least 14 days. So, inevitably, practical steps must be taken by all medical parties, as an emergency alternative is an appeal to carry out physical distancing as the only solution when a vaccine has not been found, with the aim of breaking the chain of virus spread.<sup>13</sup>

This is surely inversely proportional to the way the Muslim worship practices are very potential with the crowd (congregation) to physical contact, in the religious doctrines that flow in Islamic history, congregation is something that will never be removed as a central part of the existence of the Muslims themselves. It is not surprising that the emergence of this pandemic has invited various kinds of dilemmas for Muslims, and has even resulted to inevitable clashes in understanding text and reality. This means that there has been a kind of friction between the text-

<sup>11</sup>Noeng Muhajir, *Metodologi Penelitian Kuantitatif* (Yogyakarta: Percetakan Raka Sarasin, 2016).76-77.

<sup>12</sup>Abdurrahman Wahid, *Hukum Islam di Indonesia, Pemikiran dan Praktek*, ed. oleh Tjun Suryaman (Bandung: Percetakan Remaja Rosda Karya, 1994).3

<sup>13</sup>Siti Setiati dan Muhammad Khifzhon Azwar, “COVID-19 and Indonesia,” *Acta Medica Indonesiana* 52, no. 1 (2020): 84–89.

oriented conservatives who really emphasize the conception of text without going through contextualization challenges, and one other group who tends to be flexible context-oriented in living the values of Islamic teachings through the integration of text and context considerations in order to strengthen the vision of benefit.<sup>14</sup>

In this context, conservatism clearly referred to as an understanding that tends to be textual, normative, and literal. Where this pattern can be implanted as a *habitus* to do or even not to do something. A conservative attitude is considered to be a dogma that has long been crystallized and imprinted through a long-lasting social process, so that society's practice of certain religious practices (congregation) will be very difficult to change. In a group with a more severe level, it is not uncommon for most of them to use the arguments of the Koran and Hadith to legitimize their thick understanding without carrying out more detailed interpretation or extracting meaning. Finally, most Muslims do not know Islamic law methodologically. Islamic legal discourse is only known through diction, *taklifi* in black and white, or *haram* and *halal* only. Islamic law is not transmitted in a discursive pattern but with a pattern of indoctrination, which is often done by producing fatwas that only convey theological aspects, not humanistic. In fact, traditional Islamic legal theory alone has long introduced the term *rukhsah* or relief, where the original law can shift to situational law, if in an emergency or *masyaqqah* situation.<sup>15</sup>

So, from here, Islamic law commonly reflects on adapting to mediate the gap between text and reality that has been seen as ambivalent and paradoxical so far. Excessive devotion to the dominance of texts literally without going through any claims of historicity, often leads to stagnant attitudes in religion, even though the realities and problems faced by the people are increasingly numerous and varied, while the texts will never increase in quantity. This is as stated by Nasr Hamid Abu Zayd, by quoting what was conveyed by Imam Ali Bi Abi Talib who once emphasized that the Koran is a silent text, only humans make it alive and speaking.<sup>16</sup> This means that the text will never increase, but its meaning will continue to increase if it is accompanied by interpretation which is valid according to their needs.

The reality of Islamic civilization has shown on how *mujtahid* always pay close attention to the realities that occur in the midst of society before taking *istinbath* and developing a legal pattern that will be enforced. This usually becomes a necessity because the placement of legal findings

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<sup>14</sup> Abdur Rahman Adi Saputera Putra, "Abdur Rahman Adi Saputera Putra, "Pergumulan antara teks dan real Upaya Kontekstualisasi Hukum Islam Pada Masa Pandemi Covid-19 Sebagai Wujud Moderasi Beragama," *Kuriositas: Media Kominkasi Sisial dan Keagamaan* 13, no. 2 (2020): 141–66.

<sup>15</sup> Muhammad Harfin Zuhdi, "Muhammad Harfin Zuhdi, "Tipologi Pemikiran Hukum Islam: Pergulatan Pemikiran dari Tradisionalis Hingga Liberalis," *Ulumuna* 16, no. 1 (2012): 41–70.

<sup>16</sup> Nasr Hamid Abu Zayd, *Naqd Al-Kitab Ad-Dini, dalam edisi Indonesia, Kritik Wacana Agama* (Yogyakarta: Percetakan LKiS, 2003).12.

should be in accordance with contextuality and real phenomena as another manifestation of the implementation of ethical values that are expected to exist and are recommended in sharia. Imam Syafi'i even in his wandering phase of knowledge left the results of his old *ijtihad* (*qoulqadim*) which he had worked hard to build when he lived and studied in Iraq. However, when he continued his journey to Egypt, he then built his *fiqh* neo-paradigm which of course was different in several points of view when he was in Iraq which is called *qauljadid*. As for the comparison of the two paradigms, of course it cannot be separated from the influence of his observations on the context of the reality of people's life from each place where he is affiliated, his considerations in legal matters are always actual according to the interpretation of place, time, and other indicators. including socio-culture and culture.<sup>17</sup>

The pattern of change and legal behavior exemplified by Imam Syafi'i above, leaves a reflection for the current generation. If only during the initial period, the effort to reconcile rationality was felt to be very central in linking text and reality, especially when it is compared to the current condition, where the distance between the accessories between the two is getting farther away, just look at the process of the birth of a text and how the real phenomena that occur in society. Basically, in more detail, what often comes up in the issue of *ijtihad* is the categorization of the text itself. This is done to sort and select texts which may or may not be reached by *istinbath* practice or legal digging. Basically, classical Islamic jurists formulated texts into two broad categories, they are texts which are *qath'i* and *dzanni*, where the texts that cannot be contested through the process of *ijtihad* are texts in the sense of the first type, it is *qath'i* texts.

The fragmentation of the two text categories above is based more on editorial considerations than on the essence of meaning which directly intersects with reality. Because of this, contemporary Islamic thinkers such as Muhammad Arkoun, Mahmud Muhammad Taha, Abdullah an Naim and others often counter their thoughts on the word formula *dzanni* with mere editorial considerations. According to this school, what is *qath'i* is limited only to universal values of justice, and the rest is only particulate, which is very, very conditional and contextual. However, basically the text is to take a silent position, especially when it is related to the context of the dynamics of society which continues to increase with the times. Human rationality with the guidance of the spirit of the text is certainly expected to be a mediator to unite the silent text with a developmental reality that continues without a time limit.<sup>18</sup>

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<sup>17</sup>Abu Yasid, *Islam Akomodatif: Rekonstruksi Pemahaman Islam Sebagai Ajaran Agama Yang Universal* (Yogyakarta: Percetakan LKiS, 2004).118

<sup>18</sup>Muhammad Khalid Mas'ud, *Iqbal Reconstruction Ijtihad* (Lahore: Iqbal Academy Pakistan, 2008). 86

It is undeniable that the emergence of the Covid-19 virus pandemic has disrupted all aspects of human life, education, economics, politics, social, and even the constellation in religion. In the latter sector, especially for the Indonesian Muslim community, Covid-19 is truly a dynamic and test for the true values of Islamic teachings. The reason is that so far the people's appreciation and practice of sharia has always experienced ups and downs, without going through a significant process of re-actualization, the understanding of the majority of the ummah tends to be stagnant polarization of comprehensive sharia doctrines, so that the dominance of the text becomes thicker. So it is not a coincidence with the outbreak of the corona virus throughout this country, it can become a strategic momentum to aggressively voice the concept of Islamic legal thought which is always contextualist and dynamic, in order to minimize the narrow paradigm of people in religion, especially regarding the implementation of worship during the pandemic, more than that, as the vision and spirit of Islamic law, it is *li daf'ilmafsadahwajalb al-mashalih* as part of the goals and functions of Islamic law.<sup>19</sup> The intercorrelation of Islamic law and benefit is an indisputable constellation, the reason is that law is not formed but for the sake of creating the benefit itself.

### **Dynamics of MUI *Fatwa* during Pandemic Period: Position, Existence, and Community Response**

The definition of *fatwa* in terminology according to Yusuf al-Qardhawi is an attempt to explain syara law in a problem as a form of answer to the question raised by the fatwa requester (*mustafi*) whether the request is made individually or collectively. This is in line with the opinion of Quraish Shihab, which defines *fatwa* as advice or answers to legal questions in Islamic teachings. Among the things that need to be known about the nature of fatwa include: 1) *Fatwa* is alternative responsiveness, and 2) *Fatwa* is legal answer which are not binding.<sup>20</sup>

As one of the products of *ijtihad* from a law, fatwa usually accommodates contextualist principles, and theoretically depart from analysis through the motivation of the existence of legal texts and by using conventional methodologies. The position of the fatwa, as emphasized by Imam Nawawi in the book *al-majmu' syarh al muhaddzab*, is very crucial and has special features. The authority factor of the ulama as *mufti* and heir to the prophets further confirms this position. Fatwa is considered as an alternative which is a solution and its existence is needed to be able to balance certain situations and conditions. The era of globalization and millennials has increasingly

<sup>19</sup>Imam Asy Syatibi said that the goal of Islamic law is to achieve the benefit of its people, both in this world and in the hereafter. The benefit mentioned is based on five main items, including: 1) *Hifzh ad-Din*, 2) *Hifzh an-Nafs*, 3) *Hifzh al-Aql*, 4) *Hifzh an-Nashl*, 5) *Hifzh al-Mal*. See ZAA Harahap, "Konsep Maqasid Al-Syariah Sebagai Dasar Penetapan Dan Penerapannya Dalam Hukum Islam Menurut 'Izzuddin Bin 'Abd Al-Salam," *Tazkir*, 2014. 23

<sup>20</sup>M. Quraish Shihab, *Fatwa - fatwa M. Quraish Shihab, Cetakan ke-II* (Bandung: Percetakan Mizan, 2000).26



emphasized the existence of fatwas as a necessity, but still the application of fatwas must not be ignored of the values that refer to the main benefit or *maqasid as-sharia*.<sup>21</sup>

MUI is the embodiment of a non-governmental autonomous body that accommodates and brings together *zuama* scholars and Islamic scholars to foster and protect Muslims in Indonesia. In accordance with the main duties and functions of the MUI in general, it is to assist the government in resolving cases related to the benefit of Muslims such as issuing fatwa.<sup>22</sup> Specifically in this research, the author integrated fatwa No. 14 of 2020 as a knife of analysis, because it was considered as a trigger for the concept of contextualizing the paradigm of Islamic law at the beginning of the pandemic. Since its issuance on March 16, 2020, this fatwa has sparked various kinds of controversy and drawn a lot of criticism as well as responses from various circles of the Muslim community in Indonesia.

The reason is that most ordinary people assume that this Fatwa tends to bypass the concepts and rules of worship that have so far crystallized as an inviolable dogma, therefore in this matter, the level of understanding of the people about the issue of worship becomes the benchmark on the effectiveness of the above fatwa, especially in principle, many Muslim communities in Indonesia still have the theodic, fatalistic, and determinant paradigm patterns in religion, for example in the provisions of point (4) of fatwa No. 14 of 2020, it is: In the conditions of the spread of Covid-19 uncontrolled in a life-threatening area, Muslims are not allowed to hold Friday prayers in that area, until things return to normal and are obliged to replace them with Zuhur prayer in their respective places. Likewise, it is also prohibited to hold worship activities that involve large numbers of people and are believed to be a medium for the spread of Covid-19, such as congregations praying five times a day/*rawatib*, *Tarawih* and Eid prayers in mosques or other public places, as well as attending public recitation and *majelistaklim*.

The provisions as described above, of course, reap many pro and contra attitudes in the majority of society, this is common, especially when fatwas are read with black and white glasses without going through an intercorrelated interpretation suit between one item and another, meaning basically fatwa No. consists of 9 dictums which are a unit that needs to be examined as a whole. The misunderstanding and partiality of the society's paradigm makes the fatwa seem like a prohibition, which seems to have tended to be fabricated by MUI. Therefore, the government (medics who have authority and authority in health matters) strongly emphasizes the synergy of

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<sup>21</sup>Makruf Amin, *Fatwa Dalam Kacamata Hukum Islam* (Jakarta: Percetakan ElsaS, 2000).20

<sup>22</sup> Iswahyudi, "MUI dan Nalar Fatwa-fatwa Eksklusif," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 11, no. 2 (2017): 361, <https://doi.org/10.19105/al-ihkam.v11i2.785>.

the central role of MUI through its fatwa, and all related stakeholders. In order to mitigate the spread of the corona virus which is increasingly rampant.<sup>23</sup>

However, as time goes by, the public is more responsive and wiser in seeing fatwas, no longer using normative glasses, the community is increasingly open and implements the values of fatwa flexibility until new normal with the last MUI Fatwa Number 36 Concerning Eid Al-Adha Prayers and Slaughter of Sacrificial Animals During the Covid-19 Outbreak. Society is increasingly more realistic and understands the importance of religious internalization by upholding the spirit of contextuality and texts that are relevant to existing realities. Until that religious spirit will be in tune with the spirit to equip oneself with knowledge of religion itself. However, this positive response is not unreasonable, apart from the willingness and efforts of all elements of society to evaluate and actualize themselves regarding the issue of fatwa.

In essence, the features and characteristics of the fatwa are very easy and rational to be accepted by all groups, for several reasons: 1) Fatwa is based on the Koran, Hadith, *Ijma'*, *Qiyas* and other arguments that are *Mu'tabar*. 2) The process of determining fatwa is responsive, proactive and anticipatory. 3) The fatwa that has been stipulated carries the principles of argumentative (having the power of evidence), legitimacy (ensuring an assessment of the validity of the law), contextualist (*waqi'iy*), applicative (ready to apply), and moderate. 4) In the determination process, a comprehensive study will be carried out first,<sup>24</sup> in order to obtain a complete description of the object of the problem (*tashawwur al-problem*), the formulation of the

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<sup>23</sup>See the substance of the MUI Fatwa Number 14 of 2020 concerning the Implementation of Worship in a Situation of the Covid-19 Outbreak: (1) Everyone is required to take efforts to protect themselves from C-19. (2) An exposed person is obliged to isolate himself. For him, Friday prayers can be replaced with Zuhur prayer. For him, it is forbidden (haram) to carry out sunnah worship activities that open up opportunities for transmission, such as congregational prayer in mosques, etc. (3) A healthy person and who is not known or believed not to have been exposed to C-19, must pay attention to the following matters: a) In the event that he is in an area of very high potential, then he may leave the Friday prayer and replace it with zuhur prayer, and leave the congregational prayer at the mosque. b) In the event that he is in an area where the potential for transmission is low, then he is still obliged to perform worship, but must guard himself from C-19, such as not having direct physical contact.

(4) In the event that the spread of C-19 is uncontrolled in an area, Muslims may not hold Friday prayers, until things return to normal and are obliged to replace them with Zuhur prayers. Thus it is prohibited to hold worship that involves the crowd, such as congregational prayer in mosques, etc. (5) If the spread of C-19 is under control, Muslims are obliged to hold Friday prayers and may organize worship activities that involve the masses, such as congregational prayers in mosques, etc. (6) The government uses this fatwa as a guideline in determining the C-19 countermeasures policy related to religious issues. (7) The management of the body (*tajhiz al-janaiz*) exposed to C-19, must be carried out in accordance with medical protocol and carried out by the competent authority, with due observance of the provisions of the Shari'a. (8) Actions that cause harm and public panic, related to C-19, are haraam. (9) Muslims to get closer to Allah SWT by increasing their worship, and always praying to Allah SWT to be given protection (*daf'u al-bala'*), especially from the C-19 outbreak. See Majelis Ulama Indonesia, "Fatwa MUI Nomor 14 Tahun 2020 Tentang Penyelenggaraan Ibadah Dalam Situasi Terjadi Wabah Covid-19" (Jakarta, 2020).

<sup>24</sup>This comprehensive research includes an examination of the views of past *mujtahid* jurists, the opinions of *mu'tabar madzhab* imams and ulama, an examination of the related fatwas, as well as the views of fiqh experts regarding the issues to be denounced. Makyun Subuki, "Dimensi Pragma-Dialektis Fatwa," *AHKAM: Jurnal Ilmu Syariah* 15, no. 2 (2015), <https://doi.org/10.15408/ajis.v15i2.2856>.

problem, including the socio-religious implications and critical points of various legal aspects (*shari'ah* norms) related to these problems. 5) stipulation of a fatwa on issues with clear laws and arguments (*ma'lummin al-din bi al-dlarurah*) is carried out by conveying the law as it is. 6) Determination of a fatwa on the issue of disagreement (*masailkhilafiyah*) among the *madzhab*, it is based on the results of *al-jam'uwa al-taufiq*, but if no meeting point is reached between these opinions, the determination of the fatwa is based on the results of *tarjih*. through the *Muqaranah* (comparison) method using the principles of *Muqaranushulfiqh*. As for the problem, there is no legal opinion among the *mu'tabarmadzhab* or *ulama*, based on collective *ijtihad* through the method of *bayani* and *ta'lili* (*qiyasi*, *istihsaniy*, *ilhaqiy*, *istihsaniy*, and *sad al-dzaraa'i*). As well as the method of legal stipulation (*manhaj*) which is guided by the school's scholars.<sup>25</sup>

### **The Contextualization of Islamic Law in the Pandemic Period: A Paradigm and a Form of Religious Moderation**

In general, moderate is defined as *al-wasatiyah* which is defined as behavior in interacting and socializing based on *tawazun* attitude or taking the middle path, balanced without weighing to the right or left. According to Ibn Faris as conveyed by Muchlis M Hanafi, that *wasathiyah* comes from the word *whasath* which means balance. But in reality, today this opinion is no longer relevant and needs to be re-actualized in the context of the study of the contextualization of the Islamic law paradigm based on the reality of the context and emergency situations that are being faced by Muslims. The form of religious moderation during the pandemic is not only an imposition or demands to be able to be fair, neutral or even a balanced attitude, but Islamic law as sharia, commonly negotiates with time and situation as well as adapts perfectly to align the concept of text with the reality in the level of thought or paradigm.<sup>26</sup>

The expression contextualization, in the point of view of Islamic legal literature can clearly be interpreted as the opposite of the word textualization, which is an *ijtihad* which is carried out to comprehend Islamic law comprehensively, by trying to conform to conditions, and elaborating normative texts with progressive interpretations according to their function up to culminates in an actual understanding, which means that what is meant in an effort to contextualize the paradigm of Islamic law is an idea to adapt to a situation that is relevant to the existing reality. This activity will surely never be separated from a process produced through in-depth reasoning and research, especially during the pandemic period where the government and ulama were trying to mediate

<sup>25</sup>Wildan Insan Fauzi, "Hamka Sebagai Ketua Umum Mui (Majelis Ulama Indonesia) Dalam Menghadapi Masalah Sosial Politik Pada Masa Orde Baru 1975-1981," *FACTUM: Jurnal Sejarah dan Pendidikan Sejarah* 6, no. 2 (2017): 278–95, <https://doi.org/10.17509/factum.v6i2.9984>.

<sup>26</sup>Syafaul Mudawam, "Syariah, Fiqih, dan Hukum Islam: Studi tentang Konstruksi Pemikiran Kontemporer," *Asy-Syir'ah Jurnal Ilmu Syari'ah dan Hukum*, 2012.5

the ongoing condition with various kinds of efforts in the form of policies and even fatwas on religious items, this was a fairly realistic preventive measure as an important step early detection of the spread of the virus, and naturally this condition should be understood and realized by each individual about the direction and purpose of these goals while remaining patient to postpone personal interests and prioritizing public interests, these actions are carried out in an effort to anticipate concerns about the many negative implications that will greatly affect several sectors of life in society in general apart from mortality.

Fazlurrahman himself defines the contextualization of Islamic law by emphasizing the method of *tatbiqi* (practice) rather than merely dwelling on legal *Istimbath* efforts, the reason is that the context of the modern era is far different from the context of the past, this context is not only related to the problem of changing socio-geographical conditions, but also on the order of political conditions. The *tatbiqi* method offered by Fazlurrahman aims to get the text out of the vortex of the text and not only rotate in the circle of the text, but move from the text to the context of reality which can then be implemented in life. According to Fazlurrahman, the use of this method is one of the most superior and appropriate ways to deal with the increasingly complex and multidimensional problems of the society.<sup>27</sup>

The Contextual Principle of MUI Fatwa No. 14 of 2020 should become a tendency, it is awareness of the wide scale of expansions of benefit and neutral fields that are intentionally or unintentionally alluded to by religious texts, from here then the task of the *mujtahid* to be able to perfect it, by filling in the spaces empty with something that brings benefit to the people, in the form of considerations of the universality of law and considerations of emergency. For example, the obligation to carry out Friday prayers which must be replaced by performing midday prayers at home on the grounds of the emergency danger of Covid-19, this is not something new because the Prophet also allowed a friend to replace Friday prayers with midday prayers due to heavy rain.<sup>28</sup>

The principle of fatwa has long carried contextualized values, this is based on shifts and changes in reality that do not only come from understanding social conditions, but also through consideration of the psychological side. In a literal sense, the *mufti* understands the context of differences in individual features before analyzing the context of religious law and the process of forming these rules and laws on the reality that exists in a group of individuals. The main indicator

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<sup>27</sup>Islamic Methodology in History dalam Ghufroon A. Mas'adi Fazlur Rahman, *Pemikiran Fazlur Rahman Tentang Metode Pembaharuan Hukum Islam* (Jakarta: Percetakan Raja Grafindo Persada, 1997). 15

<sup>28</sup>Dkk Faried F. Saenong, *Fikih Pandemi Beribadah di Masa Wabah*, Nuo Publishing (Jakarta: Percetakan Gaya Media Pratama, 2020).18

of the contextualization of Islamic law, especially in fatwas, is the change in conditions, place and time. It is not surprising that some scholars state that these changes are the basis for consideration in the analysis of *maslahat mursalah*.<sup>29</sup> Other things that trigger the contextualization of law are emergency conditions, moral decadence, weak motivation for faith, or the occurrence of system modernization in society which is the implication of changing times. Consideration of contextualization in the stipulation of law has even been exemplified by the Messenger of Allah, regarding the obligation to pray in congregation, but it is an exception for someone who is afraid and sick, in line with Rasulullah, Umar bin Khattab has also temporarily eliminated the penalty for cutting off hands for perpetrators of theft in famine season.<sup>30</sup>

The content of the MUI fatwa No. 14 of 2020 is an examination of several *fiqh* principles, which are used as a tool of analysis to determine the direction of *istinbath* which aims to create benefit,<sup>31</sup> but in general all the rules used in this fatwa have ideal intercorrelation and relevance between one another, as listed on page 6 of the Fatwa, with the following description and analysis: The Covid-19 virus is a threat to human life, so it must be eliminated by taking Physical Distancing efforts to break the chain of spread as the rules of danger must be eliminated/الضرر يزال, prohibition of carrying out activities religions that have the potential to gather large numbers of people such as Friday prayers are based on the rules Rejecting damage takes precedence over taking benefit/درء المفسد مقدم على جلب المصالح, while imposing Friday prayers during the pandemic has the potential to be infected or transmit the virus, so this not allowed as the rule Not to endanger yourself and harm others/لا ضرر ولا ضرار. The ability to replace Friday prayers with dzuhur prayers at each other's house, must be accompanied by a proportional reason (Covid-19 virus) as the difficulty rule will attract convenience/المشقة تجلب التيسر because this virus is categorized as something that can bring danger in the form of death. The abilities to leave Friday prayers only apply during a pandemic / emergency period, meaning that if it is not in an emergency or the virus is no longer there, then this ability is no longer valid, as the rule of What is allowed because of an emergency is adjusted to the emergency/ما ابيح للضرورة يقدر بقدرها. Methodologically, the principles used in the

<sup>29</sup>According to *Fuqaha*, *Maslahat Mursalah* is something that has no text and agreement by the scholars regarding the use of a law or its annulment and no legal impact occurs for those who agree with it. See Zainal Azwar, "Pemikiran Fiqih Imam Ghazali tentang Maslahat Mursalah (Studi Eksplorasi terhadap Kitab al-Mustashfâ min 'Ilmi al-Ushûl Karya Al-Ghazâlî)," *Fitrah: Jurnal Kajian Ilmu-ilmu Keislaman* 1, no. 1 (2016): 47, <https://doi.org/10.24952/fitrah.v1i1.327>.

<sup>30</sup>Muchamad Muksan, "Asas Legalitas Dalam Hukum Pidana : Studi Komparatif Asas Legalitas Hukum Pidana Indonesia Dan Hukum Pidana Islam (Jinayah)," *Serambi Hukum*, 2017.44

<sup>31</sup>Imam Tajuddin Din al Subki gave the meaning of *fiqhiyyah* rules with a legal case that is *kully* (general or comprehensive) which can be applied to all *juz'i* (parts of it) to know and understand the laws of that part. While Ali Ahmad al Nadwi defines the rules of *fiqhiyyah* on the basis of *syara'* law which is general in nature, from these rules it is known that the laws of something that are under its scope. See Mukhsin Nyak Umar, *Kaidah Fiqhiyyah dan Pembaharuan Hukum Islam*, ed. oleh Nurdin (Banda Aceh: Percetakan Yayasan WDC, 2017).9-15

fatwa have gone through very rigorous considerations and researches, so that it should be pointed out that they contain juridical/certainty, philosophical/fairness, sociological/usefulness, and *taysir*/convenience values. Therefore, Imam IbnuQoyyimJauziyyah, once emphasized that the application of the law which is not based on these four principles has actually raped the existence of *ta'wil*.<sup>32</sup>In line with this problem, there are at least two simplicative elements to be able to configure or mediate text and reality so that the vision of the contextuality of Islamic law is actually achieved, including: (1) Comprehensive mastery of the meaning and purpose of a text being produced, this kind of understanding is very urgent to use. reproduction of meaning that is born from a text does not run away from the basic framework of the meaning of syar'i. (2) Efforts to harmonize the placement of the meaning of the text against reality, thus a mujtahid is not only tasked with issuing operational laws according to the necessary istidlal, but more than that how an ijihad product can be implemented in accordance with the appropriate sociological context and problematics.

## CONCLUSION

In fact, the effort to study the contextualization of the paradigm of Islamic law is a form of religious moderation in the building structure of the constellation of thoughts, especially during the Covid-19 pandemic. Where the anti-mainstream effort is to textually dichotomy but integrate essentially the understanding of moderation discourse which has recently tended to be striking and only anchored in the study arrangements regarding tolerance among fellow religious communities. The author considers that the term has narrowed the substance of moderation itself, so that the term moderation tends to be imprisoned in the definition of dictums and postulates as echoed by the Ministry of Religious Affairs. The reason is factually, the spirit of positive values of religious moderation is ironically not implemented properly among Muslims themselves (text oriented versus context oriented) in the internal order, the evidence is that there is a lot of friction that occurred during the Covid-19 pandemic after the presence of government appeals and MUI to perform physical distancing. These problems are not just born, but are more precisely triggered by paradigmatic inconsistencies that are irrelevant to the reality and emergency situations that are being faced by the ummah, as well as the lack of volume of knowledge regarding the dynamic and contextualist conceptions and principles of Islamic law. So from here, the reflection of the

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<sup>32</sup>Imam Taj al-Din al-Subki stated: *Ta'wil* is turning the word *Dzahir* (birth) to the meaning of *muhtamal* which is *marjuh* (the second meaning it contains is weak). If he is turned to him based on an argument, then *ta'wil* is valid. If it is turned to something that is suspected of being an argument (even though it is not a proposition), then it is *ta'wil* which is *fasid* (damaged), and if it is not based on any reason then it is playing, not *ta'wil*. See Achmad Sudja'i, "Kontroversi Ta'wil Dalam Kitab Mafhum Al Nash: Studi Atas Pemikiran Nasr Hamid Abu Zaid," *Jurnal Didaktika Islamika*, 2016.

paradigm of Islamic law during the pandemic period is to give birth to contextualist *ijtihad* which is commonly configured and elaborates normative texts with a progressive interpretation mode, as well as mediating and harmonizing the interrelation and domination of texts to the existing reality. One of them is with an alternative in the form of interpretation of the principle of flexibility and dynamism of Islamic law through the MUI Fatwa No. 14 of 2020 which is discussed using the *Fiqhiyyah* Principles as an analysis knife. Practically with this effort, it is certain that it can have positive implications for the patterns and patterns of understanding of the ummah which of course will become more actual and relevant, as well as reflect the face of the ideal conception of sharia which is elaborated from great doctrines as a real symbol of Islam which is *rahmatanlilalaminsholihullikulliwalmakan*.

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