

## Fatwa as a Tool of Social Engineering: The Study of Fatwa of Tarjih Muhammadiyah

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### **Abstract:**

*This article discusses the function of fatwa, specifically the Tarjih Fatwa in the field of family law. So far, Islamic law is still considered not dynamic and is still limited to only one legal function, which is nahi munkar (social control) yet the function of amar makruf (social engineering) which emphasizes the suggestion to perform good deeds in a general and practical sense is still not optimal. This results in the impression that Islamic law seems to lose its relevance. This article aims to explain the function of Tarjih's fatwa for the community. The study in this article is a literature review using a sociological approach. The results indicated that the law (fatwa) is no longer considered as an independent variable that is separated from other elements, but is a dependent variable, as are social norms and other cultural identities. Tarjih fatwa is aimed at directing society to the desired goals, eliminating inappropriate habits, and creating new patterns of behavior. In other words, the function of Tarjih Fatwa can be used as a means of manipulating society (law as a tool of social engineering).*

**Key Words:** *Fatwa, Tarjih Muhammadiyah, Social Engineering*

### **INTRODUCTION**

This article discusses the Fatwa of Tarjih Muhammadiyah in the field of family law, which is the fatwas on divorce and the obligation to register the marriage in front of the court, inheritance rights for the substitute heirs, and interfaith marriage law. The fatwas on these matters are reviewed through legal decisions yet still not under the concept of Islamic idea implemented in society. Therefore, it is not surprising that these fatwas have created controversy in society. The existence of this issue is understandable considering that Islamic law today, both in the form of jurisprudence and some existing fatwas, is not yet dynamic and is still in the area of maintaining Islamic identity from other interventions that tend to be secular. Jurisprudence or fatwa that develops in society is actually limited to one legal function, which is nahi munkar (the definition of social engineering) and the function of amar makruf (the definition of social engineering) which emphasizes the suggestion to perform good deeds in a general and practical sense which is not optimal. If this condition is still maintained, it will result to the impression of Islamic law losing its relevance in the development of society. (Juhaya S. Praja, 1991: XV). The appearance of the Tarjih fatwa which is substantially different from the existing law (fiqh) and the fatwas of other fatwa institutions in Indonesia shows that Muhammadiyah wants to play a fatwa not as an effort

to legitimize religious practices in society. However, beyond that, it is intended to be an effort to carry out social engineering (Fauzi & Ayu, 2019: 277-279).

Several studies specifically discuss the tarjih of muhammadiyah fatwa, including Asjmuni (1985), Fathurrahman Djamil (1995), Oman Fathurrahman SW (2000), Rifyal Ka'bah (1999), Hendi Rustandi (The Role of Muhammadiyah Tarjih Council in Efforts to Reform Islamic Law in Indonesia), Miftahul Huda (Ijtihad Muhammadiyah Method in Efforts to Reform Islamic Law in Indonesia), Samsuri and Iffah Nurhayati (2006: 243-259), and Syaifuddin Zuhdi (2012). Several works on Tarjih Muhammadiyah revolve around the system and method of determining law, as was done by Asjmuni A. Rahman et al and Oman Fathurrahman. Meanwhile, Fathurrahman Djamil's research is focused on the method of establishing law and its relation to Maqāṣid asy-Syarī'ah theory. Some of these studies generally use the science *uṣūl al-fiqh* as a tool to analyse the issue. The study conducted by Samsuri and Iffah Nurhayati discusses Tarjih's fatwa from a gender perspective and Syaifudin Zuhdi examines the views of Muhammadiyah community about the fatwa of smoking as haram (something prohibited in Islam). Some discuss fatwas using a sociological approach and analyse them in terms of legal functions.

This study is a library research, using legal materials of Tarjih Muhammadiyah fatwas in the field of family law, which is fatwa regarding the obligation to register marriage, divorce in court, inheritance rights for substitute heirs, and interfaith marriage law. The approach used is a sociological approach and is analysed in terms of the function of the law.

The appearance of fatwas above actually cannot be separated from Muhammadiyah's perspective in law, sources of law, and objectives and functions of law. Another perspective that cannot be separated is also related to the procedure for the birth of law, legal relations with the community, and ideology or interests that are being/will be fought for. Interestingly, nowadays, the law is no longer merely concerned with the discussions of halal, haram, sunna, and makruh (permissible). Beyond that, it has gone too far in moving to govern society. Furthermore, law has been able to manipulate social phenomena. If initially Tarjih's fatwas were more concerned with the issues of religious law and faith, in their development social issues received more attention. There is a tendency for fatwas to be guided towards regulating social problems. In the era of modern society like nowadays, law is actually seen as limited to pragmatism and functionality that are to serve the needs and ideals of society. Finally, the law at the implementation level is more oriented towards "law for social interests or law for take of social utility. This means that Tarjih's fatwa, which is actually part of the law, does not have to be neutral towards certain parties. Tarjih's fatwa is dominated by certain ideologies that have already been the basis for the birth of the fatwa.

## **DISCUSSION**

### **Fatwa as The Answer of Social Reality**

There are 4 fatwas discussed in this article, which are the fatwas regarding family law issues, illegal marriage, divorce in the court, interfaith marriage, and provisions for replacing heirs. *First:* studies related to unregistered marriage. The marriage that is conducted secretly or known as *sirri* marriage is a marriage that is performed by a marriage guardian or a representative of the guardian seen by the witnesses. This unregistered marriage is not performed in the presence of an authorized official according to the state, which is the Marriage Registration Officer (PPN). PPN in Islam in Indonesia is an

employee who is in charge of registering marriages, which is called the Office of Religious Affairs (KUA). While for Marriage Registration Officers who record non-Muslim marriages, it is carried out at the Civil Registry Office. This means that *sirri* marriage is a marriage that does not have a marriage certificate as proof that a marriage is recognized by the state.

Actually, Islamic law does not concretely regulate the registration of marriages. Marriage registration was also unknown during the time of Prophet Muhammad SAW and also during the leadership of friends. Marriage during the time of the Prophet Muhammad and during the time of friends is considered valid if the conditions and harmonious marriage are fulfilled. Marriage at that time, to be known by the community or neighbors, it is enough to announce it to the community, one of which is by announcing it through *walimat al-uruy*. (al-Qazwinī, 1417 H / 1997: 134; Bukhari, no. 1908).

Marriage registration did not get serious attention at the time of the Prophet Muhammad because of several reasons. But in fact in the Al Quran it is recommended to record things in the form of *muamalah* transactions. There are at least four things why marriage registration was not carried out at the time of Prophet Muhammad SAW. First, at the time of the Prophet there was a prohibition against writing anything other than the Qur'an. This condition certainly caused the writing culture at that time to be less developed. That era was more developed by doing a memory culture such as memorizing things. This means that at that time, remembering that marriage was not an obstacle, but had become a habit. Second, remembering things through the memorizing method was a habit of Arab society at that time. Third, there is a tradition of announcing marriage to neighbors or so called *walimat al-urusy*. This tradition is usually carried out by slaughtering a goat and this tradition is part of the testimony in the community that a marriage has been conducted besides there is also a *syar'i* witness in a marriage. Fourth, there is an assumption that during the early days of Islamic development, many marriages were performed by men and women who stay in one region. It can be said that there were still no inter-regional (countries) marriages conducted at that time. This condition causes any proof other than marriage witnesses to be less important. These reasons conclude that marriage registration is extremely important as part of authentic evidence of marriage (Amiur Nuruddin and Azhari Akmal Taringan, 2004: 120-1).

Besides that, current developments continue to occur dynamically. Interestingly, the dynamic development of this era brought a cultural shift from oral culture to written culture. The development that occurs in modern society requires written things to become authentic evidence. The memory culture of a person is currently hard to guarantee. This is because memory can be lost due to the death of the person concerned or experiencing forgetfulness and mistakes. This reason is certainly very relevant if it is related to the benefit especially in the countries where the population is predominantly Muslim such as Indonesia. It is not surprising that Indonesia then established regulations related to marriage, including the registration of marriage. This condition is carried out in order to achieve administrative order in the marriage that occurs in society. Marriage registration arrangements also provide legal certainty and protect the rights of persons involved or associated with marriage. Marriage registration also becomes a piece of authentic evidence when there is a legal dispute in marriage (Majelis Tarjih and Tajdid, 2010: 139).

Besides providing guarantees of administrative order and legal certainty, marriage registration also has several functions of prevention. First, the benefits of having a marriage registration are to avoid deviations from the harmonies and terms of the marriage

provisions both religiously and legally. Second, the benefit is to avoid the occurrence of legally prohibited marriage between a man and a woman. The third, is to avoid identity fraud of the parties who are getting married. This aspect of prevention in regulations regarding marriage is carried out based on the research on marriage requirements by Marriage Registry Officers. This is regulated in accordance with Article 6 of Government Regulation Number 9 of 1975 (Majelis Tarjih and Tajdid, 2010: 141).

The registration of marriage and the preparation of a marriage certificate, which is a necessity, have been made *qiyas* in the records related to *mudayanah* (debts and receivables) issues. This is in accordance with the orders and demands of the holy book of Muslims which requires recording in the payment of the debt (Q.S. al-Baqarah [2]: 282). Tarjih Muhammadiyah believes that the marriage contract is not a form of *muamalah* but a form of strong agreement (Q.S. an-Nisā '[4]: 21). If it is related to the issues of debts or work relations, records must be made, then even more in the relation to marriage. It should also be recorded as marriage is a very crucial and sacred thing. The Muhammadiyah Tarjih Council gave the opinion that recording legal marriages was mandatory. This condition is in accordance with the Muhammadiyah Personality text which was decided in the 35th Muhammadiyah Congress. The text basically states that one of the characteristics of Muhammadiyah is "heeding all laws, statutes, regulations, as well as the legal basis and philosophy of the state" (Majelis Tarjih PP Muhammadiyah, 2010: 136-142).

Secondly, a divorce is performed outside of court. One of the reasons for the existence of this fatwa was the emergence of a question from one of the BPH Amal Usaha administrators in the Muhammadiyah Association. He asked whether the divorce that was imposed by a husband outside the court was legal? According to the current regulations in Indonesia, which is Article 39 of Law Number 1 of 1974 concerning Marriage and Article 65 of Law Number 9 of 1989 concerning the Religious Courts in essence states that divorce can only be done in front of a court session. This is done if the court is unable to reconcile the person concerned (both parties). The regulation also states that divorce can be carried out because of an application. Applications can be made by the husband in the form of a divorce vow, while the application submitted by the wife is in the form of a lawsuit or divorce (Majelis Tarjih PP Muhammadiyah, 2010: 143).

Tarjih Muhammadiyah perceives that divorce, apart from being the domain of private law, is also part of broad interest because it is related to household welfare matters, the fate of children and also concerns legal certainty in marital status. This condition causes divorce to not be carried out carelessly, but should be carried out in accordance with statutory regulations and norms implemented in the society in order to create certainty and benefit to society.

Tarjih Muhammadiyah also believes that divorce in a marriage is urgent and cannot be easily ruled out. This is because divorce in the teachings of Islam is an act that is hated by Allah SWT, even though basically divorce is lawful (Majelis Tarjih and Tajdid, 2010: 144). Therefore divorce cannot be taken easily. The implementation of not underestimating divorce is by carrying out a divorce if sufficient legal reasons have been met. Another implementation is that divorce must be carried out by a court examination to prove that the legal reasons are appropriate or not. It is not surprising that modern Islamic law *ijtihad* imposes obligations related to divorce procedures, one of which is through a court (KHI, Article 115).

This condition is different from the culture of *fiqh* thought that exists and develops in society. Developed *fiqh* gives the husband the right to impose divorce to his wife

regardless of time and place. The divorce that was pronounced immediately was declared valid. The Muhammadiyah Tarjih Council observes this condition from the perspective of maintaining family resilience, legal certainty, and the benefit of the people. In fact, it causes a lot of harm or loss, especially for women or wives. This condition is the basis for the decision that to implement the benefit for the people, divorce must be carried out through a process that is in court and there must be a divorce in front of a court.

Tarjih Muhammadiyah perceives that legal changes like this are valid and in accordance with fiqh principles: it is undeniable that changes in law are caused by changing times (*lā yunkar tagayyur al-aḥkām bi tagayyur al-azmān*). Ibn al-Qayyim (t.th. : I, 41) argues that changes and diversity of fatwas can occur due to changes in times, places, circumstances, intentions, and customs. This fatwa issued by the Tarjih Muhammadiyah Council also takes a reference from the opinion of Islamic philosophers who have actually agreed that the goal of Sharia is to create benefits. This is stated in the opinion of ash-Shāṭibī (t.th. : II, 142) which is based on Q.S. al-Anbiyā 'verse 107, which means: "We are not sending you but to be a mercy for all the worlds."

Based on the description above, the basis for determining the obligation to pledge divorce in front of a court is a benefit. The benefit that this fatwa intends to achieve is the protection of family institutions and implementing legal certainty where marriage is not easily broken. Dissolution of marriage must be based on the investigation of whether the reasons have been fulfilled or not. Divorce imposed in front of the court thus means that the divorce has been proceeded through examination procedures on the reasons for divorce through the court trial process (Majelis Tarjih and Tajdid, 2010: 142)

Tarjih also quoted K.H. Ahmad Azhar Basyir (Basyir, 2004: 92), who claimed:

*"Divorce that declared in front of the court guarantees more compliance with Islamic guidelines on divorce, because before a decision is made, the investigation is conducted on whether the reasons are strong enough for a divorce to be pledged between men and wife. Except that it is also possible for the court to act as the judge before making a decision on divorce between men and wife".*

Tarjih Muhammadiyah reckons that the procedure of divorce should be carried out through a sequence of examination processes in the court. The divorce process in court is also intended to give the authority to the husband in committing and pledging divorce in front of a court. Then the divorce decision will be decided by the court judge. Regarding the imposition for divorce outside the religious court should declare as invalid based on the principle of *sadd aẓ-ẓarī'ah*, considering the harm that may occur (closing the door that leads to death) (Majelis Tarjih and Tajdid, 2010: 143-146)

*Third*, the interfaith marriage. Marriage between spouses professing different religions is the marriage between a Muslim or Muslim woman and a non-Muslim or non-Muslim woman. What is meant by non-Muslim or non-Muslimah is the polytheists and the disbelievers (Muhammadiyah Official Gazette Number 5, Muhammadiyah Tarjih Council, tth. : 302). The issue of interfaith marriages was decided at the XXII Muhammadiyah Tarjih Congress in 1409 H / 1989 M in Malang, East Java. Basically, Muhammadiyah considered that it is permissible for disbelieving women to be married to Muslim men. In this case Muhammadiyah admits that the disbelievers at the time of the Prophet were already in a state of *shirk*, but in the Quran Surah Al-Maidah still allows them to marry their women (Muhammadiyah Official Gazette Number 7; Majelis Tarjih Muhammadiyah, t.th. : 303-4).

Tarjih argues the above rules that allow marrying the disbelieving woman (QS. Al-Maidah verse 5) must be related to the clear reasons why that marriage is permissible. One

of the wisdom of allowing Muslim men to marry the disbelieving women is to preach to them in the hope that they can embrace the religion professed by their husbands, which is Islam. However, if the opposite is happening, Muslim men are carried away by the religion professed by the disbelievers, then the law of mubah (permissible) can turn into haram.

Tarjih sees that interfaith marriage will be an obstacle to the implementation of *sakinah*, because there is no *kafā'ah fī ad-dīn*. Therefore, marriage between spouses professing different religions is *haram*. Thus this organization establishes laws based on the principle of *sadd al-ẓarī'ah*. This is intended to avoid the disadvantages that may cause as a result of the marriage between Muslim men and disbelieving women, such as Christians and Jews today, (Muhammadiyah Official Gazette Special Number, t.th.: 9; Muhammadiyah Tarjih Council, Muhammadiyah Tarjih Decision Association, t.th.: 307; Team of the Tarjih and Tajdid Council of the Muhammadiyah Central Executive, 2003IV: 205-207). According to the law of *fiqh*: "*dar 'al-mafāsīd muqaddam' alā jalb al-maṣāliḥ*" (avoiding things that bring harm should take precedence over things that bring benefit) (The Association of Muhammadiyah Tarjih Decisions, t.th.: 307; Djamil, 1995: 146).

According to Muhammadiyah, the result of these mixed marriages leads to two things: (1) the husband's religion has switched to the religion of his wife. (2), in general, the religion embraced by the child was similar to his/her mother. This is considered as the fundamental disadvantage by Muhammadiyah, for the husband cannot protect his religion and the religion of his children. Meanwhile, maintaining religion is a *maslahat* (benefit) element which is considered in the level of *ḍarūriyyāt*. If this is the case, then the benefit requires that marriage between a Muslim man and a disbelieving woman, which is permitted by the Qur'an, become prohibited (*haram*). (Muhammadiyah Tarjih Council, t.th.: 308; Jamil, 1995: 147)

*Fourth*, the successor heirs. The term substitute heir in Indonesia was introduced in KHI article 185. *Jumhur* (majority) of the scholars did not recognize the term successor heir, because according to them heirs were divided into three groups, which are *ẓaw al-furūd*, *aṣābah*, and *ẓaw al-arḥām*. Meanwhile, KHI divides it into two groups, which are direct heirs and replacement heirs. (The Tarjih Council and the Muhammadiyah Central Executive Board Team, vol. V, 2007: 167.) A replacement heir, as in KHI, exists when the heir who dies earlier than the heir leaves a child. These children are known as the successor heirs. According to Muhammadiyah, the legal basis for the existence of this replacement heir is the word of Allah in Q.S. an-Nisā' verse 11.

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ

Allah requires you about (the distribution of inheritance for) your children, (that is) the share of a son is equal to that of two daughters (Surah an-Nisā' verse 11).

In this verse, there is the word *awlādikum*. According to Tarjih's view, the Qur'an does not explicitly mention *walad* as understood by the *jumhur* ulama (Tarjih Council and Tajdid Team of the Muhammadiyah Central Leadership, volume V, 2007: 170), as well as the word *akab* (QS. An-Nisa' [4]: 176). Therefore, the understanding of the *jumhur* scholars regarding this matter can still be considered again. This organization agrees with the KHI where the word *awlādikum* includes all the descendants of both boys and girls. This comprehension is still included in the scope of the above paragraph. On this basis, the KHI stipulates the existence of a substitute heir, who will occupy the position of his parents, even though the successor heir - according to the *jumhur* of scholars - has the status of *ẓaw al-arḥām*. This does not mean that the provisions of the KHI regarding a replacement heir are contrary to the provisions of the Qur'an. In this case Muhammadiyah

agrees with the Compilation of Islamic Law (Tarjih and Tajdid Council Team, vol. V, 2007: 171). Muhammadiyah considers that the Compilation of Islamic Law can be said to be a product of Indonesian scholars, because before it was given a legal basis, which is the Presidential instruction (Inpres) No. 1 of 1991, KHI material has been discussed by Indonesian scholars in a workshop and was well received (Directorate General of Islamic Religion, R.I. Directorate General of Religious Institutional Development Islam, 2000: 123-180).

This substitute heir does not only applicable to children, but also applies to siblings and uncles. This organization cites Article 185 Paragraph (1) KHI, which is: The heirs who die earlier than the heir can be replaced by their children, except for those mentioned in Article 173. This rule applies generally, anyone who dies earlier than the heir whether be the children, the relatives or the uncles can be replaced by their children. The share of the replacement heirs shall not exceed the share of the heirs which is equivalent to the one who was replaced. Article 185 Paragraph (2) of the KHI states, that "the share of the replacement heirs may not exceed the share of the heirs which is equivalent to those who are replaced."

### **Fatwa as a Tool of Social Engineering**

The study of the Fatwas of the Tarjih Council above indicates that legal fatwas are no longer perceived as independent variables that are separated from other elements. This is in line with contemporary legal studies, where the law (including Islamic law) is no longer considered an independent variable that is separated from other elements, but is a dependent variable, as are social norms and other cultural identities. Therefore, the relationship between law and society is more often seen as being in "the mutually forming relationship between state law and other normative orders". (Ibid., 2) From this point of view, law (fatwa) is not only a constituted factor, but also a shaping factor in society. Thus it can be understood that fatwas can change according to changes that occur in society. Likewise, on the contrary, a fatwa can be used to change (manipulate) society. Therefore fatwas are always very sociological. It presupposes that there are new developments, new problems, or new needs where legally there is no legal stipulation, or the problem is still unclear (Shihab, 2003: 16); (Jamaa, 2018: 30-31); (Alnizar, 2019: 424-428); (Hashim, 2019: 482-484).

Fatwa is not only intended to change society or what has been known as social engineering but the birth of the fatwa is also influenced by the condition of society. Thus, then changing the fatwa is a necessity, if indeed the conditions of society have changed. However, fatwas often run slower than societal change (Djatnika, 1991: XV). Various fatwas were born far behind the community's long-standing practice of requiring answers, such as the obligation to register a marriage and the obligation to make a pledge of divorce in front of a court. Fatwa regarding the registration of marriages as created approximately 30 years after the existence of the Marriage Law No. 1 of 1974. Even a fatwa tends to be standardized and difficult to change.

The experts have different opinions regarding the function of law for society, and this is very dependent on the conditions of society in which the law applies according to place and time. In general, Steven Vago explains that the function of law is social control, dispute settlement, and social engineering (Vago, 1986: 12). One of the significant features of law (including fatwas) in modern society is its conscious use by its people. Law is not only an effort to reinforce patterns of habits and behavior that exist in society, as stated by

the historical school, (Satjipto Rahardjo, 1996: 206) but also guides society to the desired goals, eliminating inappropriate habits, creating new patterns of behavior and so on. (Ibid) Legal fatwas are the result of engineering social forces in society and are used as a means of manipulating society (law as a tool of social engineering) (Wahjono, 1996: 174; Mu'allim and YUSDANI, 2004: 170).

Tarjih's fatwas, according to the writer's opinion, are more intended for social engineering efforts. This can be observed in the fatwa dictums that are against the law/tradition (habits) that develop in society. These fatwas clearly guide the community to a certain goal which is considered more beneficial and reflects the values of justice and equality. Those are against the traditions that have developed in society, such as sirri marriages, illegal divorce, and the existence of a replacement heir. This is different from the line of history which tends to maintain the traditions that are preserved in society, even though the existing traditions/laws are no longer considered relevant to changes in society.

Thus, the legal fatwas in the context of Tarjih Muhammadiyah have multifunctionality. Fatwa not only bring together Islamic ideal norms and reality, but can also function as a tool of reform (engineering) society. As a tool of engineering, the law is used to implement the interests of the people and the nation regardless the interests of economic groups, social status, origins, religion, ethnicity, and so on. In this sense, as stated by Pound, the law is a path to social goals and as a tool in social development. (Darmodiharjo and Sidharta, 1999: 130; Rasjidi, 1990: 134). In the context of Tarjih Muhammadiyah, one of the roles played by fatwas is as a tool of religious purification and social dynamism (Anwar, 2007: 328).

In discussing the function of this fatwa, it can be seen through its purpose. Legal objectives can be distinguished from various perspectives. *First*: the goal according to the desire of the legislators or fatwa makers. To find out, it can be done through the interpretation method. *Second*: direct goals and indirect goals. Third: goals that are instrumental and symbolic goals (Amiruddin and Asikin, 2008: 136).

In the theoretical concept, there are four roles played by agents of change in the process of social change, which is a) as a catalyst (guiding people to make changes); b) as a problem solver; c) as an assistant in the changing process, d) assist in problem solving and dissemination of information, and provide instructions in: (1) exploring and formulating needs, (2) investigating problems and determining goals, (3) getting relevant sources, (4) selecting or creating problem solutions, (5) evaluating solutions to problems; and (6) as a liaison with the resources needed for solving the issues confronted (Foster, 1973: 25).

Since the beginning, Muhammadiyah organization cannot be separated from its predicate as the *tajdid* (reform) movement. As an organization with a *tajdid* character, the role of Muhammadiyah cannot be separated from efforts for social change. Social change agents are people or bodies whose task is to facilitate changes in a social system (Wardana & Hidayat, 2019: 77); (Burhani, 2018: 438); (Ali, 2015: 377-378). Rogers, as quoted by Wirutomo, sees that an agent of social change is an individual who guides the decision-making process in the client system (social system) to adopt in the desired direction. The presence of a change agent will help accelerate and direct social change so that it can take place more quickly and effectively (Wirutomo, 1995: 67).

Regarding the role of Tarjih's fatwas in society, it can be noted that most of the fatwas issued by this organization are in response to general concerns at one time or the government/other body's questions and individual questions. Most of these fatwas are responses to individual questions. This means that Tarjih as an agent of change has tried to

help in creating solutions to the problems, such as fatwas on the law of marriage registration, fatwa on bank interest law, the law on interfaith marriage, and fatwa on professional zakat.

The role as a social problem solver, in general, can be seen through the issuance of a fatwa which is a question from a fatwa seeker (*mustafti*). The birth of fatwas is the answer to various problems that arise in society. Then the Tarjih's answers are solutions to issues that occur in society. This function has been played by Muhammadiyah through the issuance of a fatwa on the law of the replacement heir.

Fatwas concerning the prohibition of interfaith marriage can be categorized as Muhammadiyah's role to help investigate the issues and determine goals. In this fatwa, Tarjih Muhammadiyah has attempted to investigate the issues arising from interfaith marriages, which are: first, the husband's conversion to the religion of his wife; and second, in general, the religion embraced by the child is similar to the religion professed by his/her mother. This is considered as a fundamental disadvantage by Muhammadiyah because the husband cannot protect his religion and the religion of his children. In the fatwa Tarjih, it is also re-reminded in determining the purpose of marriage, which is the implementation of a *sakinah* family. The *sakinah* family will be difficult to create if there is no religious compatibility (*kafā'ah fi ad-dīn*). Through this fatwa, Muhammadiyah intends to provide guidance to Muslims, and make an effort to socialize itself, which is guiding society to avoid interfaith marriages. This is because, in everyday life, interfaith marriages are quite common.

Another vital role played by Muhammadiyah through this fatwa institution is to assist in the change process. This situation can be seen in the fatwa regarding the obligation to register the marriage. The issue of registration of marriage has been written in Law No. 1 of 1974 Article 2 Paragraph 2. However, this article is still frequently violated by the public, because Islamic law does not require registration of marriages. So Muhammadiyah through this fatwa provides sociological arguments, as well as religious legitimacy, because the fatwa also shows the arguments from the Qur'an, hadith, and the rules of *uṣūl al-fiqh* which are used as a basis for conducting legal *istinbāt*. This fatwa helps the existing law to run more effectively in changing society from the habit of not registering the marriage. Thus, this fatwa serves to guide the public to take any action under the legislation and to abandon the irrelevant tradition that has been prevailing in the society. The efforts to assist in this change process can also be seen in the fatwa regarding the obligation to make a pledge of divorce in a court. The social engineering efforts of these two regulations and existing laws are still deemed ineffective, because there are still many people who divorce outside of court. Through this fatwa, Tarjih Muhammadiyah wants to guide the community towards legal order and certainty, because in practice there are still many divorces outside court proceedings. Seeing a large number of underhand marriage numbers, Satria Effendi concludes the importance of socializing Islamic law in society, not only in the form of normative legal formulations, but also especially regarding aspects of legal objectives which in Islamic legal studies are known as *maqāṣid asy-syarī'ah*. Furthermore, this *maqāṣid asy-syarī'ah* is extremely needed for law enforcers because every law enforcement/legal decision made by judges should be in line with the legal objectives that the law aims to achieve (Zein, 2004: 29).

Fatwa, although created by a non-governmental organization, it has a strategic role in helping people to make changes. This is because efforts to modernize law are not always successful. As in many cases, state law has many limitations such as due to the existence of

non-state normative orders that are different from state regulations. If this is the case, state law is not a truly effective tool in the social engineering process because there are always conditions that limit the "ideological pretensions" of the state. In other words, in state positivism, law can really be understood as a mechanism of social control and organization of values. However, given the fact that plural normativity occurs at the same time and in the same place, the effectiveness of utilitarian doctrine is not always consistent (Lukito, 2008a: 10). The scope of state law is very limited because there are always challenges and resistance to the uniformity and centralization of the goals of the nation-state (Ibid., 8-9). So, these two fatwas can be considered as the tool to support the government in implementing these two rules. It is because these two issues still become a matter of disagreement when viewed in a *fiqh* manner.

As a reforming organization, Muhammadiyah, by using the fatwa institution, wants to change the condition of society through directing them towards a change for the better and not just justifying the habits that occur in society. Thus, it is expected that the fatwa can be an inspiration for change and not a mere object of change. This is intended so that Islamic law does not lose its existence, but instead it will become an alternative in solving social problems. If this is not the case, the community will look for other alternatives in solving their problems (Nasih, t.th: 51).

The idea of making Islamic teachings the main instrument in solving social problems as above is often referred to as social *fiqh*. This Islamic positioning is expected to revive the social role of Islam which has been "immersed" in the human community, or in other words so that Islamic law can become an instrument of social engineering (Ibid. : 52).

In the aspects of social life as above, institutions are necessary to maintain order and peace and legal certainty, both those that have been recognized as legal institutions according to the prevailing laws and regulations as well as those recognized based on the customs and ethics of the Muslim community (Praja, 1991 : XVII). This is a vital role of national fatwa institutions in order to help in addressing social problems.

The above matter is different from classical Islamic law (*fiqh*). Classical Islamic law has a legal culture framework that is different from modern law. The study of classical Islamic law has a rather unique character, where the main concern is not the relevance of the study to its practical values, but rather the search for theoretical truth. The scientific orientation is more "law for the sake of law" than "law for the sake of social utility". According to Ratno Lukito, this kind of study still seems to be the dominant pattern in various sharia studies in the country until now (Lukito, 2008: IV). This can be observed in the pattern of reasoning which is still textual, and does not really emphasize *maqāṣid asy-syari'ah*. So that Islamic law seems rigid and cannot experience development. This condition does not mean that the early generations of *mujtahids* and jurists did not pay attention to social aspects when performing *ijtihad*. In reality, take the Imam asy-Shafi'I as an example, had performed different *ijtihad* when he moved from Iraq to Egypt. Therefore, his opinion was known as *qawl qadīm* and *qawl jadīd*. This indicates that there is a change in the law, which is most likely due to differences in social conditions (Mubarok, 2002).

## CONCLUSION

From the above discussion, it can be concluded that: *Firstly*: Legal fatwas are no longer considered as independent variables separated from other elements, but are dependent variables, as are social norms and other cultural identities. Therefore, the relationship between law and society is more often perceived as being in "the mutually

forming relationship between state law and other normative orders". From this point of view, law (fatwa) is not only an established factor, but also a shaping factor in society. Thus, it can be understood that fatwas can change according to the changes that occur in society. Vice versa, a fatwa also can be used to change (manipulate) society. *Secondly*: Tarjih's fatwa is aimed at guiding society to the desired goals, eliminating inappropriate habits, and creating new patterns of behaviour. In other words, Tarjih's Fatwa functions as a tool of manipulating society (law as a tool of social engineering).

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