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FATWA OF THE COUNCIL OF THE INDONESIAN ULAMA ON *GOLPUT* (VOTE ABSTENTION): A Study of Contemporary Islamic Legal Thought in Indonesia, 2009

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Abstrak: Fatwa MUI Tentang Golput, Studi Pemikiran Hukum Islam di Indonesia, 2009. Isu tentang golput (golongan putih) merupakan fenomena baru dalam pemilihan umum di Indonesia yang banyak mengundang kontroversi. Sekalipun pemerintah telah meyakinkan untuk melaksanakan pemilihan umum yang aman, jujur dan adil, tampaknya golput mengarah pada sebuah gerakan yang dapat menggagalkan Pemilu 2009. Tulisan ini mengkaji fatwa Majelis Ulama Indonesia (MUI) tahun 2009 tentang pengharaman golput. Penulis mengemukakan bahwa fatwa ini telah mengundang kritikan dan mempertanyakan otoritas MUI. Sementara pihak yang medukung menganggap fatwa ini sebagai langkah cerdas dalam rangka meningkatkan peran serta pemilih sebagai sarana meningkatkan pembangunan bangsa. Penulis menyimpulkan bahwa fatwa ini mencerminkan pergulatan pemikiran hukum Islam dengan konteks sosial-politik yang terus menjadi wacana sepanjang sejarah Islam di Indonesia.

Abstract: The issue of vote abstention is a new phenomenon in Indonesia general election that appeals to controversy. Although the government has assured that the general election to be conducted fair, just and peacefull, it seemed that vote abstention tended to transform into a movement that would threaten the 2009 general election. This paper studies the fatwa of the Indonesian Council of Ulama (MUI) of 2009 on the prohibition of vote abstention. The author maintains that this fatwa has led to criticism and questioned the authority of MUI. Those who support, however, considered this fatwa as brilliant move to boost voters' participant in improving the national development. The author concludes that this fatwa reflects the dynamics of Islamic legal thought in the socio-political context that would become a discourse in the Islamic history in Indonesia.

Kata Kunci: Islamic law, fatwa, council of Indonesian *ulama*, democracy.

Background

Golput which literally means "white group" or vote abstention in general election is not a new phenomenon in Indonesian political arena. However, since the Council of Indonesian Ulama (known and abbreviated as MUI) issued a legal opinion (*fatwa*) on the unlawfulness of *golput*[1] at a national meeting of the MUI in Padangpanjang, many parties had showed their objections and criticisms. Not only did those criticisms come from an individual but also from the mainstream of Islamic organizations, i.e. Nahdlatul Ulama (NU)[2] and Muhammadiyah.

A democratic system provides room for the citizens either to use their rights or not and the case of the nonvoting of the citizen is not an exception. According to Komaruddin Hidayat, in reality nonvoting is found everywhere in the world. There is no election where all people participate, not even in the United States. In this state, the voters are not more than 60%.[3]

Indeed, as members of the nation, the MUI felt responsible and would participate in social development. Exercising Islamic legal thought is one of the efforts the MUI could do. Indeed, the role of MUI is important and Muslim people have received its benefit and observe what are recommended by the MUI. For example, in case of *halal* food, the *fatwa* is really helpful for Muslim in consuming food, and therefore no objection is heard to address against the MUI concerning this matter.

The *fatwa* on nonvoting, however, was different. By issuing *fatwa* forbidding nonvoting, the MUI had entered a complicated case. There was a rumor that the MUI had got involved in political arena. In this case, the MUI's *fatwa* was tested by the social phenomena whether it is still appropriate or not. Tobe responsible for issuing *fatwa* is not always compatible to social need, and this demonstrated the effectiveness of Islamic law.

Historical Background of MUI

Majelis Ulama Indonesia or the Indonesian Council of Ulama (MUI) is an Islamic organization founded on 7 of Rajab 1395 H, or 26th of July 1975 in Jakarta, as a meeting-point for Muslim leaders, especially as a counterpart for the government in its dealings with the Muslim community.[4]

At the beginning of its inception, the MUI had at least three main responsibilities: *first,* to issue *fatwa* and give advice on religious and social affairs to the government as well

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[1]The writer will use the term "nonvoting" instead of "*golput*" in the next pages.

[2]See for example www,nuonline.com, Accessed March 11, 2009.

[3]Komaruddin Hidayat, "Memahami Fatwa MUI" in http://www.uinjkt.ac.id, Accessed March 12, 2009.

[4]See Darul Aqsa et.al., *Islam in Indonesia: A Survey of Events and Developments from 1988 to March 1993*, (Jakarta: INIS, 1995), p. 197.

as to the Muslim community, as a part of *amar ma'ruf nahi munkar* (commanding right deeds and forbidding wrong deeds); *secondly,* to strengthen the *ukhuwah Islamiah* (Muslim brotherhood) and to keep and enhance the interreligious harmony in the framework of maintaining national unity and integrity; *third,* to represent the Muslim community in the interfaith dialog; and *fourth,* to bridge the ulamas and the government, and became the interpreter between the government and the religious community and vice versa in order to make the national development be successful.[5]

The MUI has a special commission called the Commission of *Fatwa is* whose responsibility is to issue *fatwa* to unify public opinion among Muslim community and give advices to the government of Islamic legal regulation to be considered in the formulation of certain policies. At the time of its creation in 1975 the the Commission had seven members but because of deaths and changes, the numbers can fluctuate; every five years the composition of the Commission is renewed through a recruitment. Today, this Commission is headed by K.H.Ma'ruf Amin.

The meetings of the Commission are convened as the need arises or when the MUI is aksed by the public or the government for its opinion on certain issues of Islamic law. Such meetings are generally attended by, in a part from to the chairman and members of the Commission, invited outsiders consisting of independent *ulama* and scholars in secular sciences relevant to the subject under discussion. To issue a *fatwa* the Commission normally needs one meeting but, on occasion, a *fatwa* may need up to six meetings; on the other occasion the meeting may produce several *fatwas* as in the case of vasectomy, tubectomy, and cornea donation.[6]

As long as the issuance of *fatwa* is concerned, the MUI has divided the *fatwas* based on their respective fields, ranging from the religious matter to science and technology issues. Part One concerns on ritual issues which constitute *fatwa* on *zakat* (alms), *fatwa* on praying together with other religious adherences and *fatwa* on the beginning of Ramadhan, Syawal/*'Idul Fithr* and *'Idul Adha*; Part Two deals with Religious Understanding and Sects which constitute *fatwa*s on Ahmadiyah Qadiyan, Syiah, Secularism, Pluralism, and Liberalism; Part Three concerns Social issues which comprises *fatwa*s on death sentence, corruption, Muslim's attendance at Christmas celebration and *fatwa*s on pornography and porn action, and Part Four deals with Science and Technology that constitute *fatwa*s on mechanical slaughtering of animal, vasectomy and tubectomy, and *fatwa* on cornea donation.[7]

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[5]Azyumardi Azra et.al, *Ensiklopedi Islam*, vol. 3, (Jakarta: Ichtiar Baru van Hoeve, 2002), p. 123. See also Muhammad Atho Mudzhar, *Fatwas of the Council of Indonesian Ulama: A Study of Islamic Legal Thought in Indonesia 1975-1988*, (Jakarta: INIS, 1993), p. 54. Compare with Nurhadi, "Muslims' Participation in Christmas Celebrations: A Critical Study on the Fatwa of the Council of Indonesian Ulama," *al-Jami'ah: Journal of Islamic Studies*, Vol. 40, No 2 (July-December 2002), p. 284.

[6]Mudzhar, *Fatwas of the Council,* p. 68-69.

[7]See www.mui.or.id, Accessed March, 2009.

The drawing up and issuance of the *fatwa*s are carried out by the MUI usually follows the mechanism of legal reasoning (*instimbath*) which is the combination of the text and the context. The legal reasoning applied by the MUI in stating the status of nonvoting can be traced back to the issuance procedures of the *fatwa*s available in the Guidline of Issuing the Fatwas of the MUI (Pedoman Penetapan Fatwa Majelis Ulama Indonesia) Number: U-596/MUI/X/1997. It is mentioned in Chapter 2 about General Bases of Issuing the Fatwas (Dasar-Dasar Umum Penetapan Fatwa) that:

1. Each decree of the *Fatwa* must have reference to the Qur'an and the Tradition of Prophet Muhammad which is truswarthy, and it is not contrary to the benefit of the community.
2. If they are not found in the Qur'an and the Tradition as mentioned in chapter 2 point 1, the decree of the *Fatwa* should not be contrary to the consensus (*ijmâ'*), the analogy (*qiyâs*) and other legal bases such as *istihsân* (preference), *mashâlih mursalah* (the interest of Muslim community), and *sadd az-zarî'ah* (preventing harm).
3. Prior to the issuance of the decree it is suggested to consider legal arguments included other arguments used by those with different opinion.[8]

Furthermore, in chapter 3 about the Issuance Procedures of the Fatwas (Prosedur Penetapan Fatwa) said that:

1. Each problem addressed to the commission has to be studied thoroughly by the members of the commission or by special team not less than one week before being brought to the meeting.
2. As to the fixed matter (*qath'iy*), the commission should deliver as it is, and the *fatwa* is automatically abrogated after being known to have bases in the Qur'an and the Tradition.
3. As to the controversial issue (*khilâffiyah*) among the *mazhab*s, the commission should declare the *tarjih* (the strongest opinion) after considering fiqih *muqâran* (comparative law) by using the method of comparative jurisprudence (*ushûl al-fiqih al-muqâran*) relevant to the effort of finding the strongest opinion (*tarjîh*).[9]

Given the guidelines elaborated above, the MUI appears to seek to implement what Mu'az bin Jabal had explained when he was sent by the Prophet to Yemen. The Prophet asked: "On what base will you decide the law?" Mua'az replied: "On the Book of Allah. If I don't find in the Qur'an, then I will decide on the Tradition of the Prophet. And if I don't find in the Tradition, then I will exercise my personal legal reasoning as well as I could." Prophet Muhammad was reported to agree with his opinion.[10]

In Islam, especially in *Sunni* circle, it is only proper that system of legislation resembles

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[8]See www.mui.or.id, Accessed Maret 11, 2009.

[9]*Ibid.*

[10] Muchammad Ichsan dan M.Endrio Susilo, *Hukum Pidana Islam: Sebuah Alternatif*, (Yogyakarta: LabHukman UII, 2006), p. 51.

the system used by Mu'az bin Jabal above, opened with the Qur'anic bases followed by relevant Hadits/Tradition, *Ijmâ'* (consensus) and *qiyâs* (legal reasoning). Exercising Islamic legal thought, the MUI tends to follow this common procedure.

The *Fatwa* on *Golput*

It is not surprising that the role of Muslim community in making democracy come to realize in Indonesia is amazing. Not only are they majority, but as Muslims, they also have successfully show a fantastic attitude in implementing democracy. In line with this phenomenon, Chairman of Central Muhammadiyah, Dr. Din Syamsuddin said that Islam had played significant role in enhancing democracy in Indonesia. He further added in confident that "..democracy in Indonesia will not run well without participation of Muslim community." He delivered this statement in a seminar held by the Commission of Uni-Europa (UE) entitled "Indonesian Perspective: Pluralism and Democracy" in Brussel, Belgium.[11]

The role of Islam in strengthening democracy in Indonesia has been done in various ways. Among others are by stating that both democracy and Islamic values are compatible, through judicial and legal reforms, encouraging management of good government, empowering bases of culture, promoting interfaith and interculture dialogues, and exercising general election.

The success of Indonesian Muslims in conducting democracy was performed in the 2004 General Election that Jimmy Carter, a former President of the United State (1977-1981) had to deliver his appreciation saying "A hisotorical milestone for us, this general election is also an important step for democracy in the whole world. Indonesian people are showing us dramatical example of a peacefull political shifting, and firmly negating the claim that Muslim community are antidemocratic."[12] This amazing success, however, was not authomatically followed by the up-coming general election in 2009 because of the phenomena of skepticism among the people seeing all candidates. This skepticism cristilized and formed a massive movements of abstention.

The phenomena of vote abstention can be traced back to Soeharto's era, when the credibility of the election (and therefore his reelection every five years) depended on votes. Soeharto's political legitimacy hinged on how many people voted. Intimidation and use of force was the rule, so much so that in 1993, East Timor, then under Indonesian military rule, officially recorded a 105 percent turnout.

Knowing his obsession with the number, Soeharto's critics as far back as 1971 began a civil disobedience movement to encourage people to vote with their feet, or to

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[11] Kapangi.com, "Din: Islam Telah Mainkan Peran Penting Majukan Demokrasi Indonesia" dalam http://www.kapanlagi.com, Accessed July 18, 2010.

[12] *Gatra*, No. 1-2 Tahun XI, 27 November 2004, p. 10.

spoil their ballots as opposed to Golkar, Soeharto's political machinery that helped secure his five-yearly reelections until 1998.

Soeharto has long gone from politics, golput or nonvoters continue to enjoy legitimacy today, more than it deserves. Once again, this turnout became phenomena at the Guvernor Election in West and Central Java where the nonvoters gained victory. In the West Java Governor Election, the couple had (Ahmad Heryawan and Dede Yusuf) successfully earned 7.3 million votes, while the nonvoters were 10 million. In addition, the nonvoters also won in Central Java. Given this situation, not only were the government and politicians but all-Madura MUI concerned that the later declared a *fatwa* forbidding *golput* or vote abstention. *Golput* was equalized with consuming pork or drinking wine, or even doing adultery. [13]

Facing the 2009 general election, vote abstention became one of the hot news in mass media. Although this case was not a new phenomenon in Indonesian political arena as mentioned above, however since Abdurrahman Wahid (Gus Dur) encouraged the public to boycott the 2009 general election in protest over his party's difficulties with recognition, many more parties had felt worried and considered that it was not natural anymore. The MUI was one of the parties who felt fear with this situation of scepticism. In addition, their fear was based on the increasingly low participation at local elections in the past year, ranging from 40 to 60 percent, and at the growing skepticisms about the political parties and the way the 2009 general elections were being conducted. People's Consultative Assembly speaker Hidayat Nur Wahid had asked MUI to prohibit nonvoting fearing that Gus Dur's statement will influence the grassroot. Wahid argued then that a fatwa against nonvoting could boost voter turnout in the 2009 elections.

Being profoked with Gus Dur's statement to boycott the general election and in answering Hidayat Nur Wahid's invitation, the MUI launched a *fatwa* prohibiting nonvoting as a result of a national meeting of the MUI in Padangpanjang, West Sumatera in January 2009. The meeting was led by Chairman of Commission A of *Fatwa* session, K.H Ma'ruf Amin and Dr. H.M Masyhuri Na'im, as the Vice-Chairman. The meeting was composed of 115 teams of formulation, represented by Drs. Sholihudin Al-Aiyub M. Si., as a secretary, Dr. H. Fuad Amsyari (member), Drs. H. Slamet Efendi Yusuf M.Si. (member), K.H. Drs. Abdusshomad Buchori (member), K.H. Maman Abdurrahman (member), K.H. M. Jarir (member), dan K.H. Dani Hamdani (member).[14]

According to MUI General Secretary Ahmad Rofiq, the fatwa was launched just to show that MUI is participating in improving society. Besides, the fatwa was issued in response to a question posed by members of the general public.[15]

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[13]Slamet Widodo, "Fatwa Golput; Surga Dunia atau Surga Akhirat? in www.slametwidodo.com, Accessed April 15, 2009.

[14] www.mui.or.id, Accessed11 Maret 2009.

[15] "MUI: Vote abstention fatwa is non-binding" accessed in www.thejakartapost.com. See

By 26th of January 2009 / 29 of Muharram 1430 H, the Commission succesfully declared a *fatwa* forbiding *golput* (nonvoting) in the general election, on the bases of arguments that:

1. General Election in Islamic view is a way to elect a leader (president) and a vice-leader who are eligible to make common good come to realize based on people's aspiration and the nation's need.
2. Electing a Leader is compulsory in order to establish *imamah* (leadership) and *imarah* (state) in common life.
3. *Imamah* and *imarah* in Islam need certain conditions suitable to the Islamic provisions so that people's benefit may come to realize.
4. Electing a Leader who believes in and fears of God, honest (*shiddiq*), accountable (*amanah*), active and aspirative (*tabligh*), inteligent (*fathonah*) and struggles for the sake of Muslim people, is compulsory (*wajib*).
5. Electing a Leader who does not fulfill the above conditions as mentioned in point 4 or rejecting to caste a vote while he/she knows that there is a candidate who fulfils the conditions, is unlawful (haram).[16]

Based on the above concerns, the MUI finally recommended that:

1. Muslims elect their leaders and representatives who are eligible to carry out the *amar makruf nahi munkar*.
2. The Government sosializes the general election to stimulate people's participation so that their rights might be fulfilled.[17]

The declaration of the *fatwa* on the unlawfulness of *golput* can be viewed as a brave step taken by the MUI. This is due to the reason that the MUI as a religious organization has gone far beyond their formally religious authority. Besides, the MUI will be accused of having conspiracy with the ruling government or with certain political party after issuing the *fatwa*, though initially the declaration of it had nothing to do with this background. In fact, after the *fatwa* was issued, many parties considered that the MUI had gone too far without authority to declare *golput* as forbidden. In such a case, the MUI seemed to be very confused and undecided in accomodating the hopes of either the political parties, Islamic organizations, the govermnment of the lay community.

In issuing the *fatwa* on the unlawfulness of *golput*, the MUI based their arguments from the Qur'an, hadits, and the saying of Companions as well as the ulamas. The following are the arguments of the *fatwa* by the MUI:

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also Wiwit R Fatkhurrahman, "Fatwa Haram Golput, Efektifkah?" in http://wiwitfatur.wordpress.-com, Accessed March 20, 2009.

[16] www.mui.or.id, Accessed March 12, 2009.

[17] *Ibid*.

1. Qur'an al-Nisâ'/4: 59:
   "O you who believe! Obey Allah and obey the Apostle and those in authority from among you".
2. Hadits of the Prophet P. B.U. H:
   "From Abdullah bin Amr bin 'Auf al-Muzani, from his father, from his grandfather, the Messenger of Allah P.B.U.H said: "an Agreement is concluded among Muslim people, except the agreement in prohibiting the lawfulness and permitting the unlawfulness". (Narrated by At-Tirmidzi).
3. Hadits of the Prophet P. B.U. H:
   "Whoever dies and has never given his/her oath (baiat), then he/she dies in ignorance (jahiliyah)". (Narrated by Bukhari).
4. Hadits of the Prophet P. B.U. H:
   "Whoever chooses a leader while he/she knows that there is another one who is more qualified and has broader comprehension on the Book of Allah and His Prophet's Tradition, then he/she has betrayed his God, His Messenger, and the believers". (Narrated by At-Thabrani).
5. The saying of Abu Bakar, when he delivered his first speech rightly after he was elected to be *Khalifah*:
   "O people, whenever I am doing good, please help me, but when I am committing bad things please remind me …please obey me as long as I command you in obeying God, and ignore me if I ask you to do bad things".
6. The saying or Umar when he was elected to be *Khalifah*:
   "Whoever among all of you sees me in astray, then please take me to the right path …".
7. Al-Mawardi's argument in his *Al-Ahkam as-Sulthaniyah*, page 3:
   "Leadership (al-imamah) is a place to replace the Prophet in keeping the religion and managing the world, and according to the consensus (ijma) electing one who can take this position is compulsory".
8. Al-Mawardi's opinion in his *Al-Ahkam as-Sulthaniyah*, page 4:
   "If electing leadership is compulsory, then it's (level of) compulsory is fardhu kifayah (communal obligation) as in jihad and pursuing knowledge. In this case, if there is one who is qualified (deserves) to uphold leadership (imamah), the others have no obligation to do so. If there is no one who can uphold it, two parties are elected among the community; one party is those who have the authority to elect (ahlul ikhtiyar), the other one is the candidate of the leaders (ahlul imamah) until one leader is elected".
9. Ibn Taimiyah's opinion in his *Al-Siyasah al-Syar'iyah* :
   "It is important to note that the existence of power in order to manage community's affairs is compulsory in Islamic religion without which Islamic religion and the world will not stand.

Indeed, the descent of Adam will not be able to accomplish their duties without organization as they need each other, and in an organization there needs a leader".[18]

The overall legal arguments drawn by the MUI basically state the obligation to obey the leaders and the necessity to uphold the *imamah* (leadership). In this matter, the normative arguments used by the MUI are thematical. That means, the MUI, in the process of elucidating, followed the regular procedure by referring to Qur'anic verses, Hadits, the saying of the Companion, and the saying of ulamas respectively relevant to the same topic.

Nevertheless, the normative arguments used by the MUI, are weak to some extent. *First*, none of the the arguments, especially the Qur'anic verse and the Hadits, directly talks about the status of nonvoting judged unlawful by the MUI. In the other word, the MUI referred to the above arguments to judge the nonvoting unlawful just by analogy (*qiyas*).[19] *Second*, there are many other verses, hadits, the saying of the Companions and the ulamas which might be contrary to the above conclusion.

It is also interesting to note that the *fatwa* didn't refer to the view of four *mazhabs* (Islamic schools of law). It has been recognized that the four *mazhabs*, very especially of Syafi'i, held firmly by the mainstream Muslims in Indonesia, let alone Nahdhatul Ulama.[20] The fact that the MUI didn't adopt any of the four *mazhab*s demonstrated that the *fawa* may not be acknowledged by such mainstream Muslims as Nahdhatul Ulama.

Responses to the Fatwa

The issuance of the *fatwa* on the unlawfulness of the nonvoting by the MUI had led to controversy among the community. In some internet sites, the writer found that most people, including Muslim intellectuals, did not support the issuance of the fatwa. Some rejected the idea of the *fatwa* and even delivered bitter remarks on it. Only few who considered the fatwa was necessary to enhance the process of democracy and good politics in Indonesia. Even two biggest Muslim organizations in Indonesia, Nahdlatul Ulama (NU) and Muhammadiyah, are included those who had different stance from the MUI's.

According to Hasyim Muzadi, in Indonesia many problems may cause people do

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[18] *Ibid*.

[19] In *Sunni* circle, *qiyas* is used both as a method as well as a source. *Qiyas* is used to solve legal problem through analogical reasoning. For further discussion about *qiyas*, see Ali Hasbullah, *Ushul al-Tasyri' al-Islamiy*, (Kuwait: Dar al-Ma'arif, no year), p.128-133.

[20] In 1926 the NU in its first congress issued a *fatwa* stating that for present-day Muslims the adoption of the four Sunni *mazhab*s was obligatory (*wajib*); otherwise people could go astray. The *fatwa* added that, for the members of the NU, the Syafi'i school was the appropriate of the four Sunni *mazhab*s. See Atho Muzhar, *fatwas*, p.79-80. About NU, see also my work, and Bahrul Ulum, *Bodohnya NU apa NU Dibodohi, Jejak Langkah NU di Era Reformasi: Menguji Khittah, Meneropong Paradigma Politik*, (Yogyakarta: Ar-Ruzz, 2002), p.56.

not cast their votes in general election. This because some people are too busy thinking of their food. Besides, no candidates are attracting so that people are being so skeptic. Therefore, whether or not people using their rights to vote do not matter. Hasyim, however, reminds if the nonvoting has been a movement asking people not to participate in the poll, that is a crime which is untrue.[21]

Din Syamsuddin, Central Chariman of Muhammadiyah, reminded that all ulamas be wiser and should always pay attention the people's condition. In the case of nonvoting, he said that not all these matters can be related to Islamic law, between *halal* (permissible) and *haram* (forbidden)". Another Muhammadiyah figur, Bahtiar Effendi, Chairman of the *Lembaga Hikmah dan Kebijakan Publik Pimpinan Pusat* (the Institution of Wisdom and Public Policy of National Leadership) of Muhammadiyah, said "It is better that the MUI withdraws the *fatwa* of *golput*".[22]

In line with those opinions mentioned above, a member of Hizbut Tahrir Indonesia also launched his comment. In an Islamic site, responses of Hizbut Tahrir Indonesia were published especially in the form of paper by Muhammad Ismail Yusanto, the Spokesman of Hizbut Tahrir Indonesia. This paper seemed to have been prepared specially to counter the MUI's *fatwa*. The argument by Hizbut Tahrir Indonesia, however, appeared to be much more ideologic.[23] In other words, Hizbut Tahrir Indonesia criticized the idea of the *fatwa* because of the MUI's stance which was in line with – or supported – secular leadership by launching a *fatwa* asking people to participate in democracy. Indeed, secular system, according to Hizbut Tahrir Indonesia, is forbidden in Islamic view. So, if the *fatwa* had been to forbid nonvoting in order to elect "Muslim leader",[24] Hizbut Tahrir Indonesia would have never launched their criticism.

A month earlier before Hizbut Tahrir Indonesia launched the criticism, Drs. K.H. Yakhsyalloh Mansur, M.A., Mudir 'Am (General Director) Pesantren Al-Fatah Bogor had published his comment at the same site. Yakhsyalloh Mansur seemed too much moderate

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[21] "Hasyim Muzadi: Golput Tak Perlu Diharamkan," in http://www.surya.co.id. Accessed March 18, 2009.

[22] Shodiq, "Ternyata Banyak Ormas Islam Menentang Fatwa MUI perihal Hukum Golput/Rokok" dalam http://shodiq.com, / Accessed February 20, 2009.

[23] Muhammad Ismail Yusanto, "Tanggapan Hizbut Tahrir Indonesia terhadap Fatwa MUI tentang Golput" in http://www.eramuslim.com/suara-kita/suara-pembaca. Accessed March 15, 2009.

[24] By "Muslim leader", it means that a leader with Islamic vision and agenda, particularly in establish Islamic state. In Indonesian history, all presidents are Muslims in religion. However, to Hizbut Tahrir, to be Muslim in religion is not enough. Muslim has to be *kaffah* (all-Islam), not only by religion but also – and most important – by ideology, especially the readiness to established *Khilafah* (International Islamic state) and refer the Qur'an and the Hadits as the only foundations of the Constitution.

and logic in using argument. Yakhsyalloh Mansur reminded all ulamas not to be easy to issue a *fatwa* for it would be questioned before Allah.[25]

A political observer and former Rector of UIN Jakarta, Azyumardi Azra, who, according to the writer, was predicted to have different opinion from the MUI's,[26] in this chance showed his agreement and expressed his support on the decision of the Forum Ijtima' Ulama Komisi Fatwa se-Indonesia III. According to Azra, by issuing *fatwa* on the unlawfulness of the nonvoting, that would help Muslims to have such a sense of religious responsibility that participate in the poll is compulsory that needs to be observed. So, from the perspective of the implementation of the general election, this is a very good way. Furthermore, the increasing percentage of the political particiapation was also significant in order to enhance democracy in *demokrasi*. He also added that the MUI's *fatwa* was issued for the sake of Indonesian interest in general. Therefore, according to him, this summon of the *fatwa* has to be observerd and followed-up by any religious figures in Indonesia. [27]

Although Azra admitted that it was permissible to issue a *fatwa*, he also warned that the *fatwa* had to be kept away from political consumtion, by which it became nothing more than an order of certain candidate or party. He added that the MUI's *fatwa* was not authomatically binding. Every one has the right to follow or not. He further said that the term "*haram*" had to be understood as a religious advice and not a binding. Besides, in Indonesia the institution of *fatwa* did not solely become the authority of the MUI."[28]

By his opinion above, Azyumardi Azra, seems to find a moderat way between the idea of supporting and the neglecting the *fatwa*. In this case, he appears to be more realistic seeing the fact that participation in the 2009 general election was very important as a means to find a qualified leader.[29]

Of the pro parties, Partai Keadilan Sejahtera (Prosperous Justice Party) or PKS is the most vocal party to support the *fatwa*. It is understood that from the very beginning, the top leader of PKS, Hidayat Nur Wahid was the one who firstly launched the idea to forbid the nonvoting, as mentioned above. In the other sides, *Badan Pelaksana Pemenangan Pemilu (Bapilu)*/the Winning Team of PKS, Muhamad Razikun, said:

"The *fatwa* forbidding the nonvoting will indeed influence the number of nonvoters.

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[25] Yakhsyalloh Mansur, "Fatwa MUI tentang Tidak Ikut PEMILU; Dipaksakan dan Kontraproduktif" in http://www.eramuslim.com/suara-kita/suara-pembaca. Accessed March 17, 2009.

[26] To the writer's understanding, Azyumardi Azra, is one of Muslim intellectuals in Indonesia who inclines to "liberal" view, the attitude that the MUI has always delivered severe criticism. To some degrees, the MUI even declares this view as misleading and, therefore, has to be forbidden. For further information about the *fatwa* on liberal view, see www.mui.or.id. Accessed March 11, 2009.

[27] "Hasyim, *golput*, Accessed March 18, 2009.

[28] *Ibid.*

[29] *Ibid.*

> If it was previously predicted that the number of nonvoters would increase ranging from 35 percent in 2004 general election to about 55-60 percent in 2009 general election, then the existence of the MUI's *fatwa* will possibly help to reduce the number of the nonvoters at least equal with the 2004 general election."[30]

In the context of democracy, the existence of the vote abstention or nonvoters a part of democracy and it is a legal choice. In the context of benefit, however, the citizens have to participate in order to elect the best leader, said Razikun. He added:

> "If people find none of the candidates is qualified, then in Islamic legal theory it can be learned that one has to choose anyway a leader who has least weakness,…The *fatwa* might be a spirit or support for the nation and the process of democracy, so that te number of nonvoters will be reduced athough many people have been disappointed with the political system as well as the political attitude in Indonesia".[31]

The same call came from the members of PKS in America and Canada who completely support the MUI's decision to issue a *fatwa* forbidding the nonvoting. The members of PKS view the *fatwa* as a smart action taken by the MUI. Muhammad Yusuf Efendi, Chairman of *Pusat Pelayanan dan Informasi* (Center of Service and Information) of PKS America and Canada, in San Francisco, California, for example, has been reported to have said that "the *fatwa* made by the MUI on the unlawfulness of the nonvoting is a smart action in order to ask all people of Indonesia to build the Indonesian people together."[32]

According to Yusuf, one of the significant prerequisites to recover the condition of the Indonesian people is through the participation of all citizens to buid the country, included in electing the people's representative and the leaders of the country. Yusuf also stated that the Ijtima' of the MUI was important to take into account in order to make the 2009 General Election success. He saw that the government have allocated very much fund only to build this country. Therefore, he suggested that it was not wise to waste it (by not participating in the poll). Besides, the general election was a good chance for Indonesian people to revive from their crisis.[33]

At the end of his massage, Yusuf also said that peple who live in America would like to see the glory and the development of Indonesia. Hopingly he said:

"Therefore, we, members of PKS of the United States are determined to struggle and

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[30]Administrator, "PKS Berharap MUI Keluarkan Fatwa Haram Golput" in http://pk-sejahtera.de/index.php?option=com. Accessed March 18, 2009.

[31] *Ibid.*

[32] "PIP PKS Amerika Dukung Fatwa MUI" in www.suaramerdeka.com, Accessed March 11, 2009.

[33] *Ibid.*

participating in developing the nation from outside, and I hope my brothers in Indonesia will revive and unite answering this tone of resurgence."[34]

Full support by PKS towards the MUI's *fatwa* has rised suspicious among the people. Although it is not easy to prove whether or not the PKS has vested interest behind this issuance of the *fatwa*, at least the PKS as the solid party will lose vote if the general election was proved to fail. That means the PKS would get benefit from the *fatwa*.

In the another side, no less than the General Elections Commission (KPU) had appealed to the public to ignore those growing skeptical opinions and to take part in the nation's periodic democratic exercises in electing their leaders. The commission, as are those who are obsessed with numbers, fear that Indonesia's nascent democracy will be undermined if voter turnout falls below a certain percentage.

In other words, the KPU measures its success on this magic number. The PKS, however, have their own reason for seeing a high number: A lost vote is a wasted vote. Hence, the MUI is now recruited into their campaign to force or intimidate people into voting, lest they earn God's wrath.[35]

The Implication of the *Fatwa* to the Indonesian Democracy

As mentioned above, the issuance of the *fatwa* was hoped to increase the participantion in the 2009 General Election. The number of participation, however, was difficult to measure wheter or not it had relation with the *fatwa* or not. Acording to Azyumardi Azra, it was not easy to determine the impact of the *fatwa* in decreasing the number of the nonvoters. What was more obvious was that there were Muslims who were happy to obey and follow the MUI's *fatwa*, and there were some others who felt free to decide themselves whether or not they follow the *fatwa*.[36] Azyumardi was not sure whether or not the number of participants in the poll had significant relation with the issuance of the *fatwa*.

Azyumardi, however, would prefer to see the positive sides of the *fatwa* in the context of developing and enhancing democracy in Indonesia. By the *fatwa*, Muslim people would have such a spiritual sense that participating in the poll was religious. He also asserted that the elected government would not be powerfull and credible if there were more people became nonvoters. The reason was simple, the elected government was not based on the majority.[37]

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[34] *Ibid.*

[35] www.thejakartapost.com, Accessed March 10, 2010.

[36] Kurniasih Budi, "Fatwa Haram Golput Dinilai Dongkrak Partisipasi Pemilih" in http://www.tempointeraktif.com, Accessed February 11, 2009.

[37] *Ibid.*

As long as the impact of the fatwa is concerned, so far we do not have any information concerning the impact of the fatwa with the participation of the voters. It was clear, however, that the 2009 General Election had been criticized by many observers as the worst in performace. In fact, this has nothing to do with the *fatwa*. Besides, there are other factors that make people to be nonvoters because of technical factor, for example.

Another reason why the *fatwa* seemed to have no significant impact to the constituents was that of constitutional reason. Voting in Indonesia, like in most democracies, is voluntary. There should be no legal consequences if people don't vote, unlike in Australia or in Singapore where voting is mandatory. The flipside of this is that abstaining is a right that is protected by the Constitution.

At last, the 2009 General Election had successfully brought Susilo Bambang Yudoyono as the President and Budiono as the Vice-President. We can say conclude that the democracy was success at this time through a process of General Election in good quality. The general election is said to be in good quality whenever the process and the outcome are also good. The process is good when the general election run democratically, trustful and fair, peace and smooth. The outcome is considered good when the general election bring about people's representative and national leader who were deemed capable of bringing people to prosperity and high status before international people.[38]

Given the elaboration above, the role of the MUI's *fatwa* in reducing the number of nonvoters is lest significant, except for those who initially introduced and supported the fatwa, such as the PKS members. For the later, the MUI's fatwa is of course a moral as well as religious encouragement. The number of voters seems to be much more influenced by the level of their education and maturity, socialization from the KPU, and political as well as moral will of the government rather than a fatwa.

Conclusion

It is understood that *fatwa* is one of a legal opinion exercise. In case of the *fatwa* forbidding nonvoting, the MUI appeared to have been confused and undecisived facing the dillemas whether to maintain good relationship with the government or being accepted by the Muslim community[39] and, therefore, seemed to be opportunist.

Declaring *fatwa* forbidding the nonvoting was a brave step in the situation of preparing the 2009 General Election for some reasons. *First*, nonvoting was of political affairs regulated in constitution. By issuing *fatwa* demonstrated the MUI's involvement in the political arena which is definitely in contradiction with its mission as a religious

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[38] Rozali Abdullah, "Sistem Pemilu Legislatif dan Pemilu Presiden Ditinjau dari Sudut Pandang Demokrasi," in *Journal Konstitusi*, vol. II No. 1, June 2009, p. 12-13.

[39] This conclusion is partly inspired by Mudzhar, *fatwas*, p. 68.

body. *Second*, the *fatwa* is of Islamic in nature but seemed to summon all people including non-Muslim. Then, how could the later observe it? *Third,* from the argument used by the MUI, it was inferred that the *fatwa* was not produced by serious scrutiny.

From the elaboration above, some important point have to be taken into consideration. *First*, the MUI has to be able to separate between religious matters and political affairs, though Islam doesn't separate both in conscept. But in dealing with social matters it has to be so. Thus, for the first, the MUI can use the term "*halal* (permissible) and *haram* (forbidden), while for the later, the MUI has to use the term "should", "it is better," or "it is recommended/ suggested", etc., instead of *halal-haram*. Objectivication[40] is much better and saver to implement facing social or worldly problems.

Second, issuing *fatwa* needs not only a highly qualified understanding of Islamic law, but also an accommodation with the spirit of modernity combined with a modern scientific approach and profound research methodology. Therefore, the MUI has to be more accommodative in order to produced objective and inclusive fatwa.

In addition, in order to increase public participation at the polls the government needs to reform the political parties and the way elections are organized. In case of politics, *fatwa* should works nothing more than just a moral force. Therefore it is perhaps more appropriate to use the term "reccommendation" rather than stating "*halal-haram*."

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[40]"Objectivication" was introduced by Kuntowijoyo, meaning a value-based rational implementation of Islam. Objectivication is not to practice Islam as it is. It is to adjust Islam with social situation but still refers to the fundamental root of Islam. This is especially true in social-political affairs. For further information see Kuntowijoyo, *Islam Sebagai Ilmu: Epistemologi, Metodologi, dan Etika*, (Jakarta: Teraju, 2004), p. 64-70

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