

## Reflective Thinking and Islamic Jurisprudence Traditions (Fatwa)

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### Abstract

*The aims of this study are to find out the Reflective Thinking and Islamic Jurisprudence Traditions (Fatwa). This study use qualitative research method. From the description that the author describes, several conclusions can be drawn: 1. Reflective thinking is someone who must be active and careful in understanding the problem, linking the problem with the knowledge that has been obtained and considering carefully in solving the problem. 2. The characteristics of reflective thinking include: 3. The tradition of Islamic Jurisprudence is a habit of legal experts in obtaining a set of guidelines, rules, and regulations from decisions that are regulated based on the Qur'an, sunnah, analogy, consensus, and research disciplines. 4. Usul fatwa is the basis or argument used by a mufti in answering questions related to sharia law, both for individual and collective interests in the context of the interests of the community which are not binding. 5. In addition to being a mufti who is qualified in his field, he must also be able to use the potential of relative thinking so that the fatwa produced is protected from all forms of misguidance and provides benefits for the benefit of the community.*

### Keywords

Reflective thinking;  
Islam jurisprudence;  
traditions



## I. Introduction

Reflective thinking is thinking based on reason and purpose. This type of thinking involves problem solving, formulating conclusions, involving what needs to be done, and making decisions as a person uses skills that are meaningful and effective for a particular context as well as one of the thinking tasks. This reflective thinking can develop higher order thinking skills through motivation that is connected with the latest knowledge to previous understanding, thinking abstractly and concretely, applying specific strategies in new tasks, and understanding their own thinking processes and learning strategies.

Someone who has the characteristics of reflective thinking can prevent him from making mistakes in responding to something. The observed errors can be used as a source of information in making a decision.

On the other hand, talk about The Islamic Jurisprudence tradition certainly cannot be separated from problems related to people's lives, especially the problems of Muslims who are better known as "Fiqh". Fiqh is understood as knowledge of Islamic laws regarding human actions related to everyday life.

In this case, what I mean by Islamic Jurisprudence is not the perspective of ushul fiqh, but rather the ushul fatwa.

The current fact shows that many traditions Islamic Jurisprudence (fatwa) is not always able to carry out its ideal role. There are cases where fatwas are unable to provide legal solutions to topics that are being rolled out by the public. If this happens, then

tradition Islamic Jurisprudence (fatwa) will lose its contextualization in the dynamics of the times.

Therefore, based on the introduction above, the author will try to explain the pattern of reflective thinking and tradition Islamic Jurisprudence (fatwa) in its development at the moment.

## II. Review of Literature

### 2.1 Understanding Reflective Thinking

Etymologically the word thinking comes from the word "think" which means reason, memory, and wishful thinking. Thinking means using the mind to consider and decide something, weigh it in memory.

Wasty Soemanto argues that basically the activity or activity of thinking is a complex and dynamic process. The dynamic process of thinking includes three stages, namely the process of forming understanding, the process of forming opinions, and the process of forming decisions. On the basis of this opinion, the thinking process is an activity to understand something or solve a problem through the process of understanding something or the core of the problem being faced and other factors.

From the explanations of some of the experts above regarding the thought process, the author can conclude that thinking is using the mind to solve a problem from the knowledge he has obtained as a sign of one's seriousness in dealing with the problem.

As for reflective thinking according to Dewey, it means: "active, persistent, and careful consideration of any belief or supposed from knowledge in the light of the grounds that support it and the conclusion to which it tends". Reflective thinking is active, continuous, persistent, and carefully considers everything that is believed to be true or forms of knowledge with reasons that support it and lead to a conclusion.

Meanwhile, Kember revealed that reflective thinking can be classified into 4 stages, namely: (a) habitual action, (b) understanding, (c) reflection, and (d) critical thinking.

Reflective thinking is one of the higher order thinking skills. Reflective thinking is a thinking activity that can make someone try to connect the knowledge he has gained to solve new problems related to his old knowledge. Hery Suharna stated that the process of reflective thinking (reflective thinking) can be described as information or data used to respond, originating from within (internally), which can explain what has been done, realize mistakes and correct them and communicate ideas or ideas with symbols or symbols. image, not with direct object.

The author's conclusion regarding the notion of reflective thinking from some of the expert opinions above is that someone must be active and careful in understanding the problem, linking the problem to the knowledge that has been obtained and considering carefully in solving the problem.

### 2.2 Characteristics of Reflective Thinking

Boody, Hamilton and Schon explain the characteristics of reflective thinking as follows:

- a. As a retrospective analysis or recall (the ability to self-assess).
- b. As a problem-solving process, take steps to analyze and explain the problem before taking action.
- c. As self-criticism (developing self-improvement continuously).
- d. As self-confidence and success.

Basically, reflective thinking is a person's ability to select the knowledge that has been owned and stored in his memory to solve any problems faced to achieve his goals.

According to John Dewey, the reflective thinking process carried out by individuals will follow the following steps:

- a) Individuals feel the problem.
- b) Individuals localize and limit understanding of the problem.
- c) Individuals find the relationships of the problem and formulate a solution hypothesis on the basis of the knowledge they already have.
- d) Individuals evaluate the specified hypothesis, whether to accept or reject it.
- e) The individual applies the problem-solving method that has been determined and selected, then the result is whether he accepts or rejects the conclusion.

### **III. Results and Discussion**

#### **3.1 Tradition of Islamic Jurisprudence (Fatwa)**

##### **a. Definition of Islamic Jurisprudence Tradition (Fatwa)**

###### **1). Definition of Tradition**

Etymologically, the word tradition comes from the Latin, namely tradition which means passed on or custom. As for terminology, it means something that has been done for a long time and is part of the life of a group of people, usually from the same country, culture, time, or religion. The most basic thing about tradition is the existence of information that is passed on from generation to generation, both written and oral, because without this, a tradition can become extinct.

Tradition in the Anthropology dictionary is the same as customs, namely the magical-religious habits of the life of an indigenous population which include cultural values, norms, laws and rules that are interrelated, and then become a system or system. rules that have been established and include all conceptions of the cultural system of a culture to regulate social action. Meanwhile, in the sociology dictionary, it is defined as customs and beliefs that can be maintained from generation to generation.

Tradition is a habit that is passed down from generation to generation in a society. Tradition is a mechanism that can help to facilitate the personal development of community members, for example in guiding children to adulthood. Tradition is also important as a guide for mutual association in society.

Traditions that have been entrenched will become a source in one's character and character. Tradition or custom, in the simplest sense, is something that has been done for a long time and is part of the life of a group of people, usually from the same country, culture, time, or religion. The most basic thing about tradition is the existence of information that is passed on from generation to generation, both written and oral, because without this, a tradition can become extinct. In addition, tradition can also be interpreted as a common habit in human society, which will automatically affect the actions and reactions in the daily lives of members of that society. According to Koentjaraningrat, tradition is the same as customs,

According to Funk and Wagnalls, as quoted by Muhaimin, the term tradition is defined as knowledge, doctrine, habits, practices, etc. Furthermore, Muhaimin said that tradition is sometimes equated with traditional words which in the view of ordinary people are understood as the same structure. In this case it actually comes from the Arabic adat (plural of "adah") which means habit and is considered synonymous with 'Urf, something that is known or generally accepted.

### 3.2 Definition of Islamic Jurisprudence (Usul Fatwa)

In the Western sense, jurisprudence or jurisprudence has two meanings. First, jurisprudence in a narrow sense (particular jurisprudence), which examines various branch concepts such as in terms of the concepts of rights, obligations, property rights and others. Second, jurisprudence in a broad sense (general jurisprudence), which examines the concept and nature of the basic law itself.

In the book Islamic Legal Term Dictionary, Islamic Jurisprudence is defined:

*Islamic jurisprudence the term for Fiqh, is a process by means of which jurists derive sets of guidelines, rules, and regulations from the rulings laid down in the Qur'an and the teachings and living example of the Prophet Muhammad, the Sunah. Over the centuries, these have been formulated and elaborated upon by successive generations of learned jurists, through interpretation, analogy, consensus, and disciplined research.*

It means:

*Islamic Jurisprudence, the term Fiqh, is a process by which jurists derive a set of guidelines, rules, and regulations from decisions set forth in the Qur'an and the teachings and living examples of the Prophet Muhammad, the Sunna. Over the centuries, it has been formulated and elaborated by successive generations of learned jurists, through interpretation, analogy, consensus, and research disciplines.*

Therefore, the Islamic Jurisprudence tradition here is a habit of legal experts in obtaining a set of guidelines, rules, and regulations from decisions that are regulated based on the Qur'an, sunnah, analogy, consensus, and research disciplines.

As for what the author means by Islamic Jurisprudence in this paper, it is not fiqh or ushul fiqh, but Usul Fatwa.

Usul fatwa comes from two words, namely ushul and fatwa. Ushul is etymologically a jama' (plural) from the word aṣl. The word ushul etymologically has the meaning: rooted, originating, origin, origin, source, principal, parent, center, principle, basis, original, original, rule, and genealogy.

Meanwhile, in terms of terminology, the word uṣūl has the following meanings:

1. Dalil (legal basis), as expressed by Uṣūl Fiqh scholars. "Al of the obligatory prayer is the word of Allah and the Sunnah of the Prophet". It means that the evidence for the obligation of prayer is the verses of the Qur'an and Sunnah.
2. Qaidah (base or foundation), as said by the Prophet Muhammad, "Islam was founded on five uṣūl (base or foundation)"
3. Rajih(the strongest), as the experts of Uṣūl Fiqh say: "The strongest of the (content) of an expression is the meaning of its essence". That is, every word that is heard / read, which becomes the benchmark is the true meaning of the word.
4. Far'u (branch), as the scholars of Uṣūl Fiqh say that the child is a branch of the father.
5. Mustashab (enforce existing laws from the start, as long as there are no arguments to change them). For example, someone who has performed ablution doubts whether he is still pure or has canceled his wudu. However, he was sure that he had not done anything that would invalidate wudu. On the basis of this belief, he is still considered sacred.

The term fatwa comes from Arabic from the root word "fata" which means youth, the word al-fatwa is lughawi isim masdar which comes from the word "afta" plural "fatawa" by breaking the letter "waw" or giving the letter "waw" read "fatawi" is the noun form of the sentence "fata- yaftu-fatawa" (فتا – dna suoreneg si ohw eno – snaem فتوا)

generous” (مبيل ماركلا ءاخسلا يا قوتفلا يف). A person who has a fatwa is called a mufti. When related to the definition of lughawi above with the mufti, the tendency is very close, because a mufti is always generous in providing knowledge to everyone who asks for a fatwa. According to al-Fayumi, (ل) comes from the word "al-fata" (فتلا) meaning "strong youth". This meaning gives an understanding that a mufti must be strong in providing arguments from the person who asks for a fatwa.

Book “al-Mu'jam al-Wasith Fatwa is defined as "an answer to something that is impossible in matters of sharia and Islamic legislation."

Meanwhile, the definition of fatwa in terminology, put forward by scholars with various meanings. Muhammad Rowas Qal'aji, interprets fatwa as syar'i law that is explained by a faqih to people who ask him.

Wahbah al-Zuhaili, fatwa is defined as an answer to a question regarding sharia law which is not binding.

The same meaning is also stated by Yusuf Qardawi in "al-Fatwa Baina al-Indibad aw al-Tasayyub" that a fatwa is defined as a statement or stipulation of the syara' law of a problem as an answer to a question, whether the person who asks is clear or not personally and collectively.

Then Zamakhsary in “al-Kashaf”, fatwa is defined as an explanation of sharia law on a problem as an answer to the question of certain or not certain people, namely personal interests and the interests of the community at large.

From the explanation above, it can be concluded that a fatwa is an effort to explain a mufti due to questions about sharia law, whether the questions are individual or collective in the interest of the community and the explanation of the fatwa can be in written or oral form which is not binding.

Therefore, ushul fatwa can be interpreted the basis or argument used by a mufti in answering questions related to sharia law, both for individual and collective interests in the context of the interests of the community, which are not binding.

### **3.3 The Relevance of Reflective Thinking with Usul Fatwa**

In the past, in general, salaf scholars did not overdo it in issuing fatwas, but for the sake of prudence, salaf scholars often stated that they did not know about the problems that occurred. This is an expression of a salaf scholar against something that they do not understand and do not know for sure. This indicates that there are some salaf scholars who have not used reflective thinking patterns in responding to an incident or problem.

Salaf scholars place more emphasis on a person's ability to issue a fatwa, people who issue a fatwa must have the knowledge and ability to deal with the problems that occur, so that what they fatwa does not make mistakes. Ibn Mas'ud also emphasized that a person who often gives fatwas, even though he is not in control and he is not even asked for a fatwa by others, is categorized as a madman. Therefore, in general, the Salaf scholars firmly reject the fatwas issued by people who lack basic knowledge of their religion or in other words, the fatwas are issued by people who are not experts. Salaf scholars are of the view that a person who is not an expert and does not qualify as a mufti and he issues a fatwa, must be rejected and denied so as not to mislead the ummah.

When related to today's context, fatwa authority is more institutional than individual. It is rare to find individual fatwas. The community's need for law is always questioned by institutions that have authority for it, in this context in Indonesia there is the Indonesian Ulema Council (MUI), especially the Fatwa Commission or fatwa assemblies in Islamic organizations such as the Bahtsul Masail Nahdlatul Ulama institution, the Tarjih Muammadiyah Council etc.



In this position, the fatwa is getting wider, not only limited to legal issues as well as institutions. The position of the mufti is also increasingly important in various sectors and lines of life so that the ushul fatwa is no longer purely based on the Qur'an, sunnah, analogy, consensus, and research disciplines, but based on political interests in which fatwa products are needed in certain political constellations as well as in the economic and community welfare aspects, fatwa products are needed by the community.

To simply enrich our treasures, the author cites several procedures for determining fatwas by MUI as stated in the Guidelines for Determining the Fatwa of the Indonesian Ulema Council Number: U-596/MUI/X/1997, which may be related to the context of reflective thinking theory, as follows:

- a. Every fatwa decision must have a basis on the book of Allah and the Sunnah of the Prophet which is mu'tabar, and does not conflict with the benefit of the ummah.
- b. If it is not contained in the Book of Allah and the Sunnah of the Prophet, it should not conflict with Ijma', mu'tabar Qiyas and other legal arguments such as istihsan, maslahah mursalah and sadd az zari'ah.
- c. Problems submitted to the commission should be studied first by the members of the commission or the Special Team
- d. Regarding the issues that have been discussed by Qath'iy, the commission should convey it as it is, and the fatwa will become invalid after the texts are known from the Qur'an and Sunnah.
- e. In the case of khilafiyah among the schools of thought, the fatwa is the result of tarjih after paying attention to Muqarram Fiqh (comparison) by using the rules of Muqarram fiqh usuh related to tarjih.
- f. After conducting a comprehensive in-depth discussion and taking into account the opinions and views that developed in the session, the Commission issued a Fatwa Decision.
- g. Fatwa decisions are formulated in language that can be easily understood by the wider community.
- h. The fatwa includes the basics along with a brief description and analysis as well as the sources for taking them.

Meanwhile, the Working Mechanism of the Fatwa Commission as stated in Decree Number: U-634/MUI/X/1997 contains, among others: Every letter that enters the Fatwa Commission containing requests or problems with Islamic law is recorded and selected by the Special Team to determine its classification, including:

- a. Issues that deserve to be brought to the Fatwa Commission meeting
- b. Issues that are returned to the Provincial Level MUI
- c. Enough problems answered by the Special Team
- d. Problems that don't need answers.

#### **IV. Conclusion**

From the description that the author describes, several conclusions can be drawn:

1. Reflective thinking is someone who must be active and careful in understanding the problem, linking the problem with the knowledge that has been obtained and considering carefully in solving the problem.
2. The characteristics of reflective thinking include:
  - a. As a retrospective analysis or recall (the ability to self-assess).
  - b. As a problem-solving process (awareness of how one learns).
  - c. As self-criticism (developing self-improvement continuously).

- d. As self-confidence and success.
3. The tradition of Islamic Jurisprudence is a habit of legal experts in obtaining a set of guidelines, rules, and regulations from decisions that are regulated based on the Qur'an, sunnah, analogy, consensus, and research disciplines.
4. Usul fatwa is the basis or argument used by a mufti in answering questions related to sharia law, both for individual and collective interests in the context of the interests of the community which are not binding.
5. In addition to being a mufti who is qualified in his field, he must also be able to use the potential of relative thinking so that the fatwa produced is protected from all forms of misguidance and provides benefits for the benefit of the community.

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