

Issuing Fatwa during Covid-19 Pandemic: An Analysis

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ABSTRACT

Talking about *fatwas* in contemporary situations is both crucial and accurate. Crucial because it is a slander to the people in the religion of God and accurate because it needs an accurate methodology that no one can do unless they qualify and train for it. Thus, this study attempts to address a sound legal theory of issuing *fatwa* under Islamic law during the covid-19 pandemic based on qualitative methods by adopting content data analysis. The findings reveal that the expertise for issuing the *fatwa*, its unification, the proper understanding of the nature of the calamity, consideration of *Maqāsid al-Shari'ah*, and considering *Ma'alat* are the major concerns that have a significant amount of impact in this regard. Hence, the study would provide a clear guideline on the role of *fatwa* and *Mufti* in contemporary Muslim society, especially in the covid-19 pandemic.

Keywords: *Fatwa*, *Ifta'*, Covid-19, Pandemic, Law, Islam

JEL Classification: Z12; K19.

1. Background of the Study

In general, a *fatwa* is a legal opinion issued by any Muslim jurist (*Mufti*) on particular Islamic law rulings. In principle, a *fatwa* clarifies any issue that arises in Muslim society. This shows that *fatwa* and *mufti* are two important methods for delivering legal guidance within the *Shari'ah* (Islamic law) framework that governs Muslims in their everyday routines. This is because, while *fatwas* are not legally enforceable when they are issued, they have a huge impact on modern society because they provide guidelines and norms to follow (Ibrahim et al., 2015).

Fatwa occupies a great status, evidenced by legal texts. The Almighty says, "And they request from you, [O Muhammad], a [legal] ruling concerning women. Say, "God gives you a ruling about them" (Al-Qur'an 4:127). Likewise, the Prophet (PHUB) also encouraged his companions to seek explanations whenever they came across new cases, such as the man who suffered a head injury and had wet dreams (*ihtilam*) and was subsequently forced by someone to do ritual ablution (*ightisal*), causing him to grow rigid and stiff, and eventually die. "They

have killed him; may Allah kill them. Is not a cure for lack of knowledge to ask a question?" the Prophet replied when he was notified of the occurrence (Sunan Abi Dawood, 336).

Furber (2013, p.1) defines a *fatwa* as "a non-binding legal opinion offered by an individual (known as a *mufti*) who has been trained to apply Islamic law to individual cases and then authorized by other *muftis* to do so. Accordingly, when a *mufti* (*fatwa*-maker) is posed a question by a *mustafti* (asker or *fatwa*-seeker), he utilizes the *fatwa*-making process to issue a *fatwa* (Khairuldin et al., 2019). Because *fatwa*-making refers to the *fatwa*, which is an important tool in determining the law and seeking a solution to a problem in Islam, precise guidelines have been assigned (Khairuldin & Ibrahim, 2017). According to Hassan & Khairuldin (2020), the *fatwa*-making process is divided into four levels: *al-taswir* (problem visualization), *al-takyif* (problem adaptation), *al-hukm* (legal explanation), and *al-ifta'* (*fatwa* determination). The description of this *fatwa*-making process is shown in Figure 1:

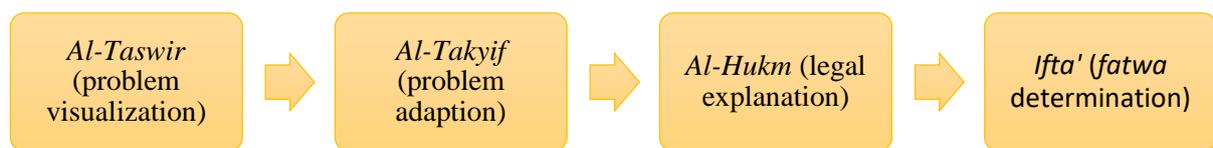


Figure 1: Stages of *Fatwa*-making Process
Source: Hassan & Khairuldin (2020)

The material of *fatwas* has historically been used to construct substantive areas of Islamic law. Because *fatwas* are the 'atomic' components of this law, they reveal a great deal about its anatomy. There were no codified laws to guide people in their religious and social concerns in the early stages of Islamic history; instead, Muslims received guidance on their religious practices by posing their concerns to early proto-jurists in the form of religion-legal questions (*istifta'*), which these proto-jurists answered in the form of *fatwas*. Islamic legal manuals began to be created due to the critical mass of *fatwas*, and a definite corpus of Islamic law emerged (Awass, 2014).

In Muslim society, *fatwas* and *muftis* play key roles. If no one is entrusted with issuing *fatwas*, society will collapse into anarchy to the point where people will be unable to distinguish between permissible and prohibited behavior. What is permissible may become prohibited in such a scenario, while what is prohibited may become permissible. As a result, *fatwas* and *muftis* are required in order to meet society's religious needs (Ibrahim et al., 2015).

Because *fatwas* issued to individuals, collectives, and institutions are not binding on the *mustafti*, there may be differences of opinion between places due to variances in environments, customs, and benefits demanded (Izmuddin, 2018). Hence, this study attempts to find out some guidelines for issuing a *fatwa* that could be adhered to during the covid-19 pandemic.

2. Statement of the Problem

The emergence of new circumstances cannot be avoided since human life evolves with time and progress. Despite the fact that Muslims inherit a huge amount of information and knowledge written by jurists, these works are unable to provide answers and solutions to all unfamiliar circumstances. This is where the institution of *fatwa* plays its vital role; as long as

human existence continues to change and transform, and *Shari'ah* is relevant and compatible with every location and time, *fatwa* requests will never cease (Al-Duski, 2007).

3. The objective of the study

The purpose of this study is to identify the reforms and elements of integration in *fatwa* during covid-19, in which the result of a *fatwa* being issued is strong, standard, and problem-solving and brings *maslaha* (public interest).

4. Method

This research acquired data on the *fatwa*-making process, which was subsequently examined using the content analysis method. The data collecting method in the form of documentation is accurate due to the textual character of data in documents related to *fatwa*-making. Indeed, this research was limited to a concept discussion. To acquire precise textual results, this study used the content analysis method.

5. Results and Discussion

In order to consider the developments in general and the emerging coronavirus in particular, a methodology must be followed to reach a correct *Shari'ah* ruling. Among the most important of these attractions are:

5.1. The Expertise in issuing *Fatwa*

In Islam, the *mufti* is the highest and most revered religious law official. After the Prophet Muhammad's (peace be upon him) death, "*mufti*" became a reference for Muslims (Al-Shatibi, 2004). According to Islamic Scholars, *Muftis* are individuals who preach or relay Allah S.W.T's laws (*hukm*) due to their in-depth understanding of the postulates of Islamic law (Subri et al., 2017). Most scholars put the conditions to become a *mufti* as follows: a Muslim, puberty and maturity (*mukallaf*), fairness, *ijtihad* (diligence), and possessing skills and talent (Al-Ashkar, 1976).

Even though individual *muftis* continue to issue *fatwas*, the production of Islamic legal expertise is increasingly becoming a collective effort. The institutionalization of collective *ijtihad* - as the technique is known - has been interpreted as a recognition of the modern world's complexity, in which no single person is capable of mastering all relevant disciplines of knowledge. It's also occasionally presented as a pragmatic reaction to the current scarcity of absolute mujtahids (Caeiro, 2011). The institutionalization of collective *fatwa* bodies can thus be considered one of the techniques by which the *'ulama* (Islamic scholars) have endeavored to remain relevant in the face of modern problems (Zaman, 2002).

According to Ibn Qayyim al-Jawziyya (2002), the *mufti*'s position is similar to that of a minister (*wazir*). Thus, the privilege of being nominated by the king as a minister is confirmed, and his status is well-known, as his position is one of the highest. The post appointed by Allah the Almighty has the same privileges as the one appointed by the Lawgiver, i.e., Allah's messenger.

In terms of religious beliefs, worship, social life, economic activity, legislation, litigation, and the law, Muslims' lives and personalities are simple and straightforward. *Fatwa* is a permanent institution that will guide and encourage the growth of Muslim life. The perfect technique of *fatwa*, which is founded on the Quran and the Sunnah, as well as the correct norms of derivation, will have the positive consequence of safeguarding Muslim identity. This process

will continue to keep the heart of Muslim society free of corruption and depravity (Al-Mallah, 2009).

5.2. Efforts for Unification of *Fatwa*

Fatwa unification efforts have been ongoing since the time of the Sahaba. Ibnu Mas'ud, for example, had followed 'Uthman's (the then Caliph) *ijtihad* and abandoned his own (Asni et al., 2019). Abu Bakar's *ijtihad* had been reinforced by Umar al-Khattab (Al-Jawziyya, 2002). In this sense, one technique of unification is to respect authoritative leaders as well as those who are more knowledgeable. Even though they all had their own opinions, some of the Sahaba appreciated and celebrated the beliefs of pious *Sahaba*, who lived during the same period as them (Asni & Sulong, 2016).

A similar notion was used during the *Tabi'in* and *Tabi' Tabi'in* periods when the most authoritative viewpoints were adopted and considered official *fatwas* to prevent *khilaf* (Islamic scholarly religious disagreement). During the Abbasid period, for example, the Secretary of State, 'Abd Allah ibn al-Muqaffa,' suggested to the Caliph Abu Ja'far al-Mansur that the book of *al-Muwatta'*, written by Imam Malik, be designated as the representation of the government's main view and that Imam Malik's *ijtihad* be formulated as a standard code of law (Asni, 2018).

Similarly, Caliph al-Mahdi and Caliph al-Rashid aspired to use the *Maliki madhab's* teachings as a source of authority. The government of Harun al-Rashid had nominated Abu Yusuf as its chief judge, and the book of *al-Kharaj* had been designated as the primary source of information (Asni et al., 2019). Following that, various *fatwa* and *fiqh* works were utilized as references and regulations in countries like the Bani Abbasid Empire, with Mawardi's *al-Ahkam al-Sultaniyyah* serving as an official reference (Al-Muhamid, 2001). Standardization took place in terms of reference sources and terms of *madhab* flow. Khadive Muhammad Ali Pasha, for example, was only appointed *mufti* from the *Hanafi* sect throughout the Ottoman Empire time (Asni et al., 2019).

The effort to standardize *fatwas* did not end there. The fuqaha' and administrators must also comprehend the process of *Istinbāt* (power of decision making of Islamic law), which is based on the exact and standard rules of *Shari'ah*, in order for the result of *ijtihad* to be the same. As a result, 'Abd al-Rahman bin Mahdi proposed to Al-Syafi'i that he produce a book detailing how legal judgments are issued. This is intended to outline standard procedures based on references to *Shari'ah* rules, resulting in the issuance of standard legal judgments (Asni et al., 2019). Furthermore, the imams of the four *madhabs* have implicitly pushed the uniformity of *fatwa* by informing the *ummah* to prioritize the strength of *dalil* (evidence) (Dehlawi, 2005). In this context, regardless of the *madhab's* origin, *fatwa* can be unified by emphasizing the strengths of *dalil* and accomplishing *maslaha* and *maqasid*. This is based on the *maslaha* argument that it makes it easier for the Qazi and Muslim community to understand the laws of *Shari'ah*, eliminate ruling errors, unifies the nation's *fatwa* by using the most *rajih hokum* (and avoids the drawbacks of dispute (Jasim, 2017). Under the principle of *al-Siyasah al-Shar'iyyah*, the ruler has jurisdiction over the unification of *fatwa* decisions. When a leader establishes a law, the society is obligated to follow it (Al-Qur'an, 4:59).

Accordingly, Asni (2018) concludes that the decision to issue a standardization *fatwa* and form an *ijtihad* union is significant because it emphasizes Islam's values of justice and equality. Thus, *Istinbāt* and *ijtihad* efforts should be carried out in a systematic, consistent, and in accordance with knowledge epistemology criteria, whether from the point of passage proof or

academic of *mujtahid* and the *mufti*. It also includes manners, which jurists have highlighted in different opinions while issuing a *fatwa* (*mura'ah al-khilaf*). The right *fatwa* (*rajih*) solves the problem, provides benefit, prevents harm, and does not produce other issues. By its meaning, a *fatwa* should be uniform and aligned in its meaning since the benefits and aims of the *Shari'ah* are one, equal, and similar, especially when they are practiced simultaneously.

5.3. Understanding the nature of the calamity (*Fiqh al-Nazila / Disaster Fiqh*)

Contemporary *Shari'ah* applications in any particular Muslim society or legal policy necessitate a technique that reflects *Shari'ah's* universality and adaptability to changing conditions. Any such application or policy would be counterproductive without the components of the *Shari'ah* relevant to adapting varied surroundings and cultures, or in other words, the dimensions of history and geography of the people. This is because it would imperil *Shari'ah's* own set of values and principles, such as justice, wisdom, kindness, and the common good (Auda, 2011).

The Change in the *fatwa*, according to Al-Qaradāwī (2009), can occur due to 10 factors, including time, place, condition, habit, information, human need, social economy, and politics. Thus, one cannot complain about a change in a particular issue's ruling due to a change in these factors. The term "rulings" refers to decisions made based on customs and traditions, *masalih mursalah* (public interests), *istihsan* (jurisprudential preference), or other secondary evidence. Ibn al-Qayyim Al-Jawziyya (2002) illustrates that the rulings are of two kinds. [The first] are those that do not change but remain constant through changes in time, place, and the *ijtihad* of scholars. The example includes the imposition of obligations and prohibitions. These are not subject to alteration or *ijtihad* that is in conflict with their prescription. The second type of judgment varies as per the public's interests. The *ta'zir* (disciplinary action), for example, was administered by the Prophet, which included, in several instances, financial penalties.

Because a *fatwa* may change over time, place, and circumstances, the foundations of the *Shari'ah* are the people's interests in terms of their livelihood and the Hereafter. A *mujtahid*, *faqih*, or *mufti* cannot do his duty unless he is knowledgeable of the reality of the times he lives in, as well as contemporary occurrences, political and economic circumstances, and people's manners and livelihoods. As a result, based on the evidence in front of him, he gives a *fatwa* and applies *ijtihad* to a specific situation. For this reason, the Prophet's Companions, *Tabi'in*, and jurists would issue *fatwas* built on the concept that a *fatwa* changes with time, place, customs, and conditions (Dar al-*Iftaa* Al-Missriyyah, n.d.).

On this basis, Umar ibn al-Khattab used *ijtihad* and sought the counsel of those around him for the issues that were brought before him and he instructed his provincial judges to do the same. As a result, they would apply *ijtihad* to the issues before them and seek the advice of persons with expertise and judgment. Due to disparities in settings and places, this developed the notion of differences in decisions reached through *ijtihad*. It was a necessary consequence of Islam's territorial growth, the dispersion of the Companions within it, and the diverse issues and situations that each region faced (Yousuf, 1993).

In this regard, Muhammadiyah, as one of Indonesia's oldest and largest socio-religious organizations, has an intriguing perspective on prayer guidance in emergencies (the case of Covid-19). Disaster *Fiqh* was compiled by Muhammadiyah and ultimately established a normative foundation in the Covid-19 mitigation. Certain specific *fiqh* concepts, such as *fiqh* of worship, are not necessarily ignored by the wider *fiqh* concept. Guidance for prayer in an emergency is one of the *fiqh* products in this specific concept. Muhammadiyah central

board circular letter number 02/EDR/I.0/E/2020 of 29 Rajab 1441 H/24 March 2020 stipulates this. During times of emergency, religious precepts govern changes in the way of worship. There have been some significant changes to the worship procedure, such as:

1. Replacing the prayer call "*ḥayya' alaṣ-ṣalah*" with "*ṣallū fī riḥālikum*" or other relevant ones.
2. Congregational prayers in the mosque are converted into individual prayers at home.
3. Friday prayers in the mosque are replaced by *zuhr* prayers at home.
4. Corpse prayer is replaced by *gaib* prayer.
5. Tarawih prayers in the month of Ramadhan 1441 H/2020 M may be held at houses rather than in mosques.

There are numerous other alterations to the protocols for worship in the emergency conditions of Covid-19.

This is because many religious ceremonies in Islam, like the five daily prayers, the *tabligh akbar* (mass religious meeting), Friday prayers, and corpse prayers, need a handshake and other physical contacts with a large group of people (Suyadi et al., 2020).

5.4. Taking the higher purposes and intents of Islamic law (*Maqāṣid al-Shari'ah*) into account

Maqāṣid Shari'ah is essentially one of the *ijtihād* methodologies used by scholars to establish Allah SWT's meanings and wisdom expressed in all or most parts of the *Shari'ah*, which in essence aims to preserve and generate the greatest good for the *ummah* (Firdaus, 2020). At the same time, the *Shari'ah* aspires to realize the welfare of individuals and communities by the application of laws and the utilization of available facilities in order to promote life on Earth toward perfection and goodness in civilization and culture in the world (Zuhayli, 1999).

There are two ways of explaining the goals of Islamic law: from the human perspective as *mukallaḥ* and the perspective of the lawmaker, namely Allah SWT. On the human side, Allah SWT has endowed human beings with potential strength through nature. Human resources serve as a means of achieving and maintaining satisfaction in one's life. Meanwhile, Islamic law's aim is in line with human nature and the function of the powers it wields, namely to reap benefits while refusing harm (*jalb al-mashālih wa dar'u al-mafāṣid*) (Uyuni et al., 2021).

The objective of Islamic law is split into three goals, according to the lawmaker's inductive reasoning based on the sources of revealed Islamic teachings (Abu Zahra, 1958).

1. The purification of the soul so that every Muslim is a source of goodness for his environment.
2. The enforcement of justice in the life of society.
3. Benefits, namely, genuine good for the benefit of society, not lust-based goodness.

The *Shari'ah's* primary purpose is welfare, which refers to five key things that must be preserved for the good and survival of human beings: religion, soul, intellect, lineage, and property preservation. The five benefits that Islamic law seeks to achieve are directed on the concept of protection and protection (*al-hifdz*) in traditional terminology, but according to contemporary scholars, these principles have been enlarged to include the growth and fulfillment of human rights (Uyuni et al., 2021).

In this regard, the legal maxim of Islamic law, "Difficulties Can Attract Facilities," must be comprehended. According to experts, travel (*safar*), illness (*al-maradh*), compulsion (*al-ikrâh*), forgetting (*al-nisyân*), ignorance (*al-jahl*), difficulty (*al-usr*), and (*umum al-balwa*) are

seven things that can offer relief (*rukhsah*) (Al-Suyuti, 2013). The ability to *tayamum* when it was difficult to use water, purification with the help of others and sitting during obligatory prayers or Friday sermons when sick, praying between two prayers, and the ability to leave congregational due to heavy rain are some examples of the relief prescribed by him.

According to (Auda) 2011), failure to include the *maqasid* approach in issuing *fatwa* would result in reductionist rather than holistic or multidimensional *Shari'ah* applications (or rather, misapplications) and literal rather than moral *Shari'ah* applications. As a result, the *maqasid* approach elevates legal choices and policies to a higher philosophical level, resulting in a holistic, multidimensional, and moral approach. This methodology provides much-needed flexibility in Islamic rulings as time and circumstances change, flexibility that is critical to Islam's universality and way of life.

Ibn Qayyim Al-Jawziyya (2002) summed up this concept that *Shari'ah* is all about wisdom and ensuring people's well-being in this life and the next. It is all about justice, mercy, wisdom, and goodness. Thus, any rule that replaces justice with injustice, mercy with its polar opposite, common good with evil, or wisdom with foolishness is not *Shari'ah* ruling, even if it is purported to be so by some interpretation.

This fact could be practically elaborated when considering the *fatwas* issued by MUI (Majelis Ulama Indonesia) concerning COVID-19 which are referred to as *maqshid Shari'ah* (five maintenances (*usūl al-khamsah*): Maintaining religion (*hifz ad-din*), soul (*hifz an-nafs*), intellect (*hifz al-aql*), family and offspring (*hifz an-nasl*), and property (*hifz al-mal*) (Syaugi, 2021). In this sense, the MUI issued the following *fatwas*: 1) *Fatwa* N0.31 of 2020 concerning the Implementation of Friday Prayers and Congregations to Prevent the Transmission of the COVID-19 Outbreak. 19; 2) *Fatwa* N0 14 of 2020 concerning the Implementation of Worship in Situations of the COVID-19 Outbreak; 3) *Fatwa* N0.2 of 2021 concerning COVID-19 Vaccine Products from Sinovac Life Sciences Co. Ltd China and Bio Farma (Persero); 4) *Fatwa* N0.13 of 2021 concerning the Law on COVID-19 Vaccination While Fasting; 5) *Fatwa* N0.14 of 2021 concerning the law on the Use of the COVID-19 vaccine for Astrazeneca Products; 6) *Fatwa* N0.18 of 2021 concerning Guidelines for the Management of the Body (*Tajhiz al-Janā'iz*) of Muslims infected with Covid 19; 7) *Fatwa* N0. 23 of 2021 concerning the Law on Swab Tests for Detecting COVID-19 While Fasting; 8) *Fatwa* N0.24 of 2021 concerning Guidelines for the Implementation of Worship in the Months of *Ramadan* and *Shawwal* 1442 H.

5.5.Considering *Ma'alat* (Consequences of Action)

Islamic principles are revealed through the study of Islamic texts for the sake of *maslahah* (well-being) in human existence. However, in some circumstances, enforcing specific rules may not result in *maslahah* and may even work against it. In this context, (Al-Shatibi, 2004) proposed adopting *Ma'alat* (consequences of action) as a basis for giving exceptions in Islamic norms, either to prohibit or to tolerate a banned activity for the benefit of *maslahah*. According to him, *Shari'ah* (Islamic law) recognizes and intends the assessment of the *Ma'alat* of activities to determine whether they are lawful or unlawful. Thus, the mujtahid (those who have the ability to conduct the *ijtihad* process) will only judge an individual's action, whether by action or omission, after examining the consequences of that action: It may have been initiated with the intention of causing *mafsadah* or preventing *mafsadah*, but it has resulted in the opposite of what was intended, or it may not

have been initiated with the intention of causing *mafsadah* or preventing *mafsadah*, but it has resulted in the opposite of that effect.

Ifwat (2018b) argues that this concept is not being used to support the change of Islamic laws because *Ma'alat* is used at the stage of rule implementation, and this procedure is carried out within the discipline of *maqasid al-Shari'ah*. Further, considering *Ma'alat* could make an Islamic rule more flexible in terms of its application. In other words, rather than focusing on the technical components of the law, the emphasis should be focused on how to attain *maslahah* in practice. However, without a comprehensive understanding of this principle, its application could be misinterpreted as a justification for modifying a rule without cause in the name of *maslahah*. As a result, the principle of *maalat* must be implemented with the discipline of *ijtihad*, *maqasid al-Shari'ah*, and understanding of reality so that *maslahah* is not utilized to legitimize a *Shari'ah-infringing* activity (Ifwat, 2018a).

It's worth noting that there are two stages of *ijtihad*: interpretation and application. While the first stage of *ijtihad* refers to the process of extracting rules from Islamic primary sources such as the Quran and Hadith, the second stage of *ijtihad* is concerned with applying those principles into practice in today's world. The first stage seeks to identify a specific rule from Islamic sources, while the second stage ties the rule to its purpose and reality (Abdul Razzak, 2017). In this regard, the principle of examining *Ma'alat* plays a major, if not dominant, role in the second stage of *ijtihad*, as it deals with the real-world consequences of rule execution. Using this approach, it is occasionally necessary to grant an exception to some rules in specific instances where those laws are unable to achieve their goals (Al-Sanus, 2003).

In reality, *mujtahids* have no power over Islamic regulations other than to apply them as necessary. Because they must study hard to grasp Islamic sources, they must also work hard to understand modern reality, which includes human needs, customs, and new issues in their life (Al-Najjar, 1900). In fact, disregarding the second part may cause Islamic regulations to have different effects than intended; even *mujtahids* have grasped the theory of Islamic rules from its sources (Al-Jawziyya, 2002).

This procedure is not as simple as its theory suggests, as Al-Shatibi (2004) points out that this is the duty of *mujtahid*, a tough path but magnificent and commendable in the end. Not surprisingly, because *Ma'alat* is difficult to implement in practice, it has not received much attention from scholars in their *fatwas* or *ijtihad*. Because the reality is constantly changing and renewing, it is strongly advised that *Ma'alat* be considered through collective *ijtihad* between Islamic jurists and the relevant specialists (Ifwat, 2018b).

6. Conclusion

In general, a *fatwa* is a legal opinion made by any Muslim jurist (*mufti*) on particular Islamic law rulings. In theory, a *fatwa* is a legal document that clarifies any issue that arises in Muslim society. This shows that *fatwa* and *mufti* are two important methods for delivering legal guidance within the *Shari'ah* framework that governs Muslims in their daily lives. This is because, while *fatwas* are not legally enforceable when they are given, they have a huge impact on modern society because they provide instructions and standards to follow. This study aims to analyze the role of *fatwa* and *mufti*, respectively, in attending to issues and problems arising in contemporary Muslim society during the covid-19 pandemic. The findings of the study are expected to provide a clear guideline on the role of *fatwa* and *mufti* in the contemporary Muslim community, especially in the covid-19 pandemic.

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