

FATWA (RELIGIOUS PRONOUNCEMENT) OF THE ULAMA COUNCIL OF INDONESIA

Number : 30 of 2016

Regarding:

LAW ON THE BURNING OF FORESTS AND LAND AND THE CONTROL THEREOF

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

The Fatwa Commission of the Ulama Council of Indonesia (MUI), upon:

- TAKING INTO CONSIDERATION** :
1. whereas, forests and land are blessings of Allah SWT (Glory to Him, the Exalted), that are important to be protected, preserved and utilized for the benefit of all;
 2. whereas, efforts taken by the community to utilize forests and land often involve burning and thus causing damage and loss;
 3. whereas, among such damage and loss caused by the fire is smoke, particularly in peat land, adversely affecting transportation, health, education, social activities, the economy, biodiversity, and the environment;
 4. whereas, given such facts, questions arise with regard as to where the [Islamic] law stands on the burning of forests and land;
 5. whereas, therefore, it is deemed necessary to establish a fatwa on the law that applies to the burning of forests and land and measures to control them, to serve as guiding principles.

- RECALLING** :
1. Al-Quran:
 - a. Words of Allah SWT elaborating on engaging a livelihood without causing damage to the earth:

كُلُوا وَاشْرَبُوا مِنْ رِزْقِ اللَّهِ وَلَا تَعْتُوا فِي الْأَرْضِ مُفْسِدِينَ.

Meaning: “Eat and drink from the provision of Allah , and do not commit abuse on the earth, spreading corruption.” (QS. al-Baqarah: 60).

- b. Words of Allah SWT forbidding man to cause damage on land and in the sea through their deeds:

ظَهَرَ الْفَسَادُ فِي الْبَرِّ وَالْبَحْرِ بِمَا كَسَبَتْ أَيْدِي النَّاسِ لِيُذِيقَهُمْ بَعْضَ الَّذِي عَمِلُوا لَعَلَّهُمْ يَرْجِعُونَ.

Meaning: “Corruption has appeared throughout the land and sea by

[reason of] what the hands of people have earned so He may let them taste part of [the consequence of] what they have done that perhaps they will return [to righteousness].” (QS. al-Rûm: 41)

وَلَا تُفْسِدُوا فِي الْأَرْضِ بَعْدَ إِصْلَاحِهَا وَادْعُوهُ خَوْفًا وَطَمَعًا إِنَّ رَحْمَةَ اللَّهِ قَرِيبٌ مِنَ الْمُحْسِنِينَ.

Meaning: “And do not cause corruption on the earth after its restoration, and supplicate Him with fear and hope: indeed Allah’s mercy is close to the virtuous.” (Q.S. al-A’râf: 56)

- c. Words of Allah SWT explaining the commandment to undertake good deeds:

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَايَ ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ
وَالْبَغْيِ يَعِظُكُمْ لَعَلَّكُمْ تَذَكَّرُونَ.

Meaning: “Verily, Allah has ordered you to perform good deeds, and forbids you from committing malice, disobedience and acts of hostility. He provides with teachings so that you may take heed.” (Q.S. An Nahl: 90)

وَابْتَغِ فِيمَا آتَاكَ اللَّهُ الدَّارَ الْآخِرَةَ ۗ وَلَا تَنْسَ نَصِيبَكَ مِنَ الدُّنْيَا ۗ وَأَحْسِنَ
كَمَا أَحْسَنَ اللَّهُ إِلَيْكَ ۗ وَلَا تَتَّبِعِ الْفَسَادَ فِي الْأَرْضِ ۗ إِنَّ اللَّهَ لَا يُحِبُّ الْمُفْسِدِينَ

Meaning: “And seek what has been blessed upon you (bliss) at the afterlife, and do not forsake your joy in the world and do good (upon others) as Allah has bestowed upon you, and you shall not bring corruption to this world. Verily, Allah disfavors those who commit harm.” (Q.S. Al Qashash [28]:77)

- d. Words of Allah SWT forbidding the pursuit of desires that can lead to destruction:

وَلَوْ اتَّبَعَ الْحَقُّ أَهْوَاءَهُمْ لَفَسَدَتِ السَّمَوَاتُ وَالْأَرْضُ وَمَنْ فِيهِنَّ بَلْ أَتَيْنَاهُمْ بِذِكْرِهِمْ فَهُمْ
عَنْ ذِكْرِهِمْ مُعْرِضُونَ.

Meaning: “And if the truth were to follow their desires, verily, the heavens and the earth, the sky and earth would crumble. Nay, We have brought them their blessing, but they turn away from their blessing.” (Q.S. al-Mu’minûn: 71).

- e. Words of Allah SWT on the consequence for people committing wrongful deeds:

وَالَّذِينَ كَسَبُوا السَّيِّئَاتِ جَزَاءُ سَيِّئَةٍ مِثْلِهَا وَتَرْهَقُهُمْ ذِلَّةٌ مَّا لَهُمْ مِنَ اللَّهِ مِنْ عَاصِمٍ كَأَمْثَلِ

أَغْشِيَتْ وُجُوهُهُمْ قِطْعًا مِّنَ اللَّيْلِ مُظْلِمًا أُولَٰئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ.

Meaning: “And those who have earned evil deeds, the recompense of an evil deed is the like thereof, and humiliating disgrace will cover them (their faces). No defender will they have from Allah. Their faces will be covered, as it were, with pieces from the darkness of night. They are dwellers of the Fire, they will abide therein forever.” (Q.S. Yûnus: 27).

- f. Words of Allah SWT forbidding the commission of misdeeds that prejudice a person’s rights and causing damage:

وَلَا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ وَلَا تَعْثَوْا فِي الْأَرْضِ مُفْسِدِينَ.

Meaning: “And defraud not people by reducing their things, nor act with greed by causing damage.” (Q.S. al-Syu’arâ’: 183).

- g. Words of Allah SWT explaining disaster as brought upon by man’s own deed:

وَمَا أَصَابَكُمْ مِنْ مُصِيبَةٍ فِيمَا كَسَبَتْ أَيْدِيكُمْ وَيَعْفُوا عَنْ كَثِيرٍ.

Meaning: “And whatever of misfortune befalls you, it is because of what your hands have earned. And He pardons much.” (Q.S. al-Syûrâ: 30).

- h. Words of Allah SWT explaining the obligation to obey Allah SWT, the Prophet SAW, and Ulil Amri:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا.

Meaning: “O you who are of faith! Obey Allah and obey the Prophet (Muhammad), and those of you (Muslims) who are in authority. (And) if you differ in anything amongst yourselves, refer it to Allah and His Prophet, if you believe in Allah and in the Last Day. That is better and more suitable for final determination.” (Q.S. al-Nisâ’: 59).

2. Hadith of the Prophet Muhammad SAW, among others:

- a. Hadith as told by Abû Dâwud and Ahmad from Anas ibnu Mâlik:

عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «إِنْ قَامَتِ السَّاعَةُ وَبِيَدِ أَحَدِكُمْ فَسِيلَةٌ، فَإِنْ اسْتَطَاعَ أَنْ لَا يَقُومَ حَتَّى يَغْرِسَهَا فَلْيُغْرِسْهَا» - رواه أبو داود وأحمد.

Meaning: Anas the son of Malik told of the words spoken by the Prophet SAW: “Once the end of days is upon us, and in the hands of you there is a

seed of the date fruit, if you are able to plant (such seed of date), do so.”
(H.R. Abû Dâwud and Ahmad).

b. Hadith as told by Muslim from Jabir ra:

عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، قَالَ: «اتَّقُوا الظُّلْمَ، فَإِنَّ الظُّلْمَ ظُلُمَاتٌ يَوْمَ الْقِيَامَةِ، وَاتَّقُوا الشُّحَّ، فَإِنَّ الشُّحَّ أَهْلَكَ مَنْ كَانَ قَبْلَكُمْ، حَمَلَهُمْ عَلَى أَنْ سَفَكُوا دِمَاءَهُمْ وَاسْتَحَلُّوا مَحَارِمَهُمْ»

Meaning: *From Jabir bin ‘Abdullah, the Prophet SAW has spoken: “Keep away from cruel acts, as such acts only bring forth darkness at the end of days, and keep away from miserly behavior, as such behavior has destroyed people before you, bringing upon them bloodshed and to make halal (permissible) of what ought to be haram (forbidden).”* (H.R. Muslim).

c. Hadith as told by Ibnu Mâjah, al-Thabarâni and al-Baihaqi from Ibnu ‘Abbâs ra.

عَنِ ابْنِ عَبَّاسٍ، قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «لَا ضَرَرَ وَلَا ضِرَارَ» - رواه ابن ماجة والطبراني والبيهقي

Meaning: *From Ibnu ‘Abbâs ra, the Prophet SAW has spoken: “Do not endanger/harm yourselves and others.”* (H.R. Ibnu Mâjah, al-Thabarâni and al-Baihaqi).

d. Hadith as told by al-Bukhârî and Muslim from ‘Abdullâh ibnu ‘Amr ibnu ‘Ash

عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو بْنِ الْعَاصِ، يَقُولُ: إِنَّ رَجُلًا سَأَلَ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَيُّ الْمُسْلِمِينَ خَيْرٌ؟ قَالَ: «مَنْ سَلِمَ الْمُسْلِمُونَ مِنْ لِسَانِهِ وَيَدِهِ»

Meaning: *‘Abdullah bin ‘Amru bin ‘Ash told: a man asked the Prophet SAW: “What makes the most virtuous Moslem?” The Prophet SAW answered: “Those (Moslems) who save other Moslems through his word and hands.”* (H.R. al-Bukhari and Muslim).

e. Hadith as told by Ahmad from Sa’id bin Zaid :

عَنْ سَعِيدِ بْنِ زَيْدٍ قَالَ سَمِعْتُ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ "مَنْ ظَلَمَ مِنَ الْأَرْضِ شَيْئًا فَإِنَّهُ يُطَوِّفُهُ مِنْ سَبْعِ أَرْضِينَ"

Meaning: *Sa’id bin Zaid said, “I heard the Prophet SAW spoke: ‘Who commits cruelty to the earth even along only one span of the hand, then he*

shall be burdened by seven layers of the earth.” (H.R. Ahmad).

- f. Hadith as spoken by Abu Dawud and al-Tirmidzi from Sa'id bin Zaid:

عَنْ سَعِيدِ بْنِ زَيْدٍ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ
وَلَيْسَ لِعِزْقٍ ظَالِمٍ حَقٌّ» رواه أبو داود والترمذي

Meaning: *Sa'id bin Zaid told of the Prophet SAW who has spoken: "He who has toiled an ownerless land, than such land shall be his right, and no right shall be given to dishonest venture."* (H.R. Abû Dâwud and al-Tirmidzi).

- g. Hadith as told by Jâbir bin 'Abdillâh:

عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «مَنْ أَحْيَا أَرْضًا مَيْتَةً
فَلَهُ بِهَا أَجْرٌ، وَمَا أَكَلَتِ الْعَوَاقِبُ فَلَهُ بِهَا أَجْرٌ» رواه النسائي

Meaning: *Jâbir bin 'Abdillâh of the Prophet SAW who has spoken: "He who has toiled a land that has gone unused shall receive blessing (pahala). And when any of such work is eaten by a wild animal, then he shall receive blessing (pahala)."* (H.R. al-Nasâ'i).

3. Principles of fiqh (interpretation of the Sharia law):

الضَّرَرُ يُزَالُ

Meaning: *"All harmful and useless things must be abolished."*

الضَّرَرُ لَا يُزَالُ بِالضَّرَرِ

Meaning: *"A harmful and useless thing cannot be substituted for (another) harmful and useless thing."*

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى حَلِّ الْمَصَالِحِ

Meaning: *"Preventing harm brought upon by an unlawful deed shall take precedent over the pursuit of benefit."*

تَصَرُّفُ الْإِمَامِ عَلَى الرَّعِيَّةِ مَنْوُوطٌ بِالْمَصْلَحَةِ

Meaning: *"The policies of the imam (government) over the affairs of the people shall be for the prosperity/benefit of the people."*

TAKING INTO ACCOUNT

- : 1. The opinion of al-Syâhibi in al-Muwâfaqât fî Ushûl al-Syari'ah, volume II, pages 198-199:

الْمَفْهُومُ مِنْ وَضْعِ الشَّرَائِعِ أَنَّ الطَّاعَةَ أَوْ الْمَعْصِيَةَ تَعْظُمُ بِحَسَبِ عِظَمِ الْمَصْلَحَةِ أَوْ الْمَفْسَدَةِ النَّاشِئَةِ عَنْهَا، وَقَدْ عَلِمَ مِنَ الشَّرِيعَةِ أَنَّ أَعْظَمَ الْمَصَالِحِ جَرِيَانُ الْأُمُورِ الضَّرُورِيَّةِ الْحَمْسَةِ الْمُعْتَبَرَةِ فِي كُلِّ مِلَّةٍ، وَأَنَّ أَعْظَمَ الْمَفَاسِدِ مَا يَكْرَهُ بِالْإِخْلَالِ عَلَيْهَا.

Meaning: *Understanding the intent of the Sharia (Allah SWT), it is that the extent of obedience or sin is dependent on the extent of the harmful effect or (conversely) the benefit that has been brought upon. It can be derived from the Islamic Sharia that the benefit comes from the five articles of dharuri as acknowledged in every rule, and that harm are the issues that impede them.*”

2. Opinion of Syihâbuddîn ibn Idrîs ibn 'Abdur Rahmân, in *al-Furuq*, Volume III, page 94:

فَإِنَّ الشَّرْعَ خَصَّصَ الْمَرْبَبَةَ الْعُلْيَا مِنَ الْمَصَالِحِ بِالْوُجُوبِ وَحَثَّ عَلَيْهَا بِالزَّوْاجِرِ صَوْنًا لِتِلْكَ الْمَصْلَحَةِ عَنِ الضِّيَاعِ كَمَا خَصَّصَ الْمَفَاسِدَ الْعَظِيمَةَ بِالزَّحْرِ وَالْوَعِيدِ حَسْمًا لِمَادَّةِ الْفَسَادِ عَنِ الدُّخُولِ فِي الْوُجُودِ.

Meaning: *Islamic Shariah Islam verily upholds the pursuit of benefit for the people as an obligation, and exert control through various prohibitions to safeguard such benefit. Likewise, Islamic Shariah looks at major harmful effects as forbidden and a threat, to be prevented and keep from occurring.*

3. Opinion of 'Izzuddîn ibn 'Abdus Salâm in *Qawâ'id al-Ahkâm fî Mashâlih al-Anâm*, Volume I, page 127:

وَكُلَّمَا قَوِيَتْ الْوَسِيلَةُ فِي الْأَدَاءِ إِلَى الْمَفْسَدَةِ كَانَ إِثْمُهَا أَعْظَمَ مِنْ إِثْمِ مَا نَقَصَ عَنْهَا.

Meaning: *When the cause that brings harmful effect is strong, then the sin becomes greater and exceeds the sin resulting from a minor cause.*

4. Opinion of Muhammad ibn Ahmad al-Fasiy, in *al-Itqân wa al-Ihkâm*, Volume II, page 105:

أَنَّ كُلَّ مَنْ أَتْلَفَ شَيْئًا فَوَجِبَ عَلَيْهِ ضَمَانُهُ بِإِتْلَافِهِ فَإِنَّهُ مُطَالَبٌ بِإِخْلَافِهِ فَإِنْ كَانَ الْمُتْلَفُ (بِالْفَتْحِ) مِنْ ذَوَاتِ الْأَمْثَالِ فَيُضْمَنُ مِثْلَهُ، وَإِنْ كَانَ مِنْ ذَوَاتِ الْقِيمِ ضَمِنَ قِيَمَتَهُ.

Meaning: *All persons who cause damage must bear the responsibility, and is demanded to provide restitution. If the object that is damaged has a similar counterpart, then he shall make replace with such similar counterpart. And if the object can only be valued with its price, than he*

shall replace according to such price.

5. Opinion of ‘Ali Haidar in *Durar al-Hukkâm*, Volume II, page 597:

الإِثْلَافُ مُبَاشِرَةٌ يُوجِبُ الضَّمَانَ عَلَى كُلِّ حَالٍ. وَلَا يُشْتَرَطُ فِيهِ وُجُودُ التَّعَدِّيِّ وَالتَّعَمُّدِ.
أَمَّا الإِثْلَافُ فَهُوَ مُوجِبٌ لِلضَّمَانِ إِذَا كَانَ تَعَدِّيًّا أَوْ تَعَمُّدًا وَإِلَّا فَلَا.

Meaning: *Direct damage caused in any circumstances shall create an obligation on the part of the offender to be liable for such damage, even when the commission of such deed has not been through recklessness or without deliberation. If damage is for a reason, the offender shall be liable if the cause was with recklessness or deliberation. And if the act was committed without recklessness or deliberation, then no obligation of liability exists.*

6. Result of the 2nd Indonesian Ijtima of Ulama of the Indonesian Fatwa Commission of 2006 on the Management of Natural Resources.
7. Fatwa of the Ulama Council of Indonesia Number 2 of 2011 on the Environmentally Friendly Mining Operations.
8. Fatwa of the Ulama Council of Indonesia Number 04 of 2014 on the Conservation of Endangered Animal Species to Maintain the Balance of the Ecosystem.
9. Law Number 41 of 1999 on Forestry, Law Number 32 of 2009 on the Protection and Management of the Environment, Law Number 39 of 2014 on Plantation, Government Regulation Number 45 of 2004 the Forest Protection, Government Regulation Number 71 of 2014 on the Protection and Management of Peat Ecosystem, Regulation of the Minister of Environment and Forestry Number P.32/MenLHK/Setjen/Kum.1/3/2016 on the Control of Forest and Land Fire, Regulation of the Minister of Environment Number 10 of 2010 on the Mechanism for the Prevention of Pollution of and/or Damage to the Environment Relating to Forest Fire and/or Land Fire.
10. Result of workshops, field visits, meetings and assessment of the Fatwa Commission Team working in conjunction with the Ministry of the Environment and Forestry over the period from 31 March to 10 June 2016.
11. Opinions, recommendations and inputs developed during the Fatwa Commission Session of the Ulama Council of Indonesia during its Plenary Session on 27 July 2016.

HAS RESOLVED

TO ESTABLISH : **FATWA ON THE LAW REGARDING THE BURNING OF FORESTS AND LAND AND THE CONTROL THEREOF**

Firstly : **General provisions**

In this fatwa, the following terms shall have the meaning as ascribed to them:

1. Forest is a unit of ecosystem consisting of an area of land made up of natural resources dominated by trees as an integral and inseparable part of the environment.
2. Land is a inland expanse of ecosystem external to a forest that is utilized for economic enterprise, agricultural activities and/or people's plantation.
3. Burning of forest and land is a deliberate act of human that causes forests and land to be set on fire.
4. Control of forest and land fire is the prevention, mitigation and management of fire.

***Secondly* : Legal Provisions**

1. The burning of forests and land that can cause damage, pollution, harm to other persons, adverse health effects, and other harmful effects, is religiously forbidden (*haram*).
2. Facilitating, allowing, and/or deriving benefit from the burning of forests and land as referred to in item 1 is religiously forbidden (*haram*).
3. Burning forests and land as referred to in item 1 constitute a crime and the offender is punishable based on the extent of the damage and impact rendered.
4. The control of forest and land fire as referred to in the general provision is mandatory.
5. The utilization of forests and land is in principle allowed, subject to the following conditions:
 - a. formal rights for such utilization must be acquired
 - b. license for utilization must be obtained from the appropriate authorities in accordance with the prevailing regulations
 - c. utilization must be for the positive benefit of the people
 - d. utilization must not cause damage and adverse impact, including damaging the environment.
6. Utilization of forests and land that is not in line with the requirements set forth in paragraph 5 is religiously forbidden (*haram*).

***Thirdly* : Recommendations**

1. The national as well as the local governments should:
 - a. harmonize the regulations related to the utilization of forests and land to avoid overlaps;
 - b. disseminate information on the applicable laws and norms related to the use of forests and land through various approaches, including religious based approach through the involvement of religious leaders;
 - c. provide sustained education to the public regarding the

- use of forests and land through various approaches, including public education and outreach and religious sermons;
- d. empower communities by reinforcing the concept of social forestry and facilitating the preparation of forest and land area without using fire;
 - e. provide environmentally friendly technology;
 - f. establish equitable policies with regard to the issuance of licenses to utilize forests and land to the public;
 - g. control forest and land fire by building synergy among the relevant institutions/agencies;
 - h. conduct strict and fair enforcement of the law against perpetrators of forest and land fire that may cause damage, pollution, harm to others, harm to public health, and other adverse effects, whether involving individuals or corporations.
2. Businesses should:
 - a. comply with every law and regulations concerning the utilization of forests and land;
 - b. conduct community empowerment, particularly for communities living around forests and land, to further their prosperity;
 - c. ensure the conservation of the environment;
 - d. provide human resources and facilities to control forest and land fire;
 - e. procure appropriate environmentally friendly technology for the preparation of land clearing.
 3. The community should:
 - a. conduct constructive measures to prepare forest and land area without setting fire;
 - b. conduct measures to prevent and mitigate forest and land fire in accordance with the applicable laws and regulations;
 - c. actively participate in monitoring for and preventing the practices of burning forests and land that may cause damage, pollution, harm to others, harm to public health, and other adverse effects.
 4. The government, businesses and the communities should undertake expedited environmental preservation through post-fire reforestation and restoration.

Fourthly

: Concluding Provisions

1. This fatwa shall come into effect on the date of its affirmation, on the condition that should there be any amendment required, it shall be amended and rectified as necessary.
2. To procure that every Moslem and persons are informed of this fatwa, it is called upon to all parties to disseminate the same.

Affirmed in : Jakarta
On : 22 Syawal 1437 H.
27 July 2016

**ULAMA COUNCIL OF INDONESIA
FATWA COMMISSION**

Chairperson,

Secretary,

PROF. DR. H. HASANUDDIN AF, MA.

DR. HM. ASRORUN NI'AM SHOLEH, MA.