



ANALYSIS OF THE FATWA OF DR. MOHD ASRI BIN ZAINUL ABIDIN AND ITS IMPLICATIONS FOR THE PENAL CODE OF PULAU PINANG REGARDING TAJASSUS

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Abstract: *The phenomenon of tajassus, or spying and seeking others' faults, is a classical issue in Islamic law that remains relevant in the context of modern sharia enforcement, particularly in investigating khalwat cases in Malaysia. The background of this issue lies in the tension between the Qur'anic prohibition of tajassus (al-Hujurat: 12) and the practices of religious enforcement officers who often resort to surveillance as evidence of khalwat. This research addresses two main questions: the ijihad methodology employed by Dr. Mohd Asri bin Zainul Abidin in issuing a fatwa prohibiting tajassus, and its implications for the Syariah Criminal Offenses Enactment of Penang. The study aims to critically analyze the legal foundations, methodological arguments, and the relevance of the fatwa within Malaysia's positive law framework. Using an empirical juridical method with a qualitative approach, the research combines normative analysis of legal texts, fatwas, and classical literature with field data obtained from interviews and observations. The findings indicate that Dr. Mohd Asri's fatwa, grounded in maqasid al-shariah, maslahah mursalah, and principles of justice, rejects tajassus practices even in the name of law enforcement. The conclusion highlights that the fatwa not only challenges the legality of enactments permitting surveillance but also paves the way for sharia law reform to align more closely with human rights protection, justice, and the values of rahmatan lil-'alamin.*

Keywords: Tajassus, Khalwat, Islamic Law, Maqasid Al-Shariah, Syariah Enactment

1. INTRODUCTION

Spying, or the act of stalking, peeping, and searching for other people's faults, is strictly prohibited in Islam, both in the Qur'an and the hadiths of the Prophet Muhammad SAW.¹ In Surah al-Hujurat verse 12, Allah SWT says: "O you who believe, avoid most of suspicion, for indeed some suspicion is a sin, and do not spy on one another or backbite one another".² This verse

explicitly emphasizes the prohibition of tajassus as part of maintaining the honor, privacy, and dignity of fellow Muslims, as well as preventing slander and corruption in society. In the application of Sharia law in Muslim-majority countries such as Malaysia, particularly in Penang, this prohibition on tajassus has become a controversial topic when linked to law enforcement operations against violations of khalwat, namely the act of a man and

¹ Mohamad Sukri bin Tuah dkk., "Sarkasme dalam Literatur Tafsir," *Qudwah Qur'aniyah: Jurnal Ilmu Al-Qur'an dan Tafsir*; 1, no. 2 (2023): 8.

² Departemen Agama Republik Indonesia, *Al-Qur'an dan Terjemahannya* (Fitrah Rabbani, 2009).

woman who are not mahram being alone together in a closed room, which has the potential to lead to adultery.³ According to the terminology used by scholars, including Sheikh Said Asy-Syartibi in his book *Aqrab al-Mawarid*, khalwat is defined as a state of solitude or a place to calm the mind from various matters by remembering only Allah SWT.⁴ This is where the tension arises between the principle of Sharia law that protects individual privacy and the state's demand to enforce religious-based moral laws.

The definition of khalwat according to the books of fiqh and the hadiths of the Prophet Muhammad SAW is the act of khalwat or being alone together between ajnabi couples, namely men and women who do not have a marriage bond that makes them lawful to each other. As for khalwat that occurs between husband and wife, earlier scholars such as Hanafi, Maliki, Shafi'i, and Hanbali defined it as a situation where a husband and wife are alone together, whether or not sexual intercourse occurs, except in certain circumstances that would prevent such intercourse from occurring.⁵

Amidst this tension, a controversial fatwa was issued by Associate Professor Dr. Mohd Asri bin Zainul Abidin, widely known as Dr. Maza, which explicitly prohibited investigative operations against couples suspected of being in seclusion, especially if such operations involved infiltration, surveillance, or searching hotel rooms

without a valid legal basis. This fatwa was issued in early December 2006, shortly after he was appointed as Mufti of the State of Perlis, and immediately attracted public attention and debate among scholars, intellectuals, and the general public. Dr. Mohd Asri argued that the methods used by religious authorities to catch people in illicit relationships, which often involved undercover agents, hidden cameras, and breaking down hotel room doors, were contrary to the spirit of Islam because they involved spying, shaming the perpetrators, and did not respect human rights within the framework of Sharia law. According to him, the prevention of immorality must be carried out in a noble manner, without violating the rights of others, and while maintaining a balance between *amar ma'ruf nahi munkar* (enjoining what is good and forbidding what is evil) and protecting personal dignity.

However, this fatwa directly conflicts with the provisions of Enakmen 3 Kesalahan Jenayah Syariah Negeri Pulau Pinang (Penang State Sharia Criminal Offenses Enactment), which explicitly gives religious authorities the power to arrest couples suspected of being in khalwat, even without a warrant, as stipulated in Section 26 and the application of Sections 11 and 13. This Act, as is the case in many states in Malaysia, views khalwat as a Sharia offense punishable by fines or imprisonment, and the arrest procedure

³ Irfan, "Khalwat Perspektif Hukum Islam (Studi Kasus Tanjung Layar Putih Makassar)," *Mazahibuna: Jurnal Perbandingan Mazhab* 2, no. 1 (2020): 114.

⁴ Mohd Shukri Hanpi, *Kamus Istilah Undang-Undang Jenayah Syariah (Hudud, Qisas & Takzir)* (Zabra, 2003).

⁵ Muhammad Amin Syakir Ibn 'Abidin, *Hasyiyah Ibn 'Abidin*, vol. 3 (Syarikat Maktabah wa Matba'ah Mustafa al-Bab al-Halabi, 1996).

often involves surveillance as part of the preliminary evidence. This raises a fundamental question: do investigations into khalwat conducted by religious authorities fall under the category of tajassus, which is prohibited, and if so, how can the state's obligation to enforce Sharia law be reconciled with religious prohibitions against privacy violations.

This controversy is not only legal in nature, but also touches on theological, ethical, and sociological issues. On the one hand, there are strong demands from some members of society and religious institutions to enforce the law strictly in order to prevent moral decline, especially among teenagers. On the other hand, there are concerns from intellectuals and human rights activists that this method of law enforcement actually damages the image of Islam as a religion of mercy for all creation, and has the potential to cause injustice, abuse of power, and stigmatization of individuals. It is in this context that Dr. Mohd Asri's fatwa becomes important to analyze in depth, not only as an expression of individual *ijtihad*, but as an effort to revitalize the principles of *maqasid sharia*, particularly *hifdz al-'ird* (preserving honor) and *hifdz al-nafs* (preserving life) in contemporary law enforcement practices.

Furthermore, this debate also shows differences in methodology in issuing fatwas between traditional and contemporary scholars. Dr. Mohd Asri is known as a scholar who uses a contextual, progressive approach and pays close attention to social, political, and cultural realities. He does not rely solely on textual arguments, but also considers

maslahah mursalah (public interests not explicitly mentioned in the text), the welfare of the *ummah*, and the social impact of a policy. In contrast, many official fatwa institutions in Malaysia, including the National Fatwa Council, tend to take a more conservative and formalistic approach, which often prioritizes the enforcement of literal law without delving into the context of its implementation. Dr. Mohd Asri's fatwa on the prohibition of *tajassus* in *khalwat* investigations was never brought before the National Fatwa Council, indicating that his views are still considered minority or even controversial among official scholars. This raises the question: does a fatwa issued by an official mufti, but not supported by the national fatwa council, still have legal and moral authority.

Within the theoretical framework, the concept of *tajassus* has been discussed in depth by exegetes and jurists. Al-Imam Al-Qurtubi, in his exegesis, explains that *tajassus* includes all forms of attempts to discover the secrets of others, including through surveillance, unlawful investigation, or even prying into personal matters. Dr. Wahbah Az-Zuhaili also emphasizes that *tajassus* is a major sin because it destroys trust, causes hostility, and violates the right to privacy protected by sharia law.⁶

Based on this background, this study focuses on two main questions: (1) What methodology of *ijtihad* did Dr. Mohd Asri bin Zainul Abidin use in issuing the fatwa prohibiting the investigation of

⁶ Muhammad Yusuf dan Khofifah Qomaria, "Antisipasi Playing Victim dalam Al-Qur'an,"

Qudwah Qur'aniyah : Jurnal Ilmu Al-Qur'an dan Tafsir 1, no. 1 (2023): 76.

perpetrators of khalwat, and to what extent is this fatwa in line with the principles of Islamic law, particularly the concepts of tajassus and maqasid syariah, and what are the implications of this fatwa on the application of Enakmen 3 Kesalahan Jenayah Syariah Negeri Pulau Pinang (Penang State Sharia Criminal Offenses Enactment 3), particularly in terms of legality, ethics, and public acceptance of the practice of enforcing khalwat laws.

The main objective of this study is to provide a critical analysis of Dr. Mohd Asri's fatwa from an Islamic law perspective, as well as to assess its relevance in the context of positive law in Malaysia. Specifically, this study aims to: (1) identify the legal basis and methodology used by Dr. Mohd Asri in issuing a fatwa on tajassus in khalwat investigations; (2) analyze the fatwa's compatibility with the concept of tajassus according to salaf and mutaakhirin scholars; (3) evaluate the provisions of the Penang State Sharia Criminal Offenses Enactment in handling khalwat cases; and (4) offer policy recommendations that balance law enforcement and the protection of human rights within the framework of sharia.

The benefits of this research are both theoretical and practical. Theoretically, the results of this research are expected to enrich the scientific knowledge in the field of *usul al-fiqh*, particularly in the discourse on tajassus, maqasid syariah, and contemporary *ijtihad*. This research can also serve as a reference for scholars, muftis, and Islamic law researchers in understanding the

complexity of applying Sharia law in the modern era. In practical terms, the findings of this study can provide input to religious authorities and policymakers in Malaysia, particularly in Penang, to reform the procedures for enforcing khalwat laws to be more in line with the principles of justice, privacy, and public interest. In addition, this study is also expected to increase public understanding of the importance of balancing *amar ma'ruf nahi munkar* with respect for individual rights.

2. RESEARCH METHOD

This study uses empirical legal research, which is an approach that combines normative studies of legislation with direct observation of the reality of law enforcement in the field.⁷ In this context, the research not only focuses on textual analysis of Enakmen 3 Kesalahan Jenayah Syariah Negeri Pulau Pinang (Penang State Sharia Criminal Offenses Decree) and the fatwa of Dr. Mohd Asri bin Zainul Abidin, but also examines how these legal provisions are applied in practice by religious authorities and how the community responds to these policies. The approach used in this study is field research, conducted through in-depth interviews with religious officials from the Penang Islamic Religious Affairs Department (JHEAIPP), religious leaders, and the general public in the Georgetown area, the capital of Penang.⁸ These interviews aimed to collect data on the procedures for arresting individuals caught in khalwat, the investigation

⁷ Jonaedi Efendi dan Prasetijo Rijadi, *Metode Penelitian Hukum Normatif dan Empiris*, 2 ed. (Kencana, 2022), 128.

⁸ Sugiono, *Metode Penelitian Kuantitatif Dan Kualitatif* (Alfabeta, 2013).

methods used, and the community's perceptions of the legality, ethics, and effectiveness of law enforcement.

The data sources in this study are divided into two main categories, namely primary data and secondary data. Primary data was obtained directly from interviews with key informants, including religious officials directly involved in khalwat operations, as well as community leaders who have an understanding of Sharia issues. Secondary data includes legal and religious materials such as the text of Enakmen 3 Kesalahan Jenayah Syariah Negeri Pulau Pinang (Penang State Sharia Criminal Offenses Act), fatwas by Dr. Mohd Asri accessed through his official website (dr-maza.com), tafsir and fiqh books, scientific journals, Islamic law books, and mass media articles discussing the issues of tajassus and khalwat. All of these sources were critically reviewed to understand the formal legal framework and social context of the fatwas and enactments analyzed.

Data collection techniques were carried out through participatory observation, semi-structured interviews, and documentary studies. Observations were made by following scientific activities and public discussions on the issue of khalwat, while interviews were conducted face-to-face with a pre-prepared list of questions, but still allowing room for natural conversation. The data collection procedure began with submitting a request for permission to the relevant institutions, followed by conducting recorded interviews (with the respondents' permission) and then transcribing them for

analysis. The documentary study was conducted intensively on official documents, fatwas, and relevant academic literature, paying attention to the validity and authority of the sources.

The data analysis method used is qualitative analysis with a content analysis approach, which aims to identify the main themes, argument patterns, and relationships between concepts in the collected data.⁹ The interview and document data are classified, coded, and analyzed thematically to answer the research questions. The analysis process was conducted inductively and deductively: inductively, by drawing general conclusions from specific data obtained from the field; and deductively, by comparing empirical findings with Islamic legal principles such as *maqasid syariah*, *maslahah mursalah*, and *sadd al-dharai'*. In addition, a comparative method was also used to compare Dr. Mohd Asri's views with the provisions of the enactment and with the opinions of other scholars, in order to assess the consistency, strength, and implications of the fatwa. With this combination of methods, the study is able to provide a comprehensive, in-depth, and balanced picture of the legal and ethical controversies in the investigation of khalwat, while also answering the research questions regarding the methodology of fatwas and their implications for positive law in Malaysia.

⁹ Miza Nina Adlini dkk., "Metode Penelitian Kualitatif Studi Pustaka," *Edumaspul: Jurnal*

Pendidikan 6, no. 1 (2022): 975, <https://doi.org/10.33487/edumaspul.v6i1.3394>.

3. RESULT AND DISCUSSION

3.1 The Maqasid Sharia and Maslahah Mursalah Approaches in the Fatwa Prohibiting Investigations of Couples in Private

The fatwa issued by Associate Professor Dr. Mohd Asri bin Zainul Abidin prohibiting investigative operations against couples suspected of being in seclusion is one of the most controversial products of contemporary ijtiḥad in the discourse on Islamic law in Malaysia. This fatwa is not merely a response to the practice of enforcing Sharia law, which is considered repressive, but is an expression of a deep methodological framework of ijtiḥad, based on the principles of maqasid al-sharia (the objectives of Sharia), maslahah mursalah (the public interest that is not explicitly mentioned in the text), and sadd al-dharai' (closing the path to wrongdoing). To understand the substance and strength of the arguments in this fatwa, it is important to analyze the methodology used by Dr. Mohd Asri, which is clearly different from the traditional approach commonly used by official fatwa institutions in Malaysia.

Dr. Mohd Asri, in his fatwa, emphasized that investigations into couples suspected of being in seclusion, which are often carried out through disguise, infiltration into hotel rooms, breaking down doors, and the use of hidden cameras, fall under the category of tajassus, which is the act of unlawfully seeking out the faults of others. He referred to the words of Allah SWT in Surah al-Hujurat verse 12. He interprets

the word tajassus broadly, not limited to gossip or complaints, but including any form of surveillance that violates privacy without permission or a legal basis in Islamic law. In this context, Dr. Mohd Asri rejects the legal legitimacy of the method of arresting people in seclusion carried out by religious authorities, as it is considered contrary to the spirit of Islam, which upholds honor, privacy, and justice. This interpretive approach shows that he does not rely solely on the literal text (zahir), but also considers the social context, moral impact, and legal objectives (maqasid).

Within the framework of ijtiḥad methodology, Dr. Mohd Asri uses the maqasid syariah approach as his main foundation. According to al-Imam al-Ghazali and al-Imam al-Shatibi, the main objectives of sharia are to protect five basic things: hifdz al-din (religion), hifdz al-nafs (soul), hifdz al-'aql (mind), hifdz al-mal (property), and hifdz an-nasl (progeny).¹⁰ In the case of khalwat investigations, Dr. Mohd Asri emphasized that violations of hifdz al-'ird (privacy and personal honor) are more dangerous than the intended benefits, namely preventing adultery. He argued that if law enforcement is carried out in a manner that violates human rights and causes slander, then the law itself loses its legitimacy in terms of sharia, even if its intentions are good.

This approach is in line with the principle of maslahah mursalah adopted by the Maliki school of thought and expanded upon by contemporary scholars

¹⁰ M. Afandi, "Nafkah produktif Perspektif Maqasid Al-Syariah," *Al-Manhaj: Journal Indonesian Islamic Family Law* 3, no. 1 (2021): 45.

such as Muhammad al-Ghazali and Yusuf al-Qaradawi. Maslahah mursalah allows for the establishment of laws based on the public interest that is not explicitly mentioned in the Qur'an and hadith, as long as it does not contradict the texts and principles of *usul fiqh*.¹¹ Dr. Mohd Asri uses this principle to argue that *khalwat* operations conducted openly and dramatically actually cause greater *mafsadah* (harm), such as stigmatization, psychological trauma, and abuse of power. He emphasized that Islam requires the prevention of immorality to be carried out in a noble manner (*bil ma'ruf*), not in a way that destroys human dignity. Furthermore, Dr. Mohd Asri also applied the principle of *sadd al-dharai'* selectively. This principle allows the prohibition of something that is essentially permissible if there is concern that it will lead to immorality. However, he rejects the excessive application of this principle in the context of *khalwat*. He argues that not all *khalwat* necessarily leads to adultery, and not all couples who engage in *khalwat* intend to commit immoral acts. Therefore, prohibiting investigation does not mean allowing adultery, but rather requires a more prudent approach, such as education, guidance, and prevention through means that do not violate human rights. Dr. Mohd Asri's *ijtihad* methodology also shows a strong influence from reformist thinkers such as Muhammad Abduh and Rashid Rida, who emphasized the importance of *ijtihad* in responding to the challenges of the times. He rejects blind *taqlid* (imitation) of old fatwas that do not take into account modern social

realities. In the context of Malaysia, where society is increasingly aware of human rights and privacy, repressive law enforcement methods can actually cause resistance to Sharia itself. Therefore, his fatwas are not only legal in nature, but also constitute an effort at *tajdid* (renewal) in Islamic thought.¹²

In the available documents, there is a quote from Dr. Mohd Asri's fatwa stating that "*tajassus* in the form of intrusion, surveillance, and breaking into hotel rooms is haram and contrary to Islamic teachings." He also emphasized that "*amar ma'ruf nahi munkar* (enjoining what is good and forbidding what is evil) should not be done in a way that is more evil than the evil being prevented." This statement shows that he uses the *maqasid* and *maslahah* approaches as the main filters in issuing fatwas, rather than simply following the opinions of *madhhabs* or official fatwas.

This approach is also evident in the way he deals with criticism. In one of his writings, he states that "we must be civil to scholars, but we should not be afraid to disagree if it is based on knowledge, not emotion." This statement reflects an open and critical intellectual attitude, which is characteristic of contemporary scholars who seek to bridge the gap between tradition and modernity. He does not reject the authority of previous scholars, but

¹¹ Hanifah Kusumastuti dkk., "Implementasi Maslahah Mursalah Dalam Putusan Majelis Tarjih Muhammadiyah dan Bahtsul Masail NU (Ijtihad Sebagai Penetaan Hukum Islam)," *Syntax Literate: Jurnal Ilmiah Indonesia* 7, no. 3 (2022): 2381.

¹² Muhammad Syaiful Tarmizi, "Larangan Investigasi Terhadap Orang yang Berkhalwat" (Skripsi, Institut Agama Islam Negeri Sumatera Utara, 2013).

emphasizes that *ijtihad* must be carried out in accordance with the context of the times.

However, Dr. Mohd Asri's approach has not been without criticism, especially from conservative clerics who consider him too liberal and influenced by Western values. They argue that preventing adultery is a collective obligation (*fard kifayah*), and that investigating *khalwat* is part of that prevention effort. They refer to the hadith of the Prophet SAW: "Whoever sees an evil, let him change it with his hand; if he cannot, then with his tongue; if he cannot, then with his heart. And that is the weakest form of faith" (HR. Muslim).¹³ However, Dr. Mohd Asri refutes this argument by emphasizing that the hadith refers to directly seeing wrongdoing, not seeking out wrongdoing through infiltration. He asserts that *tajassus* is a prohibited act and should not be used as a tool to enforce the law. In this context, he distinguishes between preventing obvious wrongdoing and creating wrongdoing through improper procedures. In addition, Dr. Mohd Asri also highlights the aspect of justice in law enforcement. He points out that *khalwat* operations are often uneven—targeting only young couples or ordinary people, while sinners from the elite or officials are rarely investigated. This phenomenon, according to him, shows discrimination and abuse of power, which actually damages the image of Sharia as a fair legal system. He emphasized that Islamic law must be enforced consistently and fairly, not selectively.¹⁴

From this analysis, it can be concluded that Dr. Mohd Asri's *ijtihad* methodology in his fatwa prohibiting *khalwat* investigations is based on three main pillars: (1) a *maqasid syariah* approach that emphasizes the protection of honor and privacy; (2) the application of *maslahah mursalah* to assess the social impact of a policy; and (3) a commitment to justice and consistency in law enforcement. This approach makes his fatwa not only legally relevant, but also resilient to modern criticism, especially in the context of a constitutional state that respects human rights.

3.2 Implications of Dr. Mohd Asri's Fatwa on Enakmen 3 Procedures for Sharia Crimes in Penang State

Enakmen 3 Tatacara Jenayah Syariah Negeri Pulau Pinang (Enakmen Jenayah Syariah 2004) is one of the most controversial legal instruments in Malaysia's Islamic legal system. This enactment gives religious authorities broad powers to arrest, search, and detain couples suspected of being in *khalwat*, even without a warrant. The provisions in this enactment, particularly Sections 10, 12, 13, 18, and 26, explicitly justify investigative methods that Dr. Mohd Asri considers to be a form of *tajassus*, which is prohibited.

Section 18, for example, states that "any Religious Enforcement Officer, police officer or Mosque Officer may, without a warrant from a judge and without a warrant, arrest any person who is involved

¹³ Maizuddin, *Penelitian Hadis Nabi (Aplikasi Metode Manual dan Digital)* (Ar-Raniry Press, 2014), 26.

¹⁴ Tarmizi, "Larangan Investigasi Terhadap Orang yang Berkhalwat."

in any arrestable offense.” This provision gives enormous power to the authorities, who can arrest someone based only on a “reasonable complaint” or “reliable information,” without the need for legal proof.¹⁵

Dr. Mohd Asri's fatwa directly challenges the legality and ethics of these provisions. He argues that the authority granted by the enactment contradicts the principle of *hifdz al-'ird* (preserving honor) in *maqasid sharia*. He asserts that “privacy is a fundamental right protected by Islam, and should not be sacrificed for the sake of symbolic law enforcement.” In this context, his fatwa not only rejects the investigation method, but also calls for a revision of the enactment to bring it more in line with the Islamic values of *rahmatan lil 'alamin*.

From a legal perspective, Dr. Mohd Asri's fatwa has caused conflict between positive law (*enakmen*) and Sharia law (*nas* and *ijtihad*). On the one hand, *enakmen* is a constitutionally valid product of legislation. On the other hand, fatwas are products of *ijtihad* that carry moral and religious authority. In the Malaysian legal system, fatwas are not legally binding, but they have a significant influence on public opinion and religious practice. Therefore, Dr. Mohd Asri's fatwa could become the basis for a movement to reform Sharia law, especially among people who are aware of their human rights.

In the available document, there is a quote from Dr. Mohd Asri stating that “dramatic and public *khalwat* operations actually cause slander, because the people who are arrested are immediately associated

with adultery, even though it has not necessarily been proven.” He emphasized that “Islamic law requires the presumption of innocence, not the presumption of guilt.” This statement shows that he uses a modern legal approach, which respects the principles of presumption of innocence and due process.

From an ethical point of view, this fatwa also highlights the aspect of *adab* (morals) in law enforcement. He emphasized that “*amar ma'ruf nahi munkar* must be carried out in a noble manner, not in a way that degrades human dignity.” He criticizes *khalwat* operations, which are often carried out openly, involving the media, which he believes only adds to the shame and trauma of the perpetrators. In this case, his fatwa is not only legal in nature, but also a moral criticism of uncivilized law enforcement.

From a social perspective, Dr. Mohd Asri's fatwa has received widespread support from intellectuals, academics, and human rights activists. Many see this fatwa as an effort to reform Sharia law to make it more humane and relevant to the times. However, on the other hand, this fatwa has also drawn criticism from conservatives who consider that he is “weakening Sharia” and “defending immorality.” They accuse the fatwa of reducing the effectiveness of preventing adultery and opening the door to immorality.

However, Dr. Mohd Asri refutes these accusations by emphasizing that “I am not defending adultery, I am only rejecting the wrong way of preventing it.”

¹⁵ Undang-Undang Negeri Pulau Pinang: *Enakmen Tatacara Jenayah Syariah* (Negeri Pulau Pinang) 2004.

He emphasized that adultery must be prevented through education, guidance, and strengthening values, not through repressive measures that damage the image of Islam.

There is a quote from Dr. Mohd Asri stating that “we must focus on bigger issues, such as rape, promiscuity among teenagers, and prostitution, not just on private khalwat.” This statement shows that he uses the *tafwid al-awlawiyyat* (prioritization) approach in *da'wah* and law enforcement. He believes that the energy of Muslims should be focused more on eradicating systemic immorality, not on symbolic and controversial operations.

4. CONCLUSION

From this analysis, it can be concluded that Dr. Mohd Asri's fatwa has broad implications for the Penang Sharia Criminal Enactment. Legally, this fatwa challenges the legality of provisions that allow *tajassus*. Ethically, this fatwa calls for a more civilized approach to law enforcement. Socially, this fatwa has sparked a national discussion about the direction of Sharia law in Malaysia.

However, the main challenge is how to translate the fatwa into policy. In Malaysia's federal system, Islamic affairs are the responsibility of the states, so any changes to the *Enakmen* must be made by the State Legislative Assembly. Therefore, Dr. Mohd Asri's fatwa needs to be supported by civil society movements, academics, and religious leaders to push for legal reform. In addition, there needs to be dialogue between progressive and conservative scholars to find common ground. Perhaps the ideal solution is to maintain the prohibition on *khalwat*, but change the methods of enforcement to be more in line with the principles of *maqasid*

sharia and human rights. For example, arrests should only be made if there is strong evidence, and should not involve infiltration or breaking down doors without permission. In this context, Dr. Mohd Asri's fatwa not only answers the research question, but also paves the way for a more just, humane, and sustainable reform of Sharia law. This fatwa shows that Islam is not outdated, but rather has principles that can respond to modern challenges, as long as they are applied wisely and based on deep *ijtihad*.

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