READING FATWAS OF MUI

A PERSPECTIVE OF Maṣlaḥah CONCEPT

Maskur Rosyid
Fakultas Syariah dan Hukum
UIN Walisongo Semarang
Jl. Prof. Dr. Hamka, Wates, Kec. Ngaliyan, Kota Semarang, Jawa Tengah
e-mail: masykurrejo@gmail.com

M. Nurul Irfan
HukumPidana IslamFakultas Syariah dan Hukum UIN SyarifHidayatullah Jakarta
e-mail: nurul.irfan@uinjkt.ac.id

Abstract: Human benefit and goodness are the main objectives of every form of regulation, including the fatwas of the Council of Indonesian Ulama (MUI). One of the fatwa fields issued by MUI is family law. The main focus of this paper is to reread and analyze the fatwas of the MUI in the field of family law with the perspective of the concept of majority fuqaha masses which have also been published in the MUI Fatwa concerning the Maslahah No. 6 / MUNAS VII / MUI / 10/2005. These fatwas, are seen using the concept of maslahat, sometimes include to the category of maṣlaḥah mu’tabarah, maṣlaḥah mursalah, and there are indications of several fatwas that include to the category of maṣlaḥah mulghah. The fatwas of the MUI in the field of family law referred to in this article is a fatwa on Abortion, concerning Differential Marriage, about Different Religions, About Marriage Under the Hand (sirri, not recorded), and about Tourism Marriage.

Keywords: Maṣlaḥah, Gradation of Maṣlaḥah, MUI, HukumKeluarga

Maslaḥah As A Consideration And Main Objective; An Introduction

Fatwa, as one of the legal products, must be oriented to benefit, the world and the hereafter. The purpose is clearly stated
in the Basic Guidelines for Determining the Fatwa of the Council of Indonesian Ulama (MUI) Chapter III paragraph 5 and emphasized in the Establishment of Fatwa Halal point I, namely that every fatwa must not conflict with the benefit of the people.\(^1\) The MUI in its fatwa guideline states that the fatwa issued must be through the established legal procedure (\textit{istidlāl}), which must be based on the Qur’an’s argument, the hadith which is \textit{mu’tabar} and must not conflict with the benefit of the people. Related to the last condition, that is, it must not conflict with the benefit of the people, the writer has two assumptions, first, that which should not conflict with the benefit of the people is the argument of the Qur’an and hadith. Second, that which should not conflict with the benefit of the people is the product of the MUI fatwa. The first assumption has the understanding that benefit is the main argument for the other two arguments.\(^2\) In some cases, this can be justified where the priority is given to the text.

The second assumption has the understanding that the fatwa issued by the MUI must not conflict with the benefit of the people. The main object in the second sense is about the results or product of the fatwa. The main proposition in this sense is the Qur’an and hadith, then the results of the taking of the two arguments which will be used as a determination of fatwa. Thus the fatwa is considered to have accommodated benefit, or in other words reality or context must be subject to the text. Whatever the condition of the community, it still must be subject to the existing texts because they are considered to contain benefits. The question that arises next is what if it turns out that the text (\textit{naṣṣ}) is contrary to benefit? Which is the main proposition in the case? Related to the case, there are two answers, first, that the provision of texts must still be used as a proposition, which is why the benefit of the people must obey and comply with the provisions of the text. The second relates to the first assumption that the benefit of the people must take precedence over the

\[^{1}\text{Guidelines and Procedures for Determining the Fatwa of the Council of Indonesian Ulama Chapter III point 5 in K.H. Ma’ruf Amin et.al., Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975 ( Jakarta: Sekretariat Majelis Ulama Indonesia, 2011), 6, and the System and Procedure for Determining Products in the Council of Indonesian Ulama in K.H. Ma’ruf Amin et.al., Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975, 14.}\]

\[^{2}\text{This concept is stated by Najm al-Din al-Ṭūfī when describing \textit{maslaḥah} as the basis of the main law. Regarding al-Ṭūfī can be read in Najm al-Dīn al-Ṭūfī, \textit{Sharh Mukhtaṣar Raudhāt} (Beirut: Mu’assasah al-Risālah, 1990). Maskur Rosyid, \textit{Implementasi Konsep Maslaḥat al-Ṭūfī dalam Fatwa MUI (2005-2010)} (Magelang, Ngudi Ilmu, 2013).}\]
texts of the texts, so the texts are under the auspices of benefit.

However, the MUI then explained that the benefit of the people intended was a benefit which did not contradict Nash, manifesting the maqāṣid al-sharīʿah in the form of the preservation of al-ṭarīqīyyah al-ḥamsāb namely preserving religion, reason, soul, wealth, and descent. The MUI then issued a fatwa on the criteria for maḥlaḥah - as mentioned - based on the following considerations. First, there are many groups or groups who, in the name of maṣlaḥah, then use it as a proposition to establish a law, thus ignoring standard rules and boundaries. Second, by ignoring the standard rules and boundaries of the problem, it has resulted in errors in establishing the law. As a result of the mistakes of Islamic law, then it has an impact on unrest in the community. Thirdly, in an effort to position and maintain Islamic law proportionally, the MUI needs to establish a fatwa regarding the criteria of the maṣlaḥah in an effort to avoid misunderstandings. The basis used in the fatwa is the Qur'an, the Hadith of the Prophet, and the opinions of the ulama which Opwis classifies as conventional scholars, they are al-Ghazzālī (505 H) and al-Shāfīʿī (790 h), and the opinions of al-Khawārizmī (850 h) in al-Shawkānī (1250 H).

Determination of the criteria for the maṣlaḥah is a re-explanation of the criteria of the maṣlaḥah which have been explained by medieval scholars. This is like what Khallāf (1956 M) did in explaining al-ṣaḥlah. Unlike other contemporary thinkers who tried to formulate a new theory about maṣlaḥah, but he instead affirmed the theory of medieval

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3 Felicitas Meta Maria Opwis, “Maṣlaḥah in Contemporary Islamic Legal Theory” Articles in Islamic Law and Society 12, 2, Leiden (2005).
4 Al-Ghazzālī’s opinion which is used as one of the bases for determining the fatwa is taken from his essay entitled al-Mustaṣfā, 91 pages 286-287 as follows. Unlike other contemporary thinkers who tried to formulate a new theory about maṣlaḥah, but he instead affirmed the theory of medieval

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6 Al-Shāfīʿī in al-Munwāfaqāt (Mesir: Dār al-Fikr, 1341 H), II, 39-40. He stated that every basis of religion (benefit) which was not appointed by a particular nass and he was in line with the act of sharak and its meaning was taken from the arguments of the sharak, then that was true, could be used as a legal basis and reference. Thus if the problem - based on the conclusions of several arguments - can be ascertained the truth. Because the arguments do not have to show legal certainty on their own without being combined with other arguments, because that is difficult to happen. Al-Shāfīʿī, Al-Munwāfaqāt (Mesir: Dār al-Fikr, 1341 H), II, 39-40. This statement was quoted by MUI as one of the basis of the fatwa, K.H. Maʿrif Amin at all., Himpunan Fatwa Majelis Ulama Indonesia,Suak 1975, 489.
7 K.H. Maʿrif Amin at all., Himpunan Fatwa Majelis Ulama Indonesia,Suak 1975, 488.
8 In Opwis’ research it was said that Khallāf in his perspective on maṣlaḥah preferred to affirm the conventional theory which was assumed to be established rather than formulating a new theory, Felicitas Meta Maria Opwis, “Maṣlaḥah in Contemporary Islamic Legal Theory” 190.
Jurisprudence which discussed again about *maslaḥah* with terms *maslaḥah mursalah* and at the same time completely refused the use of *maslaḥah mulghah*. This is what happened in the MUI fatwa on the criteria of the *maslaḥah* who want to reaffirm the *maslaḥah* theory that has been put forward by the jurists. That the benefit received is a problem that is in line with the text or in line with the intent contained in the text, so that the problem that conflicts with it must be rejected.

Although not only bound by one school, for example the al-Shāfi‘ī school or the Mālikī school, but the MUI did not dare to get out of the opinion of the priests of the school. In this matter, Nadir said that most of the MUI fatwas constituted a repetition of what had been explained by the previous clerics and there was no new fatwa issued by the MUI.\(^\text{10}\) It seems that this opinion is correct but not one hundred percent because in some cases there are cases that have never before existed and have never been explained by the scholars.\(^\text{11}\)

Back to the theme of the problem used by the MUI, that in terms of not being contradictory to the text of the MUI it does not explain in detail about the intended text. However, by looking at the guidelines used by MUI, which is in line with the number of scholars, it can be concluded that the texts in question are texts that *qat‘i* is not the *ẓanni*. In this connection, the MUI explained that Islamic law is divided into two, first *qat‘i* laws and the two *ẓanni* laws, without further explaining the understanding of both.\(^\text{12}\) The possibility of two divisions of Islamic law is in line with the meaning of the texts *qat‘i* and *ẓanni*. Because then the MUI said that if it turns out the problem posed after being examined is a problem with the *qat‘i* law and found in *ijma‘* which is *mu‘tabar* then the fatwa must be reported as it is and does not need to do *ijtihād* because the law which is *qat‘i* is assumed to be a law may be contested.\(^\text{13}\) On the other hand, if the problem is included in the legal issue that is *ẓanni*, then the MUI will carry out *ijtihād*.

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\(^\text{11}\)Some of these new cases include cases of food and medicine, as well as labeling or halal certificates for processed food. More complete reading; K.H. Ma‘ruf Amin et al., *Himpunan Fatwa Majelis Ulama IndonesiaSejak 1975*, 593-etc.

\(^\text{12}\)Chapter III concerning the Method of Determining the Second Point Fatwa in K.H. Ma‘ruf Amin et al., *Himpunan Fatwa Majelis Ulama IndonesiaSejak 1975*, 5-6.

\(^\text{13}\)Chapter III concerning the Method of Determining the Second Point Fatwa in K.H. Ma‘ruf Amin et al.*Himpunan Fatwa Majelis Ulama IndonesiaSejak 1975*, 5.
Nash who is qaṭʿī and ijmāʿ occupy the highest position in the MUI fatwa methodology, so that it must be in line with both. The logical consequence if it is contrary to both is not referred to as maṣlaḥah. From the explanation above, it can be concluded that maṣlaḥah is used as a basic guideline for determining fatwa. The mass criteria used by the MUI are more referring to al-Ghazzali’s opinion, that the benefit that is used must not conflict with the text so that each fatwa must have support and approval or at least in line with the soul's text. Such a theory is taken by the author from reading about the basic guidelines for making fatwas related to the concept of maṣlaḥah which was used as a guideline by the MUI. However, in reality, the guidelines that are so neat do not work as written.

Many fatwas have been published by MUI. Related to aqidah, worship, social, and economy. Both published through the results of ijtimaʿ, the results of the National Conference, as well as the results of the fatwa commission meeting. However, in this paper, writing is restricted to the socio-cultural field and narrowed down in the fields of marriage and family law. The fatwa in the field of family law will be re-read by the author using the concept of maṣlaḥah as mentioned by MUI in its fatwa regarding the criteria for maṣlaḥah.

Fatwas About Abortion

This fatwa was published twice by the MUI in 200014 and in 200515. If the reason for issuing a fatwa in 2000 was to question the law for abortion before the nafkh al-rūḥ16, then in 2005 the reason for its publication was more developed. Initially only questioning the law, the latter is the reason because many cases of abortion are not according to religious guidance, carried out by people who are not competent, and questioning the prohibition of abortion as the 2000 MUI fatwa or still may do so under certain circumstances.17

Answering questions about abortion, the MUI delivered a number of verses from the Qur'an, including QS. Al-Anʿām (6): 15118, QS. Al-Isrāʾ(17): 3119, QS.

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14MUI Fatwa Number 1 / Munas VI / MUI / 2000 concerning Abortion.
15MUI Fatwa Number 4 of 2005 concerning Abortion.
17MUI Fatwa Number 4 of 2005 concerning Abortion in K.H. Ma'ruf Amin et al.Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975, 455.
18That verse is that. (QS. Al-Anʿām (6): 151), which means the prohibition of killing souls that God forbids except for reasons permitted by Islam.
Explicitly, the problem of abortion is not mentioned in the Qur'an above, so the law of temporary abortion is analogous to the law of killing. That is, the qisas sentence is imposed or pay diyyat if the family forgives. The law of a new abortion is mentioned in a hadith about the dispute between two women who eventually killed one of them in the stomach. The sentence for the murder of the fetus was to pay diyyat in the form of giving a slave. The fetus referred to by the hadith still feels ambiguous and has not been able to answer the question of necessity, regarding the absolute prohibition of abortion. Is it always haram, meaning that under any circumstances the act of abortion is prohibited or prohibited under certain conditions. To be able to better answer the questions raised, the MUI then quoted various opinions of the scholars from various circles.

Al-Ghazzâlî in Ihyâ 'Ulum al-Din says that when a sperm has mixed with the ovum in the womb and is ready to accept life then destroying it is seen as a crime. 27

Thus the opinion of al-Ghazzâlî states the inability to have an abortion. Then the MUI

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20. See that God forbids humans from killing their children because of fear of poverty.
21. The contents of the verse are not different from those found in the surah al-An'am above, namely the prohibition of killing a soul that is forbidden by Allah except for justified reasons.
22. The verse in the surah contains the life after death. This is true, to convince those who doubt the resurrection after the death of God then to continue by explaining the beginning and process of human creation.
23. This verse only explains about the process of human creation, and does not explain the topic of questions raised, the MUI then quoted various opinions of the scholars from various circles.
24. The Hadith is:

Al-Bukhârî, Sahih al-Bukhârî, hadith number 2969. This hadith does not mention abortion only explained about the time of the baby's growth in the womb of his mother until the spirit was blown to him.
25. The Hadith is:

Afreelat Amrânat min disabali yarini ahrâbiha al'aihe itamamun an al'ibh allah ma al'ibh allah ma ahlamun min Bulugh al-Maram (Libanon: Mu'assasah al-Khidmât al-Tijâ'iyah, 1994), V: 185.
26. The Hadith is:

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quoted the opinion of the Azhar's scholars who stated that in terms of abortion there were two provisions, firstly that the abortion was carried out before the spirit was blown, and the two abortions performed after the spirit was blown. Regarding the first thing, there are several opinions, firstly the opinions expressed by the Zaydiyah scholars, some Ḥanafiyah scholars, some al-Shafi’iyah scholars, some Mālikiyah and Ḥanabilah scholars who claim such abortion is absolutely permissible. The two opinions expressed by the Ḥanafiyah scholars and some al-Shafi’iyah stated their ability with strong reasons and makrūb if there were no strong reasons. Thirdly, according to some of the Mālikiah scholars, they declare absolutely absolute, and finally the four opinions which are agreed upon by the Mālikiah scholars and are in line with the Zahiriyah school which states the prohibition of the act of abortion.\(^{28}\)

Regarding the second problem, which is abortion that is carried out after the spirit is blown, all the jurists express their prohibition if there is no strong reason.

In additional information from the MUI was obtained by quoting the opinion of Shaikh ‘AṭiyyahShaqr (chairman of al-Azhar's fatwa commission) regarding the causes of pregnancy and the legal consequences of abortion. Pregnancy that occurs as a result of adultery - according to him - there are two conditions, first if the pregnancy occurs because of compulsion so that women as victims feel remorse and pain then abortion is permissible. Second, if adultery is carried out on the basis of conditions in which self-esteem has been underestimated and is no longer ashamed of having sex which is forbidden, then abortion for such acts is forbidden, because by allowing abortion on the second case can legalize adultery.\(^{29}\)

Based on the rule of eliminating the precedence over withdrawing benefits and that the need sometimes occupies an emergency position while the emergency conditions permit things that are considered illegal, then the MUI applies the following abortion law. That abortion performed after the implantation of blastocyst on the uterine wall is haram. The absence of abortion also applies to pregnancies caused by adultery. Abortion is allowed because there are strong reasons,  

\(^{28}\) K.H. Ma'ruf Amin at.al, Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975, 460-461.  
\(^{29}\) K.H. Ma'ruf Amin at.al, Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975, 462.
both in the form of an emergency and in a state of urgency.\textsuperscript{30}

The first fatwa is related to the prohibition of abortion, so in the perspective of the concept of the \textit{maslaahab} of the majority of scholars, it is considered as the \textit{maslaahab mu'tabarah}, namely \textit{maslaahab} which is in accordance with the objectives of the text. As explained earlier, that \textit{maslaahat} in the view of al-Ghazzali or even the majority of scholars is always subject to \textit{qiyaas} reasoning, in this case abortion - abortion of the fetus in the womb - is analogous to killing, then the act is punished as killing. Then the second fatwa that the act of abortion is permissible if there are reasons that Islamic law occupies an emergency position or at least occupies a position of position that is nearing emergency. So that this is in line with the ability to use the \textit{maslaahab} described by al-Ghazzal\'i, namely the benefit of occupying an emergency position or purpose.\textsuperscript{31}

Therefore, in the case of a fatwa concerning abortion, it agrees with the concept of \textit{maslaahab} as conveyed by the majority of scholars.

\textbf{Fatwa About Different Religion Marriage}

Interfaith marriage is an old issue but always a hot issue to be discussed.\textsuperscript{32}

The problems of interfaith marriage will be examined in the perspective of Islamic law with the \textit{maslaahab} method. This kind of marriage is regulated in the Qur'an with the terms \textit{abl al-kitab} and \textit{mushrik}. These two things are different in their understanding, \textit{abl al-kitab} is defined as those who believe in one of the prophets and one of the divine books. \textit{Mushrik} is a person who not only associates partners with Allah, but also does not believe in the Prophet and divine books.\textsuperscript{33} The verses relating to \textit{abl al-kitab} are Surah al-M\'a'idah (5): 34 and al-Baqarah.

\textsuperscript{30}MUI's decision regarding abortion, see in K.H. Ma'raf Amin et al., \textit{Himpunan Fatwa Majelis Ulama Indonesia} Syak 1985, 464.
\textsuperscript{31}Al-Ghazzali, \textit{al-Motaasja min Ilm al-Ushul} (Beirut: Dar al-Fikr, t.dh), I: 296.
\textsuperscript{32}Discussions about interfaith marriages in Dewi Sukarti's research fall into three categories. First, the category of liberals, which tries to harmonize the text with universal human rights, especially related to marriage. According to this group, religion cannot be used as a partition to carry out marriage, so even though it is different in religion, a woman and a man can still have a marriage. Second, the conventional category. This group tries to safeguard the values in the text while separating them from human rights. This means that interfaith marriage in the view of the second group cannot be done. Third, the category of secular agnostics, which views the issue of marriage as a personal matter of man, therefore religion cannot interfere. see Dewi Sukarti, \textit{Perkawinan Antaragama Menurut al-Qur'an dan Hadits} (Jakarta: PBB UIN dan KAS, 2003), 1-2.

\textsuperscript{34}In this verse, Allah explains three kinds of things that are lawful for believers, including the ability to marry free women from both mu'minah and ahl al-
(2): 221 concerning the *mubrik*, which are then used as the basis for interfaith marriages. Based on these two verses, interfaith marriages are divided into two; the first marriage between Muslims and women *ahl al-kitāb* is permissible, while Muslim women with men *ahl al-kitāb* are not allowed. The two marriages of a Muslim and / or Muslim woman with *mubrik* are not permitted.

With the method of *maqāṣid al-shari‘ah*, interfaith marriages, both from *ahl al-kitāb* and *mubrik*, both done by Muslims and Muslim women are not allowed. At the beginning it was explained that the principle of *maqāṣid al-shari‘ah* was based on five things, namely in order to maintain religion, soul, mind, lineage, and wealth. The five can be realized properly if the smallest institution, namely the family, is well-nurtured, including in this case is religion. This conclusion rejects Ahmad Ali’s opinion with his *maṣlaḥat abmaqṣida* which states that interfaith marriages may be based on the principle of equality, freedom, and benefit. Also different from the conclusions of classical jurisprudence; regarding the validity of the marriage of a Muslim with a woman *ahl al-kitāb* on the condition of giving dowry as an obligation, not intending to commit adultery, and not being a concubine (*gundik*).

Interfaith marriage in the Indonesian context is not explicitly stated in the laws and regulations. It's just that in KHI Article 2 it is stated that marriage is a very strong contract to obey God's commands. Then in Article 3 it is stated that the purpose of marriage is to create a peaceful, happy and loving life. Furthermore, in Article 4, a new marriage is considered valid if it is in accordance with Islamic law, and this is in accordance with Law No. 1 of 1974 concerning Marriage.

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35 The verse contains the prohibited meaning of marrying polytheists.
36 Also different from the conclusions of classical jurisprudence.
38 Compilation of Islamic Law (KHI) Chapter II article 2 reads: “Marriage according to Islamic law is marriage, which is a very strong contract or mittaqaqbalikan to obey Allāh’s commands and carry it out is worship.”
39 KHI Chapter II article 3 reads: “Marriage aims to realize the sakinah, mawaddah, and rubah household life.”
40 KHI Chapter II article 4 reads: “Marriage is legal if carried out according to Islamic law in accordance with article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage.”
Then in article 44 KHI explicitly stated that an illegitimate woman marries a man who is not Muslim. More than that in Chapter IV concerning Pillars and Terms of Marriage in article 14 concerning the pillars of marriage, both witnesses and guardians are one of the conditions that must be Muslim. Of the several articles stated above, it is not explicitly stated whether or not a man should marry a non-Muslim woman. However, it can be concluded that this also applies to men, so men also cannot do marriages with non-Muslim women. This is done by the method of maqāṣid al-sharī'ah which is in addition to preserving religion, as well as guarding offspring.

The fatwa of the MUI regarding interfaith marriages was published twice, namely in 1980 with the title "Fatwa on Mixed Marriage" and in 2005 entitled "Fatwa on Marriage of Different Religion". The second fatwa issued in 2005 was a reinforcing fatwa for the previous fatwa. The fatwa was issued for several reasons, namely that interfaith marriages were rife in the community, so that in addition to causing various differences of opinion, it also caused unrest among the community. Interfaith marriage is carried out by the perpetrators under the pretext of benefit and human rights. Therefore, the MUI then issued a fatwa on the above issues with the aim of maintaining the peace of the household.

The basis used by the MUI in acting includes the Qur’an, hadith and maqāṣid al-sharī’ah rules and sadd al-dhārī’ah. Nash which is used as a legal basis is QS. Al-Nisā’ (4): 3 and 25, QS. Al-Rūm (30): 21, QS. Al-Taḥrīm (66): 6, QS. Al-Mā‘idah (5): 5, QS. Al-Baqarah (2): 221, and QS. Al-Mumtaṣanah (60): 10. The hadith used as a basis for his fatwa is a hadith concerning the criteria of a woman who will be made a wife that includes beauty, wealth, blood,

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41KHI Chapter VI article 44 reads: "A Muslim woman is prohibited from carrying out a marriage with a man who is not Muslim."
42KHI Chapter IV article 14 reads: "To carry out a marriage there must be:
   a. Future husband
   b. Prospective wife
   c. Guardian of marriage
   d. Two witnesses, and
   e. Ijab and kabul.
43This is in accordance with KHI article 25 that "who can be appointed as a witness in the marriage contract is a Muslim man, fair, aqilbaligh, uninterrupted and not deaf or deaf."
44Expressed in KHI article 20 paragraph (1) as follows. "The one who acts as a guardian of marriage is a man who fulfills the requirements of Islamic law, namely Muslims, aqil, and baligh."
47See the fatwa of the MUI regarding Differential Religion Marriage in K.H. Ma’rif Amin et al., Himpunan Fatwa Majelis Ulama Indonesia Selanjutnya 1975, 477.
and religion.\textsuperscript{48} The arguments used by the MUI are more varied when compared to the arguments used by previous ulama as mentioned earlier, namely only surah al-Ma’idah (5): 5 and surah al-Baqarah (2): 221. Arguments of the Qur’an He mentioned the suggestion of marriage with a religious person,\textsuperscript{49} even said that marriage with a slave was better than marrying a mushrikah.\textsuperscript{50} Term mushrik and mushrikah are initially different from the terms abl al-kitāb, this difference can be observed as follows. That the marriage between a Muslim or Muslimah and a mushrik or mushrikah is absolutely forbidden,\textsuperscript{51} while the marriage of a Muslim with abl al-kitāb women is permitted and does not apply otherwise.\textsuperscript{52}

The explanation of this matter has been mentioned at the outset, so that the discussion on interfaith marriage at first was indeed divided into two terms. But lately, the MUI by stating based on traditional qawls\textsuperscript{53} stated that interfaith marriages, whether with musrik or musrikah or with women and or men abl al-kitāb, were illicit marriages.\textsuperscript{54} This security indirectly violates the regulations contained in the Qur’an where a man is allowed to marry a woman abl al-kitāb. Such an opinion might be based on the rule of avoiding dangerous things which must be prioritized over attracting a usefulness, also the rule of sadd al-dharī’ah which is closing the way for the opening of danger.

The fatwa concerning the interfaith marriage case if examined by using the maṣlaḥah concept of the majority of scholars is as follows. All provisions stipulated in the text must be followed, because it violates the text, it means violating religious teachings.\textsuperscript{55} In a clear statement it is stated that the marriage of a Muslim with a woman abl al-kitāb is permissible.\textsuperscript{56} Therefore, if the fatwa follows this provision, the sound of the fatwa is as follows. That marriage between Muslims and or Muslim women with non-Muslim people is haram. That the marriage of a Muslim with abl al-kitāb is permissible. Such a fatwa in the view of the maṣlaḥah concept is that the majority of ulama are

\textsuperscript{48} K.H. Ma’rif Amin at.al, Himpunan Fatwa Majelis Ulama IndonesiaSejak 1975, 481.
\textsuperscript{50}QS. al-Baqarah (2): 221.
\textsuperscript{51}QS. al-Baqarah (2): 221.
\textsuperscript{52}QS. Al-Mā’idah (5): 5.
\textsuperscript{53}See the fatwa of the MUI regarding Differential Religion Marriage in K.H. Ma’rif Amin et al., Himpunan Fatwa Majelis Ulama IndonesiaSejak 1975, 481.
\textsuperscript{54}See the MUI fatwa decision on the 2nd point of Religion Differences in Marriage in K.H. Ma’rif Amin et al.,Himpunan Fatwa Majelis Ulama IndonesiaSejak 1975, 481.
\textsuperscript{55}This maṣlaḥah belongs to the type of maṣlaḥah because it is contrary to Nash. The majority of scholars agree not to allow use as a legal proposition.
\textsuperscript{56}QS. Al-Mā’idah (5): 5.
referred to as *maṣlaḥah mu’tabarah*, which is benefit in accordance with the text.

But the reality is that the fatwa issued by the MUI said that marriage between Muslims and non-Muslims, both women and men, was unlawful. The fatwa of the MUI regarding marriage with *ahl al-kitāb* women was also forbidden by the MUI. The second fatwa in the author's view is published based on the principle of benefit, not on the basis of textual provisions of the text. Thus the second fatwa in the perspective of the majority concept of *maṣlaḥah* is seen as *maṣlaḥah mulghah* because it is contrary to the text of the Qur'an. On the basis of the above assessment, it can be concluded that MUI in terms of interfaith marriage has implemented *maṣlaḥah mulghah* and in the perspective of the concept of majority, this type of problem is a problem that is rejected and cannot be used as a legal basis.

**Fatwa On The Inheritance Of Different Religions**

This fatwa regarding inheritance of different religions was published by MUI in 2005, which was motivated by several things, namely that in the midst of society inheritance often occurred due to the diversity of many people who believed that inheritance of different religions was allowed. The MUI assessed that this had come out of the teachings of Islam and therefore MUI needed to issue a fatwa on this matter so as not to cause various actions that came out of the teachings of Islam and so that the fatwa was used as a guide to inheritance problems.

The fatwa of the MUI regarding inheritance of different religions is based on several verses and hadith, namely QS. Al-Nisā’ 11 which regulates the distribution of each heir, also in the same surah Verse 141 which writes my opinion is not relevant to the case under study. Verse 141 states that unbelievers will not be given a way by Allah to destroy believers. The two verses do not state the inability to inherit each other between Muslims and disbelievers. The problem then becomes clear when affirmed by the hadith which

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57 MUI's Fatwa on Marriage Differs in Religion, first point.
58 The fatwa of the MUI regarding Marriage of Different Religion is the second point.
60 The reasons for issuing the MUI fatwa on the inheritance of different religions see more clearly in the MUI fatwa concerning the inheritance of different religions in K.H. Ma’ruf Amin et al., Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975, 483.
61 The verse in surah al-Nisā’ explains about the parts of each of the *ahl* heirs. The problem regarding inheritance of different religions is not explained in the verse. The provisional conclusion of the verse says that even though heirs and heirs of different religions, each has the right to inherit.
62 That verse is that...
states that Muslims should not inherit infidels and vice versa the unbelievers may not inherit Muslims.\footnote{The Hadith in the hadith means two different religions namely infidel and Islam so that the content is the same as the previous hadith which states the prohibition of mutual inheritance between Muslims and non-Muslims. The hadith has two strengths in terms of sanad, the first is considered as a legitimate hadith, and the second is considered as ḥasan hadith. More complete reading; al-Kaḥlānī, Subul al-Salam, III:99.} And the hadith which states that there is no inheritance between two people of different religions.\footnote{The definition of hadith muttafaq ‘alayh see in; Muḥammad bin Ismā‘īl al-Kaḥlānī al-Ṣan‘ānī, Subul al-Salam/Sharḥ Bulūgh al-Maram min Adillah al-Aḥkām (T.tp.: Dār al-Fikr, t.th), I: 13.}

Based on the two texts, the MUI then filed a case of religious inheritance with two fatwas. The first is that in Islamic law it does not provide mutual inheritance rights between people of different religions. This means that the law of giving and receiving inheritance for Muslims to and from non-Muslims is haram. For the perpetrators will sin because they have violated Islamic law. Second, accepting and giving property between people of different religions can only be done outside of inheritance problems, for example in the context of receiving or giving grants, wills and gifts.\footnote{The MUI’s decision on the inheritance of different religions in K.H. Ma’ruf Amin et al., Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975, 485.} Thus the MUI gave a fatwa decision on the case of different religious inheritance.

Regarding the inheritance of different religions, actually it is not only found in the Surah al-Nisā’ verse 11, but also in verses 8, 12, and 13. The whole verses only regulate inheritance in general, and are related to cases that are currently studied, namely the inheritance of different religions is not explicitly mentioned by the Qur’an. So from the rules contained in the Qur’an it can be concluded that at first, cases of inheritance can occur between Muslims and non-Muslims, between masters and slaves, or between people who have killed the heirs either intentionally or unintentionally. Then the general rule is explained (takhsās) by the hadith narrated by Usāmah bin Zaid and the hadith has been issued (takhrīj) by hadith experts such as al-Bukhārī, Muslim, al-Tirmīdī, AbūDāwud, Ibn Mājah, Aḥmad ibn Ḥanbāl, and al-Dārimī in their respective books. The hadith referred to belongs to the category of hadith sahih because it is narrated simultaneously\footnote{The definition of hadith muttafaq‘alayh see in; Muḥammad bin Ismā‘īl al-Kaḥlānī al-Ṣan‘ānī, Subul al-Salam/Sharḥ Bulūgh al-Maram min Adillah al-Aḥkām (T.tp.: Dār al-Fikr, t.th), I: 13.} by al-Shaykhānī in one line of hadith, namely Usāmah bin Zaid. The law stated by the hadith which is then held up by the majority of scholars is the prohibition of mutual inheritance between people of different religions.

The opinion of the majority of scholars according to Ibn Rushd is not only...
based on the hadith but also based on QS. Al-Nisā’ (4): 141, which is the general law between infidels and Muslims. Thus the hadith is a mukhabṣṣṣū for the generality of the verses governing inheritance, and states that the inheritance law of different religions is unlawful. However, there is an opinion that Muslims can accept inheritance from unbelievers and do not apply otherwise. This opinion was held by Imāmiyyah and al-Nāṣir based on Mu‘adh’s historical tradition that the Prophet said that Islam did not increase and not diminish, so Muslims inherited non-Muslims.67 Al-Kahlānī stated that the hadith was narrated by AbūDawud and was validated by al-Ḥākim. But according to al-Sayīs, the hadith is a hadith which is weak in quality (da‘if) and cannot be used as a legal backing for the ability of a Muslim to inherit from non-Muslim people.68

The majority of scholars argue that the hadith which is muttafaq‘alāyīb above is the one that holds in the law of inheritance in different religions, while the tradition of Mu‘adh is only information, that Islam is a religion that exceeds other religions, it increases and will not decrease.69 The lesson behind the inherited law of mutual inheritance between people of different religions according to al-Jurjāwī is that the unbelievers have left Islam, which is the strongest bond between Muslims.70 So the basic foundation in inheritance is because of the Islamic religious ties. Even though the purpose of inheritance is to love one another (ta‘āluf), help (ta‘āwun), and gain mutual benefit for the relatives (iṣāl al-manfa‘a al-aqārib).71 Therefore the main goal can be realized so that each other inherits by not confining oneself to just one religious bond should be applied.

The explanation above, if seen from the making of the argument, the opinion of the majority is rājiḥ.72 Thus once again based on the hadith, the inheritance law of different religions is unlawful. The perspective of the previous scholars regarding the inheritance of different religions is still textual because it only refers

67 Al-Kahlānī, Subul al-Salam, III: 99.
68 ‘Alī Ahmad al-Jurjāwī, Hikmah al-Tashrī‘, 269.
69 AlīAḥmad al-Jurjāwī, Ḥikmah al-Tashrī‘, 269.
70 However, based on the discussion, then a group of observers stated that classical ulama, although in the majority considered the inheritance of different religions, were haram, there were minorities of scholars who tried to accommodate non-Muslims. Evidenced by the second opinion which states that Muslims can inherit from non-Muslim people even if they do not apply otherwise. Read;NucholisMadjid, Fikih Lintas Agama (Jakarta: Paramadina,2003), 166.
to the sound of the text, while the spirit contained in the text is indirectly ignored.

**Fatwa On Marriage Under Hands (Not Recorded)**

_Nikah bawah tangan_ (Underhanded marriages), or can be called _sirri_ marriage, were translated in 2008. Some of the reasons for the issuance of the fatwa on the case are as follows. Whereas in the midst of the community there is often the practice of underhanded marriages or mating _sirri_, which means that the marriages carried out are not registered with the Marriage Registrar, which is why a lot of negative things occur due to such marriages. In addition, in 2006, through the agreement of scholars of the Indonesian fatwa commission, the case had been filed, so that the MUI deemed it necessary to declare it again, as well as the MUI's fatwa as a guideline.

The MUI based its fatwa on several arguments taken from the Qur'an, hadith, _fiqhyyah_ rules, as well as the opinions of scholars. Ayat al-Qur'an in question is QS. Al-Rūm (30): 21 and QS. Al-Nisā (4): 59. If the first verse explains the general rule of marriage as one of the signs of God's power so that by marriage humans will feel at ease, then the second verse is a general rule that every human being is obliged to obey to Allah, Rasul, and _ulilamri_ (government). The two verses do not explicitly state the rules regarding the terms and conditions of marriage, so that any type of marriage is permissible by Islam. Then the MUI refers to several traditions as follows. Hadith which states the obligation to obey a leader, a hadith that states the criteria of a prospective partner, a hadith about the suggestion of carrying out a wedding party, a hadith about the recommendation to announce marriage,

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73 MUI Fatwa Number 10 of 2008 concerning Marriage Under Hands.
74 Consideration of stipulating the fatwa of the MUI on underage marriage can be seen in K.H. Ma'rup Amin et al., _Himpunan Fatwa Majelis Ulama Indonesia_ Sejak 1975, 531.
75 That verse is that. QS. Al-Rūm (30): 21.
76 That verse is that. QS. Al-Nisā (4): 59.
77 The Hadith is. QS. Al-Rūm (30): 21.
78 This hadith is popular as a sign of the criteria for the candidate pair covering four things; wealth, manners, appearance and religion. But closed with which carries the similarity of religion as a basis for carrying out marriage. K.H. Ma'rup Amin et al., _Himpunan Fatwa Majelis Ulama Indonesia_ Sejak 1975, 532.
79 This hadith is mentioned as the first step in the marriage recording law, namely: regarding the order to announce marriage. See; K.H. Ma'rup Amin et al., _Himpunan Fatwa Majelis Ulama Indonesia_ Sejak 1975, 533.
80 The content of the hadith is almost the same as the previous hadith, namely the command to announce marriage, only if the previous hadith uses the editorial word "walimah", then the method of announcement contained in this hadith is with musical instruments such as tambourine. See; K.H. Ma'rup
and a hadith which prohibits doing damage. Of the many traditions, there is no single hadith that forbids under-marriage or *sirri* marriage. As far as observations about marriage there are hadiths which advocate announcing marriage, meaning the marriage carried out should be known to the general public. Furthermore, the rules used are rules of benefit, namely prioritizing avoiding damage to the benefit of benefit and rules of *sadd al-dhari‘ah*.

In addition to these arguments, the MUI also quoted the opinion of al-Nawāwī who stated that the decision of the imam or leader over something must be obeyed. This is related to under-marriage marriage that is not legally recognized by the Indonesian government. This means that the form of marriage does not have legal force if at any time there are deviations made by both parties. Therefore the MUI also cited Article 2 of Law Number 1 Year 1974 concerning Marriage, and Article 100 Compilation of Islamic Law (KHI). On this basis, the MUI states that under-marriage if the terms and conditions of marriage are fulfilled is that Islamic law is legal, but it can be haram if it is dangerous. In addition, the MUI also stated that marriage must be officially registered with the competent authority as a preventive measure to reject damage. Thus, the MUI stated that the case of marriage was under the hands (unregistered marriage).

It is important to note that under-marriage or *sirri* marriage is defined as a marriage that has fulfilled all the terms and conditions of marriage stipulated in conventional Islamic law. This is important, because this definition is different from that given by traditional jurists as a marriage that is kept secret by the parties, such as being kept secret to family, society, or the general public. So that the ambiguity of marriage under the hands or *sirri* marriage need not be discussed again.

Underhand marriage is studied with the theme of *Sirri* marriage and is closely related to the function of witnesses in marriage. Al-Sarakhsi states that in the Ḥanafiyyah perspective, the witness is one

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81 The Hadith is: لا ضرر ولا ضرار.
82 The rule is: دوره الخمسة مقدم على جلب المنصوب.
83 K.H. Ma'ruf Amin et al., *Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975*, 533.
84 K.H. Ma'ruf Amin et al., *Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975*, 533.
85 The decision of the MUI fatwa on marriage is under the hands of the first point in K.H. Ma'ruf Amin et al., *Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975*, 534.
86 The decision of the MUI fatwa on marriage is under the hands of the second point in K.H. Ma'ruf Amin et al., *Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975*, 534.
of the pillars in marriage,\(^8\) this at the same time disproves the opinion of Mālik, Ibn Abīlaylā, and Uthmān al-Bātā which states that the witness is not a pillar of marriage, but which is harmonious \(i'lān\).\(^8\) This means that if the marriage is carried out there is an element of secrecy then the marriage is not valid. So in the opinion of those who become pillars of marriage not witnesses but the function of witnesses is the effort to disseminate. Whereas the witness according to him is only a suggestion, as recommended by witnesses in matters of \(mu'amalah\). Whereas the Ḥanafiyyah included four elements that must be present in the marriage contract, namely the prospective husband, guardian, and two witnesses, mentioned in the hadith and \(athar\) ‘Umar who did not recognize the validity of the marriage which was only attended by one witness.\(^8\)

Al-Shāfī‘ī also requires that there be witnesses when the marriage contract, which must be two fair men.\(^9\) So that marriage carried out without witnesses is considered invalid and null and void by law. Marriage in his view must fulfill four things, namely guardian, approval from male candidates and approval from female candidates except in certain cases, and finally two witnesses are fair. Ibn Qudāmah (w.620 H) from Hanbali stated the same thing that marriage must contain a witness, provided that it is not permissible for a \(diimmi\), not a woman, and witnesses to be allowed by a blind person.\(^9\) The basis for the prohibition of women to be witnesses is the hadith of the Prophet which prohibits women from being witnesses, also in other matters. So, the condition of the witnesses of the two opinions is that both must be male and number two. Regarding announcing marriage is a suggestion only and is not a mandatory thing, because if it is required, it must be indicated as other conditions.

\(^8\)This opinion is based on the hadith of the Prophet. (T.tp: tp, t.th), V: 19, 151.

\(^9\)Al-Shāfī‘ī’s opinion is based on the hadith of the Prophet, as follows. مالك، ابن أبي لايلا، أورهان المماضي يثبت أن الحجة ليست من أركان الزواج، والحادث يثبت ذلك في حديث زوجته، (Beirut: Dar al-Ma’rifah, 1989), V: 30.


\(^9\)This opinion is based on the hadith also used by al-Shāfī‘ī above. Ibn Qudāmah, al-Mughniwa al-Sharīṭ al-Kabīr (Beirut: Dār al-Fikr, 1984), VII: 340. See also; Khoiruddin Nasution, Status Wanita di Asia Tenggara: Studi Terhadap Perundangan Undangan Perkawinan Muslim Kontemporer di Indonesia dan Malaysia (Jakarta: INIS, 2002), 145.
Based on the explanation of various opinions above, it can be concluded that the majority requires witnesses in the marriage contract, only Mālik does not say so. He emphasized the function of witnesses as a means to announce marriage. In addition, all agree that marriage is something that should not be kept secret because by keeping it a secret marriage is considered an illegitimate marriage. As far as the search for marriage under the hands - because it has never been discussed by conventional scholars - can be punished as a legitimate marriage if all the terms and conditions are met. However, with the pretext of better protecting the rights of wives and children produced after marriage, in Indonesia, as in various Muslim worlds, the government regulates a new rule concerning the registration of marriages.

Marriage records are regulated in legislations, Government Regulations, and KHI, stating that marriage must be carried out according to the beliefs of each religion and must be registered with the marriage registrar employee for marital order. Unregistered marriages do not have legal force, and marriage can only be proven by a marriage certificate made by a marriage registrar employee. Of the various types of regulations regarding the registration of marriages, it creates problems regarding whether or not the marriage is valid if it is not listed, or if the registration of the intended marriage is only an administrative requirement. Many people consider marriage registration only as an administrative requirement and have nothing to do with the validity of a marriage. So that unregistered marriages are considered legitimate marriages. But there are also opinions that state that marriage registration is a legitimate requirement for a marriage, so that unregistered marriages are considered as illegitimate marriages.

Recording of marriage - as discussed earlier - is a new thing, and in the context of usūl al-fiqh it is classified as

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93The law is Law Number 1 Year 1974 concerning Marriage Article 2 Paragraph (2).
94Government Regulation Number 9 of 1975 in various articles.
95Compilation of Islamic Law (KHI) Article 5 Paragraphs (1) and (2), Article 6 Paragraph (2), and Article 7 Verses 1-4.
**maslahahmursalah**, because implicitly or explicitly, the case is neither rejected nor supported by the text. It is seen from the point of view of *maqāsid al-sharī'ah* that it is in line with the soul of *naṣṣ*, which is to better guarantee the benefit of the parties who will do the marriage. Benefits meant include guaranteeing the rights of the parties from various abuses that may occur after marriage. With the authentic evidence in the form of Marriage Certificate, the parties will be bound by law and legally protected. Conversely, unregistered marriages will cause various kinds of harm, such as husbands arbitrarily leaving their wives and / or vice versa. Especially in the case of distribution of inheritance, then the evidence that the heirs are truly heirs is also nil. This is the location of the importance of marriage recording. If in the classical context, where the community is still communal, then the proof of the occurrence of a marriage is enough with the announcement. But now things are changing, modern times demand stronger evidence not just witnesses or announcements.

Life is certain and always changes from time to time. Relationships are not only limited to a community in an area but over the borders of the island and the State. Therefore it is not possible for someone who wants to go out of the island or abroad to always bring a witness as proof of his marriage so that he is not accused of being an illegitimate partner. It is possible that the accusation is subject to stoning because it is considered as committing adultery, or is bound 100 times because it is considered to have committed adultery ghayr muḥṣan. Or it can be subject to a fine and must pay for the fine. For these various accusations, many *maqāsid* become neglected, starting from *ḥifẓ al-nafs* to *ḥifẓ al-māl*. The existence of the Marriage Certificate will be seen here as proof of marriage and in response to accusations as an illegitimate partner. With the marriage deed it means maintaining the *maqāsid*, both *ḥifẓ al-nafs* and *ḥifẓ al-māl*.

A benefit that contains greater benefit must be prioritized for the benefit that is beneath it. The sense position here has an urgent role to determine which are positively charged (*maṣlahah*) and which are negatively charged (*maḍārat*). Marriage records if viewed with the concept of *maṣlahah*, then occupy the position of maslahahmursalah, which is a provision that is not supported by any text and also not rejected by Nash. This type of benefit is permitted to be used as a proposition of law stipulating on the terms *qat'i, ċaruhrı,*
and *kulli*. Certainly, marriage records accommodate the benefit of all parties, both men and women, both parents and children. It is an urgent need, because if not, many parties will be harmed so that *maqāṣid al-shari'ah* is neglected, it is also comprehensive, meaning that the benefit is universal for all parties involved. Thus, recording a marriage is an absolute requirement when making a marriage. Under-marriage (unregistered marriage), even though Islamic law (*fiqh*) has fulfilled the terms and conditions but is not relevant if applied to the current conditions. Such marriage is unconsciously detrimental to many parties, so the old paradigm must be changed by adding one condition, namely that marriage must be listed.

**Fatwa About Tourism Marriage**

Tourist marriage is a new issue and problem in the dynamics of Islamic law, both in classical and contemporary discourse. Basically, tourist marriage is a marriage that is carried out when making a trip (touring) complete with terms and harmony of marriage agreed upon by the majority of conventional jurisprudence but with additional term terms. This kind of marriage as reported by the MUI has been carried out in the midst of the community when traveling. These problems then raised questions from the public about the law in the case. Based on these two things, the MUI then considered it necessary to issue a fatwa that regulated the issue of tourist marriage to be used as a guideline.98

In the formulation of the fatwa, the MUI uses several arguments both from the Qur'an, hadith, consensus of scholars, and athar companions. The reference verse is as follows. QS. Al-Mu'minūn (23): 5-7, QS. Al-Rūm (30): 21, and QS. Al-Nisā ' (4): 1. These verses constitute a general rule regarding the promulgation of marriage, that the command to preserve the genitals99 and information about the creation of partners for each human100 is the content of these verses. However, until here, there are no firm rules regarding the practice and law of tourist marriage cases. Therefore the MUI then traced it to the Prophet's hadith.

Some of the hadiths referred to are details of the verses of the Qur'an which were then closed with the statement that those who sought behind the decree really exceeded the limit. QS. Al-Mu'minūn (23): 7.

In the formulation of the fatwa, the MUI uses several arguments both from the Qur'an which relates to tourism marriage.

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98 MUI Fatwa Number 2 / Munas VIII / MUI / 2010 concerning Tourism Marriage.

99 The contents of these meanings are contained in the verse as follows. وَذَٰلِكَ لِلرُّجُمِ حَافِظٌ وَلَأَذْهَبْ بمِلَّةِ أرْوَاجِهِ وَمَا مَكَّتِ أبْنَاءِ غَيْرِ مُلْمِمٍ QS. Al-Mu"minūn (23): 5-6 which was then closed with the statement that those who sought behind the decree really exceed the limit. QS. Al-Mu'minūn (23): 7.

100 The verse is وَمِنَ اِلْيَمَانِ وَكُتُبٍ وَمَا مَكَّتِ اِلْيَمَانِ قَانِمٍ غَيْرِ مُلْمِمٍ QS. Al-Rūm (30): 21. Also the verses that can be found in al-Nisā ' (4): 1 concerning the spouse of human life which was in its own beginning so that with him humans both men and women became numerous.
common. There are four hadiths which state the prohibition of mut'ah marriage or marriage practices which are mentioned for a period of time, for example for two weeks, one month, or several months, which is essentially a period of marriage. Until now, the law on marriage mut'ah is very clear, which is haram. But to strengthen the argumentation, the MUI then included the consensus of the ulama and athar companions, in this case athar ‘Umar, who both stated the same thing, namely the prohibition of marriage mut'ah.

There is no argument that explicitly regulates tourism marriage. Marriage tourism, as explained earlier, has differences and similarities with marriage mut'ah. The difference is, if a tourist marriage is done when someone is traveling, marriage will not require that. The point of similarity lies in the length of time in the marriage. So on the basis of that similarity, the MUI then stated that tourist marriage is one form or branch of marriage, mut'ah, so that it is punished forbidden. Thus, the MUI prepared tourism marriages by placing them in marriage mut'ah.

In terms of maqāṣid al-sharī‘ah, the purpose of marriage is to create and maintain offspring in accordance with Islamic guidance. So in addition to realizing the maintenance of offspring, the function of marriage is also a means to maintain religion. Of course this goal can be carried out if all parties carry out it in accordance with the principles set by Islam, which is based on benefit. The phenomenon of tourist marriage or in the above discussion is assumed to be another form of nikah mut'ah, has damaged the joints of Islam and certainly undermined the ideals of social welfare. How not, by doing the practice of marriage, the purpose of forming a family full of love and peace as indicated by the general rules in the Qur'an and also the purpose of preserving good offspring will automatically be ignored.

The practice of tourist marriage is not based on religion and love, but solely on the impulse of lust. How can something done on the impulse of lust give birth to the benefit that Islam aspires to? The answer, that this is in good reason, will not

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101 One of these traditions is: 

102 K.H. Ma’ruf Amin et al., Himpunan Fatwa Majelis Ulama IndonesiaSejak 1975, 565.

103 MUI’s decision on tourist marriages, see; K.H. Ma’ruf Amin et al., Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975, 566.

https://dx.doi.org/10.18592/sjhp.v19i1.2726
be achieved, because good goals can only be obtained by a good process. Herein lies the importance of good intelligence in addition to the use of the *naqli* argument.

**Analysis And Classification Of MUI’s Fatwa**

Some of the MUI fatwas above can be viewed in terms of the level and gradation of *maṣlaḥahs* according to the majority of jurisprudence - in accordance with the guidelines for stipulating the fatwa of the MUI - and the fatwa on the criteria of *maṣlaḥah* can be classified into several levels. *Maṣlaḥah*, in the perspective of the majority of scholars divided into three parts. The first part is *maṣlaḥah mu’tabarab*, both *maṣlaḥah mursalah*, and the third is *maṣlaḥah mulghah*. In accordance with their agreement, only the first type can absolutely be used as a legal proposition. Whereas the second type of problem is the debate between may be used absolutely and there are those that provide rather strict conditions to be used as legal propositions. Besides being *darūrī*, it is also *kullīyāt*, and *qaṭ‘īyyāt*.

The requirement is that it is applied by al-Ghazzālī as a provision that must exist when it will be used as a legal proposition. The example he put forward was related to the ability to kill a Muslim who became a prisoner of war and made their shield. The killing ability is based on the assumption that by not killing these prisoners, the lives of the Muslims can be dangerous. Therefore, the terms *darūrī*, *kullī*, and *qaṭ‘ī* must absolutely be present in *maṣlaḥah mursalah*.

The majority of scholars also agreed on the inability to use *maṣlaḥah mulghah* as a legal proposition. *Maṣlaḥah Mulghah* is interpreted as a benefit that is contrary to the existing argument. It can also be interpreted as a problem which is clearly rejected (*ṣāriḥ*) by the strongest legal proposition. Because it violates the provisions of the Nash as the strongest legal proposition, the majority of scholars for example, provides strict conditions regarding the ability to use *maṣlaḥah*, which is different from al-Shāḥbī who uses it more loosely.

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104The requirements for the three criteria are different from one character to another. Al-Ghazzālī, *al-Mustasfī min I’tim al-Uṣūl*, I: 295-296.

agree to prohibit using it as a legal proposition. Later, this opinion was questioned again by reformers. Their reasoning is quite rational, that is, it could be that in the case of the rejected problems there is goodness for humans, such as justice and equal rights. However, in reality, Indonesian fatwa institutions continue to use old opinions - the majority of classical scholars - as the standard in the fatwa.

The fatwa of the MUI which is the main concern of this paper will be grouped through the classification of the maslahah division above. First, that the fatwa of the MUI which uses the classification of maslahah is four fatwas. Among other things, the fatwa concerning the first abortion point is based on the provisions stated in the text. That killing the law is haram, both killing parents, children, and babies in the womb. This is in line with the masculine concept of the MUI, that maslahah can be used as a legal basis.

The next fatwa that uses the classification of maslahah is a fatwa concerning the case of inheritance of different religions. In this case the MUI fatwa is in line with the hadith text which states that two people of different religions cannot inherit each other. So that this is in accordance with the MUI’s concept of maslahah. The third fatwa that uses the maslahah classification is a fatwa concerning tourism marriage. Marriage tourism is analogous to formal marriage.

108See for example in the "limit theory" proposed by Shahrur, which states that in terms of inheritance women can be equal to men, meaning 1:1 with men. Of course this is contrary to the text which states that women are half a part of men. This theory uses contemporary reading (qira'ahmu'ā, that is rather than using the traditional masalahat approach. Through this paradigm, he tries to position the text as a flexible proposition, meaning that a law sometimes moves at the lower and upper limits so that the legal provisions can be looser and more flexible. Muhammad Shahrur, Nashru 'Usul ad-Da'wah al-Islami: Fiqih al-Mar'ah (al-Wa'iyyah, al-'Irth, al-Qawm, al-Ta'addud, al-Libâs) (Surijyah: al-Ahâlî al-Taba'ahwa al-Nashrwa al-Tawzî', 2000), 222. Munawwir Sjadzali was mentioned as a national figure who also tried to actualize ma'slahah, as Shahrur, Sjadzali also offered the concept of al-Musâwah in inheritance, namely 1:1 between women and men, see Munawir Sjadzali, Ijtihad Kemanusiaan (Jakarta: Paramadina, 1997), 4-10. Falcitas Meta Maria Opwis, Ma'slahah and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century (Boston: Brill, 2010). Wael B. Hallaq, A History of Islamic Legal Theories: An Introduction to Sunnî 'Usul al-Fiqh (United Kingdom: Cambridge University, 1997). See also; Ahmad ‘Ali, “Reformulasi al-Maslahah: Relevansi dan Implementasinya dalam Pengembangan Pemikiran Hukum Islam Kontemporer”, Thesis at UIN Syarif Hidayatullah Jakarta, 2008. Yûsuf-Qaradawi, al-Siyâsah al-Sharî'ah al-Dawâ'î. Naqîğ al-Sharî'atwâ Mâqaṣîdiidh (Kairo: Maktabah Wahbah, 1998).

109The fatwa reads "Abortion is unlawful since the occurrence of implantation of blastocyst on the mother’s uterine wall (nida'is)." K.H. Ma'rif Amin et al., Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975, 462.

110The fatwa reads "Islamic inheritance law does not give mutual inheritance rights between people of different religions (between Muslims and non-Muslims)." K.H. Ma'rif Amin et al., Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975, 485.

111The fatwa reads "Tourism marriage as referred to in the general provisions of the law is haram because it is the marriage of mut'aqat (temporary marriage) which is one form of mu'tah marriage." K.H. Ma'rif Amin et al., Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975, 566.
because it has the same ‘illat (ratio legist) law, which is both giving a period of time. Because marriage is punished illegally, tourist marriage is also the case. This fatwa is the same as the MUI concept about maṣlaḥah.

The fourth fatwa that uses the maṣlaḥahmu’tabarab classification is the marriage fatwa under the hand (not recorded). It is confirmed that marriage is basically if all the pillars have been fulfilled and the conditions are the marriage is legal. However, this fatwa is irrelevant to the present because harmony and the requirements of conventional marriage then develop along with the dynamics of the development of space and time.

Secondly, the fatwa of the MUI which uses maṣlaḥahmursalah as the basis of its fatwa is a fatwa on marriage under the hands of the second point. This is related to the recording of marriage based on benefits that are not rejected or supported by certain texts. Such a fatwa is more relevant to the present age because it corresponds to space and time.

Third, the fatwa of the MUI which uses maṣlaḥahmulghah as the basis of its fatwa is two fatwas. The first fatwa concerning the ability to have an abortion is because of the elements ʿarīr, qaṭī, ḥāji, and kulli. This is said because it is based on an analysis of the fatwa with the conclusions of the Islamic jurists above. The ability to do an abortion basically violates the provisions. Because basically abortion is prohibited by rules and this is agreed upon by the majority of Muslims. But then abortion is permissible with several reasons which are permissible by syara’. The conditions for obtaining an abortion are as explained by MUI. On this basis, then the fatwa concerning the ability to carry out acts of abortion with various conditions is classified as the type of mulghah. The second fatwa included in this group is a fatwa about interfaith marriages. Considered as having violated the provisions in the text stating the ability to do marriage between Muslims and women abl al-kītāb. Regarding the classification of the ability of abortion and the prohibition of marrying different

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112 The fatwa is contained in the MUI fatwa concerning marriage under the first hand as follows. "Marriage under the law is legal because conditions and pillars of marriage are fulfilled, but it is forbidden if there is a maḍarrab." K.H. Ma’ruf Amin et al., Himpunan Fatwa Majelis Ulama IndonesiaSejak 1975, 534.

113 The fatwa is contained in the MUI fatwa on marriage under the second hand as follows. "Marriage must be officially registered with the authorized agency, as a preventive step to reject the negative impact (maḍarrab) (sadd li al-duḥur ab)." K.H. Ma’ruf Amin et al., Himpunan Fatwa Majelis Ulama IndonesiaSejak 1975, 534.

114 K.H. Ma’ruf Amin at.al, Himpunan Fatwa Majelis Ulama IndonesiaSejak 1975, 462.

115 K.H. Ma’ruf Amin at.al, Himpunan Fatwa Majelis Ulama IndonesiaSejak 1975, 481.
religions, it is indeed at a glance like it has violated the text. However, it can actually be assessed using other approaches, namely emergency conditions and urgent needs. While the need can occupy an emergency position.

**Conclusion**

Based on the description above, several things can be concluded. First, *maṣlaḥah* as a fatwa guideline for the MUI only recognizes the type of *maṣlaḥah mu’tabarah* and *maṣlaḥah mursalab* as a basis for establishing law, and at the same time rejects *maṣlaḥah mulghah*. Thus, *maṣlaḥah* in the view of the MUI is in accordance with the concept of *maṣlaḥah* stated by the majority of scholars. Secondly, based on the fatwa in the field of family law above, it appears that the MUI fatwas are in accordance with the *maṣlaḥah* concept of the majority of the jurists. In terms of the ability of abortion and the prohibition of interfaith marriages, it seems contrary to the text. However, if examined further, it is precisely the MUI Fatwa in both cases of abortion and interfaith marriages - actually using a priority approach, which is carried out because of an emergency. Third, regarding the validity of marriage under the hands (not recorded), even though it is in accordance with the old conception, but not relevant for the present.

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