

THE DYNAMICS OF ISLAMIC FAMILY LAW IN THE MODERN ERA: AN ANALYSIS OF *TAGHAYYUR AL-FATWĀ* AND *AL-MUHĀFAZAH* IN THE CHANGING MARRIAGE AGREEMENT PROVISIONS IN INDONESIA

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Info Artikel

Article History:

Received: January 5, 2025

Accepted: February 26, 2025

Published: March 5, 2025

ISSN: 2656-1654

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e-ISSN: 2656-193X

Abstract

Purpose - This study analyzes the application of the *fiqhiyyah* rules *taghayyur al-fatwā* and *al-muhāfazah* in the context of changing marriage agreement provisions in Indonesia, specifically in the Regulation of the Minister of Religious Affairs Number 19 of 2018 (PMA 19/2018). The *taghayyur fatwa* rule refers to the flexibility of the fatwas, which can change according to the needs of society. *Al-muhāfazah* emphasizes the importance of maintaining good old values while adopting new opinions that are more relevant and contextual. These two principles became the primary analytical framework for evaluating the dynamics of changes in marriage agreements in PMA 19/2018. These changes are inseparable from the challenges of the modern era, such as issues of gender equality, the protection of women's rights, and legal certainty in marriage.

Methods - The research used a normative juridical method with a legislative approach. Data sources were obtained from libraries through legislation, books, and related articles.

Findings - This study shows that the application of the rules of *taghayyur fatwa* and *al-muhāfazah* in PMA 19/2018 reflects an effort of *ijtihad* to balance between maintaining the fundamental values of Islamic law (*al-muhāfazah*) and accommodating the changes and dynamics of modern society (*taghayyur fatwa*). This change can be seen in the flexibility of the time needed to make a marriage contract, which could only be done before or during the marriage but can now be done during the marriage.

Contribution/Limitations - PMA 19/2018 is a form of legal response to the development of modern society while ensuring that marriage law remains relevant, fair, and follows the principles of justice in Islam. Thus, PMA 19/2018 is proof of the adaptation of Islamic family law to contemporary challenges. The limitations of this study lie in its normative focus, without an empirical field analysis.

Originality/Value - This research offers a family law perspective on the dynamics of modern society in dealing with contemporary issues, which can be a reference for academics and legal practitioners.

Keywords: *Taghayyur Fatwa*, *Al-muhāfazah*, PMA 19/2018, Marriage Agreement, Modern Era

Abstrak

Tujuan - Tulisan ini menganalisis penerapan kaidah *fiqhiyyah taghayyur al-fatwa* dan *al-muḥāfazah* dalam konteks perubahan ketentuan perjanjian perkawinan di Indonesia, khususnya dalam Peraturan Menteri Agama Nomor 19 Tahun 2018 (PMA 19/2018). Kaidah fatwa mengacu pada fleksibilitas fatwa yang dapat berubah sesuai kebutuhan masyarakat. Sementara itu, *al-muḥāfazah* menekankan pentingnya mempertahankan nilai-nilai lama yang baik sambil mengadopsi pendapat baru yang lebih relevan dan kontekstual. Kedua kaidah ini menjadi kerangka analisis utama untuk mengevaluasi dinamika perubahan perjanjian perkawinan dalam PMA 19/2018. Perubahan tersebut tidak dapat dipisahkan dari tantangan di era modern, seperti isu kesetaraan gender, perlindungan hak-hak perempuan, dan kepastian hukum dalam perkawinan.

Metode - Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan. Sumber data diperoleh dari perpustakaan, berupa peraturan perundang-undangan, buku, dan artikel terkait. Temuan-Hasil penelitian menunjukkan bahwa penerapan kaidah *taghayyur al-fatwā* dan *al-muḥāfazah* dalam PMA 19/2018 mencerminkan upaya ijtihad untuk menyeimbangkan antara menjaga nilai-nilai dasar hukum Islam (*al-muḥāfazah*) dan mengakomodasi perubahan serta dinamika masyarakat modern (*taghayyur fatwa*). Perubahan ini terlihat dalam fleksibilitas waktu pembuatan perjanjian perkawinan, yang semula hanya dapat dilakukan sebelum atau saat perkawinan, kini dapat dilakukan selama ikatan perkawinan berlangsung.

Kontribusi/Keterbatasan Penelitian - PMA 19/2018 merupakan bentuk respons hukum terhadap perkembangan masyarakat modern, sekaligus memastikan bahwa hukum perkawinan tetap relevan, adil, dan sesuai dengan prinsip-prinsip keadilan dalam Islam. Dengan demikian, PMA 19/2018 menjadi bukti adaptasi hukum keluarga Islam terhadap tantangan kontemporer. Keterbatasan penelitian ini terletak pada fokus normatif tanpa analisis empiris lapangan.

Keaslian/Nilai - Penelitian ini menawarkan perspektif hukum keluarga tentang dinamika masyarakat modern dalam menghadapi isu-isu kontemporer, yang dapat menjadi rujukan bagi akademisi dan praktisi hukum.

Kata Kunci: *Taghayyur Fatwa, Al-muḥāfazah, PMA 19/2018, Perjanjian Pernikahan, Era Modern.*

INTRODUCTION

The rules of *fiqhiyyah* as the basis for *fiqh*, which regulate similar issues, consist of general and special rules. The special rules consist of several fields, while the *fiqh* rules relating to change are included in the general rules of *fiqhiyyah* regulations (Erkoc Baydar, 2021). Changes can be caused by various factors, such as the development of times and time differences that touch multiple aspects of human life, socio-economic, moral culture, politics, and legal systems (Gad Makhoul, 2024). Therefore, new changes are needed to address the challenges and needs growing occasionally or caused by

unexpected conditions related to *the mukallaf*.

Ibn Qayyim stated, as quoted by Samsidar Jamaluddin, that *ijtihad*, as a manifestation of independent thinking, is contextual to the times, situations, and conditions. Therefore, a *Mujtahid* must understand things related to humans, community culture, and constantly changing auxiliary sciences to avoid mistakes in his *ijtihad* (Jamaluddin et al. 2022).

This is in line with the rules that convey that a fatwa (law) can change and that there are differences following changes in time, place, and circumstances (Djazuli, 2007). Essentially, the changing conditions of

humans, society, or nature are also caused by humans. It is just that there are obligations associated with time, such as times of worship, prayer, and hajj, or times associated with welfare, both past present and possibilities in the future (Ginda & Lysenko, 2024).

In the context of *ijtihad*, differences of opinion occur between *madhhabs* and can also arise from a single *mujtahid* as the time, place, and social context change. A clear example is the difference in the results of Imam Syafi'i's *ijtihad* between the period when he was in Baghdad (*qaul qadīm/old opinion*) and the period in Egypt (*qaul jadīd/new opinion*) (Zuhaili, 2008). This change shows the dynamics of Islamic law that are responsive to the development of reality, where a law can be revised to adjust to new interests without ignoring the old principles that are still relevant.

The two rules above imply that there will always be changes in people's lives, especially in modern society. In the face of these changes, this rule signals the preservation of the old or *maslahah*. If taking a new one, it must be more *maslahah*. This rule can be applied to all fields of *ijtihad*, especially in the use of science and technology, and in changes or amendments to applicable regulations. This fact continues to go hand-in-hand with the human benefits. Therefore, the benefit is the basis for determining the law, and it may affect the change of law (Saniah et al., 2023)

One significant change occurred in the Minister of Religious Affairs

Regulation No. 19/2018 concerning Marriage Registration, specifically related to the provisions of the marriage agreement (hereinafter abbreviated as PMA No. 19/2018). In the previous regulation (Article 29 of Law No. 1/1974), a marriage agreement could only be made at or before the marriage contract. However, in PMA No. 19/2018, there is an expansion of the time for agreement, namely, as long as the marriage bond is still valid, provided that it is made before a notary and recorded by the Office of Religious Affairs (KUA) on the marriage certificate and its registration book. It is interesting from the perspective of *fiqhiyyah* rules regarding the flexibility of Islamic law in responding to the dynamics of times.

Therefore, the purpose of this research is to analyze the relevance of two *fiqhiyyah* rules, namely (1) *taghayyur al-fatwā bi taghayyur al-azminah wa al-amkinah* (changes in fatwas due to changes in times and places), and (2) *al-muhāfazah 'alā al-qadīm al-ṣāliḥ wa al-akhḍzu bi al-jadīd al-aṣlah* (maintaining the good old law and taking the better new law), towards the flexibility of making a marriage agreement in PMA No. 19/2018. 19/2018. This study aims to show how the principle of dynamization of Islamic law becomes the legal-formal basis for changing the regulation

Some previous studies have examined the implementation of the *Taghayyur al-fatwā* rule from various perspectives. Subekti dan Tjitrosudibio (2018), for example, explores the

application of these rules in the context of Islamic economics, emphasizing the dynamics of the application of these rules in response to times. Meanwhile, Mohd Noor and Mohd Noor (2021) focus on the field of *Siyasah Syariyyah* (Islamic politics), analyzing the flexibility of fatwas in response to social change and governance. Nasir et al. (2022) explored contemporary Islamic family law reform, highlighting the urgency of adjusting the law to the realities of the times to ensure justice and social relevance. Taufiq & Tgk. Syarkawi (2022) also strengthens the argument that the flexibility of *fiqh* is key in responding to the dynamics of the times without ignoring the principles of Sharia with the rule of *al-muhāfazah*.

The main difference between these studies lies in the object of the study: Islamic economics, Islamic politics, and family law (*Akhwal Shakshiyah*). This study focuses on the latter, analyzing the adaptation of Islamic family law to social, geographical, and temporal changes, while strengthening the argument that the principle of legal change in Islam is multidimensional and contextual. As such, this study complements previous academic discussions by offering a new perspective in the field of family law that has not been comparatively explored.

The results of this study are expected to provide both theoretical and practical benefits and contributions. Theoretically, this research is expected to enrich the

scientific literature, especially in legal studies and the development of the latest regulations, especially in the context of dynamic family law issues that continue to develop along with social change. Thus, this research is expected to address current challenges and provide an adaptive framework for developing Islamic family law in the future in line with the ever-changing dynamics of community life.

RESEARCH METHODS

This research is normative juridical research that examines changes in the provisions of the marriage agreement contained in PMA 19/2018 and related legal rules to answer the legal issues studied using a *statutory approach* (*statute approach*) (Prasetijo, 2022). The research data are taken from books, articles, journals, and other secondary legal materials related to changes in the provisions of the marriage agreement in the PMA.19 of 2018. Furthermore, the data are analyzed using a descriptive-analytical qualitative method that reveals the laws and regulations relating to legal theories that are the object of research (Prasetijo, 2022). This research will analyze the relationship between the rules of *taghayyur al-fatwā bi taghayyur al-azminah wa al-amkinah* (changes in fatwas due to changes in times and places) and the regulations of *al-muhāfazah 'alā al-qadīm al-ṣāliḥ wa al-akhdzu bi al-jadīd al-aṣḥaḥ* (maintaining good old laws and taking new, better laws) to the dynamics of changes in the

provisions of making marriage agreements in Regulation of the Minister of Religious Affairs Number 19 of 2018 concerning Marriage Registration

RESULTS AND DISCUSSION

Overview of the Application of *Al-Qawā'id Al-Fiqhiyyah* as a Basis for Rulemaking in Islamic Jurisprudence

Linguistically, *al-Qawā'id al-Fiqhiyyah* (fiqh rules) consists of two words, namely *al-Qawā'id* (rules) and *al-fiqh* (fiqh). *Al-Qawā'id* is the plural form of the word *qa'idah*. In language, *qa'idah* refers to principle, basis, or foundation. Both in a concrete and abstract sense, such as the word *qawa'id al-bait*, meaning the foundation of the house, *qawa'id ad-din*, meaning the basics of religion, and *qawa'id al'ilm*, meaning the rules of science (Ar-Raudli, 2015), as mentioned in Al-Baqarah verse 127 and An-Nahl verse 26.

وَأذْ يَرْفَعُ إِبْرَاهِيمُ الْقَوَاعِدَ مِنَ الْبَيْتِ وَإِسْمَاعِيلُ

"...and remember when Ibrahim raised the foundations of the House of Allah with Ismail..." (Al-Baqarah, 127).

Al-Qawā'id al-Fiqhiyyah (القواعد الفقهية) are general principles in *fiqh* that serve as a theoretical framework for resolving complex Islamic legal issues. These principles were derived from the process of *istinbāth* (extracting the law) carried out by classical scholars through an in-depth analysis of the texts of the Qur'an, Hadith, and *ijma'* (consensus of scholars). This paper examines the significance of *al-Qawā'id al-Fiqhiyyah*

in the contemporary context and analyzes its challenges and relevance in answering the dynamics of modern legal issues (L-Zarqā, 1989).

In Tafsir Ibn Katsir it is explained that the word *الْقَوَاعِدُ* in the verse above is the plural of the word *قَاعِدَةٌ*, which means pillars and foundations. This means that Allah says: "O Muhammad, tell your people about the construction of the House of Allah, which Ibrahim and Ismail did, and the raising of the foundation by both. Abdullah bin Muhammad bin Abdurrahman; Translator: Abdul Ghoftar, Mukhtashar Tafsir Ibn Kathir (Jakarta: Imam Ash-Shafi'i Library, 2008); 330. The word *Al-Qawā'id* is also found in Surah An-Nahl Verse 26.

فَأَنَّى آلَ اللَّهِ بُنِيَ لَهُمْ مِّنَ الْقَوَاعِدِ

"...Allah destroyed their building from its foundations..." (An-Nahl, 26).

From these two verses, it can be concluded that what is meant by the rule is the basis, principle, foundation, and place on which the building stands (Djazuli, 2007). The word *fiqhiyyah* is derived from the word *fiqh*, which, according to language, means understanding, understanding, and knowledge. In contrast, according to the term, *fiqh* is knowledge of Islamic law regarding human actions (Damar, 2018). Scholars differ in their opinions regarding defining *fiqhiyyah* rules. Some expand and others narrow it, but the substance remains the same. One of them is the opinion of Al-Jurjani, who

established the *fiqhiyyah* regulations as follows:

قَضِيَّةٌ كُلِّيَّةٌ مُنْطَبِقَةٌ عَلَى جَمِيعِ جُزْئِيَّاتِهَا

"A *kulli* (overarching, general) decree that covers all its parts."

From this definition, it is clear that the rules of *fiqh* are comprehensive, including their parts, in the sense that they are applied to their *juz'iyat* (parts). Islamic law has two types of rules. The first is the rules of *the ushul fiqh*, which extract the law from its source, the Qur'an or Hadith. The second is the rules of *fiqh*, which are generally concluded from *fiqh* material and are then used to determine the law of new cases that have no law in the Qur'an (Djazuli 2007).

The source of the *fiqhiyyah* rules is based on the fundamental sources of their formulation. There are two types of basics: formal and material. The formal basis is in the form of *nash*, a source of motivation or encouragement for scholars to compile *fiqhiyyah* rules. While the material basis is used to formulate, *fiqhiyyah* rules themselves.

Formal basis

In the form of verses relating to the law, most are not detailed and do not regulate technical implementation or its form. This is intended so that Islamic law is always relevant, actual, and accommodating when facing and responding to the development of human life. Therefore, the Qur'an only establishes basic principles that must be considered and adhered to. If the Qur'an

regulates all problems in detail, there will be difficulties when faced with new issues without detailed legal provisions.

The nature of the glory of the Qur'an is intended so that Islamic Shari'a can adjust and harmonize with human life wherever and whenever it is because the journey of human life is constantly evolving (Hafis, 2023). These developments are certainly not the same as one another, resulting in needs that are not the same as in many cases (Hafis et al., 2024). Islamic law must answer this situation as proof of its universality. As Allah SWT says in Q.S Al-Bayyinah: 5

وَمَا أُمِرُوا إِلَّا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ حُنَفَاءَ وَيُقِيمُوا الصَّلَاةَ وَيُؤْتُوا الزَّكَاةَ وَذَلِكَ دِينُ الْقَيِّمَةِ.

"But they are only commanded to worship Allah, sincerely obeying Him for the sake of religion, and to offer prayers and to fulfill their duties, and such is the straight (true) religion." (Al-Bayyinah, 5)

The importance of intention is also mentioned in the hadith of the Prophet Muhammad SAW.

إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ

"Verily, every action depends on its intention."

It is inferred that the law is based on the intention of every action of the *mukallaf* not only in matters of worship but also for non-worship actions, because the issue of intention also has an essential meaning in other matters.

Therefore, the *fiqhiyyah* rule is formulated as follows.

الْأُمُورُ بِمَقَامِ صِدْقِهَا

"Every matter depends on its intent" (Azam, 2015).

Material basis

This rule comes from the following hadith of Prophet Muhammad.

لَا ضَرَّ وَلَا ضَرَّارَ (رواه ابن ماجه)

"It is not permissible to cause harm to oneself and not to cause harm to others." (HR. Ibn Majah).

The rules derived from the hadith apply to all areas of law, both *Ibadah*, *Muamalah*, *Munakahat*, and *Jinayat*, as well as the *fiqhiyyah* rules formulated from the *hadith lafadz*. As mentioned above, it can be ascertained that the *fiqhiyyah* rules are the result of the formulation of scholars (Nurdin et al., 2022).

According to Mashunah Hanafi, quoted by Khalidah, the importance of *qawaid fiqhiyyah* in extracting and determining Islamic law includes several issues that have or have not occurred. Therefore, *qawaid fiqhiyyah* can be used as a tool to resolve legal problems with no provisions or legal certainty (Sheikh et al., 2023). Syamsul Hilal stated that the importance of *fiqhiyyah* rules includes the following: Kaidah *fiqhiyyah* is the realm of *ijtihad* in applying the *'illat* law extracted from the problems of branch law based on the results of absolute *ijtihad mujtahid*, *fiqhiyyah* rules have an essential role in facilitating

understanding of Islamic law, where various branch laws are arranged into one rule (Nasirudin & Yusuf, 2024), the study of *fiqhiyyah* rules can help maintain and bind multiple problems that are many and conflicting, become a way to present various laws, *fiqhiyyah* rules can develop *malakah zhihiyyah* (sense power) *fiqh* a person (Eva Nur Hopipah & Aah Tsamratul Fuadah, 2023), to be able to *takhrij* an unlimited variety of *fiqh* laws following the rules of his madhhab and bind various laws in one bond shows that the laws have a benefit that is close to each other or has a significant advantage (Syamsul Hilal, 2000).

Amendments to the Provisions for Making Marriage Agreements Before and After Marriage in Minister of Religious Affairs Regulation Number 19 of 2018

Agreeing to marriage is permissible, meaning that a person may or may not make a marriage agreement (Jaraputri et al., 2023). Marriage agreements (*Huwelijksvoorwaarden*) and English (*Prenuptial Agreement*) in Indonesia have been allowed since the enactment of the Civil Code on May 1, 1848, in this marriage agreement, then made and reaffirmed by the passage of Marriage Law Number 1 of 1974 concerning marriage (Pelu & Dakhoir, 2021).

According to the Civil Code and Law Number 1 of 1974, the provisions of the marriage agreement differ based on the legal principle, namely, *lex specialis*

derogate legi generalis, which is the principle of legal interpretation that states that special laws override *general* laws. Hence, the provisions contained in Law Number 1 of 1974 concerning marriage and its implementation regulations are more practical (Rosa et al., 2024). The provisions in marriage law state that property obtained in marriage will become a joint property (Shomad & Hajati, 2025). The property obtained before marriage retains the original property of each husband or wife. This illustrates that there are several types of properties in separate marriages. Property separation can be excluded by making a marriage agreement (Nurunnisa et al., 2023).

A marriage agreement between the two parties is binding as a norm and legal certainty (Asman et al., 2021). In making a marriage agreement, there should be no coercion, so the contents of an agreement must fulfill the agreement of the parties concerned. This is one of the instruments to maintain the purpose of marriage desired by Islam (Hafis, 2023). Hence, the purpose of making a marriage agreement is to protect the legal interests of the husband and wife against property owned or both (Masri & Handayani, 2022). The agreement fully contains the wishes of both parties by examining the limits of the law and fulfilling the rights and obligations of the husband and wife. Couples who want to agree must meet the requirements of legal capacity to ensure that the agreement is not defective in the

future (Muttaqin & Fadhilah, 2020). The marriage agreement is regulated in Article 29 of Law Number 1, Year 1974, as follows.

1. At the time or before the marriage takes place, the two parties, by mutual consent, may enter into a written agreement authorized by the marriage registrar, after which the contents shall also apply to third parties to the extent that they are concerned.
2. The agreement cannot be ratified if it violates the boundaries of the law and decency.
3. The agreement takes effect from the time the marriage occurs.
4. During marriage, the agreement cannot be changed unless both parties agree to change, and the change does not harm third parties (Grafika, 2007).

However, this provision is increasingly loosened with the rule that allows marriage agreements to be made during the marriage bond, in the sense that a marriage agreement can be made at any time by husband and wife in marriage as stipulated in the Constitutional Court Decision Number 69 / PUU-XIII / 2015 related to the judicial review of Article 29 paragraph (1), paragraph (3), and paragraph (4) of Law Number 1 Year 1974 concerning Marriage. Thus, the decision of the Constitutional Court changed the regulations stated in Article 29 of Marriage Law No. 1 of 1974.

Accordingly, the content of Article 29 changed as follows (Puu-xiii, 2018):

1. At the time of, before, or during the marriage, both parties may, by mutual consent, submit a written agreement that is legalized by a marriage registrar or notary public. After that, the contents also apply to third parties, as long as the third party is involved.
2. The agreement cannot be ratified if it violates the boundaries of the law, religion, and decency.
3. The agreement comes into force from the date of marriage unless otherwise specified in the marriage agreement.
4. During a marriage, marital agreements can be about the marital property or other contracts, not changed or revoked unless both parties agree to modify or cancel them, and the change or revocation is not detrimental to third parties (Puu-xiii, 2018).

With the issuance of the decision of the Constitutional Court Number 69/PUU-XIII/2015, which is the result of a *judicial review* of Article 29 of Law Number 1 of 1974 concerning marriage (Mahmudah, 2023), there have been significant changes regarding the provisions of making a marriage agreement. This *judicial review* was filed by a woman named Febrianti Sumirat, an Indonesian citizen who married a foreign citizen (Liman 2020). Febrianti considers that the provisions of Articles 29 (1), (3), and (4) limit her right to make

or amend a marriage agreement after marriage takes place. This contradicts the principles of justice and citizens' constitutional rights, particularly in regulating joint property and legal certainty in mixed marriages.

Based on the provisions of Article 29 paragraphs (1), (3), and (4), Febrianti argues that the time limitation for making a marriage agreement before marriage does not consider the dynamics and needs of the couple after marriage. For example, changes in spouses' economic, legal, or relationship situations may require adjustments to marital agreement. Therefore, she requested that the Constitutional Court test the constitutionality of these articles and provide an opportunity for couples to make or amend a marriage agreement after the marriage has taken place (Sofiyana & Prastyanti, 2024).

Therefore, the Constitutional Court's decision changed previous regulations. Constitutional court decision no. 69 / PUU-XIII / 2015 is reasonable because the decision seeks to avoid the adverse effects of marital ties. In particular, they relate to property obtained, property owned before and after the marriage bond, and property division during divorce (Mahmudah, 2023). Therefore, a circular letter was issued by the Ministry of Religious Affairs of the Directorate General of Islamic Public Guidance with Number B.2674.DJ.III.KW.00/9/2017 Regarding the Recording of Marriage Agreements as cited by Muhammad Hafis (Hafis et al., 2022). Considering the

decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015 on the judicial review of Article 29 of Law Number 1 Year 1974 concerning marriage, as follows:

1. The marriage Registrar may record marriage agreements made before marriage, at the time of marriage, or during the marriage bond authorized by a notary public.
2. The Marriage Registration Officer records the marriage agreement in the notes column of the marriage certificate (Model N) and the special marriage notes column of the marriage certificate extract (Model NA).
3. Requirements and procedures for recording a marriage agreement are referred to in Appendix I.
4. Another country records marriage, but the marriage agreement or amendment/revocation is made in Indonesia. The marriage agreement's reporting is recorded as a certificate by the District KUA, as shown in Appendix II.
5. You are requested to socialize this circular with all the heads of sub-district KUAs in your area.

Based on a circular letter from the Ministry of Religious Affairs of the Directorate General of Islamic Public Guidance regarding the Recording of Marriage Agreements, which has implications for changes in marriage agreements in the Minister of Religion Regulation Number 19 of 2018 concerning Marriage Registration as an

implementing regulation contained in Article 19 paragraphs (1) to (3), which is as follows:

1. Prospective husbands and wives, brides, grooms, or husbands and wives can make a marriage agreement before marriage is held or during the marriage bond.
2. Paragraph (1) mentions that the marriage agreement should be made before a notary public.
3. As mentioned in paragraph (1), the material of the marriage agreement must not conflict with Islamic law or the provisions of the rules and regulations. (Minister of Religious Affairs of the Republic of Indonesia, 2010)

Thus, the change in the provisions of making a marriage agreement in Regulation of the Minister of Religious Affairs Number 19 of 2018, which is an improvement of Regulation of the Minister of Religious Affairs Number 11 of 2017, is an implication of the circular letter of the Directorate General of Islamic Public Guidance Number B.2674/DJ.III/KW.00/9/2017 regarding the Recording of Marriage Agreements, which is a follow-up to the decision of the Constitutional Court Number 69/PUU-XIII/2015 regarding the judicial review of Article 29 of Law Number 1 of 1974 concerning marriage. Hence, the essence of these changes lies in strengthening Sharia's preventive and protective functions. At the same time, the substance is a procedural formality

that ensures compliance with Islamic and national law principles.

Application of the Rules of *Taghayyur al-fatwā* and *Al-muḥāfazah* to the Provisions of the Marriage Agreement in PMA No. 19/2018

As already mentioned, the rule of *taghayyur al-fatwā* (الفتوى تغيّر) means that changes in fatwas can change according to changes in time, place, and conditions. Based on this rule, we can recognize that Islamic Law aims to create benefits for humanity (Hafis & Johari, 2022). One of the characteristics of Islamic law is that it moves dynamically to address problems that are increasingly developing with the times that cause changes in situations, conditions, places, times, and even the needs of humanity. No one denies the dynamic nature of Islamic law among Muslims (Sumarta et al., 2024). Islam, which is believed to be a religion characterized as *shalih li kulli zaman wa makan* (appropriate in all times and spaces), demands that its rules adapt to diverse social realities to benefit the people (Takdir et al., 2024). This has caused changes in Islamic law. This follows the following rule.

تَغْيُرُ الْفَتْوَى وَاخْتِلَافُهَا بِحَسَبِ تَغْيِيرِ الْأَزْمَانَةِ
وَالْأَمَكِينَةِ وَالْأَحْوَالِ وَالْتِيَّاتِ

"Fatwas change and differ according to changes in time, place, circumstances, intentions, and customs" (Djazuli, 2007).

This rule is the basis for scholars of *ijtihad* to actualize and reinterpret the laws of various issues amid social realities that always develop at any time, place, and situation (Mun'Im, 2021) so that changes can occur based on these things. This actualization and reinterpretation are done to preserve the benefits that have been systematized in the main objectives of Sharia (*maqashid shari'ah*), which are static and eternal: protecting religion, protecting the soul, protecting the mind, protecting property, and protecting honor. This main objective is the basis for scholars to make *ijtihad* in determining Islamic law (Al Jufri et al., 2021). Therefore, every defined law must maintain the five main elements of *the maqashid shari'ah*.

In the context of changes to the marriage agreement, the *taghayyur al-fatwā* rule supports flexibility in changing the provisions of the marriage agreement, which could previously only be done before or during marriage. With existing changes, married couples can make or change marriage agreements after or during marriage.

Then, based on Constitutional Court Decision No.69/PUU-XIII/2015, which conducted a material review of Article 29, the previous provisions were changed to the following: (1) A marriage agreement can be made at the time of marriage before marriage and during marriage. (3) A marriage agreement may take effect at the time of marriage or as specified in the marriage agreement. (4) The marriage agreement can be

changed/revoked during marriage on the consent of both parties as long as it does not harm the third party (Amalia & Erliyani, 2024).

Based on the Constitutional Court No.69/PUU-XIII/2015 decision, the Ministry of Religious Affairs No.B.2674/DJ.III/KW.00/9/2017 also provides new provisions that have implications for changes in the provisions for making marriage agreements in the Minister of Religious Affairs Regulation No.19/2018 concerning Marriage Registration.

1. Prospective husbands and wives, brides, grooms, or husbands and wives can make a marriage agreement before marriage is held or during the marriage bond.
2. Paragraph (1) mentions that the marriage agreement should be made before a notary public.
3. As mentioned in paragraph (1), the material of the marriage agreement may not conflict with Islamic law or the provisions of legislation (Minister of Religious Affairs of the Republic of Indonesia, 2010). This change can be seen in paragraph (1) regarding the timing of a marriage agreement, which can be made during the marriage bond. The second change is contained in paragraph (2) regarding the form of creating a marriage agreement, which must be made before a notary.

So, the Regulation of the Minister of Religion Number 19 of 2018 further

emphasizes the form of a marriage agreement, which must be a notarial deed. This indicates that Islamic law can change according to time, place, circumstances, intentions, or customs. The above description shows that changes can occur in a previously established regulation, along with changes in place, time, circumstances, intentions, customs, and habits.

The addition of the phrase "can be made during the marriage bond" does not change that the marriage agreement can also be made "at the time" or "before the marriage is held (pre-marriage)" (Rachman et al., 2021) and carried out before a notary, which is helpful as authentic evidence for maximum protection and binding for interested parties (Liman, 2020). This is following the application of the *al-muḥāfazāh* (المحافظة) rule:

المُحَافَظَةُ عَلَى الْقَدِيمِ الصَّالِحِ وَالْأَخْذُ بِالجَدِيدِ
الأصْلَحِ

"Maintaining the old situation that is *mashlahah* and taking a new one that is more *mashlahah*" (Djazuli, 2007).

The rule of *al-muḥāfazāh* means maintaining existing values while being relevant and opening spaces to accept existing changes as long as they provide benefits. This rule emphasizes the need to maintain good old traditions but is not close to existing changes. Based on this rule, in the case of changes to the marriage agreement in Constitutional Court Decision No.69/PUU-XIII/2015, which allows for changes or the

possibility of making a marriage agreement after marriage, Islamic law (fatwa) accepts changes. While the provisions of the marriage agreement, as referred to in paragraph (1), are carried out before a notary and the material of the marriage agreement, as referred to in paragraph (1) must not conflict with Islamic law / the provisions of the legislation contained in the Regulation of the Minister of Religion Number 19 of 2018 concerning Marriage Registration is a form of the need to maintain good old traditions *al-muḥāfazah* (المحافظة).

Based on the explanation above, the rules of *taghayyarul al-Fatwa* and *al-muḥāfazah* are relevant to the changing social dynamics in Indonesia by the applicant's reasons for filing a judicial review, as explained above. Modern social dynamics demand legal flexibility to accommodate the needs of social reality, such as the mixed marriages that occur in Febrianti's application (between Indonesian citizens and foreign citizens), which are increasingly common in this modern era. This change is also in line with changes in economic conditions that can affect household conditions and awareness of individual rights in marriage, especially women's rights that must be maintained, Islamic law based on the rules of *taghayyarul al-Fatwa* and *al-muḥāfazah* gives serious attention to changes in the making of marriage agreements listed in the Minister of Religion Regulation Number 19 of 2018.

In addition, the rules of *taghayyarul al-Fatwa* and *al-muḥāfazah* are also the basis

that Islamic law (fatwa) provides space for gender equality in marital relations in Indonesia. This is a change in law that is fairer and more equal, such as allowing the making or changing of marital agreements after marriage. This will enable husbands and wives to organize their rights and obligations. On the other hand, the *al-muḥāfazah* rule provides certainty that the changes still maintain Islamic values, justice, and openness that recognize the rights of wives and husbands in marriage. It can be seen that the right to propose changes and make a marriage agreement after marriage between the husband and wife has the same rights.

Therefore, it is necessary to maintain the previous situation of *mashlahah* and take a new one that is more beneficial (*maslahat*) because the behavior of *the mukallaf*, which is the object, is seen as continuous and constantly changing. This means that the provisions of the marriage agreement in Regulation of the Minister of Religion Number 19 of 2018 concerning Marriage Registration retain the provisions of the previous contract and then adopt rules that accommodate the provisions that want to make a marriage agreement during the marriage bond. Thus, it can accommodate marital agreements made before or after marriage. This indicates that the rules in Regulation of the Minister of Religion Number 19 of 2018 retain the old provisions, but also take new provisions that are more *maslahah*.

These two rules contribute to the application of legal certainty to marriage. The *taghayyur al-fatwā* rule provides space for improvements or changes in the law that are clearer and more concrete, such as the provision of changes to the marriage agreement that can be made after the marriage is held, which previously could only be done before marriage. This change provides certainty and legal protection for couples, especially those in mixed marriages. Meanwhile, the *al-muḥāfazah* rule provides certainty that the changes do not conflict with the basic principles of Sharia that protect women's rights, such as being treated fairly and the right to earn a living.

CONCLUSION

Based on this study, it can be concluded that the application of the fiqh principles *تَغْيِيرُ الْفَتْوَى* (*taghayyur al-fatwā*) and *الْمُحَافَظَةُ* (*al-muḥāfazah*) in the Regulation of the Minister of Religion (PMA) Number 19 of 2018 reflects the ability of Islamic family law to adapt to the dynamics of the times without sacrificing the basic principles of basic principles of Sharia. *Taghayyur al-fatwā* (change of fatwa according to changes in time, place, situation, and custom) can be seen in the revised provisions of the *marriage contract*. PMA 19/2018 allows the agreement to be made *after* marriage (Article 15), previously only allowed before/in the contract. This change responds to modern needs, such as legal certainty and the protection of women's

rights, as well as addressing the issue of gender equality. On the other hand, the principle of *al-muḥāfazah* (maintaining old values that are beneficial and adopting new, more beneficial ones) acts as a counterbalance. PMA 19/2018 maintains basic Sharia principles, such as justice, agreement (*tarāḍin*), and the prohibition of clauses that remove the maintenance obligation (Article 16).

This guarantees that the changes do not violate the *maqāṣid al-syarī'ah*, especially the protection of offspring (*ḥifẓ al-nasl*) and property (*ḥifẓ al-māl*).

The harmonization of these two principles demonstrates the dynamics of contemporary *ijtihād*. The flexibility of *taghayyur al-fatwā* is balanced by the consistency of *al-muḥāfazah* on the core values of Sharia. For example, despite extending the time to make agreements, PMA 19/2018 still requires registration as a condition of validity (Article 17). Thus, Islamic family law in PMA 19/2018 is not rigid but responsive to sociocultural changes while maintaining the principle of *maṣlahah* (universal good). Applying these two principles proves that Islamic law can respond to modern challenges, such as the economic complexity and awareness of women's rights, without neglecting the essence of Sharia. PMA 19/2018 proves that the dynamics of fiqh do not simply keep up with times.

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