

HYBRID *IJTIHĀD* AND THE DILEMMA OF PUBLIC INTEREST: THE DYNAMICS OF APPLYING *IJTIHĀD* THEORY IN MUI FATWAS ON UNREGISTERED MARRIAGES AND CHILD MARRIAGES

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Abstract

Purpose - This study examines the practical application of theories of *ijtihād* in the fatwas of the Indonesian Ulema Council (MUI), focusing on the issues of unregistered marriages and child marriage, as well as their impact on the diversity of legal arguments and the consistency of fatwa outcomes. Additionally, this study evaluates the extent to which the *maqāṣid al-sharī'ah* approach is operationalized in addressing contemporary social problems.

Methods - This study is a literature review employing a normative-doctrinal approach. The primary data included MUI Fatwa No. 10 of 2008 on unregistered marriages and the 2009 Ijtima' Ulama Decision on child marriage. Analysis was conducted using content analysis and critical interpretation of the fatwa text, supported by classical *fiqh* literature, contemporary *usūl al-fiqh*, and the *maqāṣid al-sharī'ah* framework.

Findings - This study found that the MUI applies a hybrid approach that combines *taqlīd* toward classical *fiqh* and collective *ijtihād* based on considerations of the public interest. Although the MUI acknowledges the negative social impacts of unregistered and underage marriages, its fatwas continue to sanction these practices based on the opinions of classical Islamic scholars, resulting in key concepts such as harm, maturity, and the public interest not being defined with sufficient clarity. Consequently, the application of *maqāṣid al-sharī'ah* in fatwas tends to be normative-formalistic and insufficiently responsive to the complexities of contemporary reality.

Contributions/limitations of the study - This study contributes to the discussion of Islamic legal reform by critically evaluating the methodology of MUI fatwas. The study's limitation is its reliance on secondary data without empirical field research.

Originality/value - This study offers an original analysis of the application of *ijtihād* and *maqāṣid al-sharī'ah* theories and underscores the urgency of a more dynamic and contextual approach to Islamic law.

Keywords: *Hybrid Ijtihād, Theory of Ijtihad, MUI Fatwas, Unregistered Marriages, Child Marriage*

Abstrak

Tujuan - Studi ini mengkaji penerapan praktis **teori-teori ijtihad** dalam fatwa-fatwa Majelis Ulama Indonesia (MUI), dengan fokus pada isu pernikahan tidak tercatat dan perkawinan anak serta pengaruhnya terhadap keragaman argumentasi hukum dan konsistensi hasil fatwa. Selain itu, penelitian ini mengevaluasi sejauh mana pendekatan *maqāṣid al-sharī'ah* dioperasionalkan dalam merespons problem sosial kontemporer.

Metode - Penelitian ini merupakan studi pustaka dengan pendekatan normatif-doktrinal, Data primer yakni Fatwa MUI No. 10 Tahun 2008 tentang pernikahan tidak tercatat dan Keputusan Ijtima' Ulama 2009 tentang perkawinan anak. Analisis dilakukan melalui metode *content analysis* dan interpretasi kritis terhadap teks fatwa, dengan dukungan literatur fikih klasik, *usūl al-fiqh* kontemporer, dan kerangka *maqāṣid al-sharī'ah*.

Temuan - Studi ini menemukan bahwa MUI menerapkan pendekatan hibrida yang menggabungkan *taqlīd* terhadap *fiqh* klasik dan *ijtihād* kolektif yang didasarkan pada pertimbangan kepentingan umum. Meskipun MUI mengakui dampak sosial negatif dari pernikahan yang tidak tercatat dan pernikahan di bawah umur, fatwa MUI tetap mengesahkan praktik tersebut berdasarkan pendapat ulama Islam klasik, sehingga konsep-konsep kunci seperti kerugian, kedewasaan, dan kesejahteraan umum tidak didefinisikan dengan cukup jelas. Akibatnya, penerapan *maqāṣid al-sharī'ah* dalam fatwa cenderung normatif-formalistik dan kurang responsif terhadap kompleksitas realitas kontemporer.

Kontribusi/keterbatasan penelitian - Penelitian ini berkontribusi pada pembahasan reformasi hukum Islam dengan mengevaluasi secara kritis metodologi fatwa MUI. Keterbatasan penelitian terletak pada ketergantungan pada data sekunder tanpa penelitian empiris lapangan.

Keaslian/nilai - Penelitian ini menawarkan analisis orisinal terhadap penggunaan teori *ijtihād* dan *maqāṣid al-sharī'ah*, serta menegaskan urgensi pendekatan hukum Islam yang lebih dinamis dan kontekstual.

Kata kunci: *Ijtihād* Hibrida, Teori *Ijtihad*, Fatwa MUI, Pernikahan Tanpa Akta, Pernikahan Anak

INTRODUCTION

In Islam, *ijtihād* (legal reasoning) is an epistemological mechanism that bridges the relationship between revelation and an ever-evolving social reality. *Ijtihād* is understood not only as an activity of legal discovery but also as a methodological process for deriving legal rulings from Islamic normative sources (El-Saleh et al., 2021), in response to social change (Kamali, 2003). Historically, the dynamics of *ijtihād* are reflected in the development of *fiqh* schools in response to social change; for example, Imam al-Shafi'i's shift from *qawḥ al-qadīm* to *qawḥ al-jadīd* when he moved from Iraq to Egypt (Hallaq, 2009a). This demonstrates that Islamic law is fundamentally adaptive to social and geographical contexts (Arief et al., 2022).

Ijtihād within the structure of Islamic law is carried out by a mufti (Islamic legal scholar) who possesses sufficient expertise to issue fatwas as a legal response to public inquiries (Belhaj, 2013). A fatwa is not merely interpreted as a legal opinion but also as a process of legal reasoning (Mudzhar, 1993). Therefore, a fatwa functions not only as a product of religious law but also as a social instrument linking religious norms with social reality. In the modern context, fatwa authority is no longer purely individual but has evolved into collective *ijtihād* through fatwa institutions possessing institutional authority.

In Indonesia, the institutional fatwa authority is held by the Indonesian Ulema Council (MUI), which was established as the sole forum for Muslim

organizations. Over time, the MUI (through its fatwa commission) has become an institution that issues influential religious fatwas and is often referenced by the public and even government policy in certain cases related to Islamic law (Widigdo and Hamid, 2018). Although fatwas are not legally binding in terms of formal legitimacy, in practice, they possess significant social and political power (Hasyim, 2011). In its practice of *ijtihād*, the MUI employs various methods of legal *istinbāt*, such as *qiyās*, *ijmā'*, *maṣlahah mursalah*, *sadd al-dharī'ah*, and *'urf*, to address contemporary issues (Thahir and Niwari, 2020).

However, these methods are not separate from the *tarjih* method, which involves selecting the opinions of classical scholars considered the strongest and most appropriate. Thus, the method employed by the MUI is not entirely new *ijtihād* but rather involves selecting opinions from classical scholars and combining them with contemporary social considerations (Rahmadi and Firmansyah, 2024). Consequently, this method is termed hybrid *ijtihād*, which combines *taqlīd* to classical *fiqh* with contextual *ijtihād* grounded in *maṣlahah*.

Regarding MUI's fatwa responses to social changes, particularly legal issues concerning unregistered marriages and child marriages. The MUI issued MUI Fatwa No. 10 of 2008 on Unregistered Marriages and the 2009 Ijtima Ulama Decision on Child Marriage. The MUI fatwa states that siri marriages are

considered religiously valid as long as they fulfill the pillars and conditions, but are haram if they cause negative consequences (*mudarah*) for the wife and children. Meanwhile, regarding child marriage, through the 2009 Ijtima' Ulama, the MUI emphasized that the maturity of the couple is the key to the success of a marriage in accordance with the *maqāṣid al-sharī'ah*. Both unregistered marriages and child marriages can have various social and legal implications, such as the loss of legal protection for women and children, difficulties in obtaining birth certificates, and issues regarding inheritance rights and divorce (UNICEF, 2020).

Thus, the aforementioned conditions indicate a tension between classical *fiqh* and public interest. In classical *fiqh*, a marriage is still considered valid as long as it fulfills the pillars and conditions, even if it is not administratively registered. Similarly, in classical *fiqh*, child marriage is permitted as long as certain conditions are met, such as the presence of a guardian and the absence of harm. However, in the modern context, both practices have proven to have various negative social impacts. At this juncture, a legal dilemma arises in contemporary fatwas: the tension between the need to uphold the legitimacy of classical *fiqh* and the need to consider public interest and modern social realities.

However, in the practice of institutional fatwas, *maqāṣid* are often used merely as a normative justification

rather than as the primary method for legal determination (Auda, 2007). This dilemma indicates that contemporary fatwas are not merely products of legal reasoning but also the result of negotiations between classical texts, *maqāṣid al-sharī'ah*, state law, and social realities (Hallaq, 2009b). Thus, in the context of fatwas regarding unregistered marriages and child marriages, it is evident that *maqāṣid* in fatwas are of a normative-formalistic nature and have not yet been empirically operationalized in the formulation of laws based on the public interest. Consequently, it is worth examining how *maqāṣid* (public interest) in fatwas are operationalized in family law cases, such as unregistered marriages and child marriages.

To date, studies on fatwas issued by the Indonesian Ulema Council (MUI) have generally focused on three major themes. First, studies that view fatwas as products of legal politics and their relationship with the state. This research indicates that MUI fatwas often have political implications and serve as a reference in the formulation of public policy (Hasyim, 2011, 2015; Ichwan, 2013; Lindsey and Steiner, 2012; Salim and Azra, 2003a). Second, studies analyzing the methodology of MUI fatwa issuance from the perspective of *uṣūl al-fiqh*, which found that the MUI employs various methods, such as *qiyās*, *istiḥsān*, *maṣlaḥah mursalah*, and *sadd al-dharī'ah*, in addressing contemporary issues (Hasanudin, 2019; Kaptein, 2004; Lindsey, 2012; Soumena, 2024). Third,

studies specifically addressing fatwas related to Islamic family law, such as unregistered marriages, child marriages, and divorce, which generally highlight their social and legal implications within the national legal system (Abdullah Jarir et al., 2025; Bedner and Van Huis, 2010; Butt, 2008; Rohman et al., 2025; Siswanto, 2022; Ulya and Khair, 2025). Thus, unlike previous studies, this research conducts a critical analysis of how the MUI's fatwa methodology is operationalized in family law cases, such as unregistered marriages and child marriages.

This study aims to analyze how the *ijtihād* model is applied in MUI fatwas and how the *maqāṣid* (public interest) in the fatwas are operationalized in family law cases, such as unregistered marriages and child marriages. This study argues that MUI fatwas demonstrate a hybrid model of *ijtihād*, yet still prioritize classical *fiqh* as the primary source of legitimacy, while *maqāṣid al-sharī'ah* is used merely as a normative foundation and has not been empirically operationalized in addressing public interests. Thus, this article can contribute to an in-depth study of MUI fatwas to understand the practice of institutional *ijtihād* and develop the concept of hybrid *ijtihād* to explain how modern fatwa institutions combine the classical *fiqh* method of *taqlīd* with contextual *ijtihād* based on public interest.

METHOD

This research is a study of fatwas aimed at gaining an in-depth understanding of the patterns of legal reasoning, the construction of arguments, and the methodological basis of *ijtihād* used in fatwas; it is not intended to measure the phenomenon quantitatively. The approach used is a fatwa study that treats fatwas as legal texts analyzed from the methodological aspects of *istinbāt al-ḥukm*, the structure of legal arguments, and the underlying orientation of *maqāṣid al-sharī'ah*. The data sources in this study consist of primary and secondary data. Primary data consists of official documents from the Indonesian Ulema Council (MUI), namely MUI Fatwa No. 10 of 2008 on Unregistered Marriage and the 2009 Ulema Assembly Decision on Child Marriage. Secondary data is derived from literature relevant to the study.

Data collection was conducted through document study, which involved the systematic collection, reading, and examination of fatwa documents, legal documents, and scientific literature relevant to the research focus. Data analysis employed two primary methods: content analysis and *maqāṣid al-sharī'ah* analysis. Content analysis was used to identify the text structure of the fatwas, the formulation of the issues, the evidence cited, the applied *ijtihād* methods, and the legal arguments. *Maqāṣid al-sharī'ah* analysis was used to assess the orientation of legal objectives within the fatwas.

The theories employed in this study are the theory of *ijtihād* and the theory of *maqāṣid al-sharī'ah*. The theory of *ijtihād* is used to analyze the legal reasoning methods employed in the fatwa. Meanwhile, the theory of *maqāṣid al-sharī'ah* is used to analyze the orientation of the legal objectives that the fatwa seeks to achieve, as well as to assess whether the fatwa is more oriented toward the protection of formal norms or substantive public interest. The use of AI in this study serves as a tool; the concepts and ideas remain the primary intellectual property of the author.

RESULTS AND DISCUSSION

Institutional Ijtihād and the Formation of Hybrid Fatwas: Examining the MUI's Fatwa-Issuing Process

In the context of contemporary law, fatwas are no longer understood merely as the product of individual *ijtihād* as developed in the classical tradition but have transformed into a form of institutional *ijtihād* carried out collectively through official institutions. This transformation is linked to structural changes, in which the authority of *ijtihād* no longer rests entirely with individual mujtahids but with structured institutional *ijtihād*. In this context, the Indonesian Ulema Council (MUI) can be understood as an institution that performs the function of collective *ijtihād* (*ijtihād jama'i*) in responding to contemporary Islamic legal issues (Hallaq, 2001).

The concept of collective *ijtihād* emerged as a response to the complexity of modern issues involving legal, social, economic, and political aspects simultaneously. Issues such as unregistered marriages and child marriages cannot be resolved solely through a classical *fiqh* approach but require a contextual–multidisciplinary approach. Therefore, *ijtihād* is conducted through a collective mechanism involving experts from various fields (Khuluq et al., 2024). In a study of fatwas in Indonesia, Mudzhar demonstrated that MUI fatwas are a form of religious decision-making that is not merely normative and religious in nature but also possesses social and political dimensions, as they are often linked to state policies and public interests (Mudzhar and Soekarno, 1993).

Furthermore, institutional *ijtihād* indicates a shift in legal determination methods. This shift demonstrates that institutional *ijtihād* not only changes those who engage in *ijtihād* but also how it is conducted. As a product of the institutional *ijtihād* body, MUI fatwas are not formulated simplistically but through a layered legal reasoning structure. This structure generally begins with evidence from the Qur'an and hadith, followed by the opinions of classical scholars, *fiqh* principles, and considerations of *maṣlaḥah*. This argumentative structure demonstrates that legal reasoning in fatwas is not merely deductive from the text but also employs an approach based on legal

principles and objectives (Hallaq, 1984). This practice demonstrates that fatwas do not merely quote scholars' opinions but construct legal arguments tailored to the social context.

In the context of modern states, fatwas cannot be separated from the state's legal system. Therefore, a key characteristic of MUI fatwas is the negotiation between religious texts, *maqāṣid al-sharī'ah*, and state law. This negotiation indicates that fatwas function not only as religious legal opinions but also as instruments of mediation between Islamic and positive laws. In the context of modern nation-states, Islamic law does not operate in isolation but within the framework of the national legal system (Jackson, 1996).

Based on an analysis of fatwas as institutional *ijtihād*, the structure of legal reasoning, and the negotiation between texts, *maqāṣid*, and state law, it can be concluded that the method of *ijtihād* in MUI fatwas is not singular but constitutes a combination of various methods, forming a hybrid *ijtihād* model. This model demonstrates that fatwas are the results of a layered and interconnected methodological process.

The hybrid *ijtihād* model in MUI fatwas can be explained through the following stages.

Figure 1. Stages of the Hybrid Ijtihād Model in Fatwas



Source: adapted by the author

As shown in Figure 1, these stages indicate that a fatwa is the result of a methodological process that begins with normative legitimacy (classical *fiqh*), then moves to general principles (*fiqh* rules), then to legal objectives (*maqāṣid*), then to the social context, and finally to the state's legal framework before becoming a fatwa. In contemporary Islamic legal theory, this approach is known as the systems approach, which views Islamic law as a system composed of various interconnected elements (Auda, 2007).

This model demonstrates that MUI fatwas cannot be categorized as textual *ijtihād* or entirely as *ijtihād maqāṣid*, but rather as *ijtihād* that combines both while taking into account the state's legal system (Fadel, 2008). Therefore, *ijtihād* in MUI fatwas can be termed hybrid *ijtihād*, that is, *ijtihād* that integrates classical *fiqh* traditions, *maqāṣid al-sharī'ah*, and state law within a single legal reasoning framework (Salim and Azra, 2003b). This model demonstrates that

contemporary Islamic law is moving toward the integration of legal reasoning and policy reasoning in the formulation of law (Duderija, 2014). Thus, the hybrid *ijtihād* model not only explains the methodology of MUI fatwas but also indicates the direction of development in contemporary Islamic legal methodology, which is becoming increasingly institutional, contextual, and oriented toward public interest.

Fatwa on Unregistered Marriages: Between Fiqh Legality, Administrative Order, and Social Protection

The validity of a marriage in classical *fiqh* is determined by the fulfillment of the conditions and pillars of marriage. As long as these pillars and conditions are met, the marriage is considered valid under Islamic law, even if it is not administratively registered by the state. However, classical *fiqh* does not disregard administration as a form of social protection within marriage. The Prophet's hadith emphasizes the importance of *i'lān al-nikāḥ* (marriage announcement) and *walimah* as forms of social publicization to prevent future *fitnah* and disputes arising from marriage. Thus, although administrative registration is not recognized in classical *fiqh*, the principle of social protection in marriage has been acknowledged as a form of protection for women.

In its development, contemporary Islamic legal scholars have begun to interpret the concept of marriage

publication as state-administered marriage registration. Registration is viewed as a modern form of *i'lān al-nikāh* aimed at protecting the rights of husbands, wives, and children (Mir-Hosseini, 2000). In the context of modern states, marriage registration can be understood not as a requirement for the validity of marriage, but as a legal protection instrument. There are at least two dimensions to marriage in Islam: the legal-formal dimension (the validity of the contract) and the social dimension (family protection). In classical *fiqh*, the legal-formal dimension is more dominant, whereas in the context of the modern state, the state assumes the social dimension through the marriage administration system (Coulson, 2017). These two dimensions form the basis for the debate regarding the status of unregistered marriages in contemporary fatwas.

The 2008 MUI fatwa on unregistered marriages concludes that marriages that are not registered remain valid under Islamic law because they fulfill the pillars and conditions of marriage, but may become haram if they cause harm. In this fatwa, the MUI cites Quranic verses, such as Surah an-Nisa' verse 59 regarding the obligation to obey *ulil amri* (leaders), as well as hadiths on the importance of *walimah* as a form of publicizing the marriage. The fatwa also recommends that every marriage be officially registered to prevent harm (*sadd al-dharī'ah*).

The structure of the MUI's 2008 fatwa demonstrates the use of several *ijtihad* methods simultaneously. First, the MUI continues to use classical *fiqh* as the basis for determining the validity of a marriage. Second, the MUI employs *fiqh* principles, such as *dar' al-mafāsīd muqaddam 'alā jalb al-mašāliḥ*. Third, the MUI adopts the *maqāṣid al-sharī'ah* approach through the concepts of *maṣlahah mursalah* and *sadd al-dharī'ah* to recommend marriage registration. The use of *maṣlahah mursalah* indicates that the MUI recognizes social changes that cannot be fully addressed by classical *fiqh*.

However, this MUI fatwa reveals methodological ambiguity. The MUI employs *maqāṣid* in recommending marriage registration; however, it maintains the validity of unregistered marriages based on classical *fiqh*. This indicates that *maqāṣid* has not been used as the primary basis for legal determination but rather only as an additional consideration (Opwis, 2017). Furthermore, the MUI fatwa does not provide clear boundaries regarding when an unregistered marriage becomes haram. This ambiguity indicates that the application of *sadd al-dharī'ah* in the fatwa is not yet fully operational. In practice, however, unregistered marriages have negative consequences for women and children.

The integration of *fiqh* and *maqāṣid* in fatwas has not been fully utilized in a balanced manner; classical *fiqh* remains the primary basis for legal rulings, while

maqāṣid functions only as an additional consideration. This indicates that hybrid *ijtihād* in fatwas remains partial and has not yet become the primary methodological framework (Fadel, 2008). Thus, the MUI fatwa on unregistered marriages reveals a tension between classical *fiqh* and *maqāṣid al-sharī'ah*. This tension results in legal dualism: valid according to *fiqh* but potentially causing social harm. This dualism simultaneously indicates that the fatwa is a concrete example of hybrid *ijtihād* practice, yet with a level of *maqāṣid* integration that is not yet fully optimal.

Fatwa on Child Marriage: A Tension Between Classical *Fiqh* Doctrine, Child Protection, and Modern Legal Reform

Child marriage relates to the existence of a minimum age limit for marriage; in the classical *fiqh* tradition, the majority of *fuqahā'* do not agree on a specific numerical minimum age for marriage but rather use the concepts of *baligh* and capacity (*al-bā'ah*) as indicators of readiness for marriage (Kamali, 2003). The position of classical *fiqh* in fatwas regarding child marriage is not a final norm but rather one of several references in the process of *ijtihād*. The MUI fatwa demonstrates a process of negotiation between classical *fiqh* and modern social realities, which becomes evident in the legal argumentation structure of the fatwa.

The 2009 MUI fatwa on child marriages indicates that the fatwa institution continues to place classical *fiqh* as the basis for its legal legitimacy. The fatwa states that underage marriage is valid because Islam does not explicitly set a minimum age limit for the Qur'an or hadith. The evidence cited includes an interpretation of Surah al-Nūr verse 32 regarding the term "*al-ayāmā*" as well as the hadith concerning Aisha's marriage to the Prophet Muhammad. However, the fatwa does not entirely disregard modern social reality. The MUI states that maturity is a key indicator for achieving marriage objectives such as family well-being and pregnancy safety, and that it becomes haram if it causes *muḍārah* (harm).

Nevertheless, the fatwa does not operationally explain what is meant by maturity and *muḍārah*. The absence of clear indicators regarding maturity indicates that the concept of *maqāṣid* is used at a normative level but has not yet been operationalized into concrete legal standards. However, the operationalization of *maqāṣid* is crucial to ensure that *maqāṣid* does not merely serve as a normative justification but becomes the foundation for legal rulings. Furthermore, the MUI fatwa states that it aligns with Indonesia's Marriage Law. This indicates that the fatwa is not only based on classical *fiqh* and *maqāṣid* but also takes state law into account as part of the legal considerations.

Thus, the argumentative structure of the MUI fatwa actually consists of three

layers: classical *fiqh* as normative legitimation, *maqāṣid* as considerations of public interest, and state law as the regulatory framework. Thus, the practice of hybrid *ijtihād* in MUI fatwas actually demonstrates an effort to integrate classical *fiqh* with *maqāṣid* and state law; however, this integration has not yet fully resulted in legal decisions comprehensively grounded in *maqāṣid*.

Hybrid *Ijtihād* and the Dilemma of the Public Interest: Limitations on the Operationalization of *Maqāṣid al-Sharī'ah* in Fatwas

Although there are recommendations to avoid unregistered and underage marriages, the Indonesian Ulema Council (MUI) essentially recognizes and validates both types of marriage. Regarding unregistered marriages, the MUI states, “an unregistered marriage is legally valid because the conditions and pillars of marriage have been fulfilled, but it is haram if it causes harm.” [A marriage that is not legally recognized remains valid because the conditions and pillars of marriage have been fulfilled, but it is prohibited if it causes harm] (Indonesian Ulema Council, 2008).

Similarly, the fatwa regarding underage marriage states, “Early marriage is valid as long as the conditions and pillars of marriage have been fulfilled, but it is haram if it results in harm.” [Early marriage is valid as long as the conditions and pillars of marriage have been fulfilled, but it is

forbidden if it causes harm]. Both fatwas follow a similar pattern, validating marriage and then listing exceptions that render it invalid.

The Hybrid *Ijtihād* Structure in MUI Fatwas: The Dominance of Classical *Fiqh* within a Modern Institutional Framework

The method of issuing MUI fatwas on unregistered marriages and child marriage does not rely on a single approach but rather is a combination of classical *fiqh taqlīd*, collective *ijtihād*, and considerations of state positive law. This structure can be referred to as hybrid *ijtihād*, that is, a model of *ijtihād* that combines the authority of classical *fiqh* with the need for modern regulation within the context of the nation-state. For example, in the fatwa on unregistered marriage, the MUI maintains that a marriage is valid if it fulfills the conditions and pillars of marriage in Islam, even if it is not registered by the state. At the same time, however, the MUI encourages marriage registration due to concerns about the detrimental social and legal impacts on women and children. This approach demonstrates that classical *fiqh* remains the foundation of legality, while social considerations are employed as supporting arguments through the approaches of *sadd al-dharī'ah* and *maqāṣid al-sharī'ah* (Rolia Ulfah, 2024).

Thus, the hybrid structure of *ijtihād* in MUI fatwas can be understood as a combination of four main elements: (1)

taqlīd toward classical *fiqh* as a basis of legitimacy, (2) collective *ijtihād* as an institutional mechanism, (3) *maqāṣid* as normative legitimacy, and (4) state law as an administrative framework. However, in practice, classical *fiqh* remains the dominant framework for legal determination, while *maqāṣid* and social considerations function as supporting arguments, not as the primary method of *istinbāt* (legal deduction) (Fatarib et al., 2025).

Recognition of Harm Without Prohibition: The Problem of Operationalizing Maqāṣid al-Sharī'ah

There is a discernible pattern in fatwas regarding unregistered marriages and child marriage: arguments that acknowledge the existence of social harms but do not result in a prohibition of such practices. For instance, in the fatwa on unregistered marriages, the MUI acknowledges that such practices can harm women and children. However, the MUI does not declare unregistered marriage to be haram; rather, it remains valid under religious law and is merely recommended to be registered. Similarly, in fatwas regarding child marriage, the MUI acknowledges the negative impacts but does not absolutely prohibit child marriage. Thus, the *maqāṣid al-sharī'ah* in these fatwas function only as a normative acknowledgment of public interest and do not serve as a basis for changing the legal status from permissible to prohibited.

This phenomenon highlights the distinction between *maqāṣid* as theory and *maqāṣid* as operationalization. In classical *maqāṣid* theory, al-Shāṭibī explains that the objectives of Islamic law are to safeguard five fundamental principles: religion, life, intellect, lineage, and property (Al Ikhlas et al., 2021). If a practice is proven to undermine any of these five objectives, then theoretically, that practice may be restricted or even prohibited. However, in institutional fatwas, *maqāṣid* is not always used operationally to change the law but rather serves only as a moral and social consideration.

In MUI fatwas, the argumentative structure begins with evidence from the Qur'an, hadith, and the opinions of classical scholars and concludes with considerations of *maqāṣid*, such as the public interest. This pattern indicates that *maqāṣid* are used to reinforce decisions already established based on classical *fiqh*, not to determine the law at the outset of the *ijtihād* process. Thus, it can be concluded that in institutional fatwas, *maqāṣid* occupy a dual position: as normative legitimation and as a legal method. However, in practice, *maqāṣid* more frequently function as normative legitimation rather than as an independent method of legal *istinbāt*.

CONCLUSION

This study concludes that the institutional *ijtihād* framework employed by the Indonesian Ulema Council (MUI) in addressing issues of unregistered and

underage marriages still exhibits limitations in operationalizing *maqāṣid al-sharī'ah*. The MUI adopts a hybrid approach that combines *taqlīd* toward classical *fiqh* with collective *ijtihād* based on *maṣlahah* considerations. However, in practice, this approach tends to produce norm-formalistic fatwa formulations, in which the recognition of negative social impacts is not followed by a conceptual redefinition of key categories, such as *darar* (harm), *bulūgh* (maturity), and the public interest.

Furthermore, there is inconsistency in the application of *maqāṣid* principles, particularly when compared to the MUI's firm stance on other issues, such as interfaith marriage. This imbalance indicates that the frameworks of *sadd al-dharī'ah* and the protection of *ḥifẓ al-nasl* have not been systematically operationalized across the entire spectrum of family law issues. Thus, this study contributes theoretically by critiquing the boundaries of hybrid *ijtihād* in the context of institutional fatwas, while emphasizing the need for a shift toward a more reflective, interdisciplinary, and contemporary social reality-based model of *ijtihād*.

Practically, this study offers policy implications regarding the urgency of reformulating the MUI's fatwa methodology, particularly in establishing marriage registration as a normative obligation and expanding the definition of maturity to encompass physical, psychological, and social dimensions. Nevertheless, the

limitations of this study lie in the use of data and a focus restricted to two cases, thereby opening the door for further empirical and comparative research to identify broader patterns of MUI fatwa evolution.

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