



Samarah: Jurnal Hukum Keluarga dan Hukum Islam
Volume 7 No. 2. July 2023
ISSN: 2549 – 3132; E-ISSN: 2549 – 3167
DOI: 10.22373/sjhk.v7i2.17552

Al-Būṭī's Thoughts on *Maṣlāḥah* and Its Application in the Fatwa of World Fatwa Institutions

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Abstract: This study aims to explore and analyze al-Būṭī's thoughts on *maṣlāḥah* (public interest) and its application issued by world-prominent Fatwa Institutions, namely *Ḍār al-Iftā al-Miṣriyah in Egypt*, *Ḍār al-Iftā al-'Irāqiyah in Iraq*, and *al-Majlis al-Islamī al-Sūrī in Syria*. The research adopts a normative method, employing conceptual, literary, and sociological approaches that is analyzed descriptively. The findings of this research focus on the application of al-Būṭī's concept of *maṣlāḥah* to the online marriage contract fatwas issued by the aforementioned Fatwa Institutions. The results indicate that these fatwas do not align with a credible interpretation of *maṣlāḥah* within Islamic law. Further, it can be seen that two key points support this conclusion: (i) they contradict the *maqāṣid sharī'ah* (objectives of Islamic law), particularly the highest objective of preserving religion (*hiḏ al-dīn*), and (ii) the urgency of *maṣlāḥah* in the context of online marriage contracts varies and cannot be universally applied. This research contributes to the enhancement of fatwa decision-making processes in Indonesia.

Keywords: Online marriage *fatwa*, *maṣlāḥah*, *al-būṭī*, world *fatwa* institutions

|| Submitted: March 23, 2023 || Accepted: June 17, 2023 || Published: June 18, 2023

Abstrak: Penelitian ini bertujuan untuk mengungkap dan menganalisis pemikiran al-Būṭī tentang *maṣlāḥah* dan aplikasinya dalam fatwa yang dikeluarkan Lembaga-Lembaga Fatwa Dunia, yaitu *Ḍār al-Iftā al-Miṣriyah* di Mesir, *Ḍār al-Iftā al-'Irāqiyah* di Iraq dan *al-Majlis al-Islamī al-Sūrī* di Suriah. Penelitian ini menggunakan metode penelitian normatif dengan pendekatan konseptual, literatur dan sosiologis yang dianalisis dengan metode analisis kualitatif. Hasil penelitian ini merupakan penerapan konsep *maṣlāḥah* al-Būṭī (w. 2013 M) terhadap fatwa akad pernikahan online yang diterbitkan oleh ketiga lembaga fatwa dunia tersebut. Adapun hasil dari penelitian ini menunjukkan bahwa fatwa akad pernikahan online yang diterbitkan oleh ketiga lembaga fatwa ini bukanlah sebuah *maṣlāḥah* mu'tabarāh dalam syari'at Islam. Hal ini dilihat dari dua poin utama yaitu bertentangan dengan *maqāṣid sharī'ah* yang bermuara pada tingkatan tertinggi, yaitu *hiḏ al-dīn* (menjaga agama) dan tingkat urgensi *maṣlāḥah* terhadap akad pernikahan online yang tidak dapat disamaratakan. Studi ini memberikan kontribusi penting pada keputusan fatwa di Indonesia.

Kata Kunci: Fatwa pernikahan online, *maṣlāḥah*, al-būṭī, Lembaga Fatwa Dunia

Introduction

Since the government issued a circular from the Ministry of Religion of the Republic of Indonesia, No: P-004/DJ.III/Hk.00.7/04/2020, advising to postpone marriage, many people, especially Indonesians, in doing so, were forced to annul their marriage and put it Put off for a while. This is according to data provided by the Regional Office of the Ministry of Religion in Siaceh, which found 127 married couples in March but found that the number of married couples increased in a shorter period in April. The number of married couples dropped sharply to 73 couples. It continued to decline until May when only five married couples were collected by 12 Religious Affairs Offices (*Kantor Urusan Agama/KUA*) in the Siaceh region.¹ On the other hand, some of these couples violate these rules and recommendations, and some who want to have a wedding force themselves to do it in secret (*sirrī*). Their marriage is not officially registered with the KUA, which indirectly means that the government

¹ Latu Ratri Mubyarsah, "Saat Pandemi Covid-19, "Jumlah Pasangan Yang Menikah Turun Drastis," *Antara*, 2020, <https://www.jawapos.com/jpg-today/16/06/2020/saat-pandemi-covid-19-jumlah-pasangan-yang-menikah-turun-drastis/>.

does not recognize their marriage, although *sirrī* marriages are valid under religious law.²

Not only that but with the advancement of technology in the present day, some of these couples are eager to make their marriage contract online. This was done by the two teams Max Walden and Shaffira Gayatri, in which the woman is Indonesian and resides in Surabaya, while the husband is Australian and lives in Sydney. Because this couple had planned to get married for a considerable amount of time in advance, they chose to get married on the day that they had initially planned, which was June 20, 2020, even though the concept had to change, specifically by carrying out their marriage contract using *maṣlāḥah* zoom.³

Teleconference/online marriage is a marriage contract practice still taboo in Indonesian society. In this type of marriage, the guardian and the prospective bride and groom do not need to be in the exact location when pronouncing *ijab* and *qabul*; instead, they can do so over an internet network telecommunication. These two couples practise this type of marriage.

Several Islamic legal scholars have examined the topic of online marriage contracts. For instance, Muhammad Alwi al-Maliki and Asep Saepudin Jahar concluded that scholars have different opinions regarding the validity of marriage contracts conducted via teleconferencing. This difference stems from variations in the methodology of interpreting the Qur'an and Hadith texts, responses to advancements in science and technology, and differences in identifying and applying *ittiḥād al-majlis* (the coming together of parties in a contract).⁴ M. Misbahul Amin emphasized that the identification and application of *ittiḥād al-majlis* contribute to the differences of opinion among scholars regarding the validity of video call marriages, specifically whether *ittiḥād al-majlis* is considered the ultimate goal (*maqṣad*) or merely a means (*wasīlah*) to achieve the goal of eliminating deception (*gharar*) in the marriage contract.⁵

² Hari Widiyanto, "Konsep Pernikahan Dalam Islam (Studi Fenomenologis Penundaan Pernikahan Di Masa Pandemi)," *Jurnal Islam Nusantara* 4, no. 1 (2020), p. 103–10.

³ Hellena Souisa, "Terpisah Ribuan Kilometer Karena Pandemi Corona, Pasangan Indonesia Australia Tetap Menikah Lewat Zoom," *NEWS*, 2020, <https://www.abc.net.au/indonesian/2020-07-01/pasangan-indonesia-dan-australia-menggelar-akad-nikah-lewat-zoom/12407008>.

⁴ Muhammad Alwi Al-Maliki and Asep Saepudin Jahar, "Dinamika Hukum Akad Nikah Via Teleconference Di Indonesia," *Jurnal Indo-Islamika* 10, no. 2 (2020), p. 136–51.

⁵ M Misbahul Amin, "Studi Analisis Akad Nikah Menggunakan Video Call Perspektif Maqoshid Al-Syariah dan Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan," *Ustratuna: Jurnal Hukum Keluarga Islam* 3, no. 2 (2020), p. 88–108.

On the other hand, Muhajir views telephone marriages as invalid, as they contradict Sharia norms by potentially causing ambiguity and uncertainty with negative consequences.⁶ In contrast, Mohammad Aniq Yasrony concluded that marriages conducted via teleconferencing are valid according to Islamic law, based on the argument of *maṣlāḥah mursalah* (public interest).⁷ Furthermore, Wardah Nuroniyah suggests that in the practice of online marriage contracts, specific conditions must be met for the contract to be valid. This includes having additional witnesses, totalling four witnesses, with two witnesses present with the bride's guardian and two with the prospective groom. Wardah Nuroniyah also proposes another requirement that the individuals intending to marry are not in the same area to avoid negative assumptions from the local community.⁸

According to Ḥamzah Abd al-Nāṣir, marriage contracts conducted via teleconferencing can only be considered valid in emergencies. This means that if the guardian or the prospective groom, or both, are unable to travel and meet in one gathering, then a marriage contract via teleconferencing can be implemented and deemed legally valid. A marriage contract conducted solely through correspondence, such as email or fax, is analogized to a valid written agreement by Hanafi scholars. On the other hand, a marriage contract that involves video calls is compared to a direct in-person contract, as both the guardian and the prospective groom can listen to each other's voices in real-time and have face-to-face interaction through wireless networks. Similarly, if a contract conducted through correspondence is deemed valid by Hanafi scholars, then a contract conducted via video call should also be considered valid.⁹

Muhammad Khalaf Muhammad Bani Salamah asserts that all jurists unanimously agree on the invalidity of a written marriage contract when both parties (the guardian and the prospective groom) are physically present in the contract assembly, provided there is a valid Islamic excuse such as being unable to speak. However, regarding written marriage contracts conducted through the internet where both parties are not physically present in the same assembly, scholars hold differing opinions. Some scholars argue that it is invalid based on the analogy (*qiyās*) between written contracts and contracts made through

⁶ Muhajir Muhajir, "Studi Analisis Putusan Pengadilan Agama Jakarta Selatan No. 1751/P/1989 Tentang Perkawinan Melalui Telepon," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 5, no. 1 (2018), p. 9–19.

⁷ Muhammad Aniq Yasrony, "Akad Nikah Via Teleconference Perspektif Mashlahah Al-Mursalah" Al-Hukama, (2017).

⁸ Wardah Nuroniyah, "Analisis Akad Nikah Via Teleconference Menurut Fiqih Mazhab Dan Hukum Positif Indonesia," *Mahkamah: Jurnal Kajian Hukum Islam* 2, no. 1 (2017).

⁹ Ḥamzah Abd al-Nāṣir, *'Aqd Al-Zawāj 'Abr Wasā'Il Al-Ittiṣāl Al-Hadīthiyah*, (Aljazā'ir: al-Baḥth al-'Ilmī fī Kulliyat al-Aḥwāl al-Shakhṣiyah Qism al-Ḥuqūq, 2014).

indirect expressions (*kināyah*), which are deemed invalid. On the other hand, some scholars consider such contracts valid due to a valid Islamic excuse: the extreme difficulty for both parties to meet in person.¹⁰ Habib Shulton Asnawi concludes that the status of marriage conducted via telephone is valid, both from the perspective of Shariah and the government. In this regard, the Shariah perspective refers to the opinion of the Hanafī school of thought, which understands *ittiḥād al-majlis* (the unity of the assembly) as a condition for the necessity of continuity between the offer (*ījāb*) and acceptance (*qabūl*). This means that the *ittiḥād al-majlis* required in the marriage contract serve as a means to ensure the continuous connection between the offer pronounced by the guardian and the acceptance pronounced by the prospective spouse, without requiring them to be physically present in the same location.¹¹

Thus, the difference in this research lies in the approaches and perspectives used to analyze the issue. Previous studies have made significant contributions in presenting various viewpoints and arguments related to the validity of marriage through teleconferencing. Each study refers to differences in methods of interpreting the texts of the Qur'an and Hadith, responses to scientific and technological advancements, identification and application of *ittiḥād al-majlis*, *maṣlāḥah* (public interest), *maqṣad* (objective), *udzur syar'i* (legal excuse), and the perspectives of different schools of thought. Therefore, this research provides a novel contribution by utilizing the concept of *maṣlāḥah* al-Būṭī as a yardstick for analyzing the *maṣlāḥah* derived from the provisions issued by three global fatwa institutions.

The law and legality of *sharā'* for this kind of marriage are not new. Several years earlier, fatwa institutions around the world had discussed and discussed this type of marriage. Among these fatwa institutions, three fatwa institutions are well-known and can be said to be worthy of reference for other fatwa institutions, namely: *Ḍār al-Iftā al-Miṣriyah* in Egypt, *Ḍār al-Iftā al-'Irāqiyah* in Iraq and *al-Majlis al-Islamī al-Sūrī* in Syria. These fatwa institutions view that online marriage laws can be justified in *shara'* terms and conditions that apply. This is because the three institutions see a *mashallah* side of marriage for some people or groups. This study will focus on the *maṣlāḥah* for online marriage contracts from the fatwa issued by the three fatwa institutions. To further develop the problem, this research is designed into the following issues;

¹⁰ Muhammad Khalaf Muhammad Bani Salamah, "Mashrū'iyah 'Uqūd Al-Zawāj Bi Al-Kitābah 'Abr Al-Internet," *Al-Jāmi'ah Al-Islāmiyah Kulliyah Al-Dirāsāt Al-Islāmiyah* 23, no. 2 (2014).

¹¹ Habib Shulton Asnawi, "Pernikahan Melalui Telepon dan Reformasi Hukum Islam Di Indonesia," *Al-Mazaahib: Jurnal Perbandingan Hukum* 1, no. 1 (2012).

(i) Urgency of the online marriage contract; (ii) *Maṣlāḥah* for the online marriage contract fatwa issued by the three fatwa institutions.

This research will use the concept of *maṣlāḥah* al-Būṭī, which is in his dissertation entitled "*Ḍawābiṭ al-Maṣlāḥah fī al-Sharī'at al-Islāmiyah*". The idea of *maṣlāḥah* al-Būṭī will be a barometer of the *maṣlāḥah* that is in this online marriage contract, whether it is classified as a *maṣlāḥah muktabarah* or *ghair muktabarah*, so that it can produce conclusions on *maṣlāḥah* from the mandates of online marriage contracts from the three institutions.

This research will try to dig deeper into the significant arguments from the *maṣlāḥah*, which form the basis of three fatwa institutions that issue online marriage fatwas, and analyze them with the concept of *maṣlāḥah* according to al-Būṭī's point of view in his book "*Ḍawābiṭ al-Maṣlāḥah fī al-Sharī'at al-Islāmiyah*", be it *maṣlāḥah* or *madharrat* that will emerge from this kind of marriage.

The novelty of this research lies in the utilization of the concept of *maṣlāḥah* al-Būṭī concerning online marriage contracts. Furthermore, this study delves deeper into the significant arguments underlying the *maṣlāḥah* (public interest) that underpins the online marriage fatwas issued by three institutions. These arguments are then analyzed using the *maṣlāḥah* concept from the perspective of Al-Būṭī, as outlined in his book "*Ḍawābiṭ al-Maṣlāḥah fī al-Sharī'at al-Islāmiyah*" (The Principles of *maṣlāḥah* in Islamic Law). The analysis aims to identify the *maṣlāḥah* (benefit) or *madharat* (harm) that arise in relation to this type of marriage. Overall, the novelty of this article lies in the exploration and application of Al-Būṭī's views on *maṣlāḥah* to the fatwas issued by various institutions regarding online marriage.

The method used in the data analysis process is the content analysis method. First, the content analysis method is used to see the concept of *maṣlāḥah*, which according to al-Būṭī offers in his book "*Ḍawābiṭ al-Maṣlāḥah fī al-Sharī'at al-Islāmiyah*". Then the idea of *maṣlāḥah* al-Būṭī will be qualitatively applied to online marriage contracts that are in the fatwas of world fatwa institutions. This is done to analyze how deep and far the relevance of the concept of *maṣlāḥah* al-Būṭī is to the edicts of online marriage contracts.¹²

Law of Marriage Contracts Online

The case of online marriage contracts has caused quite a stir and disputes among contemporary scholars so that they have disagreements in giving the law

¹² Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, Bandung: Remaja Rosdakarya, 2002, 163. Faisal Ananda Arfa and Watni Marpaung, *Metodologi Penelitian Hukum Islam*, Jakarta: Kencana, 2018.

for online marriage contracts, which is a matter of *ijtihadī*. Debates between Islamic scholars since the emergence of online marriage contract cases until now over the law have led to two groups of scholars opposing each other. One group says it is legal, and the other says it is invalid.¹³

The opinions of scholars who are against or are more inclined not to legalize online marriage contracts argue that apart from the *'illat*, there are many loopholes for manipulation and elements of fraud in the process, also because they see that this marriage is not just a *mu'amalah* contract/transaction, but rather leans towards the ta-da element. His *'abbudiyyah*, is confirmed by the following word of Allah Ta'ālā: "*And how are you going to take it back, even though you have been associating with each other (as husband and wife). And they (your wives) have taken a strong agreement (marriage bond) from you.*" (Q.S. Al-Nisa [4]: 21).

Nawawi al-Bantanī, in his commentary entitled *Murāḥ Labīd* interprets the word "مِيثَاقًا غَلِيظًا" which means a firm agreement is a marriage, in which this marriage is not just a transaction like *mu'amalah*. Still, there is also an element of the agreement Allah made for every person who makes a marriage contract.¹⁴ Therefore, to strengthen the meaning of the sacred agreement, Rasulullah PBUH said: "*Fear Allah in matters of women. Verily, you have taken them as a trust from Allah and justified their genitals with the word of Allah.*"

They see that the nature of *tabbudiyyah* is greater than the nature of *mu'amalah*, so the procedures and practices must be precisely the same and according to what the Prophet PBUH taught, namely that the contract is directly in one place. As a result, this group views the marriage contract as distinct from other *mu'amalah* contracts/transactions, such as buying and selling or pawning.

The opinions of scholars who are pro with online marriage contracts argue that with this increasingly rapid technological development, the elements of manipulation and fraud mentioned by the contra groups can be contained and eliminated. This can be realized with adequate equipment and facilities, especially now. It is not difficult to meet face to face and talk in real-time like a typical wedding contract. Therefore, all modern tools and facilities, such as the internet and its applications, can strengthen the implementation of online

¹³ Ashar Ashar, "Akad Nikah Via Internet," *Mazahib: Jurnal Pemikiran Hukum Islam* 11, no. 1 (2013): 27.

¹⁴ Muhammad ibn Umar Al-Nawawī, *Murāḥ Labīd Li Kashf Ma'nā Al-Qur`ān Al-Majīd* (Beirut: Dār al-kutub al-ilmiyyah, 1417), 190.

maṣlāḥah marriage contracts without reducing the substance of a marriage contract.¹⁵

Second, regarding the essence and form of marriage, the group pro for the validity of this kind of marriage contract differs from the previous group. They instead see marriage is a matter of worship (*tabbudi*) more looking at the other side, which is a *mu'amalah* transaction, or it can be said the nature of *mu'amalah* in the marriage contract is stronger than the nature of its *'ubudiyyah*, so that in the procedure for the marriage contract it is equated with the procedures for other *mu'amalah* contracts/transactions such as buying and selling and mortgages, which will be more flexible and not fundamentalist.

Arguments for Online Marriage Fatwa

1. Argumentation of Dār Al-Iftā al-Miṣriyah

Dār Al-Iftā al-Miṣriyah in 1997 M. under the auspices of the mufti 'Aṭiyyah Ṣaqr has discussed a little about the marriage contract which is held remotely assisted by a communication device that can display audio and visual simultaneously, which was intended initially for to questions about warrants that are owned by teleconference *maṣlāḥah*, namely telephones that can only be connected by audio, without being accompanied by visuals.¹⁶

In the fatwa, he continued by giving an analogy that if in the future, when technology develops and advances, where there are communication tools that can connect audio and visual simultaneously at one time, then at that time, the figures and voices of both parties will be verified those who carry out marriage contract transactions consisting of *ijāb* and *qabūl* can be realized, and if this is realized, then it can be said that this kind of contract is legally valid.

He argued that if indeed the reason for not legitimizing the telephone *maṣlāḥah* marriage contract is the difficulty of witnesses verifying the voices and owners of the voices of both parties which carry out the contract, then when the reason or *māni'* disappears with technological advances such as what can be done by internet network (online) *maṣlāḥah* that connects audio and visual at one time, the contract law becomes valid.¹⁷

What 'Aṭiyyah Ṣaqr disclosed is following the *qa'idah fiqhiyyah* which reads:¹⁸

¹⁵ Miftah Farid, "Nikah Online Dalam Perspektif Hukum," *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 5, no. 1 (2018), p. 179.

¹⁶ Biografi Dār al Iftā' al-Miṣriyah, "Dār Al Iftā' Al-Miṣriyah," 2021, 500, <https://www.dar-alifta.org/AR/aboutdar.aspx?ID=101>.

¹⁷ Biografi Dār al Iftā' al-Miṣriyah, 500.

¹⁸ Muhammad Ṣhidqī ibn Ahmad Abu Al-Hārīts Al-Ghazzī, *Mausū'ah Al-Qawā'id Al-Fiqhiyyah* (Baerut: al-Muassasah al-Risālah 2003, 2003).

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Meaning: If the *māni'* (obstacle) disappears, then the original law (which was prevented by *māni'*) returns.

The legality of long-distance marriage contracts using communication tools is hindered because of a *māni'*, namely the inability or difficulty of witnessing and verifying the two witnesses against the parties carrying out the marriage contract. Therefore, when testimony can be realized with today's technology that uses the internet network so that it allows both parties to be seen and heard at the same time, then at that moment, the *māni'* is lifted or lost, so that the contract can be said to be legally valid in shar'ah Islam.

2. Argumentation of Dār Al-Iftā al-'Irāqiyah

Dār al-Iftā al-'Irāqiyah views that the root of the problem of the pros and cons of the legality of online marriages or similar ones using modern communication tools does not lie in the requirement of *ittihād al majlis* (one place) when *ījāb* and *qabūl*, but because it is difficult for two witnesses listening to the marriage contract which consists of *ījāb* and *qabūl*, and the difficulty of ascertaining the figure of the groom or the bride's guardian who will perform the marriage contract.¹⁹

Shaikh Mahdī bin Ahmad Al-Sumaida'ī who is the Grand Mufti of the Republic of Iraq, argued that the condition for *ittihād al majlis* (one place) in a marriage does not require continuity between *ījāb* and *qabūl*, this is following the Hambali school of thought mentioned by Shaikh Manṣūr ibn Yūnus ibn Idrīs al-Bahūtī in his book *kashshāf al-Qinā' sharh* from the book *Matan al-Iqnā'* by Sharafuddīn Abī al-Najā Mūsā ibn Ahmad ibn Sālim ibn 'Īsā ibn Sālim al-Maqdisī al-Hajawī al-Dimashqī, he said:

"And if *qabūl* is pronounced late from *ījāb*, it can still be said to be valid as long as both of them are in the same majlis (one place) and are not busy with matters that can cause the contract to be terminated according to custom, even though the separation is long; and if the two separate before the *qabūl* is said and after the *ījāb* is said, then the *ījāb* is void (invalid), as well as if both of them are busy with things that can cause the contract to be terminated according to custom; for it is more like looking away than answering him."²⁰

¹⁹ Biografi Dār al Iftā' al-Miṣriyah, "Dār Al Iftā' Al-Miṣriyah."

²⁰ Manṣūr ibn Yūnus ibn Idrīs Al-Bahūtī, *Kashshāf Al-Qinā' Sharh 'an Matn Al-Iqnā'* (Beirut: Ālam a-Kutub, 1983), 41.

According to Al-Sumaidaī, a contract held at a wedding using a communication tool in the form of an internet network (online) or teleconference *maṣlāḥah* is still categorized as a contract carried out in one *majlis*. This is analogous to the meaning of *ittihād al-majlis* mentioned by Shaikh Maṣṣūr ibn Yūnus ibn Idrīs al-Bahūtī, which he does not require in *ittihād al-majlis* to be continuous or continuous in *ījāb* and *qabūl*, so that in the practice of a marriage contract that in the form of *ījāb* and *qabūl* which are carried out by teleconference *maṣlāḥah* or internet network (online) at one time is called a marriage contract that takes place in one *majlis* so that it does not eliminate the meaning of *ittihād al-majlis* which the *fuqahās* have required.

The meaning of *ittihād al-majlis* in the teleconference *maṣlāḥah* marriage contract, which is not accompanied by a visual video, is rather challenging to understand, so it is natural that some scholars are still hesitant to accept the validity of a contract like this. Still, this contract occurs through a communication device that simultaneously displays sound and images as shown with a video call through the internet network (online). Therefore, the meaning of *ittihād al-majlis* will be more easily recognized and accepted because not only the voice but also live video at the same time can also be carried out and seen by the witnesses who are in the marriage contract.²¹

3. Argumentation of al-Majlis al-Islamī al-Sūrī

As for al-Majlis al-Islamī Al-Sūrī emphasized that long-distance marriages which take place with the help of communication devices either in the form of telephones or internet networks that can allow connecting audio and visuals are carried out because it is not possible to carry out ordinary (conventional) marriages. Therefore, maintaining each of the pillars and conditions of the wedding will be more difficult due to the distance that separates the two parties who will enter into a marriage contract, so the verification of *ījāb* or *qabūl* carried out by witnesses is not as easy as an ordinary marriage contract.²²

According to al-Majlis al-Islamī Al-Sūrī, the difficulty of verification is what causes contemporary scholars to have disagreements in determining the legality of teleconference *maṣlāḥah* marriage contracts. Some scholars who view the validity of this kind of marriage contract require that there be no manipulation of any element when the agreement takes place and, that the network or sound is not cut off, that both parties, accompanied by two

²¹ Farid, "Nikah Online Dalam Perspektif Hukum," 180–81.

²² Al-Majlis al-Islāmī al-Sūrī, "Biografī Al-Majlis Al-Islāmī Al-Sūrī (Dewan Islam Suriah)," n.d., https://sy-sic.com/?page_id=2330.

witnesses, can hear clearly and understand at the same time, and if the two witnesses only hear only from the groom's side, or vice versa, namely only hearing from the groom's guardian, then the marriage contract is considered invalid.

As for marriage contracts that are held via the internet network (online) employing video conferencing, al-Majlis al-Islamī Al-Sūrī views this kind of contract as valid with the argument of *maḥmūlawy*, which is that if only the teleconference *maṣlāḥah* marriage which can only be witnessed is sound, then some contemporary scholars consider it legally valid, so this kind of marriage contract (via videoconference) should be regarded as more valid because there are fewer opportunities for manipulation. Furthermore, witness verification is a more convincing contract because it's not just voting; witnesses can see both parties carrying out the marriage contract.

Application of the *Maṣlāḥah* Al-Būṭī Concept to Online Marriage Contract Fatwas Issued by World Fatwa Institutions

At least, there are five limitations in applying the concept of *maṣlāḥah* al-Būṭī to online marriage contracts, which will reveal whether the legality of online marriage contracts issued by three world fatwa institutions - Dār al-Iftā al-Miṣriyah, Dār al-Iftā Al-'Irāqiyah and al-Majlis al-Islamī al-Sūrī - is a *maṣlāḥah* ḥaqīqī and *mu'tabarāh* in sharī'ah or a *maḍarat* and *maḥsadah*.

Maqāṣid sharī'ah revolves around five things; the first is *hiḥẓ al-dīn* (guarding religion); second *hiḥẓ al-naḥs* (guarding the soul); third, *hiḥẓ al-'aql* (guarding the mind), fourth, *hiḥẓ al-naṣl* (guarding offspring); and the fifth is *hiḥẓ al-māl* (safekeeping). Everything that refers to the maintenance of these five things is called *maṣlāḥah*, and vice versa; everything that refers to the destruction of these five things is called *maḥsadah*.²³

First, *hiḥẓ al-dīn* (safeguarding religion), if viewed from this point of view, the emergence of a fatwa regarding the validity of online marriage contracts can cause the loss of the *ta'abbudī* element in marriage, which in marriage is not just an ordinary transaction like other *mu'amalah*. Still, there is also an element of worship that is so sacred and cannot be contested. This can be

²³ Abdul Hameed Badmas Yusuf, "A Study of Conceptual Foundations of Maqāṣid al-Sharī'ah (objectives of Islamic Law) as expounded by classical Muslim Jurists," *The Islamic Quarterly* 64, No. 4 (2023). Saim Kayadibi, "The State As an Essential Value (Ḍarūriyyāt) of the Maqāṣid Al-Sharī'ah," *Ahkam: Jurnal Ilmu Syariah* 19, no. 1 (2019). Muhammad Amin Suma, et.al., "The Implementation of Shari'a in Aceh: Between the Ideal and Factual Achievements," *Ahkam: Jurnal Ilmu Syariah* 20, no. 1 (2020). Ali Sodiqin, "Science-Based Ijtihad: Religious and Scientific Dialectic on Fatwas Regarding Congregational Worships Amid the Covid-19 Pandemic," *Ijtihad: Jurnal Wacana Hukum Islam* 21, No. 1 (2021).

seen from the word "مِيثَاقًا غَلِيظًا", which is in the al-Qur`ān sura al-Nisa verse 21. Abdullah ibn Ahmad al-Nasafī in his commentary, explains that the word "مِيثَاقًا غَلِيظًا" in al-Qur`ān sura al-Nisa verse 21 has the meaning an agreement that Allah made to his servants to maintain the honour of women. From this, it can be seen that the agreement and contract that is made in marriage is not between a man and a woman or the groom and the bride's guardian, but between a servant and Allah *subḥānahū wa Ta'ālā*, and what is even more interesting, the word "ميثاق" (promise or bond) totalling 11 words in the Qur`ān. All of them show a promise that Allah *subḥānahū wa Ta'ālā* demands from his servants. It can be concluded from this that all matters described in the Qur`ān and in which there is the word "ميثاق", then these cases have an element of worship whose practice and procedure cannot be changed according to human will because if not, it will eliminate the element of worship (*ta'abbudī*) in it. This is in accordance with the opinion of the majority of madhhab Shāfi'ī scholars such as al-Imam al-Ghazālī Imam Haramain and others who state that the *lafadh* of the marriage contract has an element of worship (*ta'abbudī*), which is different from *mu'āmalah* such as buying and selling and others.²⁴

Second, from the point of view of *hifz al-nafs* (safeguarding the soul), the fatwa on the legality of online marriage is a solution for the survival of some people,²⁵ especially in countries currently in conflict, such as Syria. Because it is impossible to meet one another, carrying out an online marriage contract is necessary. This is the main reason that made al-Majlis al-Islāmī al-Sūrī act and issued a fatwa on the validity of online marriages for some people who cannot meet and hold a marriage contract as usual or by way of proxy and are forced to carry out a marriage contract to be maintained and protecting the rights of the Syrian people.²⁶

The three fatwa institutions (Dār al-Iftā al-Miṣriyah, Dār al-Iftā Al-'Irāqiyah and al-Majlis al-Islāmī al-Sūrī) in their fatwas, which legalize online marriage contracts also have stringent provisions, where the three require not there was suspicion of fraud on both sides. Suppose at the time the contract is suspected of manipulation. In that case, the contract is invalid because if it is

²⁴ Muhammad ibn Muhammad Abū Hāmid Al-Ghazālī, *Al-Wasīṭ Fī Al-Madhhab* (Cairo: Dār al-Salām, 1417), p. 100. Abdul Malik ibn Abdullah ibn Yūsuf ibn Muhammad Al-Juwaini Abu al-Ma'ālī, *Nihāyat Al-Maṭlab Fī Dirāyat Al-Madhhab*, in *I* (Cairo: Dār al-Minhāj, 2007), p. 10.

²⁵ Iffatin Nur and Reni Puspitasari, "Postgender Fiqh: The Views of MUI's and KUPI's Ulema on Postgenderism from Maqāṣid Sharī'ah Perspective," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 18, no. 1 (2023), p. 152–76.

²⁶ Al-Majlis al-Islāmī al-Sūrī, "Biografi Al-Majlis Al-Islāmī Al-Sūrī (Dewan Islam Suriah)."

still valid, then what originally wanted to bring *maṣlāḥah* from the point of view of *hiḏz al-naḑs* (guarding the soul) turns upside down, which brings *maḑsadah*.

Third, from the point of view of *hiḏz al-'aql* (safeguarding one's mind),²⁷ the fatwa on online marriage contracts can be a bridge to protect one's mind. This can be illustrated to someone who needs to get married but cannot do it because of the distance that separates the groom and the bride's guardian, if allowed to postpone the wedding, it is likely that person will fall into bad deeds, whether adultery or alcohol. Therefore, many scholars believe that by marriage, one's mind will be healthier, think positively, and avoid madness. As al-Imam al-Haramain has mentioned in his book *Nihāyat al-Maṭlab fī Dirāyat al-Madḥhab*, he said:²⁸

وهو من أسباب زوال الجنون كما أن العزوبة من أسباب الجنون

Meaning: Marriage is one of the reasons someone recovers from being crazy, and being single is one of the reasons someone goes crazy.

However, according to the author's opinion, this *maṣlāḥah* related to *hiḏz al-'aql* (safeguarding the mind), which is in the form of guarding the mind by carrying out *maṣlāḥah* marriages online, can only be realized in someone who will marry the woman of his choice, and be in one place. However, they cannot carry out the marriage contract because the bride's guardian is in a different location, as happened to the couple Sirojuddin Arif and Halimatus Sa'diyah, who are already in the same place, namely in Oxford, England. Therefore, to legalize the relationship, the prospective groom is forced to enter into a long-distance marriage contract held at Oxford University with the guardian of the prospective bride, who is in Cirebon-Indonesia.

On the other hand, if the couple is separated, as is the case in most cases, then *hiḏz al-'aql* (guarding the mind) cannot be realized because by marrying them online, they cannot fulfil their biological needs. getting married or not is the same. It could even be that the physical conditions blocked before marriage increased and soared after marriage, and caused the man's mind to be more unstable than before, so he was afraid it would bring greater *maḑsadah*.

Fourth, at a glance from the point of view of *hiḏz al-naṣl* (safeguarding offspring). When viewed from the perspective of *hiḏz al-naṣl/al-ansāb*, online marriage contracts have a *maṣlāḥah* in them, namely making it easier to have

²⁷ Iffatin Nur, et.al., "Maqāṣid Al-Sharī 'at: The Main Reference and Ethical Spiritual Foundation for the Dynamization Process of Islamic Law," *Aḥkam: Jurnal Ilmu Syariah* 20, no. 2 (2020), p. 331–60.

²⁸ Abdul Malik ibn Abdullah ibn Yūsuf ibn Muhammad Al-Juwaini Abu al-Ma'ālī, "Nihāyat Al-Maṭlab Fī Dirāyat Al-Madḥhab," 43.

many offspring. But on the other hand, if measured from *hiḥẓ al-'araḍ* (safeguarding honour) it can also cause *maḥṣadah* in the future because there is no legal umbrella that specifically covers this marriage contract, so it is feared that many of the rights and honours of one of the spouses who are not fulfilled and cannot be held accountable or brought to court. Therefore, according to the *qaidah fiḥḥiyyah*, which reads:²⁹

درء المفاصد مقدم على جلب المصالح

Meaning: Rejecting *maḥṣadat* takes precedence over taking benefit.

According to the author, the fatwa on the validity of online marriage contracts from the perspective of *hiḥẓ al-'araḍ* (safeguarding honour), which is contained in *hiḥẓ al-nasl/al-ansāb* is not a *maṣlāḥah mu'tabarah*.³⁰

Fifth, from the point of view of *hiḥẓ al-māl* (safeguarding property), *maṣlāḥah* in the mandate of an online marriage contract is not very visible at the time the contract is in progress, except in one aspect, namely the low cost carried out by both parties at the reception of the agreement, because only rely on the internet network. But broader than that, the *maṣlāḥah* referred to in the aspect of *hiḥẓ al-māl* (safeguarding wealth) is after the marriage. In marriage, Islam is the entry point for the birth of new rules relating to financial aspects, such as the husband's obligation to give a dowry to his wife as proof that he is a serious and responsible man. The husband also should provide for his wife and children.

Suppose some irresponsible people carry out a fatwa on the validity of the online marriage contract. In that case, it may not be a problem that arises, but on the contrary, namely, the *maḥṣadah* that occurs from this fatwa. Because one party can efficiently run away from this responsibility. Men who run away from the burden of providing a living, or conversely, women who run away from the responsibility of looking after their husband's property. If true, this online marriage contract fatwa follows some of the opinions of scholars who allow it from an Islamic legal perspective. However, this is also a serious consideration from the standpoint of *maṣlāḥah* in the future. Hence, keeping any gaps in *maḥṣadah* that arise later is more prioritized than getting temporary

²⁹ Al-Shāḥībī Ibrāḥīm Ibn Mūsá Ibn Muhammad al-Lumakhī, "Al-Muwāḥaqāt Fī Uṣūl Al-Sharī'ah," in *VI* (Baerut: Dār al-Kutub al-'ilmīyah, 2003), p. 446.

³⁰ M Asrorun Ni'am Sholeh, "Towards a Progressive Fatwa: MUI's Response to the COVID-19 Pandemic," *Ahkam: Jurnal Ilmu Syariah* 20 (2020).

maṣlāḥah. This is following one of the *qā'idah fiqhiyyah* from *qawā'id al-khamsah*, which reads:³¹

الضرر يزال

Meaning: Mafsadat/maḍharat must be eliminated.

The online marriage contract, although on the one hand, has problems in facilitating a person in building his family life, on the other hand, has the potential to open up a *mafsadah* in his new life when he is already married, which is contrary to the fundamental purpose of a marriage that Allah *Ta'ālā* has explained in al-Qur`ān Surat ar-Rūm verse 21. This is because the parties who conduct online marriage contracts -namely distance constraints- will have difficulty getting their rights in person because of the distance that separates them. Then their marital status, which the government has not officially recorded, makes room for them to avoid each other's obligations - such as maintenance which is the husband's obligation that he does not give to his wife - because there is no law binding them both. Moreover, even online marriage contracts that have taken place at this time are contracts that are carried out by both partners whose parents are not very familiar with them, so the *kafā'ah* nature of the two couples cannot be ascertained, as happened to the couple Sirojuddin Arif and Halimatus Sa'diyah, where the guardian of the prospective bride cannot meet face to face and see her future son-in-law.³²

This issue (online *maṣlāḥah* marriage contract) is a contemporary fiqh problem that emerged in the 20th century. Therefore, neither al-Sunnah nor al-Qur`ān will be found explicitly in both naṣ or the exact text discussing and explaining this problem. However, if you look at the previous analysis, which is very much at the root of considerations of the validity of online marriage contracts, apart from the meaning of *'ittihād al majlis*, it is also caused by testimony that was carried out indirectly, as explained by three previous world fatwa institutions.

Testimony cannot be avoided, and the truth must be maintained as much as possible. If there is doubt in the affidavit in a marriage contract, then automatically, the marriage contract cannot be valid according to Islamic shari'ah. As the words of the Prophet PBUH:

³¹ Abdurrahmān ibn Abi Bakr Al-Suyūfī, *Al-Ashbāh Wa Al-Nadzā'ir*, (Baerut: Dār al-Kutub al-Ilmiyyah, 1990), p. 83. Ansori, "Qawā'id Fiqhiyyah as Islamic Epistemology and its Application at Marriage Law in Indonesia," *Juris: Jurnal Ilmiah Syariah* 21, No. 1 (2021).

³² Muhajir, "Studi Analisis Putusan Pengadilan Agama Jakarta Selatan No. 1751/P/1989 Tentang Perkawinan Melalui Telepon," 11.

" لَا يَحِلُّ نِكَاحٌ إِلَّا بِوَلِيِّ وَصَدَاقٍ وَشَاهِدَيْنِ عَدْلٍ " (رواه البيهقي)³³

Meaning: Marriage is not good unless there is a guardian (from the bride), Mahar (dowry) and two fair witnesses" (Narrated by al-Baihaqī)

As for online marriage contracts, as previously explained, the witness in the agreement is very vulnerable to manipulation. With the development of technology, things that once seemed impossible today can become honest with the help of such sophisticated technology. This manipulation starts from the voice, face, and time can occur, causing the speaker to be unable to distinguish between the real and the fake. Some software nowadays can manipulate faces, such as deep fakes, Looksery and Avatarify.³⁴

Therefore, according to the author, the online marriage contract fatwa issued by the three world fatwa institutions is contrary to the principles of hadīth or sunnah *qauliyah*, which were previously mentioned. The words of the Prophet PBUH are very concerned about testimony in a marriage which is one of the conditions for the validity of the wedding, while an online marriage contract does not support this. Although the three online fatwa institutions require this kind of marriage contract to be valid, there must be no slightest manipulation. Otherwise, it cannot be said to be accurate and move to the standard marriage contract, namely *mu'āyanah* (direct face-to-face) or through the *taukīl* method (representing someone to make a contract) as explained in his fatwa al-Majlis al-Islāmī al-Sūrī.³⁵

According to the author of a fatwa like this, it cannot be used and published in the general public for fear that irresponsible parties will use it, and considering that the manipulation elements contained in online marriage contracts will not completely disappear, the testimony cannot be said to be one hundred per cent true. Therefore, instead of taking the *ihtiyāt* (cautious) path in matters of marriage, it is more prioritized than looking at the *maṣlāḥah*.

Qiyās is the pivot for mujtahid *ijtihād*, so naturally, *qiyās* becomes the *dābiṭ* (limits) of a *maṣlāḥah*, so that we can make sure that the *maṣlāḥah* belongs to the class of *maṣlāḥah mu'tabarāh* or *maṣlāḥah mulghāh*. According to al-Būṭī, every *qiyās* will consider *maṣlāḥah*, but not vice versa. That is, the maintenance of *maṣlāḥah*, in general, is not necessarily based on the *qiyās* method because the method of maintaining *maṣlāḥah* in general also has another

³³ Muhammad al-Dārimī Ibn Ḥibbān, *Al-Ihsān Fī Taqrīb Ṣaḥīḥ Ibn Ḥibbān* (Baerut: al-Muassah al-Risālah, 1988), p. 386.

³⁴ Mahardika Putera Emas, "Problematika Akad Nikah Via Daring Dan Penyelenggaraan Walimah Selama Masa Pandemi Covid-19," *Batulis Civil Law Review* 1, no. 1 (2020), p. 74.

³⁵ Al-Majlis al-Islāmī al-Sūrī, "Biografi Al-Majlis Al-Islāmī Al-Sūrī (Dewan Islam Suriah)."

form, apart from *qiyās*, namely what is called *maṣlāḥah mursalah*. After conducting research by the author on the legal fatwa of online marriage contracts issued by three world fatwa institutions, the author does not find *qiyās* laws that conflict with the existence of a fatwa on the validity of online marriage contracts.

Al-Būṭī emphasized that when there are two or more *maṣlāḥah* in one case, then the *maṣlāḥah* which has a higher level of urgency must be prioritized as al-Būṭī has mentioned that the level of speed of *maṣlāḥah* is determined by the story of a person's need, namely from a hierarchical point of view or the level of demand and its influence on the establishment of a law. Al-Būṭī divides it into three groups, namely, *dharūriyyāh* or primary, *ḥājīyyāh* or secondary and *taḥsīniyyah* or tertiary.³⁶ Therefore, to be able to see the existence and position of the level of *maṣlāḥah* in the online marriage contract fatwa, it is necessary to analyze human needs for marriage because by knowing it directly, one can also see the level of urgency of this *maṣlāḥah* for humans.

After conducting research, it was found that the background to the issuance of the fatwa on the legality of online marriages from these three institutions was the existence of a *masaqqah* for several people in carrying out face-to-face marriage contracts, so they were forced to do it online. The *maṣlāḥah* that may be obtained from this online marriage contract is not only to make it easier for someone to carry out a marriage contract without being hindered by the distance that separates the two parties who will carry out the marriage contract. Especially during a pandemic like this, cases of online marriage contracts were previously taboo and rarely occurred, but during the COVID-19 pandemic, these marriage contracts began to occur frequently. This is due to government regulations and recommendations not to have large crowds, requests for postponing marriages, and other rules that make face-to-face meetings even more complicated, forcing some groups to carry out online *maṣlāḥah* marriage contracts.

This online wedding contract has also become easier with the help of increasingly sophisticated technology, applications such as zoom, WhatsApp video calls, Instagram, messengers and so on, which can allow a person to communicate audio and visually like face to face so that it becomes an alternative that is quite effective and efficient for today's people to conduct wedding contracts online, especially during a pandemic like this.

The level of need for *maṣlāḥah* contained in this online marriage contract cannot be averaged into one grade, and this is because the *maṣlāḥah* included in

³⁶ Al-Būṭī, *Ḍawābiṭ Al-Maṣlāḥah Fī Al-Sharī'ah Al-Īslāmiyyah* (Cairo: Mu'assasah al-Risālah, n.d.), p. 128.

this online marriage contract is closely related to the situation and condition of the perpetrator or party who will do it according to the level of need for the marriage itself, as explained in the previous chapter, this *maṣlāḥah* can be at the level of *ḍarūriyyāh*, *hājiyyah* or *tahsīniyyah* according to the situation and conditions.

According to the author, *maṣlāḥah* in an online marriage contract can become a *maṣlāḥah ḍarūriyyāh* if indeed the need for marriage is in the conditions of *ḍarūriyyāh* as well, which cannot be replaced or held back by other factors, and there is no other way to carry out the marriage except through online. However, in its application, it cannot be left alone. Still, it must be accompanied by *dawābiṭ* and conditions so strict that individuals intending to abuse the fatwa are avoided. The most important thing among the *dawābiṭ* that must be considered, as explained by the three world fatwa institutions in their fatwa, is in testimony, where witnesses are required to see and witness the ongoing contract of the two parties until it ends. In addition, there should not be the slightest doubt that there is an element of manipulation in the agreement, so if it is suspected that manipulation has occurred in the contract, the marriage contract is considered invalid. This is done because the online marriage contract is not a marriage contract whose validity is indeed agreed upon. Instead of having to use it, its use is only within a limited scope and groups. As mentioned by the scholars in the *qa'idah fiqhiyyah*, which reads:³⁷

الضرورة تقدر بقدرها

Meaning: *Ḍarūrat* is measured following the level of its urgency.

The need for *ḍarūriyyāh* for this marriage is not included in the first rank in *maqāṣid al-sharī'ah*, namely *hiḏ al-dīn*. But this five *maqāṣid al-sharī'ah* are related to each other, as has been mentioned by al-Būṭī, because indirectly, when *maṣlāḥah ḍarūriyyāh* in marriage is fulfilled, which is part of *hiḏ nafs* and *nasl*, then *maṣlāḥah ḍarūriyyah* in *hiḏ al-dīn* is realized, vice versa. So then, if the need for the marriage is not an urgent need, which means it is at the level of *hājiyyah* or secondary conditions, the *maṣlāḥah* that will materialize in the form of an online marriage contract will also be at the *maṣlāḥah hājiyyah* level. Therefore, this must look at the level of *maṣlāḥah* that arises after the online marriage contract.

In situations like this, the researcher views that the *maṣlāḥah* after the online marriage contract is at a level that must be prioritized compared to before, which is related to the rights of the husband and wife. Therefore, the

³⁷ Muhammad Muṣṭafā Al-Zuhailī, *Al-Qawā'id Al-Fiqhiyyah Wa Taṭbīqātuhā Fī Al-Madhāhib Al-'Arba'Ah* (Damaskus: Dār al-Fikr, 2006).

mafsadah that will arise from an online marriage contract will be greater than the problems, starting from the status of the marriage, which does not yet have a particular legal framework relating to online marriage contracts, manipulation or fraud, to the quality of children born as a result of online marriage contracts which have not yet been can be registered in the government because their marital status cannot be recorded in the government.

Therefore, al-Majlis al-Islamī al-Sūrī, in his fatwa, gave such a strict *dābiṭ*, the institution explained that online marriage contracts that can be said to be valid are online marriage contracts carried out via teleconference and video calls, provided that both witnesses can hear both parties when pronouncing *ijāb* and *qabūl*. They can ascertain that there is not the slightest manipulation in the contract. If there is even the slightest doubt in the minds of the witnesses, then the contract cannot be said to be valid and must be repeated in another way, be it *wakālah* or waiting until they can perform the contract face to face.

This author's view is following the *qā'idah fihiyyah* which reads:³⁸

درء المفساد أولى من جلب المصالح

Meaning: Preventing destruction (*mafāsad*) is more prioritized than achieving *maṣlāḥah*.

Finally, suppose the need for marriage is at the *tahsīniyyah* or tertiary level, at which level a person does not need marriage, whether he can provide for his partner physically and mentally or not. In that case, the mashallah of making a marriage contract online for him is also at the *maṣlāḥah tahsīniyyah* level. According to the author, the benefits arising from this online marriage contract will be greater than those obtained in a situation like this. Especially when it is seen that there are still *maṣlāḥah* that must be prioritized, as previously explained. Therefore, it can be concluded that in conditions like this, keeping *maṣlāḥah* coming from *maṣlāḥah* that is possible to be caused by an online *maṣlāḥah* marriage contract is prioritized over taking *maṣlāḥah*. Because of the *muḍharat* or *mafsadah*, as much as possible, it must be eliminated following *qā'idah fihiyyah*, which reads:³⁹

الضرر يزال

Meaning: *Mafsadat/maḍarat* must be eliminated.

Furthermore, it is no less essential to be considered by the author in determining and concluding that this online marriage contract conflicts with a

³⁸ Abdurrahmān ibn Abi Bakr, *Al-Ashbāh Wa Al-Nadzā'ir...*, p. 87.

³⁹ Abdurrahmān ibn Abi Bakr, 83.

more critical problem, namely the legal side of the government and cases that have occurred to date, where this type of contract does not yet have government laws. Which explicitly protects it so that the possibility of *mafsadah* and harm arising after the online marriage contract is greater than the *maṣlāḥah*. This is corroborated by the statement of one of the fatwa institutions, namely al-Majlis al-Islāmī al-Sūrī, at the end of his fatwa expecting the continuation of the Syrian government to regulate legislation on this online marriage contract due to the many facts related to residents of Syria in recent years, that undocumented marriage contracts have caused a lot of trouble, loss of rights, and confusion, especially in cases of divorce, complaints or disputes between spouses, and it is often impossible to collect witnesses or prove the marriage contract because instability experienced by the Syrian people.⁴⁰

Conclusions

The analysis of the application of the concept of *maṣlāḥah* al-Būṭī to the fatwas on online marriage contracts issued by the three global fatwa institutions (Dār Al-Iftā al-Miṣriyah, Dār Al-Iftā al-'Irāqiyah, al-Majlis al-Islāmī al-Sūrī) indicates that these fatwas are not in line with the widely recognized *maṣlāḥah* in Islamic law. Two main points form the basis of this conclusion. First, these fatwas contradict the five established pillars (boundaries) of *maṣlāḥah* al-Būṭī, as they do not fulfil the *maqāṣid sharī'ah*, which aims to preserve religion. The online marriage procedures that do not involve *ittihād al-majlis* (unity of the assembly) and *mu'āyanah* (direct face-to-face interaction) are not under the demands of worship and the traditional practices of marriage inherited from the Prophet Muhammad (peace be upon him). Second, the level of urgency for online marriage is related to the individual's need for marriage. Suppose this need is at the level of *ḍarūriyyah* (necessity), where a delay would lead to adultery and other sins. In that case, online marriage becomes obligatory if it is impossible to conduct it face-to-face or through *wakālah* (representation), assuming there is no manipulation during the contract. However, suppose the need is at the level of *hājīyyah* (essential need), where a delay would not lead to adultery. In that case, online marriage is not valid as it contradicts the higher priority of *maṣlāḥah ḍaruriyyah*, which is to protect rights and lineage. Finally, suppose the need is at the level of *tahsīniyyah* (improvement), where there is no desire to get married. In that case, online marriage cannot be considered valid and may even be prohibited as no recognized *maṣlāḥah mu'tabarah* (recognized benefit) is pursued in such a contract. Furthermore, a suggestion for further

⁴⁰ Al-Majlis al-Islāmī al-Sūrī, "Biografi Al-Majlis Al-Islāmī Al-Sūrī (Dewan Islam Suriah)."

research is to conduct empirical studies involving case studies or surveys to enhance the understanding of the application of the concept of *maṣlāḥah* al-Būṭī in the fatwas on online marriage contracts. The research could include interviews with scholars, religious figures, and Islamic family law practitioners to obtain a broader perspective. Additionally, a comparative analysis of related fatwas from fatwa institutions in other countries could be included in the research. The implications of the research findings could also be extended to consider their impact on legislation and policies related to Islamic family law in Indonesia. Furthermore, the research could explore other aspects of *maṣlāḥah* and its application in Islamic family law.

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