



Theory of *al-Istiṣlah* as the *Istinbāt al-Ḥukmi* Method on the MUI Fatwa

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Article History:

Received : July 31, 2023

Revised : September 7, 2023

Accepted : September 13, 2023

Online : December 07, 2023

Keywords:

MUI fatwa

Istinbāt al-Ḥukmi Method

Istiṣlah

the *uṣūl fiqh*

Islamic law

Syafi'i school

DOI:

<https://doi.org/10.56436/jocis.v2i2.239>

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Abstract

This article presents a theoretical study of *Istiṣlah* and also its application to the MUI fatwa of Jambi Province. The four fatwas studied include; fatwas about religious lectures, the bride and groom sitting side by side at wedding receptions, friendship between Muslims and other people, and fatwas about the commemoration of Islamic holidays. The main problem studied is what is the position of *Istiṣlah* and its application to the MUI fatwa of Jambi Province? This article comes from qualitative phenomenological research which examines the phenomenon of fatwa application using the *Istiṣlah* paradigm on four cases that are the focus. The results of the research show that in implementing the fatwa with the application of the principles of *al-Istiṣlah*, the Jambi MUI succeeded in getting out of its attachment to certain schools of jurisprudence. The use of fatwa using *Istiṣlah* independently is not found in the *uṣūl fiqh* of the Syafi'i school, nor in the practice of its *fiqh* issues, while the MUI fatwa uses it. The MUI fatwa continues to follow the patterns and *manhaj* outlined by sectarian scholars, even though it does not limit itself to certain sects.

Abstrak

Artikel ini menyajikan kajian teoretis *Istiṣlah* dan juga penerapannya pada fatwa MUI Provinsi Jambi. Empat fatwa yang dikaji antara lain; fatwa tentang ceramah agama, pengantin yang duduk bersanding dalam resepsi pernikahan, silaturahmi Umat Islam dengan umat lain, dan fatwa tentang peringatan Hari-hari Besar Islam. Permasalahan utama yang dikaji adalah bagaimana kedudukan *Istiṣlah* dan aplikasinya pada fatwa MUI Provinsi Jambi? Artikel ini berasal dari penelitian kualitatif fenomenologis yang mengkaji fenomena aplikasi fatwa yang berparadigma *Istiṣlah* terhadap empat kasus yang menjadi fokus. Hasil penelitian menunjukkan bahwa dalam penerapan fatwa dengan penerapan prinsip-prinsip *al-Istiṣlah*, MUI Jambi berhasil keluar dari keterikatan terhadap mazhab *fiqh* tertentu. Penggunaan fatwa dengan menggunakan *Istiṣlah* secara mandiri tidak ditemukan dalam *uṣūl fiqh* mazhab Syafi'i, pun dalam praktik masalah *fiqh*nya, sementara fatwa MUI memakainya. Fatwa MUI tetap mengikuti pola dan *manhaj* yang digariskan para ulama mazhab, sekalipun tidak membatasi diri pada mazhab tertentu.

A. Introduction

In the context of Indonesian society, fatwa issued by religious institutions, including the Indonesian Ulama Council (MUI) from the center to the regions have a great influence. In research

conducted by the Research and Development Section (*Balitbang*) of Media Indonesia,¹ it was revealed that out of 3,294 respondents who were used as research samples using the survey model, there were 1,798 (54,580/0) people who then felt determined to follow the MUI fatwa. Some people then move their accounts from conventional banks to *riba*-free Islamic banks. The survey results do not represent Indonesian Muslims as a whole. However, it provides a strong indication of the strong influence of fatwa in changing the thoughts and behavior of Muslims in Indonesia.

The facts resulting from the survey show at least two important things. First, MUI fatwa have an important meaning among Indonesian society, especially Muslims. The reality so far shows, although MUI fatwa are not legally binding, in practice they have an impact on the social order of the Indonesian nation as a whole. Second, the influence of the MUI fatwa does not only apply to Islamic society, but has also been absorbed into Indonesian laws and regulations. The urgency to pay attention to the results or consequences of an act has been introduced by Ash-Syathibi in detail in his work, *al Muwafaqat fi-Ushul al-Ahkam*. Furthermore, he explained that weighing the consequences of an action, whether the consequence is in line with *maqashid* or contrary to it, is ordered according to *syar'i*. A mujtahid may not stipulate a law, unless he has obtained sufficient knowledge about the impact that will result from the act, from the side of the *mashlahah* as well as the *mafsadat*.²

Basically, all laws that have been established by Allah SWT for His servants contain *mashlahah*, both laws in the form of commands and prohibitions. None of which escape from *mashlahah*. Because all of Allah's commands for His servants in essence contain benefits for human beings, either directly or indirectly. It's just that some feel the benefits immediately and some are felt afterwards.³ Regarding *mashlahah*, Amir Syarifuddin stated that all scholars agreed on the existence of *mashlahah* contained in the laws that had been determined by Allah SWT. It's just that, there is still polemic among scholars, especially regarding God's intention in making legal provisions. Among them, there are those who argue that God's purpose in making legal provisions is to bring about *mashlahah*. On the other hand, there are those who think that Allah stipulates laws not only to bring about *mashlahah* but purely because of His will and *qudrat*.⁴

This *mashlahah* is what is then known as *istishlah* or *mashlahah mursalah*, namely *mashlahahs* that are in line with and in line with *syara'* objectives but are not supported by specific sources of argument which legitimize or reject the *mashlahahs*. However, to what extent is this *istishlah* or *mashlahah mursalah* recognized as blasphemy? This is still a matter of controversy among *fiqh* scholars. There are groups who reject *istishlah* in law-making, and there are also groups who consider *istishlah* to be acceptable and used as a method of enacting laws. For this reason, one of the methods developed by *ushul fiqh* scholars in instituting laws from texts is *mashlahah mursalah*, namely a *maslahah* for which there is no text *juz'i* (detail) that supports it, and no one rejects it and no *Ijma'* supports it, but this *maslahah* is supported by a number of texts through *istiqrā'* (induction from a number of texts).⁵

¹The results of this survey were published on 19 December 2003. The survey was carried out in order to "test" the MUI fatwa regarding the prohibition of bank interest, which was produced at the Indonesian Ulama Ijtima' in 2003, in Jakarta.

² Asy-Syathibi, *al-Muwāfaqāt*, 10.

³ Amir Syarifuddin, *Ushul Fiqh II*, (Jakarta: Logos Wacana Ilmu, 1999), 322.

⁴ Basically, the benefit of human life is the goal of the Sharia and all the laws it contains, so as to provide goodness and happiness. On the other hand, the Shari'ah also rejects everything that damages creatures.. Mustafa Sa'id al-Khin, *Atsar al-Ikhtilaf fi al-Qawaid al-Fuqaha'*, (Kairo: Muassasah alRisalah, t.t.), 550.

⁵Nasrun Haroen, *Ushul Fiqh*, (Jakarta: Logos Publishing House, 1966), 113; Duski Ibrahim, *Metode Penetapan Hukum Islam: Membongkar Konsep al- Istiqra' al-Ma'nawi Asy-Syatibi*, (Jogjakarta: Ar-Ruzz Media, 2008), 160-161.

The issues that the MUI has requested for a fatwa are quite diverse, ranging from everyday problems that already have legal precedents to those that have never had legal precedents.⁶ In establishing a fatwa, the MUI tries to find common ground among the various schools of thought using the al-jam'u wa at-tawfiq method (combining and looking for similarities). If efforts to find common ground are not successful, then the determination of a fatwa is based on the results of ijtihād jamā'i (collective ijtihad) using the bayānī and ta'līlī methods (qiyāsī, istihsānī, illlāqī, istishlahi, and sadd adz-dzarī'ah). MUI also always pays attention to public welfare (mashālih al-'āmnaah) and maqāshid asy-syarī'ah, as well as the consequences and impacts of a legal determination.⁷ It is at this level that the Istishlahi concept is often used by MUI in establishing a fatwa.

Among the Jambi Province MUI fatwas that use the Istishlah method in determining fatwas, are as follows:

1. Fatwa on Religious Lectures and Recitations at the Ta'lim Council stipulated by the Jambi Province MUI Fatwa Commission, on March 10, 2012.⁸
2. Fatwa on Brides Sitting Side by Side at the Wedding Reception which was stipulated by the Jambi Province MUI Fatwa Commission on March 10, 2012.⁹
3. Fatwa on Muslim Gathering from one Muslim community to another, which was stipulated by the Jambi Province MUI Fatwa Commission on March 10, 2012 M.¹⁰
4. Fatwa regarding the Celebration of Islamic Holidays such as Mawlid Nabi and Isra which was stipulated by the Fatwa Commission on March 10, 2012.¹¹

The legal determination of MUI fatwa on contemporary issues using the Istishlah concept is interesting for further discussion. Therefore, this study will present a theoretical study of istishlah and also its application to the Jambi Province MUI fatwa. Based on the background of these problems, the problems that will be studied in this article include; first, what is the position of istishlah as a method of establishing fatwa? second, what is the degree of legal force of using the Istishlah method in determining Islamic law? and third, how is the application of Istishlah in establishing fatwas at the Jambi Province MUI.

B. Theoretical Framework

1. The Principle of the Universality of Islamic Law and the Public Benefit (Nazhariyyat al-Mashlahah).

Maslahah and poverty which are used as guidelines are universal, but when implemented they are often based on local and partial considerations. Because of this, the principle of fiqh is known, which says, "There are changes in law along with changes in time and place," and "the application

⁶The fatwas that have been issued by the MUI can be classified into four parts: (a) in the field of faith and religious sects; (b) Worship Area; (b) Social and Cultural Sector, and (d) Food, Medicine, Cosmetics (POM), and Science and Technology Sector. Apart from that, there are also fatwas decided through the Ijtima' of the Indonesian Fatwa Commission which are grouped according to the year the Ijtima' of the ulama took place. These two things are outside the theme of sharia economics which is specifically codified in the book Harnpunan Fatwa on Sharia Finance of the MUI National Sharia Council (Jakarta: Erlangga Publishers, 2014) which contains fatwas on sharia economics and finance.

⁷ See the description of "Guidelines and Procedures for Determining Fatwas of the Indonesian Ulema Council" in Himpunan Fatwa MUI Sejak 1975 (Edisi Terbaru) (Jakarta: Emir, 2015), 3.

⁸ Sekretariat Majelis Ulama Indonesia Provinsi Jambi, Dokumen Fatwa MUI tahun 2102.

⁹ Sekretariat Majelis Ulama Indonesia Provinsi Jambi, Dokumen Fatwa MUI tahun 2012.

¹⁰ Sekretariat Majelis Ulama Indonesia Provinsi Jambi, Dokumen Fatwa MUI tahun 2012.

¹¹ Sekretariat Majelis Ulama Indonesia Provinsi Jambi, Dokumen Fatwa MUI tahun 2012.

of a law is closely related to the presence or absence of illat." Ibn Taymiyyah said in *Mawsû'at al-Fiqh Ibn Taymiyyah*, that sharia law was revealed by Allah to humans by bringing benefit and perfecting it, eliminating damage and minimizing it, prioritizing good over harm, choosing greater benefit by allowing smaller benefit, and rejecting the greater loss by choosing the lesser loss.¹² On the basis of this principle, Islamic law can change and develop along with changes and developments in society while remaining within the corridors of the general principles that have been determined.

2. The Principle of Original Freedom (Al-Barâat al-Ashliyyah)

The principle of original freedom (al-barâat al-ashliyyah) is a very important issue in the discourse of Islamic legal thought. The urgency is not only limited to the area of halal-haram, but is broader than that. The existence of the principle of al-barâat al-ashliyyah is a reflection of Islam's concern for human nature. Based on this principle, humans are considered as creatures that are originally in a state of fitrah or free from any mistakes. However, humans have the potential to slip into the valley of error. The story of Prophet Adam strengthens the above thoughts. Allah SWT created him as a creature who is free from sin, given various privileges, placed in heaven, and lives in a situation that is free and independent (al-barâat al-ashliyyah). But after that, he got tricked by Satan which led him to a mistake. Then he repented, and Allah accepted his repentance.¹³ The theory of al-barâat al-ashliyyah is in one breath with the words of the Prophet which states that every child is born in a state of fitrah.¹⁴ The terminology of fitrah in the Hadith is an interpretation of the verses of the Koran which emphasizes that Allah SWT creates humans according to their nature.¹⁵ In addition to the principle of al-barâat al-ashliyyah, its derivative principle which is meaningful and held by fiqh experts is a rule which states:

"The basic principle on the issue of benefits is permissible".¹⁶

3. Theory of Legal Consequences (Nazhariyyat al-l'tibâr al-Mâl)

Nazhariyyat i'tibâr al-mâl is applying a law resulting from ijtihad to the object of the law itself (human). This theory was first introduced by Imam ash-Syathibi. According to him, nazhariyyat i'tibâr al-mâl is an ijtihad that seeks to apply a law in accordance with the circumstances surrounding the legal object.¹⁷ It is necessary to pay attention to the situation and conditions surrounding the legal object, because the law extracted from the Al-Qur'an and Hadith is not necessarily suitable when applied to the legal object as a whole. Therefore, in order for a legal decision issued by a mujtahid to be correct, he must pay attention to the circumstances surrounding the legal object by carrying out ijtihad tathbiqî.

The word Istishlah comes from Arabic with the origin of the word Shalaha which can be given the meaning of "good". The word Al-Istishlah means:

¹² Ibnu Taymiyyah, *Mawsû'at al-Fiqh ibni Taymiyyah* (Beirut: Dâr al-Ma'rifah, tth.), Bab al-Mashlahah, 2.

¹³ See Q.S. Al-Baqarah/2, verse 37: (YY:) (Then Adam received several sentences from his Lord, then Allah accepted his repentance. Indeed, Allah is the Most Accepting of repentance, the Most Merciful).

¹⁴ As he said: "Not every child is born except in a state of nature, then both parents are made Jews, Christians or Magi." (H.R. Muslim).

¹⁵ al-Qur'an Ar-Rum : 30.

¹⁶ Nashr Farid Muhammad Washil dan Azbdul Aziz Muhammad Qzzam, *Qawa'id Fiqhiyyah* (Jakarta: Amzah, 2009), 73. See also Muhammad Shidqi al-Burnû, *Qawâ'id al-Fiqh al-Kulliyyah* (Beirut: Muassasah ar-Risâlah, 1990), 129.

¹⁷ Asy-Syâthibî, *al-Muwâfaqât fi Ushûl al-Ahkâm* (Beirut: Dâr ar-Rasyâd al-Hadîtsah, t.t.), juz IV, 100.

فإن استصلاح: الهواء من أعون الأشياء على صحة البدن

"A desire to improve something in a healthy body.¹⁸ Among the scholars who use this term a lot is Imam Ahmad bin Hamnbal.¹⁹

As quoted from the book *al-masalih al-mursalah* written by Jalaluddin Abdurrahman, that al-Istishlah is sometimes also called Mashlahah.²⁰ This word is taken from as-false which means that something is in perfect form (bay'ah kamilah) in accordance with the intended purpose or goal, such as a pen being in its most appropriate form when used for writing and a sword being in its most appropriate form. when used for slashing.²¹ The word Mashlahah also comes from the word shalaha with the addition of "alif" at the beginning which literally means "good" as opposed to the word "bad" or "damaged". It is mashdar with the meaning of the word shalah which means "benefit". The definition of mashlahah in Arabic means "actions that encourage the goodness of humans". In a general sense, everything that is beneficial to humans, either in the sense of attracting or producing, such as generating profit or pleasure, or in the sense of rejecting or avoiding, such as rejecting harm or damage. So everything that contains benefits deserves to be called maslahah. Therefore, mashlahah contains two sides, namely attracting or bringing about benefits and rejecting or avoiding harm.²²

Second, Mashlahah hajiyah, is maslahah where the level of human life needs for him is not at the dharuri level. The form of maslahah does not directly fulfill the old basic needs, but indirectly goes in the same direction as in terms of making it easy to fulfill the needs of human life, Mashlahah hajiyah is also not fulfilled in human life, not to the point of directly causing damage to the five basic elements. , but indirectly it can lead to destruction. Examples of mashlahah hajiyah are; studying religion to uphold religion, eating for survival, sharpening the brain for perfect reason, selling him to get wealth. All of these are good deeds or maslahah at the hijaiyah level. Third, Mashlahah tahsiniyah is a maslahah whose human life needs are not up to the level of dharuri, nor up to the level of pilgrimage; but these needs need to be met in order to give perfection and beauty to human life. Mashlahah in the form of tahsini is also related to the five basic human needs.²³

Second, al-Mashlahah al-Mulgah, namely something that is considered maslahah by the mind, but is considered false because in reality it is contrary to the provisions of the Shari'a. For example, there is an opinion that equalizing the distribution of inheritance between men and women is mashlahah. However, such a conclusion is contrary to the provisions of the Shari'a, namely verse 11 of Surah An-Nisa' which emphasizes that the division of male children is twice that of female children. The existence of this contradiction shows that what is considered mashlahat is not mashlahat in the sight of Allah SWT. Third, al-Mashlahah al-Mursalah, and maslahah like this is what is meant in this paper, whose meaning is as in the definition mentioned above. Mashlahat like this is found in muamalah issues where there is no legal firmness and there is no comparison in the Qur'an and Sunnah for an analogy to be made. For example, traffic regulations with all the signs. There is no specific argument for such regulations, both in the Qur'an and the Sunnah of the

¹⁸ Al Anshar, *Lisan Al Arab*, Juz,9, 279. *Taj al Urus*, juz.1, . 606. *Al Nihayat fi al Gharib al Atasr*, Juz.4, 70.

¹⁹ Abdur Rahman I Doi, *Syari'ah Kodifikasi Hukum Islam*, (Jakarta; Rineka Cipta, 1993), 126.

²⁰ Romli SA, *Pengantar Ilmu Ushul Fiqh; Metodologi Penetapan Hukum Islam*, (Depok; Kencana, 2017), 189.

²¹ Abdallah M. Al-Husayn al-"Amiri, *Dekonstruksi Sumber Hukum Islam; Pemikiran Hukum Najm ad-Din Thufi*, (Jakarta; Gaya Media, 2004), 101.

²² Amir Syarifuddin, *Ushul Fiqh 2*, (Jakarta, Logos Wacana Ilmu, 2005), 323. See also Al Zarqa, Mustafa Ahmad, *Al-Istishlah wa al Mashalih al Mursalah fi al Syari'at al Islamiyah wa Ushul Fiqh*, Trj. Ade Dedi Rohayana, *Hukum Islam dan Perubahan Sosial*, (Jakarta: Riora Cipa, 2000), 35.

²³ Amir Syarifuddin, 327-328.

Prophet. However, such regulations are in line with the objectives of the Shari'a, which in this case is to preserve life and property.²⁴

A clear attitude in seeing istiṣlah, both positive and negative, except for the Shafi'i school. Because of this, one can see an explanation of their attitude as follows, briefly from each mujtahid, as described by Mursyidin Ar-Rahmani, in his article on the theory of al-Istiṣlah in the Application of Islamic Law, namely:

1. The Abu Hanifah School (80-150 H / 699-767 AD) The Hanafi school does not study al-Istiṣlah specifically, but al-Istiṣlah is studied together with al-Istiḥsan. Al-Istiḥsan and al-Istiṣlah are two terms that have the same meaning, but the term used is *maṣlahah al-mursalah* (the same as the Maliki school of thought), while the term al-Istiḥsan is the use of the term which is clear, as has been said. They set al-Istiḥsan on systematic rules, namely when it is necessary to correct irregularities arising from (implementation of) *qiyas*. This is by looking at the style and purpose of the Shari'a to rectify crimes and uphold justice and goodness. In studying Istiḥsan, the Hanafiyah school divides Istiḥsan into two types, namely: *Istiḥsan qiyasi* and *Istiḥsan dharurat*. Istiḥsan qiyasi can be explained in terms of *qiyas*, because it is part of *qiyas*, while *Istiḥsan dharurat* is to become a *shaqif* (brother) for al-Istiṣlah. In studying Istiṣlah, (in the Hanafiyah school it is called *maṣlahah al-mursalah*), this does not study it separately which can explain the ways and conditions for them to maintain *maṣlahat*.
This is not like what has been implemented by the Maliki school, the Hanafiyah fuqaha' make a lot of *furu'* and give fatwas with Istiḥsan iyah fatwas included in Istiḥsan dharurat, which they think istiḥsan dharurat is based on maintaining *maṣlahat*, eliminating narrowness and *siyasa syar'iyat* (*fiqh siyasa*). While the views other than the Hanafiyah school of thought, that this istiḥsan dharurat includes *maṣlahah mursalah*, as has been explained. For example: in the Hanafiyah school of thought, there is a fatwa that a woman who becomes an apostate if her husband is mentally undisciplined, then she is not divorced. Likewise, the fatwa states that a wife who is divorced by her husband while her husband is sick, the wife has the right to inherit, because her husband dies, while the wife is in *iddah*. So, Istiḥsan is a word that is considered good by mujtahids based on *tabi'at*, custom, or it seems that there is no anger (indicator) from *shari'at*.
2. The Maliki School (93-179 H/712-795 AD) The Maliki school has shown the theory of *maṣlahat al-mursalah* in a more general picture. They make Istiḥsan as a branch in the use of *maṣlahat al-mursalah* which is devoted to circumstances that are contrary to the rules of *qiyas*. Where if applying *maṣlahat* that is opposite to *qiyas*, then it will be able to get rid of the difficulties caused by *qiyas*. In the Maliki school, views *maṣlahat al-mursalah* as a separate source. This opinion is very popular in this school, because the texts of the Shari'a have shown it as in the case of *qiyas*.

Al-Syathibi stated in the book *al-Itisham*, there are 10 examples regarding al-Istiḥsan and al-Istiṣlah which have been determined by the companions and *tabi'in*. So that the conclusions that can be drawn are three limitations as assumed by the Malikiyah school. These limitations are: a. There is compatibility between *maṣlahat* and *maqashid al-sharia*, where the *maṣlahat* does not contradict the *syara'* proposition even though it is one. b. *Maṣlahat* is related to problems that are *ma'qulat* (rational) which according to *syara'* are based on maintenance of *maṣlahat*, so there is no problem place that talks about *ta'abbud* and similar *syara'* problems. c. The results of *maṣlahat al-mursalah* are returned to matters that are *dharuri* (primary) according to *syara'* and avoid narrowness in religion, so that

²⁴ Satria Effendi, *Ushul Fiqh (Jakarta; Kencana, 2012)*, 149-150. Compare with Muhamad Abu Zahrah, *Ushul Fiqih*, (Jakarta; Pustaka Firdaus, 2008), 424.

the birth of an imperfect rule is something that is obligatory except with it, then it is obligatory.²⁵

3. The Shafi'iyah School (150-204 H/769-820 M) According to Imam Syafi'i's view, syara' law has taken care of all existing problems through the texts of the Koran and Sunnah, isyara'h or by way of qiyas. So if you use istihsan and istishlah, which in essence cannot be limited regarding legal issues (shari'at). So if you use the path of Istihsan and Istishlah it will make truth and falsehood immeasurable. Shafi'i said: "Whoever makes istisan, then he has made the Shari'a." According to him, if a mufti, judge or mujtahid uses the path of istihsan, then of course his business will be in vain. Imam Syafi'i has explained specifically in the book al-Umm it is called "Cancellation of Istihsan".

4. The Hanabilah School (164-241 H/780-855 AD)

The Hanabilah school emerged by taking the same path as Imam Maliki, that views maslahat as a source that can be used as a guide in establishing syara' law. According to the Hanabilah school, a faqih can stipulate that every action that contains unseen benefits is demanded by syara' without the need for special syara' texts, and every case that brings harm or does good weighing dzarrah though, surely he will see (reply) it . And whoever does evil as big as dzarrah, surely he will see (reply) it too.

According to Najmuddin al-Thufi (from the Hanabilah school), his views are very contradictory to the opinions of the scholars and jurists above regarding mashlahat, he prioritizes mashlahat over texts or qath'i arguments when the two are contradictory.²⁶ This opinion is clearly a ra'yu which is rejected by all mu'tabarah schools of fiqh, not only by the Ahmad bin Hanbal school, because this view will lead to wasting the texts of the Shari'at simply because of a mere rational view. If it were allowed for mujtahids, judges and other scholars to perform ijtiḥad like this, of course there would be confusion in imposing and implementing a law. Because of this, the scholars and jurists agreed to reject this view, because if they agreed with this opinion, of course it would cause confusion in legal principles, especially regarding the Istishlah rule to distinguish between mashlahat and mafsada, and set sufficient boundaries.

C. Research Methods

The use of systematic methods is intended so that this research reaches the target in a precise and directed manner. This study uses a qualitative method, a method used to find knowledge of the research subject at a certain time.²⁷ Qualitative research has the following characteristics: first, it takes place in a natural setting. Second, researchers are the main data collection instrument or tool, and third, data analysis is done inductively.²⁸ As research or literature review (library research).²⁹ Some of the books used as main references include al-Muwāfaqāt Ushūl al-Ahkām by ash-Syāthibī,³⁰ al-Furūq by al-Qarāfi,³¹ I'lām al-Muwaqqi'īn 'an Rabb al-Ālamīn by Ibn al-Qayyim,³² and al- Mustashfā min 'Ilm al-Ushūl by al-Ghazālī.³³ This study uses documentation data collection

²⁵Al Syathibi, *al 'Tisham*, juz II, 307 dan 315

²⁶ Al Syathibi, *Al Muwafaqat*, juz II, 82.

²⁷Mukhtar, *Metode Praktis Penelitian Deskriptif Kualitatif*, (Jakarta, Referensi, 2013), 10.

²⁸Lexy J. Moleong, *Metodologi Penelitian Kualitatif* (Bandung: Remaja Rosdakarya, 2000), 113.

²⁹Library research is research carried out in technical literature studies, sourced from various literature, whether in the form of primary or secondary sources. This type of research is usually critical and analytical, the fruit of the researcher's mind. Moh. Nazir, *Metode Penelitian* (Jakarta: Ghalia Indonesia, 1985), 111-112.

³⁰ Abū Ishāq Ibrahim ibn Mas'ūd asy-Syāthibī, *al-Muwāfaqāt fī Ushūl al-Ahkām* (Beirut: Dār ar-Rasyād al-Haditsah, t.t.)

³¹ al-Qarāfi, *al-Furūq* (Beirut: Dar al-Ma'rifah, t.t.)

³² Ibnu al-Qayyim al-Jawziyyah, *I'lām al-Muwaqqi'īn 'an Rabb al-Ālamīn* (Beirut: Dar al-Jayl, t.t.)

³³ Abū Hāmid Muhammad al-Ghazālī, *al-Mustashfā min 'Ilm al-Ushūl* (Beirut: Dār al-Fikr, t.t.)

techniques, namely verbal data in the form of manuscripts, reports, scientific works, research reports, and so on. In this study, the verbal data referred to is a collection of MUI fatwas. To strengthen the documentation data, data collection was carried out through interviews with MUI members. The data obtained in this study were analyzed using a hermeneutic approach. The term hermeneutics³⁴ contains three elements; the world of the text, the world of the author and the world of the reader.³⁵

D. Research Results and Discussion

Of the several fatwa products, the MUI fatwa which specifically stipulates using the istishlah approach can be explained as follows:

1. Fatwas Regarding Religious Lectures

Lectures and recitations are a method of da'wah invoked by Islam as Allah's Word in Surah An-Nahl:

ادْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحُكْمِ وَالْمَوْعِظَةِ الْحَسَنَةِ ۚ وَجَادِلْهُمْ بِالَّتِي هِيَ أَحْسَنُ ۚ إِنَّ رَبَّكَ هُوَ أَعْلَمُ بِمَنْ ضَلَّ عَنْ سَبِيلِهِ ۚ وَهُوَ أَعْلَمُ
بِالْمُهْتَدِينَ

"Call (people) to the way of your Lord with wisdom and good teaching, and argue with them in a good way. Truly your Lord, He is the one who knows better who has gone astray from His way and He is the one who knows better who is guided. (An-Nahl: 125).

In the process of religious lecture activities where the target is humans as individual and social beings, which involves the attitudes and personalities of the preachers in working on the targets of da'wah in the form of living humans who have attitudes and personalities as well. This is where it will be seen that there is a relationship and mutual influence between the da'i and the target of da'wah.³⁶ As for the background to the fatwa on religious lectures, in this case, the Fatwa Commission of the Indonesian Ulema Council, Jambi Province, gave views on some of the issues raised. Observing reports from the people of Kumpeh District, Kab. Muaro Jambi, Jambi Province, through the Camat, KAPOLSEK and DANRAMIL Kumpeh, dated 28 February 2012, that lately, religious lectures and recitation activities at the Ta'lim Assembly have been routinely carried out by Muslims. In addition, the implementation of religious lectures and lectures at the Ta'lim Assembly raises questions among Muslims about their legal status. Therefore, the Jambi Provincial Council of Indonesian Ulemas considers it necessary to issue a fatwa on this matter to serve as a guideline.³⁷

Based on this, a Fatwa regarding religious lectures was stipulated, Number 01 of 2012 concerning Religious Lectures and Recitations at the Ta'lim Assembly. The Jambi Province MUI fatwa commission saw several factors into consideration in establishing the fatwa, first that Islam is a religion that has great concern for its people to increase knowledge and elevate those who have high knowledge. Second, seeking knowledge can be done both formally and non-formally (in

³⁴ Carl Braaten defines hermeneutics as a science that reflects on how a word or event that occurred in the past can be understood and meaningful in the present situation. It includes both methodological rules applied in general interpretation and epistemological assumptions. Carl Braaten, *History of Hermeneutics* (Philadelphia: Fortress, 1996), 131. See also Hans-Georg Gadamer, "Classical and Philosophical Hermeneutics," dalam *Theory, Culture and Society* (London: SAGE, 2006), vol. 23 (1), 29.

³⁵ Komaruddin Hidayat, *Memahami Bahasa Agama: Sebuah Kajian Hermeneutik* (Jakarta: Paramadina, 1996), 3.

³⁶ HM. Arifin, *Psikologi Dakwah Suatu Pengantar* (Jakarta: Bulan Bintang, 1997), 17-18

³⁷ MUI Provinsi Jambi, Nomor 01 tahun 2012 tentang "Ceramah Agama dan Pengajian pada Majelis Ta'lim."

religious lecture halls or other recitation forums), thirdly, so that every Muslim who needs it can know it, urging all parties to disseminate this fatwa.

As for the arguments for establishing a fatwa regarding religious lectures and recitation of the Ta'lim Assembly, one of them is in the word of Allah SWT in surah al-Muj is verse 11.

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا قِيلَ لَكُمْ تَفَسَّحُوا فِي الْمَجَالِسِ فَافْسَحُوا يَفْسَحِ اللَّهُ لَكُمْ وَإِذَا قِيلَ انشُرُوا فَانْشُرُوا يَرْفَعِ اللَّهُ الَّذِينَ آمَنُوا مِنْكُمْ وَالَّذِينَ أُوتُوا الْعِلْمَ دَرَجَاتٍ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ

O you who believe! If it is said to you, "Give spaciousness in the assemblies," then expand, surely Allah will make room for you. And if it is said, "Stand up," then stand up, Allah will raise (degrees) those who believe among you and those who are given knowledge by degrees. and Allah is Observant of what you do. Al-Muj is verse 11., in another verse Allah says,

وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَأُولَئِكَ هُمُ الْمُفْلِحُونَ

"And let there be a group of people who call on virtue, order (do) what is good, and prevent what is wrong. And they are the lucky ones." (Ali imran verse 104)

In addition to the verses of the Koran above, this fatwa also refers to the hadiths about the fatwa.

مَنْ خَرَجَ فِي طَلَبِ الْعِلْمِ فَهُوَ فِي سَبِيلِ اللَّهِ حَتَّى يَرْجِعَ

"Whoever goes out to seek knowledge then he is in the way of Allah until he returns". (Narrated by Tirmidhi)

طَلَبُ الْعِلْمِ فَرِيضَةٌ عَلَى كُلِّ مُسْلِمٍ

Seeking knowledge is obligatory for every Muslim. (HR. Muslim)

Therefore, why is there a fatwa issued by the MUI regarding religious lectures, namely there is unrest in society regarding the content of a religious lecture delivered by someone, in this case the content of the lecture which contains heretical teachings or teachings that are out of the context of Islamic law. This is the background to the existence of a fatwa issued by the MUI, especially the Jambi Province MUI. As Ustadz Muhammad Yusuf said, "Regarding lectures so far there has been no submission in general, but there have been complaints about lectures containing heretical teachings, which occurred in the Simpang Ahok area. Then he was investigated and finally met with an organization called Darul Tauhid Al-Qalbiyah. In the end they came to the MUI and had a dialogue and then it was confirmed that there were indeed teachings that contained heretical sects, so the MUI issued a fatwa and said that the sects were heretical sects and asked the authorities to dissolve them. Because it contains teachings that deviate from the teachings of Islam."³⁸

The Jambi Province MUI issued a fatwa regarding religious lectures containing heretical teachings, based on community reports, regarding the lecture at Simpang Ahok delivered by the Darul Tauhid Al-Qalbiyah organization. Based on the report, the MUI summoned the organization, after investigation it turned out that the teachings deviated from Islamic teachings. This led the MUI to issue a fatwa and say that the sect was indeed a deviant sect and asked the authorities to disband it because it contained teachings that deviated from Islam.

³⁸ Ustadz Muhammad Yusuf, Head of the Fatwa Division of the MUI Jambi Province, Interview was conducted on September 25, 2022, Place: Ustad Yusuf's residence, Interview was conducted in a relaxed manner between the informant and the author knowing each other or openly.

As said by Ustadz Muhammad Yusuf, as chairman of the Jambi Province MUI fatwa division, said that:

"This fatwa is included if there are complaints from the public or there are complaints from the public regarding the problems that have occurred, in this context in the form of lectures containing heretical teachings, then later the fatwa commission will convene to issue a fatwa. One of the reasons for issuing the fatwa was a proposal from the public or indeed there was a general issue raised by the central MUI so that the regional MUIs carry out *ijtihād*, as was recently held in Jakarta a national *ijtima' ulama'* in the field of fatwa, one of which discussed modern issues, such as marriage online and so on. As for the regional fatwas that we have carried out, some have arisen from public unrest and the MUI really needs to issue a fatwa immediately. So for that there are 2 styles of the MUI issuing a fatwa, namely based on complaints from the local community or those who are national issues that the fatwa commission must be involved in. The benefit of the fatwa is to make a solution through the *ijtihād* of the *ulama'* towards laws that have not yet been stipulated strictly, the Qur'an and Sunnah explicitly, of course, for matters that are new *mujtahirat*, it is necessary to issue fatwas related to new matters. who do not know the law."³⁹

Based on the results of the interview above, it can be concluded that there are two categories of fatwas procured by the MUI, namely based on complaints from the local community regarding the problems that occur, concerning social life, the fatwa is issued by the regional MUI. The benefit of the fatwa is to make a solution in responding to problems that occur in society, especially problems related to Islamic law. Regarding the issue of fatwa law, fatwa, as stated by Ibn Qayyim al-Jawzi, has limited enforcement authority. "*Taghayyarul fatwa bihasabi taghayyur al-azminah wa al-amkinah wa al-ahwal wa al-niyat*", or Fatwa can evolve over time, changes in geographical location, shifts in conditions, and shifts in intentions.⁴⁰

2. Fatwa Regarding Brides Sitting Side by Side at the Wedding Reception

Wedding receptions in *fiqh* are known as *walīmatul 'ursi* which consists of two words in Arabic, namely *al-walīmah* and *al-'urs*. *Walīmah* comes from the word *awlama* which means partying, holding banquets/feasts, or the word *al-walīmah* (*jama': walāim*) which means banquets or parties.⁴¹ While *'urs* comes from the word *a'rasa* which means holding a wedding party, or the word *al-'ursu* which means marriage.⁴² So in language, the sentence *walimatul 'ursi* means a wedding party.⁴³ Wahbah az-Zuhaili in his book *Fiqh Islam Wa Adillatuhu*, explained that according to the majority of scholars, a wedding reception is a highly recommended *sunnah* and this is a well-known opinion from the Maliki and Hanabilah schools of thought and the opinion of some Syafi'i scholars. Because it is food for happy events, the law is not obligatory.⁴⁴ In this case, Islam views holding *Walimah Urs* as an event to introduce to the wider community so that the bride and groom are known to many people, that they are a husband and wife who are legally religious and recorded in the proof of the marriage book. *Walimah Urs* is also intended to inform the public about the marriage of the bride and groom, so that when they leave together there will be no slander.⁴⁵

³⁹ Ustad Yusuf, Head of MUI Jambi, Interview Conducted on September 25, 2022, Place: Ustad Yusuf's Residence, Interview Conducted Casually Between Informants and Writers Knowing Each Other Or Openly.

⁴⁰ Riza Hadi Kusuma and Yoyok Sabar Waluyo, "Public Attitudes and Views towards the Fatwas of the Indonesian Ulema Council (MUI) Case Study of the Jakarta State Polytechnic Academic Community," Research Article, NY, p. 72.

⁴¹ Ahmad Warson Munawwir, *Al-Munawwir: Kamus Arab-Indonesia Terlengkap* (Surabaya: Pustaka Progresif, 1997), 1581.

⁴² Munawwir, *Al-Munawwir*, 915

⁴³ Munawwir, *Al-Munawwir*, 915 and 1581.

⁴⁴ Wahbah Az-Zuhaili, *Fiqh Islam Wa Adillatuhu*, trans. Abdul Hayyie al-kattani, dkk, cet. I, Jilid IX (Jakarta: Gema Insani, 2011), 121.

⁴⁵ D.R. Hasbi Indra MA, *Potret Wanita Shalehah* (Pena Madani) Jakarta 2004. 142

The aisle is where the bride and groom sit side by side which is generally located in the living room.⁴⁶ The aisle is the place where the bride and groom are compared during the wedding ceremony.⁴⁷ Based on the above opinion, it can be concluded that the aisle is where the bride and groom sit when carrying out the wedding ceremony.

According to customary law, marriage is a matter of relatives, family affairs, community affairs, degree matters and personal affairs of one another in very different relationships.⁴⁸ Pairing men and women if there are elements that can cause evil, then it is not permissible, because it will cause lust for both the groom and the community. From the description above, it can be concluded that *urf* can be used as a proposition to instigate law. However, *urf* is not a proposition that stands alone, it becomes a proposition because there is someone who supports it and has a backbone, whether in the form of *ijma'* or *maslahat*.⁴⁹ From the description above, the Jambi Province MUI Fatwa Commission established fatwa No. 03 of 2012 concerning Brides sitting side by side in the perception of marriage. Considering that firstly, the bride and groom sitting side by side at a wedding reception is a common event carried out by the community, secondly, that the bride and groom sitting side by side at a wedding reception still raises questions among some Muslims about their legal status, thirdly, that therefore the assembly Indonesian scholars of Jambi Province set a Fatwa on this matter to be guided.

The argument used by the *ijtima* of the Ulama in determining the fatwa is the Word of the Prophet Muhammad

أُغْنُوا هَذَا النِّكَاحَ وَاجْعَلُوهُ فِي الْحَمْسَاجِدِ وَاضْرِبُوهُ عَلَيْهِ بِالدُّفُوفِ

"Announce the wedding, and do it in the mosque, and (enliven) by hitting the tambourine." HR. Tirmidhi

The legal provisions regarding the fatwa of the bride and groom sitting side by side in the perception of marriage are, First, juxtaposing two brides in certain communities has become a tradition that has been carried out from generation to generation. Second, in Islam, marriage must be announced so that everyone knows as the hadith above. The three sitting side by side at a wedding reception (*walimatul ursy*) are part of the process of notifying and introducing the bride and groom to the general public, because it is considered good, this tradition is permissible, as long as the reception is not colored and accompanied by acts no immorality.⁵⁰ Based on this fatwa, it is permissible to sit side by side at a wedding reception with the aim of informing the bride and groom about what is appropriate. Opinion of Imam Hanafi and Hanafiyah scholars, Hanafiyah scholars adhere to their proposition which is called *Istihsan*. The various kinds of *ijtihad* that they carry out use *Istihsan* which rely on habits (customs), emergencies and benefits. This activity is nothing but relying on *al-manasib al-mursal*, by taking what is beneficial (*istishlah*). According to the reality, the Hanafiyah scholars are those who use the *istishlah* argument (*mashlahah mursalah*).⁵¹

⁴⁶Zuraima, *Seni Hias Pakaian Adat Wanita dan Pakaian Pengantin Wanita Jambi* (DEPDIBUD: Proyek Pengembangan Kesenian Jambi, 1983), 83.

⁴⁷Anwar Ibrahim, *Arti Lambang Dan Fungsi Tata Rias Pengantin Dalam Menanamkan Nilai-Nilai Budaya Provinsi Sumatera Barat* (Padang: Proyek Inventarisasi Dan Dokumentasi Kebudayaan Daerah, 1984), 83.

⁴⁸MR B. Ter Haar Bzn, *Asas-asas dan Susunan Hukum Adat*, terj. K. Ng Soebakti Poesponoto (Jakarta: PT Pradnya Paramita, 1974), 187.

⁴⁹Amir Syarifudin, *Ushul Fiqh Metode mengkaji dan memahami Hukum Islam secara Komprehensif* (Jakarta: Zikrul Hakim, 2004), 93.

⁵⁰MUI Provinsi Jambi, Nomor 03 tahun 2012 tentang "pengantin yang duduk bersanding dalam resepsi pernikahan."

⁵¹Khallaf, *Mashadir*, 89.

3. Fatwa of friendship between Muslims and other people

Gathering is a compound word taken from the Arabic words, *shilah* and *uterus*. The word *shilah* is rooted from the word *washl* which means "to connect" and "to collect". This means that only those who are broken and scattered are addressed by *shilah*. While the word 'womb' originally meant "affection", then developed to mean "place to contain the fetus". In an Arabic perspective, Ahmad Warson revealed that the *shilaturrahmi* is an Indonesian translation of the language *صلة الرحم*. Viewed from the aspect of *tarkib*, *lafadz صلة الرحم* is *tarkib idhofi*, namely *tarkib* (organization) consisting of *mudhof صلة* (and *mudhof ilaih الرحم*). First, special *silaturrahim*, namely *silaturrahim* which is carried out based on kinship or kinship relations that are connected by lineage or closest descendant. The value of *silaturrahim* which is based on relatives or lineage has a very high value, because it has a responsibility both morally and materially. In accordance with the words of the Prophet Muhammad which means;

"Verily, the Messenger of Allah said: "Shadaqah for the poor only gets the reward of alms, while for relatives (womb) there are two rewards, namely the reward of alms and the reward of *shilah*. (Narrated by Ibn Huzaimah)".

Second, *Shilaturrahim* in general, namely *shilaturrahim* which is carried out based on the relationship between fellow human beings (relationships of the same religion) as in (QS. Al-Hujurat [49]: 10).

"The believers are actually brothers. therefore reconcile (improve relations) between your two brothers and fear Allah, that you may receive mercy."

The Al-Qur'an as a guide for mankind, among other things, teaches to establish ties of *silaturrahim* as in (QS. An-Nisa' verse 1).

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً ۚ وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ ۚ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا -

"O people, fear your Lord, who created you from a single soul, and from him Allah created his wife; and from both of them God gave birth to many men and women. and fear Allah with (using) His name you ask one another, and (maintain) friendly relations. Verily, Allah is always guarding and watching over you."

Al-Qadhi Iyyadh said, there is no difference among the scholars regarding the law of *silaturrahmi*, they agree that *silaturrahmi* in general is obligatory and breaking it is a sin. However, connecting *silaturrahmi* has levels of degrees, some of which are higher than others.⁵² Furthermore, Rasulullah Muhammad SAW stressed strongly about the impossibility of breaking *silaturrahmi* and even warned strongly that people who break *silaturrahmi* will not enter heaven. The benefits of hospitality according to al-Faqih Abu Lais\ Samarqandi are to get the pleasure of Allah SWT, make the people we visit happy, please the angels, because angels are also very happy to hold hospitality, in addition to other benefits, namely being liked by humans, increasing a lot of sustenance and etc. Furthermore, he stated that hospitality can foster love for others, increase a sense of togetherness, a sense of kinship, strengthen and strengthen brotherhood and friendship, increase rewards after his death, and what is no less important is that he will always be remembered so that others always pray for him.⁵³

The Messenger of Allah also gave us tips so that *silaturrahmi* remains intertwined and adds to the feeling of love and mutual love for fellow Muslims, namely: Spread greetings, Connect *silaturrahmi* ties, Feed people in need, Fulfill invitations when invited, visit sick people, deliver the

⁵²Isnan Efendi Abu Abdus Syahid al-Fujuti, *Pentingnya Silaturrahmi* (Durah Warga Melayu di Qatar, 2014), 11.

⁵³H. Rachmat Syafe'i, *al-Hadis: Aqidah, Akhlak, Sosial dan Hukum*(Bandung: CV Pustaka Setia, t.th), 209.

bodies of people who are die.⁵⁴ Brotherhood or ukhuwah, is one of the teachings that gets important attention in Islam, this is as emphasized by U. stadz Muhammad Yusuf as the head of the provincial MUI Fatwa division said that:

"The fatwa regarding hospitality that we understand is tolerance, which is of course from a humanitarian point of view, however, the principle in Islam is that we prioritize relationships with people who believe, Muslims are more concerned with our relationships than non-Muslims. In terms of intimacy and community relations or affection, but our social needs are also taught to do good to anyone, because that is hospitality in the sense of maintaining social relations and not conflicting with the basic elements of our religion and mutual respect not interfering with each other and indeed this is what is recommended, with a record of tolerance that is not excessive, of course. Gatherings, gatherings that are reasonable and indeed create a harmonious relationship among members of society".⁵⁵

Based on the interview above, that tolerance between Muslims and other people is tolerance as humanity. In Islam also prioritizes relationships with believers. In terms of familiarity and social relations or a sense of affection, they are taught to do good to anyone. Gathering in question is social relations and does not conflict with the basic elements of Islam and mutual respect does not interfere with each other and always maintains harmony among fellow believers. As emphasized by Ustadz Muhammad Yusuf as chairman of the MUI fatwa commission in Jambi province said that:

"There is a fatwa about establishing good relations with fellow believers, with a background of social factors, there are many incidents involving elements of race, religious similarities that lead to divisions among people, damage to narcissism and so on that are out of place. Therefore it is necessary to have a view by the MUI. Related fatwas in order to maintain good relations between religious communities, and must support government programs.⁵⁶

As the argument quoted by the Jambi Province MUI fatwa commission in the Word of Allah SWT in surah Muhammad verses 22-23:

فَهَلْ عَسَيْتُمْ إِنْ تَوَلَّيْتُمْ أَنْ تُفْسِدُوا فِي الْأَرْضِ وَتَقَطَّعُوا أَرْحَامَكُمْ ۚ أُولَٰئِكَ الَّذِينَ لَعَنَهُمُ اللَّهُ فَأَصَمَّهُمْ وَأَعَمَّى أَبْصَارَهُمْ ۚ

"So if you were in power, you would do mischief on earth and cut off family ties? They are the people cursed by Allah; then made deaf (his hearing) and blinded his sight." (QS. Muhammad: verses 22-23).

While some scholars are of the view that hospitality is not limited to family relations and religious equality, but also human relations, because all humans come from the same ancestor, namely the prophets Adam as and Hawa. The ties of friendship between fellow human beings cannot be severed and contested as long as they do not have bad consequences (Tafsir al-Misbah: 147).

In surah An-nisa verse 1 Word of Allah SWT:

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً وَاتَّقُوا اللَّهَ الَّذِي الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا

Meaning: "O mankind, fear your Lord, who created you from one self (Adam), and (Allah) created his partner (Eve) from his (self); and from both of them Allah multiplied many men and women. Be pious to Allah in whose name you ask one another, and (maintain) family relationships. Indeed, Allah always protects and watches over you."

⁵⁴Muhammad Habibillah, *Raih Berkah Harta dengan Sedekah dan Silaturrahmi* (Cet. I; Sabil,2013), 146-147.

⁵⁵ Ustad Yusuf, Interview with the author, September 25, 2022.

⁵⁶ Ustad Yusuf, Interview with the author, September 25, 2022.

And in another Hadith, the word of the Prophet SAW said means "Whoever likes to expand his fortune and ends his death (longevity), then let him continue (the rope) of friendship". (H.R. Bukhari). Besides that, it also mentions the Hadith of the Prophet Rasulullah SAW which means "Whoever believes in Allah and the Last Day, should stay in touch" (Muttafaqun 'alaihi). The next word of Rasulullah SAW is about the importance of maintaining friendship, which means "Would you like me to show you a charity that is greater in reward than prayer and fasting?" asked Rasulullah SAW to his friends. "Of course," they replied. He then explained "you reconcile those who are fighting, reconnect broken brotherhoods, reunite separated brothers, bridge various groups in Islam, and strengthen brotherhood among them are good deeds with great rewards. Whoever wants to extend his life and expand his sustenance, let him continue the relationship" (HR. Bukhari Muslim).

On the basis of consideration of the above argument. Jambi Prov MUI stipulates a fatwa that the gathering of Muslims from one Muslim community to another is permissible with the consideration of the decision that, firstly, gathering is the key to opening the grace and help of Allah SWT. with related to friendship, then ukhuwah Islamiyah will be well established, the two Muslims/groups of Muslims and other Muslims are brothers, therefore they must protect each other's ukhuwah Islamiyah and strengthen friendly relations, because friendship can broaden sustenance, and extend life. In response to the Jambi Province MUI decision above, the background to the MUI decision is related to the friendly relations of Muslims, namely the existence of problems in society concerning harmony and peace in society. Relations between religious communities are still not conducive. For this reason, the MUI emphasized that every Muslim should always maintain ukhuwah Islamiyah and strengthen friendly relations, because friendship can increase sustenance and extend life. In general, hospitality can maintain the unity of the nation, in particular it can calm and prosper the people of Jambi.

Rasulullah SAW ordered to maintain friendship with his mother even though he had different beliefs with her.⁵⁷ Gathering is also a big matter ordered by Allah SWT so it should not be wasted. The command that shows filial piety to parents can also be seen from the words of the Prophet Muhammad, which means "Indeed, a child who is most devoted to his parents is a person's hospitality to his father's best friend's family after his father died". In the hadith above, Rasulullah SAW explained that if a child respects and does good to those who are respected and loved by their parents while they are still alive. The service recommended by Rasulullah SAW has a big social impact. The important task assigned by Allah SWT to His servants on earth is to uphold relations between families and throw away enmity between them and eliminate the causes of hatred in their souls.⁵⁸

Allah and His Messenger have promised a very big reward in the hereafter for people who stay in touch. Besides that, he provides many worldly benefits, such as compassion in the heart for creatures, breadth of fortune, good names, and several other commendable benefits.⁵⁹ Islam strongly encourages friendship. In fact, silaturahmi is the core of Islamic teachings, as narrated from Abu Umamah r.a. he said: "Amr bin Abasah as Sulami said: 'I said: 'With what did Allah send you?' 'The Messenger of Allah replied: 'Allah sent me with friendship to destroy idols and so that Allah is monotheized, He is not associated with anything.'⁶⁰ Islam is a religion that pays great attention to human relations. This is illustrated by the existence of various laws on human relations both concerning family and community relations. To strengthen relations between families, Islam

⁵⁷Al Qurthubi, *Tafsir Al Qurthubi*, trans. Ahmad Rijali Kadir (Jakarta: Pustaka Azzam: 2008) 17

⁵⁸Al Buthy, Dr. Muhammad Sa'id, *"Manhaj Robbani"* (Solo: CV. Pustaka Mantiq. 1994), 93

⁵⁹ Abdul Aziz bin Fathi as Sayyid Nada, *Ensiklopedi Adab Islam (jilid II)*, trans. Abu Ihsan al Atsari. (Pustaka Imam Syafi'i : 2007) 117.

⁶⁰Imām al-Hāfiz Abī Abdullah Muhammad bin Ismā'il bin Ibrāhīm bin al-Mughīrah, *Al-Ju'fa Al-Bukhārī, Sāḥiḥ al-Bukhārī* (Riyadh: Maktabah al-Rusy. 2006), 577.

prescribes friendship. In the view of the Qur'an and hadith, silaturahmi has a very important position. The Qur'an describes that friendship is a form of worship of a servant to his Lord. And the hadiths describe that people who are always friendly will have their lives extended and their fortunes expanded.⁶¹

The decision of the Fatwa regarding Muslim Gathering from one Muslim community to another is of course supported by the texts of the Qur'an and hadith which confirm that in essence Gathering is the key to opening the grace and help of Allah SWT. By connecting friendship, ukhuwah Islamiyah will be well established, and a Muslim/group of Muslims and other Muslims are brothers and sisters, therefore they must maintain ukhuwah Islamiyah and strengthen friendly relations, because friendship can broaden sustenance, and extend life. And that is a consideration of the istiṣlah method in determining the fatwa.

4. Fatwa Regarding Commemoration of Islamic Holidays

Commemorating Islamic Holidays is an expression for Muslims to celebrate, just like commemorating the birthday of Prophet Muhammad Saw. This is a community tradition held by Muslims to commemorate the birth of Prophet Muhammad SAW, to foster love for Rasulullah SAW. Society is closely related to historical events. The technical implementation also varies according to the aspirations of the people or the culture attached to the people who do it. The implementation is carried out by the community, even by the national government down to the sub-district level.⁶² Observing reports from the people of Kumpeh Ulu sub-district, Muaro Jambi Regency regarding the celebration of Islamic holidays such as the birthday of the Prophet Muhammad Saw. The MUI Fatwa Commission, Jambi Province. As material for consideration by the Jambi Province MUI in establishing the fatwa, firstly that the celebration of Islamic holidays such as the Prophet's Birthday and Isra' Mi'raj is an activity that has religious value and is commonly carried out by Muslims, secondly that the celebration of Islamic holidays such as the Prophet's Birthday and Isra' Mi'raj for some Muslims still raises questions about the legal basis, thirdly that because of this, the Indonesian Ulema Council of Jambi Province deems it necessary to stipulate a fatwa on this matter to serve as a guideline.

One of the arguments used by the Jambi Province MUI fatwa Commission in determining the fatwa was the Word of Allah SWT, the Qur'an Surah Yunus verse 58.

قُلْ بِفَضْلِ اللَّهِ وَبِرَحْمَتِهِ فَبِذَلِكَ فَلْيَفْرَحُوا هُوَ خَيْرٌ مِمَّا يَجْمَعُونَ

Say (Muhammad), "By the grace of Allah and His mercy, let them be happy with it. It is better than what they put together."

The words of Rasulullah SAW

عَنْ أَبِي قَتَادَةَ الْأَنْصَارِيِّ رَضِيَ اللَّهُ عَنْهُ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ سُئِلَ عَنْ صَوْمِ الْإِثْنَيْنِ فَقَالَ فِيهِ وُلِدْتُ وَفِيهِ أَنْزَلَ عَلَيَّ

"From Abi Qatada al-Anshori RA, in fact the Messenger of Allah was asked about fasting on Mondays. The Messenger of Allah replied; on that day I was born and the revelation was sent down to me ". (H.R Muslim, Abud Dawud, Tirmidhi, Nasha'I, Ibn Majah, Ahmaf, Ibn Khuzaimah, Ibn Hibban, Ibn Abi Syaibah and Baghawi).

⁶¹M Fauzi Rachman, *Islamic Relationship* (Jakarta: Erlangga, 2012), p. 161

⁶²Departemen Agama RI, *Pedoman Penyelenggaraan Peringatan Hari Besar Islam* (Jakarta: Departemen Agama RI, 2009), 9.

The commemoration of the Prophet's Birthday / Isra' Mi'raj is included in the recommendation of the Prophet's hadith to do something good and not violate Islamic Shari'ah. The Prophet said which means:

"Whoever does (pioneers) in Islam something good will get a reward for his good deeds, and he will also get a reward from those who follow after him without deducting their reward in the slightest" (Reported by Al-Imam Muslim in his Sahih Book).

Allah SWT's commands are general so that we always remember the days of Allah in His Word in Abraham:

وَذَكِّرْهُمْ بِأَيَّامِ اللَّهِ

"And remember them by the days of Allah"

Quoting an Opinion of Imam Jalaludin Syahuthi: "That he was asked by people about the deeds of the Prophet's birthday in the month of Rabiul Awal, whether the law was according to syara', whether the implementation was rewarded or not? Imam Sayuthi replied: they read stories about the history of the Prophet and stories about how it was when the Prophet was born, then they ate together and dispersed, nothing more than that. Such worship is "Bid'ah Hasanah" (Bid'ah Bait), which is rewarded for doing it because in the act of worship there is an atmosphere of raising the Prophet, giving rise to joy and joy for the birth of the glorious Prophet Muhammad SAW (I'anatut Thalibin III Pg 363).

Taking into account the above arguments and hadiths, the Jambi Province MUI Fatwa commission decided on a fatwa regarding the celebration of Islamic holidays such as the Prophet's Birthday and Isra Mi'raj by looking at the considerations of the ijtim'a of the clergy. Islam, which is a vessel for strengthening Ukhuwah Islamiyah and friendship, contains within it the values of gratitude for all the blessings bestowed by Allah SWT (the birth of the Prophet SAW is the greatest blessing for this people), and listening to the recitation of the Al-Qur'an listening to religious lectures, almsgiving, or doing other good deeds. Second, the celebration of Mawlid Nabi and Isra' Mi'raj may be carried out as long as it is aimed at future interests of great benefits for developing the quality of worship for Muslims, and as a form of love for religion and Rasulullah SAW. Third, to maintain the celebration of Mawlid Nabi and Isra' Mi'raj does not deviate from true religious rules, ethics should be followed, namely:

- a. Filling with readings shalawat to Rasulullah SAW
- b. Dhikr and increase the worship of Allah.
- c. Read the history of the Prophet Muhammad and tell the virtues and virtues of him.
- d. Giving alms to the needy or the poor.
- e. Increase friendship.
- f. Showing a sense of joy and happiness by feeling the constant presence of Rasulullah SAW in our midst.
- g. Hold recitations or ta'lim assemblies that contain advice for good and emulate the Prophet SAW

Based on the fatwa above, it can be concluded that the celebration of holidays is highly recommended, on the basis of worship, such as the celebration of Eid al-Fitr and Eid al-Adha. Apart from that, it also strengthens Ukhuwah Islamiyah and friendship, in which it contains the values of gratitude for all the blessings bestowed by Allah SWT (the birth of the Prophet SAW is the greatest blessing for the people). Among the arguments that can be used as a basis for the permissibility of commemorating the birthday of the Prophet Muhammad, is how this commemoration encourages

people to read blessings and blessings are ordered by Allah SWT in his words of the Qur'an Surah Ahzab: 56:

Surah Al Ahzab 56

إِنَّ اللَّهَ وَمَلَائِكَتَهُ يُصَلُّونَ عَلَى النَّبِيِّ يَا أَيُّهَا الَّذِينَ آمَنُوا صَلُّوا عَلَيْهِ وَسَلِّمُوا تَسْلِيمًا

It means; Verily, Allah and His angels pray for the Prophet. O you who believe. Salawat you for the Prophet and greet him with full respect.

The commemoration of the Prophet's birthday is a matter that is considered good by scholars and Muslims in all countries and has been carried out in all places. Therefore, he is demanded by Syara` based on the rules taken from the Hadith narrated by Abdullah bin Mas'ud, what is considered good by the Muslims, He is also good in the sight of Allah, and what is seen as bad by the Muslims is also bad in the eyes of Allah. The permissibility of commemorating the birthday of the Prophet has strong syar'i arguments. As the Prophet Muhammad celebrated the birth and reception of his revelation by fasting every day of his birth, namely every Monday the Prophet SAW fasted to be grateful for the birth and the beginning of receiving his revelation.

عَنْ أَبِي قَتَادَةَ الْأَنْصَارِيِّ رَضِيَ اللَّهُ عَنْهُ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ سُئِلَ عَنْ صَوْمِ الْإِثْنَيْنِ فَقَالَ فِيهِ وُلِدْتُ وَفِيهِ أُنْزِلَ عَلَيَّ

"From Abi Qotadah al-Anshori RA, in fact the Messenger of Allah was asked about fasting on Mondays. Rasulullah SAW replied: On that day I was born and the revelation was sent down to me ". (H.R. Muslim)

We are also encouraged to be happy for Allah's mercy and grace to us. Including the birth of the Prophet Muhammad SAW Who brought mercy to the universe. Allah SWT says:

قُلْ بِفَضْلِ اللَّهِ وَبِرَحْمَتِهِ فَبِذَلِكَ فَلْيَفْرَحُوا هُوَ خَيْرٌ مِمَّا يَجْمَعُونَ

"Say: "With the grace of Allah and His mercy, let them be happy with it. Allah's grace and His mercy is better than what they collect. (QS. Yunus: 58).

There is a hadith narrated by Al-Bukhari. The hadith explains that on every Monday, Abu Lahab's torment in Hell is alleviated compared to other days. This is because when the Prophet Muhammad was born, he was very happy to welcome his birth to the point that he felt the need to free his slave named Tsuwaibatuh Al-Aslamiyah. If Abu Lahab who is non-Muslim and the Koran clearly denounces him, his torment is alleviated because of the expression of joy at the birth of the Prophet Muhammad, then what about people who are Muslims who are happy with the birth of the Prophet Muhammad? KH. Hasyim Asyari believes that the commemoration of the Prophet's birthday is good if it contains good things in its implementation, such as reading verses from the Al-Quran, reading the Sirah of the Prophet. In this way, it will further increase faith and love for the Prophet Muhammad. Besides that, to strengthen brotherhood, it is recommended for people who have excess to give alms in the form of food dishes and other things. And there's nothing wrong with enlivening the celebration by presenting tambourines as happened in society, because this is permissible and had also happened during the time of the Prophet Muhammad.

For him, birthday celebrations that have become a tradition in society and are considered something good will turn into something that is haram and must be avoided if there is real disobedience in practice. His opinion is in accordance with a rule:

"Good deeds (obedience) if they lead to real disobedience, then they must be abandoned, because actually everything that points to evil is evil."

Another example in the celebration of Islamic holidays besides the birthday of the Prophet is the Isra Mi'raj Celebration. We can take from this celebration the Islamic value of the Isra Mi'raj Celebration, which is the spiritual journey of the Prophet Muhammad, one night many centuries ago which was fantastic and seemed dramatic. There are two stages of the journey, namely the horizontal stage from the Grand Mosque in Mecca to the Aqsa Mosque in Palestine. The second stage is the vertical stage from the Aqsa Mosque to Sidratul Muntaka in the seventh heaven. As Allah explains in the verse of the Qur'an:

سُبْحَنَ الَّذِي أَسْرَى بِعَبْدِهِ لَيْلًا مِّنَ الْمَسْجِدِ الْحَرَامِ إِلَى الْمَسْجِدِ الْأَقْصَا الَّذِي بَارَكْنَا حَوْلَهُ لِنُرِيَهُ مِنْ آيَاتِنَا إِنَّهُ هُوَ السَّمِيعُ الْبَصِيرُ

"Glory be to Allah, who has driven His servant one night from Al Masjid Al Haram to Al Masjid Al Aqsa which We have blessed around him so that We show him some of our signs (greatness). Verily, He is All-Hearing, All-knowing. (QS. Al Isra: 1)

Determination of fatwas regarding the celebration of Islamic Holidays seen from the method of stipulating the law and looking at the arguments and hadiths regarding the benefits of implementing these holidays is permissible by implicitly using istiṣlah, which basically in celebrating Islamic holidays may be carried out as long as it is aimed at the interests of future benefits. which is great for the development of quality of worship of Muslims, and as a form of love for religion and Rasulullah SAW.

E. Conclusion

From the results of the research that has been described in the discussion of the previous chapters, it is concluded that the problems mentioned at the beginning of this study, that the use of the concept of Al-Istiṣlah in legal Istiṣlah, is actually a continuation of the implementation of the principle of mashlahah mursalah, because Al-Istiṣlah is essentially a the form of ijtihad based on mashlahah by rejecting damage, by prioritizing to reject mafsadah. The principle of rejecting mafsadah that will result, is in order to realize benefit. In an affiliative context, the explicit use of Al-Istiṣlah is by mentioning Al-Istiṣlah as an independent argument alongside other arguments in the considerations of the fatwa. This fact emphasizes the use of an eclectic methodology (talfiq) in determining the fatwa of the Indonesian Ulema Council, which is more based on the benefit aspect. In its fatwa, MUI managed to get rid of interest in certain schools of fiqh. The use of fatwa using Al-Istiṣlah independently is not found in the ushul fiqh of the Shafi'i school, even in practice on matters of fiqh, while the MUI fatwa uses it.

However, methodologically, MUI fatwas still follow the pattern and manhaj outlined by the school's scholars, although they do not limit themselves to certain schools of thought. This is in line with the fatwa methods and procedures stipulated by the MUI, although this seems to contrast with the reality of the majority of members of the MUI fatwa commission who have a background in fiqh expertise with the Shafi'i school of thought. Some of the formulations of the scholars above, it can be understood that the conditions for performing istiṣlah in general. Mashlahah is an essential maslahah that has gone through the process of istiṣlah. Mashlahah must be logical, provide benefits and avoid harm to the majority of the people. Determination of law for a maslahah must be in line with and in harmony with syara' objectives and not contradictory with syara' arguments (Al-Qur'an, al-Sunnah, and ijma', sharih).

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