

## Online Marriage in the Perspective of *Fiqh Nawazil*

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### Abstract

Online marriage is a phenomenon of the global Muslim community, which raises different opinions from Islamic jurists about its validity because there is no Al Qur'an argument and hadith text, so it requires legal elaboration. This article discusses the online marriage practice as a phenomenon of contemporary Muslim society and online marriage from the perspective of *fiqh nawazil*. Thus, the arguments (*nash*) of the online marriage phenomenon can be explained clearly and comprehensively. This research used normative method with a conceptual, philosophical, and comparative approach between *maslahat* and *mafsadat*. The study results show that online marriage is a marriage carried out using online media, such as video calls, Zoom meetings, Webex, and Skype. Online marriage has fulfilled the pillars of marriage, but some conditions that have not been fulfilled, i.e., *ijab* and *qabul*, must be said in one location. The use of *fiqh nawazil* is very



suitable to be used as a theory of analysis by using one rule, namely "*al-Muwazanah bayna al-Mashalih wa al-Mafasid*" (considering *maslahat* and *mafsadat*). From the perspective of *Fiqh nawazil*, an online marriage contract is not legal. It is based on the *tarjih* theory "*dar-u al-Mafasid Hall min Jalbi al-Mashalih*," where preventing *mafsadat* (disadvantage) is more crucial than realizing *maslahat* (benefit).

**KEYWORDS** *Fiqh nawazil; Maslahat ; Mafsadat; Online Marriage.*

### **Abstrak**

Nikah *online* menjadi fenomena masyarakat muslim global yang memunculkan pendapat berbeda-beda dari para ahli Hukum Islam tentang keabsahannya karena belum ada dalil/*nash* sehingga membutuhkan penjabaran hukum. Artikel ini mendiskusikan tentang praktik nikah *online* sebagai fenomena masyarakat muslim kontemporer dan nikah *online* dalam perspektif *fikih nawazil*, sehingga fenomena nikah *online* dapat dijabarkan dalil/*nash*-nya secara jelas dan komprehensif. Penelitian menggunakan metode normatif dengan pendekatan konseptual, filosofis dan komparatif antara *maslahat* dan *mafsadat*. Hasil penelitian menunjukkan, nikah *online* merupakan pernikahan yang dilaksanakan dengan menggunakan media *online*, seperti *video call*, *zoom meeting*, *webex* dan *skype*. Nikah *online*, sudah memenuhi rukun nikah, namun ada syarat yang belum terpenuhi yaitu *ijab* dan *qabul* harus diucapkan dalam satu majelis. Penggunaan *fikih nawazil* sangat layak untuk dijadikan teori analisis dengan menggunakan satu kaidah yaitu *al-Muwazanah bayna al-Mashalih wa al-Mafasid* (mempertimbangkan *maslahat* dan *mafsadat*). Akad nikah via *online* dalam perspektif *fikih nawazil* hukumnya tidak sah. Hal ini berdasarkan pada teori *tarjih* "*dar-u al-mafasid aula min jalbi al-mashalih*" dimana mencegah *mafsadat* lebih utama dari pada mewujudkan *maslahat*.

**KATA KUNCI** *Fiqh nawazil; Nikah Online; Maslahat; Mafsadat*

## Introduction

The *online* marriage phenomenon is increasing in today's contemporary era.<sup>1</sup> On the other side, marriage is a very sacred worship.<sup>2</sup> It is because, apart from being commanded by Allah the Almighty in the *Qur'an*, marriage is also a sunnah of the Prophet. Allah the Almighty says:

“And if ye fear that ye will not deal fairly by the orphans, marry of the women, who seem good to you, two or three or four; and if ye fear that ye cannot do justice (to so many) then one (only) or (the captives) that your right hands possess. Thus, it is more likely that ye will not do injustice.” (Al-Nisa': 3).

Prophet Muhammad, who becomes the ideal type for all of us and was sent for *Rahmatan lil alamin*, also encouraged His people to get married.<sup>3</sup> As narrated by Imam Bukhari, the companion Anas ibn Malik said that three young men came to the residence of the wives of the Prophet Muhammad and asked about the level of worship of the Prophet. After they were told about it, they felt that the worship they had been doing so far was nothing compared to the worship of the Prophet Muhammad. Then, they said,

“Our worship is nothing compared to the worship of the Prophet Muhammad. He has been forgiven of all past and future sins. One said, “If I always pray at night, forever.” Then, one of the others said, “I will fast and

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<sup>1</sup> Muksalmina Muksalmina et al., “Online Marriage Registration Service Policy Through Simkah Web for Prospective Bride and Groom in The Office of Religious Affairs, Banda Sakti District, Lhokseumawe City,” *Malikussaleh Social and Political Reviews*, 2021, <https://doi.org/10.29103/mspr.v2i2.6341>; Nasa'y Aziz, “THE GREAT PHENOMENON OF ONLINE SIRRI MARRIAGE FOR MALE AND FEMALE,” *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences*, 2018, <https://doi.org/10.33258/birci.v1i3.70>.

<sup>2</sup> Asman Asman, Marilang Marilang, and Kurniati Kurniati, “Existence of Marriage Agreements in Islam Development Studies in the Community of Malay Border Indonesia-Malaysia,” *Jurnal Ilmiah Al-Syir'ah*, 2021, <https://doi.org/10.30984/jis.v19i1.1256>; Meraj Ahmad Ahmad, “THE IMPORTANCE OF MARRIAGE IN ISLAM,” *International Journal of Research -GRANTHAALAYAH*, 2018, <https://doi.org/10.29121/granthaalayah.v6.i11.2018.1082>; Jonathan E. Brockopp, Jacob Neusner, and Tamara Sonn, “Marriage in Islam,” in *Judaism and Islam in Practice*, 2020, <https://doi.org/10.4324/9780203981016-16>.

<sup>3</sup> Muhamad Taufiq, “Nikah Sirri Perspektif Maqashid Syariah,” *Al-Manhaj: Journal of Indonesian Islamic Family Law* 1, no. 2 (2019): 114, <https://doi.org/10.19105/al-manhaj.v1i2.3138>.

not break the fast." Then, one of the others also said: "I will stay away from women, so I will not marry forever." Then, Prophet Muhammad came and said:

"Are you the people who said such and such things? By Allah, I fear Allah more than you do, and I am most obedient and dutiful among you to Him, but still, I observe fast and break it, perform Salat and sleep at night, and take wives. So, whoever turns away from my Sunnah does not belong to me."<sup>4</sup>

The Prophet also advised young people to get married, as he said:

"O young men, those among you who can support a wife should marry, for it restrains eyes (from casting evil glances) and preserves one from immorality; but he who cannot afford It should observe fast for it is a means of controlling the sexual desire."<sup>5</sup>

However, the legitimacy of *online* marriage raises pros and cons for Islamic jurists. According to Islamic jurists, *online* marriages are legal if there are casual reasons according to the situation faced.<sup>6</sup> According to the Hanafi, Hambali, and Maliki madhabs, an *online* marriage is legal if it is done at one time in the different locations. However, the Syafi'i madhab considers it invalid because the requirements of a legal marriage are the pronouncement of Shariah *ijab* and *qabul* at the same time and in the same place.<sup>7</sup> The Indonesian Ulema Council stated that *online* marriage was legal, and Nadhatul Ulama declared it was invalid.<sup>8</sup>

This study complemented previous studies on *online* marriage with the *fiqh nawazil* analysis method, focusing on *maqashidi tarjih* as a theory,

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<sup>4</sup> Imām Al-Bukhārī, *Sahīh Al-Bukhārī* (Beirut: Dār ibn Katsīr, 2002), pt. 7; Imam Muslim, *Sahīh Muslim* (Riyadh: Dār al-Taybah, 2006), 1020.

<sup>5</sup> Al-Bukhārī, *Sahīh Al-Bukhārī*; Muslim, *Sahīh Muslim*.

<sup>6</sup> Wardah Nuroniyah, "Analisis Akad Nikah Via Teleconference Menurut Fiqih Mazhab Dan Hukum Positif Indonesia," *Mahkamah: Jurnal Kajian Hukum Islam* 2, no. 1 (2017).

<sup>7</sup> ahmad syarifuddin and F Faisal, "Pernikahan Online Ditengah Pandemi Bagi Penderita Positif Covid-19," *Sakina: Journal of Family Studies* 6, no. 2 (n.d.): 81–97, <https://doi.org/10.18860/jfs.v6i2.1402>.

<sup>8</sup> Siti Mutamimah, "Hukum Pernikahan Online Menurut Nadhatul Ulama Dan Majelis Ulama Indonesia" (UIN Sunan Gunung Djati Bandung, 2023).

namely *al-Muwazanah bayna al-Mashalih wa al-Mafashid fi al-Hal wa al-Maal*. This paper specifically discussed the *online* marriage contract practice as a phenomenon of the contemporary Muslim community and *online* marriage from the *fiqh nawazil* perspective so that the arguments (nash) of the *online* marriage phenomenon can be explained clearly and comprehensively.

## Methods

This study used a normative method with a conceptual, philosophical, and comparative approach between *maslahat* and *mafsadat*. The principle in *fiqh nawazil* is “*al-Muwazanah bayna al-Mashalih wa al-Mafasid*” (considering benefits and *mafsadat*) and the rule of law of *fiqh* “*dar-u al-mafasid muqaddamun ala jalbi al-mashalih*” (preventing *mafsada* from taking precedence over realizing benefits) is used as a paradigm of thinking in analyzing the problem. The data collection technique is used document studies by searching various classical and contemporary Islamic legal literature and other literature related to the discussion. Technical analysis used prescriptive analysis with deductive Islamic law reasoning.

## Discussion

### The Fact of *Online* Marriage: The Phenomenon of Contemporary Muslim Society

*Nikah* comes from Arabic, a *masdar* from *nakaha-yankihu*. The literal meaning of marriage is uniting or combining. Arabic linguists differ on the absoluteness of the term marriage. Some of them argue that marriage is absolute in sexual relations, while others claim that marriage is absolute in

the contract.<sup>9</sup> In Arabic, the word '*nikah*' is synonymous with 'marriage'. Marriage in Arabic also means uniting something with something else.<sup>10</sup>

According to the terms of Islamic jurisprudence, many scholars define marriage as the marriage contract to obtain the legality of sexual relations.<sup>11</sup> Syekh Al-Syirbini defines marriage as a marriage contract that has legal consequences for sexual relations with *lafadz nikah* or *tazwij* (marriage).<sup>12</sup> On the other side, *online* means on the internet (virtual). '*Online*' is a word that refers to the state of a connected connection, so *online* marriage is an *online* marriage using internet connection facilities.<sup>14</sup>

As mentioned in *Fiqh nawazil*, the problems that occurred are contemporary, actual, and factual. Therefore, it is necessary to understand the context of the problem deeply. In analyzing the context of the problem of *online* marriages, the researchers must collect data related to the problem based on the theme and substance. In *online* marriages, the researchers collected data related to the context of *online* marriage. The following is *online* marriage data:<sup>13</sup>

*First*, in Saudi Arabia, a couple of lovers got married *online* through a Skype video call. It was the first time it has happened in the Kingdom that has implemented Shariah law. The groom, who is known to be pursuing higher education in the United States, married a woman in Kharma City, west of Saudi Arabia through a video call.<sup>14</sup>

*Second*, *online* marriage trends occurred in Nigeria during the COVID-19 pandemic through social media platforms such as Webex and Zoom meetings.<sup>15</sup>

<sup>9</sup> Ahmad Al-Fayumi, *Al-Mishbah Al-Munir* (Beirut: Maktabah al-Ilmiyah, n.d.), 765.

<sup>10</sup> Muhammad Al-Razi, *Mukhtar Al-Shihhah* (Aleppo: Mushtafa al-Baby, 1369), 299.

<sup>11</sup> Akmaluddin Muhammad Al-Babarty, *Al-Inayah Sharh Hidayah*, 2nd ed. (Matbu' ma'a hamisyi Fathi al-Qadir, n.d.), 187.

<sup>12</sup> Muhammad al-Khatib Al-Syirbiny, *Mughni Al-Muhtaj*, ed. 4 (Beirut: Dar al-Kutub al-Imiyah, 2006), 123.

<sup>13</sup> "Pertama Di Arab Saudi, Pasangan Menikah Lewat Skype," n.d.

<sup>14</sup> Habib Toumi, "Saudi Couple Marries Via Skype," n.d.

<sup>15</sup> Oluwaseye Oluwayomi Ikubanni and Paul Atagamen Aidonjje, "The Legality of Virtual Marriage in Nigeria given the Covid19 Pandemic Social Distancing: An X-Ray of the Matrimonial Causes Act," *Madonna University, Nigeria Faculty OF Law Law Journal* 6, no. 1 (n.d.).

*Third*, in Indonesia, Briptu Nova, a member of the West Kalimantan Regional Police, conducted Ijab Qabul through a video call because he had to participate to be an IPO in the UN peacekeeping missions or United Nations Police at Multifunction Police Training Center, Cikeas. Kardiman Bin Haeruddin's wedding to Febrianti Bin Hasanuddin was held in 2020 through WhatsApp video call smartphone due to the COVID-19 pandemic impact. Dayah from Malaysia and Muliawati from Lombok, West Nusa Tenggara, conducted an *online* marriage in 2020 due to the COVID-19 pandemic.<sup>16</sup>

*Fourth*, in Malaysia, an *online* wedding was held through a video conference in 2020 with the couples Muhammad Don Haadi Don Putra and Nahdatul Aishah Mohd Sharif due to the COVID-19 pandemic.<sup>17</sup>

From several facts about *online* marriage, we produced some ideas: *First*, *online* marriage is a new way of marriage that has not been contained in the text of classical *fiqh* manuscripts, so it requires legal legitimacy from Islamic Shariah and is in accordance with the characteristics of *fiqh nawazil*. *Second*, in *online* marriages that have taken place, the media used to carry out the marriage contract is Skype. *Third*, prospective husbands and wives who are far apart are factors causing *online* marriages.

Furthermore, we provided general illustrations of *online* marriage problems. The *online* wedding illustrations are as follows: *First*, present the guardian in front of a PC or other media compatible with video calls (i.e., Skype, Line, WhatsApp, and others). *Second*, the prospective husband is also presented in front of a PC or other media. *Third*, present both witnesses at the place of the guardian and the place of the prospective husband. The witness witnessed and assessed the validity of the contract that took place *online*. *Fourth*, the *consent* pronouncement of the guardian through *online*

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<sup>16</sup> Rifan Aditya, "Viral Pernikahan Online Malaysia - Lombok, Akad Nikah Lewat Video Call," n.d.

<sup>17</sup> Taufik Hidayat, "Cegah Penyebaran Corona, Acara Nikah Di Malaysia Dilakukan Secara Online," n.d.



pronounces *qabul* by the husband in another place. *Fifth*, the two witnesses assessed the wetness of the legality of the *online* marriage.

### ***Fiqh Nawazil* as Theory Analysis**

Studying *fiqh nawazil* is one of the most exciting studies in Islamic scholarship. In the Middle East, *fiqh nawazil* is one of the courses at the Faculty of Shariah.<sup>18</sup> *Fiqh* is also a science that studies Shariah laws that are applicable and adopted from particular propositions (*tafshiliyah*).<sup>19</sup> *Nawazil* comes from Arabic, which is the plural form of *Nazilah*. According to its literal meaning, *nazilah* is a disaster from various disasters that befall humans.<sup>20</sup> Therefore, the *fiqh* scholars recommend the priest perform *qunut* in prayer when a calamity befalls Muslims.

The examples of *nawazil* include disease, plague, famine, flood, and war. Terminologically, it is an event or problem that requires the legitimacy of *Shariah* law. Therefore, *nawazil* includes all events that require certainty in Islamic law. The events occur either repeatedly or infrequently, as well as whether the events happened a long time ago or were just contemporary issues.<sup>21</sup>

However, in the globalization era, the term *nawazil* is often associated with unprecedented contemporary events and problems. Therefore, Bakr Abu Zaid defines *nawazil* as contemporary events and issues.<sup>22</sup> Meanwhile, Al-Jizany defines *nawazil* as contemporary problems that occur and require *ijtihad* and legal certainty, so *fiqh nawazil* is a science that studies Shariah laws related to contemporary problems.<sup>27, 23</sup>

<sup>18</sup> Ibnu Manzur, *Lisanu Al-'Arab*, Dar al-Sha (Beirut, 1994), 522.

<sup>19</sup> Ahmed ibn Umar Al-Syathiri, *Al-Yaqt Al-Nafis Fi Madzhabi Ibni Idris* (Beirut: Dar al-Minhaj, 2011), 13.

<sup>20</sup> Ibnu Manzur, *Lisanu Al-'Arab*.

<sup>21</sup> Abu al-Bashal Abd Naser, *Al-Madkhal Ila Fiqh Al-Nawazil* (Yarmouk: Al-Yarmouk University, 2021), 602.

<sup>22</sup> Bakr Abu Zaid, *Fiqh Al-Nawazil* (Beirut: Muassasah al-Risalah, 1996), 9.

<sup>23</sup> Muhammad Abdullah Al-Zarkasyi, *Al-Mantsur Fi Al-Qawaid Al-Fiqhiyah*, n.d., 69.



According to that definition, there is a strong correlation between *fiqh nawazil* and *fiqh*. The correlation is the general-specific correlation between two different sides. *Fiqh nawazil* and *fiqh* have in common, namely studying particular Shariah laws. Beside that, *fiqh* is more universal than *fiqh nawazil* in terms of the applicable law scope. *Fiqh* covers all prevailing problems, both contemporary and classical problems, whereas *fiqh nawazil* is more universal from another perspective, so *fiqh nawazil* includes laws from various contemporary laws, both applicable and non-applicative.<sup>24</sup>

As previously mentioned, *nawazil* means contemporary issues that require legitimacy and justification for legal certainty under Islamic law. Based on the definition, an incident or event is included in the *nawazil* category if it meets the following characteristics: *First*, events that have already happened.<sup>30</sup> Therefore, *iftiradhiyah* (estimation) issues are not included in the discussion of *fiqh nawazil* because they have not yet occurred. *Iftiradhiyah* problem includes problems that are unlikely to happen and problems that are far from expected. *Second*, contemporary problems have never happened before, or there is an update on the basic foundation of the problem, so problems that have occurred before are not included in the discussion of *fiqh nawazil*. *Third*, this incident requires certainty of Islamic Shariah law, for example, health insurance, blood donors, organ transplants, and other contemporary issues that already meet the characteristics of *fiqh nawazil*, so the example becomes a discussion and research study of *fiqh nawazil* because it has fulfilled the previous characteristics.

Unlike the case with diseases that have nothing to do with Islamic law, it is not a study of *fiqh nawazil* because it does not fulfill the third characteristic. In addition, the disease requires serious treatment from a specialist and does not require the legitimacy of Shariah law. Likewise, natural disasters are not included in the study of *fiqh nawazil* because the

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<sup>24</sup> Al-Jizani, *Fiqh Al-Nawâzil (Al-Dirâsah Al-Ta'shîliyah Al-Tathbîqiyah)*.

disasters require intensive handling from the government and do not require legal legitimacy from the Shariah.

The classification of contemporary problems based on the objectivity of contemporary studies is divided into two parts: *First*, contemporary *fiqh* is a matter related to Islamic Shariah laws. *Second*, contemporary non-*fiqh* is a matter that is not related to Islamic Shariah laws, for example, contemporary problems in ideology like the emergence of new sects.

Therefore, urgency is divided into two parts: *First*, macro-contemporary (contemporary problems) occurs in all Muslims, such as the effects of globalization on the Islamic economy, the influence of pluralism on the social order of Muslims, and so on. *Second*, micro-contemporary occur for some Muslims, such as the effects of flash floods in Jember on Islamic education and illegal logging on the environment in Kalimantan.

Based on the number of occurrences and the distribution area, it is divided into three parts: *First*, contemporary problems that every Muslim cannot avoid, such as communication using cell phones and currency transactions. *Second*, contemporary problems often occur, such as *online* buying and selling transactions and carrying out prayer services on airplanes. *Third*, contemporary problems, which rarely occur, are then forgotten by Muslims.

Dr. Mustafa ibn Hamid ibn Smith makes a more appropriate classification as follows:<sup>25</sup>

*First*, contemporary problems are found in Shariah texts that punish them. This first part often occurs in the globalization era because the term *nawazil* is intended for contemporary problems that have not happened. In addition, it has included the characteristics of *fiqh nawazil*, which requires legitimacy from Islamic law. When giving legitimacy to contemporary problems in the first part, it certainly requires a deep understanding of *fiqh*, so it takes a *mujtahid* who is able to perform *tarjih* and *tafri'*. Ibn Hajar said:

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<sup>25</sup> Al-Jizani.

"for anyone who can read fiqh books in a school of thought – and does not have expertise in giving fatwa, may not give fatwa to ordinary people unless he already knows from his school of thought, the law is certain - there is no disagreement between scholars – such as the obligatory intention in ablution', and the invalidity of ablution' when touching the genitals or ajnabiyah people <sup>26</sup>. This is different from the problems that still occur, there are disagreements among scholars."<sup>27</sup>

*Second*, there are contemporary problems in the text of the Shariah, but there has been a change in the basics of the problem. This second classification is often called the relative contemporary problem. It contains problems that have occurred but there have been developments in several factors and a renewal in some of the structures, so they are like contemporary problems that have never happened before.<sup>28</sup> Researching these problems requires knowledge of *al-usus al-dzatiyah*.<sup>29</sup>

Researchers in the dimensions of human life during the modern era, and every problem that occurs in changes and developments that have never happened in the previous era, are required to do numerous research studies on *fiqh* issues that are built on *ta'lil bil munasabah* or *maslahat* or '*urf*, like a modern transaction problem. Sometimes, adhering to the texts of the *fiqh* scholars and their conditions that do not have Shariah texts or *ijma'* makes it difficult to deny Islamic tolerance, more specifically when needed by humans (such as this problem or transactions) that are included in emergencies and urgent needs.<sup>30</sup>

*Third*, there are contemporary problems in the text of the Shariah, but it has a negative impact when applied. These issues are not allowed to be

<sup>26</sup> "Ajnabiyah Is a Woman Who Is Mature and Not Her Mahram," n.d.

<sup>27</sup> Ibnu Hajar Al-Haytami, "Al-Fatawa Al-Kubra Al-Fiqhiyah" (Karachi: Noor Book, 2011), 296.

<sup>28</sup> Al-Jizani, *Fiqh Al-Nawâzil (Al-Dirâsah Al-Ta'shîliyah Al-Tathbîqiyah)*.

<sup>29</sup> "Al-Usus Al-Dzatiyah Means the Principles That Are Included in the Structural Shar'i Law so That the Law Changes Due to Changes in These Principles," n.d.

<sup>30</sup> Musfer Ali Muhamamd Al-Qahtany, *Manhaju Istinbath Ahkam Al-Nawazil Al-Fiqhiyah Al-Mu'ashirah: Dirasah Ta'shîliyah Tathbîqiyah* (Jeddah: Dar al-Andalus al-Hadra', 2003), 286.

*fatwa* because they can have a damaging negative impact on the social order and Islamic law. An example is the opinion of former scholars that allowed counterfeit money. Of course, if this opinion is applied today, it will have a negative impact, so these problems require a re-examination in the framework of Islamic law by looking at *maqashid Shariah*.<sup>31</sup>

The researchers certainly wonder why the previous scholars hold that opinion. In this case, Dr. Mustafa ibn Hamid ibn Smith answered, because they made assumptions about problems that had not occurred in his time, so there are differences in the description of the problem that has an impact on differences in the certainty of *Shariah* law.<sup>32</sup> If they lived in today's era and knew the description of the problems that occurred today, they would not issue such a *fatwa*.

In the concept of the study "*al-Muwazanah bayna al-Mashalih wa al-Mafashid fi al-Hal wa al-Maal*," the purpose of this rule is to consider the current and future *maslahat* and *mafsadat*. *Maslahat* literally comes from the word "*shaluha-yashluhu*," which means the antonym of damage.<sup>33</sup>

According to Imam al-Ghazali, *maslahat* is preserving the goals of Islamic law summarized in five basic principles (*Kulliyatu al-Khamsh*).<sup>34</sup> Meanwhile, Sheikh Izzuddin ibn Abdussalam defines *maslahat* as goodness and benefits, while *mafsadat* is ugliness and danger.<sup>35</sup> Dr. Muhammad Said Ramadhan al-Buthy defines *maslahat* as the benefit that is the goal of Islamic law, from upholding religion to protecting the soul, mind, lineage, and property based on particular classifications.<sup>36</sup>

<sup>31</sup> Al-Muhadarah Fi Maqashid Al-Syariah Bafadhal, "No Title," n.d.

<sup>32</sup> Musthafa Hamid Ibn Smith, *Madkhal Ila Fiqh Al-Nawazil* (Tarim: Al-Tashwir, 2022).

<sup>33</sup> Ahmand Ibn Faris, *Maqayisu Al-Lughah* (Damaskus: Dar al-Fikr, 1979), 303.

<sup>34</sup> Imam Al-Ghazālī, *Al-Mustashfā Min `Ilm Al-Usūl* (Madinah: Dal al-Kutub al-Ilmiah, 1993), 174.

<sup>35</sup> Muhammad Izzuddin Ibn Abd Al-Salam, *Qawaid Al-Ahkam Fi Mashalih Al-Anam* (Cairo: Maktabah al-Kulliyat al-Azhariyah, 1991), 3–4.

<sup>36</sup> Muhammad Taufiq, "A Critique against the Perspective of Al-Thufy on the Contradiction of Maslahat and the Holy Text," *Millati: Journal of Islamic Studies and Humanities* 5, no. 2 (2020): 121–28, <https://doi.org/10.18326/mlt.v5i2.121-128>; Ahmad Ibn Hajar Al-Haytami, *Al-Fatawa Al-Fiqhiyah Al-Kubra* (Al-Maktabah Al-Islamiyah, n.d.), 24.

According to Imam Ibnu Hajar, research on *maslahat* and *mafsadat* is the duty of a *mujtahid*, while the *muqallid* is not allowed to examine this matter, which is different from the priest's opinion. Likewise, with the *mujtahid fatwa*, a contradiction of opinion exists because the duties are only *tarjih* and *takhrij*.<sup>37</sup>

Syekh al-Askhar argues that the opinion of Ibn Hajar is only limited to the study of *maslahat* and meanings, which ultimately depart from the principles and theories of the schools of thought.<sup>38</sup> For that matter, the researchers must know the limitations of *maslahat* reasoning as follows: *maslahat* must be under the auspices of *maqashid* Islamic law; *maslahat* does not conflict with the holy text of the *Qur'an*; *maslahat* does not conflict with the holy text of *al-Hadith*; *maslahat* does not conflict with *qiyas*; *maslahat* does not ignore other *maslahat* that are more important and equal to it.<sup>39</sup>

A *mujtahid* must take the following steps to achieve legal certainty based on *maqashid Shariah*: *First*, *mujtahid* conducted experiments on the impact of the *maslahat* and *mafsadat* of the law, which states that it is permissible. *Second*, *mujtahid* conducted experiments on the impact of the *maslahat* and *mafsadat* of the law, which states that it is not allowed. *Third*, examine and weigh accurately the results of the first and second steps of the experiment, guided by the rules of *tarjih* between *maslahat* and *mafsadat*.<sup>40</sup> In this case, Sheikh Izzuddin ibn Abdussalam explained that when faced with a problem, many benefits are *ukhrawiyah* in nature; if it is possible to produce all of them, people can do it. If it is impossible to have similarities in level, people should choose between the benefits or draw lots. When they have nothing in common, they are more concerned with the dominant

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<sup>37</sup> Al-Haytami, *Al-Fatawa Al-Fiqhiyah Al-Kubra*.

<sup>38</sup> Abdullah Husain Bilfaqih, *Mathlabu Al-Iyqad Fi Al-Kalam "Ala Syai" Min Ghurari Al-Alfadz*, ed. Mushtafa Hamid Bin Smith (Kuwait: Dar Al-Deyaa, 2017), 145.

<sup>39</sup> Muhammad Said Ramadhan Al-Buthy, *Dhawabitul Al-Maslahah Fi Al-Syariah Al-Islamiyah* (Damaskus: Dar al-Fikr, 2005), 125–286.

<sup>40</sup> Ibn Smith, *Madkhal Ila Fiqh Al-Nawazil*.

benefit, and this is also done when a problem contains many interpretations.<sup>47</sup>

When there is a contradiction between *maslahat* and *mafsadat* in a problem, it is possible to carry out *maslahat* and leave *mafsadat*, then practice it. If everyone cannot perform this when *maslahat* is superior to *mafsadat*, *maslahat* is prioritized regardless of the *mafsadat*. If *mafsadat* is superior, everyone should avoid *mafsadat* without seeing *maslahat*.<sup>41</sup>

The following are also included in *tarjih* rules between *maslahat* and *mafsadat*:

1. Preventing *mafsadat* is more crucial than realizing *maslahat* (*dar-u al-mafasid aula min jalbi al-mashaleh*).<sup>42</sup> Therefore, when *mafsadat* and *maslahat* are at the same level, preventing *mafsadat* is superior to actualizing *maslahat*.
2. When there are two *mafsadat*, it is prioritized to prevent the *mafsadat*, which is more dangerous, so it prioritizes preventing general risks rather than specific risks.
3. Preventing *mafsadat* (*dar-u al-mafasid*) is required not to cause *mafsadat* that is equivalent to or more dangerous.<sup>43</sup>

*Fourth*, *mujtahid* examines universal *fiqh* theory (*al-fikih al-'ammah*) in the process of considering between *maslahat* and *mafsadat*, for example, the theories *raf'u al-haraj*, *al-masyaqqah tajlibu at-taysir*, *al-dharurat tubihu mahdzurat*, *dharurat tuqaddiru bi qadriha*, *al-hajah tunazzilu manzilata al-dharurati al-'amah aw al-khassah*, and other *fiqh* theories.

*Fifth*, after the *mujtahid* has decided on legal certainty, the *mujtahid* must conduct a study of legal certainty in terms of the *maqashid* perspective

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<sup>41</sup> 'Izz al-Dīn Ibn 'Abd al-Salām, *Al-Qawā'id Al-Sughrā* (Beirut: Dar al-Fikr al-Mu'ashir, 1996), 125.

<sup>42</sup> Abdul Jalil and Muhammad Taufiq, "Al-Âtsâr Al-Mutarattibah 'Âla PERPPU (Lawâih Al-Hukûmiyyah Al-Badaliyyah) Min Al-Munazhhamât Al-Mujtama'Iyyah Raqm 2 Li 'Âm 2017 Dlidida Wujûd Hizb Al-Tahrîr Indûnîsiyâ Min Manzhûr Saddi Al-Dzarî'Ah," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 14, no. 1 (2019): 144, <https://doi.org/10.19105/al-ihkam.v14i1.1982>.

<sup>43</sup> Abd Naser, *Al-Madkhal Ila Fiqh Al-Nawazil*.

of Islamic law because *maqashid* is universal while legal certainty is particular. These particular problems must be under the auspices of universal problems.<sup>44</sup>

If a contemporary *mujtahid* ensures legal certainty, then he must pay attention to the following matters:

1. *Maslahat* that obtains legality from Islamic law (*al-Maslahat al-Mu'tabarah syar'an*) is not an independent argument (*mustaqil argument*).<sup>45</sup>
2. The object of study of *maslahat* and *mafsadat* is only limited to the problems that become the field of *ijtihad*. It is not a problem that has been determined by the sacred text.
3. *Maslahat* determined based on sacred texts takes precedence over *maslahat* determined only based on *ijtihad*.<sup>46</sup>
4. As an alternative, the *Shariah* makes *al-maslahat al-Marjuhah* (*maslahat* that is not superior) when there is an old age or *masyaqqah* to arrive at *al-maslahat al-rajihah* (problem that is superior).<sup>47</sup>
5. *Maslahat* and *mafsadat* research must include all *maslahat* and *mafsadat*, while considering the influence of both at the time of research and afterward. *Mujtahid* must examine the application of the sacred text; will it impact the realization of his goals? Therefore, the *mujtahid* may not rush to decide on legal certainty and *fatwa* except after examining the implications of the decision.<sup>48</sup>

An example of this rule is body transplantation, from a personal point of view, is not allowed. However, when viewed from the point of view of the

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<sup>44</sup> Abd Naser.

<sup>45</sup> Al-Qahtany, *Manhaju Istinbath Ahkam Al-Nawazil Al-Fiqhiyah Al-Mu'ashirah: Dirasah Ta'shiliyah Tathbiqiyah*.

<sup>46</sup> Al-Zarkasyi, *Al-Mantsur Fi Al-Qawaid Al-Fiqhiyah*.

<sup>47</sup> Al-Salam, *Qawaid Al-Ahkam Fi Mashalih Al-Anam*.

<sup>48</sup> Abū al-Ishāq Al-Shāhibī, *Al-Muwāfaqāt Fī Usūl Al-Sharī'ah*, Juz II (Dār ibn `Affan, 1997), 194–95; Al-Qahtany, *Manhaju Istinbath Ahkam Al-Nawazil Al-Fiqhiyah Al-Mu'ashirah: Dirasah Ta'shiliyah Tathbiqiyah*.



common good, it is permitted because included in the category of *hifduz al-nafs*.<sup>49</sup>

### **Online Marriage in the Perspective of *Fiqh Nawazil***

Classification of problems is an activity to return contemporary problems to the theory of Islamic law, or it could be interpreted as an activity to adjust these problems to the theory of Islamic law. It is intended so that there is a synergy between the substance of these problems and the theory of Islamic law.<sup>50</sup> According to the Hanabilah school, marriage can only happen with one pillar, namely the *ijab* and *qabul* of both parties, but the marriage does not fulfill the terms and conditions.<sup>51</sup> The Malikiyah school of thought argues that the five pillars of marriage are husband, wife, guardian, dowry, *ijab*, and *qabul*.<sup>52</sup> The Syafiiyah school of thought also argues that there are five pillars in marriage, namely *ijab* and *qabul*, the two witnesses, husband, wife, and guardians.<sup>53</sup> Meanwhile, according to the Hanabilah school of thought, marriage only has three pillars, namely the two prospective husband and wife, *ijab*, and *qabul*.<sup>54</sup>

Our opinion was that the difference between the scholars in the marriage law is only a non-essential difference because the scholars consider the guardian that the two witnesses are not included in the harmony, but they make it a condition of marriage. Likewise, scholars argue that guardians are not pillars in marriage, but they make it a condition of

<sup>49</sup> Al-Jizani, *Fiqh Al-Nawâzil (Al-Dirâsah Al-Ta'shîliyah Al-Tathbîqiyah)*.

<sup>50</sup> Khaled Abdullah Al-Mizainy, "Dirasat Tathbiqiyah Syar'iyah Li Al-Ta'amul Ma'a Al-Nawazil Al-Mustajaddat," *Waraqah Bahs Muqaddamah Ila Nadwati Al-Ikhtilaf* (Dhahran, 2008), 7.

<sup>51</sup> Ibn al-Humam Al-Hanafî, *Fath Al-Qadeer Sharh Al-Hidayah* (Beirut: Dar al-Kutub al-Ilmiyah, n.d.), 189.

<sup>52</sup> Muhammad Arafah Al-Dasuqi, *Hasyiyah Al-Dasuqi* (Beirut: Al-Maktabah Al-Ashriyah, n.d.), 21; Ibn Jizzi, *Qawanin Al-Ahkam Al-Syar'iyah Wa Masail Al-Furu' Al-Fiqhiyah* (Islamic Manuscript, n.d.), 219.

<sup>53</sup> Al-Syirbiny, *Mughni Al-Muhtaj*.

<sup>54</sup> Manshur Yunus Al-Bahuty, *Al-Raudhu Al-Murabba' Syarh Zad Al-Mustaqni'* (Beirut: Muassasah al-Risalah, 2008), 269.

marriage, except for the Hanafiyah school, which states that guardianship is not the pillar or condition that must be met in marriage.

Furthermore, we assumed that *online* marriage has actually fulfilled the pillars of marriage. Some requirements still hinder *online* marriage, namely the pronunciation of *ijab* and *qabul*, which must be in one location (*majlis*). In classifying this problem, we used the third method, namely, legal research on contemporary issues based on *fiqh* or *ushul* theories.<sup>55</sup> The *fiqh* theory used in this matter is the contract theory (*nadzariyatu al-aqdi*). In contract theory, the pronouncement of *ijab* and *qabul* must be in one location (*majlis*).

*Majlis* is a place to sit. In interpreting the terms of the marriage contract in one *majlis*, scholars have a variety of views. According to the majority of scholars from the Malikiyah, Syafiiyah, and Hanabilah circles, one *majlis* is gathered in one place. To obtain a legal procession of marriage, all parties involved in the marriage contract procession must physically gather.<sup>56</sup> In fact, according to the Syafi'i school of thought, even though the parties involved in the contract have gathered in one place when one of them cannot see the other because it is illicit or otherwise, then the marriage is considered invalid.<sup>57</sup> Whereas in the Abu Hanifah school, one *majlis* is where two people who make a contract can communicate directly and carry out the contract at the same time. Any media can be used as long as it can connect two parties without any possibility of manipulation. In this case, using the media to carry out the marriage contract is legal.

According to Abd al-Rahman al-Jazairi, the meaning of "one *majlis*" is direct involvement between the guardian or one who represents him and the

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<sup>55</sup> "The Problem Classification Methods Are as Follows: First, Istidlal Legal Certainty from the Holy Texts of the Koran, Al-Hadith, and Ijma'. Second, Ijtihad Is Analogizing Contemporary Problems to Classical Problems. Third, Research on Contemporary Legal Issues Is Based on Fiqh Theories or Ushul Theories," n.d.

<sup>56</sup> Ibnu Abidin Al-Dimasyqi, *Raddu Al-Mukhtar Ala Al-Darri Al-Mukhtar* (Beirut: Dar al-Fikr, 1992), 14; Ibn Qudamah Al-Maqdisy, *Al-Mughni* (Cairo: Maktabah al-Qaherah, 1968), 535.

<sup>57</sup> Sulaiman Al-Bujairimi, *Hasyiyah Al-Bujairimi Ala Al-Khateb* (Beirut: Dar al-Fikr, 1995), 285–87.

prospective husband or one who represents him, while in the implementation of *ijab-qabul*, some scholars also require the presence of two witnesses. In this term, direct involvement means the participation of both parties in carrying out *ijab-qabul*, and what is essential is not the physical participation of individuals. Thus, the internet network or other telecommunications facilities can be categorized as “one *majlis*” if the communication is still in the same context.<sup>58</sup>

Based on the differences in the concept of *majlis*, the issue of *online* marriage contracts among the scholars differed in their responses. *First*, the majority of scholars are in line with that the condition for those who enter into a marriage contract is that all parties must be in one place and at the same time. Therefore, a marriage contract that is not carried out in one place, even though both parties can communicate with each other, is still considered invalid. According to Imamiyah, Hambali, and Shafi'i, contracts in writing (such as letters) are invalid<sup>59</sup>.

*Second*, the Hanafi school of thought states that *online* marriage contracts are legal. This conclusion was obtained because, according to this group, a *majlis* that is mandatory in every contract is not the existence of two people who perform *ijab-qabul* in one place physically. It could be that the two places are far apart. However, if there is a means of communication that allows both parties to carry out the marriage process at the same time, it is still called a *majlis*, so the contract carried out is still considered valid.<sup>60</sup>

After we analyzed the illustrations of the problems, we analyzed the classification of the problems to give certainty to Shariah law. This last phase is the most urgent step in the *ijtihad* phases because this phase is the process of applying *Shariah* law that was carried out in the second phase

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<sup>58</sup> Abdurrahman Al-Jaziri, *Al-Fiqh 'ala Madzahib Al-Arba'ah* (Beirut: Dal al-Kutub al-Ilmiah, 2003).

<sup>59</sup> “This Is Also the Opinion of the Majority of Contemporary Scholars and the Results of the Majma' Al-Fikh Al-Islamy in Jeddah in 1410,” n.d.

<sup>60</sup> *This Opinion Is Supported by Usama Umar Sulaiman Al-Asqar, Mustajaddat Fi Qadaya Al-Zawaj Wa Al-Talak* (Jordan: Dar al-Nafais, n.d.).

(read, problem classification) to illustrate the problems described in the first phase.

In addition, this last phase does not only require an in-depth understanding of the problem illustration, but it does not just require *malakah fikhiyah*. Instead, people have to combine the two. With the *malakah fikhiyah* they have, the *mujtahid* is able to see the context of the problems that are happening wisely to produce correct legal certainty.<sup>61</sup>

Therefore, illustrating contemporary problems objectively and classifying problems are phases to find out legal certainty. These phases are objects of law enforcement that are only specific to certain individuals. The object of law application, which is broader in nature, requires more thorough and universal research.<sup>62</sup> The application of legal certainty (*al-Tanzil*) is divided into two parts judging from the object.<sup>63</sup> *First, al-Tanzil al-'Am* (the application of the law is universal) is the application of legal certainty whose object is broad and comprehensive. That is the result of legal certainty decided by a *mujtahid* to the broader community. *Second, al-Tanzil al-Khas* is the application of legal certainty whose object is only for certain individuals and certain conditions. That is the result of legal certainty decided by a *mujtahid* to certain people and certain conditions.

In the legal certainty application, which has a specific object (*al-Tanzil al-Khas*), everyone must pay attention to *maqasid* of Islamic law, so this is what we chose in this study. In legal certainty terms, we examined *online* marriage from the perspective of *maqasid Shariah*. *Maqasid Shariah* is the science that studies the development of Shariah law for the benefit or prevention of *mafasadah*, so a *mujtahid* can explore to make legal certainty

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<sup>61</sup> Al-Mizainy, "Dirasat Tathbiqiyah Syar'iyah Li Al-Ta'amul Ma'a Al-Nawazil Al-Mustajaddat."

<sup>62</sup> Al-Jizani, *Fiqh Al-Nawâzil (Al-Dirâsah Al-Ta'shûliyah Al-Tathbîqiyah)*.

<sup>63</sup> Al-Jizani.

that has no legitimacy from the Shariah text.<sup>64</sup> *Maqashid Shariah* is the objective set by Islamic Shariah to realize the benefit of the people.<sup>65</sup>

The essence of *maqashid* in Islamic law is to create benefits and prevent *mafsadat*. Imam al-Ghazali defines *maslahat* as maintaining the goals of Islamic law that are summarized in five basic principles (*Kulliyatu al-Khamsh*).<sup>66</sup> In the *maqashid* of the Islamic *Shariah*, there are rules of the *kulliyah*. These rules include *al-dharuriyat* (primary), *al-hajiyat* (secondary), and *al-tahsiniyat* (tertiary).<sup>67</sup> Linguistically, *Al-Dharuriyat* is a plural word for *dharury*, which means something that is urgently needed to reach an emergency level. It covers upholding religion (*hifdz al-dien*), protecting the soul (*hifdz al-nafs*), protecting the mind (*hifdz al-'aql*), maintaining the offspring (*hifdz al-nasl*), and protecting property (*hifdz al-mal*). Furthermore, *Al-Hajiyatis* is needed, but not to the extent of an emergency, for example, buying, selling, and rental transactions. *Al-Tahsiniyat* is considered good according to custom without any basic needs like eliminating the *shahada* expertise for slaves.<sup>68</sup>

We focused on analyzing the values of *maqashid Shariah* first, especially the first of the three *maqashid Shariah* rules.<sup>69</sup> The first rule is "*al-Muwazanah bayna al-Mashalih wa al-Mafashid fi al-Hal wa al-Maal*." This rule is intended to consider the current and future benefits, including *mafsadat*. Essentially, *maslahat* comes from the word "*shaluhayashluhu*," which means the antonym of *mafsadat* (damage).<sup>70</sup> Imam al-Ghazali defines *maslahat* as maintaining the goals of Islamic law that are

<sup>64</sup> Ahmad Shaleh Bafadhal, *Al-Muhadarah Fi Maqashid Al-Syariah* (Tarem: al-Tashwer, 2013).

<sup>65</sup> Ahmed Al-Raisuni, *Madkhal Ila Maqashid Al-Syariah* (Cairo: Dar al-Kalima, 2010), 7–12.

<sup>66</sup> Al-Ghazālī, *Al-Mustashfā Min `Ilm Al-Usūl*.

<sup>67</sup> Al-Shāhibī, *Al-Muwāfaqāt Fī Usūl Al-Sharī`ah*.

<sup>68</sup> Jalaluddin Al-Mahally, *Syarh Al-Jalal Mahally "Ala Jam'i Al-Jawami"* (Beirut: Dar al-Kutub al-Ilmiyah, n.d.), 322–24.

<sup>69</sup> "The Three Rules in Maqashid Shariah Namely; 'Al-Muwazanah Bayna Al-Mashalih Wa Al-Mafashid Fi Al-Hal Wa Al-Maal'. 'Taqdiru Halati Al-Idhtirar Wa General Al-Balwa', and 'T'tibaru Al-A'raf Wa Al-Adat Wa i'khtilafi Al-Ahwal Wa Al-Dzuruf Wa Al-Makan Wa Al-Zaman,'" n.d.

<sup>70</sup> Faris, *Maqayisu Al-Lughah*.

summarized in five basic principles (*Kulliyatu al-Khamsh*).<sup>71</sup> Dr. Muhammad Said Ramadhan al-Buthy defines *maslahat* as the benefit of the Islamic law goal, from upholding religion to protecting the soul, mind, lineage, and property, based on particular classifications.<sup>72</sup>

In *online* marriage, some *maslahat* can exist, i.e., it is easy to get married without any distance and place restrictions. However, in addition to *maslahat*, we found many *mafsadat* consist of the following points: *First*, *hifdu al-nasl* has not been achieved as the top priority for marriage. *Second*, the loss of the sanctity of marriage. *Third*, many scholars forbid *online* marriage. *Fourth*, the loss of caution in *online* marriage contracts. *Fifth*, many irregularities and cases of *online* fraud occur due to social media.

After considering *maslahat* and *mafsadat* in the *online* marriage contract, we applied the *al-tajih* method between *maslahat* and *mafsadat*. The theory is "*dar-u al-mafasid hall min jalbi al-mashaleh*" –preventing *mafsadat* is more crucial than realizing *maslahat*. Therefore, we decided that the *online* marriage contract is invalid based on the *tarjih* theory "*dar-u al-mafasid hall min jalbi al-mashaleh*." In *online* marriage, there are many interpretations, as we have previously mentioned, while the problem is only facilitating the marriage contract without knowing the distance, so preventing *mafsadat* is prioritized over realizing *maslahat*.

## Conclusion

There are differences between classical scholars regarding the implementation of *Ijab* and *Qabul*, which must be carried out at the same time and the same place in *online* marriages. The maqashid Shariah values with "*al-Muwazanah bayna al-Mashalih wa al-Mafashid fi al-Hal wa al-Maal*" are very appropriate to overcome these differences of opinion because of their *maslahat* and *mafsadat* now and in the future. *Hifdu al-*

<sup>71</sup> Al-Ghazālī, *Al-Mustashfā Min `Ilm Al-Usūl*.

<sup>72</sup> Al-Buthy, *Dhawabitu Al-Maslahah Fi Al-Syariah Al-Islamiyah*.

*nasl* has not been achieved as the main priority in marriage, the loss of the sanctity of marriage, and the many scholars who forbid *online* marriage are interpretations of the practice of *online* marriage. Therefore, by considering the benefits and mafsadat in an *online* marriage contract, the most appropriate thing is to apply the *alt-tajih* (benefit) method between *maslahat* and *mafsadat*. The theoretical basis used is "*dar-u al-mafasid hall min jalbi al-mashaleh*," in which preventing mafsadat is more crucial than realizing *maslahat*. The research findings are that *online* marriage contracts are invalid based on *Nawazil fiqh theory and tarjih "dar-u al-mafasid hall min jalbi al-mashaleh"*. In the future, there needs to be more comprehensive research on *online* marriage law based on the views of contemporary scholars in various countries so that valid arguments can be found regarding whether *online* marriage is legal or not.

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