

## ISTINBAT AND ISTIDLAL FATWA WITHIN THE KEDAH STATE FATWA LEGAL FRAMEWORK: METHODOLOGICAL PERSPECTIVE

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### ABSTRACT

*The process of searching for sources to identify the ruling that must be decided is a must in the practice of issuing fatwas. Reference to authoritative sources is the main requirement for a mufti before the fatwa decision is made. Therefore, to identify the accuracy of a ruling, it must be based on the Istinbat and Istidlal process which is organized according to the priority of its source. The coordination of Istinbat and Istidlal methods through legislation as a catalyst for the unity of legal thought and the accuracy of community understanding. The use of socio-legal research methods that combine library and descriptive methods. Content analysis of the Kedah State Mufti and Fatwa Enactment (2008) aims to study the legal provisions related to the Istinbat and Istidlal methods of fatwas in the state of Kedah. In addition, the author also conducted a general survey of the development of Kedah's fatwa institutions and legislation chronologically. Furthermore, an in-depth analysis of the latest fatwa, namely the HIV Prevention Treatment Initiative (PREP-HIV), was also conducted to examine the Istinbat and Istidlal methods applied by the Kedah State Fatwa Committee in reality. Fatwas are not decided individually by the Mufti but rather are done collectively with the members of the Fatwa Committee through a discussion process. The Fatwa Committee makes reference to the sources of the Syafi'i School of Law as the main basis for determining the Hukum Syara' to be achieved in the method of determining the fatwa. Despite this, the Kedah Fatwa Committee's openness to receiving views from other schools of fiqh is very positive. There are policies such as Maqasid and Maslahah that are not clearly stated in the Enactment but are applied in the Istinbat and Istidlal methods of the fatwa.*

**Keywords:** *Istidlal, Istinbat, Kedah Fatwa Committee, Fatwa Enactment, Qawl Mu'tamad.*

### 1. INTRODUCTION

The Kedah Darul Aman State Mufti Office was established in 1998, so for the first time in the history of the Kedah state fatwa, the position of mufti was created. Previously, the position of *mufti* could not be created because there

was no provision in the Administration of Islam Enactment No. 9 of 1962. The Mufti is the administrator of the State Mufti Department and the main authority in matters of Islamic religious law. His position is recognised in the Islamic administrative law as enshrined in Sections 4 and 5 of the Mufti and Fatwa (Kedah Darul Aman) Enactment 2008. Section 4 provides: 'The Mufti appointed under Section 5 of this enactment shall be the administrator of the Kedah Darul Aman State Mufti Department'. In addition, the mufti is responsible for issuing any fatwas. The provisions of Article 8(1) explain as follows: 'The Mufti shall have the power to issue any fatwa'.

The Mufti or Fatwa Committee applies the *Istinbat* and *Istidlal* methods which are structured and in accordance with the fatwa research method. Every investigation effort goes through a postulate process to decide the law on an issue.

*Istinbat* according to Ibrahim Mustafa (1989) *Nabata al-syai' -nabtan, wa nubutan*, means *zahir* after being hidden. If it is said *istinbata al-faqih al-hukma*, it means that the *Fiqh* issues the *hukm* or *Faqih* issues the internal meaning of something with its understanding and *ijtihad* (Al-Razi, 1983). Therefore, *istinbat* means an effort to obtain the *hukm* for a case or problem from definitive sources or postulates.

*Istinbat* in Malay (Kamus Dewan, 2002) is the practice of issuing *hukms* or decisions based on the Quran or certain hadiths. *Istinbat* on the other hand is the convicting the *hukm* based on the Quran or certain *hadith* as it is said that this conclusion can be understood from the Quran and hadith.

The process of issuing fatwas should be continued based on the strength of *istinbat* which is based on the postulates of *syara'* and references from experts in the relevant field. According to Al-Baghdadi (1990), a successful *mufti* is a *mufti* who can issue *hukm* according to the correct *istinbat* method based on *manhaj usuli* until he reaches a rational legal determination.

Referring to the framework of *Usul al-fiqh*, *istinbat* means an effort to obtain the law for a case or problem from its definitive sources or postulates. Therefore, it can be said that *istinbat* activities are focused on how to obtain the *hukm* for a problem from its definitive sources (Mat Saad Abd. Rahman, 2007). Meanwhile, *Istidlal* intends to try to find a postulate or legal source for a problem whose *hukm* is not yet known (Al-Amirini, 1990).

*Istidlal* activities are focused on efforts to find evidence or legal sources for a problem that is also not known by *hukm* (Kafrawi, 2005). This means that the space of *Istidlal* activities is wider than *istinbat*. This is because *Istidlal* has two goals or targets, firstly to obtain evidence or source of *hukm* for a problem and

secondly to obtain a *hukm* for the problem that has no *hukm* (Al-Ateeq, 2022). The goal of *istinbat* is only the *hukm* that can be obtained from various existing sources.

The role of the Mufti or Fatwa committee is also to evaluate and analyze the implications that will result from the fatwa that is decided whether to realize *maslahah* or reject *mafsadah* (Al-Buti, 1990). Similarly, in assessing the need for *maslahah* or *mafsadah*, priority or *awlawiyyat* should be emphasized by the Muftis (Mahmood, A.M. et.al. 2011). The aim is to ensure that the fatwa decided celebrates the importance of the ummah by looking at the good and bad effects of the fatwa.

## 2. LITERATURE REVIEW

### 2.1 Stages of Fatwa Issuance

Referring to the effort to issue *hukm* and fatwas for an issue, every problem must go through several processes and stages. According to Ali Jum'ah (2013), a faqih needs to apply four levels of elements in presenting an answer, namely, getting an overview of the problem, analyzing, explaining the law and presenting an answer. Therefore, there are 4 stages of the fatwa process that will be passed (Darul Ifta'Al-Misriyyah, 2025):

**The first stage:** *al-Taswir* which is the stage of describing the problem. The mufti level needs to get an early overview of issues and problems raised by the *mustafti* among individuals or communities and agencies/institutions. At this stage, the mufti has to examine an issue by taking into account several aspects such as time, place, individual (*mustafti*) and atmosphere. This research is in line with the *fiqh* method (Al-Zubydi, 2014): "*The hukm on a matter is based on its image.*" According to him, the method is part of the *ijtihad* guidelines in obtaining a clear picture of the issue according to the circumstances, reality, events and reasons for the *ijtihad*.

**The second stage:** *al-Takyif* which is the division and categorization of issues after identifying the picture of an issue and problem. The process of categorizing problems according to the appropriate *fiqh* debate according to the scope of the corresponding problems such as worship, *muamalat*, crime and others. Therefore, the *muftis* need to have a clear understanding of this issue so that every problem raised from the *mustafti* side can be systematically categorized based on the scope of the actual debate.

**The third stage:** *al-hukm* or *bayan al-hukm* is the stage of explanation and determination of the *hukm* where a *hukm* will be placed according to the correct

and accurate method and postulate. The process of gathering information and evidence related to a problem is carried out through recognized sources such as the Quran, hadith, ijma' and qiyas. Next, the issue was discussed with the fatwa committee involved.

**The last stage:** *al-Ifta'* which is the stage of issuing fatwa after a problem or issue has gone through the stage of describing the problem, categorizing and determining according to the texts of *syara'*. The results of the research on the problem will be submitted by the *mufti* to *mustafti*.

The importance and significance in improving understanding of *fiqh* in health and modern medicine in the society are founded on current and local realities. Health science and modern medicine are fields of study that bring about a critical impact on the change of rulings within aspects of worship and *munakahat* (Islamic family law). A necessity of today, collective *ijtihad* between the *fuqaha* and experts in the related fields has become an essential requirement so that the process of finding the '*illah*' is done accurately/with more accuracy and strength to determine the ruling for issues on health science and modern medicine. In accordance with that, this article focuses on the aspect of requirement for the application of collective *ijtihad* in the *istinbat* of *fatwas* for issues connected to health science and modern medicine (Alias, 2020).

*Istinbat* and *Istidlal* applied in the third stage, namely *Al-Hukm* or *bayan al-hukm*. By in short, after an issue has got a clear picture of the problem and categorized the problem according to the appropriate area of debate. The Mufti and the Fatwa Committee continue the process of determining the law of a matter after it has been assessed and discussed based on appropriate sources and postulates. Every answer and fatwa issued by the mufti must take into account the aspects of the *nas Qat'i*, other sharia texts and *masalahah*.

## 2.2 Development of Kedah State Fatwa Institutions and Legislation

The following is the chronology of the institutional and legal development of the Kedah state fatwa (Kamarudin, 2014):

**Table 1.** Chronology of the Development of Kedah Fatwa Institutions and Legislation.

Bill.	Year/Duration	Institutions & Fatwa Legislation	Legal Developments
1	1901-1935	The individual who is given authority in Islamic Religious Affairs and Sharia Law	Before the Islamic Religious Enactment Number 9 (1962) came into force, the Sultan had appointed the

		is the <i>Syeikhul Islam</i> .	<i>Syeikhul Islam</i> from 1901 until 1935 to assist him as well as acting as the officer who headed the administration of Islamic Religious Affairs. <i>Syeikhul Islam</i> is tasked with giving views on religious matters just like the role of the Mufti in other states. <i>Syeikhul Islam</i> is also a judge at the Court of Appeal level in addition to giving views on issues related to Sharia Law.
2.	1936-1964	The Kedah State Government established <i>Majma' Masyikhatil Islam</i> to replace the position of <i>Syeikhul Islam</i> .	<i>Majma' Masyikhatil Islam</i> has three members, namely the chairman and two other members. In the system of <i>Majma' Masyikhatil Islam</i> policy decisions on religious matters are referred to this conference. The title <i>Majma' Masyikhatil Islam</i> was used from 1936 to 1964
3.	1965-2000	The power to issue a Fatwa has been given to the Fatwa Committee. Therefore, Your Highness Sultan has appointed a qualified person to be the Chairman of the Fatwa Committee to replace <i>Majma' Masyikhatil Islam</i> .	The position shall consist of one chairman, two persons or not more than six Council Members. The title of Chairman of the Fatwa Committee was used from 1965 until 2000. The Fatwa Committee consists of several scholars while the Chairman of the Fatwa Committee will act as the leader in issuing a ruling.
4.	September 25, 1996	Establishment of the Kedah Darul Aman State Mufti Department under Section 35 of the Islamic Religious Administration Enactment Number 9 (1962).	This approval came into effect on 25 September 1996. As there is no provision in the Islamic Religious Administration Enactment Number 9 (1962) that allows for the appointment of a 'Mufti', the official appointment cannot be carried out. However, for administrative smoothness, the Kedah State Government offered the position of MUFTI on a contract basis for 2 years.
5.	July 1, 1998	The Chairman of the Fatwa Committee	In his position as Chairman of the Fatwa Committee, the state

- carries out his duties as the State Mufti.
- government agreed to give him permission to carry out his duties as the State Mufti from 1 July 1998.
6. June 7, 1999 The proposal of the Kedah Islamic Religious Council meeting to officially appoint the position of Kedah State Mufti to replace the position of Chairman of the Fatwa Committee.
- Representatives from the Kedah Islamic Religious Council (MAIK) led by YB. Dato' Secretary of the State of Kedah, YAA Dato' Chief *Syarie* Judge of the State of Kedah, Secretary of the Department of Islamic Religious Affairs of Kedah and Assistant Secretary to the Government (Service Branch) have had an audience with Your Highness Sultan of Kedah to present the proposal of the meeting of the Kedah Islamic Religious Council to officially appoint *Sohibus Samahah* Dato' Setia Jaya Dato' Paduka Syeikh Abdul Majid bin Mohd. Noor, to assume the position of Kedah State Mufti to replace the position of Chairman of the Fatwa Committee.
7. January 1, 2000 The administration of the Mufti Department is completely separate from the Kedah Islamic Religious Affairs Department.
- It remains to refer to the Law on the Islamic Religious Administration Enactment Number 9 (1962).
8. August 3, 2000 Amendments the words 'Chairman of the Fatwa Committee' to 'Mufti'.
- Amendments were made to the Islamic Religious Administration Enactment Number 9 (1962) the position of the Mufti of the State of Kedah has been gazetted in the government gazette from the word 'Chairman of the Fatwa Committee' to 'Mufti'.
9. September 1, 2000 The title 'Mufti' has been used since 2000 until now.
- The Islamic Religious Administration Enactment Number 9 (1962), Section 35 (Amendment) replaces the title 'Chairman of the Fatwa Committee' to 'Mufti'

January 1, 2002	Regrading of the post of Mufti.	Regrading of the Mufti post from Grade S1 (Open) to Main Grade 'C' (VU7) was approved with effect from 1 January 2002 (Reference; PSU(K)712/1390(56) dated 1 April 2003)
October 15, 2002	The position of Deputy Mufti (Islamic Affairs Officer Grade S48) has been approved	The position of Deputy Mufti (Islamic Affairs Officer Grade S48) was approved through the approval of Appointment No. 136 of 2002 and Warrant of Appointment No. 8/2003
June 10, 2003	Other positions were also filled from time to time and were fully filled in 2000.	Through the approval of Employment No. 136 of 2002 and Employment Warrant No. 8/2003 effective 15 October 2002 (Reference; PSU(K) CP 242-1401 B 46(27) dated 9 Rabiul Akhir 1424 equivalent to 10 June 2003).
November 18, 2007	The Mufti and Fatwa (Kedah Darul Aman) Enactment 2008 was passed in the Kedah Darul Aman State Legislative Assembly after receiving the approval of Your Highness Sultan.	To further strengthen the administration of the Kedah State Mufti Department, a new enactment has been enacted specifically related to the jurisdiction of the Kedah State Mufti Department and matters related to it.
April 1, 2008	The Mufti and Fatwa (Kedah Darul Aman) Enactment 2008 have fully come into effect.	The administration of fatwa institutions in the State of Kedah is further streamlined with the membership of the Fatwa Committee consisting of the Mufti as the Chairman, the Deputy Mufti as a member, three members of the Council, and not less than two and not more than six other persons, who are qualified and suitable to be appointed by Your Highness Sultan on the advice of the Mufti and an official from the Mufti Department as Secretary.

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The Mufti and Fatwa (Kedah Darul Aman) Enactment 2008 makes provisions on mufti and State Fatwa Committees as well as provisions for functions and

matters related to fatwa. Although this enactment is newly provisioned but there is no significant difference compared to the previous enactment. The difference is that every fatwa no longer needs to get the approval of the State Islamic Religious Council to be gazette. Other matters related to the method and process of issuing fatwas are still accepted and practiced.

The main function of the Mufti Department is as an agency that coordinates and develops strong fatwas guided by the Quran and As-Sunnah, Ijma' and Qiyas adhering to the *Aqidah Ahlus Sunnah Wal Jamaah*. In addition, the Department also plays a role in resolving religious concerns that arise among the community, especially in the state of Kedah, in addition to several other tasks such as determining the direction of the *qibla* and issuing the Kedah State Islamic Teaching Certificate (Fatwa Kedah, 2025).

Now, the fatwa committee has created a fatwa website for online access by the public (Fatwa Kedah, 2025). The fatwa content category is divided into 3 (three) categories such as gazetted Fatwa (Warta Fatwa Kedah, 2025), Irsyad al-Fatwa (Irsyad Fatwa Kedah, 2025) and Irsyad al-Hukum (Al-Hukmi Fatwa Kedah, 2025). The activities of the Mufti Department are divided into two, namely the Management division involving general administration, services and finance. While the Fatwa division involves the development of fatwa, regional, Qibla azimuth and accreditation certificate.

### 3. METHODOLOGY

This study is in the form of socio-legal which is a research method that unites two main areas of research, namely law and society. Analysing how legal rules, institutions and decisions operate within their real-world social, specifically the Mufti and Fatwa Enactment (Kedah Darul Aman) 2008 and the Kedah Mufti Department as an institution. Since the law is formed as a mechanism to manage the affairs and conflicts that arise in the social society, the law has a close relationship and is difficult to separate from the society (Rohani, 2002). The study also involves systematic research on new and current fatwa legal issues. The use of traditional or conventional legal methods involves the process of stating, interpreting and clarifying the existing law in a legal field (Mahdi Zahraa, 1998).

The research that has been conducted is based on a qualitative approach (Azizah, 2010). To examine the legal framework of fatwa in the State of Kedah, a content analysis method has been chosen. This method requires a certain theme to be fixed so that the process of analysis of the text does not diverge. In this study, the theme is related to the methodology of the *Istinbat* and *Istidlal* fatwa of the Kedah State Fatwa Committee within the framework of fatwa

legislation. The authors had tried to analyze the document to find out the content and meaning contained in the document (Nazir, 1985; Ratna, 2004; and Muhadjir, 2000). Including online publications on the website of the Kedah State Mufti Department.

Referring specifically to the Mufti and Fatwa (Kedah Darul Aman) Enactment 2008. Content analysis was carried out by selecting appropriate texts based on the objectives of the study conducted. The inductive method is used in data analysis through the process of drawing conclusions from things that are specific to a general reality (Peter A. Angeles, 1981; Henry L. et al., 1977). The author has presented the data that is specific and then makes conclusions of a general nature. The author has analysed the data using deductive methods as a way of analyzing and conducting research based on 'thinking patterns' that seek evidence based on general evidence on specific matters (Abdul Halim, 1987). Analysis of the methodology of *Istinbat* and *Istidlal* fatwa selectively and specifically on the issue of HIV Disease Prevention Treatment Initiative (PREP-HIV) using deductive methods to discuss the current and latest issue on modern treatment and medicine. The author has examined the *Istinbat* and *Istidlal* methods applied by Fatwa Kedah committee and then made specific conclusions regarding the scope of discussion of this article.

## 4. RESULTS & DISCUSSION

### 4.1 General Procedure for Issuing Fatwa of the State of Kedah

Mufti and fatwa institutions play an important role in an Islamic country. The role in determining or establishing *hukm* as a guide for the life of Muslims is undeniable, especially in the atmosphere of an increasingly developing world and the emergence of new problems faced by Muslims. The Kedah Darul Aman State Mufti Department plays an important role in solving problems related to Sharia Law faced by the community.

The provision clarifies that from the point of view of its procedure, questions about Sharia Law or fatwa must be asked directly to the mufti. The Mufti and the Fatwa Committee also have the right to issue a fatwa on their own initiative at any time. Similarly, a fatwa can be issued by order of His Majesty the Sultan. In this regard, Section 19(1)(a)(b) of the Enactment 2008 provides as follows:

Subject to Section 21, the Fatwa Committee shall;

(a) by order of His Majesty the Sultan, or

(b) on its own volition, issue a fatwa on any question that has not been finalised or on any issue relating to Sharia law'.

The provision also mentions that a fatwa can be issued when there is a written application to the mufti. The 2008 Enactment states:

Section 19(c):

*Upon request by any person by letter or any other means addressed to the Mufti'.*

The above provision indicates that a request can be made by letter and any other means only. Based on practice, applications can be submitted by letter, telephone, fax or in person with the Mufti's Office.

Practically, not all applications submitted were brought to the Fatwa Committee meeting. The Fatwa Committee will consider whether the matter is acceptable or rejected. The application will be rejected if it is not beneficial in the opinion of the members of the Fatwa Committee. The 2008 Enactment states:

*'Section 19(2): The Fatwa Committee shall consider a request by any person unless in his mind the matter presented is nonsense or with any other reasonable reason for which no answer should be given'*

In short, this provision indicates that only important questions that are beneficial will be considered by the fatwa authority. While unimportant questions will be ignored. In addition, if the question received is something simple, it will be answered immediately by the mufti, deputy mufti or officials involved. Questions that really need discussion alone will be brought into the Fatwa Committee meeting.

According to Section 21(2), when the Mufti proposes to issue a fatwa, he must call a meeting of the committee consisting of the Mufti as the chairman and five other members of the Fatwa Committee to discuss the matter to be issued by the fatwa. The 2008 Enactment provides in Section 20(1):

*The chairman and five other members of the Fatwa Committee shall form a quorum'.*

The provisions also indicate that all official State Government fatwas must be brought to the meeting of this Committee first. Notification of the meeting is made in writing as well as verbally to the members by the secretary. In fact, the Mufti can order the secretary to call a meeting at any time. The enactment provides:

Section 14(3):

*All fatwa committee meetings shall be called by the secretary.*

Section 14(4):

*The chairman may at any time direct the secretary to call a meeting.*

The chairman will instruct the secretary to call a meeting. Usually, the Fatwa Committee meeting is held every month, which is in the fourth week. However, a special meeting will be held if there is a problem that requires an immediate fatwa. Notice of the meeting call will be notified in advance. The attendance of the number of members as mentioned above is required to hold the meeting. If there is not enough attendance, the meeting will be cancelled.

For questions deemed appropriate, the mufti may order a study or research to be conducted by a research officer and a paper is prepared.

The provisions of Article 21(1) state:

*'Before issuing a fatwa, the mufti may cause a study or research to be conducted by the research officer as directed by him and a paper to be prepared'.*

The above studies and research are fundamental points in the practice of fatwa. Aiming to produce a more convincing fatwa decision. The members of the Fatwa Committee will receive the paperwork prepared ten days before the meeting. This is to give them time to refine the paper, covering the texts of the Quran, Sunnah and the references used. In addition, the Kedah Fatwa Committee has enough space to make a careful review and evaluation of the paperwork.

#### **4.2 Methodology Istinbat and Istidlal in Kedah Fatwa Research**

The research was carried out with the aim of collecting data. Data collection is the most important asset in research. Without data, a study will not succeed in achieving its goal. According to Sulaiman Masri (2005), data collection is a process of collecting variables and the researcher will determine the procedures, techniques and aspects of data collection that are in accordance with the study. Fatwa research is closely related to the process of collecting data and information comprehensively. The aim is to ensure that the legal questions and issues raised are understood in depth. Usually, the use of one method alone does not give a true picture of a study question.

The Kedah State Fatwa Committee applies two (2) fatwa research methods in dealing with legal issues that occur;

- i. First: Literature Review Methods
- ii. Second: Fieldwork Research Methods

#### 4.2.1 *First: Literature Review Methods*

The literature method is the most important research process to maximise the information and findings obtained based on the objectives of the study (Mohd Shaffie, 1991). The fatwa research method which is literature is carried out after the fatwa application is received by the Kedah Mufti Department or the Kedah State Fatwa Committee. Kedah Fatwa Committee will study the content of the treasury of *fiqh*, especially in the *Shafi'e madhhab*.

In accordance with the provisions of the Mufti and Fatwa (Kedah Darul Aman) Enactment 2008, in issuing any fatwa, the Fatwa Committee shall decide as follows:

Section 26. *The Qawl Mu'tamad (Definitive Opinion) should be followed:*

- (1) *In considering any fatwa under section 21 or certifying any opinion under section 25 the Fatwa Committee should, in general, follow the Qawl Mu'tamad of the Shafi'e Madhhab based on the Quran, Hadith, Ijma' Ulama' and Qiyās.*
- (2) *If the Fatwa Committee is of the opinion that following the Qawl Mu'tamad of the Shafi'e Madhhab will result in a situation contrary to the public interest, the Fatwa Committee may follow the Qawl Mu'tamad of the Maliki, Hanafi or Hanbali Madhhab after obtaining the consent of His Majesty the Sultan.*
- (3) *If the Fatwa Committee is of the opinion that none of the Qawl Mu'tamad of the four madhhabs can be followed without leading to conditions contrary to the public interest, then the fatwa can be decided on its own discretion without being bound by the Qawl Mu'tamad of any of the four madhhabs."*

This method is applied by the Fatwa Committee through the method of literature study or text study involving four (4) methods of *Istinbat* and *Istidlal*;

- i. The use of the Quran and Sunnah.
  - ii. Use of the *Ijma' Ulama* method
  - iii. Use of the *al-qiyas* method
  - iv. Use of the *Talfiq* Method
- i. ***The use of the Quran and Hadith.***

In accordance with the provisions, it states that any question must be resolved based on the opinion of the *Shafi'e* School. The 2008 Enactment, Section

26(1) states:

"In considering any fatwa under section 21 or certifying any opinion under section 25, the fatwa committee shall, in accordance with the *qawl mu'tamad* of the *Shafi'e Madhhab* based on the *Quran and Hadith*"

Therefore, based on the above provisions, the *Quran and Hadith* are the true and main sources of the *hukm* implemented in the State of Kedah.

The Kedah State Fatwa Committee uses texts from the *Quran and Hadith* as a reference in issuing fatwas. The application of the *Quran and Hadith* texts carried out by the Kedah State Fatwa Committee can be seen in the following form;

References to the texts of the *Quran and Hadith* are referred to in the form of verse quotations, translations and brief explanations through quotations from existing *fiqh* books without a deeper discussion through the *tafsir* of the *Quran* and the authoritative *syarh* of *al-Hadith* to obtain a more detailed legal discussion on the issue of fatwa (Kamarudin, 2012). Likewise, the method of postulation through the interpretation of the words of the text is not presented at all as a *manhaj istidlal* (method of postulate) which is important in the determination of *Sharia* law.

## ii. Use of *Ijma' Ulama*

In accordance with the provisions, it states that any question must be resolved based on the opinion of the *Shafi'e School*. The 2008 Enactment, Section 26(1) states:

"In considering any fatwa under section 21 or certifying any opinion under section 25, the fatwa committee must, in general, follow the *qawl mu'tamad* of the *Shafi'e Madhhab* based on *Ijma' Ulama*"

Although *ijma'* is part of the source of the law, in the context of its application, the Kedah State Fatwa Committee does not do *ijma'* in a problem. This is because the Mufti and the Fatwa Committee today are those who are committed and bound by the *Shafi'e Madhhab* in the State of Kedah. This group is not *Mujtahid* (Al-Asyqar, 1991), but they are all *Muqallidin* to the opinion of the existing sect.

Therefore, the *ijma'* that is done is more about seeing and seeing the *ijma'* of the previous scholars. The Mufti and the Fatwa Committee only hold a meeting and take a decision on a *hukm* that has been *ijma'* by the scholars of the *madhhab*.

### iii. Use of the Qiyas method

During the process of determining the *hukm*, the Fatwa Committee also adopts the method of *Qiyas* in the process of issuing its fatwa. In accordance with the provisions stating that any question must be resolved based on the opinion of *the Shafi'e Madhhab*. The 2008 Enactment, Section 26(1) states:

*"In considering any fatwa under section 21 or certifying any opinion under section 25, the Fatwa Committee shall, in accordance with the qawl mu'tamad of Madhhab Shafi'e based on ... and Qiyas"*

The application of *Qiyas* must be based on the correct method of determining *'illah* so that it corresponds between the original *hukm* and the new *hukm*. To embody the method of *Qiyas* as a source of law, *ijtihad* activities are very necessary to obtain the true *'illah* so that it is relevant to the new *hukm*. The processes of searching for *'illah* through the method of *ṣibr wa taqsim*, *tanqih al-manat*, *takhrij al-manatib* need to be explored in depth because the results will produce the accuracy of the *'illah* of the law that can analogize the original *hukm* with the current *hukm* (Al-Shawkani, 1999).

The use of *Qiyas* is one of the methods of determining the *hukm* applied by the Fatwa Committee. However, the operation of *Qiyas* applied by the Kedah State Fatwa Committee does not take place according to the legal analogy process developed by the *jurists* and even the method of using *Qiyas* in the way of making *hukm* is also unclear. The findings of Hazizan (2017) study found that the operation of *Qiyas* used by the Fatwa Committee in the method of determining the *hukm* is not based on the doctrine of *Qiyas* agreed upon by the *jurists* who developed the method.

### iv. Use of the Talfiq Method

*Talfiq* is the act of mixing various opinions of *madhhab* in a problem and not being bound by the opinions of one *madhhab* because of the demands of certain factors. In addition, the methodology of producing *hukm* from postulates through the *talfiq* method with the aim of obtaining *sharia* law in a particular problem (Mustafa, et.al. 2018). The *talfiq* method used is to combine the opinions of the previous *madhhab* scholars. This method, according to the view of some contemporary scholars, is the best approach in providing current *fiqh* solutions that can meet all the needs of human life in this era (Mohd Hafiz Jamaludin, et.al. 2016).

In general, the *Shafi'e* School is used as the main source of reference in setting fatwas aimed at avoiding disagreements and confusion among the Community (Enactment No. 6, Section 26(1)). However, if the Fatwa Committee is of the

opinion that the *Qawl Mu'tamad* of the *Shafi'e* School may lead to a situation contrary to the public interest, the Fatwa Committee may, with the permission of the Sultan, follow the *Qawl Mu'tamad* of the *Hanafi*, *Maliki* or *Hanbali* School. Enactment 2008 Section 26. (2): mention:

*"If the fatwa committee is of the opinion that by following the qawl mu'tamad of Madhhab Syafi'e a situation contrary to the public interest will result, the fatwa committee may follow the qawl mu'tamad of Madhhab Hanafi, Maliki or Hambali after obtaining the consent of His Majesty the Sultan".*

From the above provisions, there is no constraint to accept what is appropriate and reasonable for the benefit of the public even if it is outside the *Qawl Mu'tamad* of *Syafi'e*.

The Enactment of the Mufti of the State of Kedah clearly states that, when issuing a fatwa, it is customary to follow the *qawl mu'tamad* of the *Shafi'e Madhhab*, unless it is of the opinion that the *qawl mu'tamad* of the *Shafi'e Madhhab* may lead to a situation contrary to the public interest, then it is permissible with the permission of the Sultan to follow the *qawl* of any other *Mu'tabar* sect. This proves that the welfare factor is the main thing in determining fatwas, especially those that touch on issues in society.

In addition, every question raised needs to be solved. If it is not found or none of the *qawl mu'tamad* from the four *Madhhabs* can be followed, then the fatwa can be decided according to the discretion of the Fatwa Committee itself. Section 26(3) provides that:

*"If the Fatwa Committee is of the opinion that none of the qawl mu'tamad of the four Madhhabs can be followed without leading to a situation contrary to the public interest, then the fatwa can be decided according to its own prudence without being bound by the qawl mu'tamad of any of the four Madhhabs."*

The provisions clearly show how a wider avenue is given to the Fatwa Committee to take legal views from any *Sunni* sect. Even to any view outside of the four *madhhabs* so that it reaches a broader *ijtihad*. This means that the Fatwa Committee seems to be free to determine the appropriate method including *Talfiq* to be used to resolve questions that arise based on the needs and interests of the public. The main importance in the effort to issue a fatwa, the responsible party tries to make a fatwa that can bring benefits and *maslahah* to the public.

#### 4.2.2 *Second: Through Fieldwork Research Methods*

Fieldwork research is a research method that involves field studies or activities. One form of social research (Anwarul Yaqin, 2007) which is a social interaction aimed at collecting information for research purposes. The Fatwa Committee and the officials involved will go down to the study location to see and witness for themselves the reality or true picture of the background of the issues presented.

The Fatwa Committee will usually use field methods to identify and obtain an authentic picture of the fatwa issue to be decided. There are two commonly used field methods, namely:

- 1) A field study that involves on-site research on an issue raised (Fatwa Kedah, 2021).
- 2) Referral to parties related to fatwa issues to get a complete explanation (Fatwa Kedah, 2022)

Legal research in the context of *Istinbat* and *Istidlal* fatwa, it is necessary to be thorough in setting systematic research guidelines. This needs to be fulfilled in the collective efforts to address new issues in an increasingly complex society. The methodology of fatwa research needs to combine an understanding of legal concepts as well as the reality of today's society.

#### 4.3 *Fatwa Analysis on HIV Pre-Exposure Prophylaxis (PREP) Treatment Initiative in Health Facilities (Fatwa Kedah, 2023).*

*The Kedah State Fatwa Committee has examined the arguments and views presented by the representative of the Ibn Sina Medical Charity Organisation Malaysia (PAPISMA), Doctor Muhamad Ridhwan bin Abdul Mu'in, family physician of Simpang Kuala Health Clinic on the introduction of HIV prevention treatment initiative or PREP in health facilities introduced by the Ministry of Health Malaysia (MOH) and agreed:*

1. *Treatment of the HIV PREP method for couples (HIV-negative husband or wife) who live with an HIV-positive spouse and health workers should be on maslahah to prevent them from also contracting the virus.*
2. *However, giving is haram to other than the two groups above because it will invite more mafsadah (damage) than maslahah (goodness), this is based on the Fiqhiyyah method:*
  - Emergency Requires Things That Were Originally Haram.
  - Leniency or Rukhsah is not linked or associated with immoral acts.
  - Preventing All Evils Is More Important Than Taking Benefits.

Therefore, the Fatwa Committee is of the view that the Government should review this pilot project so that free sexual activities are not prevalent and invite various harms that affect the requirements of *Maqasid Shariah*, especially in terms of "Hifzu Al-din" and "Hifzu Al-Nasab" for the well-being of the Society and the Nation in the future.

This fatwa is one of the positive measures taken by the Fatwa Committee to deal with the spread of this virus after receiving reports on the increasing number of HIV carriers. This is because, the Fatwa Committee sees this situation as a threat to the sanctity of family institutions and the security of life.

#### 4.4 Analysis of *Istinbat* and *Istidlal* Fatwa Methods

In explaining the decision of the fatwa above, the Fatwa Committee uses the method of referencing medical experts. The argument of the legal answer is also strengthened by several *fiqh* methods that mention the public interest. In addition, the *Maqasid al-Syar'iyah* method is considered as an important basis in determining the fatwa because it touches on the care of *al-daruriyat*, especially in the aspect of safeguarding one's lineage and religion.

Expert opinion refers to expert testimony, or expert testimony is an opinion given by someone who has expertise in a field or question (Bahnasi, 1989). Not only that, but testimonials also given in relation to scientific, technical or professional matters by qualified and authoritative experts to speak on such matters can be categorized as expert testimony. This expert testimony is usually issued by those who have gone through training, specific skills or a person's habit on a matter (Mahmud Saedon, 1998).

Therefore, religious matters should be asked to scholars or people who are knowledgeable in the field of religion while worldly affairs should be asked to experts in those matters. For example, the question about a disease must be asked to a knowledgeable person in the field, namely a health expert (Irwan Mohd Subri & Fakhriina Zulkiple, 2016).

The author agrees with the decision of the fatwa above in relation to the necessity of PREP law conditionally to only two (2) groups. The fatwa answers given are rational in line with the current reality that is happening in the community. The Fatwa Committee also considers the requirements of *maslahah* and *mafsadah* in every fatwa decision decided by looking at the issue based on the methods of *Maşaliḥ al-mursalāh*, *şadd al-dharai'*, *'urf* as well as the rules of *fiqh*. The Fatwa Committee's consideration in adopting this method is based on the background of the fatwa applicant, the local culture, the sensitivity of the community, the impact of giving a fatwa to the contrary and the current needs.

HIV or *Human Immunodeficiency Virus* is a type of virus that can paralyze and destroy a person's immune system which eventually results in AIDS which is "*Lack of Immunity Syndrome Against Disease*" (Zahariah, 2006). Usually, people with AIDS will become weak because their bodies have lost the ability to fight various types of diseases and they will die. One of the ways HIV/AIDS is transmitted through sex, whether it is free sex or marriage.

In the context of marriage, HIV carriers are either husband or wife at risk of transmitting this virus to their partners. This has resulted in more individuals becoming victims of this virus infection. In fact, children who are about to be born are at high risk of getting the same infection. Therefore, the HIV PREP prevention initiative is one of the steps that should be implemented as a method of preventing the spread of this virus to individuals through marital relations.

The analysis of the fatwa method used by the Fatwa Committee can be submitted as follows;

**First:** Every prohibition causes harm not only to oneself but to others as well (Mustafa al-Bugha and Muhya Al-Din Mistu, 2006). According to al-Nawawi (1980), harm also occurs in the institution of marriage including vows '*ila*' is by allowing his wife's desires so as to cause emotional disturbance to him. This prohibition proves that the harm given to the wife in the form of emotions is prevented, not to mention the harm to her physical, so even more is prohibited. Therefore, the transmission of the HIV virus to a couple is one of the forms of physical harm that is very tragic because surely their standard of living will be affected and eventually lead to death. Therefore, HIV PREP prevention initiatives are the best way to avoid harm to their husbands or wives once they know the health status of their spouses.

**Second:** The provision of HIV PREP also fulfils the meaning of *maslahah* for the well-being of the couple which fulfils the five basic principles of *Maqasid al-Shari'ah* which is *al-daruri* as considered by the Fatwa Committee as a method of fatwa. According to Al-Shatibī (2011), this principle is the basis of *maslahah* where it should be given priority and is very authoritative.

The issue of HIV testing does not only involve the lives of each couple but the lives of future offspring. Its care should be given priority because it is the basis of *maslahah* which is very necessary to take care of. According to Al-Ghazali (1997), as recorded by Wahbah al-Zuhayli (2007) that, *maslahah al-daruriyat* which includes the care of life and offspring is a strong *maslahah*. Therefore, the care of life must be given attention so as not to be involved in any form of harm (Nur al-Din, 2001). One of them is to stay away from yourself or others from

getting HIV.

The decision to give HIV PREP is in fact a step that needs to be implemented to prevent the spread of this virus through marriage which can ultimately threaten the lives of their spouses and children. Among the demands of the husband's responsibility is not to cause harm to the wife in any form because the act is a tyrannical and prohibited act. According to Muḥammad Uqlah (2002), among the forms of harm that are prevented against a wife are giving bad treatment by abusing and hurting her, insulting her without any required reason or any action that is considered harmful to her.

All forms of this harm are expressly prohibited by the Shari', whether emotional or physical harm. Through the method of *dilalah al-nass* (Ahmad al-Hasari, 1997), the transmission of HIV to the couple is included in the form of physical harm which is prohibited based on the similarity of *'illah* that exists in the above treatment, namely harm to the wife.

Therefore, before such harm occurs, prevention should be done so that the infection can be avoided. The implementation of HIV PREP is the most effective medium to prevent HIV infection and transmission. If it turns out that one of them is a carrier of the HIV virus, then the action of the HIV PREP initiative can be taken to prevent serious harm from occurring. Islam attaches great importance to harmony in the institution of marriage. Therefore, the Sharia requires that the marriage be dissolved if there is any form of abuse and harm to the wife or otherwise based on maintaining the *maslahah* of each spouse. Moreover, if the harm causes death, then it is more entitled to be avoided through the test.

To meet this purpose, the stipulation that the given of HIV PREP is conditional, and the Kedah State Fatwa still maintains the illegal law for parties other than HIV-positive married couples who live together and health workers is a very rational step. This is because, apart from the two groups, it can invite more *mafsadah* than good. Most importantly, the authorities are obliged to enforce hisbah to prevent crime and vices such as adultery as the main factor leading to the spread of the HIV virus.

*Manhaj* issuance of fatwa by the Fatwa Committee meets the following standards;

**First:** The Fatwa Committee prioritizes *maslahah* which is of greater importance than *mafsadah* which has little effect based on *the method of Maṣaliḥ al-mursalah* as a purpose to eliminate the greater *mafsadah*.

**Second:** The Fatwa Committee prohibits and prohibits an act or action as a measure to prevent *greater maḥṣadah* from having a greater impact based on the doctrine of *ṣadd al-dhara'i*.

**Third:** The Fatwa Committee requires a restraint or prohibition based on a major emergency factor and an urgent situation where harm can occur if it is in compliance with the restraint or prohibition.

**Fourth:** The Fatwa Committee gives priority to something that is a need or a part of the community so as not to cause trouble or difficulty to them in implementing the need.

The Fatwa Committee uses the method of *ṣadd al-dhara'i* as a way to interpret the law. The use of *ṣadd al-dhara'i* as a method of fatwa is the correct application that can be used by the Kedah State Fatwa Committee. The method of *al-Dhara'i* is a method related to *maṣlahah* and *maḥṣadah* because it is defined as a way that leads to good or harm. Mustafa Al-Bugha (2006) is of the opinion that *al-Dhara'i* which leads to damage is forbidden and obligatory to be prevented.

In conclusion, the Fatwa Committee adopts this method based on certain standards by taking into account the consideration of *maṣlahah* and *maḥṣadah* based on the implications for the institution of the family and the Muslim community.

## 5. CONCLUSION

The method of *Istinbat* and *Istidlal* fatwa in the legal framework is very important and helps to obtain a more uniform and harmonious and systematic fatwa. In the discussion above, it has been clear that JKF Kedah applies *Istinbat* and *Istidlal* using various approaches referring to the Fatwa Enactment 2008. Overall, the fatwas were decided based on several levels of *Istinbat* and *Istidlal* methodology based on verses of the Quran, Sunnah, *Ijma'*, *Qiyas* and decided based on *maṣlahah'ammah*, *Maqasid* and *talfiq* were also applied selectively.

The Mufti and Fatwa Enactment of the State of Kedah stipulate that fatwa is decided based on the *qawl mu'tamad* of *Madhhab Syāfi'i* and in certain circumstances can be transferred to the *qawl mu'tamad* of other *madhhab*, but there are situations where fatwa is decided by abandoning the *qawl mu'tamad* and guided by *qawl* that is not *mu'tamad* including *qawl* that is *da'if* because they want to continue to remain with the hold of a sect. The Fatwa Committee needs the permission of the Sultan to leave the *Shafi'i* School. The *Talfiq* approach of *madhhab* within the framework of the *qawl mu'tamad* is also provided for in the Enactment proves the existence of openness in the methodology of *Istinbat* and

*Istidlal.*

Fatwa research is also carried out by the Fatwa Committee through two methods, namely literature and field. This element can be clearly translated in the *Istinbat* and *Istidlal* method of Kedah Fatwa Committee applied to the latest legal issues. Referrals to experts involved in legal issues are also done effectively. The decision of the fatwa is in accordance with the concept of arbitrage or *muwazanat* between *maslahah* and *mafsadah*. The Fatwa Committee adopts this method based on certain standards by considering the needs and importance of *maslahah 'ammah* and its impact on the Muslim community, especially in the State of Kedah.

The methodology of *Istinbat* and *Istidlal* fatwa must be done carefully so that the right methods and sources can be identified to resolve legal issues. The Fatwa Committee must conduct an in-depth study and explain the justification for the use of a method and legal source. The methodology of *Istinbat* and *Istidlal* in the framework of legislation ensures harmony. However, for the solution of new issues in the reality of today's life, *Istinbat* and *Istidlal* in fatwa research need to be flexible and progressive.

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