

Method Analysis of Fatwa KH. MA. Sahal Mahfudh on the Issue of Marriage by Telephone and Internet

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Abstract

The purpose of this study is to determine the analysis of the opinion of KH. MA. Sahal Mahfudh On The Issue Of Marriage By Telephone And Internet. Data collection methods through documentary, as well as data processing through editing, classification, verification, and data systematisation. Then the data is analysed by taxonomy and qualitative conclusions are drawn with deductive thinking methods Based on the research that has been done, Kiai Sahal's fatwas on contemporary family law problems are about marriage contracts by telephone, marriage contracts via the internet or communication tools. In determining the fatwa, Kiai Sahal uses methods such as those used by the Nahdlatul Ulama Bahtsul Masail Institute and the Indonesian Ulema Council's Fatwa Determination Commission. Namely the Nash Qath'i, Qauli and Manhaji approaches. This approach involves using a variety of sources, including Nash qath'i (Al-Quran or Hadith) when the rule of law is clear, and otherwise the Qauli and Manhaji methods are used. The Qauli method is based on the opinions of leading scholars or jurists of various schools of thought contained in the trusted books of Islamic jurisprudence (al-kutub al-mu'tabarah). This approach is used when answers can be found in the opinions of these scholars or in recognised books of fiqh. If satisfactory answers cannot be found through the opinions of scholars or recognised books of fiqh, Kiai Sahal uses the Manhaji method

Keywords: Analysis of Fatwa Sahal Mahfud, Marriage by Telephone, Marriage By Internet

Published by

Fakultas Syariah Sekolah Tinggi Agama Islam (STAI) Al-Furqan Makassar

ISSN

2622-5212

Website

<https://ojs.staialfurqan.ac.id/jtm/>

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INTRODUCTION

At the time of the Prophet, if there was a new problem faced by Muslims, what was done was to go to the Prophet to ask about the law. then the Prophet would provide answers with the help of the revelation he received or by using his personal ijtihad based on revelation. Ijtihad was only used if they could not directly ask the Prophet, and the results of the ijtihad would be submitted to the Prophet for a decision. (Umam & Aminuddin 2001)

After the death of the Prophet, the Companions dispersed to various regions. Many of them held leadership positions in religious and intellectual affairs. They were the source of enquiries and requests for judgement on various issues in their respective regions. (Ahmad Hasan 1984). The Companions, after the death of the Prophet, were faced with new situations that did not have clear legal guidance in the Quran.(Sari & Sunarti, 2013) They began to do Istinbat (legal search) to solve these problems. When they encountered situations where there was no nash (direct guidance from the Quran or Hadith), they used ra'yu (personal judgement) or their intellect, based on the principles of benefit and general rules of law. (Umam & Aminuddin 2001)

The scholars and fatwa experts of that time gave fatwas based on Shari'ah law, which was based on the Quran and Hadith, as well as their personal ijihad. Fatwas were an important way of explaining the Shari'ah rulings on various issues that arose in society. Fatwas are based on extracting Shari'ah law from Shari'ah sources, and ijihad is the only way to determine Shari'ah law from these sources.(Santoso, 2016)

However, it is important to remember that not everyone is authorised to give fatwas. Fatwa givers must fulfil a number of requirements, including a deep understanding of the Qur'an and As-Sunnah, mastery of the Arabic language, and a deep understanding of various religious issues. One important requirement in giving fatwas is to follow the established methodology (manhaj). Giving a fatwa without adhering to the manhaj is a violation of religious principles. In other words, the provision of fatwa must be based on the principles of ijihad, which includes fahm al-Nash (understanding the text) to understand the nash or legal text and fahm al-waaqi' al-haadith (understanding the reality that occurs). Fahm al-Nash is an attempt to understand the evidence of sharia so that it can determine the law contained in the evidence. While fahmu al-waaqi' al-haadith is an attempt to examine and understand the reality to be punished so that the substance of the problem and the sharia law that best suits the reality can be known.

In Islam Reality is not a source of law or legal evidence, but rather the object to be punished. Therefore, fatwas are not taken from the reality, but refer to the arguments of sharia such as the Al-Quran, Sunnah, Ijma' (agreement of scholars), and Qiyas (legal analogy). Therefore, the role of scholars is very important in providing correct understanding through fatwas. Basically, fatwa is the result of the ijihad of individual scholars or Muftis, or religious institutions that have the authority to provide fatwa in legal and religious matters. (Dimiyati 2015)

Although today individuals such as the imams of the mazhab are rarely found, ijihad efforts can be made collectively or independently by muftis or scholars who have the ability to provide fatwas. In Indonesia, there are various religious institutions that publish fatwa books, such as Tanya Jawab Agama and Kata Berawab published by Majelis Tarjih PP Muhammadiyah, Fatwa Set of the Indonesian Ulema Council, and Solutions to Actual Problems of Islamic Law Decisions of the Nahdlatul Ulama National Conference and Konbes. In addition, there are also scholars in Indonesia who have extensive knowledge and are able to provide fatwas independently or collectively through questions posed to them. One example is KH. MA. Sahal Mahfudh, a contemporary Indonesian scholar who often gives fatwas on actual Islamic legal issues. He is often recognised by the pesantren and academic world for his sharp thinking and ability to provide systematic and clear solutions to various Muslim problems. The book "Dialog Problemat Umat" is one example of his work that discusses various issues surrounding worship, morals, and social issues in Islam. (Sari & Sunarti, 2013)

However, in this context, the author limits the discussion to only address the method of issuing fatwas related to the family law issues described in the book. This includes issues such as marriage over the phone, circumstances where a wife directs her husband to seek his biological satisfaction elsewhere because she is reluctant to fulfil those needs, and various other fatwas delivered by KH. MA. Sahal Mahfudh. The book "Dialog Problemat Umat" contains various fatwas from KH. MA. Sahal Mahfudh who provides solutions to the problems faced by the ummah in modern times. However, this book does not explain in detail the method used by KH. MA. Sahal Mahfudh in responding to questions posed to him. This is what makes the author interested in conducting research related to the method of issuing fatwas used by KH. MA. Sahal Mahfudh, especially in the context of family law today. Understanding the method of issuing fatwas is important and needs to be mastered so that the fatwa given can be a clear and correct guide.(Atabik & Mudhiiah, 2014)

METHOD

This research falls into the category of library research with a qualitative approach and is descriptive in nature with the aim of describing in detail the fatwa method used by KH. MA Sahal Mahfud. The data used in this research are in the form of theories or concepts related to methods in determining Islamic law or fatwa. The approach used is a qualitative approach, which focuses on description and in-depth understanding of the fatwa method used in the context of contemporary family law cases by KH. MA. Sahal Mahfudh. This research approach, researchers start with concrete facts or events that are relevant to the issue. From these concrete data, researchers then generalise findings that have a general nature. With this approach, researchers can draw general conclusions based on concrete data that has been collected.

RESULT AND DISCUSSION

Contemporary Family Law Problematics

1. Telephone marriage

Telephone marriage is an issue that has contemporary relevance. The fatwa of KH. MA. Sahal Mahfudh's fatwa regarding the validity of marriage by telephone is that in this era of advanced technology, communication and telecommunication tools have become an integral part of everyday life. Telecommunication stalls are mushrooming everywhere, which encourages some people to consider long-distance marriage over the phone as a practical option, especially for those who are very busy. However, in determining the law, practical considerations alone are not enough. Other aspects need to be taken into account because in Islam, marriage is something very sacred.

KH. MA. Sahal Mahfudh then looked for legal answers related to marriage by telephone by referring to several fiqh books such as *Tanwir al-qulub*, *at-tanbih*, and *kifayat al-akhyar*. Based on the information in these books, a marriage is only considered valid if it involves a bridegroom, a guardian, and at least two witnesses, all of whom must be physically present in one wedding assembly. Therefore, based on the explanations in these fiqh books, KH. MA. Sahal Mahfudh concluded that marriage by telephone is not valid according to Islamic law because it does not fulfil the fiqh requirements. (Meri Fitri 2022)

In the whole analysis, the method used by KH. MA. Sahal Mahfudh is the qauli approach, which follows the opinions in the fiqh books that are considered valid. However, if you pay further attention, these books do not explicitly discuss marriage by telephone, but rather focus on the issue of the invalidity of marriage if the two parties are not present in one assembly. Thus, telephone marriages are also considered invalid due to the physical absence of both parties. In this case, the method used is the *Ilhaqi* method, which is adjusting the existing problem with similar situations that have been explained in recognised fiqh books. (Meri Fitri 2022)

2. Internet Marriage Ceremony

A fatwa on the validity of a marriage contract conducted via the internet or other means of communication is an important issue in the contemporary context. According to KH. MA. Sahal Mahfudh, marriage is not just a formalisation of biological needs, but is also part of the great shari'ah. Marriage is considered a *muqoyaddah* act of worship, which means that its implementation is bound by the provisions of terms and conditions. Although there are variations of opinion among scholars on the pillars of marriage, *ijab* and *qabul* are two elements that are generally agreed upon by all scholars.

It is important to understand the difference in interpretation between the Hanafis and the majority of scholars. The Hanafis consider *ijab* to be the first utterance of one of the parties to the contract, while *qabul* is the response of the second party. Meanwhile, the majority of scholars require *ijab* to come from the bride's guardian or his

representative, and qabul is a recitation of the willingness to marry from the groom or his representative. In the context of marriage through communication media such as the internet, email or chat, there is debate about whether the contract is valid. The Hanafiyah opinion states that a marriage contract through a letter or written message is valid provided that two witnesses are present. However, this opinion is not recognised by the majority of scholars, who require the physical presence of the parties concerned in a marriage ceremony.

KH. MA. Sahal Mahfudh concluded that marriage contracts through communication media such as the internet, email or telephone are not valid according to Islamic law. This is due to two main factors: firstly, the requirement for ijab and qabul must be done in the physical presence of the parties concerned, including the bridegroom, guardian and two witnesses. Secondly, because communication media such as the internet or email are considered as letters (kinayah) in the view of the Malikiyah, Shafi'iyah and Hanabilah, who also do not recognise marriage contracts through letters.

In answering this question, KH. MA. Sahal Mahfudh uses the qauli approach by referring to fiqh books that are considered valid. However, because there are differences of opinion among the mazhab imams, he then analyses using the manhaji method. After trying to find a compromise between the various views, he finally chose to take the stronger opinion (tarjih) and which is more in line with the purpose of marriage in Islam, namely to create a family that is sakinah, mawaddah, and rahmah. Thus, according to KH. MA. Sahal Mahfudh, marriage contracts through communication media such as the internet, email, fax, and others are not valid. (Meri Fitri 2022)

Based on the analysis conducted by the author, Kiai Sahal in determining Islamic law uses a method similar to that used by the NU Bahtus Masail and the MUI Fatwa Commission. This is indicated by his activities and responsibilities in NU, starting from the basic level until he finally served as Chairman of PBNU Syuriah and became Chairman of the Central MUI in Jakarta for two periods. This certainly influenced his thinking in determining Islamic law regarding cases submitted to him.

During the 1992 NU National Conference of Alim Ulama in Bandar Lampung, Kiai Sahal was elected as the acting Rais 'Aam representative, with Kiai Ilyas Ruhiyat as the acting chairman. During this meeting, they managed to update the qualitative decision-making system by adding the manhaji method of determining Islamic law, which involves using the basic principles (al-qawaid al-ushuliyah) and methodology developed by the madhhabs in formulating rulings on a particular issue while taking into consideration the Qawaid Fiqhiah.

KH. MA. Sahal Mahfudh explained that the legal principles formulated by previous scholars remain relevant today, but it is necessary to develop fiqh through principles and methodologies that are contextual. The steps taken by Kiai Sahal in determining the law on the questions posed to him are as follows:

1. Telephone Marriage Contract In determining the ruling on telephone marriage contracts, Kiai Sahal uses the Manhaji approach with the ilhaqi method, with the following steps:
 - a. The first step taken by Kiai Sahal was to analyse the problem posed to him, looking for clues behind the occurrence of marriage contracts by telephone, especially because of technological advances that make human activities more practical.
 - b. He explained the problem from various interdisciplinary viewpoints, emphasising that, despite technological advances, legal decisions should not be based solely on practice.
 - c. He sought answers using the Qauli method, referring to several fiqh books, such as Tanwir al-Qulub, at-Tanbih, and Kifayah al-Akhyar. These books state that a marriage is only valid if attended by the groom, a guardian, and two witnesses. However, these books do not explicitly mention the validity of telephone marriages.

However, because these books emphasise that marriage is not valid if both parties are not present at the same meeting, Kiai Sahal concludes that telephone marriage contracts are not valid. Therefore, Kiai Sahal used the *ilhaqi* method, similar to that used by the MUI Fatwa Commission, by equating the current issue with analogous cases in existing books. He also uses the approach used by NU's LBM, which involves the *ilhaqul masail bi nazhairiha* method with the consensus of scholars. However, because the fatwa issued by Kiai Sahal is individual (*fardy*), he uses his own understanding to analyse the case.

2. Internet Marriage Contracts In determining the ruling on internet marriage contracts, Kiai Sahal uses the *Manhaji* approach with the *tarjihi* method, with the following steps:
 - a. explain the importance of marriage, which is bound by the terms and conditions.
 - b. He collected the opinions of the Hanafis and the majority of scholars concerning the pillars of marriage. Then he explains their opinions regarding the pillars of marriage.
 - c. He explained the reasoning behind this issue, emphasising the increase in human activity and sophisticated means of communication such as the internet, email, fax and so on, which are considered more practical and efficient, including for carrying out the marriage contract through *ijab qabul*. He emphasised that, in essence, the use of communication tools such as the internet, chat and email are similar to written letters.
 - d. He sought answers using the *Qauli* method, based on the opinions of the *Madzhab Imams*, similar to that used by the NU's LBM and the MUI's Fatwa Commission.
 - 1) He explains the opinion of the Hanafi scholars, who state that marriage is valid by letter, provided it is attended by two witnesses.
 - 2) He explains the opinion of the majority of scholars, who state that the marriage is not valid if it is not attended by both parties, the guardian, and two witnesses.

Because there are differences of opinion (*khilafiyah*), fatwas are determined using the *manhaji* approach with the *tarjihi* method, by choosing the stronger and more beneficial opinion. However, the NU fatwa system does not use the *tarjihi* method, but uses the *taqrir jama'i* method to choose one opinion among several, following the opinions of scholars from the Maliki, Hanafi, Shafi'i, and Hanbali schools of thought. According to the author, Kiai Sahal's approach is considered appropriate. He first relies on authoritative sources, and when answers are not immediately available, he uses the methodology of classical scholars, comparing contemporary issues with analogue cases and determining the most suitable solution for the current situation. However, in the case of marriage by telephone or communication media, Kiai Sahal does not seem to introduce independent *ijtihad* (legal reasoning) and continues to adhere to the relevant teachings of previous scholars.

CONCLUSION

The approach used by Kiai Sahal Mahfud in giving fatwas follows the approach/methods used by Nahdlatul Ulama's *Latjnah Bahtsul Masail* and the Indonesian Ulema Council's legal ruling system. This approach involves using a variety of sources, including *Nash qath'i* (Al-Quran or Hadith) when the rule of law is clear, and otherwise the *Qauli* and *Manhaji* methods are used. The *Qauli* method is based on the opinions of leading scholars or jurists of various schools of thought contained in the trusted books of Islamic jurisprudence (*al-kutub al-mu'tabarah*). This approach is used when answers can be found in the opinions of these scholars or in recognised books of *fiqh*. If satisfactory answers cannot be found through the opinions of scholars or recognised books of *fiqh*, Kiai Sahal uses the *Manhaji* method. The *Manhaji* method involves using approaches similar to those used by earlier scholars, such as the *ilhaqi* (analogy) method, which involves matching

contemporary issues with similar cases in authoritative texts. Alternatively, the tarjih (preference) method is used, where two different opinions on the same issue are compared, and the opinion that is stronger and more relevant in the current context is chosen. In addition, Kaidah Fiqiyah (Islamic legal maxims) can also be used.

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