
The Istinbat Methodology of Fatwa by the Kedah Fatwa Committee: A Critical Analysis on Selected Fatwas

Alias Azhar^{*a}, Hazizan Md Desa^b, Mohd Zakhiri Md. Nor^c, Shuhairimi Abdullah^d

^a*School of Law, University Utara Malaysia(UUM), Malaysia*

^b*Department of Islamic Affairs Kedah, Malaysia*

^c*School of Law, University Utara Malaysia(UUM),Malaysia*

^d*School of Human Development & Technocommunication, Univversity Malaysia Perlis, Malaysia*

**Corresponding author e-mail: az.alias@uum.edu.my*

Abstract

A fatwa is the reaction or response towards questions concerning religious ruling faced daily by each member of society. The issuing of hukm based on fatwa occurs after going through the process of istinbat before being finalised as law. To istinbat a fatwa, the process must be implemented based on a solid istinbat methodology centred on arguments in Islamic law. Apart from that, the fatwa can also be a result of a responsive legal reasoning approach on the social reality of the local community. The research conducted was based on two main forms of research methods that were undertaken together, namely, qualitative research design and sampling study. The research also adopts a content analysis approach which involves examining contents and meaning of documents. The documents include fatwa texts and fatwa enactments of Kedah in both written and online forms. This article discusses the istinbat methodology applied by the Kedahan Fatwa Committee through performing critical analysis on selected fatwas as a sample. In addition to legal reference based on the Syafi'e mazhab, the fatwas issued also rely on maslahah and 'urf as important guides in the istinbat of fatwa. The istinbat method along with clear arguments and legal sources are the catalysts of an effective fatwa issuing. An istinbat methodology that is actively responsive to the realities of societal life can enhance the credibility and reliability of the fatwa institution via the fatwa issued.

Keywords: Social issues, istinbat process, Maslahah, 'Urf, Kedahan fatwa.

1.0 INTRODUCTION

Fatwas act as a source of law for the survival of a developing and dynamic society, as well as a reflection of the thought and intellectuality of the society. Fatwa is born from the intellectual activity and effort of fatwa institutions to conclude and istinbat Syariah principles from its numerous sources.

The strength of the verification and application aspects of a clear istinbat method based on usul fiqh is the main methodology in the istinbat process. The various istinbat approaches applied must be observed to produce a law that is in accordance with the requirements of Islam. The binding with a mazhab and compliance with the aspects of maslahah and 'urf will influence a fatwa that goes through the istinbat process. This article analyses the use of the istinbat method in legal convictions practised by the Kedah Fatwa Committee. It also explains the method of istinbat ruling applied in Islamic law in issuing a fatwa to solve and resolve unique and challenging issues in Islamic jurisprudence.

The Istinbat method through references in the Syafi'e mazhab is stipulated by law in the application of the istinbat method in the Kedah Enactment of Mufti and Fatwa (Kedah Darul Aman) 2008. Provision No. 6 Section 26(1) stipulates:

“In determining any fatwa under section 21 or acknowledging any opinion under section 25, the Fatwa Committee should normally follow the qaul muhtamad (finalised qaul) of Mazhab Syafi'e based on al-Quran, Hadith, al-ijma' of scholars (consensus) and Qiyas.”

The Mufti and Fatwa Enactment (Kedah Darul Aman) 2008 Section 26 (2)] also provides the element of mazhab openness as follows:

“If the Fatwa Committee opines that if by following qaul muktamad of Mazhab Syafi’e, a condition that contradicts the benefits of the public may occur, the Fatwa Committee can follow / adhere to the qaul muktamad of Mazhab Hanafi, Maliki or Hambali after receiving the consent of His Majesty the Sultan.”

An approach based on public benefits or *maslahah ‘ammah* is made as a pre-requisite for mazhab openness in the *istinbat* process of fatwas. If a fatwa *istinbat* process that refers to a source from Mazhab Syafi’e causes conflict with public benefits or society benefits, then mazhab openness will be applied.

Clearly, the local *maslahah* or *‘urf* reference is also taken into account within the fatwa *istinbat* process based on the reality of the Muslim community within an area and its compatibility with the *maslahah*. This fulfils the initial objective of the law based on fatwa issued. The fatwa that is going to be enforced is with the aim to benefit the needs of people and not cause harm to the society.

2.0 RESEARCH METHODOLOGY

The study takes a socio-legal form which is a research method that unites two key areas of research, namely social science and law. Since the law is set up as a mechanism for managing the affairs and conflicts that arise in social societies, the law has a close relationship with the community (Rohani Abdul Rahim, 2002). This study also involves a systematic research on new and up-to-date legal issues with the use of authenticity and high creativity through traditional or conventional legal methods which incorporate the process of stating, interpreting and explaining existing laws in a legal field (Mahdi Zahraa, 1998). Documentation is the method of data collection by studying the documents related to the problem studied (Abdul Halim bin Mat Diah, 1987). Among those included in the document category are photographs, portraits, court case judgements, laws and regulations (Imam Barnadib, 1982), autobiographies, personal papers, diaries and newspapers (Koentjaraningrat, 1986).

Content analysis was used to examine the method of *istinbat* for fatwas in Kedah. This method of analysis requires a certain theme setting so that the analysis process of the text does not deviate (Muhammad Haji Yusuf, 1993). In this research, texts of selected fatwas from the state of Kedah in written and online forms were examined. This content analysis was done by selecting the appropriate text based on the objective of the study. Therefore, the sample used for this purpose includes several selected fatwas. There are six common steps in using this method, namely, identifying the problem, followed by choosing the sample, reading and recording the content according to the objective rules, and interpreting the results of the study (Syed Arabi Idid, 1999). To analyse the method of *istinbat* for fatwas practised by the Kedah Fatwa Committee, the author used random fatwa sampling analysis. Four (4) fatwas that are contemporary and have social characteristics were chosen as the research samples. These fatwas were arranged according to several fatwa classifications which include marriage, zakat, administration and society. These four fatwas were chosen because they represent the most legal issues that arise in society. The analysis conducted in this part is more focused on examining the *istinbat* method used and applied in the fatwa issuing process in Kedah.

3.0 CLASSIFICATION OF FATWA

3.1 Fatwa on Munakahat (Marriage)

The fatwa regarding HIV test implementations among future partners in marriage in Kedah was decided by Kedah Fatwa Committee on 29th December 2001. The issue concerning HIV test implementations among those engaged to be married discussed by the Fatwa Committee are as follows:

Medical examinations for future partners in marriage is permissible based on a hadith by Rasulullah (Messenger of Allah) SAW. The hadith recorded by Ibnu Majah, from Aisyah which said: It is required to choose lineage and marry someone with the same social status.

Among the characteristics of having similar social status are free from issues that may cause dissolution of marriage, either issues that prevent intercourse, such as a severed penis or impotence, or issues that do not hinder intercourse but can incite disgust, and detach warmth and affection in a relationship between husband

and wife, such as madness, leprosy and vitiligo, especially diseases that have been identified as communicable diseases with no cure, such as AIDS that is currently spreading.

Based on the facts above, the Committee posits that for prevention purposes from the dangers of HIV to the husband and wife as well as to their progeny, HIV examination should be done on both the groom-to-be and the bride-to-be and should be considered as a permissible condition for marriage but not a condition of validity or invalidity of marriage.

The fatwa is one of the positive steps taken by the Fatwa Committee to curb the spread of the virus after receiving reports regarding the increment of HIV carriers. This is because the Fatwa Committee views the situation as a threat to the sanctity of the family institution.

3.1.1 The Analysis of Fatwa Istinbat Method

The Fatwa Committee has conducted a literature review and has cited the Sunnah as reference and support for the fatwa. The evidence in the Sunnah urges Muslims to choose a good partner. This reference is strengthened by several fiqh methods that talks about public interest. Apart from that, the method of Maqasid al-Syar'iyah is taken into account as an important foundation in determining the fatwa because it touches on the preservation of al-dāruriyāt (necessities) elements, specifically in the aspect of preserving lineage. The fatwa argument also extracted fiqh opinions related to fasakh (divorce law) concerning deformities that occur to one of the partners as a foundation for fatwa determination.

The authors agree with the fatwa decision above regarding the additional requirement in the marriage process which is the requirement to undertake the HIV screening test on all future partners in marriage who want to marry or register their marriage in Kedah. The fatwa given is rational and in accordance with the current reality of society. HIV or Human Immunodeficiency Virus is a virus that can extinguish or destroy the human immune system and subsequently cause AIDS or Acquired Immune Deficiency Syndrome (Zahariah Yaakob, 2006).

Within the context of marriage, there is a risk for HIV carriers, either the husband or the wife, to spread the virus to his or her partner. It causes more individuals to become victims of the virus. Indeed, the offspring that will be born is at a large risk to be infected. Therefore, HIV testing is a required step to be implemented as a prevention method to prevent the spread of the virus through marriage.

Analysis of fatwa method applied by the Fatwa Committee can be presented as follows:

The hadith (Abi Abd Allah,t.t), "It is required to choose a lineage and perform marriage with a partner of equal social status", which becomes the reference of the Fatwa Committee is in accordance with the purpose of the issue that has a relation with the hadith, "Do not do harm and cause harm"; however, the application is simple that even its importance with the fatwa issue cannot be seen. The hadith emphasised the importance of marrying someone that has the same social status so it will not cause any harm. The harm meant in this case is harm that occurs without a justified reason that permits it (Mustafa al-Bugha, 2006).

Every prohibition that causes harm is not only prohibited for oneself but to others as well (Taqi al-Din, 2003). Harm may also occur in the marriage institution, such as 'ilā' oath, which is, ignoring the wants and desires of the wife until she experiences emotional disturbance (Mustafa al-Bugha, 2006). The prohibition proves that even emotional harm towards the wife is prohibited, hence physical form is even more forbidden. Thus, the spread of HIV to partners is a form of physical harm that is severe because their life will be impaired and will finally cause death. Hence, the HIV test implementation is the best step to prevent harm to the future husband or wife after knowing their partner's health status before marriage.

The decision to implement HIV testing is a step that is *daruri* (a necessity), which must be implemented to prevent the spread of this virus through marriage, that could eventually threaten the partner's life and their offspring. The responsibility of the husband is to do no harm to his wife in any form as it is a cruel and forbidden act. According to Muḥammad Uqlah (2002), some forbidden forms of harm towards wife include treating her badly by torturing and hurting her, isolating her without permissible reason or any act that is considered harmful to her.

All these forms of harm, either emotional harm or physical harm is clearly forbidden by the Sharia. Through the method of *dilālāh al-nas* (Ahmad al-Hasari, 1997), the spread of HIV to the spouse is included as a form of physical

harm that is forbidden based on the similarity of ‘illah (the reason behind a ruling in Islamic jurisprudence), which existed in the act above, that is, causing harm to the wife.

Therefore, before the harm occurs, prevention is required to avoid the infection. Implementation of HIV testing is the most effective medium to determine the health level of each partner before proceeding with the marriage. If either one of them is proven as HIV carriers, the marriage can be cancelled to avoid a more serious harm. Islam puts a lot of emphasis on the harmony of the marriage institution. Thus, the Sharia permits marriage to be dissolved if any ill-treatment or harm is done on the wife or vice versa in order to safeguard each partner’s *maslahah*. Particularly, if the harm causes death; thus, it should be avoided with the HIV testing.

In general, the method of application legal sources employed by the Kedah Fatwa Committee is in accordance with application of legal sources present in Islamic law history, which is by consulting a source of religious ruling that is agreed by all religious scholars, the Hadith. However, the weakness for the fatwa is that it did not clearly mention the hadith and its narrator. This allows room for the community to dispute the fatwa as there is no detailed proof or explanation. This will make it seem to the society that the Kedah Fatwa Committee was not really concerned regarding the application of *istinbat* method for legal sources in the process of fatwa issuing.

In conclusion, the *istinbat* method for rulings in the fatwa issue needs to be conducted carefully so that an accurate method can be identified to solve the issue, even though the Fatwa Committee presents rational evidences and justifications. A thorough examination needs to be performed specifically in explaining justification for the application of legal methods. Nonetheless, the fatwa that has been decided is in accordance with the public interest of today and that various issues that occur in the society can be witnessed today.

3.2 Fatwa on Zakat

Fatwa regarding zakat on income was decided by the Kedah Fatwa Committee on the 30th April 2007. The Fatwa Committee decision about salary and zakat on income is as follows:

Kedah Fatwa Committee unanimously agrees regarding zakat on income payment to the Kedah Zakat Department and recommends the Zakat Department to present the decision to His Majesty the Sultan for His Majesty’s consent regarding the instruction of the income zakat payment for the people of Kedah to the Kedah Zakat Department. This decision was imparted as a response to a request forwarded by the Kedah Zakat Department concerning zakat determination for salary and income.

3.2.1 Analysis of Fatwa *Istinbat* Method

The fatwa discussion pertaining to income zakat that that was decided by the Kedah Fatwa Committee is correct as it agreed to support the payment of income zakat to the Kedah Fatwa Department. However, the author did not find any argument or evidence applied except the use of ‘urf, which could be named literature research in the *istinbat* process of this fatwa.

The committee recommended the Zakat Department to present this decision to His Majesty the Sultan for His Majesty’s consent concerning the instruction of income zakat payment for the people of Kedah to the Kedah Zakat Department. His Majesty the Sultan possesses the highest authority in determining a fatwa.

The Kedah Fatwa Committee has applied legal methods in relation to His Majesty’s decree. The use of the law corresponds with the local ‘urf (norm). This classification is based on the idea that for each law made by the government for public interest or *maslahah* and can be categorised as ‘urf when the law is a customary practice for local residents.

Income is defined by the *fuqaha* as *māl al-muṣṭafād* (Wahbah al-Zuhayli, 2007) because it is a new form of acquisition and earning that profits its receiver through a form of receiving that is allowed by Allah SWT. The discussion concerning this zakat is presented clearly by Yūsuf al-Qaradāwī as a form of *māl al-muṣṭafād*, in which zakat payment is obligatory based on the *al-nama’* characteristics present in the salary or income (Al-Qaradhawi, 2007). The fatwa is seen as a rational decision; however, the fatwa needs to be re-evaluated so that the justifications for this fatwa can be presented accurately.

According to author, the istinbat methods used by the Fatwa Committee are as follows:

First: Interpreting the phrase *ما كسبتم* in verse 267 from surah al-Baqarah can be support evidence for determining income zakat. Islamic scholars and mufasssīrūn have explained the phrase and its relevance with salary and income. According to Al-Qurṭubī, the phrase *الكسب* means every effort one expends until exhaustion occurs, such as conducting business ('Abd Allah Muhammad, 1995). The phrase *الكسب* refers to gains or profits obtained by someone from his own efforts that are halal and good. Thus, salary is included in the interpretation of *الكسب* because it is an earning acquired by a person as a reward for his effort through a halal source.

Second: Through referring to al-Sunnah, there is a more specific hadith associated with income and salary that can be mentioned in the istinbat method, such as the hadith concerning *māl al-muṣṭafād*, as narrated by Ibn 'Umar r.a., where Rasulullah (Messenger of Allah) SAW said: Whomever receives wealth, it is compulsory to pay zakat for it, until haul is completed or fulfilled in the hand of his owner (Muhammad, t.t). Al-Kasymīrī (2004) explained that *māl al-muṣṭafād* is divided into three types; one of them is assets acquired from other incomes, such as the increase of other assets in business activities, money saving or the increment of livestock. It is in accordance with the definition of salary as gains attained in the form of assets from work or services rendered by someone (Mahmood Zuhdi, 2003). Based on that definition, it is included in the category of *māl al-muṣṭafād* because it has the characteristics of asset acquisition from other assets. Hence, it is compulsory to extract zakat from it.

Third: The Istinbat method based on *qiyās* can also be applied as a method to determine a ruling, however, its analogy must be done accurately. According to the *usul* method, there are four tenets that become the foundations in determining a religious ruling based on *qiyās*. If one of these tenets is not fulfilled, the *qiyās* method cannot be applied. The first rule is *al-aṣl* that is *nas* (proof/evidence) from al-Quran or Sunnah that clarifies a ruling. Second is *al-far'*, an issue or query that has no *nas* support. Third, *al-ḥukm*, which is the original law that is compared to *far'* law. Fourth is *al-'illah*, a property that has certain characteristics that exist in *al-aṣl* and *al-far'*.

When detailing *al-qiyās*, *al-far'* will be compared to *al-aṣl* based on the similarity of *'illah* that exists between them (Muhammad Mustafa, t.t). Subsequently, the law for issue that has no *nas* reference will be clear. In this matter, *'illah* plays a vital role in ensuring the accuracy of *al-far'* law. In reality, the process of finding *'illah* does not occur easily, indeed it requires the *ijtihād* process to identify the *'illah* if it is not stated clearly in the *nas*. The *nas* can be made as *al-aṣl* that is an obligation to pay business zakat and agriculture zakat. Whereas, salary is classed as *al-far'* because it does not have a clear *nas* reference regarding its zakat. An accurate *'illah* for the zakat obligation is fertility. This because, metaphorically, business activities are supported by the profits gained, while agriculture are supported by the yields of harvests obtained (in this case business is likened to agriculture). Based on the assessment made, salaries can potentially be a fertile asset through income and profits acquired each month or each time service is given within the haul period. Therefore, a salary can be charged zakat based on an *'illah* similarity that exists in *al-aṣl* and *al-far'* law, which is fertility, and not based on *nas*.

Fourth: Every excess income from basic needs can be made a foundation to determine the obligation of salary zakat, however it might not be considered by the Fatwa Committee in the process of the istinbat method as the Committee adheres to the Syafi'i Mazhab. Actually, this foundation can be applied as it is required by the Hanafi Mazhab as a determinant in making wealth zakat compulsory (Muhammad Amin, 2003). This is because excess assets owned by an individual is the basic difference between the poor and the rich. The poor only possess assets that can barely sustain their basic needs, while the rich people have assets that are more than their needs. Basic needs are defined as the essential needs to sustain life, such as eating, drinking, shelter, clothes, tools and others.

In conclusion, a salary income has the potential to be an asset under the category of wealth zakat. The fuqaha has presented the important foundations in determining wealth zakat. Rationally, it can be interpreted as a method to determine the obligation of salary zakat and income zakat. In this matter, fatwa research based on the application of *Uṣūl al-Fiqh* must be emphasised critically because failure to understand the application can cause inaccuracy in fatwa issuing and determining process.

In general, the formulated law is in accordance with the law issued by the method of application of legal sources present in Islamic law history, that is, by referring to *'urf* and is still bound to the Syafi'i Mazhab as it does not consider excess of basic spending. Nevertheless, the weakness of this fatwa is that the method of application of legal sources in determining and deciding a fatwa was not clearly specified. This matter gives some room for the society to argue the fatwa based on the lack of a detailed explanation.

3.3 Fatwa on Administration

Fatwa concerning the relocation of old graves for the purpose of land development was decided by the Kedah Fatwa Committee on the 23rd June 2001. The Kedah Fatwa Committee discussed the issue regarding the relocation of old graves in the following statement:

By referring to the report pertaining the issue above, it is understood that the graves are in the area of several individuals' ownership, not in a waqf area for a cemetery and the bodies buried in the graves are the bodies of their ancestors and they agreed unanimously to develop the land and relocate the graves to another cemetery. Thus, the Committee posits that there is no objection from the Sharia to develop the land and relocate the graves respectfully and properly:

- i. To carefully dig them with light tools.
- ii. To collect all the small pieces of the remains in a clean place, wrap them and then bury them in a Muslim cemetery.
- iii. If the remains are complete and in perfect condition, they must be wrapped again in shroud cloth and buried separately.

The Fatwa Committee decided that the relocation of old graves for development purposes is permissible. The justification is based on the benefits of developing the land as well as respect for the graves that will be relocated to a better place.

3.3.1 Analysis of Fatwa Istinbat Method

The Kedah Fatwa Committee has conducted a literature review to explain the law of relocating old graves, which is permissible based on Sharia Law. However, the author did not find any argument and proof applied in the fatwa except that the Committee decided on the fatwa by stating that there is no objection from the Sharia without clearly disclosing any proof or method of legal istinbat. The Committee only listed the method and protocols to be followed during the graves' relocation.

The authors agree with the fatwa presented by the Fatwa Committee because it is decided based on the public interest and the current reality. The fatwa research process was performed to solve this issue; however, there are flaws present in the law determination process, meanwhile, the istinbat process needs to be complemented with other legal methods.

Fuqaha in the past have given the fatwa as haram to re-excavate a cemetery after remains are buried (Al-Mawardi, 1994). Nonetheless, the prohibition is not absolute because excavation is allowed if the needs are urgent. The additional methods that can be applied by the Fatwa Committee are as follows:

First: Through references in hadith, which can act as support for the Fatwa Committee in its specific research process that mentions the permissibility of excavating a cemetery for particular purposes. Among them is the hadith narrated by Jabir Bin 'Abd Allah r.a.: The Messenger of Allah SAW came to the grave of 'Abd Allah Bin Ubay after he was buried. Subsequently, the Messenger of Allah asked for the grave to be dug. Then, he put the remains on both his knees, blew with his saliva and dressed the remains with his cloth (Al-Bukhari, 1400H). Based on that purpose, this clearly shows that cemetery re-excavation is only allowed if urgent needs exist. Even more so if the needs touch the public interest. To prevent inconvenience for the public, the relocation of old graves is sensible.

Second: The problem with this fatwa is related to *maslahāh al-hajiyāt* because it affects the needs of society to develop the land for public interest. In *maslahāh al-hajiyāt*, the needs that alleviate difficulties for the society should be met as long as it is not against the Sharia as Allah SWT says in the Quran, which means: "Allah intends for you ease and does not intend for you hardship" (Surah al-Baqarah 2:185). According to Al-Zamakhshari (1998), this verse clarifies that Allah SWT makes something easier for His servants and does not burden them with something that could not be done. Furthermore, according to Al-Zamakhshari (1998), the hardship needs to be overcome in order to prevent problems for humans. Hence, the relocation of old graves should be conducted so it can provide progress for the society. However, Ibn al-Taymiyah (t.t) viewed the issue rigidly, where he totally did not allow the excavation of cemeteries even though for certain purposes. This view was also supported by al-Ramli (t.t.). Meanwhile, in *Fatḥ al-Ghaffār*, it is mentioned that relocating or excavating a cemetery for an important purpose and reason, which touches the public interest is permissible (al-Qhadi Hasan, 1427H).

Succinctly, the view that supports this issue is in accordance with the meaning of the hadith above and the concept of *maslahāh al-ḥajjiyāt*. Since this issue is the reality of that time, current values need to be considered for the benefits and interests of the society. In addition, the purpose of re-excavation was not for individual benefit but involved public interest. Therefore, it should be prioritised above individual interest.

In conclusion, fatwa presented is rational and in accordance with the current reality. Although there research was conducted to solve this issue, it needs to be complemented with methods of legal determination that have more basis and are more accurate to fulfil the appropriateness of the fatwa decided.

3.4 Fatwa on Social Issue

A fatwa regarding illegitimate children was decided by the Kedah Fatwa Committee on 25th July 2010. The Kedah Fatwa Committee discussed the issue of illegitimate children in the excerpt below:

An illegitimate child is:

A child born out of wedlock either due to adultery or rape and the child is not from a *syubhah* (an ambiguous) intercourse nor from a child of a slave.

A child born in a period less than six months and two *lahzah* according to the lunar calendar from the date of marriage.

Illegitimate children cannot take patrilineal descent from the man who caused their birth or to any man who admits to being the father of the child. Thus, the child cannot inherit or bequeath, cannot be a *mahram*, cannot be a *wali* (guardian) and cannot take the man's name.

If the man marries the child's mother and intercourse occurs; thus, the relationship between the child and the man is as stepfather and the man becomes a *mahram* to the child.

The Kedah Fatwa Committee has agreed to accept this fatwa to be gazetted.

3.4.1 The Analysis of Fatwa Istinbat Method

The Fatwa Committee has applied a literature review to explain the law of illegitimate children based on Sharia Law. However, the author did not find any argument or proof used for the fatwa except that the Committee decided the fatwa by agreeing it to be gazetted without clearly stating the proof and *istinbat* method. The Committee only lists the criteria for the illegitimate child according to Sharia Law. Principally, the author agrees with the fatwa given by the Fatwa Committee because it was decided based on the society's interest and the current reality. In the research, there were references to *nas*; however, it was not stated clearly.

Nevertheless, the fatwa decision can be reasoned by the Kedah Fatwa Committee based on the evidences stated below:

First: "A child born out of wedlock either due to adultery or rape and the child is not from a *syubhah* (an ambiguous) intercourse and not a child born from a slave". The statement of the Fatwa Committee is in accordance with a hadith from Messenger of Allah SAW that means: "The child is traced to the owner of the bed (*al-firash*)."¹ (Sahih Muslim. "Bāb al-Walādu Līl Firāsh" in *Kitab al-Radhā'*. Hadith no. 3598 page 663). Thus, the *fuqaha* agreed that a child can only take patrilineal and matrilineal descents if the marriage is legitimate according to Sharia Law, ownership or *syubhah* (Ali Abdul Rahim, 2012). Hence, the legitimacy of a child is determined by a legitimate marriage between both parents.

Second: "A child who is born in a period of less than six months two *lahzah* according to lunar calendar from the marriage." The statement by the Kedah Fatwa Committee is in accordance with the application of evidence from the Quran. The basis for the view is a compromise between two verses of the Quran that are related to the issue. The first verse is *surah al-Ahqaf* 46:15 and the second verse refers to *Luqman* 31:14.

In the first verse Allah mentions that the duration of pregnancy and breastfeeding is 30 months. Meanwhile, in the second verse, Allah SWT emphasises the duration for breastfeeding is two years, or 24 months. This means according to compromise method, the remaining period of six months is the minimum duration of pregnancy (Wahbah Zuhayli, 1985). According to the majority of *fuqaha*, the six months do not only refer to the duration of marriage, but to the

time that is possible for the intercourse of husband and wife to occur. As stated by fuqaha all marriage can be a basis for the legitimacy of child when the marriage reaches six months before the child is born.

After scrutinising the fatwa regarding illegitimate children, the child is identified as ‘a child out of wedlock’. In *Bughyāt Al-Murtasydīn*, the author divides the child that is born healthy due to the adultery of a woman who has a husband into four categories (Ba ‘Alawi, 1998):

- i. The child is denied patrilineal descent of the husband either physically or spiritually without the need to perform li’an, which is a child born less than six months from the time the husband and wife can have intercourse after the marriage or born after four years from the last possible time that the husband and wife can have intercourse.
- ii. The child has patrilineal descent from the husband and all laws regarding heritage and others are applied physically only.
- iii. The child has patrilineal descent from the husband in physical terms only. He is not obliged to deny it when he suspects (zan) that the child is not his, with his suspicion on the matter, that is as if he has istibra’ the woman before he has intercourse with her.
- iv. The child has patrilineal descent from the husband; thus, it is forbidden for him to deny it. In fact, the denial is a huge sin that can lead to blasphemy if his suspicion (zan) that the child is his or both matters are the same.

Third: The Fatwa Committee has applied fiqh methods as proof in explaining the issue concerning illegitimate children. The author views the method of الضرر يزال that is “the harm must be eliminated”, is considered as an accurate method in handling this issue. Ibn Nujaym opines that this method is applied in several marital rulings or law, such as the permissibility to fasakh (dissolve marriage) due to deformity of the spouse because the existence of several harmful elements (Jalal al-Din, 1997). The permissibility demonstrates if the deformity can be a reason to dissolve the marriage due to harm, then if the harm involves the status of an illegitimate child, it would give even more reason to dissolve the marriage.

Life in marriage is full of responsibilities; the husband is responsible to protect the wife and his family as mentioned by Allah, who placed the responsibility upon the husband to protect his wife (Abu Bakar, 1405H). Indeed, the husband is absolutely forbidden to ignore or neglect the responsibility because it is a right that is burdened by the Sharia upon them, to safeguard the interests of wife (‘Abd. Karim Zaydan, 2000).

As mentioned by ‘Abd Al-Karīm Zaidān (2000), the responsibility is a daruri and needs to be fulfilled in a life of marriage consistently and constantly; however, how the rights of husband and wife can be fulfilled if the foundation of the child’s bond could not be determined. A child is deemed illegitimate if the child’s birth is through an intercourse out of wedlock and the child can only take a matrilineal descent, not to the man who had intercourse with the mother (Muhammad Rawwas, 2000).

In conclusion, the initial law of lineage is for a legitimate marriage. Thus, anyone who is married cannot deny or renounce the lineage of a child who is born from them. It is also prohibited to accuse any child that is born from a marriage as an illegitimate child. The perpetrators of such denial and accusation are viable to hudud law. The denial and accusation could only be accepted if it is supported by convincing evidence.

In fact, the method of application of legal sources by the Fatwa Committee in issuing the fatwa is in accordance with the method of application of legal sources present in Islamic law history, which is by attempting to refer directly to the original and initial Sharia Law: the Quran and Sunnah. However, the weakness is it did not clearly state the references from the al-Quran (specifically from which verse or surah), as well as the hadith used and its narrator.

3.5 CONCLUSION

In conclusion, from the analysis performed, the Kedah Fatwa Committee maintained the application principle of the istinbat method in issuing fatwas in Kedah based on the provision of law. Critical analysis on four (4) selected contemporary fatwas reveal that numerous methods were used and applied by the Fatwa Committee to istinbat fatwa law. It encompasses evidencing processes using al-Quran, al-hadith, Ijma’, Qiyas, ‘Urf and several fiqh methods.

Nevertheless, the sources and evidences were not stated clearly and thoroughly in the fatwas issued. It is hoped that the Fatwa Committee can provide complete fatwa responses that are inserted or enclosed with sources of evidence to fulfil the criteria of a reliable istibat method which possesses authoritative credibility. The knowledge and understanding of the society does not only depend on a ruling or fatwa issued, but also on the reason of the ruling or fatwa issued through istibat procedure especially on law proving.

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