**AN OVERVIEW OF SELECTED *MASLAHAH* BASED *FATWAS* RELATING TO FAMILY LAW ISSUES IN MALAYSIA[[1]](#footnote-2)\***

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**ABSTRACT**

Islamic law is primarily based on the Qur’an and the Sunnah of the Prophet (s.a.w). Due to the changes in place and time, there are occasions where new cases may not have clear and direct principles from the Qur’an and the Sunnah of the Prophet (s.a.w). Accordingly, solutions for new cases require the exercise of *ijtihad* and application of *fatwa* in establishing new rulings. This study deals with selected *maslahah* based *fatwas* on issues relating to family law in Malaysia. The study is undertaken in order to provide an overview on the issuance of *maslahah* based *fatwa* relating to family law issues, so that sound new rulings could be established for the benefit of the whole nation. Focus is made on *fatwas* that have been issued relating to child marriages, legitimacy of children and ascription of paternity, jointly acquired property and suckling relationships. In Malaysia, family matters fall under the jurisdiction of the state. Therefore, if a new case arises and it requires a legal opinion, a State based *fatwa* will be issued. The study adopts a qualitative research methodology based on available library-based materials. State *fatwas* are also referred to and examined. Finally, the article suggests improvements to the exercise of *ijtihad* and the issuance of *fatwa* in Malaysia*.*

**Keywords:** *maslahah* based *fatwa*, *fatwa* involving family law, status of *fatwa*, family law and Islamic law in Malaysia.

**SATU TINJAUAN TENTANG FATWA TERPILIH YANG BERASASKAN *MASLAHAH* BERKAITAN ISU UNDANG-UNDANG KELUARGA DI MALAYSIA**

**ABSTRAK**

Pada dasarnya undang-undang Islam adalah berlandaskan al-Qur’an dan Sunnah Rasulullah s.a.w. Oleh kerana terdapat perubahan tempat, zaman dan masa, terdapat beberapa keadaan di mana kes-kes baharu tidak disebut secara terperinci daripada al-Qur’an ataupun Sunnah. Oleh itu, penyelesaian untuk kes-kes tersebut memerlukan pelaksanaan ijtihad yang akan menyebabkan terbentuknya pendapat baru ataupun fatwa untuk diaplikasikan. Penyelidikan ini membincangkan *fatwa*-*fatwa* berdasarkan *maslahah* terpilih mengenai isu-isu yang berkaitan dengan undang-undang keluarga di Malaysia. Kajian ini dilakukan untuk memiliki gambaran umum terutama dalam garis panduan penerbitan *fatwa* berdasarkan *maslahah* berkaitan isu undang-undang keluarga, sehingga suatu ketetapan baru yang tepat dapat ditetapkan dan memberi manafaat bagi seluruh bangsa. Contohnya masalah yang berkaitan dengan perkahwinan kanak-kanak, kesahtarafan nasab anak-anak dan hubungan nasab yang sah dengan bapa, isu mengenai harta yang diperoleh bersama, dan hubungan menyusu. Di Malaysia, masalah keluarga berada di bawah bidang kuasa negeri-negeri. Oleh itu, jika timbul kes baru dan memerlukan pendapat undang-undang, *fatwa* akan dikeluarkan oleh negeri-negeri di Malaysia. Penyelidikan ini menggunakan kaedah penyelidikan kualitatif berdasarkan bahan-bahan perpustakaan yang sedia ada, sementara *fatwa* negeri juga dirujuk dan diperiksa. Akhirnya, artikel ini juga akan cuba mencadangkan penambahbaikan pelaksanaan ijtihad dalam konteks Malaysia.

**Kata kunci**: *fatwa* berasaskan *maslahah*, *fatwa* melibatkan undang-undang keluarga, status *fatwa* dan undang-undang Islam di Malaysia, undang-undang keluarga, undang-undang Islam di Malaysia.

**INTRODUCTION**

Islamic law is primarily based on the Qur’an and the Sunnah of the Prophet (s.a.w). Due to changes in period, place and practices, there will be situations where new circumstances arise and there is no direct provision in the Qur’an and the Sunnah of the Prophet (s.a.w) as well as in the classical works of the Muslim jurists. This necessitates contemporary jurists to exercise *ijtihad,* which is based on the sources of Islamic law. In many instances, this will further lead to the issuance of *fatwas* by the muftis. This is evident based on the Qur’anic verse that commands the Muslims to seek knowledge and explanation from experts if they are ignorant. The Qur’an states to the effect:

...so, ask the people of the reminder if you do not know.[[5]](#footnote-6)

The process of issuing a *fatwa* by a *mujtahid* [[6]](#footnote-7) is also considered as one of the ways to protect the continuance of Islamic law and ensure its suitability through time and place. Apart from that, a *fatwa* is one of the tools which can be utilized to identify new rulings that allow Islamic law to continuously developed. This is a proof that Islamic law is an active, flexible and comprehensive religion that is suitable for all times.[[7]](#footnote-8)

**BRIEF CONCEPT OF *FATWA* AND *MASLAHAH* UNDER ISLAMIC LAW**

**Brief Concept of *Fatwa***

The word ‘*fatwa’* is derived from the Arabic word ‘*fata*’ which means ‘an energetic youth’.[[8]](#footnote-9) The term fatwa is also interchangeably used with the words ‘*futya*’ and ‘*futwa*’.[[9]](#footnote-10) *Fatwa* literally means what is clarified by the jurist; or an answer given by the *mufti*.[[10]](#footnote-11) Technically, *fatwa* can be defined as a text by a *mufti* that answers a question. It also means a legal ruling and an explanation issued by a *mufti* in response to a particular problem.[[11]](#footnote-12) In other words, whenever an issue arises in the society, the *mufti* will provide an explanation in the form of a legal ruling to aparticular legal issue. These explanations are based on the Qur’an, Sunnah, *ijma’*, *qiyas* and any other recognized sources of Islamic law.

 The ruling issued by a *mufti* may pertain to an obligation, a recommendation, a prohibition, a reprehensible and a permission. There are four important components of *fatwa* namely *mustafti, mufti, mustafta fih* and *fatwa*. *Mustafti* refers to a person who is in need of an answer for a legal ruling on a particular issue. A *Mufti* is a person who explains the law and informing it without a binding effect.[[12]](#footnote-13) The action in giving the legal ruling by the *mufti* is legally termed as *ifta’*. It follows that *ifta’* means the explanations of rules and informing it without a binding effect. Some of the Muslim scholars who include al-Qaysi used the term *ifta’* to also mean *fatwa*.[[13]](#footnote-14) Meanwhile, ‘*mustafta fih*’ refers to the issue or problem asked by the *mustafti* for a legal ruling. Finally, *fatwa* is the answer or legal ruling to solve the issue. [[14]](#footnote-15) The *fatwa* is used to address new issues that arise in the society. Compared to a *qadi’s* judgment, a *fatwa* is not legally binding.[[15]](#footnote-16)

**Brief Concept of *Maslahah* and its Position in Relation to *Fatwa***

*Maslahah* in its literal sense means a benefit or a cause to benefit or removing harm.[[16]](#footnote-17) In its technical sense, al-Ghazali defined *maslahah*, as the benefit that is intended by the Law Giver to protect mankind particularly to preserve five of the most essential values namely religion, life, lineage, intellect and property.[[17]](#footnote-18) *Maslahah* can be divided into three categories.[[18]](#footnote-19) The first category is *maslahah mu’tabarah*, which is a *maslahah* which is acknowledged by the Shari‘ah. It includes all types of *maslahah* where the Qur’an and Sunnah enacted a law for its realization. It is further divided into three, namely; the essential interest, the complementary interest and the embellishment.[[19]](#footnote-20)

 The second category of *maslahah* is *maslahah mulghah*. This kind of *maslahah* is not recognized by the Shari‘ah and is nullified by the Qur’an and the Sunnah. Examples of this type of *maslahah* is the practice of usury in transactions, the prohibition of polygamy and the distribution of equal share for both man and woman in cases involving inheritance.[[20]](#footnote-21)

 The third category of *maslahah* is *maslahah mursalah*. It is a *maslahah* that is neither acknowledged nor rejected by the Shari‘ah. There is no text which validates or invalidates it, for example, the compilation of the Qur’an, using the prison, liability of trustees, registration of marriage, HIV testing for those who wish to get married, and other similar situations.[[21]](#footnote-22) The majority of Muslim jurists consider this type of *maslahah* as a source of Islamic law.[[22]](#footnote-23)

 *Maslahah* is not based on personal preference and inclination but closely related and in line with the objectives of the Shari’ah in securing benefits and repelling harm and evil. Consequently, the process of issuance of a *fatwa* in the derivation of a new ruling that has no basis in the Qur’an, Sunnah or *ijma’* are based on *maslahah,* which considers the benefit and welfare to everyone. A *fatwa* should not be issued by a person who is not able to understand its significance, as the *fatwa* issued will be inaccurate or unfair. The *fatwa* must be related to the universality of Islamic law and subject to certain regulations.[[23]](#footnote-24) An example of a baseless legal opinion (*fatwa*) is the prohibition of *talaq* and polygamy, as well as the permissibility of *riba* in banking transaction or considering it as a safe mode for property investment. All of these presumed *maslahah* is invalidated and are deemed void as it contradicts legal texts of the Qur’an and Sunnah as well as *ijma’*.[[24]](#footnote-25)

 It is one of the spirits of Islamic law that it considers and recognizes *maslahah*. When the Lawgiver justifies the ruling, it provides guidance that the ruling is based on certain reason (‘*illah*) that evolved with circumstances. In executing the *maslahah*, the Qur’an does not provide the justification of the ruling in matters like transactions, crimes, state affairs, judiciary and constitutions, etc. This provides room to the jurists, as well as the *muftis*, to interpret and elaborate in detail the ruling that is applicable to their respective society, provided that the *maslahah* of the people is the underlying reason for the ruling. The main consideration that must be given for its implementation is that the ruling is within the limitation of the general principles of Islamic law and without conflicting the Qur’anic texts and Sunnah. This is in accordance with the verses of the Qur’an that states;

O ye who believe! Put not yourselves forward Before Allah and His Messenger.[[25]](#footnote-26)

In another verse the Qur’an again states;

It is not fitting for a believer, man or woman, when a matter has been decided by Allah and His Messenger, to have any option about their decision…[[26]](#footnote-27)

It is also in line with the principles of Islamic law (*qa’idah fiqhiyyah*) that states,

…it is not permissible to exercise *ijtihad* when there is clear text.[[27]](#footnote-28)

**ROLE OF *FATWA* IN CONTEMPORARY MUSLIM SOCIETY WITH REGARD TO FAMILY LAW ISSUES**

The ability of the *fatwa* institution in providing answers and solutions exhibits the infinite suitability of Islamic law to the changes of period, time and circumstances. Moreover, it fulfils human necessity and interest by virtue of the principle of mercy (*rahmah*) to all mankind through the Prophet Muhammad (s.a.w).[[28]](#footnote-29) The answers and explanation provided by the *fatwa* are not restricted within a specific characteristic only, as it covers a broader range of explanation for every contemporary issue. This activity demonstrates flexibility of Islamic law and fair consideration through *fatwa* institution. This will further lead to rebuilding and reforming of the *fiqh* movement.[[29]](#footnote-30) The more active the *fatwa* institution is utilized, the more advance the Muslim society will be.[[30]](#footnote-31)

 The position of the *mufti* in giving an explanation and providing solution to contemporary issues is evident by looking into the prominent roles of the *fatwa* and its significance in the Muslim society. The authority of a *mufti* has also been affirmed in the Qur‘an when it emphasizes on obedience to those who have authority among us after obedience to Allah s.w.t. and the Prophet (s.a.w).*[[31]](#footnote-32)* Thus, obeying the *fatwa* is akin to obeying the command of Allah and His messenger.[[32]](#footnote-33)

 In Malaysia, the institution of *fatwa* plays a vital role in providing explanations for new developments that cater specifically contemporary issues arising in Malaysian society. Moreover, *fatwa* is an effort by Islamic authorities to provide an explanation and clarification in order to prevent hardship from afflicting Muslim society. If no one is to be entrusted with the role of issuing *fatwa*, society would descend into chaos to the extent that people are unable to differentiate between what is permissible and what is prohibited. In such a scenario, what is permissible might become prohibited while what is prohibited might become permissible. Therefore, the institution of *fatwa* and *mufti* are essential to meet with the religious needs of society.[[33]](#footnote-34) It is also interesting to note that, *fatwa* is mainly to answer questions or issues arise in the society. Apparently, it does not resolve differences of opinion. However, *fatwa* can solve the issue if it is adopted by the authority particularly the *Syar’ie* judges. This is because the judgement given by a *Syar’ie* judge will remove the differences of opinion among the Muslim jurists.[[34]](#footnote-35)

**AN OVERVIEW ON *FATWAS* RELATED TO FAMILY MATTERS IN MALAYSIA**

Family matters are aspects that develop in line with social changes and development. Ambiguities in Islamic provisions or unclear texts and authorities on certain issues may also lead to the need of a *fatwa* in the interest of the Muslims as a whole. In the Malaysian context, there are many *fatwas* related to family matters. This part of the article provides an overview of several of those *fatwas*. Focus is made on four pertinent issues relating to the determination of the paternity of a child, relationship due to suckling, jointly acquired property and the status of child marriages. These issues are highlighted due to the controversies that arose after the case was brought to the courts or due to the construction of certain parts of a statute. *Fatwas* were issued in order to clarify the situation and provide a clearer guidance to the public at large.

***Fatwa* Relating to Paternity of a Child**

It is an established principle that the paternity of a child is recognized through a legal relationship. i.e., through marriage, regardless of whether the contract of marriage is valid or invalid (*fasid*); or the child is the product of doubtful intercourse (*wati’ shubhah*). Example can be seen in the case of *Ismail v Aris Fadhilah,[[35]](#footnote-36)* whereby the parties were married with the bride’s brother as a guardian (*wali*) even though at that time, the grandfather is still alive and not senile. At that particular time, the parties already had three children. The Court held that the first marriage was invalid but their children are legitimate as the marriage was based on a belief that the marriage was a valid marriage. In other words, although the sexual relationship that took place between the husband and wife was considered as doubtful intercourse (*wati shubhah*), the status of the resulting child is still considered as the child of the marriage.

 Nevertheless, the majority of Muslim jurists are of the opinion that, the ascription of paternity may only be applicable if the child is born not less than six months (lunar calendar) from the date of the marriage contract.[[36]](#footnote-37)The above juristic view was adopted by Islamic Family law Act and Enactment in Malaysia for example Islamic Family Law (Federal Territories) Act 1984 which provides that;

Where a child is born to a woman who is married to a man more than six *qamariah* months from the date of the marriage or within four *qamariah* years after dissolution of the marriage either by the death of the man or by divorce, the woman not having remarried, the *nasab* or paternity of the child is established in the man, but the man, by way of *li'an* or imprecation, disavow or disclaim the child before the Court.

In the case of *Norzaini binti Alias v Mohamad Sharif bin Mohamad Taib*,[[37]](#footnote-38) the plaintiff applied for the maintenance of her 13-year-old child, but the father denied that the child was his. The Court held that the child was legitimate and ascribed her to the father as the child was born after ten and a half months from the date of the marriage and there was intercourse between the plaintiff and the defendant after their marriage.

 In the case of *Wan Khairi bin Wan Azmi v Farah Nurliliana bt Jauhari*,[[38]](#footnote-39) The applicant sought an order from the Court to declare that the child, a baby boy delivered by the respondent on 7 December 2010 as the legitimate child of the parties according to *Hukum Syarak* (the Shari‘ah). The parties were married on 9 June 2010. The Court held among others that the baby was born more than six months from the date of the marriage. Whilst at the time of the marriage, they are staying together until the delivery of the baby boy and the husband was able to consummate the marriage. Therefore, the child was ascribed to the father.

 Nevertheless, there are decisions by the Syari‘ah court that declared that if a child is clearly the product of an illicit sexual relationship out of wedlock, no paternity can be established between the child and the biological father. This is due to the fact that fornication or adultery does not confer any status of legitimacy. The child’s lineage is ascribed to the mother, as the mother is the owner of the womb. In the case of *Re Mohd Fairus bin Othman & Ita Wijaya binti Ismail*,[[39]](#footnote-40) the Court had rejected the application of the plaintiff to ascribe paternity of the child to his biological father as the marriage was held to be invalid. The Court also did not categorize the relationship between the plaintiffs as doubtful relationship (*syubhah*) as both of them realize and was aware of the fact that their marriage was against the procedure of marriage in the State as the marriage was solemnized by unauthorized guardian (*wali*). Furthermore, the Court wishes to protect the interest of the Muslims as a whole by discouraging this kind of syndicate marriage.

 The court in this case decided based on the hadith of the Prophet Muhammad (s.a.w) which stated to the effect that, “*A child belongs to the bed (valid marriage) and for the adulterer is stone (or stoning)*.”[[40]](#footnote-41) This hadith indicates that the male adulterer has no paternity upon the child who is born from as a result of his illicit sexual relationship. He is not entitled to anything except the punishment.

 In pursuant to this decision, the State Fatwa Committee of Selangor,[[41]](#footnote-42) Melaka,[[42]](#footnote-43) Negeri Sembilan,[[43]](#footnote-44) and Penang[[44]](#footnote-45) proceeded to define an illegitimate child as the product of sexual intercourse out of wedlock, rape, or a scientific method that is contrary to Islamic law. Furthermore, the child must not be born in less than six months after the contract of marriage solemnised and must not be the product of doubtful intercourse.[[45]](#footnote-46) But in cases where there is confession of zina or adultery by both or either of the parents, even if the child was born more than six months after the contract of marriage. This would also include situations where there are witnesses that confessed to the illegitimacy of the child.[[46]](#footnote-47) As a result, the child and the biological father will not inherit one another. If the child is a female, the biological father is not eligible to be her guardian/*wali* as the child is not his *mahram*, and the rule on relationship among strangers must be observed.[[47]](#footnote-48) In relation to this, the *Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Agama Islam Malaysia* in 28-29 January 1981 decided on ascribing the illegitimate child with the name of ‘Abdullah’. The *fatwa* states;

Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia Kali Pertama yang bersidang pada 28-29 Januari 1981 telah membincangkan Penamaan Anak Tak Sah Taraf (Anak Luar Nikah). Muzakarah telah memutuskan bahawa anak zina atau anak di luar nikah (anak tak sah taraf) sama ada diikuti dengan perkahwinan kedua pasangan ibu bapanya atau tidak hendaklah dibin atau dibintikan kepada Abdullah.”[[48]](#footnote-49)

It follows that in 1998 the *fatwa* stated; “Jika seseorang perempuan Melayu Islam bersekedudukan tanpa nikah dengan deorang lelaki Islam atau bukan Islam dan melahirkan anak, maka anak itu hendaklah dibinkan atau dibintikan dengan Abdullah atau nama “asma al-Husna” berpangkalkan Abdul.[[49]](#footnote-50)

Further guidelines for registration of the surname of an illegitimate child was issued by JAKIM among others emphasized that the surname of the illegitimate child should not be the mother as this may lead to social effect and phsycological effect to the child.[[50]](#footnote-51)

 It is important to note that a *fatwa*, although it is a legal pronouncement, it is merely based on the probability (*zann*) since the issue arises has no basis of definitive proofs (*dalil qat’i*). In this sense, the guideline on the surname of the child with Abdullah or any other name of *Asma al-Husna[[51]](#footnote-52)* might be appropriate with the custom of the Malaysian society, even though the majority of Muslim jurists agreed that the illegitimate child must be ascribed to his/her mother since she bore and gave birth to it.[[52]](#footnote-53) This is based on the judgment of the Prophet Muhammad (s.a.w) when separating (by divorce) a man and his wife in the case of *li’an*, and the child was regarded as belonging to the wife only.[[53]](#footnote-54)

Under Malaysian Law, once the *fatwa* has been gazetted.[[54]](#footnote-55), it becomes the law in a particular state, and Muslims are obliged to adhere to its judgment and regulation. The opposing views states that to ascribe the child to the name ‘Abdullah’ and not the biological’s father’s name as the child’s surname may conceal the child’s true parentage and it does not serve any benefit for the child in terms of the rights that he or she might enjoy. The child does not bear the sin of his biological parents whose illegal act leads to his existence. However, even though ascription of paternity to the illegitimate child will protect his right to *nasab*, this will lead to a belief in the community that sexual relationship outside marriage does not deny the child’s right to paternity (*nasab*) and therefore, it is not wrong to involve in an adulterous relationship. This could lead to further *mafsadah* or evil within the community. It is to further emphasize that public interest (in the community as a whole) prevails over individual interest (illegitimate child alone), as recognition of paternity of a child conceived outside wedlock will cause damage and defeat the family and social system as a whole. This is also the reason why protection of lineage is one of the values to be protected under the objectives of Shari’ah (*Maqasid* al-*Shari‘ah*)[[55]](#footnote-56)

 In relation to this, the DNA proof of paternity does not give effect on the paternity claim by the biological father as the relationship between the child and the father is only established through legal relationship, i.e., through marriage, in addition to the condition that the child was born more than six months after the contract of marriage.[[56]](#footnote-57)

 On the other hand, the *fatwa* in the State of Perlis issued by Negeri Perlis Shari’ah Committee (2006-2008)[[57]](#footnote-58) differs with the above *fatwa* and provides that ‘a child who is born less than six months after the date of a marriage contract can be ascribed to the mother’s husband unless the husband denies that.’[[58]](#footnote-59) This *fatwa* is said to have solved the problem of registration of a child who is born less than six months from the date of the marriage contract. Apart from that, this *fatwa* is also to help reducing stress and trauma of the child who cannot be ascribed to the father. In addition, it is also an attempt to cover shame of the parents who had repented after committing of such offence.[[59]](#footnote-60) Nevertheless, this *fatwa* is only applicable in the state of Perlis. This is due to the limitation in the application of fatwa in Malaysia as being confined to it being under the jurisdiction of each state only.

***Fatwa* on Relationship Arising from Suckling**

Suckling of breastmilk is one of the child’s right that must be fulfilled by the parent or guardian of the child. This is to be discharged either by the child’s biological mother, or by a wet-nurse as the best food for a baby is breastmilk. Circumstances may occur that deprived the baby’s right in breastfeeding, such as the mother’s incapability to breastfeed due to death, or refusal or illness,[[60]](#footnote-61) or the new-born is a foundling. On this basis, a *fatwa* on the permissibility of breastfeeding a foster child has been issued.[[61]](#footnote-62) The permission is given to either a married or unmarried woman who may choose to breastfeed the child in order to create a certain degree of blood relationship with the child.[[62]](#footnote-63)

 It follows that, for the breastfeeding or suckling to give effect in establishing a blood relationship, certain conditions must be fulfilled. These include the amount of breastfeeding must not be less than five sessions; and that the suckling must be until the child is full. At the same time, the child also must be under two years of age and the amount and the access of the milk inside the infant’s body is significant since the first two years of the child age is the most productive period for the growth and physical development of the child.[[63]](#footnote-64)

 In regard to whether the milk must be pure breastmilk or not, the Muslim jurists are in agreement that if the breast milk that is mixed with other substances like water or goat milk is more, it still creates marriage prohibition.[[64]](#footnote-65) Consequently, the husband of the wet-nurse becomes the foster father of the infant and they are prohibited to marry one another. This prohibition also extended to the descendants of the foster mother and father, as well as their siblings. This relationship is in accordance with the Quranic text that stated to the effect:

…your foster mothers (who suckled you) and your foster sisters…[[65]](#footnote-66)

It also follows the ruling of consanguinity by way of the Prophet’s (s.a.w) saying:[[66]](#footnote-67) All things which become unlawful because of blood relations are unlawful because of the corresponding foster suckling relations.[[67]](#footnote-68)

The *fatwa* further provides for the permissibility of an unmarried woman to breastfeed an infant by taking medication to stimulate the production of breast milk. The *fatwa* states that the foster mother, whether married or unmarried, may breastfeed her foster child assisted by modern technology like taking hormone injections to increase milk production. establish blood relationship.[[68]](#footnote-69) The suckling of a child creates a kinship with the child. It follows that this will establish a relationship between the child and the breastfeeding mother that extends to her husband and children, even when her marriage takes place after she had breasfed the child. The wisdom for this permissibility is the benefit in social interaction (*maslahah*) as breastfeeding removes the barrier that would have existed between the breasfeeding mother and the suckling child. This would mean the establishment of prohibited degrees in marriage between the breastfeeding mother and the child as well as her own biological children. It follows that during his infancy, the child had benefitted from a natural breastfeeding which includes nutrition and emotional care. Further, when they grow up, they may socialize and interact as one of the family members in the same blood relationship. [[69]](#footnote-70)

In Malaysia, the law on the relationship due to suckling is that it results in a prohibited degree of marriage based on the Shafi’i view which is generally adopted in the Islamic Family Law Act/Enactment of each State.[[70]](#footnote-71)

***Fatwa* on Jointly Acquired Property**

Jointly acquired property refers to property which was acquired by the husband and wife during the subsistence of a marital relationship. Under the Shari‘ah, there is no direct rule on that matter. Under the Shari‘ah, , both the husband and wife are prescribed with personal rights and duties. The wife possesses the legal capacity to perform any transaction, the right to acquire property, as well as to bear liability and burden as a consequence of various dealings. What she earns is hers, and the husband has no authority upon her property.[[71]](#footnote-72) Nevertheless, due to the nature of a marital relationship, both might acquire shared property in which both have rights over it. In this sense, if the couple is unable to specify their contributions, the portion will be determined by the court based on oath and evidence, if it has not been resolved through amicable settlement (*sulh*).

 In 1982, a *fatwa* on *harta* *sepencarian* (jointly acquired property) was issued. This indicates that jointly acquired property by both spouses in a marital relationship is recognized based on the Shari‘ah..[[72]](#footnote-73) Therefore, the *fatwa* on this issue is based on the legal maxim: *custom is the basis of judgment (al-‘adah muhakkamah)*. In this case, the basis of this *fatwa* is the customary practice of the Muslim society in Malaysia that honours the contribution of both parties in the marriage and give rewards in terms of jointly acquired property if the couple have decided to divorce, or if one party is deceased.[[73]](#footnote-74)

 In Malaysia, the *fatwa* regarding this issue has been legislated and implemented based on the consideration that the wife shares the burden and responsibility throughout the marriage, either directly or indirectly. An example of direct contribution is whenever the wife who is employed shares with the husband the acquisition of the property through depositing certain amount of money as part of purchase price. While example of indirect contribution is an unemployed wife who contributes to the acquisition of the assets by looking after the family and households and gives her moral support to the husband who is working and such support leads to prosperity of the family life. This is the justification applied by the Hanafis in shared responsibility in marriage as similar to *sharikah al-abdan*.[[74]](#footnote-75) In relation to this, Husam al-Din ibn Musa ‘Afanah stated that if the wife shared the authority, or the house, or in other similar direction, her rights in the share is established based on her portion and contribution.[[75]](#footnote-76) Therefore, the shared burden and responsibility of the wife must be treated as similar to other shared transaction or contract.[[76]](#footnote-77) The reason is to protect the right of each partner in the shared contract and this will enable each party to enjoy their contribution resulting from the gain or loss of such contract. Hence, the right of the parties will be protected, and nobody will suffer from injustice and ill-treatment.[[77]](#footnote-78)

The law in relation to the share of both spouses in jointly acquired property has been embodied in the State Act and Enactment. For example, the IFLA provides three kinds of matrimonial property that are considered jointly acquired property namely properties that were jointly acquired by both spouses,[[78]](#footnote-79) properties that were solely acquired by one spouse,[[79]](#footnote-80) and properties that were acquired before marriage but was substantially improved by another spouse during marriage.[[80]](#footnote-81)

 For the first kind, the IFLA provides that the Court shall have power, when permitting the pronouncement of talaq or when making an order of divorce, to order the division between the parties of any assets acquired by them during their marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale. (2) In exercising the powers conferred by subsection (1), the Court shall have regard to— (a) the extent of the contributions made by each party in money, property, or labour towards the acquiring of the assets; (b) any debts owing by either party that were contracted for their joint benefit; and (c) the need of the minor children of the marriage, if any, and, subject to those considerations, the Court shall incline towards equality of division.[[81]](#footnote-82)

 For the second category, the IFLA further provides that the Court shall have power, when permitting the pronouncement of talaq or when making an order of divorce, to order the division between the parties of any assets acquired during the marriage by the sole efforts of one party to the marriage or the sale of any such assets and the division between the parties of the proceeds of sale.[[82]](#footnote-83) Finally, the IFLA provides that for the purposes of this section, references to assets acquired during a marriage include the assets owned before the marriage by one party that have been substantially improved during the marriage by the other party or by their joint efforts.[[83]](#footnote-84)

***Fatwa* on Child Marriages**

Before the issuance of *fatwa* on child marriage, all the states in Malaysia have stipulated a minimum age of marriage of both male and female Muslims in Malaysia. For example, the IFLA states that;

No marriage may be solemnized under this Act where either the man is under the age of eighteen or the woman is under the age of sixteen except where the Syariah Judge has granted his permission in writing in certain circumstances.[[84]](#footnote-85)

This provision provides a minimum age of marriage, nevertheless a young adult may marry even though he or she is below the minimum age so long as the Syariah judge (in exceptional circumstances) has given his permission in writing. The best example of this permission can be seen in the recent case of *Kamariah bt Ahmad v Nur asmira bt Abdullah*,[[85]](#footnote-86) where the Syariah Court in this case granted permission to Nor Asmira who was at that time aged 15 years old and 2 months to marry even though at that time she is still in school. The reason given was that the situation was considered to be under exceptional circumstances as she and her future husband had often gone out together.

 Under the Shari ‘ah, the minimum age of marriage in a girl is 16 years old.[[86]](#footnote-87) This provision is in line with the age of puberty under the Hanafi school of law, where no natural symptom appears.[[87]](#footnote-88) This also seems to suggest that the IFLA provides the age of marriage based on the age of puberty as prescribed by the Shari‘ah.[[88]](#footnote-89)

 Nevertheless, under the Child Act 2001, a child is defined as a person below the age of 18 years old.[[89]](#footnote-90) Therefore, 16 years old as a minimum age of marriage of a female child is considered a minor by virtue of the Child Act 2001. This had created a conflict between the two laws.

 It follows that the *Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia* of 106 dated 21 –to 22 October 2014 issued a *fatwa*[[90]](#footnote-91) on child marriage among others stated that based on authorities and principles of Islamic law as well as medical experts and phsycologists. A fatwa was issued that stated that a child marriage is only allowed with the situation where conditions of safeguarding the welfare of the child.[[91]](#footnote-92) The term ‘child marrriage’ as referred to in the text refers to an underage marriage which is permitted to be contracted with the aim of protecting the benefit and welfare of the child. This can be seen in the above cited case of *Kamariah bt Ahmad v Nur Asmira bt Abdullah*,[[92]](#footnote-93) where the Syariah Court allowed the marriage of a 15-year-old girl in order to avoid the possibility of any promiscuous act. Lately, social problems in Malaysia are quite rampant and this may lead to illegal relationship and evil among those couples who are not legally married.[[93]](#footnote-94) Apart from being an evil (*maksiat*) act, illicit sexual relationship causes harm to young mothers as it may result various kinds of illness as well as the birth of illegitimate children. From the year 2019 until February 2020, there were about 25,567 illegitimate children registered with National Registration Department (JPN) born less than six months from the date of marriage contract.[[94]](#footnote-95) Furthermore, Islam recommends marriage to avoid sinful act as the Prophet (saw) stated:

He who can afford to marry should marry, because it will help him to lower his gaze (from looking at forbidden things and other women), and save his private parts (from committing illegal sexual acts etc.), and he who cannot afford to marry is advised to observe sawm (fasting), as *sawm* (fasting) will restrain his sexual power.[[95]](#footnote-96)

The authors acknowledge that the permission given for underage marriages has been subjected to criticisms. Nevertheless, this permission is not the norm but an exception to the norm. Parents who wish to marry off an underaged child must obtain the permission of the Syariah court judge. The judge must first be satisfied that there exists ‘exceptional circumstances that warrant the permission. The marriage will only be allowed if the welfare of the child is established. In addition to that, one of the reasons for this permissibility is when the guardian had found a suitable groom for her ward and there is fear that if they waited until her puberty, the chance of finding a better spouse is less.[[96]](#footnote-97)

 Thus, an underage marriage is allowed in achieving the above benefits (*maslahah*) that is to prevent harm i.e. the birth of illegitimate children and in order to avoid fornication and any resulting consequences such as teenage pregnancies, abortions and abandonment of babies.

**CONCLUSION**

The role of *fatwa* in providing clarifications and answers to new circumstances is continuous and vital. The above discussion shows that the process of *ijtihad* in the derivation of rulings requires an extensive and comprehensive investigation in order to reach the most accurate answer within the confinement of social restrictions and personal effort. With the changes in times and issues, the process of *ijtihad* will never end and must be in line with the interest (*maslahah*) in the people i.e., the *maqasid al-Shari’ah*.

 The above discussion reflects that *fatwa* related to family matters were based on acceptable *maslahah*. Nevertheless, differences of opinion seem to arise in issuance of *fatwa* based on different scope of *maslahah* for example the *fatwa* on legitimacy and surname of illegitimate child in most States in Malaysia and the State of Perlis. This in fact may lead to confusion especially among the public who are laymen. Therefore, in order to solve the problems of having a different *fatwa*, the practise of mutual consultation (*syura*) among the learned in the specific areas are very significant in order to produce sound and standardised *fatwa*.[[97]](#footnote-98) This can be realized through collective *ijtihad* (*ijtihad jama’i*) which may assemble the muftis of various states in Malaysia as well as all expertise in all relevant areas. Mutual consultation and collective *ijtihad* are very significant specially to solve issues and problems of discrepancies and differences in the product of *fatwa*. Furthermore, a collective *ijtihad* requires deliberation among the expertise of different fields. As *fatwa* is a state matter, uniformity and a standard procedure as well as guideline based on *maslahah* is required so to end up with acceptable *fatwa* applicable and uniformed in all states in Malaysia. As such, the institution of *fatwa* will continue to prosper and to provide solutions to the human society so long as the problems in the Muslim society continue and require solution and new rulings.

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5. Al-Qur’an, *Surah al-Anbiya’*, 21:7. See also Abdullah Yusuf ‘Ali, *The Holy Qur’an; Text Translation and Commentary,* New Revised Edition (Brentwood, Maryland, U.S.A.: Amana Corporation, 1989). [↑](#footnote-ref-6)
6. A mujtahid is a person who possesses the ability to do *ijtihad.* [↑](#footnote-ref-7)
7. Husayn Muhammad al-Mallah, *al-Fatwa Nash’atuha wa Tatawwuriha Usuliha wa Tatbiqatiha,* (Bayrut: al-Maktabah al-‘Asriyyah, 2009), vol. 1, p.8. [↑](#footnote-ref-8)
8. Al-Fayumi, *al-Misbah al-Munir*, al-Maktabah al-‘Ilmiyyah, Beirut, Vol. 2, p.462. [↑](#footnote-ref-9)
9. Ibn Manzur, *Lisan al-Arab*, (Dar Sadir, Beirut, n.d)., Vol. 15, p.147. [↑](#footnote-ref-10)
10. Ibid. [↑](#footnote-ref-11)
11. Zaydan, Abd al-Karim, *Usul al-Da’wah*, (Dar al-Kutub al-‘Arabiyyah, n.p.p., 1401H/1981), p.157. [↑](#footnote-ref-12)
12. Al-Bahuti, Mansur bin Yunus bin Idris, *Kashshaf al-Qina’ ‘an matn al-iqna’*, (Dar al-Fikr, Beirut-Lebanon, n.d.), Vol. 6, p.299. [↑](#footnote-ref-13)
13. Al-Qaysi, Nabil bin Abi al-Hasan, *Adab wa Ahkam al-Fatwa*, (Dar al-Iman, Alexandria-Egypt, 2008), p.10. [↑](#footnote-ref-14)
14. Al-Bahuti, Mansur bin Yunus bin Idris, *Kashshaf al-Qina’ ‘an matn al-iqna’*, Vol. 6, p.299. [↑](#footnote-ref-15)
15. Al-Mallah, *al-Fatwa Nash’atuha wa Tatawwuriha Usuliha wa Tatbiqatiha*, vol. 1, p.399. See also Badruddin et. al., Maslahah Based Fatwa on Issue Relating to Wealth in Malaysian Context, *Journal of Islamic Law Review*, 13 no. 1 (June 2017): p.70. [↑](#footnote-ref-16)
16. Hassan, Husayn Hamid, *An Introduction to the Study of Islamic Law*, (Adam Publishers & Distributor, New Delhi-India, 2005), p.194. [↑](#footnote-ref-17)
17. See Hassan, Husayn Hamid, *Nazariyat al-Maslahah fi al-Fiqh al-Islami*, (Maktabat al-Mutanabbi, Cairo-Egypt, 1981), p.5-6. [↑](#footnote-ref-18)
18. See Sha’ban, Zakiy al-Din, *Usul al-fiqh al-Islami*, (Dar Nafi’, n.p., n.d.), p.131. [↑](#footnote-ref-19)
19. Ibid. [↑](#footnote-ref-20)
20. Ibid., p.132. [↑](#footnote-ref-21)
21. Ibid., p.134. [↑](#footnote-ref-22)
22. Ibid., p.134. See also Badruddin et. al., Maslahah Based Fatwa on Issue Relating to Wealth in Malaysian Context, p.72. [↑](#footnote-ref-23)
23. Al-Mallah, vol. 1, p. 495. [↑](#footnote-ref-24)
24. Al-Mallah, vol. 1, p. 496. [↑](#footnote-ref-25)
25. See the Holy Qur’an, *Surah al-Hujurat*: 1. See also Abdullah Yusuf “Ali, The Holy Qur’an; Text Translation and Commentary, New Revised Edition (Brentwood, Maryland, U.S.A.: Amana Corporation, 1989). [↑](#footnote-ref-26)
26. See the Holy Qur’an, *Surah al-Ahzab*, 33: 36. See also Abdullah Yusuf “Ali, The Holy Qur’an; Text Translation and Commentary, New Revised Edition (Brentwood, Maryland, U.S.A.: Amana Corporation, 1989). [↑](#footnote-ref-27)
27. *Majallah al-Ahkam al-‘Adliyyah* (Ottoman Civil Code), Article 14. [↑](#footnote-ref-28)
28. *Surah al-Anbiya’*, 21:107 - *And We have sent you (O Muhammad) not but as a mercy for the 'Alamin (mankind, jinns and all that exists).* See Abdullah Yusuf “Ali, The Holy Qur’an; Text Translation and Commentary, New Revised Edition (Brentwood, Maryland, U.S.A.: Amana Corporation, 1989). [↑](#footnote-ref-29)
29. Qutb al-Raysuni, *Sina’ah al-Fatwa fi al-Qadaya al-Mu’asirah,* (Bayrut: Dar ibn Hazm, 2014), p.64-69. [↑](#footnote-ref-30)
30. Ibid. [↑](#footnote-ref-31)
31. Al-Qur‘an, *Surah al-Nisa*, 4:59. See Abdullah Yusuf ‘Ali, *The Holy Qur’an; Text Translation and Commentary,* New Revised Edition (Brentwood, Maryland, U.S.A.: Amana Corporation, 1989). [↑](#footnote-ref-32)
32. Al-Mallah, vol. 2, p. 584-6. [↑](#footnote-ref-33)
33. Badruddin Ibrahim, *et al,* “The Role of Fatwa and Mufti in Contemporary Muslim Society,” *Pertanika Journal of Social Science and Humanities*, 23, (S) (Nov 2015): 323. [↑](#footnote-ref-34)
34. Wahbah al-Zuhayli, *Usul al-Fiqh al-Islami*, Vol. 2, Dar al-Fikr, Damascus, 2010, p.427. [↑](#footnote-ref-35)
35. (1980) JH 5, 326. [↑](#footnote-ref-36)
36. See Muhammad Abu Zahrah, a*l-Ahwal al-Shakhsiyyah*, Dar al-Fikr al-‘Arabi: n.pp., n.d., pp. 386-387. [↑](#footnote-ref-37)
37. (2003) 16 JH (2) 101; [2006] 4 ShLR 154. [↑](#footnote-ref-38)
38. [2011] 2 ShLR 1. [↑](#footnote-ref-39)
39. (2009) 28 JH (2) 203, [2010] 1 CLJ (Sya) 126. [↑](#footnote-ref-40)
40. See al-San’ani Muhammad Ibn Ismail, *Subul al-Salam Sharh Bulugh al-Maram*, Vol. 3, Beirut: Dar al-Kitab al-‘Arabi, 1987, p. 210. [↑](#footnote-ref-41)
41. Selangor Fatwa 28 April 2005. Selangor Fatwa 28 April 2005. For example, the fatwa states; “Jawatankuasa Fatwa Selangor bertarikh 17 Januari 2005 telah memutuskan bahawa  sighah berkaitan anak tak sah taraf menurut hukum syara’ ialah :

 1.Anak yang dilahirkan tanpa nikah sama ada hasil daripada zina, rogol atau melalui cara sainifik yang bertentangan dengan hukum syara’.

 2.Anak yang dilahirkan kurang daripada 6 bulan 2 lahzah qamariah dari waktu “Imkan ad Dukhul” dan bukan hasil daripada persetubuhan syubhat.

 3.Anak yang dilahirkan lebih daripada 6 bulan 2 lahzah qamariah dari segi waktu “Imkan ad Dukhul” selepas akad yang sah dan ada bukti dari segi syara’ bahawa anak tersebut ialah anak tanpa nikah melalui iqrar (pengakuan) mereka yang berkenaan (suami dan isteri tersebut atau salah seorang daripadanya), atau 4 orang saksi yang memenuhi syarat-syarat mengikut hukum syara’. [↑](#footnote-ref-42)
42. Malacca Fatwa 27 October 2005. [↑](#footnote-ref-43)
43. Negeri Sembilan Fatwa 12 January 2002. [↑](#footnote-ref-44)
44. Penang Fatwa October 2006. [↑](#footnote-ref-45)
45. Selangor Fatwa 28 April 2005; Malacca Fatwa 27 October 2005. [↑](#footnote-ref-46)
46. Selangor Fatwa 28 April 2005; Malacca Fatwa 27 October 2005; Penang Fatwa October 2006. [↑](#footnote-ref-47)
47. Terengganu Fatwa 6 January 2005. [↑](#footnote-ref-48)
48. *Kompilasi Pandangan Hukum Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Agama Islam,* (Selangor: Jabatan Kemajuan Islam Malaysia, 5th. Edn, 2015), 155. [↑](#footnote-ref-49)
49. See Muzakarah Jawatankuasa Fatwa (MKI) Kali ke 44 25 Jun 1998, Garis Panduan Penamaan dan Kedudukan Anak Tak Sahtaraf dari Segi Syara’, 1-2. Available online at http://e-smaf.islam.gov.my/e-smaf/assets/files/oldsite/garis\_panduan\_penamaan\_dan\_kedudukan\_anak\_tak\_sah\_taraf\_dari\_segi\_syarak.pdf accessed 27/2/2020. [↑](#footnote-ref-50)
50. See Jabatan Kemajuan Islam Malaysia (JAKIM), *Garis Panduan Anak Tak Sah Taraf: Penamaan, Pergaulan dan HAk-haknya* (Kuala Lumpur: Matang Cipta, 1998), 3-4. [↑](#footnote-ref-51)
51. The Ninety-nine names of God (Allah the Almighty) such as al-Rahman, al-Rahim, al-Malik, al-Quddus, al-Salam etc. [↑](#footnote-ref-52)
52. *Al-Mawsu’ah al-Fiqhiyyah al-Kuwaitiyyah,* (Kuwait: Wizarah al-Awqaf wa al-Shu’un al-Islamiyyah, 2002), vol. 45, 222. [↑](#footnote-ref-53)
53. See al-Shawkani, Muhammad bin ‘Ali bin Muhammad, *Nayl al-Autor Sharh Muntaqa al-Akhyar*, (Bayrut – Lubnan: Dar al-Ma’rifah, 1998) Vol. 6, 798. [↑](#footnote-ref-54)
54. For example, Section 34(3) of the Federal Territories Administration of Islamic Law Act, which states that:

(3) Upon publication in the Gazette, a fatwa shall be binding on every Muslim resident in the Federal Territories as a dictate of his religion and it shall be his religious duty to abide by and uphold the fatwa, unless she is permitted by Islamic Law to depart from the fatwa in matters of personal observance, belief, or opinion.

(4) A fatwa shall be recognized by all Courts in the Federal Territories as authoritative of all matters laid down therein.

See also Penang Fatwa October 2006. [↑](#footnote-ref-55)
55. Ibid. [↑](#footnote-ref-56)
56. Negeri Sembilan Fatwa, 12 December 2012. [↑](#footnote-ref-57)
57. Meeting chaired by the Mufti of Perlis Dr. Mohd Asri bin Zainul Abidin dated September 2008.

 See https://www.mstar.com.my/lokal/semasa/2008/11/13/mufti-perlis-boleh-nasabkan-anak-kepada-suami-ibu-sekalipun-perkahwinan-kurang-daripada-enam-bulan, accessed on 23/5/2021. [↑](#footnote-ref-58)
58. See Dr Mohd Asri Zainul Abidin, Anak Yang Lahir Dari Perkahwinan Yang Kurang Daripada Enam Bulan?, Dr MAZA.com, accessed 24/2/2019, https://www.facebook.com/DrMAZA/posts/anak-yang-lahir-dari-perkahwinan-yang-kurang-daripada-enam-bulansoalan-bolehkah-/10153157030207990/.https://www.facebook.com/DrMAZA/posts/anak-yang-lahir-dari-perkahwinan-yang-kurang-daripada-enam-bulansoalan-bolehkah-/10153157030207990/ [↑](#footnote-ref-59)
59. See http://drmaza.com/home/?p=488<http://drmaza.com/home/?p=488> accessed 24/2/2019. [↑](#footnote-ref-60)
60. See for example The New Humanitarian, ‘Why More Mothers Do Not Breastfeed Their Babies” available online at https://deeply.thenewhumanitarian.org/malnutrition/articles/2017/12/15/why-more-mothers-dont-breastfeed-their-babies-2 accessed on 23/5/2021. [↑](#footnote-ref-61)
61. Selangor 7 June 2012; Pahang 30 December 2011; Negeri Sembilan 12 December 2012. [↑](#footnote-ref-62)
62. For example, Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia Kali Ke-96 yang bersidang pada 13-15 Oktober 2011 telah membincangkan mengenai Hukum Wanita Menyusukan Anak Angkat. Muzakarah telah membuat keputusan seperti berikut:

 Setelah meneliti keterangan, hujah-hujah dan pandangan yang dikemukakan, Muzakarah menegaskan bahawa Islam menggalakkan setiap ibu yang melahirkan anak untuk menyusukan sendiri bayi mereka dengan susu ibu sehingga mencapai usia dua tahun, sekiranya mereka mampu berbuat demikian. Namun begitu, Islam juga membenarkan wanita yang tidak melahirkan anak tetapi mengambil anak angkat, untuk menyusukan sendiri anak tersebut dengan bantuan rawatan perubatan.

 See *Kompilasi Pandangan Hukum Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Agama Islam,* (Selangor: Jabatan Kemajuan Islam Malaysia, 5th. Edn, 2015), p. 233. [↑](#footnote-ref-63)
63. Ahmad Farraj Husayn, *Ahkam al-Usrah fi al-Islam,* (Bayrut: Dar al*-*Jami’ah al-Jadidah, 1991), vol. 2, p. 219. [↑](#footnote-ref-64)
64. See Al-Qalyubi, Ahmad Salamah & Umayrah, Ahmad al-Barlisi,

 *Hashiyata Qalyubi wa Umayrah* (Bayrut; Dar al-Fikr, 1995) vol. 4, p. 62-63. [↑](#footnote-ref-65)
65. Surah al-Nisa, 4:23. See Abdullah Yusuf ‘Ali, *The Holy Qur’an; Text Translation and Commentary,* New Revised Edition (Brentwood, Maryland, U.S.A.: Amana Corporation, 1989). [↑](#footnote-ref-66)
66. Al-Shawkani, Muhammad bin ‘Ali bin Muhammad, *Nayl al-Autor Sharh Muntaqa al-Akhyar*, (Bayrut – Lubnan: Dar al-Ma’rifah, 1998) Vol. 5, p. 863. [↑](#footnote-ref-67)
67. See fatwa from Selangor 7 June 2012; Pahang 30 December 2011; Negeri Sembilan 12 December 2012. See also Bayan Linnas siri 70: Isu Berkenaan Ibu Susuan dan Pelbagai Hukum, accessed March 1, 2018, < http://muftiwp.gov.my/ms/artikel/bayan-linnas/1138-bayan-linnas-siri-70-isu-berkenaan-ibu-susuan-pelbagai-hukum-kad-atau-sijil-susuan?highlight=WyJwZXJrYWh3aW5hbiIsInBlcmthaHdpbmFuJy4iLCJrYW5hay1rYW5hayIsInBlcmthaHdpbmFuIGthbmFrLWthbmFrIl0=> [↑](#footnote-ref-68)
68. Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia Kali Ke-96 yang bersidang pada 13-15 Oktober 2011 telah membincangkan mengenai Hukum Wanita Menyusukan Anak Angkat. Muzakarah telah membuat keputusan seperti berikut:

 “Sehubungan itu, Muzakarah bersetuju memutuskan bahawa menggunakan ubat atau suntikan untuk merangsang pengeluaran susu badan adalah harus dengan syarat ianya seorang wanita yang telah mencapai umur baligh sama ada telah berkahwin ataupun sebaliknya dan ubat atau hormon yang digunakan tersebut tidak mengandungi sebarang unsur-unsur najis atau mudharat. Keharusan ini tidak tertakluk bagi seorang lelaki yang berubah menjadi wanita melalui pertukaran jantina.”

 See *Kompilasi Pandangan Hukum Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Agama Islam,* (Selangor: Jabatan Kemajuan Islam Malaysia, 5th. Edn, 2015), 233. [↑](#footnote-ref-69)
69. Pahang Fatwa Committee 30 Dec 2011, Negeri Sembilan Fatwa Committee 12 Dec 2012. See also Kompilasi *Pandangan Hukum Muzakarah Jawatankuasa* Fatwa. *Majlis Kebangsaan Bagi Hal Ehwal Agama Islam,* (Selangor: Jabatan Kemajuan Islam Malaysia, 5th. Edn, 2015). [↑](#footnote-ref-70)
70. See for example Islamic Family Law (Federal Territories) Act 1984, Section 2 & 9(3). [↑](#footnote-ref-71)
71. Infaq al-Zawjah min Martabiha ila al-Bayt, accessed March 2, 2018, < http://www.dar-alifta.org/AR/ViewFatwa.aspx?sec=fatwa&ID=12189>; http://www.dar-alifta.org/AR/ViewFatwa.aspx?sec=fatwa&ID=12189>; Qarar bi Sha’n Ikhtilafat al-Zawj wa al-Zawjah al-Muwazzafah, accessed March 2, 2018, http://www.iifa-aifi.org/2174.html>.http://www.iifa-aifi.org/2174.html>. [↑](#footnote-ref-72)
72. The *fatwa* states “Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia Kali Ke-4 yang bersidang pada 13-14 April 1982 telah membincangkan Harta Sepencarian. Muzakarah telah memutuskan bahawa; Segala apa yang diberi atau dihibahkan oleh suami kepada isteri atau sebaliknya dengan bukti secara syarak atau dengan pengakuan dari pihak yang memberi adalah menjadi hak kepada yang menerima. Mengenai rumah tempat tinggal dan perabot pada dasarnya adalah menjadi hak suami kecuali bila ada kenyataan menunjukkan bahawa suami menghibahkan kepada isterinya, atau isteri yang punya. Maskahwin, pakaian dan nafkah pada dasarnya adalah menjadi hak isteri. See Kompilasi *Pandangan Hukum Muzakarah Jawatankuasa* Fatwa. *Majlis Kebangsaan Bagi Hal Ehwal Agama Islam,* (Selangor: Jabatan Kemajuan Islam Malaysia, 5th. Edn, 2015) p.155. [↑](#footnote-ref-73)
73. Harta Sepencarian, accessed March 2, 2018, < http://kelantan.jksm.gov.my/jksnk/v2/index.php/ms/2-uncategorised/154hartasepencarian>.http://kelantan.jksm.gov.my/jksnk/v2/index.php/ms/2-uncategorised/154-harta-sepencarian>. [↑](#footnote-ref-74)
74. Haji Daud bin Muhammad, Datu Aria Diraja, “Harta Sepencarian, Isu-Isu dan Amalan”, *Jurnal Hukum,* Jld XV Bhg 1, (June 2002): 7. [↑](#footnote-ref-75)
75. Husam al-Din ibn Musa ‘Afanah, *Yas’alunak Vol. 19,* (n.p.: Kitab INC, 2014), p. 304. [↑](#footnote-ref-76)
76. *Al-‘Alaqah al-Maliyah bayna al-Zawjayn*, accessed March 2, 2018, < http://aliftaa.jo/Question.aspx?QuestionId=671> .http://aliftaa.jo/Question.aspx?QuestionId=671>. [↑](#footnote-ref-77)
77. See also Nurulfatiha Muah, Bolehkah Isteri yang tidak Bekerja Menuntut Harta Sepencarian, Sinar Harian, 4th October 2019, at https://www.sinarharian.com.my/article/50489/LIFESTYLE/Sinar-Islam/Bolehkah-isteri-tidak-bekerja-tuntut-harta-sepencarian accessed 10/6/2021. [↑](#footnote-ref-78)
78. See Islamic Family law (Federal Territories) Act 1984, s. 122 (1&2). [↑](#footnote-ref-79)
79. See Islamic Family law (Federal Territories) Act 1984, s. 122 (3&4). [↑](#footnote-ref-80)
80. See Islamic Family law (Federal Territories) Act 1984, s. 122 (5). [↑](#footnote-ref-81)
81. See Islamic Family law (Federal Territories) Act 1984, s. 122 (1&2). [↑](#footnote-ref-82)
82. Islamic Family Law (Federal Territories) Act 1984, sect. 122 (3). [↑](#footnote-ref-83)
83. Islamic Family Law (Federal Territories) Act 1984, sect. 122 (5). [↑](#footnote-ref-84)
84. Islamic Family Law (Federal Territories) Act 1984, sect. 8. [↑](#footnote-ref-85)
85. [2015] 3 ShLR. [↑](#footnote-ref-86)
86. Islamic Federal Territories Act 1984, sec. 8. [↑](#footnote-ref-87)
87. See the Annotated Statutes of IFLA, p. 106. [↑](#footnote-ref-88)
88. See also Azizah Mohd & Nadhilah A. Kadir (2019). Minimum age of marriage under Islamic Law and the Islamic Family Law (Federal Territories) Act 1984: a preliminary study on the ideal age of marriage in Malaysia. *Al-Shajarah*, 24 (2). p. 239-266. [↑](#footnote-ref-89)
89. Child Act 2001, Act no 611, sect. 2. [↑](#footnote-ref-90)
90. *Kompilasi Pandangan Hukum Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Agama Islam*, 167. [↑](#footnote-ref-91)
91. The text of the fatwa states “…berasaskan nas-nas Syarak dan Kaedah-Kaedah Fiqhiyyah serta keterangan pakar-pakar kesihatan dan psikologi, Muzakarah bersetuju memutuskan bahawa perkahwinan kanak-kanak hanya boleh dibenarkan dengan syarat ia dilakukan semata-mata untuk memenuhi kemaslahatan kanak-kanak tersebut secara syar’ie…” see *Kompilasi Pandangan Hukum Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Agama Islam*, 167-169. [↑](#footnote-ref-92)
92. [2015] 3 ShLR. [↑](#footnote-ref-93)
93. #  See Fifi Harteeny Marzuki, Kahwin bawah 18 tahun dapat bendung masalah sosial - Mufti Negeri Sabah, AstroAwani, 24 September 2018 available online at https://www.astroawani.com/berita-malaysia/kahwin-bawah-18-tahun-dapat-bendung-masalah-sosial-mufti-negeri-sabah-186438 accessed 3/6/2021.

 [↑](#footnote-ref-94)
94. See Nor Fazlina Abdul Rahim, JPN Kaji Dasar Pendaftaran Anak Tak Sahtaraf, BHOnline,20 February 2021, at https://www.bharian.com.my/berita/nasional/2020/02/657401/jpn-kaji-dasar-pendaftaran-anak-tak-sah-taraf accessed on 3/6/2021. See also Fazleensafeena, 150 kes Sehari! Isu Ibu Hamil Luar Nikah Semakin Barah, ismaweb, Mengangkat Suara Ummah, 27 December 2020, at

 https://ismaweb.net/2020/12/27/150-kes-sehari-isu-ibu-hamil-luar-nikah-semakin-barah/ accessed on 4/6/2021. [↑](#footnote-ref-95)
95. See al-Shawkani, Nayl al-Autor, Vol, 6, 584. [↑](#footnote-ref-96)
96. Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuh,* (Dimashq: Dar al-Fikr, n.d.), vol. 9, pp. 6682-6683. [↑](#footnote-ref-97)
97. Muhammad ibn Ali ibn Husayn al-Maliki. *Dawabit al-Fatwa: Man Yajuzu an Yufti wa man la yajuzu an Yufti*. (Al-Iskandariyyah: Dar al-Furqan, 1418). [↑](#footnote-ref-98)