

AN ANALYSIS OF THE RESULTS OF THE 33RD NU CONGRESS 2015 ON THE PROTECTION OF INDONESIAN MIGRANT WORKERS AND MARRIAGE REGISTRATION FOR MUSLIM MIGRANT WORKERS ABROAD

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▪ Received:08-07-2023

▪ Revised: 09-01-2025

▪ Accepted: 09-01-2024

Abstract

*Indonesian citizens who need marriage registration services abroad do not always get the best service from the Indonesian Representative Office abroad. With this issue, NU provided recommendations in the 33rd NU Mu'tamar to strengthen legal protection for Indonesian workers abroad. This research was conducted to answer questions related to the context in which NU formulated the protection of Indonesian migrant workers and marriage registration for Muslim migrant workers abroad. This research uses normative research with a statutory approach and conceptual approach, so this research is a type of library research. From the results of the 33rd NU Batsul Masail decision on the protection of migrant workers and marriage registration for Muslim migrant workers abroad using the approach of the Fikih rule *Qawaid al-Ahkam fi Mashalih al-Anam*, where this rule emphasises that on *Maslahah mursalah*. So it is required for the legislative body to provide more benefits, especially in relation to services for foreign migrant workers who want to register their marriage. This is seen from Law No. 39 of 2004 that has not fully regulated the protection in detail, which results in many violations that occur against migrant workers. Starting from the determination process through TKI service bureaus to placement in the workplace. In addition, Law No. 39 of 2004 does not include matters relating to marriage for overseas workers so that it raises new problems related to the protection of migrant workers, one of which is the problem of marriage registration. Judging from the urgency of marriage registration, it is very necessary to add regulations relating to this matter to Law No. 39 of 2004. With the inclusion of marriage issues in Law No.39 of 2004.*

Keywords: *Batsul Masail, Marriage Registration, Indonesian Workers*

Abstrak

Warga negara Indonesia yang membutuhkan layanan pencatatan pernikahan di luar negeri tidak selalu mendapatkan layanan terbaik dari Kantor Perwakilan RI di luar negeri. Dengan isu tersebut, NU memberikan rekomendasi dalam Mu'tamar NU ke-33 untuk memperkuat perlindungan hukum bagi tenaga kerja Indonesia di luar negeri. Penelitian ini dilakukan untuk menjawab persoalan terkait konteks yang melatar belakangi NU merumuskan perlindungan TKI dan pencatatan nikah bagi TKI beragama Islam di luar negeri. Penelitian ini menggunakan penelitian normatif dengan pendekatan perundang-undangan dan pendekatan konseptual, maka penelitian ini berjenis *library research*. Dari hasil putusan Batsul Masail NU ke 33 tentang perlindungan TKI dan pencatatan nikah bagi TKI Beragama Islam di Luar Negeri menggunakan pendekatan kaidah Fikih *Qawaid al-Ahkam fi Mashalih al-Anam*, dimana kaidah ini menekankan bahwa pada *Maslahah mursalah*. Sehingga dituntut kepada badan legislatif untuk lebih memberikan kemaslahatan, terutama dalam kaitannya dengan layanan bagi pekerja migran asing yang ingin mendaftarkan pernikahan mereka. Hal ini dilihat dari Undang-Undang No. 39 tahun 2004 belum sepenuhnya mengatur berkaitan dengan perlindungan secara terperinci yang berakibat masih banyak pelanggaran-pelanggaran yang terjadi terhadap TKI. Mulai dari proses penentuan melalui biro-biro jasa TKI sampai

penempatan pada tempat kerja. Selain itu, Undang-Undang No. 39 tahun 2004 tidak mencantumkan hal-hal yang berkaitan dengan pernikahan bagi Tenaga Kerja di Luar Negeri sehingga memunculkan permasalahan baru berkaitan dengan perlindungan TKI, salah satunya masalah pencatatan perkawinan. Dilihat dari urgensinya pencatatan perkawinan sehingga sangat perlu menambahkan regulasi berkaitan dengan hal tersebut pada Undang-Undang No. 39 tahun 2004. Dengan dicantumkan masalah perkawinan pada Undang-Undang No.39 tahun 2004.

Kata kunci: Batsul Masail, Pencatatan Nikah, Tenaga kerja Indonesia

INTRODUCTION

According to projections by Bank Indonesia, there will be 3.37 million migrant workers from Indonesia in the third quarter of 2022. The number is 3.4% higher than in 2021, when there were 3.25 million people. Although this position seems economically beneficial for all parties, there are several legal issues that arise. According to the Indonesian Ministry of Foreign Affairs, the causes of employment problems abroad are work accidents, unpaid wages, physical torture/abuse, inappropriate workload, sexual harassment, inadequate work schedules, lack of a sense of belonging, and conflicts.¹ The National Agency for Placement and Protection of Indonesian Migrant Workers (Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia, BNP2TKI) also noted that problematic workers might have incomplete documents, pre-existing medical conditions, or be pregnant.²

Law No. 39/2004 on the Placement and Protection of Indonesian Workers Abroad regulates the protection of Indonesian workers abroad. The government has stated on several occasions that the state has not been able to provide complete protection. There are unclear laws, unequal tasks and powers between the public and private sectors that make laws less useful, and a management and protection system that is worse for Indonesian workers abroad. These are some of the problems with the Indonesian Placement and Protection of Migrant Workers Law.³ The regulations and laws governing the recruitment and protection of workers abroad still have many shortcomings, which place workers in unfavorable situations and make it difficult for the government to assist migrant workers to the fullest when they need help. Migrant workers who work in the informal sector, such as domestic workers, are not subject to the current applicable laws.⁴

According to Article 2, Paragraph 1, of Government Regulation No. 9 of 1975 on the Implementation of Marriage Law, the registrar, as referred to in Law No. 32 of 1954 on the Registration of Marriage, Divorce, and Reconciliation, is responsible for recording marriages for Indonesian citizens who are Muslims.⁵ In Law Number 16 of 2019 concerning Amendments

¹ "Pelayanan dan Perlindungan WNI/TKI di Luar Negeri", dalam rapat dengar pendapat (RDP) dengan Tim Pengawas TKI DPR RI

² Presentasi BNP2TKI dalam rapat dengar pendapat (RDP) dengan Tim Pengawas TKI DPR RI tanggal 30 Januari 2014

³ Ratih Probosiwi, 'Analisis Undang-Undang Perlindungan Tenaga Kerja Indonesia Di Luar Negeri', *Jurnal Kawistara* 5, no. 2 (2015): 200–212, <https://doi.org/10.22146/kawistara.7597>; Judy Fudge, 'Making Claims for Migrant Workers: Human Rights and Citizenship', *Citizenship Studies* 18, no. 1 (2 January 2014): 29–45, <https://doi.org/10.1080/13621025.2014.865894>.

⁴ Aswatini Raharto, 'Pengambilan Keputusan Tenaga Kerja Indonesia (Tki) Perempuan Untuk Bekerja Di Luar Negeri: Kasus Kabupaten Cilacap (Decision Making To Work Overseas Among Indonesian Women Labor Migrants: The Case of Cilacap District)', *Jurnal Kependudukan Indonesia* / 12, no. 1 (2017): 39–54; Brenda S. A. Yeoh and Shirlena Huang, 'Negotiating Public Space: Strategies and Styles of Migrant Female Domestic Workers in Singapore', *Urban Studies* 35, no. 3 (1998): 583–602.

⁵ Sheanny Scolastika et al., 'Perkawinan Campuran, Pencatatan Keabsahan Pencatatan Perkawinan Diluar Indonesia Berdasarkan Peraturan Perundang-Undangan', *Kertha Wicaksana* 14, no. 2 (2020): 139–46, <https://doi.org/10.22225/kw.14.2.1789.139-146>.

to Law Number 1 of 1974 on Marriage, published in October 2019, there are also no regulations related to marriages abroad. According to Article 56, paragraph 1 of the Marriage Law, it is stated that a marriage between two Indonesian citizens (WNI) conducted abroad or between an Indonesian citizen and a foreign citizen (WNA) conducted abroad is valid if the marriage is recognized by the laws of the country where the marriage took place. In its second paragraph, it is stated that marriages conducted outside Indonesia must be registered within one year after the couple returns to Indonesia in order to be recognized in Indonesia. The registration of marriages outside Indonesia is regulated by Law No. 23 of 2006 on Population Administration, commonly known as the Population Administration Law. According to Article 37, paragraph (1), marriages between Indonesian citizens that occur outside the territory of the Unitary State of the Republic of Indonesia must be recorded by the competent government authority in the respective country and reported to the Representative of the Republic of Indonesia. Further provisions of paragraph (4) state that the individual is required to notify the relevant authorities at their place of residence of the marriage registration no later than 30 (thirty) days after their return to Indonesia.⁶

This law implies that there are no specific regulations for the registration of marriages for Indonesian residents who get married while living abroad, which causes a number of problems. In addition, this law does not state that every delegation must be registered in the cooperating country. The government has established various regulations regarding marriage registration services for Indonesian citizens living abroad under certain conditions. First, the Joint Decree (Surat Keputusan Bersama, SKB) No. 589 of 1999 between the Minister of Religious Affairs and the Minister of Foreign Affairs establishes guidelines for the implementation of marriages among Indonesian citizens abroad. Second, the Decree on Delegation of Authority for the Appointment of Marriage Registration Officers No. 463 of 2000 from the Minister of Religious Affairs.⁷

In response to this, NU decided at the 33rd NU Mu'tamar held on Tuesday, August 4, 2015, at the Bahrul Ulum Islamic Boarding School complex in Jombang, East Java, to discuss the issue that Indonesian citizens who need marriage registration services abroad do not always receive the best services from Indonesian Representative Offices abroad. In addition, Indonesian citizens working as laborers or pursuing higher education abroad have not fully benefited from government programs such as counseling and religious services.⁸ NU also provided several recommendations, namely: first, the need to amend Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad to strengthen the protection given to Indonesian migrant workers abroad, including by providing services for Indonesian migrant workers abroad to register their marriages. Second, regulations or policies are needed to govern the appointment of Marriage Registration Officers (Pegawai Pencatat Nikah) who possess strong credentials and capabilities to provide marriage registration services at the Indonesian Representative Office. The Religious Attaché at the Indonesian Representative Office is also planned to be established under this structure, especially in countries with a concentration of Indonesian labor, such as Malaysia, Saudi Arabia, Hong Kong, and other countries.⁹

Based on the above exposition, the researcher is interested in investigating and tracing back the issues of migrant worker protection and marriage registration for Muslim migrant workers abroad as described above. The purpose of this research is to provide answers to

⁶ Scolastika et al.

⁷ Abdul Halim and Carina Rizky Ardhani, 'KEABSAHAN PERKAWINAN BEDA AGAMA DILUAR NEGERI DALAM TINJAUAN YURIDIS', *Jurnal Moral Kemasyarakatan* 1, no. 1 (2016): 15–36.

⁸ Materi Mukhtamar ke-33 Nahdlatul Ulama, (Jakarta: Nahdlatul Ulama, 2015), hlm. 265

⁹ Materi Mukhtamar ke-33 Nahdlatul Ulama, (Jakarta: Nahdlatul Ulama, 2015), hlm. 266

questions about the environment in which NU develops its policies on the protection of migrant workers and the registration of marriages for Muslim migrant workers abroad.

RESEARCH METHOD

This research uses the normative legal research method, which focuses on the study of applicable laws, legal documents, and legal principles. This method involves several approaches. First, the legislative approach is carried out by analyzing various related regulations, such as Law No. 39 of 2004 on the placement and protection of Indonesian workers abroad, Law No. 16 of 2019 on amendments to Law No. 1 of 1974 on marriage, Government Regulation No. 9 of 1975 on the implementation of the marriage law, and Law No. 23 of 2006 on population administration. This analysis aims to evaluate the extent to which these regulations provide legal protection for Indonesian migrant workers, particularly concerning marriage registration. Additionally, this research also employs a conceptual approach to understand legal concepts such as the protection of migrant workers' rights, marriage registration, and the legal relationship between migrant workers and positive law in Indonesia. This approach assists in identifying legal principles that serve as a foundation for fortifying relevant regulations.¹⁰

This research interprets data collected through document studies and legislation using descriptive analysis methods.¹¹ This research interprets data collected through document studies and legislation using descriptive analysis methods.¹² The study's findings should lead to specific suggestions, such as changing Law No. 39 of 2004 by adding a clause that controls how Indonesian workers who go to work abroad can register their marriage.

RESULTS AND DISCUSSIONS

A. Marriage Abroad

Mixed marriages occur when an Indonesian citizen marries a foreign citizen in Indonesia. We classify this type of marriage based on the nationality and the location of the marriage. Second, we categorize marriages that occur outside of Indonesia, specifically those that unite two Indonesian citizens. The last one is the marriage between a foreign citizen and an Indonesian citizen outside of Indonesia.¹³

Marriage outside Indonesia is regulated in Article 56 of the Marriage Law, which states: "(1) Marriage in Indonesia between two Indonesian citizens or an Indonesian citizen and a foreign citizen is valid if conducted according to the law applicable in the country where the marriage takes place and does not violate the provisions of this law for Indonesian citizens." (2) Within one year after the husband and wife return to the territory of Indonesia, their marriage certificate must be registered at the Marriage Registration Office where they reside. Marriage is a legal act in the civil realm, so the marriage must meet the criteria of legal validity and, in the case of international marriages, comply with the law of the chosen country of the couple (choice of law). Therefore, the marriage laws of each party's country must be considered when determining the validity of an international marriage. According

¹⁰ Yogi Febriandi, Muhammad Ansor, and Nursiti Nursiti, 'Seeking Justice Through Qanun Jinayat: The Narratives of Female Victims of Sexual Violence in Aceh, Indonesia', *QIJS (Qudus International Journal of Islamic Studies)* 9, no. 1 (29 July 2021): 103–40, <https://doi.org/10.21043/qijis.v9i1.8029>.

¹¹ Muhammad Budiarto, "Perlindungan Hukum terhadap Tenaga Kerja Indonesia di Luar Negeri: Studi Kasus di Negara Timur Tengah," *Jurnal Hukum dan Keadilan*, Vol. 15, No. 2, 2020, hlm. 145-157.

¹² Matthew B. Miles and A. Michael Huberman, *An Expanded Sourcebook Qualitative Data Analysis* (Thousand Oaks, London New Delhi: Sage Publications, 1994).

¹³ T Prasastinah and G Anand, *Hukum Keluarga Dan Harta Benda Perkawinan* (Surabaya: Revka Prima Media, 2019); Monika Lindbekk, 'Implementing the Law of Khul' in Egypt', *Hawwa* 18, no. 2–3 (28 October 2020): 265–94, <https://doi.org/10.1163/15692086-12341379>.

to R. Soetjo Prawirohamidjojo, there are two categories of marriage criteria: formal and material. People who are going to get married have material needs. Meanwhile, the formal criteria involve the formalities that must be fulfilled to conduct the marriage.¹⁴

In this case, marriage is valid if it meets the requirements in Article 2, Paragraph 1 of the Marriage Law, which states that marriage is legal if conducted according to the laws of each religion and belief, in the presence of a registrar, and attended by two witnesses. We cannot overlook the requirements in Article 2 of the Marriage Law, as they constitute public order for the residents of Indonesia. A violation of this provision can dissolve the marriage.¹⁵

Another requirement is that the prospective couple must register themselves if they are Muslim to apply for the Marriage Permit Certificate; however, if they are not Muslim, they can register themselves at the Civil Registry Office. According to the Population Administration Law, marriages must be reported to the Consulate General of the Republic of Indonesia in the country where the marriage will take place if the prospective partners are foreign nationals and Indonesian citizens who will be married outside Indonesia.¹⁶

Based on the provisions of Article 56, paragraph (2) of the Marriage Law, marriages conducted outside Indonesia must be registered at the Marriage Registration Office within one year. Article 37, paragraph (1) of the Population Administration Law mandates that marriages between Indonesian citizens conducted abroad must be recorded. The marriage must be reported to a representative of the Republic of Indonesia and registered with the relevant government agency in the country where it takes place. The Marriage Certificate Register will be updated, and a Marriage Certificate Extract will be issued after the marriage registration at the Representative Office of the Republic of Indonesia. Marriage registration must be carried out at the authorized agency in the place of residence no later than 30 (thirty) days after returning to Indonesia, in accordance with Article 37, paragraph 4 of the Population Administration Law.¹⁷ This will be subject to an administrative sanction in the form of a fine of Rp 1,000,000.00 based on the provisions of Article 90, paragraph (1), letter B, in conjunction with paragraph (2) of the Population Administration Law, if it exceeds the time limit specified in Article 37, paragraph (4) of that law. However, the Marriage Law regulations regarding the registration of marriages conducted outside Indonesia do not stipulate sanctions for the negligence of registering a marriage within one year.¹⁸

B. Bahtsul Masail Nahdlatul Ulama

To address the religious issues experienced by the nahdiyyin residents, NU often conducts discussions in stages. The discussion of these issues begins at the Bahtsul Masail branch level (village or pesantren). If it is still unclear, it is brought to the branch level (district); if it is still unclear, it is brought to the branch Bahtsul Masail (regency); if it is still unclear, it is brought to the provincial Bahtsul Masail; and if it is still unclear, it is

¹⁴ R. S Prawirohamidjojo, *Pluralisme Dalam Perundang Undangan Perkawinan Di Indonesia* (Surabaya: Airlangga University Press, 1988).

¹⁵ Scolastika et al., 'Perkawinan Campuran , Pencatatan Keabsahan Pencatatan Perkawinan Diluar Indonesia Berdasarkan Peraturan Perundang-Undangan'; FARHANA IBRAHIM, 'Cross-Border Intimacies: Marriage, Migration, and Citizenship in Western India', *Modern Asian Studies* 52, no. 5 (21 September 2018): 1664–91, <https://doi.org/10.1017/S0026749X16000810>; Suhadi Cholil, 'The Politico-Religious Contestation: Hardening of the Islamic Law', in *Muslim-Non-Muslim Marriage* (Singapore: ISEAS Publishing, 2009), 139–58, <https://doi.org/10.1355/9789812308221-008>; Rozaliya Garipova, 'Married or Not Married? On the Obligatory Registration of Muslim Marriages in Nineteenth-Century Russia', *Islamic Law and Society* 24, no. 1–2 (8 March 2017): 112–41, <https://doi.org/10.1163/15685195-02412p05>.

¹⁶ Scolastika et al., 'Perkawinan Campuran , Pencatatan Keabsahan Pencatatan Perkawinan Diluar Indonesia Berdasarkan Peraturan Perundang-Undangan'.

¹⁷ Scolastika et al.

¹⁸ Scolastika et al.

brought to the national Bahtsul Masail.¹⁹ Therefore, the process for debating topics in this forum is from branches to branch representatives, from branch representatives to branches, from branches to regions, from regions to the central committee, from the central committee to the National Conference, and finally from the National Conference to the congress.

Bahtsul Masail bases his decisions on the opinions of mujtahids, also known as *aqwal almujtahidn*. We will follow a *qaul man* (an established opinion) if we find one. If it is not found, then it will use *qaul mukharraj* (an opinion obtained through *takhrij*). The Bahtsul Masail Forum adheres to the accepted viewpoint within the scope of one of the four schools of thought, which is why this forum is referred to as the school of thought opinion. When a *khilaf* (difference of opinion) arises, the decision of *ahlul tarjih* determines which opinion is stronger. They also often reach a consensus in differences of opinion, but they also take a stance to make decisions based on the conditions of the demands of *tahsniyyah* (secondary needs) and *d'arriyyah* (primary needs).²⁰

Sometimes, the Bahtsul Masail committee uses external experts as resource persons to help explain specific examples related to the topic under discussion. The sources used are those who are considered experts in their field. From the decision-making procedure, it is clear that the Bahtsul Masail organized by Pengurus Besar Nahdlatul Ulama (PBNU) holds significant power for Nahdlatul Ulama members in making religious decisions.²¹ Based on the data above, the Bahtsul Masail Institution can be categorized as a *mujtahid fil mahab* when conducting legal reasoning. There are three methods used by NU in conducting legal reasoning, according to Ahmad Zahro, namely *qauli*, *'ilhaqi*, and *manhaji*.²²

1. *Qauli* Method

The "qauli" approach, or "following established opinions within a certain school of thought," is a form of *istinbat* that directly refers to the "ibarah" from the *fiqh* book.²³ Although this practice has been ongoing for a long time, since the first Bahtsul Masail in 1926, it was only officially recognized in the decision of the National Conference of Ulama in Bandar Lampung (June 21-25, 1992):

- a. The *qauli* or *wajhi* method found in the *ibrah* of the book must be used as a solution for every problem that can be resolved by the *ibrah* of the book, and the book only provides one *qaul* (opinion of the school of thought's imam) or *wajhi* (opinion of the school of thought's scholars).
- b. If there are several opinions or views but it is still possible to resolve the issue using the *'illat* of the book, then *taqrir* is done to choose one of them. The choice is to take the stronger opinion or the more beneficial one. Furthermore, the differences of opinion are resolved, particularly in the Shafi'i school, according to the decision of the First Congress (1926), by choosing: (a) the opinion held by an-Nawwi and ar-Rafi'i, known as *asy-Syaikhin*; or the viewpoint expressed by an-Nawwi; or the viewpoint expressed by ar-Rafi'i; or the viewpoint held by the majority of scholars;

¹⁹ Abdul Mughits, *Kritik Nalar Fiqh Pesantren* (Jakarta: Kencana Prenada, 2008).

²⁰ Umi Latifah, Yusuf Baihaqi, and Jayusman Jayusman, 'Analisis Keputusan Musyawarah Nasional Lembaga Bahtsul Masail Nahdlatul Ulama Tahun 2019 Tentang Hukum Bisnis Multi Level Marketing', *Asas* 13, no. 2 (2022): 1–23, <https://doi.org/10.24042/asas.v13i2.11276>.

²¹ Ahmad Zahro, *Tradisi Intelektual NU* (Yogyakarta: LKiS, 2004).

²² Mughits, *Kritik Nalar Fiqh Pesantren*.

²³ Gusti Muhamad Shadiq et al., 'Telaah Metodologi Istinbath Dan Corak Hukum Islam Lembaga-Lembaga Fatwa Di Indonesia (LBMNU, Majelis Tarjih Muhammadiyah Dan Komisi Fatwa MUI)', *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 2, no. 2 (2024): 684–99, <https://doi.org/10.62976/ijjel.v2i2.546>.

or the opinion of the most wise scholar; or the viewpoint held by the majority of the warriors.²⁴

The first opinion that can be considered a fatwa when a decision is being discussed is the one based on the reputation, or consensus, of Imam Nawwi and Rafi'i. If there is no response, then the opinion of Imam an-Nawwi is taken; if there is none, then the opinion of Imam ar-Rafi'i is used. In the absence of a solution, the majority of non-Shafi'i academics are used, followed by the most devout scholars, and finally their opinions.

2. *Ilhāqī* Method

If the qaul method doesn't reveal the veil (expression) of the fiqh books, then *ilhaq al-mas'il bi nairh* is used. This means comparing the decision in a case that doesn't have a decision in the book to a case that does have a decision in the book, or to a well-known opinion. This approach has been operationally used by NU for a long time, just like the qauli method, but implicitly and anonymously as a formulation known as *ilhaq*.²⁵ In the *ilhaq* method, the following conditions must be met: "Mulcaq bih (something that hasn't been definitively ruled upon yet, or in *qiyās* called *far'*), mulcaq 'alaih (something that has been definitively ruled upon or in *qiyās* called *aql*), wajh ilcāq (the factor of similarity between *mulcaq bih* and *mulcaq 'alaih* or *'illah*) by an expert."²⁶

Technically, the *ilhāqī* method is similar to the *qiyās* method. The *qiyās* method gets its *al-aṣl* (source) from the Qur'an and the final Sunnah, which was supported by Imam Shafi'i. The *ilhāqī* method, on the other hand, gets its *al-aṣl* and rulings from books of law that have a strong presumption (*zan*). However, this event shows that there is a methodological contradiction in *qiyās* between Imam Syafii and the understanding of the *salaf pesantren* that says they follow the Syafii school. On the other hand, it shows the *pesantren's* understanding of their reverence for the treasures of Shafi'i jurisprudence, so they do not dare use their school of thought's method in a direct manner.

3. *Manhajī* Method

In the event that this *ilhāqī* method also fails to arrive at a legal conclusion (since there is no fiqh text that can be *ilhāq*-ed) then the *manhajī* method is used. This is a way to settle religious disputes by following the thought process or legal determination rules set by the imam of the school of thought. As with the first two methods, it is not yet known by the term *manhajī*.

C. Analysis of the Results of the 33rd NU Congress in 2015

Bahtsul Masail is one of the religious discussion forums within the NU organization to respond to and provide solutions for the problems that arise in community life. In the congress, Bahtsul Masail holds the highest authority to formulate various religious issues, including *Masa'il al-Diniyyah Wa qi'iyah*, *Mawdlu'iyah*, and *al-Qonuniyyah*.²⁷ Therefore, through this forum, a decision has been reached based on legal agreements and legislative recommendations that are believed to serve as a guiding principle for the general public, especially for NU members.

In this case, at the 33rd NU Congress in Jombang, one of the discussions was about *ad diniyah al-Qonuniyah* regarding the protection of Indonesian workers and the registration

²⁴ Zahro, *Tradisi Intelektual NU*.

²⁵ Zahro.

²⁶ Zahro.

²⁷ Dkk Haidar Putra Daulay, 'Jurnal Ilmiah Al – Hadi', *Jurnal Ilmiah Al-Hadi* 6, no. 1 (2020): 147.

of marriages for Indonesian Muslim workers abroad. The activity yielded several recommendations. First, it is necessary to amend Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad to further strengthen the protection provided to Indonesian workers abroad, including in the form of marriage registration services for Indonesian workers abroad. Second, regulations or policies need to be established for the assignment of marriage registrars who possess good qualifications and competencies to provide marriage registration services at the Representative Office of the Republic of Indonesia. In this framework, it is also hoped that the government can establish religious attachés at Indonesian representative offices, especially in countries that are hubs for Indonesian migrant workers, such as Malaysia, Saudi Arabia, Hong Kong, and other countries.²⁸

The result, when viewed from the perspective of Usul Fiqh, falls under Maslahah Mursalah. The decision-making process relies on the Fiqh principles found in Izzuddin Abd al-Salam's *Qawaid al-Ahkam fi Mashalih al-Anam*, volume I, page 51:

للسائل أحكام المقاصد فالوسيلة إلى أفضل المقاصد هي أفضل الوسائل فمن وفقه الله للوقوف على ترتيب
فاضلها منمفضوله المصالح عرف

"For the intermediary of the laws of purpose, the intermediary for the best purpose is the best intermediary." Whoever is granted assistance by Allah to hold the authority to prioritize public interests will understand which public interest is more important than the one below it."

تصرف الإمام على الرعية منوط بالمصلحة

"The leader's policies toward people must align with the common good."

According to that principle, it emphasizes the decision-making of the Congress based on Maslahah Mursalah. It is very clear that the muktamar institution strongly desires to achieve a benefit, especially in terms of providing marriage registration services for Indonesian migrant workers abroad.²⁹ Several Muslim countries, including Indonesia, have established regulations to govern marriage and its registration.³⁰ This is done for the orderly implementation of marriage in society, the certainty of law, and to protect the parties involved in the marriage itself as well as the consequences of the marriage, such as the wife's maintenance, the relationship between parents and children, inheritance, and so on. With a marriage certificate as proof of registration, if there is a disagreement or one party is careless, the other can go to court to protect or get their rights. This is because the marriage certificate is official legal proof that the couple is married.³¹

Because marriage registration is so important, NU suggested that Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad be changed to better protect Indonesian workers abroad. One way that this could be done is by offering marriage registration services to Indonesian workers abroad at the 33rd Muktamar in Jombang. The basis of this recommendation is the legislation regulating the placement and protection of overseas workers still contains many weaknesses, causing workers' positions to often be disadvantaged and the state to be unable to provide maximum protection for problematic workers. The existing laws do not regulate the presence of workers in the informal sector, such as domestic workers. In addition, Indonesian citizens who need

²⁸ Materi Muktamar ke-33 Nahdlatul Ulama, (Jakarta: Nahdlatul Ulama, 2015), hlm. 266

²⁹ Arif Maftuhin, 'Mosques for All: Nahdlatul Ulama and the Promotion of the Rights of People with Disabilities', *JOURNAL OF INDONESIAN ISLAM* 15, no. 2 (1 December 2021): 247, <https://doi.org/10.15642/JIIS.2021.15.2.247-270>.

³⁰ Zareena A. Grewal, 'Marriage in Colour: Race, Religion and Spouse Selection in Four American Mosques', *Ethnic and Racial Studies* 32, no. 2 (1 February 2009): 323–45, <https://doi.org/10.1080/01419870801961490>.

³¹ Nenang Julir, 'PENCATATAN PERKAWINAN DI INDONESIA PERSPEKTIF USHUL FIKIH', *MIZANI: Wacana Hukum, Ekonomi Dan Keagamaan* 4, no. 1 (2017): 53–62.

marriage registration services abroad have not received optimal service from Indonesian representative offices abroad.

Based on this, we can state that the recommendations made by NU during the 33rd congress in Jombang have improved the legislation. From this, it can be seen that the results of the congress strongly emphasize the concept of welfare for Muslims and facilitate Muslims in carrying out religious activities abroad. Another thing that the congress results show is that the rules that the government set up have not been fully put into place. For example, Article 37, paragraph (1) of the Population Administration Law says that Indonesian citizens who marry someone else abroad must register their marriage. The marriage must be registered with the relevant authorities in the country where it takes place and reported to the Representative Office of the Republic of Indonesia. Upon the registration of the marriage at the Representative Office of the Republic of Indonesia, it will be recorded in the Marriage Certificate Register, and a Marriage Certificate Extract will be issued. Article 37 paragraph (4) of the Population Administration Law mandates that the registration of marriage be carried out at the authorized agency in the place of residence no later than 30 (thirty) days upon returning to Indonesia.³² The law has not yet specifically regulated the criteria for marriage registrars who possess adequate qualifications and competencies to carry out marriage registration services at the Indonesian Representative Office.

In line with this, the 33rd NU Congress provided regulations on the need to create rules or policies regarding the assignment of marriage registration officers who possess good qualifications and competencies to carry out marriage registration services at the Indonesian Representative Office. In this framework, it is also hoped that the government can establish a religious attaché at the Indonesian Representative Office, especially in countries that are hubs for Indonesian migrant workers, such as Malaysia, Saudi Arabia, Hong Kong, and other countries, so that marriage registration can proceed smoothly. In general, the outcome of the 33rd NU Congress in Jombang regarding the protection of Indonesian migrant workers and the registration of marriages for Muslim workers abroad aims to encourage the government to create regulations that specifically provide protection for them.

The 33rd Muktamar Institution made rules to protect Indonesian migrant workers based on what was happening at the time. This is clear from the first decision, which says that Law No. 39 of 2004 about placing and protecting Indonesian workers abroad needs to be changed to better protect Indonesian workers abroad, for example, by giving them services to register their marriages abroad.³³ The results of the decision show that Law No. 39 of 2004 does not fully regulate detailed protections, resulting in many violations still occurring against migrant workers. The violations range from the process of determining eligibility through Indonesian workers service agencies to the actual placement at the workplace. This is evidenced by the still too many illegal agencies that send migrant workers abroad, resulting in them being treated like "slaves," so that the rights and obligations of migrant workers are never fulfilled as stated in Law No. 39 of 2004. Furthermore, Law No. 39 of 2004 concerning the Placement and Protection of Overseas Workers does not include matters related to marriage for overseas workers, which has led to new issues regarding the protection of Indonesian migrant workers, one of which is the issue of marriage registration. Given the urgency of marriage registration, it is very necessary to add regulations related to this matter in Law No. 39 of 2004. By including marriage issues in Law No. 39 of 2004

³² Scolastika et al., 'Perkawinan Campuran , Pencatatan Keabsahan Pencatatan Perkawinan Diluar Indonesia Berdasarkan Peraturan Perundang-Undangan'.

³³ Materi Muktamar ke-33 Nahdlatul Ulama, (Jakarta: Nahdlatul Ulama , 2015), hlm. 266

concerning the placement and protection of overseas workers, Indonesian migrant workers are better protected in their rights and obligations in household matters abroad.

In the second decision, it is stated that regulations or policies need to be created for the assignment of marriage registration officers who possess adequate qualifications and competencies to carry out marriage registration services at the Indonesian Representative Office. In this framework, it is also hoped that the government can establish a religious attaché at the Indonesian Representative Office, especially in countries that are hubs for Indonesian migrant workers, such as Malaysia, Saudi Arabia, Hong Kong, and other countries.³⁴ The decision highlights the issues that Indonesian migrant workers have been facing when getting married abroad, namely the lack of adequate religious institutions to conduct marriages, especially concerning marriage registration. The decision by the 33rd Muktamar indicates the need for regulations regarding qualified marriage registration officers. In addition, the 33rd NU Muktamar institution also proposed the establishment of a religious attaché at representative offices. If analyzed in relation to the registration of marriages for Indonesian migrant workers or those getting married abroad, it is already regulated in Article 56 of the Marriage Law. Article 56 of the Marriage Law explains that a marriage in Indonesia between two Indonesian citizens or an Indonesian citizen and a foreign citizen is valid if conducted according to the laws applicable in the country where the marriage takes place and does not violate the provisions of this law for Indonesian citizens. (2) Within 1 (one) year after the husband and wife return to the territory of Indonesia, their marriage certificate must be registered at the Marriage Registration Office in their place of residence.”³⁵ From that article, it only explains that the marriage process is conducted according to the country where it takes place, but it does not explain what and how the marriage process is carried out, nor which country conducts it. This will create many problems, especially for Indonesian migrant workers who are Muslim, because not all countries where Indonesian migrant workers reside conduct marriages in an Islamic manner. Therefore, it is very necessary to establish a religious attaché at the Indonesian representative office to serve as a platform for the Islamic community, especially in conducting marriages.

CONCLUSIONS

Based on what was said above, it is clear that the idea behind the NU Muktamar Institution to protect Indonesian migrant workers (TKI) and make sure that TKI marriages are registered abroad comes from Izzuddin Abd al-Salam's Jurisprudential Rule *Qawaid al-Ahkam fi Mashalih al-Anam* volume I page 51. This principle emphasizes that it is based on *Maslahah Mursalah*. It is very clear that the legislative body highly expects the existence of *maslahah*, especially in relation to services for foreign migrant workers who want to register their marriages. Several Muslim countries, including Indonesia, have developed laws to regulate marriage and its registration in this context. This is done to protect the parties entering into marriage and the consequences arising from the marriage, such as spousal support, parent-child relationships, inheritance, and other consequences, as well as to provide legal certainty of marriage in society. If a husband and wife fight or one of them is careless, the other can go to court to protect or get their rights back through the registration of marriage backed by a marriage certificate. This is because the marriage certificate is official proof that the husband and wife are married.

³⁴ Materi Muktamar ke-33 Nahdlatul Ulama, (Jakarta: Nahdlatul Ulama, 2015), hlm. 266

³⁵ Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan pasal 56

There are still a lot of violations against Indonesian migrant workers, as shown by Batsul Masail NU No. 33's decision on the protection of migrant workers and the registration of marriages for Muslim migrants living abroad. This is because Law No. 39 of 2004 does not fully regulate detailed protection. The violations range from the process of determining migrant workers status through Indonesian migrant workers service agencies to their placement in the workplace. This is evidenced by the still too many illegal agencies that send migrant workers abroad, resulting in them being treated like "slaves," so that the rights and obligations of migrant workers are never fulfilled as stated in Law No. 39 of 2004. Furthermore, Law No. 39 of 2004 concerning the Placement and Protection of Overseas Workers does not include matters related to marriage for overseas workers, which has led to new issues concerning the protection of Indonesian migrant workers, one of which is the issue of marriage registration. Given the urgency of marriage registration, it is very necessary to add regulations related to this matter in Law No. 39 of 2004. By including marriage issues in Law No. 39 of 2004 concerning the placement and protection of overseas workers, it makes Indonesian migrant workers more protected in their rights and obligations in household matters abroad.

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