

MAQAŞID AL-SYARIAH IN FATWA YUSUF AL-QARDHAWI ABOUT *MISYAR* MARRIAGE

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Abstract: The existence of *misyar* marriage does not aim to build *sakinah, mawaddah* and *rahmah* households. Meanwhile, according to Yusuf al-Qardhawi in his fatwa, it is permissible as long as it is in an urgent condition. So the author looks at it from the point of view of his Maqasid al-Shariah. Research Methods In this study using a qualitative descriptive approach. Protection of the Soul/Body (*Hifẓ al-Nafs*). Scholars who allow *misyar* marriage are of the opinion that when viewed from the realization of the great goals of a marriage, it is true that *misyar* marriage is not an ideal form of marriage. Property Protection (*Hifẓ al-mal*). With *misyar* marriage, a rich wife can help her husband's economy which may be weak. This is in line with the concept of *maqasid* al-shariah in the realm of al-nafs at the *tahsiniyat* level. Apart from that, with a *misyar* marriage, the wife is lucky because she has someone who can protect herself and her property from damage and interference from other parties. Protection of the Intellect (*Hifẓ al-Aql*). Forms of human care for the mind and thoughts by living a healthy way and continuing to develop their natural talents. Protection of Offspring (*Hifẓ al-Nasl*). The initial purpose of marriage is so that husband and wife can live together forever, day and night in order to achieve a life that is *sakinah, mawaddah, wa rahmah*.

Keywords: *Maqasid Al-Syariah*, Fatwa Yusuf Al-Qardhawi, *Misyar* Marriage

Abstrak: Keberadaan kawin *misyar* itu tidak bertujuan untuk membangun rumah tangga *sakinah, mawaddah* dan *rahmah*. Sedangkan menurut Yusuf al-Qardhawi dalam fatwanya mengatakan boleh asal dalam kondisi terdesak. Maka penulis melihat dari sudut pandang *maqasid al-shariah*nya. Metode penelitian dalam penelitian ini menggunakan pendekatan deskriptif kualitatif. perlindungan jiwa/raga (*hifẓ al-nafs*) Ulama yang membolehkan nikah *misyar* berpendapat bahwa jika ditinjau dari perwujudan tujuan-tujuan besar sebuah pernikahan, memang benar bahwa nikah *misyar* bukan bentuk pernikahan yang ideal. Perlindungan harta (*hifẓ al-mal*) Dengan nikah *misyar* istri yang kaya bisa membantu ekonomi suami yang mungkin lemah. Ini sejalan dengan konsep *Maqasid Al-Syariah* pada ranah al-nafs pada tingkat *tahsiniyat*. Selain itu dengan pernikahan *misyar* istri beruntung karena memiliki seseorang yang bisa

melindungi diri dan hartanya dari kerusakan dan gangguan pihak lain. Perlindungan akal (*hifz al-Aqli*). Bentuk penjagaan manusia pada akal dan pikiran dengan cara hidup sehat dan terus mengembangkan bakat-bakat alaminya. Perlindungan keturunan (*hifz al-Nasl*). Tujuan awal dilakukannya pernikahan adalah agar suami istri dapat hidup bersama selama-lamanya, siang dan malam agar tercapai kehidupan yang *sakinah, mawaddah, wa rahmah*.

Kata Kunci : *Maqasid Al-Syariah, Fatwa Yusuf Al-Qardhawi, Nikah Misyar*

Introduction

Marriage in Islam is a sacred worship, not only limited to the legality of the consent *qabul* and recorded in the marriage certificate book. In Islam, a strong bond marriage is lived for a lifetime, establishing a sacred promise between the two parties, which is called husband and wife. Islam also views that in the marriage process it must also be announced to the public, with the aim that the person who is being married is known by other people and makes lading promotions in Islam, marriage fun. The bond that is forged between husband and wife each has a balanced portion. The man who is entering into a marriage contract must prepare a dowry and provide spiritual and physical support. On the other hand, a wife has an obligation to serve and be devoted to the husband she marries. Full obligations are given to men who are married to take care of children, maintain harmony and maintain the integrity of the household.¹

The development of the era of human needs is also a problem of more and more human desires also for more and more. The desire to have many wives is an instinct for all men. Marriage actually avoids adultery because in marriage there is a concept or system that must be fulfilled by men. The concept of consent and *qabul*, for women there must also be a guardian, for men there must be a dowry. If in marriage, in general, the husband is obliged to provide physical and spiritual support for his wife and live together with his wife in one house and the wife can claim her rights if her husband does not give her rights as a wife. In contrast to *misyar* marriages where women do not claim the rights that should be obtained in marriage, namely external

¹ Patri Sagita, "Nikah di bawah Tangan Dalam Perspektif Hukum Islam" *Jurnal Qisthosia: Jurnal Syariah dan Hukum*, Vol. 3 No. 1 (2022): 31–45.

maintenance, but the woman has revoked her rights to the man who wants to marry her and the woman only demands mental support.²

As with other unusual forms of marriage, the legal status of this misyar marriage also raises debates, especially among contemporary scholars. Contemporary scholars issue fatwas that are contradictory to one another by looking at different points of view. They are divided into two groups, namely the group that allows it and the group that forbids the practice of this *misyar* marriage. The phenomenon of *misyar* marriage is included in fiqh issues, especially in matters of marriage, where the legal provisions are not strictly regulated in either the Al-Qur'an or Hadith. Contemporary scholars carry out *ijtihad* regarding the legal status of *misyar* marriages, added, in order to determine the law for an event by way of *ijtihad*, a mujtahid must know the purpose of Shari' to derive and establish shari'at. In the study of *Maqasid Al-Syariah*, it is explained that all the laws ordained by Allah, all of them have aims and objectives, it only remains for a mujtahid to carry out *ijtihad* steps on syariah texts. In the principle of *Maqasid Al-Syariah*, attracting or taking the good (*maslahah*) and rejecting or avoiding the bad (*mafsadatan*). From the differences in views above, it is necessary to seek and understand the meaning both in the text of the Qur'an and those related to the concept of *misyar* marriage. Because by using the *Maqasid Al-Syariah* method to find out the intent and purpose of Shari' (Allah SWT) in regulating *misyar* marriages.³ This is also intended so that the essence of the wisdom of *al-tashri'* from marriage is truly conveyed and provides benefits for Muslims, especially in the case of *misyar* marriages.⁴

Discussion Result

Maqasid Al-Sharia

Maqasid comes from the Arabic *maqasid*⁵ which is the plural form of *maqāṣad* which means target, intention, final goal. *Maqasid Al-Syariah* is the target or purpose or intentions behind the law. *Maqasid* is defined as goals,

² Mhd Yazid, "Relasi Suami Istri dan Pelanggaran Patriarki (Nikah *Misyar* dalam Perspektif Gender)" *Ijtihad* Vol. 36 No. 1 (2020).

³ Ratno Lukito, "Continuity and Change in Law: Confabulating *Misyar* Marriages in Indonesia" *Institutional Memory Papers* Vol. 12 No. S1 (2022): 240–263.

⁴ M. Karim, "Metode Penetapan Hukum Nikah *Misyar* Perspektif Yusuf Al Qardawi," *Bustanul Fuqaha : Jurnal Bidang Hukum Islam* Vol. 2 No. 1 (2021),: 509–520.

⁵ Sapri Ali, "Pernikahan Wisata Perspektif Hukum Islam" *Salimiya Jurnal Studi Ilmu Keagamaan Islam* Vol. 4 No. 1 (2020). 223-233.

objectives, aims, and ideals.⁶ Thus *maqashid* in Islamic law means the purpose or goal behind the rules or decisions that exist in Islam. *Maqashid Al-Syariah* is the goal desired by the legislator (*Maqashid Al-Syariah*) from the prohibitions or orders contained in the *Maqashid Al-Syariah* which can be known by analyzing the propositions with a textual analysis approach based on 'illat. *Maqashid Al-Syariah*, in its application it must be dialogued with the wishes of the servant (*maqashid li al-'ibad*).⁷

The actual law is based on *maqashid alsyariah* by considering the spatial and temporal framework related to *maqashid li al-'ibad*. Therefore, the grand design of the development of Islamic law always considers the realm of ideals (revelation) and the social development of society on the other hand. . Modern scholars classify *Maqashid Al-Syariah* in technical-applicative terms; *maqashid* is determined by a number of dimensions, namely the level of need, the scope of regulations to achieve the goal, the range of people included in the goal, and the level of universality of the goal. The traditional classification above is then criticized by contemporary scientists by proposing new *maqashid* concepts and classifications by paying attention to new dimensions.⁸

In this regard, two things have been done. First, paying attention to the scope of the regulations set, here *maqashid* is classified into three, namely: general *maqashid* which can be observed through the entire collection of Islamic Law, such as the needs mentioned above and new *maqashid* such as justice and conveniences. Specific *maqashid* which can be observed through certain chapters in Islamic Law, such as child welfare in family law, avoiding criminal acts in criminal law, and avoiding monopoly in financial transaction law. Partial *maqashid* is the intention behind the rules, such as finding the truth in seeking a number of witnesses in cases of justice. Second, contemporary scientists introduce a new universal *maqashid* which is directly caused by naṣ, rather than by a collection of fiqh literature in schools of Islamic law.⁹

This approach significantly allows the *maqashid* to overcome the historicity of fiqh and represent the high principles and values of the text. This

⁶ Eko Saputra & Busyro, "Kawin Maupah : An Obligation To Get Married After Talak Tiga In The Tradition Of Binjai Village In Pasaman District: A Maqâsid Al- Shari'ah Review", *QJIS*, Vol. 6 No. 2 (2018).

⁷ Hasbi Ash Shiddiqi, "Pandangan Al- Qaradawi Tentang Hukum Nikah *Misyar* (Kajian Analisis Kritis Perspektif Dhawabith Al-Maslahah Syekh Ramadhan Al-Buti)" *Al-Maqashidi* Vol. 3 No. 1 (2020): 1–15.

⁸ Caesar Shan Fitri Argo Putro, *Studi Komparatif Pendapat Yusuf Qardhawi dan Ibnu Hazm Tentang Keabsahan Nikah Misyar* (Skripsi, UIN Prof. KH. Saifuddin Zuhri Purwokerto, 2022),

⁹ Moh. Nurhakim dan Khairi Fadly, "Tinjauan Sosiologis Fatwa Ulama Kontemporer Tentang Status Hukum Nikah *Misyar*" *Jurnal Salam*, Vol. 14 No. 2 (2011): 41–52.

universal *maqasid* includes *aqidah*, *fitrah*, reason, knowledge, policy, freedom, independence, social, politics, economic reform, women's rights, equality, convenience, justice, dignity, worship, soul, moral values, forming a *sakinah* family, building the nation strong, *tauhid*, *tazkiyah* and there are still others. Auda sees that the idea of *maqasid* is always changing and developing, which based on the periodization of time can be classified into four periods, namely the companion period, the time of the madhhab priests, the development of *maqasid* theory from the 5th to the 8th centuries and the contemporary period. Positioning Auda in *maqasid* discourse throughout Islamic history, it can be seen that his views on *maqasid* are not much different from those of previous researchers. Because Auda only adds and develops concepts that have been proposed by previous thinkers. The concept that is truly new from Auda is when he places *maqasid* as a philosophy of Islamic law. This means that *maqasid* is placed as an independent discipline and not one of the themes of Usul Fiqh studies. Therefore *maqasid* must function as a fundamental methodology used in the workings of Uṣul Fiqh. Levels of *Maqasid Al-Syariah* Contemporary scholars' divide *maqasid* into three levels, namely *maqasid* 'amah (General *maqasid*/general objectives), *maqasid khaṣṣah* (Specific *maqasid*/special objectives) and *maqasid juz'iyah* (Partial *maqasid* /partial goals). The *maqasid* al-Shariah pyramid consists of three levels. Below are the *maqasid* hierarchical levels. based on the degree of inevitability.¹⁰

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¹⁰ M. Halilurrahman dan Imam Edi Supeno, "Pandangan Maqasid Al-Shari'ah dalam Fatwa Ulama Kontemporer Tentang Nikah Misyar" *Al Ashlah* Vol. 1 No. 1 (2022), 1 (2022): 1–14.

¹¹ Muhammad Hafiz Naufal, *Pemikiran Yusuf Al-Qardhawi Tentang Nikah Misyar* (Skripsi UIN Jakarta, 2017).

Misha's marriage

The term *misyar* marriage is composed of two words, "marriage" and "*misyar*". *Nikah* or *taẓwīj* in Arabic means marriage. In the language of marriage means intercourse or mixing. Furthermore it is said: "A marriage occurs between woods when the woods are inclined to each other and mixed with one another". According to Abdul Aziz in language, marriage means combining and uniting and entering into each other. Marriage in Indonesian is the same as the term marriage, which is an arranged marriage between a man and a woman to become husband and wife, have a wife or husband. The word marriage is also interpreted as joining or gathering, because one of the married people gathers with each other either by means of having sex or gathering and joining at the time of the contract.

As for the definition of marriage according to the fuqaha (jurists), namely the Hanafiah group, marriage is a contract that benefits having, having fun on purpose. The Syaf'iyah group interprets marriage as a contract that contains legal provisions on the permissibility of *wathi* (having intercourse) with the pronunciation of marriage or *taẓwīj* or the meaning of both. The Malikiyyah group defines marriage as a contract that contains legal provisions solely to allow *wathi* (having intercourse), have fun and enjoy what is in a woman who is allowed to marry him. The Hanabilah group interprets marriage as a contract using the pronunciation of marriage or *taẓwīj* to allow benefits, having fun with women. *Mutaakhirin* scholars define marriage. *Mutaakhirin* scholars define marriage, namely marriage is a contract that provides legal benefits for the permissibility of having family relations (husband and wife) between a man and a woman and holding mutual help and limiting the rights of the owner and the fulfillment of each other's obligations. Abu Bakar Jabir defines marriage as a contract that makes it lawful for each of the two people, husband and wife, to enjoy the relationship between the two of them.¹²

According to Ghazali, marriage is an akad (contract) that provides legal benefits of the ability to enter into family relations between the two and can also help each other and give both of them their respective rights and obligations. However, another meaning was expressed by Muh Hambali, according to whom Islam does not merely assume that marriage is a legitimate means of forming a family. marriage is not merely an honorable means to get righteous children. More than that, Islam views marriage as a way to realize a larger goal, which includes various aspects of society based on Islamic Sharia,

¹² Chairani Puri Rauza, *Kajian Hukum Terhadap Pasangan Transgender yang Menikah Pasca Operasi Kelamin Menurut Hukum Islam dan Hukum Positif di Indonesia* (Skripsi, UMSU, 2019)

which will have a fundamental influence on Muslims and the existence of Muslims. The second term, the word *misyār*, according to the *misyār* language, comes from the word al-sayr which means to go. Or going on a trip, then the word *misyār* is attributed to marriage because the husband goes to his wife's place and not the other way around.¹³

Some people think that the word *misyār* is the language of 'amiyyah which comes from the Bedouins in a number of Arab countries. There is even a conclusion that restrictions on its use are only in the Najed district, namely in the Kingdom of Saudi Arabia. This was justified by Ahmad Tamimi. He said that, the word *misyār* is a non-standard word used in Najed district, meaning a visit during the day. Then this name is absolutely used for the type of marriage where the husband meets his wife only during the day, like visiting neighbors. Shaikh Jabir al-Hakami. He said that the word '*misyar*' was taken from the expression yusyir ash-syakhs 'ala fulan, which means that someone goes to and from so and so to visit him from time to time. This marriage is called *misyar* because it is the husband who leaves for the wife's place at separate and narrow times. He does not live with his wife for long, and often the husband does not spend the night and does not stay. The same thing was also defined by Usman al-Asyqar stating that in fact the word *misyār* is a form of mubalaghah which is intended for a man who travels a lot in the end the word becomes the name for this type of marriage, because people who marry in this way do not fulfill the obligation to have a home. ladder as determined by the Syariah.¹⁴

So this *misyār* marriage is called *misyār* because it is the husband who goes to the wife's place at separate times. The husband does not stay with his wife for long, even the husband does not spend the night and stays, as has been stipulated by the shari'a. This marriage is called *misyar* because it is the husband who goes to the wife's place at separate times. Husbands don't stay with their wives for long, even husbands don't spend the night and settle down. The same definition was also reviewed by Muhammad Nabil Kazhim, that *misyār* marriage is a marriage in which the woman only gets some of her rights which are regulated at the time of the marriage contract, such as not getting a place to live, a living, and continuity to live with her. From some of the definitions above, it can be understood that al-*misyar* marriage is a marriage

¹³ Nasiri, "Studi Analisis Terhadap Fatwa Yusuf Al-Qaradawi Tentang Kawin *Misyar* Dalam Perspektif Hukum Perkawinan Islam" *al-Qanun* Vol. 17 No. 2 (2014),

¹⁴ Umi Ana, *Praktik Nikah Misyar Ditinjau Menurut Hukum Islam: Studi Di Kecamatan Bukit Kabupaten Bener Meriah* (Skripsi, UIN Ar-Raniry, 2021)

in which the woman does not get her full rights as a wife as stipulated at the time of the syariah marriage contract, such as not having a place to live, a living and the right to live together. This *miyyār* marriage is carried out by a husband who is already married without obtaining permission to remarry from his first wife. The principle in this marriage is that a husband is not obligated to carry out his obligations physically or on a daily basis to his wife, the husband only performs some of his obligations, namely fulfilling the wife's inner needs.¹⁵

Pillars and Terms of Marriage

Pillars and Terms of Marriage Marriage in Islam has several pillars and conditions that must and should be followed. Marriage must fulfill the elements forming a marriage contract to be carried out. However, in determining the pillars and conditions of this marriage, the scholars are still found to have differing opinions. This difference can be seen from the way the scholars view the meaning of pillars. The term pillars in Arabic means pillars, pillars, sides, angles, or points of something. According to the term, Muhammad al-Zuhaili, stated that pillars are something with its existence the law stands above it, and something that is part of that something (action). Whereas pillars according to Abdul Rahman Ghazali state is something that must exist that determines whether a job (worship) is legal or not, and something that is included in the series of jobs, such as washing the face during ablution', *takbiratul ibram* when carrying out prayers, or the groom's candidate and women in marriage. From this meaning, some scholars place an element of marriage in the forming part of the marriage contract, some do not include it as part of the marriage contract. Thus, this difference in itself will lead to their differences in establishing the pillars of marriage. Next, it will be explained according to the four Islamic scholars about what are the pillars of marriage, including:¹⁶

1. According to the Hanafi school of thought, the only pillars of marriage are *sighat* consent and *qabul*, namely consent from the marriage guardian of the woman and *qabul* from the groom.
2. According to the Maliki school, the elements that enter into the pillars of marriage are the guardian of the woman, the dowry or dowry, the

¹⁵ Chomim Tohari, "Fatwa Ulama Tentang Hukum Nikah *Miyyar* Perspektif Maqasid Shariah", *Al Tabrir Jurnal Pemikiran Islam* Vol. 13 No. 2 (2013)

¹⁶ Nasiri, "Meneropong Pelaku *Miyyar* di Surabaya dari Sudut Dramaturgi Erving Goffman" *Jurnal Wacana Hukum Islam dan Kemanusiaan* Vol. 15, No. 2 (2015): 199–218.

prospective groom, the prospective bride, and the sighat of the marriage contract.

3. According to the al-Shafi'i school, the pillars of marriage consist of the groom, bride, guardian, two witnesses, and the nature of the marriage contract.
4. According to the Hanbali school, the elements that become the pillars of marriage are the groom, the bride, the consent of the guardian, and the consent of the groom. From the information above, it can be seen that the scholars differ in the inclusion of certain elements into the scope of the pillars of marriage.

This in principle does not make a big difference. Each scholar still considers it necessary and important for elements that are not pillars of marriage. As in the opinion of the Hanafi school of thought, it is still necessary and important for the marriage guardian, the bride and groom and the dowry. Likewise with Abu Bakar Jabir al-Jaza'iri according to him, there are three pillars of marriage, including the presence of a marriage guardian, contract sign and Mahar. 56 However, according to Abdul Aziz, there are three pillars of marriage without including dowry as pillars of marriage, including:¹⁷

1. The two parties to the contract, namely the bride and groom, are free from marriage barriers.
2. *Ijab*, which is a sentence that comes from a guardian or representative who occupies his position by using the word, "to marry or give in marriage".
3. *Qabul*, which is a sentence that comes from the groom or a representative who occupies his position with the words, "I accept", or "I am willing with this marriage". Likewise for other scholars. Because, it is illogical and unreasonable when there are readings of consent and consent without anyone saying the words of consent and acceptance.

Amir Syarifuddin stated that the differences in opinion of the scholars were not substantial. That way, the difference above does not have an impact on whether someone's marriage contract is valid or not. What's more, scholars who do not include one element as a pillar of marriage make it a condition for a valid marriage. Therefore, scholars sometimes include those that are not pillars as a condition for a valid marriage and their positions complement each other. Based on some of the opinions above, the writer can summarize the pillars of marriage in one order, namely the bride and groom, the guardian of

¹⁷ Koko Setyo dkk, *Kajian Yuridis Terhadap Perkawinan Misyar Menurut Hukum Islam* (Artikel ilmiah hasil penelitian mahasiswa, UNEJ, 2013).

the woman, witnesses, and consent granted. All of these pillars of marriage have their own conditions. If traced in depth, it can be obtained relatively quite a lot of differences in the opinions of scholars in determining the conditions that must be possessed in the pillars of marriage. It's just that, here the author is not wanting to discuss these differences in depth, but the conditions for marriage here are only stated in general terms, namely as follows:¹⁸

1. The groom must meet the requirements of the bride not being a mahram, not being forced, the person is certain and it is clear from the person that he is really a man, not currently in ihram, not having a wife who is forbidden to be married to a prospective wife, not currently having a wife four people, and the prospective husband must be Muslim.
2. The bride must fulfill the requirements without any obstacles, such as not having a husband, not being a *mahram* and not currently in the iddah period, being independent, or of her own free will (not being forced), the person explains. that she is really a woman, not in ihram, Muslim or *abl al-kitab*.
3. Guardians must meet the requirements of being male, Muslim, mature, sane, willing or not forced, fair, and not currently in ihram.
4. Witnesses must meet the requirements of being male, Muslim, mature, intelligent, able to hear and see, free not to be forced, not in ihram, understand the language used for consent and consent.
5. Ijab kabul must meet the requirements in the form of consent by the guardian of the woman, consent from the groom, carried out in one assembly, the pronunciation that is pronounced must be in the form of lafaz nikah or zawaj, or the meaning of each of these words that is understood by the community at that time. generally.

Legal Basis of Marriage

The legal basis for marriage in this discussion, the author describes it in three sub-discussions, namely according to the Qur'an, Sunnah, and the consensus of the scholars. The Koran As for some of the arguments used, Among the verses of the Koran which form the basis of marriage law is QS. al-Nisa' [4] verse 3:

¹⁸ Dulsukmi Kasim, "Fenomena Nikah *Miyar* Perspektif Pemikiran Hukum Islam" *Al-Mizān* Vol. 15, No. 2 (2019): 342–366.

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبْعَ ۚ
فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَٰلِكَ أَدْنَىٰ أَلَّا تَعُولُوا ﴿٣٠﴾

Ministry of Religion Translation 2019:

If you are worried that you will not be able to do justice to (the rights of) orphaned women (if you marry them), marry (other) women you like: two, three, or four. However, if you are worried that you will not be able to act fairly, (marry) only one or the female slaves you have. That is closer to not doing injustice.

Apart from that, the verse above also provides direct information about the legality of marriage itself as a way for humans to maintain their existence. Another argument of QS al-Rūm [30] verse 21:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً
وَرَحْمَةً ۗ إِنَّ فِي ذَٰلِكَ لَآيَاتٍ لِّقَوْمٍ يَتَفَكَّرُونَ ﴿٢١﴾

Ministry of Religion Translation 2019:

Among His signs (greatness) is that He created partners for you from (kind of) yourself so that you feel at ease in him. He made between you feelings of love and affection. Indeed, in that there are signs (of Allah's greatness) for people who think.

According to Ibn Ishaq, the verse above means that Allah SWT created men in the form of women as his wives. In the context of Prophet Adam as, Allah SWT created Eve from the left rib of Prophet Adam as. Allah deliberately created Eve from the human species in order to get happiness, this is different when created from other nations such as jinn or animals, there will be no love and affection between the two. According to al-Qurtubi, this verse means that Allah SWT created women that you feel comfortable with. from the semen of men and from your kind. Some say it was Eve from Adam's rib. Other Qur'anic arguments refer to the provisions of the letter al-Nur [24] verse 32:

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَأَمَائِكُمْ ۗ إِنَّ يَكُونُوا فُقَرَاءَ يُغْنِيهِمُ
اللَّهُ مِنْ فَضْلِهِ ۗ وَاللَّهُ وَاسِعٌ عَلِيمٌ ﴿٣٢﴾

Ministry of Religion Translation 2019:

Marry those who are still single among you and also those who are worthy (married) of your slaves, both men and women. If they are poor,

Allah will give them ability with His grace. Allah is Extensive (His gifts) and All-Knowing.

Based on the description above, it is clear that the Qur'an recognizes the legality of marriage as a way for humans (male and female) to be able to relate to one another. The creation of humans in pairs, coupled with the tendency of the sexual instinct between the two of them, requires a method of distribution whose legality is recognized. In this case, several verses of the Koran above become a legal basis for carrying out the marriage relationship.

Marriage Hadith

The marriage hadith is the second postulate after the Koran in the provisions of Islamic law, including the law on marriage. There are quite a lot of arguments from the hadith of Rasulullah SAW about marriage. In this session, only a few relevant hadith narrations were presented, such as in al-Bukhari's narration from Umar bin Hafsh bin Ghiyas:

عن عبد الرحمن بن يزيد قال: التقيت مع علقمه والأسود ذات مرة بعد الله ، ثم قال: عندما كنا صغارًا ، كنا مع النبي. في ذلك الوقت ، لم نكن نعرف شيئًا ، فقال رسول الله صلى الله عليه وسلم: أيها الشباب ، من بينكم القدرة ، فدعوه يتزوج ، لأن الزواج يمكن أن يخفف البصر ، وأيضًا أكثر قدرة على حماية الأعضاء التناسلية ، ولكن من لا يستطيع ، فليصوم ، لأنه يخفف شهوته. (رواه البخاري)

From Abdurrahman bin Yazid he said; I, together with Alqamah and al-Aswad, once met Abdullah, then he said; when we were young, we were with the Prophet. At that time, we didn't know anything, so Rasulullah SAW said: O young people, who among you has the ability, then let him marry, because marriage can lower the gaze, and also better able to protect the genitals, but who can't , let him fast, because it can relieve his lust. (Narrated by al-Bukhārī).

The hadith above is quite familiar and easy to find in Islamic marriage law literature. The purpose of the hadith above is so that people who are able to marry can carry out their marriage, and if they cannot afford it, it is recommended to fast. According to Bugha, being able to get married as meant by the hadith means being able to bear the costs of the marriage. Likewise, Najieh commented that the meaning of being able in the hadith above is being able to bear a living. Fasting as a shield / fortress means that by fasting it can

reduce the desire to have sex. Another hadith argument is the history of Muslim, from Abi Bakr bin Nafi' as follows:¹⁹

عن أنس أن جماعة من الناس رأوا من أصحاب الرسول صلى الله عليه وسلم سألوا زوجات الرسول رآهم في حباته. فقال بعضهم لن أتزوج. فقال بعضهم لا آكل لحما. ويقول البعض الآخر ، لن أنام على سريري. فلما سمع النبي هذا الكلام فضح الله وحمده ، ثم قال: ما بما؟ يقولون هذا وذاك ، على الرغم من أنني أصلي ونوم أيضاً ، فأنا أصوم وأفطر أيضاً ، وأتزوج أيضاً من امرأة. فكل من يكره سنتي لا يعني من مجموعتي ". (حديث رواه مسلم)

From Anas that a group of people from among the companions of the Prophet saw asked the wives of the Prophet saw about his hidden practices. So some of them said, I will not marry. Then some said, I will not eat meat. And some others say, I will not sleep on my bed. Hearing these words, the Prophet praised Allah and praised Him, then he said: What's wrong with them? They say this and that, even though I myself pray and also sleep, fast and also break my fast, and I also marry a woman. So anyone who hates my sunnah, means not from my group ". (Hadith narrated by Muslim).

This hadith also gives an indication of the law regarding the law on marriage. The proof of the marriage law is that in the life of Rasulullah SAW, he also married, even marriage was part of the sunnah of the prophet while those who deny and hate the sunnah are not included in his group. In this way, the hadith of the Prophet Muhammad became one of the legal references regarding the marriage law, those who deny the marriage law are not among the people of the Prophet Muhammad.

Ijmak

Ijmak etymologically (*lughawiyah*) means a condition or state of determination to do something or a decision to do something, or agree. Ijmak also means determination towards an action or a consensus of scholars on a problem. According to the term, ijma is the consensus or agreement of the friends or some say the consensus of the scholars simultaneously in a particular matter after the death of the Prophet Muhammad. In another sense, ijmaq is an agreement between mujtahid imams among Muslims sometime after the death of the Prophet Muhammad on sharia law regarding certain

¹⁹ Ulya Hikmah Sitorus Pane & Muhammad Rozali, "Analisis Fatwa 'Ali Juma'ah Tentang Nikah 'Urfi dalam Kitab Al-Kalim Al-Thayyib Fatawa Ashiriyah" *Al-Mizan* Vol. 12 No. 1 (2016): 47-80.

issues and events. So, the *ijmam* meant here is the agreement of Islamic jurists. In relation to the source of law, *ijma* occupies the third position.

Even though it is not as authoritative as the Qur'an and sunnah, this consensus is used as a guideline that allows laws about something to be taken and produced. The shari'a of marriage also refers to the *ijma* of the clergy. That is, the scholars have agreed that marriage in Islam is used as one of the legal events whose legality is recognized by all scholars. According to Ibn Qudamah, in his book: "*al-Mughni*" it is clearly read that the Qur'an, sunnah and *ijma* are sources of marriage law. He also added that Muslims have agreed that marriage is a Shari'a. That way, marriage in Islam has a strong legal basis, and the consensus of the clergy as one of the references. Seeing the three legal bases above, both the Koran, Sunnah or hadith, and Ulama consensus, the legal position of marriage is very strong. In fact, marriage in Islam is a matter that is highly recommended, while at the same time refuting the practices and claims of monks who fast to marry. Yusuf al-Qaradawi has addressed this issue quite well. That there is no monkhood in Islam. Islam does not stand alone without providing a way out to meet the needs of sexual instincts, without rules and without ties. Therefore, he forbids adultery and all that leads to it. But on the other hand, Islam also does not tightly restrain these instincts, so that it does not open up even the slightest space to fulfill them.

For this reason, Islam advocates marriage and forbids singleness or singleness. It may be said here that the marriage law in Islam is a refutation of the concept of monasticism. Logically it is also unacceptable, because it is impossible for human development without the relationship between men and women. It's just that, Islam teaches that the procedure for distribution must be through a valid marriage contract, fulfilling all legal requirements in the form of pillars and conditions of marriage, so that by fulfilling these pillars and conditions, one's marriage can legally qualify as a legal relationship according to Islamic law. For this reason, in the next section, it is important to state the pillars and conditions of the marriage.

There are several principles of marriage according to Islamic law, which need to be considered so that marriage is truly meaningful in human life in carrying out their duties to serve God. In essence, a *misyar* marriage is not much different from an ordinary marriage, meaning that everything that is a requirement and pillar of an ordinary marriage is also found in a *misyar* marriage. So that the principles of *misyar* marriage with marriage in Islam, namely:

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1. Fulfill and carry out religious orders. That marriage is the sunnah of the Prophet, it means that God carries out the marriage in essence is from the teachings of religions governing the marriage, providing boundaries and pillars and the necessary conditions. If the pillars and conditions are not met, the marriage is cancelled or fasidlah.
2. Willingness and Consent. The essential principle of a marriage is that there is the consent of both husband and wife. Because willingness is a matter of the heart that is not known by other people, it is necessary to have concrete expressions that show consent and acceptance.
3. Marriage for good.
4. The purpose of marriage, among other things, is to have offspring and for peace, tranquility and between love and affection.

All of this can be achieved only with the principle that marriage is for ever, not just for a certain time. Having seen beforehand so that later you will not regret after getting married and by seeing and knowing beforehand you will be able to perpetuate the agreement between husband and wife. The purpose of the *Misyar* marriage There are several objectives of carrying out the *Misyar* marriage as follows:

1. To add offspring As stated that human instinct has a tendency to have legitimate offspring, the legitimacy of offspring that is recognized by himself.
2. Fulfilling human needs to channel lust. It has become the nature of Allah SWT's *iradah*, humans are created to be matched and created by Allah SWT to have a desire to have a relationship between men and women, as illustrated that men and women are like clothes, meaning that one needs the other.
3. Protect yourself from adultery. Peace of life and family love and affection can be shown through marriage. People who don't distribute it through marriage will experience impropriety and can cause damage to themselves by committing adultery, because humans have lust, while lust tends to invite to bad deeds.

4. Realizing cooperation and life harmony between men and women for household life. It is a fact that humans in the world do not stand alone but are in a society consisting of the smallest units, namely families formed through marriage. In his life humans need peace and serenity of life. Calm and tranquility to be achieved by the existence of calm and tranquility for the community is the most important factor in determining calm and tranquility.
5. Reasons for *Misyar* Marriage In line with the times, the form of *misyar* marriage has emerged. This kind of marriage has become a serious phenomenon in several Islamic countries recently, due to the changes that have occurred in life, the origins of marriage this has existed in the past.

This *misyar* marriage leads to the provision of relief to the husband from the obligation to fulfill the place of residence, maintenance and equal share between the second wife and the first wife, which is based on the second wife's yielding attitude. This last wife only wants the existence of a man who used to look after and care for her (from biological needs) by loving her. Yusuf al-Qardhawi's reason for allowing this marriage, he considers that in today's era, obstacles to marriage are very diverse, most of which arise from the woman herself. From here then came the *awanis*, namely:

1. Single women of old age, who have passed the time to get married.
2. Women who are still living with their parents, and are unable to fulfill their nature in building a family and being a mother.
3. There are a lot of women who have experienced divorce.
4. Widows left by their husbands to die alone or together with abundant wealth.
5. Career women, work and work alone, such as teachers, instructors, doctors, pharmacists, lawyers or other professions with a fixed income.

From the reasons above, it can be seen that *misyar* marriage is essentially aimed at fulfilling biological needs (sex instinct) as well as glorifying and keeping from slipping into adultery. Just as the *awanis* are women who are materially sufficient so they don't demand material rights from their husbands, where marriage for them is the most important legal status for the *awanis* when viewed from the law of marriage is mandatory.

***Misyar* Marriage Practices in the Perspective of Islamic Law (Fiqh and Legislation in Indonesia)**

In the matter of *misyar* marriage, al-Qardhawi views that *misyar* marriage is legally permissible as a solution even including alternative marriages for

certain people, for two reasons, namely: first if they are not allowed to carry out this misya marriage practice, they are worried that they will fall into the chasm of disobedience (adultery). Second, a *misyar* marriage fulfills the requirements of the pillars of marriage, so that no 'ulama' has the right to prohibit an act that has been permitted by shara'. With these two main reasons, al-Qardawi dared to issue a fatwa that *misyar* marriage is lawful and permissible. From the two reasons put forward by al-Qardhawi above, according to the author's analysis, it is not a reason to allow the practice of *misyar* marriage. Because, firstly: a person who has a strong sexual instinct and he really wants to get married, but he cannot afford it either because he is unable to afford it or because he does not have time to think about it, in Islam a solution has been provided to avoid the brink of immorality (adultery). , that is, he was ordered to fast, not to marry *misyar*. Because with fasting, the passionate desire to marry will loosen. If it is loosened, of course the possibility of falling into adultery is reduced, it can even be said that it is impossible to happen. This is in accordance with the hadith of the Prophet Muhammad SAW.

من عبد الله مسعود ر. هو قال. قال لنا رسول الله يا شباب! من استطاع منكم أن يتزوج ،
لأن النكاح أغمض أعينكم وأحراً عورته (من الزنا) ، ومن استطاع ، فعليه أن يصوم لأن
الصوم دواء له ". (رواه البخاري ومسلم)

From 'Abdullah Mas'ud r.a. he said. Rasulullah said to us, O youth! Whoever among you can afford it (has money), then he should marry because actually marriage is more closed eyes and protects the private parts (from adultery), and whoever can afford it, then he must fast because fasting is a medicine for him "(Narrated by Bukhari and Muslim)

The second is that an action that fulfills the pillar requirements is not automatically permissible, because there are other things that must be considered. The author wants to give an insight related to the principle "that an action that meets the requirements and pillars may not necessarily be carried out". For example, a person who prays on a prayer rug that is sacred but belongs to someone else, then his prayer is valid but the law is unlawful, because using someone else's prayer rug is a ghasab that must be abandoned (not allowed). This is proof that it is lawful or permissible to do an act, it is not enough just to fulfill the pillars of harmony. *Misyar* marriage, for example, even though the pillar conditions have been fulfilled, there are sighat, guardian, witness, dowry and so on, but this cannot be done, because the existence of

misyar marriage does not aim to build a *sakinah, mawaddah* and *rahmah* household. In practice, *misyar* marriage is only for the purpose of obtaining pleasure and the legality of biological relations. This is proven by the fact that there is no obligation to provide a living, not living at the same house, no plans to have children or offspring and the existence of this *misyar* marriage is kept secret from the general public, of course this marriage is also not registered at the Office of Religious Affairs (KUA), for example in Indonesia.²⁰

In other words, the practice of *misyar* marriage is an illegal marriage that is not recognized by law and has no legal force. Allah gives two choices for everyone to build a household, which is to unite in good household welfare or even divorce in a good way. ...*fa imsak bi ma'ruf aw tarsib bi ihsan...*(QS. Al-Baqarah: 229). The invocation of this verse will contradict what has happened in *misyar* marriage practices. On the one hand, this *misyara* married couple is called husband and wife because there is indeed a marriage contract and there has never been a divorce. However, on the other hand, this *misyar* married couple does not appear to be husband and wife because they live separately and do not live under the same roof (one house). Therefore, if the author borrows Zakariya al-Ansari's term 'wa la wa la', the status of this *misyar* marriage is unclear. This, of course, contradicts the QS directives. Al-Baqarah (229) above.

Yusuf al-Qardhawi admits that this type of marriage is not the type of marriage recommended in Islam, but marriage is permissible because of pressures and demands for certain people. In other words, the practice of *misyar* marriage is to benefit career women who are super busy and don't have time to think about marriage. However, when viewed from the side of the general public, they will feel disturbed and do not agree with the practice of *misyar* marriage. They think that this *misyar* marriage is just a 'new face' of the practice of prostitution. Thus, the writer finds two sides of the paradox, namely two different interests. On the one hand, the practice of *misyar* marriage is for the benefit of some women and on the other hand there are the interests of the general public that must also be considered.

Therefore, in the writer's opinion, it is the interests of the general public that must be prioritized. Shalabi said that when the general benefit is at odds with the specific benefit, Islam prioritizes the general benefit over the specific benefit. From this, the author concludes that the *misyar* marriage that

²⁰ Agus Wahyu Irawan dan Zulfatun Anisa, "Tinjauan Hybrid Contract Perspektif Maqâshid Syari'ah" *Journal of Islamic Banking* Vol. 1, No. 1 (2020): 54–82.

Yusuf Qaradawi stated is more directed at the mere fulfillment of sexuality, and brings more harm than benefit. On the other hand, the general public will criticize the practice of *misyar* marriage, because this marriage is similar to the practice of adultery and the practice of hiring a 'gigolo'. This means that the practice of *misyar* marriage is clearly more dangerous and will cause great slander in society, so that in the author's opinion the misya marriage model must be abandoned because it causes damage as the fiqh rule emphasizes:

رفض الضرر له أسبقية على جذب الخير

Rejecting the damage takes precedence over attracting goodness

This is important to know, because the principles of *misyar* marriage are not in accordance with the objectives of Islamic marriage. First, the absence of alimony, which contradicts Surah al-Talaq verse (7) and Surah al-Baqarah verse (233), as well as the hadith narrated by Imam Bukhari and Imam Muslim regarding the obligation to provide for his wife, and of course this would conflict with Compilation of Islamic Law in article (80) paragraph (4). Second, this *misyar* marriage is not recorded which contradicts Surah al-Baqarah verse (282) and KHI article (5) paragraph (1). Third, in a *misyar* marriage, a husband also does not have the obligation to provide a place for his wife to live, which is the essence of *misyar* marriage, so that it will violate the rules in the Qur'an surah al-Talaq verse (6) which obliges a husband to provide a place to live. Thus, it is clear that the practice of *misyar* marriage according to Islamic law is haraam and should not be carried out, because the practice of *misyar* marriage is contrary to the verses of the Qur'an, the hadiths of the Prophet Muhammad SAW. as well as legislation in Indonesia UU. No. 1 of 1974, PP. No. 9 of 1975 and Compilation of Islamic Law.

Results Of The Views Of *Maqasid Al-Syariah* In The Fatwa Of Yusuf Al-Qardhawi About *Misyar* Marriage Fatwa of Yusuf Al-Qaradawi

According to al-Qardhawi, *misyar* marriages are permissible because like da'im marriages (conventional marriages), *misyar* marriages also embody the benefit of the syari'at, where husband and wife get inner satisfaction. There is also a family life that is built on the basis of glory. Legally, *misyar* marriage is valid, because it fulfills all the pillars and conditions of a valid marriage. Where there is consent and *qabul*, mutual consent between the bride and groom, guardians, witnesses, the bride and groom are equal, there is an agreed dowry.

After the marriage contract, the two officially became husband and wife. Later husband and wife have rights. Hereditary rights, inheritance rights, iddah rights, divorce rights, sleeping rights, housing rights, living expenses rights, and so on. Related to the rights and obligations of husband and wife. It's just that, both of them were happy with each other and agreed that there was no demand for the wife on the husband to live with his wife, nor the right to share shift days. Because everything depends on the husband. Whenever a husband wants to visit his wife, he will meet her at any hour of the day or night. Al-Qardhawi stated that *misyār* marriage is a solution for women who are not married, for virgins who have passed their marriage period, of course by choosing a man who is truly good in character, and both parties are pleased with each other. So it is not appropriate for people to block the path that is permitted by shara'. However, al-Qardhawi emphasized that he was not someone who liked and advocated *misyār* marriage.²¹

Another scholar who supports the opinion that *misyār* marriage is permissible is Yusuf al-Duraysh. According to him, the opinion that *misyār* marriage is invalid because of efforts to hide and keep the marriage secret, whether by witnesses, guardians, or the bride and groom, does not invalidate the marriage. This opinion according to him is in accordance with the opinion of the majority of scholars. In addition, in terms of realizing the great goals of a marriage, it is true that *misyār* marriage is not an ideal form of marriage. However, that does not mean it is empty of the formation of its main goals as a whole. Apart from that, Zaharuddin Abd Rahman also added that Yusuf Al-Qardhawi, stipulated that *misyār* marriage, but the law is makruh.

Yusuf al-Qardawi gave a controversial fatwa regarding issues related to the practice of marriage which is rife among the people of the Middle East. Where are career women who are wealthy and don't have time to think about marrying beyond the perfect age to get married-looking for men who want to marry themselves and are not subject to the obligation to pay maintenance, provide housing, and so on. Such a practice was finally raised to be questioned by Sheykh Yusuf al-Qardawi, so that al-Qardawi felt the need to issue this fatwa on *misyar* marriage. Yusuf al-Qaradarwi explained that differences of opinion in matters of furu'iyah (partial fiqh), are not something new anymore and these differences will not cause problems for people who have strong faith, because differences only arise due to differences in the point of view used. by each scientist. According to him, this difference is a blessing and a

²¹ Hasbi Ash Shiddiqi, "Pandangan Al- Qaradawi Tentang Hukum Nikah *Misyar* (Kajian Analisis Kritis Perspektif Dhawabith Al-Maslahah Syekh Ramadhan Al-Buti), : 1–15.

solution for all mankind. However, if the difference is caused by mere emotional and lust factors, then it will further distance them from the truth.

Al-Qardhawi recounted that the issuance of the *misyar* marriage fatwa caused many protests, especially from mothers. Not a few of them suggested that he withdraw the fatwas that had been issued, especially those related to the permissibility of this *misyar* marriage. They conveyed this to al-Qardawi so that he would regain the sympathy of the Muslim community, especially women who on average disagreed with the practice of *misyar* marriage. Responding to this, al-Qardawi actually said that an 'alim who always wants to get thumbs up and praise from the general public, usually he will tend to give a fatwa that is in accordance with the wishes of the community (orders) and eventually he will gradually abandon his religious teachings. Yusuf al-Qardawi admits that there is no definite meaning of *misyar*, it's just that this term has developed in most of the Gulf countries. According to them, the meaning of *misyar* is passing and not staying long. This is indeed appropriate if the word *misyar* is seen from a linguistic point of view, because the word *misyar* comes from the root word sara (already running), yasiru (currently running), Sayran (walking) or siyaratan (traveling) and the isim of the tool is *misyar*. Yusuf al-Qardawi emphasized that there is no precise definition for this *misyar* marriage, but after he saw the practice of *misyar* marriage that occurred in the community, he concluded that there was one definition of "*misyar* marriage" namely *misyar* marriage is where a man goes to the woman and the woman do not move or are with the man in his (male) house, and usually this kind of marriage occurs with the second wife and the man who carries out this kind of *misyar* marriage already has a wife who lived together in his house before.

In the context of *misyar* marriage, this form of thinking is relatively new when compared to mut'ah marriage and muhallil marriage. Both have a history in the life of Muslims since the time of the Prophet. Meanwhile, *misyar* marriage has just emerged and developed in the era of modern Muslim society. However, this *misyar* marriage has been a well-known phenomenon among the people for a long time. Yusuf al-Al-Qardāwī defines *misyar* marriage as where a man goes to the woman's side and the woman does not move or be with the man in his house. Usually this kind of marriage occurs with the second wife and the man who carries out this kind of marriage already has a wife living together in his house. This kind of marriage is not a marriage that is recommended by Islam, but marriage is permissible because of the pressure of necessity, impact and development of society, with the record that the marriage contract must be carried out because marriage without a legal

contract is invalid. According to Yusuf al-Qarḍāwī, a religious expert has no reason to prohibit a woman from carrying out a marriage with this type of marriage (*misyar*), namely by doing *tanazul* from some of her rights, if the intention is really pure for her own good.

There are several factors that make a person willing to reduce his rights, including to get something that is more useful for him, as was done by one of the wives of Rasulullah saw. namely Saudah bint Zama'ah. Saudah was the first wife that the Prophet married. after Khadijah. Sauda was an old woman, she felt that the Prophet would not treat her as tenderly as before. He was very worried that the Prophet divorced her and was afraid that after the day of reckoning, she would not be able to accompany the Messenger of Allah. as a wife. For that he gave *tanazul* (relief) to the Prophet. And he gave that right to the wife of Rasulullah saw. the other, namely Aisha. With this relief, the Messenger of Allah was very grateful and placed Sauda in the right place according to the word of Allah SWT in Q.S An-Nisa [4]: 128.

وَإِنْ امْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُورًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ وَأُحْضِرَتِ الْأَنْفُسُ الشُّحَّ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا

Ministry of Religion Translation 2019:

If a woman is worried that her husband will be *nusyuz* or be indifferent, the two can make real peace. Peace is better (for them), even though humans are by nature miserly. If you do good and take care of yourself (from *nusyuz* and indifference) surely Allah is All-Aware of what you do.

It comes from the woman herself. From here, the women who Yusuf al-Qarḍāwī called the *awanis* emerged, namely:

1. Single women of old age, who have passed the time to get married.
2. Women who are still living with their parents, and are unable to fulfill nature in building a family and being a mother.
3. There are so many women who have experienced divorce
4. Widows whose husbands die alone or together with abundant wealth.
5. Career women who work alone, such as teachers, doctors and those with a fixed income.

With the *awanis* above, they all do not demand material rights from their husbands. They want to do *misyar* marriages based on their truly pure intentions for their own good. As the word of Allah swt in Q.S At-Thalak[65]: 2-3.

فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوَى عَدْلٍ مِّنكُمْ
وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ ذَلِكُمْ يُوعَظُ بِهِ مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۗ وَمَنْ يَتَّقِ اللَّهَ
يَجْعَلْ لَهُ مَخْرَجًا ۖ وَيَرْزُقْهُ مِنْ حَيْثُ لَا يَحْتَسِبُ ۚ وَمَنْ يَتَوَكَّلْ عَلَى اللَّهِ فَهُوَ حَسْبُهُ ۗ إِنَّ اللَّهَ
بَالِغُ أَمْرِهِ ۗ قَدْ جَعَلَ اللَّهُ لِكُلِّ شَيْءٍ قَدْرًا ۝

Ministry of Religion Translation 2019:

When they are nearing the end of their beauty, reconcile with them kindly or release them kindly and testify with two witnesses who are just from you and you should uphold the testimony for Allah. This is advised to those among you who believe in Allah and the Last Day. Whoever fears Allah, He will surely open a way out for him.

and bestows upon him sustenance from a direction he did not expect. Whoever puts his trust in Allah, surely Allah will fulfill his (needs). Indeed, it is Allah who completes His affairs. Truly, Allah has made provision for everything.

From these reasons it can be seen that *misyar* marriage is essentially aimed at fulfilling biological needs as well as glorifying and guarding against slipping into forbidden adultery. So the author views that the method of determining *misyar* marriage law by Yusuf Al Qardāwī uses the *ijtihad insya'i* method, namely establishing legal conclusions from the phenomenon of late marriage in Arab countries so as not to slip into a bigger sin by referring to the Al-Qur'an surah An Nisa verse 128, and the story of the Prophet's wife, Saudah bint Zam'ah.

Views of *Maqasid Al-Syariah* in Yusuf Al-Qardhawi's Fatwa Regarding MISYAR Marriage / Misyar Marriage: Religion (*Hifz al-Din*),

Misyar marriages usually take place in emergency situations. According to Yusuf al-Qardhawi, this type of marriage must be tolerated, because it is usually held under special circumstances and conditions that bind the husband or wife. Meanwhile, both of them wanted to protect themselves and their honor, while it was impossible for them to enter into a common marriage, so they were forced to do *misyar* marriage. This view has its relevance to the concept of *Maqasid Al-Syariah* in the realm of *al-Din* at the *hajjiyat* level. In certain circumstances the provisions of marriage in Islam can be lightened, including by allowing the wife to give up some of her rights from her husband.

Misyar Marriage Opinion of contemporary scholars, especially Yusuf al-Qardhawi and Wahbah Zuhaili regarding *misyar* marriage as explained above, when viewed from the perspective of *Maqāṣid Al-Syariah*, the researcher found the arguments used as *hujjah* (legal reasons) as follows: First, the basis 'The most important law that is the reason for groups that allow *misyar* marriages is the fulfillment of all the requirements for a valid marriage. That's why marriage becomes legal according to religion. A marriage in which there is consent and acceptance, mutual consent between the bride and groom, guardians, witnesses, the two brides are equal, there is an agreed dowry, then the marriage contract is official and the two become husband and wife. If this opinion is connected with the concept of *Maqāṣid al-Shariah*, then it seems relevant to *Maqāṣid Al-Syariah* in the *dharuriyyat* level of *hifḍ al-Din* as well as in the *dharuriyyat* level of *hifḍ al-Nasab*. Because in this realm it indicates that with marriage, religious teachings and the existence of an Islamic family can be maintained.

Soul/Body(*Hifz al-Nafs*),

In Indonesia, for example, many men go abroad and work on shipping. When they go to other countries, their wives stay at home, while men still need to channel their biological desires. Usually, they marry the women they land on. Generally, wives are willing even though they know that their husbands will not stay with them forever and one day they will be abandoned and cannot be expected to return. And according to Yusuf Qardhawi such a marriage is not a problem. Yusuf Qaradawi refuted the scholars who said that *misyar* marriage was only to seek satisfaction biologically and it would demean the woman herself with her opinion: "I should say that the goal of seeking pleasure and satisfaction in marriage is not a bad and despicable goal, as they describe it. Even one of the purposes of marriage is to seek pleasure. Therefore it is not permissible to *tanaẓul imta'* (seeking pleasure) when the marriage ceremony is carried out. According to Yusuf Qaradawi, the goal of seeking pleasure in marriage is not only from the man's side, but this goal comes from both parties, both men and women. Keeping from doing evil deeds is a noble value taught by Islam, because this is what distinguishes Muslims from other people. Men's needs for women and vice versa (women's needs for men) have become human nature by saying that marriage is natural. There are religions that consider marriage to be an evil and dirty act that has been given by God. Therefore, according to Yusuf Qardhawi, *syara'* must provide convenience in matters of marriage so that humans are not trapped in

committing unlawful acts. Especially in this era where the door to unlawful acts is wide open with the proliferation and spread of immoral places everywhere. Thus, according to Yusuf Qardhawi, we are not angels who do not have passion, we are human beings who naturally have sexual desires that must be channeled. And marrying by way of *misyar* marriage is not something that can be blamed because the conditions and pillars are fulfilled, whether registered or not, rather than having to commit adultery.

Scholars who allow *misyar* marriage are of the opinion that when viewed from the realization of the great goals of a marriage, it is true that *misyar* marriage is not an ideal form of marriage. However, that does not mean it is empty of the formation of its main goals as a whole. Not even a few of these goals can be found in it. It's just that, both of them are pleased with each other and agree that there is no right of maintenance from the husband for his wife, nor is there any right to share shift days. Due to the existence of these marriage rights, this opinion when connected with *Maqasid Al-Syariah*, will appear relevant to *al-nafs* at the *dharuriyat* level, namely the maintenance of the continuity of the reproduction of offspring, and the maintenance of honor, especially the honor of women who do not get it except by marriage. In addition, the wife who is married *misyar* also feels happiness and inner satisfaction because in that marriage she gets something that she does not get except by getting married. This is in accordance with the concept of *Maqasid Al-Syariah* in the realm of *al-nafs* at the *hajjiyat* level.

The researcher also examines from a negative point of view *misyar* marriage on the soul/body (*Hifz Al-Nafs*). Human habits in fulfilling biological needs with *misyar* marriage will have a negative impact on the household, men or women who are used to *misyar* marriage will get used to mutually changing partners resulting in AIDS. From the side of body and soul, we will often compare with other people resulting in conflicts in the household and divorce.

Treasure (*Hifz al-mal*)

With *misyar* marriage, a rich wife can help her husband's economy, which may be weak. This is in line with the concept of *Maqasid Al-Syariah* in the realm of *al-nafs* at the *tahsiniyat* level. Apart from that, with a *misyar* marriage, the wife is lucky because she has someone who can protect herself and her property from damage and interference from other parties. This is in line with the concept of *Maqasid Al-Syariah* in the realm of *al-mal* at the *dharuriyat* level. In the *Maqasid Al-Syariah* approach, the quality of benefit in

an action will determine the level of legal status of the act. Because of this, several general principles emerge in determining law based on *maqashid al-syariah*, including:

1. The demand to do something is because of the benefits contained in it and the demand to leave something is because there is mafsadat in it,
2. If the mafsadat in an action dominates, then carrying it out is at the level of makruh, the greater the mafsada, the stronger the level of disrepute, up to the level of haram. The level of mafsadat in terms of what is forbidden is greater than what is makruh in,
3. An act that is obligatory can turn into not obligatory on consideration of the bad consequences it will cause, for example if its implementation will endanger other people or violate the wisdom intended by syariah.

Intellect (*Hifz al-Aql*),

The form of human care for reason and thoughts by living a healthy life and continuing to develop their natural talents. Reason and reason are one of the instruments given by God for humans who can distinguish them from other creatures. By utilizing human reason will get the highest degree in the sight of Allah. On the other hand, if humans do not take advantage of the potential of reason, Allah will continue them into the abyss of humiliation. *Misyar* marriages are permitted, among other things, to avoid committing adultery and it is lawful to do so between men and women who can afford it. If someone on a long trip wants biological needs, then the solution is to do *misyar* marriage. A man who wants to carry out a *misyar* marriage with the aim of serving Allah and saving himself from adultery. Likewise, the woman is not coerced when carrying out a *misyar* marriage and mutual need between men and women.

Descendants (*Hifz al-Nas*),

In Islam, marriage has a purpose more than just venting lust and seeking pleasure. Marriage is a vehicle for regeneration (*hifz al-nas*), as well as for achieving a *sakinah* family, *mawaddah wa rahmah*. According to Yusuf Qardhawi, *misyar* marriage is not a marriage recommended by Islam. It's just that this marriage is permissible because there is an urgent need as a result of the development of society and because of the changing times. and the absence of all of the expected objectives does not invalidate the contract. It is said, "everything that cannot be obtained in its entirety cannot be completely abandoned because a little is better than nothing." The initial purpose of

marriage was so that husband and wife could live together forever, day and night in order to achieve a *sakinah* life. *mawaddah, wa rahmah*. However, there are many couples who have to separate because of work, business, or other tasks that cannot be left behind. It does not fulfill the purpose of marriage, but if the wife is willing, then it is legal. Scholars who allow *misyar* marriages also require that marriages like this must be formalized by state regulations with the registration of marriages by government agencies. Of course this opinion is in line with *Maqasid Al-Syariah* in the realm of *al-nasab* at the *hajjiyat* level.

Conclusion

Yusuf al-Qardhawi's view of *misyar* marriage in the perspective of *Maqasid Al-Syariah*, namely Religious Protection (*Hifz al-Din*). According to Yusuf al-Qardhawi, *misyar* marriage is permissible if in an emergency. Protection of the Soul/Body (*Hifz al-Nafs*) Scholars who allow *misyar* marriage are of the opinion that when viewed from the realization of the great goals of a marriage, it is true that *misyar* marriage is not an ideal form of marriage. Property Protection (*Hifz al-mal*) With *misyar* marriage, a rich wife can help her husband's economy which may be weak. This is in line with the concept of *Maqasid Al-Syariah* in the realm of *al-nafs* at the *tahsiniyat* level. Apart from that, with a *misyar* marriage, the wife is lucky because she has someone who can protect herself and her property from damage and interference from other parties. Protection of the Intellect (*Hifz al-Aqli*) Forms of human care for the mind and thoughts by living a healthy way and continuing to develop their natural talents. Protection of Offspring (*Hifz al-Nasl*) The initial purpose of marriage is so that husband and wife can live together forever, day and night in order to achieve a life that is *sakinah, mawaddah, wa rahmah*.

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