

### *Misyār Marriage In The View Of Yusuf Qardawi And Abdullah Muhammad Ath-Thayyar: Challenges And Constructive Approaches*

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#### ABSTRACT

This research focuses on the discussion of *misyār* marriage as one of the contemporary phenomena that did not exist in the time of the Prophet Muhammad SAW by using a type of literature research with a qualitative approach and analyzing existing data inductively. The results of the study show that *misyār* marriage was triggered by its emergence due to the massive development of the times. One of the indicators is the emergence of women who no longer live at home and work, so that they are economically independent. In addition, the varied work of men keeps them away from their wives which then causes problems. By analyzing the opinions of several scholars who have detailed the marriage of *misyār*, such as Yusuf Qardhawi and Abdullah Muhammad Aṭ-Ṭayyar, it can be concluded that this opinion cannot be separated from the concept of legal change of Ibn Qayyim which is also influenced by the changing times. This study proposes to deepen the understanding of the concept of *nikah misyār* to answer the development of the times and its relevance to Islamic teachings, namely *ṣaliḥ li-kulli az-zamān wa al-makān*. In addition, this study also offers constructive approaches in assessing the validity of *misyār* marriage. This research is expected to enrich the discourse around marriage in Islam and become a medium for the wider community to know this phenomenon.



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## 1. Introduction

In the social aspect, marriage has an important role because only from marriage can the family be formed. Society is formed from many families living in one area. This means that the social harmonization of a society depends on each family occupying the area. (Salmah, 2016) Islam does not only make marriage a medium to unite two people of the opposite sex in a certain bond with the principles and conditions that have been set. However, marriage has its own rights and obligations for both of them in a balanced manner. (Halilurrahman and Luwihita, 2023)

Basically, *misyār* marriage fulfills matters related to the principles and conditions of marriage according to Islam as determined by the majority of scholars. This phenomenon was born due to the massive changes of the times that occurred, such as the discovery of women who were economically established so that they did not need a living to be born from others. However, there is a concern if the alimony that should be the wife's right is aborted just because she is able to be independent because basically, a husband's alimony to his wife is a form of responsibility regardless of whether his wife is able to be independent or not.

The controversy over the *misyār* marriage has become a significant topic of debate among Muslims. This practice, which involves marriages in which a wife does not live with her husband in the same house, triggers a variety of views and interpretations. Some scholars and scholars consider it a pragmatic solution to certain situations, while others view it as contrary to the basic principles of marriage in Islam. The discussion covered complex legal, social, and ethical aspects, reflecting the diversity of thought in contemporary Muslim society. (Fatimawali, 2024)

*Misyār marriage* is generally known by contemporary scholars as a marriage practice in which a woman agrees to impose the right to receive or ask for alimony for her as described in the rules of jurisprudence, such as not being able to live and the right to live together. In most cases, a *misyār* marriage is performed by a man who has married another woman but does not have permission to remarry from his first wife. The principle of this kind of marriage is that the husband does not have to meet his wife's birth or daily needs. So the husband only performs other obligations, namely meeting the inner needs of his wife. (Sunarto and Chamdani, 2021) *Misyār* marriage itself is not known by previous jurists because it is a contemporary problem that was *ijtihad* by scholars of his time. (Al-Qaraḍāwī, 2010)

The phenomenon of *misyār* marriage is widely found in people living in Qatar and people in the Gulf countries, both in the past and in the present. This is based on the fact that men often travel for a long period of time until some of them marry women in the place where they stop to fulfill their biological desires, as well as to survive while abroad. (Al-Muthlaq, 2012) Apart from the Gulf countries, the phenomenon of *misyār* marriage can also be found among students who are studying in Cairo, Egypt. As a student who lives on scholarships and struggles to make a living, having a marriage with *the misyār* method is one of the right solutions. The reason is that it will feel difficult if a student has to carry out a marriage in general. (Faisal, 2016)

The cause of the emergence of *misyār* marriage is triggered by several causes that are divided into three aspects, namely the cause born from women based on several factors, the cause born from men which is also based on several factors, and the cause based on social changes with several factors behind it. (Al-Muthlaq, 2012) Here is the summary:

No	Reason	Factor
1	Woman	<ol style="list-style-type: none"> <li>1. Many virgin women have passed the ideal period of marriage but are not married and there are many widows.</li> <li>2. Misunderstanding of the concept of polygamy in Islam.</li> <li>3. There is a need for a woman to stay with her family.</li> </ol>
2	Man	<ol style="list-style-type: none"> <li>1. There are men who like and are happy if they have many wives</li> <li>2. There are men who are reluctant to bear heavy burdens and responsibilities after marriage</li> <li>3. The busyness of work that does not allow him to settle down with his wife</li> </ol>
3	Social	<ol style="list-style-type: none"> <li>1. The more expensive the dowry and the need to carry out the wedding.</li> <li>2. The negative perspective of society towards the practice of polygamy.</li> </ol>

As a contemporary phenomenon that is less clear in the discussion of classical jurisprudence, *Misyār marriage* raises the assumption that this kind of marriage is just another name for *mut'ah*, *sirrī*, or marriage that had occurred in the Puncak area, Bogor which is known as nikah tourism, considering that the practice is similar at first glance to it. The controversy over the *misyār* marriage has become a significant topic of debate among Muslims. Some scholars and scholars consider it a pragmatic solution to certain situations, while others view it as contrary to the basic principles of marriage in Islam. The discussion covered complex social and legal aspects, reflecting the diversity of thought in contemporary Muslim society. (Fatimawali, 2024)

Among the scholars who argue that *misyār* marriage is a pragmatic solution in certain situations is Yusuf Qardhawi. He argued that as long as the marriage has fulfilled the legal principles and conditions and does not violate anything that prohibits marriage, then the marriage becomes valid regardless of the name of the marriage. This is based on a rule that says that an *ibrah* in an agreement lies in its intention and meaning, not in the pronunciation and *mabāni* (arrangement of words). However, Abdullah Muhammad Ath-Thayyar considered that the marriage of the *misyār* was haram to be carried out. He argued that marriage in this way brings many dangers that can have a negative influence on a child's education and morals. This is based on the fact that if a wife gives birth to a child from a husband who is rarely at home, the child will be far from her father due to several factors that affect the growth and development of her child.

*Misyār* marriage in the view of scholars is very varied, including Yusuf Qardawi dan Abdullah Muhammad Ath-Thayyar. This research is different from previous studies because the focus of this research focuses on the opinions of two well-known Islamic scholars of the contemporary era who have given a fatwa on *misyār marriage*, namely Yusuf Qardawi and Abdullah Muhammad Ath-Thayyar by analyzing the opinions of both of them by using several theories as the basis of their analysis, namely the theory of social law change echoed by Ibn Qayyim and the Concept of Sadd Zari'ah.

The purpose of this study is to analyze and compare the opinions between two prominent Islamic scholars who disagree with each other. In addition, this study aims to provide an overview of how social changes affect in giving birth to a phenomenon where scholars need to perform *ijtihad* in order to find a law that suits the conditions.

## 2. *Literatur Review*

The data sources in this literature research consist of primary data sources and secondary data sources. The primary sources of data in this study are a book written by Yusuf Qardāwī entitled *Zawāj Al-Misyār Haqīqatuhu wa Hukmuhu*, a book written by Abdullah Muhammad Aṭ-Ṭayyār entitled *Majmū' Muallafāt wa Rasāil wa Buhūs*, and a book written by Abdul Aziz Al-Hujailan entitled *Al-Mukhtār fī Zawāj Al-Misyār*. Meanwhile, secondary data sources use a book written by Abdul Malik Mutlaq entitled *Zawāj Al-Misyār Dirōsah Fiqhiyyah wa Ijtīmā'īyyah Naqdiyyah*, the book *Al-Ahwāl Ash-Syakhṣiyyah li Al-Muslimīn* by Thal'at Abdul Ghaffar, and several other journals and documents.

In addition, there are several studies that are relevant to the research conducted by the author, including a thesis written by Faisal entitled "A Comparative Study of the Validity of *Misyār* Marriage in Classical Fiqh and Contemporary Fiqh" which uses the literature method. The result found is the validity of the *misyār* marriage in the perspective of classical jurisprudence if it is carried out as well as marriage in general by fulfilling the applicable principles and conditions of marriage. Contemporary scholars also have a variety of views, some allow it, some prohibit it, and some abstain based on several factors.

Next is a thesis written by Ismanul Fajri entitled "An Analysis of the Opinion of Wahbah Al-Zuhaili (d. 1437 H) on the *Marriage of Misyār* from the Perspective of *Maqāṣid Al-Syarī'ah*" which is in the form of literature research. The result is that Wahbah al-Zuhaili allows the marriage of *misyār* because in this model of marriage there is one of the *maqāṣid* nikah, namely the *complementary maqṣad*; the honor of a woman who becomes a wife, even if it is married by *mishar*, the woman will also be protected from adultery.

There is also a thesis written by Arifin entitled "*Misyār* Marriage : *Syaddu Dzarī'ah's* Perspective " which also uses literature research. The content of the thesis discusses the essence which includes the evidence, the position of the wife, and the factors that cause the occurrence of the *misyār* marriage.

## 3. *Research Methods*

In this study, the author uses a type of literature research, which is a series of activities related to library data collection methods (Mahmud, 2011) with a qualitative approach, which means that this research intends to understand a phenomenon subjectively and contextually. This research not only seeks answers but focuses more on a detailed understanding of the phenomenon of *misyār* marriage based on the understanding of scholars supported by theoretical foundations. In addition, the author pays attention to the sociological aspects that occur caused by the changing times. The author also pays attention to aspects that may affect women, because the object of the study of *misyār* marriage is mostly related to women. Therefore, the authors use large and extensive data sources from classic and contemporary books and journals as an important step to ensure that this study can analyze the opinions of scholars.

The author conducts the data collection process using documentation techniques. The documentation technique itself is a way of collecting data through the study of written sources that contain data or information needed by the researcher. In addition,

the author takes several systematic steps in collecting data, namely the author initially identifies the available sources from various sources to then analyze and analyze the content and compare the thoughts contained in the sources. Then as a final step, the author concludes by paying attention to the findings from existing sources based on the method used by the author so that the results of his research can be accounted for. The data analysis process in this study begins by examining existing data. In this study, inductive data analysis is used as a data analysis method that seeks to produce a new view of *misyār* marriage by starting from existing facts that are the basis of scholars to avoid manipulation of existing data.

#### 4. Results

##### a. *Misyār Marriage* in Middle East Countries Laws

In terms of juridical facts, especially in Middle Eastern countries, some countries have made *nikah misyār* a law related to *Ahwāl Shakhṣiyyah*. The law is different following the majority of the fiqh schools that are adhered to in the country. However, not all of these countries explicitly mention that the law is specifically for the practice of marriage *misyār* only. (Al-Hujailan, 2009)

In Syria, in the first paragraph of article 14 of the Syrian *Law of Ahwāl Shakhṣiyyah*, it is stated that "If the marriage is bound by a condition that violates the Shari'a law or violates the purpose of the Sharia law and makes it customary for it to be implemented, then the condition becomes invalid but the contract is valid". (As-Siba'i, 2001) Based on this, the Sharia Law uses an approach to the Shafi'iyah madhhab.

The same thing is conveyed in Part 13 of article 19 of the *Moroccan Ahwāl Shakhṣiyyah* Law which reads: "If the contract is associated with conditions that violate the rules of the Shari'a or its purposes, then the conditions are null but the contract is valid". In paragraph 3 of article 19 of the *Ahwāl Shakhṣiyyah* Law of Jordan, it is stated: "If the contract is associated with conditions that violate the purposes of the marriage contract and prescribe something dangerous according to the Shari'ah, such as requiring one of the husband and wife not to behave well, or forcing *one of them to drink khamr*, or forcing one of them to sever the relationship with his parents, then the condition must be canceled but the contract is valid". (Al-Asyqar, 2000)

Prof. Dr. Muhammad Nujaimi commented on the previous Law that there was a disagreement to the conditions that also ratified the contract but the conditions themselves were false. However, it can be understood that the intention of the content is related to the rules of sharia and the purposes of marriage so that it is known that the contract is valid and the conditions are void. In addition, it is understandable that if a woman voluntarily aborts her rights, it is allowed. (Al-Hujailan, 2009)

In addition, according to Al-Hujailan who interviewed a woman named Wafa' Ahmad, a 42-year-old teacher who performed a *misyār* marriage when he was 35 years old and was not married at all at that time. Not long after, a 50-year-old man with an influential social status came who wanted to get married briefly and only known to the woman's family. However, the man could not give the right to *mabīt* because he already had his first wife. Moreover, he hid this marriage from his first wife and children and allowed Wafa' to stay with his family. With the conditions submitted, Wafa' accepted it and was still able to maintain his marriage.

### b. *Misyār Marriage* in Yusuf Qardhawi's Perspective

Basically, *misyār marriage* in Yusuf Qardhawi's view is not something new because in practice it has been happening for a long time, many people have done it, but no one knows it as *misyār*. According to him, the *misyār* marriage itself is a model of marriage where a husband comes to his wife's house because his wife does not move to her husband's house. The majority of *misyār* marriages occur in the practice of polygamy because the husband usually already has a first wife to support. The essence of this kind of marriage is to release a man from his obligation to provide shelter, alimony, and a fair distribution of property to his wives because some women only want to be taken care of inwardly so that they are willing to give up their rights. (Al-Qaraḍāwiy, 2010).

Yusuf Qardhawi himself did not know the meaning of *the misyār* with certainty. It's just that this term is developing in some Gulf States. The meaning of *misyār* according to them is to pass and not linger for a long time. For Yusuf Qardhawi, the naming of *misyār* does not need to be valued in his language, he only tends to discuss the substance of this marriage. Yusuf Qardhawi saw the substance of same-sex marriage through the marriage contract that was carried out, departing from his review, Yusuf Qardhawi said that *misyār marriage* is in harmony and the conditions are the same as marriage that has been shariah, the harmony and conditions of marriage are the same as in the opinions of popular schools, such as Imam Malik, Imam Shafi'i, and Imam Ahmad bin Hanbal. According to Yusuf Qardhawi, the *misyār* marriage is basically *mubāh*. But Yusuf Qardhawi's concerns ruled that his harm and damage denounced the noble purpose of marriage itself. So Yusuf Qardhawi explained that preventing *misyār marriage* with the potential of this marriage is also included in sunnah. (Armi and Nurhayati, 2023)

*Misyār marriage* is not basically a marriage recommended by Islam. However, along with the massive development of the times, the development of science is also very significant, especially for modern women. So according to Yusuf Qardhawi, it is very ineffective if the law does not change because the law changes according to *the musabbib*. (Saepullah and Hanafiah, 2017) Yusuf Qardhawi said that the marriage of *misyār* is halal through his words:

سمّوا هذا الزواج ما تسمّونه و لكنّ المهمّ عندي أن تتحقّق أركان عقد الزواج و شروطه

Means:

"Name this marriage what most people usually mention, but I think the most important thing in this marriage is the fulfillment of the conditions and the harmony of the marriage."

### c. *Misyār Marriage* in Abdullah Muhammad Aṭ-Ṭayyar's Perspective

According to Abdullah Muhammad Aṭ-Ṭayyar, *misyār* marriage is an expression of marriage that looks valid according to sharia because of the fulfillment of the principles and conditions but contains the intention to abort some of the wife's rights such as the right to birth maintenance and the right to get a place to live. The husband only came for a few moments according to his ability. This kind of marriage does not occur unless there is an agreement between the two and it is not mentioned in the implementation of the contract. (Ath-Thayyar, 2011) Definitely, it can be seen that this marriage is based on affection because there is an agreement between husband and wife. However, it is originally a crime and can lead to very great damage, especially the many damages in this day and age, such as the weakness of faith and his passion for satisfying orgasms and

lusts, so that this seemingly easy marriage can be their shortcut to seek mere satisfaction. (Mahgob, 2019)

Among these damages can affect the growth and development of children because in the marriage of *misyār*, the role of men is very lacking. This can trigger a lack of *sakīnah*, *mawaddah*, and grace which should be the purpose of marriage as in QS. Ar-Rum 21:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

Translation:

"Among His signs is that He created for you from your own (kind) so that you may feel at peace with him. He makes among you a sense of love and affection. Indeed, in such things there are indeed signs (of Allah's greatness) for those who think."

Another damage that is affected by the *misyār* marriage is the lack of protection for the wife's honor because of the loss of rights that should belong to her, including the abortion of the rights for her offspring. *Misyār* marriage according to Abdullah Muhammad Aṭ-Ṭayyar is a marriage that does not heed the noble intention that has been set by Allah swt. which should be based on peace, love, and affection. (Ath-Thayyar, 2011)

However, it is originally a crime and can lead to very great damage, especially the many damages in this day and age, such as the weakness of faith and his passion for satisfying orgasms and lusts, so that this seemingly easy marriage can be their shortcut to seek mere satisfaction. Another damage that is affected by the *misyār* marriage is the lack of protection for the wife's honor because of the loss of rights that should belong to her, including the abortion of the rights for her offspring. According to Abdullah Muhammad Aṭ-Ṭayyar, a *misyār* marriage is a marriage that does not heed the noble intention that has been set by Allah SWT which should be based on peace, love, and affection. (Ath-Thayyar, 2011)

In a hadith, the Prophet Muhammad SAW warned that basically women have rights over their husbands. This basis is certainly different from the *misyār marriage* so that there is an indication that the *misyār marriage* is permissible for something that is haram and hides behind the word willingness (Umar, 2016) The Prophet Muhammad SAW said:

أَلَا وَحَقَّهُنَّ عَلَيْكُمْ أَنْ تَحْسِنُوا إِلَيْهِنَّ فِي كِسْوَتِهِنَّ وَطَعَامِهِنَّ (رواه ابن ماجه)

Means:

"Do you not know that their right to you is to give you the best clothes and food!?. (HR. Ibn Majah)

In *misyār* marriage, even if the harmony and conditions are fulfilled, it is actually not enough to legalize the marriage because there are several types of contracts that are still haram even though the harmony and conditions are fulfilled because basically the contract must be in accordance with its purpose, not only in the harmony and conditions. An example of a contract that is harmonious and its conditions are fulfilled is *muḥallil marriage*.

## 5. Discussion

In classical jurisprudence of Islam, the rights of wives have been regulated based on Islamic legal sources, namely the Quran and the hadiths of the Prophet Muhammad

SAW which are detailed by the imams of the madhhab. Some of them are arrangements related to the right of *mabīt* and maintenance.

Regarding the right to *mabīt* (Sleeping together at night), the classical madhhab differ in opinion if a husband has only one wife, whether it is the right of the wife or not. According to the Hanafiyah madhhab, the husband is obliged to give the right of *mabīt* to his wife. This opinion is strengthened by the strong opinion of the Hanabilah madhhab. Meanwhile, according to the Malikiyah madhhab, Shafi'iyah, and a narration from Imam Ahmad argues that this is only recommended and is not the absolute right of a wife.

The first argument comes from a hadith narrated by Abdullah bin Amru bin Āṣ that the Prophet Muhammad SAW said

يَا عَبْدَ اللَّهِ، أَلَمْ أُخْبِرْ أَنَّكَ تَصُومُ النَّهَارَ وَتَقُومُ اللَّيْلَ؟ قُلْتُ: بَلَى يَا رَسُولَ اللَّهِ، قَالَ: فَلَا تَفْعَلْ، صُمْ وَأَفْطِرْ، وَنَمْ وَتَمَّ، فَإِنَّ لِحَسَبِكَ عَلَيْكَ حَقًّا، وَإِنَّ لِعَيْنِكَ عَلَيْكَ حَقًّا، وَإِنَّ لِرِزْوَجِكَ عَلَيْكَ حَقًّا (متفق عليه)

Means:

"O 'Abdullah, have I not been told that you fast during the day and perform worship (prayer) at night? I ('Abdullah) replied: Yes, O Messenger of Allah. The Messenger of Allah said: Do not do it! Fast, break the fast, pray at night, and sleep. Indeed, your body has a right over you, your eyes have a right over you, and your wife has a right over you" (Muttafaq 'Alaihi)

While the second opinion argues intellectually that the right of *mabīt* belongs to the husband so that the husband has the right to leave it. However, this opinion is argued that if the right of *mabīt* belongs to the husband, then it also becomes the right of the wife. And this is reinforced from the previous words of the Prophet Muhammad SAW that wives have rights to their husbands. As for how long the right of *mabīt* is given to the wife, scholars have different opinions. Some say that the right to *mabīt* is given once every four nights, while others say that there is no specific limit because it is returned to the needs of each husband and wife. Regarding the imposition of the right to *mabīt* in the condition of not polygamy, so far there has been no opinion from the scholars of the madhhab regarding whether it is permissible or not. This is based on the fact that they consider it impossible for a husband who has only one wife to impose the right of *mabīt* on him. Whereas if a polygamous husband wants to impose the *mabīt* rights of his wives, then the classical scholars have discussed this in the discussion of *zawāj nahāriyyāt wa layāliyyāt*. (Al-Hujailan, 2009)

While abortion for the wife in the lens of classical jurisprudence, classical scholars also have different opinions. If summarized, it will produce a table approximately as follows:

No	Madhhab	Opinion
1	Narrated by Ahmad	The wife is prohibited from asking for alimony if her husband is in a difficult situation and he is willing to accept the condition.
2	Syafi'iyah	The condition of imposing the wife's alimony rights is an invalid condition so that the marriage with this condition is valid by contract but the condition is void so that the condition must be canceled.



3	Malikiyah	The contract and its conditions must be canceled if the wife has not been honeyed and is valid by the contract but the conditions are canceled if the wife has been honeyed.
4	Other narration from Shafi'iyah Ahmad from Ibn Hazm	Cancel the contract and conditions because it is likened to a <i>muḥallil marriage</i> .

In *misyar* marriage, there are several advantages that can be achieved for married couples, including:

1. Cost savings: *Misyar* marriage allows the husband to avoid the obligation of maintenance, such as clothing, food, and board. This can reduce the financial burden for husbands, especially for those with economic limitations. (Al-Fitri, 2020)
2. Wife's economic independence: Women who marry in *misyar* are often those who are financially established. Thus, they do not depend on their husbands to provide for their maintenance and can manage their own household finances. (Shiddiqi, 2020)
3. Solutions to personal needs: *Misyar* marriage can be an alternative for individuals who want to meet their emotional and biological needs without having to be bound by marital obligations. This can be an option for women who prefer to have a partner without having to share their daily lives. (Al-Fitri, 2020)
4. Avoiding adultery: With the reality of *nikah misyar*, individuals who cannot get married by fulfilling their maintenance obligations can avoid committing adultery because the two have a valid bond even though they do not live together. (Arifin, 2019)

But on the other hand, the *misyar* marriage can be an entry point to a much more massive damage if this marriage is allowed especially widely because it is very easy to carry out the *misyar* marriage so that there can be a man who gets married whenever he wants and divorces his wife if he wants without having to care about what happens to his family. (Ath-Thayyar, 2011)

Among the negative consequences born from *misyar* marriage that can harm a couple are as follows:

1. Loss of wives' rights: In *misyar* marriage, the wife must give up her rights such as birth support and residence. This has the potential to cause injustice and losses to wives in the long run.
2. Risk of economic uncertainty: Although the wife may be financially independent, uncertainty regarding support from her husband in emergency situations and urgent needs remains. If the husband does not provide any maintenance at all, the wife may face difficulties in the face of an economic crisis. (Yazid, 2020)
3. Social and emotional impact: This model of marriage can potentially create social stigma against women involved in *misyar marriage*. In addition, a relationship that is not accompanied by full commitment can lead to emotional problems and dissatisfaction. (Al-Fitri, 2020)
4. Failing to achieve the purpose of marriage: One of the main goals of marriage in Islam is to build a peaceful, loving, and merciful family. *Misyar* marriage often fails to achieve this goal because the couple does not live together and does not share household responsibilities in full. (Yazid, 2020)

Yusuf Qardawi's view of *misyyār* marriage finds its relevance to the concept of legal change echoed by Ibn Qayyim. Ibn Qayyim stated that the Shari'ah is enforced for the benefit of the servants in this world and in the Hereafter. Furthermore, it was emphasized that actually the foundation and principles of sharia are the law and the benefit of servants in this life and the hereafter. Shari'a brings justice, mercy, wisdom and benefit to all. The statement shows that benefits are the principle for changing legal fatwas according to changes in time, place, circumstances, and customs that apply in a place in accordance with the purpose and benefits desired by the sharia maker when enacting a law. Therefore, the shari'a provides different laws for different situations, conditions, and activities. (Basri, 2018)

Benefit as a substance of sharia has experienced differences along with different times, places, situations, intentions, and customs. That means that the occurrence of differences in eras, places, situations, intentions, and customs becomes the legitimacy and reason for the change of law. Ibn Qayyim's view shows that Islamic sharia is flexible and adaptive in responding to every change and development. In fact, Ibn Qayyim argued that Islamic law can be interpreted and translated according to the social context of the ummah. (Rahmawati, 2017)

The essence of the legal changes mentioned is basically a small part of many problems whose legal consensus may differ in different times, places, and conditions. For this reason, a hard effort is needed in order to harmonize the reality of life with Islamic law that is sourced and based on the Qur'an and Sunnah. It is realized that many of the problems that arise today have not yet been found in the classical *khazānah* fiqh. Likewise, there is a problem that the previous scholars have established a legal consensus so that it is considered final, but the reliants say otherwise in line with the development of the times, places and situations.

Yusuf Qardhawi who argues that *misyyār* marriage is basically a valid marriage because of the fulfillment of the harmony and conditions as marriage in Islam. *Misyār* marriage can be a solution in response to the changing times, where women have the right to abort their livelihood if they wish. In addition, for a man who has to work away from his wife, he can have polygamy with another woman and agree with him to abort his livelihood as long as he is not bound by conditions that annul the marriage.

Therefore, the door of *ijtihad* must always be opened in order to realize Islamic sharia as a sharia that is suitable for each era and place. (Darwis, 2017) The social reality of society is something that is not static, it is constantly changing along with the pace of time caused by the factors that drive it. According to sociologist Soerjono Soekanto in his book entitled *Sociology of an Introduction*, these factors include contact with other cultures, an advanced formal education system, an attitude of appreciating one's work and his desire to advance, an open system at all levels of society, a heterogeneous population, and people's dissatisfaction with certain areas of life. (Ipandang, 2019)

Yusuf Qardhawi ignores the prohibition of *misyyār* marriage which is based only on the purpose of marriage. This is based on changes in conditions, places, times, and traditions so that Islamic law really applies to every time and time with its dynamic nature. Seeing the development of this modern era, many women are already able to be independent in terms of economics so that the obligation to provide a living and provide a place to live for a husband needs to be reconsidered. Especially for women who work in strategic sectors with very high salaries which are often much higher than the income of a husband. Is the obligation of maintenance still imposed on the husband in the practice of *misyyār* marriage? *Misyār* marriage is not only a means for unmarried elderly women. *Misyār* marriage will be able to avoid indecent acts, such as gathering kebo, *free sex*,

and avoid public gossip, especially for old women who are still single, will be in the spotlight of many people. Especially if the woman works in the public sector. The assumption of society will be more or less negative towards the woman. Women used to be more busy as housewives. Women used to only rely on wealth from their parents' inheritance and maintenance from their husbands, in contrast to women today who can earn their own money. (Halilurrahman and Luwihta, 2023)

In addition, with the development of the times, many men were found who worked far from their place of origin. In this day and age, jobs are very varied such as working on a cruise ship, being a pilot, and even being a miner. In the world of shipping, for example, every man will go to another country for a long period of time while their wives stay at home. Because the man needed to fulfill his biological desires, they married the woman where they were pulling. Generally, the women she marries are willing and know that the man she marries will not stay forever and only come back if possible. (Saepullah and Hanafiah, 2017)

In addition, the increasingly massive spread of Islam that has even touched the western world requires a mujtahid to be able to relate the teachings of the Qur'an in accordance with his dogma, namely *ṣaliḥ liḥikullī az-zamān wa al-makān*. The life of the Muslim community there is different from Muslims in general, such as in the Middle East or some countries in Asia, both in terms of number and the application of religious rules. (Firdaus, 2022) With different conditions and situations, it is possible that there will be differences in marriage practices as generally occur in Muslim-majority countries, including the validity of nikah *misyār* as a solution to marriage in the contemporary era.

Indeed, basically a perfect marriage is a marriage where men are able to play an active role in the family. He exists to protect and guide his wife and children and ensure that what they consume is halal and comes from their hard work so that it is guaranteed to be halal. Yusuf Qardhawi also conveyed that if husband and wife protect each other's rights, it will be the reason for the survival of a household (Al-Qaraḍāwī, 2005) as QS. Al-Baqarah verse 228:

وَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ

Translation:

"They (womens) have rights balanced with their obligations in the proper way. But husbands have an advantage over them."

Regarding the validity of the *misyār* marriage, Yusuf Qardhawi did not express his opinion alone. Some scholars agree on the validity of the *misyār marriage*. Among them is the Grand Sheikh of Al-Azhar Muhammad Sayyid Tantawi who allows as long as his contract is in accordance with the concept of *sharia* and has agreed to impose the rights of wives. Because basically marriage is based on affection and grace and it can be obtained from the willingness of husband and wife. (Al-Hujailan, 2009)

Abdullah Muhammad Aṭ-Ṭayyar assessed the *misyār* marriage with the *sadd ḥarā'ah* approach. Abdullah Muhammad Ath-Thayyar views that *misyār* marriage has the potential to give birth to long-term damage. *Misyār* marriage will cause complex problems, especially in the lens of feminism. Women are only considered as objects of mere lust gratification because the livelihood that should be an honor for them has been aborted. In addition, *misyār* marriage cannot realize the main purpose of marriage, which is the existence of affection.

In addition, it is permissible to marry *misyār* on the basis of concealment and concealment from public delusion when the basis of a marriage should be declared to avoid slander. *Misyār marriage* also denounces the dignity of women because in *nikah misyār*, if a woman asks for equality of rights, she will be in the shadow of divorce. This is because there is no other purpose other than to fulfill his sexual desires without any responsibility. Children born from the practice of *misyār marriage* will feel unfamiliar with their fathers because they rarely meet, which has an impact on the poor education and morals of their children. (Nugroho, 2019) In the practice of *misyār* marriage, especially for those whose marriages are not registered and registered, a husband who is married and has a wife and polygamy in *misyār* has the potential to be sinned as a consequence because he comes to the second wife without the knowledge of the first wife and will spend his time marrying the wife he married in *misyār* and potentially neglects the right of his first wife to marry. (Trigiyatno, 2021)

*Misyār marriage* can be a problem of gender injustice for women. Gender differences can cause injustice that is manifested in various forms of injustice in the socialization of gender role values ideology. (Fakih, 2008) Women in *misyār* marriage are labeled as inferior, weak and easily deceived by men because they give up some of their rights that are usually obtained in marriage in general that Islam has given to all women without exception. Women who marry *misyār* have the potential to be labeled as a source of slander and accused of destroying other people's family relationships.

This is based on the practice of *nikah misyār* which is generally a second marriage and is hidden. If it is known by the first wife and the wider community, then there may be a stigma that women who marry in the *misyār* manner are destroyers of other people's relationships. (Fakih, 2008) *Misyār marriage* has the potential to create subordination in gender injustice that puts women in an unimportant position. (Fakih, 2008) The assumption that women are not important or just a complement to men's interests. In *misyār* marriage, women are only used to satisfy men's lust. Men only visit when they only need biological needs and women must comply with that desire because it is considered that women in their lives are never independent. (Nugroho, 2019)

Understanding the reality and conditions of society will give a lot of consideration in understanding *naṣ* and its application of law. Misunderstanding can lead to mistakes in establishing laws or not fulfilling a sense of justice. It will be difficult to get a good understanding of a legal thought if it is separated from the concept of *mujtahid*. Because any intellectual activity is not separate from the character of social problems. The condition of the community is the main consideration in making changes to fatwas that refer to *maṣlaḥat* and *mafsadah* which are the goals and intentions of the sharia. An action that is intended to bring benefits can be beneficial, but under certain conditions, the aspect of *mafsadah* can be greater. (Purwanto and Johari, 2017) As in the opinion of Abdullah Muhammad Aṭ-Ṭayyar who considers that *misyār* marriage cannot be implemented in a society that has a relatively low level of faith so that it can make *misyār* a shortcut that seems to be in accordance with sharia just to release the orgasm of one's lust.

After paying attention to the aspects of *maṣlaḥat* and *mafsadah*, the next thing a *mujtahid* is to determine a law based on *istidlāl*. *Sadd Ḍarī'ah* is an option of *istidlāl*, which is to close the way to disobedience. Ibn Qayyim is of the view that *taklīf* consists of *amar* and *nahi*. *Amar* is divided into an order over something in question and an order on an intermediary (الأمر بالشيء أمر بوسائله) Likewise with the prohibition. So reject intermediaries who convey something that is haram included in the realm of *taklīf*. (Purwanto and Johari, 2017) In the concept of *Sadd Ḍarī'ah*, Abdullah Muhammad Aṭ-Ṭayyar argues that this marriage has the consequence of causing great damage rather than its benefits, so he forbade it even though it is valid by contract as a form of avoiding *mafsadah* which includes weakening the *qawāmah* of men over women, reducing his role

as a father to his children, and providing a gap for someone who takes refuge behind the word ' *Misyār* ' as a means of satisfying his sexual desires. (Mahgob, 2019)

## 6. Conclusion

Abdullah Muhammad Aṭ-Tayyar's opinion is supported by the rule that says that if a matter that contains mafsadat that has consequences for a haram must take precedence over the aspect of maslahat that contains the meaning of ability. Marriage is basically mubah and not mandatory, but avoiding haram is an obligation, so avoiding haram should be prioritized.

However, the author argues that *misyār marriage* can be permissible for those who are already in the compulsory stage of marriage, that is, those who are prejudiced that if they do not marry, they will fall into vile and evil acts. This condition is motivated by the fact that if she is physically and mentally (Burj, As-Saman and Al-Masri, 2020) capable but economically unable and finds a woman who agrees to ease the burden of the man not to provide partial or full birth support, then it is permissible according to the rule of "إعمال أخف الضررين" (Mubarak, 2002)

Furthermore, the opinion of Abdullah Muhammad Aṭ-Tayyar is refuted by Yusuf Qarḍāwī who argues that the main purpose of marriage is precisely the fulfillment of sexual desires. This goal cannot be aborted for any reason and condition (Al-Qarḍāwī, 2010). In contrast to different birth maintenance following certain conditions and factors, the desire for human sexuality will forever be the same. Therefore, its fulfillment must be guaranteed by the sharia by paying attention to changing conditions and factors.

In Yusuf Qarḍāwī's view, the fulfillment of sexual desire is not a despicable goal at all. Harsat has become human nature and Islam does not see it as a disgusting thing at all, so Islam accommodates it by marriage. (Al-Qarḍāwī, 2010) However, dynamic human habits and customs require the *mujtahid* to innovate with the aim of maintaining the relevance of Islam to the changing times.

## 7. References

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