

CONTEXTUAL REASSESSMENT OF THE SAUDI MISYAR MARRIAGE FATWA IN INDONESIA

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Abstract

This study aims to analyze the foundational reasoning behind the fatwa on misyar marriage in Saudi Arabia and to assess its relevance and potential application within the context of Islamic family law in Indonesia. The research employs an ushul fiqh approach through three analytical stages: *takbrīj al-manāṭ*, *tanqīh al-manāṭ*, and *tahqīq al-manāṭ*. It adopts a normative-qualitative method, utilizing primary sources such as Saudi fatwas, as well as contemporary fiqh literature and related academic studies. The findings indicate that the permissibility of misyar marriage in Saudi fatwas is grounded on three main ‘illats: the fulfillment of the essential pillars and conditions of marriage, the permissibility of voluntarily waiving certain marital rights (*tanāẓul al-ḥuqūq*), and the presence of specific social needs (*ḥājah*). However, through the process of *tahqīq al-manāṭ*, it is found that these ‘illats are not fully applicable within the Indonesian context. Differences in legal systems, social structures, and the lack of adequate legal protection for women and children render the practice of misyar marriage more likely to produce harm (*mafsadah*) than benefit (*maṣlahah*). Therefore, although misyar marriage may be considered valid from a fiqh perspective, its application in Indonesia lacks strong socio-legal justification. This study underscores the importance of a contextual approach in applying fatwas across different jurisdictions, as well as the necessity of considering the objectives of Islamic law (*maqāṣid al-syarī‘ah*), particularly in protecting the rights of women and children within Islamic family law.

Abstrak

Nikah misyar merupakan salah satu fenomena fikih kontemporer yang memunculkan perdebatan tidak hanya pada aspek keabsahan akad, tetapi juga pada kesesuaian dengan maqāṣid al-nikāḥ dan implikasi sosialnya. Artikel ini bertujuan untuk menganalisis dasar-dasar fatwa nikah misyar di Arab Saudi melalui pendekatan takhrīj al-manāṭ, menyaring ‘illat hukumnya melalui tanqīh al-manāṭ, serta menguji relevansinya dalam konteks Indonesia melalui tahqīq al-manāṭ. Penelitian ini menggunakan metode hukum normatif-kualitatif dengan pendekatan ushul fikih, berbasis pada studi literatur terhadap fatwa ulama Saudi dan kajian akademik kontemporer. Hasil penelitian menunjukkan bahwa ulama yang membolehkan nikah misyar mendasarkan hukum pada terpenuhinya rukun dan syarat akad, kebolehan pelepasan sebagian hak istri, serta adanya kebutuhan sosial tertentu. Sebaliknya, ulama yang menolak menitikberatkan pada ketidaksesuaian dengan maqāṣid al-nikāḥ, rusaknya muqtadha al-‘aqd, dan potensi mafsadah. Melalui proses tanqīh al-manāṭ, ditemukan bahwa perbedaan tersebut berakar pada perbedaan penentuan ‘illat inti antara pendekatan formal-struktural dan substantif-teleologis. Sementara itu, melalui tahqīq al-manāṭ, penelitian ini menegaskan bahwa ‘illat kebolehan nikah misyar di Arab Saudi tidak sepenuhnya relevan dalam konteks Indonesia, terutama karena perbedaan sistem hukum, struktur sosial, serta tingkat perlindungan terhadap perempuan dan anak. Dengan demikian, meskipun nikah misyar dapat dinilai sah secara fikih, penerapannya di Indonesia berpotensi menimbulkan mafsadah yang lebih besar daripada maslahat. Oleh karena itu, fatwa kebolehannya tidak dapat diadopsi secara langsung, melainkan harus diposisikan sebagai pengecualian yang bersifat kontekstual. Penelitian ini menegaskan pentingnya pendekatan tahqīq al-manāṭ dalam memastikan relevansi fatwa lintas konteks, sekaligus memperkuat integrasi antara metodologi ushul fikih dan realitas sosial dalam pengembangan hukum keluarga Islam kontemporer.

Keywords: Nikah Misyar; Fatwa; Takhrij Al-Manat; Tanqih Al-Manat; Tahqiq Al-Manat



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INTRODUCTION

The phenomenon of misyar marriage is one of the contemporary fiqh issues that continues to raise debates, both at the conceptual and implementive levels. The development of this practice in a number of Gulf countries, especially Saudi Arabia, shows the existence of socio-economic dynamics that demand the flexibility of the marriage model without eliminating the validity of the sharia contract. In the scientific context, the importance of the study of misyar lies in its position as a form of Islamic law response to modern social changes, especially when the practice of marriage is faced with the realities of urbanization, high mobility, and changing patterns of family relations. Furthermore, in Indonesia, the issue of misyar has gained its own relevance because it intersects with the problems of marriage registration, women's protection, and family law certainty. Therefore, research on the misyar marriage fatwa and its possible application in Indonesia is important to enrich the discourse of contemporary fiqh and family law.

Several previous studies have examined misyar marriage from different angles. Kasim et al. through the Method of Determination of the Law of Marriage Misyar Perspective Yusuf al-Qardawi emphasized that the ability of misyar according to al-Qaradawi is based on the consideration of maslahat and the willingness to relinquish certain rights by the wife.¹ Fajri et al. in Wahbah al-Zuhaili's Analysis of Opinions on the Marriage of Misyar Perspective of Maqasid al-Sharia'ah found that although misyar can fulfill the basic purpose of marriage, it is not fully capable of realizing a more comprehensive maqasid.² Busyro in his article Questioning the Law of Marriage Misyar emphasized that misyar tends to fail to fulfill the maqasid of al-asliyyah and al-tab'iyah because it emphasizes formal legality rather than family functions. Mariani through the Misyar Marriage Perspective of Women and Child Protection Law highlights the vulnerability of women and children in the practice of misyar if it is not accompanied by adequate legal protection.³ "Misyar Marriage: Aspects of Maslahah and Mafsadah" by Sunarto et al. discusses how Misyar Marriage contains elements of maslahat in the form of flexibility for certain couples, but also has the potential to cause mafsadah, especially related to the release of wife rights which can weaken the stability of the household.⁴ "Unraveling the Controversy and Benefits of Misyar Marriage" by Fatimawali, outlines the pro-cons of misyar debate by emphasizing that although misyar is considered to provide a practical solution under certain conditions, this practice still carries the risk of injustice to women due to the reduction of basic rights in marriage.⁵ Research on misyar marriage has also been carried out by Abd. Rouf (2024) through a study of the views of the figures of the Indonesian Ulema Council (MUI) in Malang City. The study shows that the

¹ M Kasim dan Hijrayanti Sari, "Metode Penetapan Hukum Nikah Misyār Perspektif Yusuf al-Qardāwī," *BUSTANUL FUQAH: Jurnal Bidang Hukum Islam* 2, no. 3 (2021): 509–20, <https://doi.org/10.36701/bustanul.v2i3.400>.

² Khiyaroh, "Nikah Misyar dalam Prespektif Hukum Progresif dan Undang-Undang Perkawinan Di Indonesia" 6, no. April (2025): 165–80, <https://doi.org/10.46773/usrah.v6i2.1852>.

³ Mariani Mariani, "Nikah Misyar Perspective Of Women And Child Protection Law," *JOURNAL OF ISLAMIC AND LAW STUDIES* 9, no. 3 (2025): 191–203, <https://doi.org/10.18592/jils.v9i3.18006>.

⁴ Muhammad Zainuddin Sunarto and Zainuri Chamdani, "Nikah Misyar; Aspects of Maslahah and Mafsadah," *Media Bina Sains* 15, no. 8 (2021): 4929–40.

⁵ Fatimawali Fatimawali, "Mengurai Kontroversi Dan Manfaat Nikah Misyar," *Al Qodiri: Jurnal Pendidikan, Sosial dan Keagamaan* 22, no. 2 (2024): 93–103, <https://doi.org/https://ejournal.kopertais4.or.id/tapalkuda/index...>

assessment of misyar marriage is not only based on the validity of the harmony and fiqh requirements, but also considers the social context, legal implications, and protection of the rights of women and children in the Indonesian legal system.⁶

The difference in scholars' views on misyar marriage shows that this issue does not only revolve around the normative debate of the postulate, but also on the construction of 'illat and the social context that surrounds it. However, previous studies have generally stopped at mapping the pros and cons of the ability of misyar marriage or on the description of its social impact, without adequate methodological testing of the validity of 'illat fatwa in different contexts.⁷ The approach of ushul fiqh through *takhrīj*, *tanqih*, and *tahqīq al-manat* has not been widely used systematically to assess whether the 'illat built into the misyar marriage fatwa is really relevant when applied across countries.⁸ As a result, the fatwa is often treated as if it were universal. On that basis, this article offers a contextual analysis of ushul fiqh by placing *tahqīq al-manat* as the main framework to assess the relevance of the fatwa of the misyar marriage in Saudi Arabia in the context of Islamic family law in Indonesia.

The novelty of this study lies in its methodological examination of the 'illat underlying the fatwa on misyar marriage, rather than merely mapping competing views. By employing the framework of *uṣūl al-fiqh*, particularly *tahqīq al-manāt*, this research critically challenges the assumption of the universality of Saudi Arabian fatwas while assessing their relevance within the structurally different social context and legal system of Indonesia. This approach goes beyond *maqāṣid* analysis or social impact, extending to an epistemological evaluation of the legal construction itself. In addition, this study integrates normative analysis with Indonesia's positive law, particularly in relation to women's protection and legal certainty in family law, thereby offering a more contextual, critical, and applicable model for interpreting fatwas.

The purpose of this study is to explain the basics of the fatwa of Saudi Arabian scholars in establishing the law of misyar marriage through the *takhrīj al-manat* approach, as well as to reassess the relevance of the 'illat through *tahqīq al-manat* in the Indonesian context. This research also aims to measure the potential application of misyar in Indonesia by considering positive laws, social structures, family culture, and the principle of women's protection. Theoretically, this study enriches the literature on istinbat methodology on contemporary family issues. Practically, the results of this study are expected to provide a comprehensive understanding for academics, practitioners of Islamic law, and fatwa institutions about the limits of the application of misyar and its considerations in the Indonesian socio-legal context.

This study employs a normative-qualitative legal approach grounded in *uṣūl al-fiqh* methodology, particularly through the frameworks of *takhrīj al-manāt*, *tanqih al-manāt*, and *tahqīq al-manāt*. The research is based on a systematic literature review of primary sources, including Saudi Arabian fatwas and contemporary scholars' opinions on misyar marriage, as well as secondary sources related to Islamic family law, *maqāṣid al-syarī'ah*, and contemporary fiqh studies. The analysis focuses on identifying the legal 'illats underlying the permissibility of misyar marriage and reassessing their applicability within the socio-legal context of Indonesia.

⁶ Abd Rouf, "Reevaluating the Legal Status of Misyār Marriage: Contextual Insights from Figures of the Indonesian Ulema Council in Malang City," *Al-Hukama': The Indonesian Journal of Islamic Family Law* 14, no. 2 (2024): 232–60, <https://doi.org/10.15642/alhukama.2024.14.2.232-260>.

⁷ Aslati Aslati et al., "Utilizing Science and Maqāṣid al-Sharī'ah in Resolving Contemporary Issues of Islamic Family Law," *Al-Manābij: Jurnal Kajian Hukum Islam* 18, no. 1 (2024): 17–36, <https://doi.org/10.24090/mnh.v18i1.10571>.

⁸ Ismail Jalil et al., "The Implementation of Tanqih Al-Manath Theory in Ushul Fiqh: An Analysis of Marriage Law Issues in Indonesia," *Jurnal Ilmiah MIZANI* 11, no. 02 (2024): 401–20, <https://doi.org/10.29300/mzn>.

SAUDI ARABIAN FATWAS ON MISYAR MARRIAGE

Etymologically, the term *misyar* comes from the root word *sara-yasiru*, which means "to walk" or "to go." Thus, a misyar marriage can be interpreted in language as a marriage that is carried out by way of visitation, namely a marriage in which the husband does not live with his wife permanently.⁹ The term misyar is a word that is *'amiyyah* (conversational language), which is used in the Najd region of the Kingdom of Saudi Arabia with the meaning of "visit during the day". Therefore, the marriage called nikah misyar is so called because the husband usually only visits his wife during the day, as is the custom of people who visit their neighbors.¹⁰

The terminology of contemporary fuqaha' interprets marriage misyar as a marriage contract that is valid according to shari'i because of the fulfillment of the harmony and marriage conditions of the prospective husband, future wife, guardian, two witnesses, and *ijab qabul*, but accompanied by the agreement of one of the parties, generally the wife, to relinquish some of her rights such as alimony, cohabitation, or division of turn time. Yusuf al-Qaradawi defines misyar as the release of the husband from the obligation to provide shelter, maintenance, and justice in the division of time (*qism*) between the first wife and the other wives, as a form of willingness on the part of the wife. Where the wife wants a man who can maintain her honor, protect her, and accompany her, even without demanding any obligations from her, because she already has her own financial sufficiency and ability.¹¹ Similarly, Wahbah al-Zuhayli called misyar a form of marriage that still fulfills all the pillars and conditions of the validity of the contract, but has a fundamental difference from marriage in general.¹² In practice, wives voluntarily give up some of their rights that are usually obtained in a normal marriage, such as the right to get a place to live, alimony, and the right to spend the night with her husband.¹³

Saudi Arabian scholars generally define marriage misyar as a marriage contract that is valid according to sharia, but accompanied by the abortion of some of the wife's rights that are additional such as residence, routine maintenance, or division of turns. This practice is seen as a social response to contemporary conditions that demand flexibility in household settings. The Islamic Fiqh Council in Mecca provides a more formal definition, namely a marriage contract in which the wife relinquishes the right to residence, alimony, or rotation either in whole or in part and she is willing if her husband comes to her residence at any time according to her ability.¹⁴ Thus, misyar is understood as a marriage contract that is harmonious and the conditions are still met, while some of the wife's rights are voluntarily released without violating the basic purpose of the marriage itself. This view is strengthened by the results of the study of Markaz al-Buhuts al-Syar'iyyah under the Egyptian Dar al-Ifta', which affirms that marriage misyar is considered valid and permissible as long as the contract fulfills the pillars of marriage and all conditions that are

⁹ Musdalifah Musdalifah, Hamzah Hasan, dan Muhammad Shuhufi, "Nikah Misyar Perspektif Fikih Kontemporer," *Istidal: Jurnal Studi Hukum Islam* 12, no. 1 (2025): 44–65, <https://doi.org/10.34001/ijshi.v12i1.7746>.

¹⁰ 'Abdullah Hizam Fahid Al-'Ajmi, "Nikah Misyar," *Dar Al-'Ulum Faculty Magazine (مجلة كلية دار العلوم)* 38, no. 133 (2021): 599–631, https://mkda.journals.ekb.eg/article_204293.html.

¹¹ Yusuf Al-Qaradawi, *Zawaj al-Misyar: Haqiqatuhu wa Hukumuhu* (cairo: Maktabah Wahbah li al-Taiba'ah wa al-Nashr, 2005), <https://bokawy.com/ktab-zwaj-al-msyar-hqyqth-whkmh>.

¹² Lathifah Munawaroh, "Ketimpangan Pemenuhan Hak Istri Pada Pernikahan Misyar Dalam Pemikiran Wahbah Al-Zuhaili," *Jurnal Muslim Heritage* 6, no. 1 (2021), <https://doi.org/10.21154/muslimheritage>.

¹³ Ismanul Fajri dan Helmi Basti, "ANALISIS PENDAPAT WAHBAH AL-ZUHAILI (w. 1437 H) TENTANG NIKAH MISYAR PERSPEKTIF MAQASHID AL-SYAR'AH," *Familia: Jurnal Hukum Keluarga* 4, no. 1 (2023): 49–67, <https://doi.org/10.24239/familia.v4i1.81>.

¹⁴ Qarārāt al-Dawrah al-Thāminah 'Asharah, "Majma' al-Fiqh al-Islāmī" (Makkah, n.d.), 465.

considered valid in Islamic law. This shows that, despite objections from some Egyptian scholars regarding the ethical or social aspects of misyar, its official fatwa institution still recognizes the validity of the contract within the framework of classical Islamic law. This approach also shows that the difference of scholars' views is not on the formal validity aspect of the contract, but on the assessment of the social impact and *maqasid al-nikah*.¹⁵

Shaykh 'Abd al-'Azīz Ibn Bāz is one of the Saudi scholars who is often used as a reference in the discussion of misyar marriage. In his work *al-Fatawa al-Syar'iyyah fi al-Masa'il al-'Asriyyah*, he emphasized that there is no prohibition for a man to marry a woman who remains in the house of his parents as long as the contract fulfills the provisions of the Shari'ah, namely the existence of a guardian, the willingness of the two brides, the presence of two fair witnesses, and the absence of a barrier factor to the contract.¹⁶ However, in another statement published in *Majallat al-Da'wah* (no. 1639), Ibn Bāz conveyed a more cautious attitude. He emphasized that every Muslim is obliged to perform a marriage in a manner that is fully in accordance with the Shari'ah, regardless of the term used to refer to the contract. Therefore, if in practice the misyar marriage violates the provisions of the sharia, then what must be rejected is the deviation of the practice, not the name of the contract.¹⁷

Shaykh 'Abdul 'Aziz bin 'Abdillāh Āl al-Shaykh explained that misyar marriage is basically permissible as long as all the pillars and conditions of marriage are fulfilled and there is a clear announcement, so that it does not raise suspicion or accusations. He emphasized that any form of additional agreement between the two parties returns to the conditions they determine themselves as long as they do not conflict with the provisions of the Sharia. The moderate attitude was also conveyed by the Imam of the Grand Mosque, Shaykh Sa'ud al-Shuraiim.¹⁸ According to him, errors in the application of the misyar marriage cannot be used as a reason to ban the contract absolutely. He emphasized that the damage arising from abandoning the practice of misyar could be greater than the damage arising from its existence, as long as the contract is carried out correctly in accordance with the provisions of sharia. This approach shows an attempt to combine two important aspects: the formal validity of the contract and considerations of potential negative impacts that are relative and highly dependent on the social context.¹⁹

In addition to the permissible opinion of scholars, a number of contemporary scholars expressly reject marriage misyar and consider that this practice is contrary to *maqasid al-nikah* (the objectives of marriage) and the consequences of the contract. Among them were Shaykh Muhammad Nasiruddin al-Albani, Dr. Muhammad az-Zuhayli, Dr. 'Umar Sulayman al-Ashqar, Dr. 'Abdullāh al-Juburi, Dr. 'Ali Muhyiddin al-Qaradhadhi and Dr. Malikah Zarar. They are of the view that the conditions that usually accompany misyar such as the abortion of alimony, the right of rotation, or the right to live together are contrary to the natural consequences of the marriage contract and eliminate the element of justice between the wives. They consider this practice to damage the wisdom of marriage because of the loss of *mawaddah* (affection), *sakinah* (tranquillity), and *rahmah* (mercy), which can only be realized through permanent togetherness and

¹⁵ Al-'Ajmi, "Nikah Misyar."

¹⁶ Syaikh Khalid al-Juraysi, *al-Fatawa al-Syar'iyyah fi al-Masa'il al-'Asriyyah*, n.d.

¹⁷ 'Abd al-'Aziz Ibn Baz, "Majallat al-Da'wah," 1419.

¹⁸ Ihsan Yilmaz dan Nicholas Morieson, "Religious Populisms in the Asia Pacific," *Multidisciplinary Digital Publishing Institute* 13, no. 9 (2022), <https://doi.org/10.3390/rel13090802>.

¹⁹ Al-'Ajmi, "Nikah Misyar."

responsibility. In addition, the nature of misyar, which is often kept secret, is considered to cause social suspicion and opens up opportunities for violence or slander in the community.²⁰

The scholars who reject it also use the *sadd al-dzari'ah* approach to show that misyar has great potential to lead to moral and social damage, including the exploitation of women through "marriage", which simply serves as a legalization of sexual relations without family responsibility. In their perspective, misyar is contrary to the *maqasid* (objectives) of marriage which places the custody of offspring as the primary goal and the fulfillment of biological needs as the secondary goal. The concept of *qiwamah* (husband's leadership), which relies on the character of male nature and the obligation to provide for sustenance is also considered to be unrealizable in the format of misyar. Furthermore, some scholars even consider misyar as a gap that approaches the practice of mut'ah, because it is prone to being done secretly, easily ending with talaq, accompanied by minimal dowry, and even sometimes carried out without a guardian. They warn that this kind of practice could turn into the commodification of sexual relations through the "instant marriage" services that have taken place in some places, thereby undermining the moral structure of society and degrading the dignity of women.²¹

ANALYSIS OF TAKHRIJ, TANQIH AND TAHQIQ AL-MANAT IN THE FATWA OF MISYAR MARRIAGE

Takhrij al-Manat in the Fatwa on Misyar Marriage

Etymologically, *takbrīj* means "to extract" or "to bring forth," thus *takbrīj al-manat* refers to the process of identifying and deriving the effective legal cause (*'illah*) from various indications found within the sources of Islamic jurisprudence. This concept denotes an analytical effort to trace and determine the most appropriate *'illah* among several possible causes proposed by jurists. In this sense, *takbrīj al-manat* functions as a methodological tool to extract the underlying legal reasoning that shapes juristic judgments on a particular issue. In the context of misyar marriage, this method enables the identification of consistent patterns of legal reasoning across different fatwas, even when issued by diverse authorities.²²

The fatwas of Saudi scholars and fiqh institutions generally distinguish between the formal validity of the marriage contract and the evaluation of its potential social consequences. Through the framework of *takbrīj al-manat*, this distinction serves as a preventive analytical step to uncover the rational legal basis underlying the permissibility of misyar marriage. First, classical fiqh establishes that the validity of a marriage depends on the fulfillment of its pillars (*arkān*) and conditions (*shurūṭ*), as well as the absence of legal impediments. Accordingly, if these requirements are satisfied, the contract is considered legally valid.²³ This position is supported by scholars such as Ibn Bāz, Āl al-Shaikh, and the Islamic Fiqh Council in Mecca. Within this framework, the term "misyar" is treated merely as a nominal label without independent legal consequence, thereby placing the focus of validity solely on the structural elements of the

²⁰ 'Āmir Muṣṭafā Aḥmad Al-Dabbāgh dan Qays 'Abd al-Wahhāb 'Īsā Al-Ḥayālī, "Pernikahan Misyar antara Kedaruratan dan Legalitas (Keabsahan Syariat)," *Jurnal Al-Nahrain untuk Ilmu Hukum* 27, no. 3 (2025), journal.nahrainlaw.org/index.php/ar/article/view.

²¹ Al-Dabbāgh dan Al-Ḥayālī.

²² Nurul Aulia Dewi dan Tuti Anggainsi, "Menelusuri 'Illat Hukum dalam Ushul Fiqh: Sebab, Hikmah, dan Implementasinya dalam Penetapan Hukum Islam," *Indonesian Journal of Multidisciplinary Scientific Studies* 3, no. 2 (2025): 33–40, <https://doi.org/10.33151/ijomss.v3i2.597>.

²³ Muhammad Hamdani, Muhammad Riduwan Masykur, dan Tutik Hamidah, "Akad Pernikahan Melalui Zoom dalam Perspektif Fikih," *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam* 5, no. 1 (2023): 423–32.

contract. This pattern indicates that the *'illah* is primarily constructed upon the formal-structural aspects of the marriage, with relatively limited attention to its substantive and social dimensions.

Second, the issue of the wife's waiver of certain rights constitutes another important aspect in the analysis of *takbrīj al-manāṭ*. Fatwa institutions that permit misyar marriage generally classify rights such as maintenance (*nafaqah*), residence, and equal division of time as supplementary rights that may be voluntarily waived without affecting the validity of the contract, provided that such waiver is free from coercion and does not involve essential rights. This reflects a clear distinction between essential and non-essential rights within marriage.²⁴ Third, permissive scholars argue that misyar marriage remains compatible with the objectives of marriage (*maqāṣid al-nikāḥ*). Despite the reduction of certain material rights, the contract is still considered to fulfill basic objectives such as safeguarding chastity and providing lawful means for fulfilling biological needs. This demonstrates that contemporary Islamic legal reform is not solely grounded in normative legality, but is also directed toward reconstructing the law in order to align it with social dynamics and the needs of modern society through the *maqāṣid al-syarī'ah* approach.²⁵ This pattern reflects the tendency of scholars to balance formal legal validity with considerations of public benefit (*maṣlahah*), although at the same time it may potentially reduce certain ideal objectives of marriage, particularly in terms of protecting wives' rights and establishing a stable family structure.²⁶

The permissibility of misyar marriage is also supported by some Saudi scholars, such as al-Syuraim, who relate it to considerations of social necessity (*ḥajab*), including economic burdens, women's preference to remain with their families, and the socio-cultural dynamics of Gulf societies. While this factor does not serve as the primary *'illah* of legal validity, it functions as a supporting *manāṭ* that explains the social relevance of misyar marriage. Thus, its permissibility is not solely grounded in normative legality, but also in contextual utility.²⁷ This perspective highlights a juristic tendency to distinguish between the conceptual legality of a contract and the pathological aspects of its practice.

In contrast, scholars who reject misyar marriage construct the *manāṭ* on more substantive dimensions, namely its conformity with the inherent implications of the contract (*muqtadha al-'aqd*), the realization of *maqāṣid al-nikāḥ*, and the potential for harm (*mafsadah*). They argue that the waiver of maintenance, residence, and marital companionship is not merely a matter of supplementary rights, but rather an essential component of the marriage contract that cannot be legitimately eliminated. Consequently, such conditions render the contract defective (*fāsid*). Furthermore, misyar marriage is viewed as failing to achieve key objectives of marriage, such as *sakīnah* (tranquility), *mawaddah* (affection), and *rahmah* (compassion), which require sustained cohabitation and responsibility. Additionally, the often secretive nature of misyar marriage is believed to generate social suspicion and increase the risk of abuse and moral disorder.²⁸

²⁴ Asran Asran Dinata, "Kebutuhan Nafkah Biologis Sebagai Alasan Perceraian Perspektif Fikih Dan Undang-Undang Nomor 1 Tahun 1974," 2024, <https://doi.org/repository.uin-suska.ac.id/id/eprint/82035>.

²⁵ Zainal Arifin, Tutik Hamidah, dan Abd Rouf, "ANALYSIS OF MAQASIDIYYAH ON THE COMPILATION OF ISLAMIC LAW AND THE EGYPTIAN AL-WASIYAH LAW REGARDING WAJIBAH BEQUEST FROM IBN ASHUR'S PERSPECTIVE," *Jurnal Muslim Heritage*, n.d., <https://doi.org/10.21154/muslimheritage.v10i1.10733>.

²⁶ Ahmad Al-Mursi Husain Jauhar, *Maqashid syariah* (Amzah, 2023).

²⁷ Achmad Shobirin Hasbulloh, "Fenomena Nikah Misyar Di Arab Saudi," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 2, no. 1 (2024): 167–92, <https://doi.org/10.62976/ijjel.v2i1.378>.

²⁸ Al-Dabbāgh dan Al-Ḥayālī, "Pernikahan Misyar antara Kedaruratan dan Legalitas (Keabsahan Syariat)."

Scholars who oppose misyar marriage also employ the principle of *sadd al-dhari'ah* (blocking the means to harm), arguing that this form of marriage opens the door to moral and social corruption, including the potential exploitation of women under the guise of a legally valid contract. In their view, misyar contradicts the fundamental objectives of marriage, particularly the preservation of lineage, while reducing marriage to a mere means of legitimizing sexual relations without corresponding familial responsibilities. The concept of *qiwamah* (male guardianship), which is grounded in the obligation to provide maintenance and leadership within the family, is also considered unattainable within the misyar framework. Some scholars even argue that misyar resembles temporary marriage (*mut'ah*) in practice, as it is often conducted discreetly, easily terminated, and sometimes accompanied by minimal dowry or procedural irregularities. Such practices are seen as contributing to the commodification of marital relations and undermining the moral fabric of society.

From this analysis, it becomes evident that the divergence of opinions among scholars regarding misyar marriage reflects not merely a difference in legal conclusions, but a deeper methodological divide in determining the *'illah*. On one side stands a formal-structural approach that prioritizes the validity of legal form, while on the other side lies a substantive-teleological approach that emphasizes the objectives and social consequences of marriage. This indicates that the debate over misyar marriage extends beyond the question of formal validity, evolving into a broader discourse on how *maqāsid al-nikāh* and social impacts should be integrated into legal reasoning. While misyar may be considered formally valid, the emphasis on the waiver of rights and the risk of harm suggests a shift in the construction of *'illah* from purely structural considerations toward more substantive and consequential dimensions.²⁹

Tanqīh al-Manāṭ in the Fatwa on Misyar Marriage

Linguistically, *tanqīh* means “to refine,” “to purify,” or “to filter.” In *uṣūl al-fiqh*, *tanqīh al-manāṭ* refers to the process of selecting and determining the most relevant and decisive legal cause (*'illah*) by eliminating additional causes that are weak, insignificant, or do not directly influence the legal ruling.³⁰ Thus, *tanqīh al-manāṭ* represents a stage of refinement aimed at identifying the most essential foundation of a ruling by excluding irrelevant factors. In the context of misyar marriage, this process demonstrates that the differences among scholars do not merely lie in the number of arguments presented, but in which *'illah* is considered most determinative. Among those who permit misyar, the refined analysis reveals three principal *'illat*s: the formal validity of the contract, the classification of the wife’s rights as supplementary rights that may be waived, and the assumption that the minimum objectives of marriage remain fulfilled. This indicates a methodological tendency to prioritize structural validity and flexibility of rights within the contractual framework. Consequently, this stage clarifies the core *manāṭ* that serves as the axis of legal judgment in a given case.³¹

Conversely, among scholars who reject misyar marriage, *tanqīh al-manāṭ* reveals that the central *'illah* lies in the disruption of *muqtadha al-'aqd* (the inherent implications of the contract), the failure to realize the comprehensive objectives of marriage (*maqāsid al-nikāh*), and the predominance of potential harm (*mafsadah*). Therefore, the rejection is not merely based on the

²⁹ Al-Dabbāgh dan Al-Ḥayālī.

³⁰ Dewi dan Anggani, “Menelusuri ‘Illat Hukum dalam Ushul Fiqh: Sebab, Hikmah, dan Implementasinya dalam Penetapan Hukum Islam.”

³¹ Kasim dan Sari, “Metode Penetapan Hukum Nikah Misyār Perspektif Yusuf al-Qarḍāwī.”

accumulation of risks, but on the assumption that these elements constitute inherent aspects of the contract that cannot be compromised. This demonstrates that the divergence between the two groups is not only quantitative in terms of the number of arguments, but fundamentally qualitative in determining which *'illah* is most essential. Scholars who permit misyar tend to treat marital rights and objectives more flexibly, whereas those who reject it regard them as essential structures that cannot be reduced. Hence, through *tanqīh al-manāṭ*, the debate ultimately centers on the prioritization between formal legality and the substantive essence of marriage.³²

From a critical perspective, the application of *tanqīh al-manāṭ* in the issue of misyar marriage reveals an important methodological insight: the juristic disagreement (*ikhtilāf*) among scholars does not primarily stem from differences in understanding textual sources (*nuṣūṣ*), but rather from differences in determining the operative *manāṭ* considered essential. When formal validity (the fulfillment of pillars and conditions) is treated as the core *manāṭ*, misyar is deemed valid. However, when substantive objectives such as maintenance and cohabitation are regarded as integral to the nature of the contract (*muqtadha al-'uqd*), misyar becomes legally problematic. This indicates that contemporary *ijtihād* requires careful discernment between what constitutes the “form” and what constitutes the “substance” of a marital institution.³³

Nevertheless, a critical note must be emphasized. Although prioritizing formal validity may provide a legal-formal solution for certain needs, its broader application raises ambiguity. The separation between “supplementary rights” (such as maintenance and residence) and the essential nature of the contract in misyar marriage may open space for the normalization of relationships with minimal responsibility. Therefore, stricter limitations are required to ensure that such legal flexibility does not undermine the principle of protecting women’s rights, which constitutes a fundamental value within Islamic family law.

Tahqīq al-Manāṭ in the Saudi Arabian Context

Etymologically, *tahqīq* means “to verify” or “to ascertain with precision.” Accordingly, *tahqīq al-manāṭ* refers to the process of confirming the presence of a legal cause (*'illah*) within a specific case or context after it has been established through *takbrīj* or *tanqīh*. In other words, it is the stage of applying a formulated *'illah* to empirical reality (*al-wāqī'*) in order to determine whether that *'illah* is genuinely operative in the case under examination, thereby ensuring the proper application of the legal ruling.³⁴ This stage does not seek to identify new *'illats*, but rather to evaluate the compatibility between established *'illats* and social, legal, or empirical conditions. In the context of misyar marriage, *tahqīq al-manāṭ* functions as an empirical verification to assess whether the *'illats* formulated by both permissive and prohibitive scholars are actually present within the social, legal, and cultural realities of Saudi Arabia. At this stage, the issue is no longer the validity of the *'illah* itself, but the extent to which Saudi social conditions allow that *'illah* to operate in practice.

³² Isra Mardi, Abdul Kodir, dan Rohanda Rohanda, “Epistemology of Misyar Marriage by Yusuf al-Qaradawi in the Book of Zawāj al-Misyār Hakikatuh and Hukmuh from the Perspective of the Philosophy of Science,” *El-Hadhanah: Indonesian Journal Of Family Law And Islamic Law* 5, no. 1 (2025): 46–64, <https://doi.org/10.22373/hadhanah.v5i1.6811>.

³³ Khawla Ghouri Bashir, Arif Ali Arif Karadaghi, dan Adel Maarouf Laftah Younis Al-Janabi, “Fatwa controls between Misyar marriage and polygamy: A critical analytical study: دراسة تحليلية نقدية: ضوابط الفتوى بين المسيار والتعدد,” *مجلة العلوم الإسلامية* 4, no. 4 (2021): 18–41.

³⁴ Muhammad Nur Khaliq dan Aji Pangestu, “Teori Maqasid Syari’ah Klasik (Asy-Syatibi),” *Risālah Jurnal Pendidikan dan Studi Islam* 11, no. 1 (2025): 149–62, https://doi.org/10.31943/jurnal_risalah.v11i1.1330.

Within the Saudi context, several structural factors reinforce the operative *manāṭ* employed by scholars who permit misyar marriage. First, Saudi society is characterized by strong family spatial segmentation, stable domestic patterns, and a cultural norm of gender segregation. These conditions render non-residential marriage arrangements relatively familiar within the social experience of the community. Contemporary studies indicate that family relations in Gulf societies are not always based on permanent co-residence, making the waiver of certain supplementary rights such as housing or equal time allocation socially acceptable when grounded in the wife's consent and prevailing norms.³⁵

Second, the economic structure of Saudi society further supports the relevance of the permissibility *manāṭ*. High levels of occupational mobility, particularly among men working outside their cities or abroad, encourage some couples to adopt more flexible marital arrangements. In this context, the notion of social necessity (*ḥājab*), frequently invoked by Saudi scholars, is not merely abstract but reflects concrete situational needs arising from the working conditions of expatriates, security personnel, and other highly mobile professions.³⁶ Thus, the *'illah* of social benefit and necessity operates tangibly within the Saudi context. Third, the Saudi legal framework, largely grounded in the Hanbali school, provides broader recognition of contractual stipulations classified as *ḥuqūq ṣā'idah* (supplementary rights). Since obligations such as maintenance, residence, and equal time allocation are considered rights that may be voluntarily waived, this *'illah* gains both legal legitimacy and consistency within local jurisprudential practice. The emphasis placed by Saudi scholars on voluntariness (*taw'īyyah*) and the absence of coercion (*ghayr mulzimah*) can therefore be empirically verified within the normative structure of Saudi family law.³⁷

However, *tahqīq al-manāṭ* also reveals problematic dimensions that underpin the opposing view. The practice of misyar marriage conducted informally often without official registration validates concerns regarding the potential exploitation of women and the neglect of the broader objectives of marriage (*maqāṣid al-nikāḥ*). Although Saudi society, which is relatively accustomed to polygamy, may display greater tolerance toward limited emotional interaction in misyar arrangements, the fact that such marriages are frequently undertaken by already married men raises persistent issues of fairness in the distribution of time and emotional support.³⁸

From the author's analytical perspective, the crucial point to emphasize is that the effectiveness of *tahqīq al-manāṭ* in the Saudi context demonstrates the high degree of flexibility within Islamic law in responding to changing social structures. Nevertheless, this flexibility should not be overstated. The success of misyar as a legal solution is heavily dependent on individual moral integrity particularly on the part of the husband and on the transparency of the contract. While the sociological reality of Saudi Arabia may support the operative *manāṭ* underlying permissibility, it does not negate the risk that, in the absence of strict legal oversight (such as formal registration), misyar marriage may shift from a solution grounded in *maṣlahah* to a

³⁵ Hasbulloh, "Fenomena Nikah Misyar Di Arab Saudi."

³⁶ Ahmad Nawir et al., "Comparative Analysis of The Family Law Systems in Indonesia and Saudi Arabia in The Context of Unregistered Marriage: Maqashid Al-Syari'ah Perspective," *International Journal of Health, Economics, and Social Sciences (IJHESS)* 6, no. 4 (2024): 1075–84, <https://doi.org/10.56338/ijhess.v6i4.5772>.

³⁷ Fajri dan Basri, "ANALISIS PENDAPAT WAHBAH AL-ZUHAILI (w. 1437 H) TENTANG NIKAH MISYAR PERSFEKTIF MAQASHID AL-SYARI'AH."

³⁸ Umar Multazam, "TELAHAH PEMAHAMAN MAQASID AL-SYARIAH DALAM FATWA ULAMA KONTEMPORER TERKAIT NIKAH MISYAR" 4 (2025): 291–311, <https://doi.org/10.58578/ahkam.v4i2.5523>.

mechanism that legitimizes exploitative relationships.³⁹ Therefore, *tahqīq al-manāṭ* in this context should not merely serve to justify existing practices, but must also function as a basis for advocating additional regulatory measures to mitigate the identified risks of *mafsadab*.

REASSESSING THE APPLICABILITY OF MISYAR MARRIAGE IN INDONESIA

The analysis of the dialectics among Saudi scholars regarding misyar marriage demonstrates that its legal validity is highly dependent on context-specific *‘illats*. Through the framework of *takhrīj al-manāṭ*, it is evident that the permissibility of misyar in Saudi Arabia rests upon three principal pillars: the fulfillment of classical marital pillars, the legitimacy of *tanāẓul al-ḥuqūq* (waiver of rights), and the presence of specific social needs (*ḥājah*) such as extended family structures and high labor mobility. However, in light of the legal maxim *al-ḥukm yadūru ma‘a ‘illatibi wujūdān wa ‘adaman* (a ruling revolves around the existence or absence of its *‘illah*), such a fatwa cannot be directly transplanted into the Indonesian context. The processes of *tanqīḥ* and *tahqīq al-manāṭ* thus become crucial, as supporting *‘illats* such as the wife’s consent and social necessity must be re-examined. Given the fundamental differences in legal protection systems, particularly in terms of civil marriage registration, as well as socio-economic and cultural structures in Indonesia⁴⁰, the *‘illats* that justify misyar in Saudi Arabia may be absent or even transform into *mafsadab* (harm) within Indonesian reality.⁴¹

The next step involves *tanqīḥ al-manāṭ*, which filters the identified *‘illats* to determine their relevance in Indonesia. At this stage, it becomes clear that Indonesia’s legal and social structures do not provide conditions analogous to those in Saudi Arabia, resulting in the weakening of several justifying *‘illats*. First, the *‘illah* of contractual validity, which relies solely on classical fiqh requirements, does not fully apply in Indonesia. While state registration may not be an essential element in the Saudi context, it functions as a crucial legal safeguard in Indonesia, determining the legal status of women and children.⁴² Consequently, unregistered misyar marriages may lead to significant harms, including the ambiguity of children’s legal status, the loss of maintenance rights, uncertainty in inheritance, and weak legal protection in cases of divorce.⁴³ Thus, the *‘illah* of contractual validity as a basis for permissibility is substantially weakened in the Indonesian context.⁴⁴

Second, the *‘illah* of the wife’s consent (*tanāẓul al-ḥuqūq*) cannot be strongly verified. From a legal perspective, the waiver of rights is valid only if it arises from genuine free will without coercion. However, Indonesian social realities are still marked by economic inequality and relatively weak bargaining positions for women, making such “consent” susceptible to structural

³⁹ Fazluddin Modaqiq dan Abdul Subhan Sediqi, “Misyār Marriage and Its Rules According to Contemporary Jurists,” *International Journal of Cultural and Religious Studies* 4, no. 2 (2024): 41–48, <https://doi.org/10.32996/ijcrs.2024.4.2.5>.

⁴⁰ Mariani, “Nikah Misyar Perspective Of Women And Child Protection Law.”

⁴¹ A Asrullah, Achmad Musyahid, dan Andi Muhammad Akmal, “Hukum Itu Beredar Pada ‘Illatnya,” *Socius: Jurnal Penelitian Ilmu-Ulmu Sosial* 3, no. 1 (2025), <https://doi.org/10.5281/zenodo.15769636>.

⁴² Ikilil Hasbiyalla, “Unregistered Marriage in the Study of Indonesian Positive Law and Islamic Law,” *VRISPRAAK: International Journal of Law* 8, no. 1 (2024): 10–20, <https://doi.org/10.59689/vris.v8i1.1162>.

⁴³ Rahman Rahman et al., “Hadith Interpretation of Law and Justice and Its Implementation as an Alternative Solution Rule of Law Enforcement In Indonesian,” *Jurnal Muslim Heritage* 8, no. 2 (2023), <https://doi.org/10.21154/muslimheritage.v8i2.7214>.

⁴⁴ Kuni Qoneta, “Pencatatan Perkawinan Sebagai Perlindungan Hukum Terhadap Perempuan Dan Anak Perspektif Maqashid Syari’ah Al-Syatibi,” *El-Iqthisady: Jurnal Hukum Ekonomi Syariah* 7, no. 1 (2025): 160–71, <https://doi.org/10.24252/el-iqthisady.v1i1.Juni.56563>.

coercion.⁴⁵ This contrasts with the Saudi context, where extended family structures and greater financial autonomy among women provide stronger support for voluntary decision-making.⁴⁶ Third, the *'illah* of social necessity (*hājah*) does not exhibit comparable relevance. Factors such as extreme labor mobility, non-residential living patterns, and high rates of unmarried women central to the Saudi argument are not present with similar intensity in Indonesia. Instead, the application of *misyar* may expand unregistered marriages and weaken legal protections for women and children⁴⁷, while also enabling the misuse of “mutual agreement” as a means to evade financial responsibility.⁴⁸ Therefore, the *'illah* of social necessity cannot serve as a strong justification for permissibility in Indonesia.

The results of this filtering process indicate that the principal *'illats* underpinning the permissibility of *misyar* in Saudi Arabia do not operate adequately within the Indonesian context, and thus cannot be directly applied without further verification. At the stage of *tahqīq al-manāṭ*, these *'illats* are tested against Indonesian social reality. The findings confirm that Indonesia's social, cultural, and legal structures do not support the effective operation of the permissibility *'illats*. From the perspective of contractual validity, the absence of registration creates legal complications; from the perspective of consent, there is no guarantee of authentic autonomy in line with *maqāṣid al-nikāḥ*; from the perspective of marital structure, non-residential arrangements hinder the realization of *sakīnah*, stability, and familial responsibility; and from the perspective of benefit, the practice is more likely to generate new forms of *mafsadah* rather than provide solutions.⁴⁹ Therefore, the *'illah* of contractual validity, which serves as the foundation of permissibility in Saudi Arabia, cannot stand robustly within the Indonesian legal framework.

Accordingly, based on the verification of *tahqīq al-manāṭ*, the majority of the *'illats* supporting the permissibility of *misyar* are not sufficiently present in Indonesia. Referring to the principle *al-ḥukm yadūru ma'a 'illatibi wujūdan wa 'adaman*, the permissibility of *misyar* cannot be directly applied. Although it may be considered valid from a classical fiqh perspective, in the Indonesian context it is more likely to produce harm than benefit, and therefore lacks a strong foundation for acceptance at the social, legal, and *maqāṣid al-syarī'ah* levels.⁵⁰

From a critical sociological and juridical perspective, the author argues that the concept of *tanāẓul al-ḥuqūq*-which forms a central pillar of *misyar* marriage in Saudi Arabia is largely unrealistic when applied within the Indonesian socio-economic context. The apparent willingness of a wife to forgo maintenance or residence, particularly within a still patriarchal and economically unequal society, is more often the result of structural pressure than genuine autonomy. Allowing *misyar* marriage to be legally recognized in Indonesia would risk legitimizing

⁴⁵ Muhammad Nabel, Toshihiro Kudo, dan Raden Muhamad Purnagunawan, “Unequal and Unprotected: Exploring Gender Wage Gap Among Precarious Workers in Indonesia,” *HUMANISMA: Journal of Gender Studies* 9, no. 2 (2025): 155–70, <https://doi.org/10.30983/humanisma.v9i2.9919>.

⁴⁶ Jawaher Binsuwadan et al., “The relationship between financial inclusion and women's financial worries: evidence from Saudi Arabia,” *Sustainability* 16, no. 19 (2024): 8317, <https://doi.org/10.3390/su16198317>.

⁴⁷ Aljawhara Albrahim dan Azlinda Azman, “The Factors Influencing Youth Marriage Abstinence in Saudi Arabia: A Comprehensive Review,” *Malaysian Journal of Social Sciences and Humanities (MJSSH)* 10, no. 9 (2025): e003579–e003579, <https://doi.org/10.47405/mjssh.v10i9.3579>.

⁴⁸ Wiranda Soraya, Bukhari Ali, dan Muhammad Husnul, “Legal Protection of Women and Children in the Practice of Nikah Sirri (Unregistered Marriage),” *al-Rasīkh: Jurnal Hukum Islam* 14, no. 2 (2025): 271–86, <https://doi.org/10.38073/rasikh.3323>.

⁴⁹ Rizaldy N Mokoagow, Nur M Kasim, dan Mohamad Rivaldi Moha, “Ketidadaan Pencatatan Pernikahan Dan Implikasinya Terhadap Perlindungan Perempuan Dan Anak Dalam Masyarakat Perdesaan,” *YUDHISTIRA: Jurnal Yurisprudensi, Hukum Dan Peradilan* 3, no. 1 (2025): 75–81, <https://doi.org/10.59966/yudhistira.v3i1.1925>.

⁵⁰ Nagita Rahma Sari, Ade Gunawan, dan Ferida Rahmawati, “Analisis Dampak Ketimpangan Gender terhadap Partisipasi Perempuan di Dunia Kerja,” *Sabmiyya: Jurnal Ekonomi dan Bisnis*, 2025, 313–21.

exploitative practices under the guise of religious compliance. The purported benefits claimed by proponents of misyar are therefore disproportionate to the systemic harms that may affect women and children.⁵¹ As evidenced in cases of unregistered marriages, the absence of legal documentation can deprive women of their rights in divorce, including maintenance and legal protection.⁵² Consequently, misyar marriage is more appropriately positioned as a legal exception based on necessity, rather than a standard marital model.

CONCLUSION

Based on the overall analysis presented in this article, it can be concluded that the debate surrounding misyar marriage does not primarily revolve around the formal validity of the contract, but rather around the construction of the legal cause (*'illah*) employed in determining its ruling. Through the approach of *takhrīj al-manāṭ*, it is found that Saudi scholars who permit misyar marriage emphasize the fulfillment of the essential pillars and conditions of marriage, the permissibility of waiving certain marital rights (*tanāẓul al-ḥuqūq*), and the presence of specific social needs (*ḥājah*) underlying the practice. In contrast, scholars who reject it construct their arguments on substantive grounds, including its inconsistency with the objectives of marriage (*maqāṣid al-nikāḥ*), the disruption of the inherent implications of the contract (*muqtadba al-'aqd*), and the predominance of potential harm (*mafsadah*). This divergence reflects two distinct paradigms of *ijtihad*: a formal-structural approach and a substantive-teleological approach.

Through the process of *tanqīḥ al-manāṭ*, this study demonstrates that the core of this divergence lies in determining which *'illah* is considered most essential. The permissive group places the formal validity of the contract as the primary *manāṭ*, whereas the opposing group regards the objectives of marriage and its social consequences as integral to legal validity itself. Thus, the difference in fatwas is not merely normative, but reflects deeper methodological differences in understanding the nature of the marriage contract. Furthermore, through *tahqīq al-manāṭ*, this study finds that the *'illat*s supporting the permissibility of misyar in the Saudi context cannot be fully verified in Indonesia. Differences in social structure, legal systems, and economic conditions play a decisive role. In Indonesia, marriage registration functions as a crucial mechanism of legal protection, while the waiver of marital rights cannot be reliably ensured as an expression of genuine consent due to existing structural inequalities. Moreover, the social necessity underlying the permissibility of misyar in Saudi Arabia is not significantly present in Indonesian society.

Therefore, based on the legal maxim *al-ḥukm yadūru ma'a 'illatibi wujūdan wa 'adaman*, the permissibility of misyar marriage in Saudi Arabia cannot be directly applied in Indonesia without contextual verification. Although it may be considered valid from a classical fiqh perspective, in the Indonesian socio-legal context it is more likely to generate *mafsadah* than to realize *maṣlaḥah*, particularly in relation to the protection of women and children. Accordingly, misyar marriage should be positioned as a situational legal exception rather than a standard marital model within the framework of Islamic family law in Indonesia.

Theoretically, this study underscores the importance of integrating *uṣūl al-fiqh* analysis with socio-legal realities in contemporary legal reasoning. Practically, it highlights that any fatwa

⁵¹ Muhammad Sahal Mahfudz, "Long Distance Marriage to Keep Sakinah's Family Established," *Al Mashaadir: Jurnal Ilmu Syariah* 4, no. 2 (2023): 53–61, <https://doi.org/10.52029/jis.v4i2.107>.

⁵² Emilda Sonu et al., "The Dynamics and Legal Implications of Unregistered Marriages in Indonesia," *Antmind Journal of Jurisprudence and Social Justice* 1, no. 1 (2025): 45–56, <https://doi.org/10.63077/9e5wjt36>.

formulated within a specific context must undergo a process of *tahqīq al-manāṭ* before being applied to a different social environment, in order to ensure that the resulting legal ruling remains aligned with the objectives of Islamic law and the principles of justice.

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