

The Reality of Mut'ah Marriage in Indonesia: Reinterpretation of the Opinion of Shia Scholars

Moh. Alfin Sulihkhodin

Universitas Islam Negeri (UIN) Sayyid Ali Rahmatullah Tulungagung
email: alfinarma@gmail.com

Muhammad Asadurrohman

Universitas Islam Negeri (UIN) Maulana Malik Ibrahim Malang
email: baadhlminkul@gmail.com

Aris Wibowo

Universitas Islam Negeri (UIN) Sayyid Ali Rahmatullah Tulungagung
email: arisberthes04@gmail.com

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Abstract

The purpose of this research is to describe the reality of *mut'ah* marriage in Indonesia by making an attempt to interpret the views of *Shi'ah* scholars. The discourse related to *mut'ah* marriage isn't longer considered a new discuss in Indonesia. There have been several previous studies related to this problem. Starting from research that focuses on the discuss related to the legal controversy of contract marriage, efforts to compare Islamic law with positive law in Indonesia, attempts to criticize the hadith relating to the ability to implement *mut'ah* marriage, and research that is directly involved in the field. Basically, this opinion about the permissibility of marriage was specifically conveyed by the *Shi'ah* scholars. And the *Sunnis* generally forbid it. This study used a qualitative approach with the library study method. The writer chose the research using the literature study method to make it easier to collect data related to the reality of the practice of *mut'ah* marriage in Indonesia. The research results show that: The practice of *mut'ah* marriage in Iran is actually regulated in a certain regulation. But, in Indonesia the marriage that are listed and protected in the regulations are marriages that are permanent (*daim*).

Abstrak

Tujuan dari penelitian ini adalah untuk menggambarkan realitas nikah *mut'ah* di Indonesia dengan melakukan upaya reinterpretasi terhadap pandangan ulama' Syi'ah. Diskursus terkait dengan nikah *mut'ah* memang bukan lagi termasuk sebagai sebuah pembahasan yang baru di Indonesia. Sudah ada beberapa penelitian terdahulu yang membahas terkait dengan permasalahan tersebut. Mulai dari penelitian yang fokus pada pembahasan tentang kontroversi hukum kawin kontrak, upaya perbandingan hukum Islam dengan hukum positif di Indonesia, upaya kritik terhadap hadis yang berkaitan dengan kebolehan pelaksanaan kawin *mut'ah*, hingga penelitian yang bersifat lapangan. Pada dasarnya, pendapat tentang kebolehan perkawinan ini secara khusus disampaikan oleh kalangan ulama' Syi'ah. Adapun kalangan *Sunni* secara umum melarangnya. Penelitian ini menggunakan pendekatan kualitatif dengan metode studi kepustakaan agar memudahkan dalam menggali data tentang diskursus dan realitas praktek perkawinan *mut'ah* di Indonesia. Hasil penelitian menunjukkan bahwa praktek nikah *mut'ah* yang terdapat di negara Iran sejatinya diatur dalam sebuah regulasi tertentu sedangkan di Indonesia sendiri perkawinan yang tercantum dan dilindungi dalam regulasi adalah perkawinan yang bersifat tetap (*daim*).

Keywords: *Mut'ah* marriage, reinterpretation, Shia, ulama.

Introduction

Discourses related to *mut'ah* marriage in Indonesia are quite a concern for many researchers who in fact are pursuing the scientific field of Islamic family law.¹ Based on the results of online searches, many studies and writings have been found that focus on the contents of the discussion on *mut'ah* marriage, ranging from books, scientific articles to scientific journals, scientific papers such as theses and dissertations. Starting from writings that focus on discussing the validity of the law, making comparisons between

¹ A Hasannia, "Temporary Marriage Among Shiite and Sunni Muslims: Comparative Study of 'Istimā', *Mut'ah*, and Misyār," *Temporary and Child Marriages in Iran and Afghanistan: Historical Perspectives and Contemporary Issues* 8, no. 1 (2021): 31–45.

Islamic law and positive law in Indonesia, efforts to criticize hadiths related to the blasphemy of *mut'ah* marriage practices, to field research to describe the growing reality in Indonesia.

Nevertheless, the results of these studies have not yet touched on a discussion of fundamental issues which, in our opinion, still require further research as we describe in this paper. Where the discussion about *mut'ah* marriage in this paper is a form of reconstruction of the understanding that has developed in the midst of society so far. It doesn't feel like an exaggeration, because both from the point of view of the textual arguments and from the social aspect, it shows that the practice of *mut'ah* marriage is legally controversial. One of the strange incidents that went viral regarding the perpetrators of *Mut'ah* marriage was what a doctor felt for one of his patients who incidentally did not look like a person who deserved to have a disease as a result of the examination he had done, where the doctor was surprised at the patient because the results of the examination stated that the patient had HIV disease. After exploring by asking a number of questions that made the patient tell the truth about what he had done so far, so that HIV disease nested in him, he revealed that the patient was a woman who adheres to Shiaism and is used to carrying out the practice of *mut'ah* marriages.²

This case is only one illustration, which may not only be the doctor's experience.³ In real terms, as we will reveal in this paper to ensure that serious research is still needed regarding the issue of *mut'ah* marriage. This is important to do considering that there are still many of them, especially in Indonesia, who use religion as the basis for justifying what they are doing. On the basis of academic anxiety, as we have stated above, this research basically seeks to make an effort to reinterpret the opinion of the Shi'a Ulama which is often used as a legal basis (*hujjah*) for the realization of muta marriage. Reinterpretation is carried out by conducting a critical analysis study of the opinions of fiqh scholars, specifically the views of Sunni and Shi'i scholars. With the aim of being able to produce an article that has credibility to be used as an argument against the

² Haula Syi'ah, "Akhir Petualangan Pasien Terakhir," *Haula Syi'ah*, last modified 2021, <https://haulasyiah.wordpress.com/2009/08/28/akhir-petualangan-si-pasien-terakhir/>.

³ Sukron Makmun, "Fenomena Pernikahan *Mut'ah* Di Republika Iran (Antara Ada Dan Tiada)," *Muwazah* 6, no. 1 (2009).

rejection of the practice of *mut'ah* marriage. More than that, this paper will also present a comparison of statutory regulations related to the practice of *mut'ah* marriage. Both in Indonesia and countries with a majority of adherents of the Shia sect.

Method

The research that we will carry out with the theme related to the reality of *mut'ah* marriage in Indonesia will later be carried out using qualitative methods based on library research. By trying to analyze and reinterpret the views of the Shia scholars on the practice of *mut'ah* marriage (contract). This library research method is considered more effective according to the author's opinion, in order to explore and analyze the reality of the practice of *mut'ah* marriage in Indonesia.⁴

Debate over Concept *Mut'ah* Marriage

Marriage is something that has become His nature. Where with the occurrence of a legal marriage, matters related to marriage also become legal.⁵ The discussion around the definition of marriage tickles the ears of academics in particular, and the public in general. Where incidentally has a background in rationalist life if the definition referred to refers to what has been mapped or described by leading scholars in the classical era. This can be seen as defined by the madzahib scholars.

In grammatical language the term marriage comes from the word "*nakaha*" in Arabic which means "a contract" (*al-budhl'u*) or "related to intercourse; intercourse" (*al-wath'u*).⁶ Whereas epistemologically means "a contract wherein it is permissible to have fun with women" or "a contract that has been stipulated by the Shari'a which functions to give ownership rights for men to have fun with women, and justify a woman having fun with man".⁷

⁴ Soerjono Soekanto, *Penelitian Hukum Normatif* (Jakarta: Rajawali Pers, 1990), op. 35.

⁵ Mohammad Alfin Sulihkhodin, "Prosesi Khitbah Di Indonesia Perspektif Local Wisdom Dan Qaidah Fiqh," *Bilancia: Jurnal Studi Ilmu Syariah dan Hukum* 14, no. 2 (2020).

⁶ Munir Ba'albaky, *Al-Maurid, Qâmûs Injlîz-Arabiyy* (Beirut: Dârul-'Ilmi lil-Malâyîn, 1977).

⁷ Wahbah bin Mushthafa Al-Zuhaily, *Al-Fiqh Al-Islamiyy Wa Adillatuh* (Beirut: Dar al-Fikr, 1985), op. 29.

This definition is what the majority of scholars agree on.⁸ And in the KBI (Big Indonesian Dictionary) provisions it seems to refer to what has been agreed upon by the majority of these scholars. Thus, the important point that can be underlined from this definition is a valid contract which aims to justify intimate relationships between a man and a woman who have entered into a marriage in terms of fulfilling their biological needs as human beings.

This feels different from what is contained in the provisions of the Compilation of Islamic Law regarding the definition of marriage, where KHI definitively does not focus on purely biological relationships. However, more to the formation of a harmonious family, *sakinah*, *mawaddah*, and *rahmah*.⁹ As contained in chapter II on the basics of marriage. In Article 2 it is stated that marriage is “Marriage, which is a very strong contract or mitsaqan ghalidzan to obey Allah’s commands and carrying them out is a form of worship”. While the goal is as contained in the provisions of Article 3, namely to create a household life that is *sakinah*, *mawaddah* and *rahmah*.

The word *mut'ah* also comes from Arabic, which etymologically can be interpreted as “enjoyment; pleasure; happiness”.¹⁰ Meanwhile, in terminology what is meant by *mut'ah* marriage in Indonesia is also known as contract marriage. Or the relationship between a man and a woman as befits a marriage relationship in general, with the condition that there is a certain amount of dowry, and within a certain amount of time too (shortly or long), that is, in accordance with the agreement between the two parties.¹¹ Such is the case with: “I marry you for one day, ten days, or one month. *Mut'ah* marriage can also be understood as an Arabic term that has been Indonesianized, where *mut'ah* marriage is no

⁸ Zainuddin Ahmad bin 'Abdul 'Aziz bin Zainuddin bin 'Aly bin Ahmad al-Malibari Al-Hindi, *Fath Al-Mu'in Bi Syarh Qurroh Al-'Ain Bi Muhimmat Al-Din* (Beirut: Dar Ibn Hazm, 1989), op. 444.

⁹ M. Nur Yasin, *Hukum Perkawinan Islam Sasak* (Malang: UIN-Malang Press, 2008), op. 55.

¹⁰ Muhammad Syarif 'Adnan As-Saqaf, *Baina As-Sunnah Wa Asy-Syi'ah: Al-Masail Al-Fiqhiyyah Allati Khalif Fiha Asy-Syi'ah Al-Imamiyah Ahlussunnah Wa Al-Jama'ah (Masail Al-'Ibadah, Wa an-Nikah, Wa Ath-Thalaq, Wa Ar-Radha')* (Damaskus: Bait al-Hikmah, 2006), op. 703.

¹¹ Ali Akbar, *Nikah Mut'ah Di Mata Hamka* (Yogyakarta: Semesta Aksara, 2018), op. 2.

different from the term contract marriage. The term contract is synonymous with an expiry period (expiration), so when the contract is finished, the husband and wife law no longer applies (breaking the relationship by itself). Based on this description, it can be understood that there is a very prominent difference between the practice of *mut'ah* marriage and the concept of marriage that is justified by the majority of scholars' as officially enforced in Indonesia. Which is then written with the term *nikah daim* (permanent marriage).

However, in order for the discussion of *mut'ah* marriage to be definite and directed, it is necessary to classify several points related to the similarities and differences in the practice of marriage between the two: *First*, based on the aspect of equality: (1) Consider children born out of wedlock as legitimate children. Even so, laws apply between children and fathers; (b) making dowry a pillar in marriage; (c) there is a prohibition to marry someone who becomes a mahram; and (d) enforce the existence of *'iddah* after the divorce, or after the end of the contract period in the practice of *mut'ah* marriage. *Second*, based on the aspect of difference: (a) in the practice of *mut'ah* marriage there is a certain period of time, as has been alluded to before. Whereas in peaceful marriage this is not the case; (b) the practice of *mut'ah* marriage or contract marriage requires the amount of dowry with details as agreed by the parties and regulated in the marriage agreement; (c) there is an agreement for the continuation of the marriage relationship (contract) in the implementation of *mut'ah* marriage; and (d) the application of inheritance law in *mut'ah* marriage depends on the agreement of both parties (specifically the law of inheritance between husband and wife).¹² This is of course very different from the rules of peaceful marriage. The period of *'iddah* that is enforced in *mut'ah* marriage is twice sacred (pure from menstruation) or forty-five days.¹³ In the practice of *mut'ah* marriage there is no obligation to provide for the

¹² Sa'di Abu Jaib, *Mausu'ah Al-Ijma' Fi Al-Fiqh Al-Islamiy* (Damascus: Dar al-Fikr, n.d.), op. 1105.

¹³ Akbar, *Nikah Mut'ah Di Mata Hamka*, op. 10.

wife unless it is based on a mutual agreement, and it is considered makruh to marry a woman who is still a girl.¹⁴

As for the law of *mut'ah* marriage, in general, there are differences of opinion among some scholars. Both scholars from the Sunni and Shi'i circles. The majority of scholars from four schools of thought (Hanafiyah, Malikiyah, Syafi'iyah, and Hanabilah as representatives of Sunni scholars) forbid the practice of *mut'ah* marriage. In fact, it is also said that the perpetrators of *mut'ah* marriage have the right or deserve to be sanctioned or punished.¹⁵ Whereas the Imamiyah scholars as representatives of the Shi'i community said that mubah marriage is mubah, and legally valid.¹⁶

Mut'ah marriage: An Overview of Regulations in Indonesia

Mut'ah marriage is no longer a foreign and new problem in Indonesia. This kind of marriage occurs quite often in certain areas, it can even be said that it has become a custom that has always existed and been practiced by the people. It's no different in the Bogor area, which according to most people has become a separate label. That this city is dubbed as one of the locations that is often used as a place for the practice of contract marriages.¹⁷

Not only in the Bogor area, as in the Pamekasan, Probolinggo, Jepara areas, or other areas that cannot be mentioned one by one. That the phenomenon of contract marriages will always exist. The issue of religion or belief does not seem to be one of the basic causes. However, according to the author's opinion, it is more inclined to socio-cultural issues, as well as economics. The practice of *mut'ah* marriage for some people is considered as one of the media to be able to improve economic conditions, as well as family welfare.¹⁸

¹⁴ As-Saqaf, *Baina As-Sunnah Wa Asy-Syi'ah: Al-Masa'il Al-Fiqhiyyah Allati Khalif Fiha Asy-Syi'ah Al-Imamiyah Ahlussunnah Wa Al-Jama'ah (Masail Al-'Ibadah, Wa an-Nikah, Wa Ath-Thalaq, Wa Ar-Radha')*, op. 715.

¹⁵ Abdurrahman Al-Jazairi, *Kitab Al-Fiqh 'Ala Al-Madzahib Al-Arba'Ah*, 4th ed. (Dar al-Kutub al-'Ilmiyah, 2003), opp. 84–85.

¹⁶ Abi Ja'far Muhammad bin al-Hasan bin 'Ali Al-Thusi, *Al-Mabsuth Fi Fiqh Al-Imamiyyah* (Teheran: Maktabah al-Murtadhawiyah, 1996), op. 246.

¹⁷ Ali Akhbar Abaib Mas Rabbani Lubis, "Nikah *Mut'ah*: Kontekstualisasi Narasi Dan Nalar Nikah *Mut'ah*," *Istinbath: Jurnal Hukum dan Ekonomi Islam* 19, no. 1 (2020).

¹⁸ *Ibid.*, 119.

Mut'ah marriages in Indonesia generally occur among people with middle to lower economic levels, with businessmen, officials, and with foreign nationals (foreigners). With a certain agreement, both in terms of the amount of dowry that must be given, as well as the duration of the implementation of this contract marriage. Generally it only happens in a matter of days, weeks, or even months. After the contract is completed, the status of husband and wife between the two parties also ends.¹⁹

Concerns about the practice of *mut'ah* marriage among Indonesian Muslim communities are also comparable to concerns about the phenomenon of free sex among teenagers, young people of school age. This kind of situation is one of the indicators that moral decay has actually occurred. It's like the phenomenon of contract marriages which are considered to bring material (financial) benefits, so some people make them a livelihood by way of sexual exploitation.²⁰

As a rule of law, the context of marriage in Indonesia has been regulated in such a way. Both in terms of administration, as well as in terms of the legality of religion and law thereof. Marriage is considered valid if it has been carried out and in accordance with religious rules and laws related to it. It is no different than the implementation of Law Number 1 of 1974 as updated through the provisions of Law Number 16 of 2019 concerning Marriage. As a legal umbrella that is *lex generalis*. Or with Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law, as a specialist *lex*.

Law Number 1 of 1974 as updated through the provisions of Law Number 16 of 2019, basically explains that: "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on Belief in One Almighty God". This means that marriage is meant to form a happy, everlasting, and lasting family forever. Divorce in this context is an exception in itself. If it is not for the sake of an urgent (*dharurat*) nature, then in fact divorce is not permissible. The reality of *mut'ah* marriage is not in line with the validity of the Marriage Law. Bearing in mind, the purpose of the

¹⁹ Akbar, *Nikah Mut'ah Di Mata Hamka*, op. 38.

²⁰ *Ibid.*

marriage that was held was only for the sake of a moment. Or it can also be interpreted only as a way to channel sexual desires.²¹

The purpose of this kind of marriage is certainly not in line with the aims and objectives of Islamic law itself. That marriage is to maintain religious values, protect offspring, or clarify the lineage of a child. It is no different in the provisions of the Compilation of Islamic Law which also emphasizes the provisions of Article 2 paragraph (1) of the Marriage Law, that: "Marriage is valid if it is carried out according to Islamic law, and in accordance with Article 2 paragraph (1) of the Marriage Law Number 1 of 1974".²²

Even though it is not directly stated in the provisions of the Marriage Law or the Compilation of Islamic Law, the practice of *mut'ah* marriage can actually be interpreted as a form of marriage which is actually not permissible at all. The Marriage Law and KHI require the establishment of an eternal and eternal marriage bond. Where doing it is also included as a form of worship. Meanwhile, *mut'ah* marriage is considered to only bring greater elements of *madharat*. Primarily for the continuation of the rights of a woman.²³

The concept and main purpose of *mut'ah* marriage with permanent marriage which is considered valid, both in terms of religion or state law in Indonesia, of course cannot be said to be equivalent to it. The issue of unregistered marriage is still considered to have an opportunity for violations of the rights of a woman and child, especially the practice of *mut'ah* marriage which is considered more dangerous. Or it can also be said as a covert marriage practice. Even though so far, according to the author, the practice of *mut'ah* marriage in Indonesia is not even categorized as a marriage that violates the law and can be subject to criminal sanctions for anyone who does it. Except, there are indications of human trafficking cases behind the practice of contract marriages.

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²¹ M. Quraish Shihab, *Tafsir Al-Misbah* (Bandung: Mizan, 2016), op. 127.

²² Lubis, "Nikah *Mut'ah*: Kontekstualisasi Narasi Dan Nalar Nikah *Mut'ah*," 121.

²³ *Ibid.*, 122.

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Regarding civil law regulations, in this case marriage, Iran enforces its laws based on Shi'a religious understanding, namely permanent marriages, as enforced by Sunnis, (*daim marriages*) and temporary marriages (*mut'ah marriages*).²⁶ Because of that Iran is claimed by some researchers as the only Islamic country that enforces *mut'ah* marriage constitutionally (positive law).²⁷

²⁴ Al-Fauzi, "Konflik Arab Sunni Dan Iran Syiah Kontemporer," *Liwaul Dakwah* 4, no. 1 (2020): 72.

²⁵ Hasannia, "Temporary Marriage Among Shiite and Sunni Muslims: Comparative Study of 'Istimā', *Mut'ah*, and *Misyār*"; D Romano, "Iraqi Kurdistan and Turkey: Temporary Marriage?," *Middle East Policy* 22, no. 1 (2015): 89–101; S Badran, "Contemporary Temporary Marriage: A Blog-Analysis of First-Hand Experiences," *Journal of International Women's Studies* 20, no. 2 (2019): 241–256; S Mallery, "The Marriage Well at Teltown: Holy Well Ritual at Royal Cult Sites and the Rite of Temporary Marriage," *European Review of History* 18, no. 2 (2011): 175–197; Y Margalit, "Temporary Marriage: A Comparison of The Jewish and Islamic Conceptions," *Journal of Law and Religion* 33, no. 1 (2018): 89–95.

²⁶ B Maddy-Weitzman, "Historic Departure or Temporary Marriage? The Left-Islamist Alliance in Tunisia," *Dynamics of Asymmetric Conflict: Pathways toward Terrorism and Genocide* 5, no. 3 (2012): 196–207; I Fazio, "Temporary Confusions: Marriages and Success Patterns in the Foreign Communities in Messina in the 19th Century," *Quaderni storici* 36, no. 2 (2001): 475–515; F Valizadeh, "Prevalence of Sexual Transmitted Infections (Stis) and Un-Protected Sex in Temporary Marriage in Iran: A Systematic Review and Meta-Analysis," *Iranian Journal of Public Health* 50, no. 6 (2021): 1156–1166; M Watsona, "Temporary and Child Marriages: Historical Perspectives and Contemporary Issues in Iran, Iraq, and Afghanistan," *Temporary and Child Marriages in Iran and Afghanistan: Historical Perspectives and Contemporary Issues* (2021): 1–29; K Ahmady, "The Role of Temporary Marriage (TM) in Promoting Early Child Marriage (ECM) in Iran," *Temporary and Child Marriages in Iran and Afghanistan: Historical Perspectives and Contemporary Issues* (2021): 47–66.

²⁷ Sen Mcglinn, *Family Law in Iran* (Leiden: The University of Leiden, 2002), op. 58.

Apart from the detailed explanation of the two types of marriage, below are several articles of Iran's civil law regarding *mut'ah* marriage as follows:

Article 1040 – “Each one of the parties concerned can, with a view to contracting marriage, ask the other party to produce a certificate of the doctor showing the freedom of the person concerned from serious contagious diseases such as syphilis, gonorrhoea and consumption”

Article 1069 – “A provision in the marriage contract reserving the right of cancellation of the contract, if made, will be null and void. But in a permanent marriage, a provision entitling one of the parties to withhold the dowry is permissible provided that duration of this is definitely mentioned. After cancellation of the grant of dowry (*sudaq*) the situation will be as if no dowry is mentioned in the contract of marriage”

Article 1071 – “Either the man or woman can depute a third party with power to contract the marriage”

Article 1075 – “Marriage is called temporary when it is for a limited period of time”

Article 1076 – “The duration of the temporary marriage must be definitely determined”

Article 1077 – “In the case of temporary marriage, provisions concerning inheritance of the wife and her dowry are the same as fixed in the Chapter on inheritance’ and in the following Chapter.”²⁸

***Mut'ah* Marriage in Islamic Law Debate**

Dialectics related to the issue of *mut'ah* marriage has always been debated across the ages. Both Sunni and Shi'i circles. In general, the majority of Sunni scholars reject the practice of *mut'ah* marriages because they are considered to be contrary to Islamic law.²⁹ Meanwhile, on the contrary, in the view of the Shia scholars, the practice of *mut'ah* marriage is judged as something that is

²⁸ E Wolf-Gazo, “Law of Desire: Temporary Marriage in Shi'i Iran: Shahla Haeri,” *Digest of Middle East Studies* 1, no. 1 (1992): 21–23.

²⁹ P Niechciał, “Shi'i Institution of Temporary Marriage in Tehran: State Ideology and Practice,” *Anthropos* 104, no. 1 (2009): 172–179; T Pauha, “‘As a Sunni, I Naturally Cannot Understand Anything Like Temporary Marriage’ Mut'a Marriage, Online Boundary-Work, and the Social Psychology of Sunni-Shi'a Relations,” *Journal of Muslims in Europe* 12, no. 1 (2023): 77–97; I Lechkar, “The Role of Temporary Marriage in the Formation of a ‘Modern’ Islamic Sexual and Relational Ethics for Halal Dating among Young Pious Muslim Men,” *Religion and Gender* 12, no. 2 (2022): 129–150; F Z A Benladghem-Ghouali, “The Sub-Saharan Immigrant Representation in the Moroccan Society in the Novel of ‘Temporary Marriage’ by Taher Benjelloun,” *Synergies Algerie*, no. 28 (2020): 307–318.

permissible.³⁰ It's like Allamah Tabataba'i who is a mufassir from the Shia group who allows the practice of muta marriage based on the provisions of QS. An-Nisa' verse 24, which means as follows: "Then the wives you have had intercourse with among them, give them their dowry, as an obligation. And there is nothing wrong with you for something that you have mutually agreed to, after determining the dowry. Surely Allah is All-Knowing, All-Wise."³¹

This verse is seen as indicating the permissibility of entering into *mut'ah* marriages according to the Shia scholars. Where the word "Istamta'tum" in the letter An-Nisa' verse 24 is related to *mut'ah* marriage. This verse is included as a group of madaniyah verses which were revealed in the first half of the life of Rasulullah Muhammad after he migrated to the city of Medina. Not much different from the Sunni scholars who allow *mut'ah* marriages. As one of them, a mufti from the Maliki school of thought, namely Muhammad Thahir ibn 'Asyur, in which he argued that the practice of *mut'ah* marriage was once permitted by the Prophet, then it was not allowed to return or was forbidden. He is of the opinion that actually *mut'ah* marriage is not canceled or absolutely forbidden. Instead, marriage is permissible with urgent causes and conditions. It's like during a war or in a distant spirit and over a period of years.³²

Islam is the complete religion revealed by Allah to mankind through the Prophet Muhammad as His messenger. The Qur'an in this case is a miracle that contains guidance and matters related to God's guidance for humans. Through the Prophet Muhammad, Al-Qur'an can be conveyed and eternal until now. Al-Qur'an as a pure source of law from Allah, in many ways is something abstract, meaning that there is still a need for a support for understanding (tools to understand the contents in the Al-Qur'an) so that humans

³⁰ A A Bogoderova, "Temporary Marriage as Russian Literary Pattern in the 19th - Early 20th Century," *Sibirskii Filologicheskii Zhurnal* 2020, no. 3 (2020): 92-106; Wolf-Gazo, "Law of Desire: Temporary Marriage in Shi'i Iran: Shahla Haeri"; H Shafiei Fini, "The Nature of Long-Term Temporary Marriage in Imamiyah Jurisprudence and Legal System," *Opcion* 35, no. 1 (2019): 75-89; B Nasiri, "Analysis of the Pros and Cons of Shiite and Sunni on the Effects of Temporary Marriage," *Advances in Environmental Biology* 8, no. 13 (2014): 512-516.

³¹ Allamah Sayid Muhammad Husein Thabathaba'i, *Al-Mizan Fi Tafsir Al-Qur'an* (Beirut-Libnan: Muassasah al-A'lami lil Mathubu'at, 1974), op. 271.

³² Sayyid Sabiq, *Fiqh Al-Sunnah* (Beirut: Dar al-Fikr, 1983), op. 35.

can understand the contents of the verses Al-Quran verses properly and correctly. So the Prophet Muhammad, as the trusted prophet of Allah has an important role in terms of providing an explanation of what needs to be explained regarding the understanding of the Qur'an which is felt to still require further understanding so that it can be said according to the actual understanding. At the time of the Companions, where the Prophet Muhammad was still around their lives, every problem that arose at that time was always put forward to the Prophet Muhammad in order to get lessons and understanding, so that a problem could be solved. However, after his death, every problem that arose was due to the ever-growing and developing life, the succession of mankind and the atmosphere of life, it is even possible for a problem to grow in a complex and complicated way. So, it is in this kind of situation that the Al-Qur'an and As-Sunnah are the main pillars to be used as a reference in terms of determining the law on problems that arise. As for if one of the two does not find an answer, then *ijtihad* is an alternative that can be used to meet the needs in determining the law of any existing problems.

In terms of views related to *mut'ah* marriage, that scholars' who come from the Shi'a community, specifically in this case adherents of the Ja'fari school of thought, *mut'ah* marriage does not actually recognize the term *nasakh*. Remember, during the time of the caliph Abu Bakr, the practice of *mut'ah* marriage was still found. Just like Zubair ibn 'Awwam's best friend who entered into a *mut'ah* marriage with Asma' bint Abu Bakr as-Siddiq. Where from the results of his marriage he was also blessed with two children. In contrast, Sunni scholars in general have prohibited the practice of *mut'ah* marriage. Bearing in mind, there has been an argument that came as a form of text, and forbids the practice of *mut'ah* marriage. As the opinion of Al-Qurtubi, "that *mut'ah* marriage was actually permissible and legal in the early days of the development of Islam". After there is an argument that comes and prohibits it, then the law is unlawful.

Mut'ah Marriage in the View of the Shia Zaidiyah

In this case, the Shi'a have several schools of thought, one of which we have alluded to in the previous discussion of this article, where they differ from one another in terms of legal reasoning. So

that the legal product that is produced is also very possible for differences to occur. This is the same as what happens within the Sunni body, there are several schools of thought within it which develop and produce different legal products, as we can see from the legal products produced by the Hanafiyah, Malikiyah, Syafi'iyah, and Hanabilah circles. Shi'a in their work, until today has several schools of thought in it. Among them are Shi'a Imamiyah and several sects within it, and Syi'ah Zaidiyah. Judging from the reality of Shi'a adherents in terms of quantity, it can be said that Shia Imamiyah occupies the highest quantity compared to Shia Zaidiyah. This can be seen from the spread of his teachings in several Islamic worlds, including Iran, Iraq and Syria. However, when viewed from the point of view of religious understanding, the Zaidiyah Syi'ah is the most moderate of the existing Shi'ah sects.³³

In relation to the issue of *mut'ah* marriage, it is necessary to use it as a comparison of the legal products resulting from the two major Shiite sects. In general, because of the greater quantity of one of the two, the validity of *Mut'ah* marriage law is only legalized by the Shia Imamiyah. While the Zaidiyah Shiites are not like that, they prohibit the realization of *mut'ah* marriage, as well-known prohibition among Sunnis. We can see this as stated in one of the books which contains a collection of thoughts and legal products from Imam Zaed, as follows:

سئل _عليه السلام _ عن المتعة ؟ فقال: المتعة مثل الميتة والدم ولحم الخنزير. وسئل _عليه السلام _ عن المتعة ؟ فقال: رخصة نزل بها القرآن وحرمها لما نزلت العدة والموارث، وهذا إجماع أهل البيت _عليهم السلام _؛ فقيل: يا ابن رسول الله، وما الذي نسخها ؟ فقال: قوله تعالى: والذين هم لفروجهم حافظون (٥) إلخ الآيات [سورة المؤمنون]، فلم يبيح الله تعالى إلا الزوجة وملك اليمين.

It should be noted that there is one statement that we think is held by contemporary Shi'i circles that there is an awkwardness in practicing the practice of *mut'ah* marriage in real terms in their daily lives. This is as enshrined in one of the books composed by a person with the Shia wing, it is said that even though they justify the

³³ Ahmad Atabik, "Melacak Historitas Syi'ah (Asal Usul, Perkembangan, Dan Aliran-Alirannya)," *FIKRAH* 10, no. 2 (2015): 335.

permissibility of the law of *mut'ah* marriage, the Lebanese Shi'i, Syria, Iraq, do not practice *mut'ah* marriage. In fact, it was also said that the Lebanese shari'ah court forbade it to be realized.³⁴ This was also reinforced by one of the results of a student's research at the University of Iran which focused on the reality of *mut'ah* marriage in Iran, where it was stated that the practice of *mut'ah* marriage in Iran is de facto still being pros and cons. Therefore, even though Iran's constitutional law justifies and enforces *mut'ah* marriage, in reality the practice of *mut'ah* marriage in Iranian society is more inclined to acts of mere prostitution.³⁵

Conclusion

Provisions regarding the permissibility of *mut'ah* marriages in Iran are basically regulated in a certain regulation. Where there are several conditions that must first be fulfilled by the parties who will carry out the marriage contract. Meanwhile, regulations in Indonesia basically do not regulate the validity of *mut'ah* marriages. Bearing in mind, basically marriage is a contract that is "mitsaqan ghalidzan" or marriage is permanent, permanent. Not only is it legal religiously, but the existing regulations also require the process of registering marriages. So that if in the future there is a conflict, it can be resolved while still prioritizing the protection of the rights of each party in the marriage. And it needs to be emphasized, that the views of scholars in several countries that legalize *mut'ah* marriages actually encounter a wavering. This means that the practice of this kind of marriage is basically not allowed. Bearing in mind, there are strong indications that it will only lead to the practice of prostitution under the guise of religion. And preferably in the marriage regulations in Indonesia, some marriage practices that are deemed deviant in order to be subject to a separate sanction for whoever does it. It is no different than the practice of *mut'ah* marriage itself.

³⁴ Muhammad Jawwad Mughniyyah, *Al-Fiqh 'Ala Al-Madzahib Al-Khamsah; Al-Ja'Fari, Al-Hanafī, Al-Maliki, Asy-Syafi'i, Al-Hambali* (Beirut: Dar at-Tiyar al-Jadid, 2008), op. 110.

³⁵ Makmun, "Fenomena Pernikahan *Mut'ah* Di Republika Iran (Antara Ada Dan Tiada)," 153.

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REFERENCES

- Ahmady, K. “The Role of Temporary Marriage (TM) in Promoting Early Child Marriage (ECM) in Iran.” *Temporary and Child Marriages in Iran and Afghanistan: Historical Perspectives and Contemporary Issues* (2021): 47–66.
- Akbar, Ali. *Nikah Mut’ah Di Mata Hamka*. Yogyakarta: Semesta Aksara, 2018.
- Al-Fauzi. “Konflik Arab Sunni Dan Iran Syiah Kontemporer.” *Liwaul Dakwah* 4, no. 1 (2020).
- Al-Hindi, Zainuddin Ahmad bin ‘Abdul ‘Aziz bin Zainuddin bin ‘Aly bin Ahmad al-Malibari. *Fath Al-Mu’in Bi Syarh Qurroh Al-‘Ain Bi Muhimmat Al-Din*. Beirut: Dar Ibn Hazm, 1989.
- Al-Jazairi, Abdurrahman. *Kitab Al-Fiqh ‘Ala Al-Madzahib Al-Arba’Ah*. 4th ed. Dar al-Kutub al-‘Ilmiyah, 2003.
- Al-Thusi, Abi Ja’far Muhammad bin al-Hasan bin ‘Ali. *Al-Mabsuth Fi Fiqh Al-Imamiyyah*. Teheran: Maktabah al-Murtadhawiyah, 1996.
- Al-Zuhaily, Wahbah bin Mushthafa. *Al-Fiqh Al-Islamiy Wa Adillatuh*. Beirut: Dar al-Fikr, 1985.
- As-Saqaf, Muhammad Syarif ‘Adnan. *Baina As-Sunnah Wa Asy-Syi’ah: Al-Masail Al-Fiqhiyyah Allati Khalif Fiha Asy-Syi’ah Al-Imamiyah Ahlussunnah Wa Al-Jama’ah (Masail Al-‘Ibadah, Wa an-Nikah, Wa Ath-Thalaq, Wa Ar-Radha’)*. Damaskus: Bait al-

- Hikmah, 2006.
- Atabik, Ahmad. "Melacak Historitas Syi'ah (Asal Usul, Perkembangan, Dan Aliran-Alirannya)." *FIKRAH* 10, no. 2 (2015).
- Ba'albaky, Munîr. *Al-Mawrid, Qâmûs Injîlîz-Arabîy*. Beirut: Dârul-'Ilmi lil-Malâ'yîn, 1977.
- Badran, S. "Contemporary Temporary Marriage: A Blog-Analysis of First-Hand Experiences." *Journal of International Women's Studies* 20, no. 2 (2019): 241–256.
- Benladghem-Ghouali, F Z A. "The Sub-Saharan Imigrant Representation in the Moroccan Society in the Novel of 'Temporary Marriage' by Taher Benjelloun." *Synergies Algeria*, no. 28 (2020): 307–318.
- Bogoderova, A A. "Temporary Marriage as Russian Literary Pattern in the 19th - Early 20th Century." *Sibirskii Filologicheskii Zhurnal* 2020, no. 3 (2020): 92–106.
- Fazio, I. "Temporary Confusions: Marriages and Success Patterns in the Foreign Communities in Messina in the 19th Century." *Quaderni storici* 36, no. 2 (2001): 475–515.
- Fini, H Shafiei. "The Nature of Long-Term Temporary Marriage in Imamiah Jurisprudence and Legal System." *Opcion* 35, no. 1 (2019): 75–89.
- Hasannia, A. "Temporary Marriage Among Shiite and Sunni Muslims: Comparative Study of 'Istimâ', Mut'ah, and Misyâr." *Temporary and Child Marriages in Iran and Afghanistan: Historical Perspectives and Contemporary Issues* 8, no. 1 (2021): 31–45.
- Jaib, Sa'di Abu. *Mausu'ah Al-Ijma' Fi Al-Fiqh Al-Islamiy*. Damascus: Dar al-Fikr, n.d.
- Lechkar, I. "The Role of Temporary Marriage in the Formation of a 'Modern' Islamic Sexual and Relational Ethics for Halal Dating among Young Pious Muslim Men." *Religion and Gender* 12, no. 2 (2022): 129–150.
- Lubis, Ali Akhbar Abaib Mas Rabbani. "Nikah Mut'ah: Kontekstualisasi Narasi Dan Nalar Nikah Mut'ah." *Istinbath: Jurnal Hukum dan Ekonomi Islam* 19, no. 1 (2020).
- Maddy-Weitzman, B. "Historic Departure or Temporary

- Marriage? The Left-Islamist Alliance in Tunisia.” *Dynamics of Asymmetric Conflict: Pathways toward Terrorism and Genocide* 5, no. 3 (2012): 196–207.
- Makmun, Sukron. “Fenomena Pernikahan Mut’ah Di Republika Iran (Antara Ada Dan Tiada).” *Muwazah* 6, no. 1 (2009).
- Mallery, S. “The Marriage Well at Teltown: Holy Well Ritual at Royal Cult Sites and the Rite of Temporary Marriage.” *European Review of History* 18, no. 2 (2011): 175–197.
- Margalit, Y. “Temporary Marriage: A Comparison of The Jewish and Islamic Conceptions.” *Journal of Law and Religion* 33, no. 1 (2018): 89–95.
- Mcglinn, Sen. *Family Law in Iran*. Leiden: The University of Leiden, 2002.
- Mughniyyah, Muhammad Jawwad. *Al-Fiqh ‘Ala Al-Madzahib Al-Khamsah; Al-Ja’Fari, Al-Hanafi, Al-Maliki, Asy-Syafi’I, Al-Hanbali*. Beirut: Dar at-Tiyar al-Jadid, 2008.
- Nasiri, B. “Analysis of the Pros and Cons of Shiite and Sunni on the Effects of Temporary Marriage.” *Advances in Environmental Biology* 8, no. 13 (2014): 512–516.
- Niechciał, P. “Shi’i Institution of Temporary Marriage in Tehran: State Ideology and Practice.” *Anthropos* 104, no. 1 (2009): 172–179.
- Pauha, T. “‘As a Sunni, I Naturally Cannot Understand Anything Like Temporary Marriage’ Mut’a Marriage, Online Boundary-Work, and the Social Psychology of Sunni-Shi’a Relations.” *Journal of Muslims in Europe* 12, no. 1 (2023): 77–97.
- Romano, D. “Iraqi Kurdistan and Turkey: Temporary Marriage?” *Middle East Policy* 22, no. 1 (2015): 89–101.
- Sabiq, Sayyid. *Fiqh Al-Sunnah*. Beirut: Dar al-Fikr, 1983.
- Shihab, M. Quraish. *Tafsir Al-Misbah*. Bandung: Mizan, 2016.
- Soekanto, Soerjono. *Penelitian Hukum Normatif*. Jakarta: Rajawali Pers, 1990.
- Sulihkhodin, Mohammad Alfin. “Prosesi Khitbah Di Indonesia Perspektif Local Wisdom Dan Qaidah Fiqh.” *Bilancia: Jurnal Studi Ilmu Syariah dan Hukum* 14, no. 2 (2020).
- Syi’ah, Haula. “Akhir Petualangan Pasien Terakhir.” *Haula*

- Syi'ah. Last modified 2021.
<https://haulasyiah.wordpress.com/2009/08/28/akhir-petualangan-si-pasien-terakhir/>.
- Thabathaba'i, Allamah Sayid Muhammad Husein. *Al-Mizan Fi Tafsir Al-Qur'an*. Beirut-Libnan: Muassasah al-A'lami lil Mathubu'at, 1974.
- Valizadeh, F. "Prevalence of Sexual Transmitted Infections (Stis) and Un-Protected Sex in Temporary Marriage in Iran: A Systematic Review and Meta-Analysis." *Iranian Journal of Public Health* 50, no. 6 (2021): 1156–1166.
- Watsona, M. "Temporary and Child Marriages: Historical Perspectives and Contemporary Issues in Iran, Iraq, and Afghanistan." *Temporary and Child Marriages in Iran and Afghanistan: Historical Perspectives and Contemporary Issues* (2021): 1–29.
- Wolf-Gazo, E. "Law of Desire: Temporary Marriage in Shi'i Iran: Shahla Haeri." *Digest of Middle East Studies* 1, no. 1 (1992): 21–23.
- Yasin, M. Nur. *Hukum Perkawinan Islam Sasak*. Malang: UIN-Malang Press, 2008.

