

The Problem of Legal Balance Regarding The Rights and Obligations of Husband and Wife From The Perspective of *Misyâr* Marriage (*Mitsâqan Ghalîza*) on Marriage Law

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Abstract

In this study focuses on legal issues regarding the balance of rights and obligations of husband and wife in misyâr marriage. Misyâr marriage as a form of marriage in which one party promises to release obligations as husband or wife in their marriage, In this marriage model it can result in the non-implementation of the form of marriage prescribed by Islam and state law in the Marriage Law, where the essence of marriage is the physical and spiritual bond of mitsâqan ghalîza (مِيثَاقًا غَلِيظًا) between the two parties to live life to become a Sakinâh, mawâdah wa rohmâh family. In the legal and sociological approach to society, that in marriage the essence of the parties carrying out their rights and obligations as husband and wife, so that the balance in marriage. Law No. 1 of 1974 concerning Marriage which emphasizes the nature of marriage on the rights and obligations between the parties, so that, the rights and obligations cannot be released without a reason, while in misyâr marriage, releasing one of its obligations without a sharia reason. In Indonesian society in general, in order to maintain balance, Sighat Ta'liq is often used as a basis for maintaining the relationship between husband and wife in order to maintain balance in the existing marriage, so that the goal of marriage that is Sakinâh, mawâdah wa rohmâh, can be achieved if the balance is realized in the representation in the relationship between husband and wife. In this article aims to analyze in depth the misyâr marriage as a form of deliberate release of obligations without a sharia reason. in this study using qualitative methods and legal approaches in this study, where the perspective on the legal framework of mitsâqan ghalîza and the legal paradigm in Islamic law and marriage law.

Keywords: *Misyâr Marriage; Rights and Obligations of Spouses; Legal Balance in Marriage; Islamic Marriage Law.*

Abstrak

Dalam penelitian ini memfokuskan kepada masalah hukum terhadap keseimbangan hak dan kewajiban suami dan istri dalam perkawinan *misyâr*. Perkawinan *misyâr* sebagai bentuk pernikahan yang salah satu pihak berjanji melepaskan kewajiban sebagai suami atau istri dalam perkawinannya, Dalam model pernikahan tersebut dapat mengakibatkan tidak terlaksananya bentuk perkawinan yang disyariatkan oleh Islam dan hukum negara dalam UU Perkawinan, dimana hakikat dalam perkawinan adalah

ikatan lahir bathin *mîtsâqan ghalîza* (مِيثَاقًا غَلِيظًا) diantara kedua belah pihak untuk menjalankan kehidupan agar menjadi keluarga yang *Sakinâh, mawâdah wa rohmâh*. Dalam pendekatan hukum dan sosiologis kemasyarakatan, bahwa dalam perkawinan hakikatnya diartikan pihak menjalankan hak dan kewajibannya sebagai suami dan istri, sehingga keseimbangan dalam perkawinan. UU No. 1 Tahun 1974 Tentang Perkawinan yang menitikberatkan hakikat perkawinan terhadap hak dan kewajiban diantara para pihak, sehingga, tidak dapat dilepaskan hak maupun kewajibannya tanpa adanya sebab, sedangkan dalam perkawinan *misyâr*, melepaskan salah satu kewajibannya tanpa sebab yang bersifat *syar'i*. Dalam masyarakat di Indonesia secara umum, dalam rangka menjaga keseimbangan sering menggunakan *Sighat Ta'liq* sebagai landasan untuk menjaga hubungan antar suami dan istri dalam rangka menjaga keseimbangan dalam perkawinan yang ada, sehingga tujuan perkawinan yang *Sakinâh, mawâdah wa rohmâh*, dapat dicapai apabila keseimbangan diwujudkan dalam perkawinan dalam relasi antara suami dan istri. Dalam artikel ini bertujuan untuk menganalisis secara mendalam terhadap pernikahan *misyâr* sebagai bentuk kesengajaan pelepasan kewajiban tanpa sebab *syar'i*. dalam penelitian ini menggunakan metode kualitatif dan pendekatan hukum dalam penelitian ini, dimana persepektif pada kerangka hukum *mîtsâqan ghalîza* dan paradigma hukum dalam hukum Islam serta UU perkawinan.

Kata Kunci: Pernikahan Misyâr; Hak Dan Kewajiban Pasangan; Keseimbangan Hukum Dalam Pernikahan; Hukum Perkawinan Islam.

INTRODUCTION

Religious views on marriage create relationships based on religious values in addition to sexual needs. The bonds of marriage have serious consequences. In QS al-Nisa' (4), this is expressed with the term *mîtsâqan ghalîza*, which means that this agreement is not an ordinary agreement, but rather a very strong one. Linguistically, the words *mîtsâq and ghalîz* contain the basic meaning of a strengthened commitment, a strengthened agreement, and a heavy moral burden. This meaning shows that the meaning of the words *mîtsâqan ghalîzâ* is not just an ordinary contract or promise, but a form of agreement that has great spiritual and ethical consequences.¹ *Mîtsâqan ghalîzâ* in Surah Al-Nisa verse 21 means a firm agreement in the form of a marriage contract. Al-Thabary, Al-Bagawi, and Ibn Kathir explain that this marriage contract is taken by Allah from a man to a woman, who is then obliged to guard it in a good way and release it in a good way as well, this is taken during the marriage contract. Al-Thabary also explains that this marriage contract is evidence

¹ Ramadhani, D., Syam, N., & Ramadhan, M. (2026). MAKNA MITSAQAN GHALIZA DALAM AL-QUR'AN (STUDI TAFSIR TEMATIK). *Pendas: Jurnal Ilmiah Pendidikan Dasar*, 11(01), 96-106. doi: <https://doi.org/10.23969/jp.v11i01.41890>; Arif Sugitanata et al., "Family Harmony and the Question of National Resilience: A Maqâšid al-Sharī'ah Perspective," Indonesian Journal of Islamic Law 9, no. 1 (2026), <https://doi.org/10.35719/1vp2ps41>.

taken through the mandate of Allah and the words of Allah which then make a woman halal for a man. The three Mufassir explain the same meaning with the affirmative side, the mandate of Allah by which a woman is halal for a man, with the obligation to guard her in a good way.² Understanding in marriage basically places a sacred promise between the existing couple.

The sanctity of this relationship was then adapted by positive law such as in Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 Chapter I Article 1 which states that marriage is an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on faith in God Almighty.³ This bond makes humans united in the grace of Allah SWT. In essence, affirming the validity of marriage, Article 2 paragraph (1) of Marriage Law Number 1 of 1974 states that "marriage is valid according to each person's religion and belief". Furthermore, Article 10 paragraph (2) of the Implementing Regulations of Marriage Law Number 9 of 1975 explains that "marriage procedures are carried out according to the laws of each religion and belief". This provision applies to all religions in Indonesia except Islam because it combines Islamic law with the provisions of the Compilation of Islamic Law.⁴ Marriage must have a

² Muhammad Bin Jarir Bin yazid Bin Katsir Bin Ghalib Al Amali Abu Ja'far Al Thabari, *Jami' Al Bayan Fi Ta'wil Al Qur'an* (Muassasah al-Risalah, 2000), 128 jus 8; Abu Muhammad Al Husein Bin Mas'ud Al Bagawi, *Ma'alim Al Tanzil Fi Tafsir Al Qur'an* (Beirut: Dar Thayyibah Li Al Nashr Wa Al Tauzi', 1997), 187 juz 2.; Abu al-Fada` Ismail bin Umar bin Katsir, *Tafsir Al- Qur'an Al-Azim*, Thabari, *Jami' Al Bayan Fi Ta'wil Al Qur'an* on Shalahuddin, H., Hidayat, M. S., Allam Setiawan Nugroho, M., Tsaqib, A., & Jamil, A. (2023). Konsep Mitsāqan Ghalīzhan Sebagai Solusi Cara Pandang Feminis Tentang Konsep Pernikahan. *Journal of Islamic and Occidental Studies (JIOS)*, 1(2), 190-213.

³ Darussamin, Z., Armansyah, A., & Zikri, A. (2023). The urgency of maturity to get married and its relevance to family life goals. *Al-Istinbath: Jurnal Hukum Islam*, 8(1 May), 215-236. doi: <https://doi.org/10.29240/jhi.v8i1.5324>; Ahmad, Chaidir Ali, Muhsan Syarafuddin, Kirama Nasim Manbi Ushama, and Jamaluddin Jamal Muhsen. 2025. "The Concept of the Ideal Couple: Buya Hamka's Perspective in Islamic Marriage Law". *An-Nisa: Journal of Islamic Family Law* 2 (4): 315-25. <https://doi.org/10.63142/an-nisa.v2i4.366>.

⁴ Lathifah, A. (2020). State Marriage and Civil Marriage: The Role of State Policy on Interreligious Marriage in Central Java. *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 15(1), 1-30. <https://doi.org/10.19105/al-lhkam.v15i1.2689>; Burhan Latip, Muhammad Husni Abdulah Pakarti, Nik Salida Suhaila Nik Saleh, Muhammad Zakir Husain, and Normadiah Daud. 2025. "Prohibition Vs Persistence: Contract Marriages Between the Objectives of Islamic Law and Local Legal Realities in

physical or spiritual bond, or both, making it both a legal and a religious act. It is a legal act because it creates rights and obligations for both parties. However, it is a religious act because marriage is always linked to the teachings of each religion and belief system, which have established rules for its implementation.⁵ Therefore, in marriage, religious rules are placed as a guide in carrying out God's laws as His servants.

In the Quran, marriage is referred to as "nikah," meaning union, and "covenant" (*mîtsâqan ghalîza*), meaning a strong agreement. Marriage or nikah in Arabic is called *al-zâwâj* (الزواج), meaning to unite or gather. Therefore, marriage can be defined as an agreement between a man and a woman to establish a husband-wife relationship and live together in goodness. From an Islamic legal perspective, marriage is a valid contract, called *mîtsâqan ghalîza*, entered into to fulfill Allah's command and is considered an act of worship. Allah has chosen marriage as a means of procreation and sustaining human life.⁶ So that marriage will give rise to the rights and obligations of the parties who bind themselves in marriage. Therefore, as a promise in marriage, it cannot be justified in state law to give up their rights and obligations as husband and wife.

Islam has comprehensively regulated marriage, from how to find and select a life partner to how to treat them once they become one. Islam has its guidelines, and it also teaches how to build a beautiful home with a partner you love and desire. Marriage is a covenant/bond between a man and a woman to live a life together and obey God's commands, and its observance is an act of worship.⁷

Article 28B of the 1945 Constitution states that every person has the right to form a family and continue their lineage through legal marriage. Therefore, marriage is a fundamental human right. Although marriage is a fundamental right, it must comply with the provisions of

Indonesia". *An-Nisa: Journal of Islamic Family Law* 2 (4): 342-60. <https://doi.org/10.63142/an-nisa.v2i4.471>.

⁵ Permanasari, L. (2018). Perlindungan Hukum Terhadap Perempuan Dan Anak-Anak Dari Perkawinan Sirri Ditinjau Dari Undang-Undang Perkawinan No. 1 Tahun 1974 Dan Hukum Islam. *Jurnal Hukum Dan Keadilan*. 103-125.

⁶ Chaidir, M., & Suparmin, S. (2024). Legal Analysis of Misyar Marriage According to the Views of Nashirudin Al Bani. *Jurnal Daulat Hukum*, 7(3), 298-309. doi: <https://dx.doi.org/10.30659/jdh.v7i3.40202>

⁷ Hafidzi, A., & Septiani, R. (2020). Legal Protection of Women Forced to Married In Islamic Law and Human Rights Perspective. *Madania: Jurnal Ilmu-Ilmu Keislaman*, 10(1), 18-28. doi: <http://dx.doi.org/10.24014/jiik.v10i1.10547>

the Marriage Law.⁸ Marriage is prescribed to achieve the interests of both husband and wife so that both can have a happy family, in which a sense of security, tranquility, peace and prosperity is realized. In the process of marriage, there are conditions and pillars that must be met. One of the conditions for a valid marriage in Islam is that the prospective bride and groom have reached puberty. The meaning of *bâligh* is that both prospective brides and grooms who will marry are mature or adult, marked by their sexual maturity, namely physically having experienced *ikhtilâm* (wet dreams), ejaculation for men and menstruation for women, and psychologically they can distinguish between what is *haq* (right) and what is *bâtil* (wrong), so that they can be burdened with *taklif* (legal burden). Indirectly, Islam suggests that marriage should be carried out by couples who are adults, because they have reached physical, psychological, and mental maturity.⁹

Principles of marriage law in Indonesia in Indonesia, the principles of marriage law are regulated in Law Number 1 of 1974 concerning Marriage and strengthened through the Compilation of Islamic Law (KHI). Some important principles in Indonesian marriage law in Law Number 1 of 1974 are: In the Indonesian marriage law system, there are several important principles that serve as the basis for regulating and organizing family relationships. First, the principle of monogamy as regulated in Article 3 of Law Number 1 of 1974, states that a man may only have one wife and a woman may only have one husband, so that the relationship between husband and wife is based on the principle of fidelity to each other. The consensual principle in Article 6 of the same law emphasizes that the validity of a marriage or the appointment of a guardian must be based on the free consent of the prospective bride and groom or the families concerned. This shows the importance of awareness and willingness in forming a marriage bond.¹⁰

In Islam, *Sunnâtullah* men and women who wish to engage in sexual or intimate relations must get married. Since marriage is governed

⁸ Judiasih, S. D. (2023). Kontroversi Perkawinan Bawah Umur: Realita Dan Tantangan Bagi Penegakan Hukum Keluarga Di Indonesia. *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan*, 6(2), 174-192. <https://doi.org/10.23920/acta.v6i2.1295>

⁹ Hakim, A. (2023). Fenomena perkawinan di bawah umur: Penyebab dan dampak. *Usroh: Jurnal Hukum Keluarga Islam*, 7(1), 60-75. doi:<https://doi.org/10.19109/ujhki.v7i1.17926>

¹⁰ Meidina, A. R. (2023). Legal System of Polygamy and Divorce in Muslim Countries: Comparative Studies among Turkey, Pakistan, and Indonesia. *Matan: Journal of Islam and Muslim Society*, 5(1), 15-30. doi: <https://doi.org/10.20884/1.matan.2023.5.1.8301>

by Islamic law, it is frequently unclear what exactly constitutes a civil law marriage in Indonesia. One common question is whether this regulation comes from Fiqh, which has been incorporated into laws that serve as the foundation for Muslims, or from regulations that originate and are explained in our civil law, specifically the Compilation of Islamic Law.¹¹ Simply put, marriage in Islam prioritizes a balance of human rights for each partner. In *misyâr* marriages, one party generally abdicates their obligations as husband and wife and fails to fulfill their duties as either husband or wife. Therefore, this article focuses on analyzing *misyâr* marriages, where one party abdicates their obligations from the perspective of the meaning of *mîtsâqan ghalîza* in the Marriage Law.

RESEARCH METHODS

This study employs a qualitative research method with a legal research orientation, integrating both normative and empirical approaches. The normative approach is used to examine legal doctrines, principles, and regulations concerning marriage, particularly those related to the concept of *mîtsâqan ghalîza* within the framework of Marriage Law. Meanwhile, the empirical approach is utilized to explore how these legal norms are implemented and experienced in the practice of *misyâr* marriage. Through this combination, the research seeks to provide a comprehensive understanding of how the law influences the balance of rights and obligations between husband and wife, as well as how the philosophical essence of marriage as a strong physical and spiritual bond is interpreted in contemporary contexts.

The data sources in this research consist of both primary and secondary data. Primary data are obtained from legal documents such as statutory regulations, court decisions, and authoritative religious texts that discuss marriage principles, alongside, where relevant, insights from practitioners or stakeholders involved in marital legal practices. Secondary data are derived from scholarly literature, including books, peer-reviewed journal articles, and previous studies that discuss *misyâr* marriage, Islamic legal philosophy, and the concept of *mîtsâqan ghalîza*. Data collection is conducted through documentary study and literature review, supported by a systematic identification, classification, and verification of relevant legal materials to ensure the validity and reliability of the data.

¹¹ Anam, K. (2019). Studi Makna Perkawinan Dalam Persepektif Hukum Di Indonesia. *Yustitiabelen*, 5(1), 59-67.

The data analysis technique applied in this study is qualitative analytical-descriptive, using methods of content analysis and comparative analysis. Content analysis is employed to interpret legal texts and doctrines related to marriage and to identify underlying principles governing rights and obligations within *misyâr* marriage. Comparative analysis is used to examine the alignment or discrepancy between normative legal provisions and empirical practices, particularly in light of the concept of *mîtsâqan ghalîza* as a sacred marital covenant. The results of the analysis are then synthesized to construct a coherent argument regarding the extent to which current legal frameworks uphold the philosophical and juridical ideals of marriage, thereby contributing to the development of more balanced and equitable marital legal policies.

RESULTS AND DISCUSSION

The Paradigm of Problem *Misyâr* Marriage Regarding the Balance of Rights and Obligations of Husband and Wife

Marriage naturally begins with the desire bestowed upon humans by God as His creatures. This desire fulfills the biological needs that underlie human regeneration. This desire also forms an instinctive attraction between a man and a woman. This attraction gives rise to feelings of love and affection. Islam then regulates how this attraction should be directed through legitimate and reasonable procedures that avoid any prohibited acts. Therefore, marriage requires conditions that must be met in accordance with Islamic law. These requirements are a way to form a good and lasting bond. The current world, which is increasingly advanced and developing, where interaction between people is increasingly easy and accessible, has given rise to a new paradigm and impacts all aspects of life, including the understanding of marital relationships. Some countries, as is well known, allow couples to live together without being married. This condition is certainly a social phenomenon that can impact people's lives. Furthermore, another phenomenon occurring in society, especially among the younger generation, namely freedom of association, has given rise to a quite complex social problem, namely early marriage due to the impact of this promiscuity.¹²

Islam encourages its adherents to have two, three, or four spouses. It is adequate to have just one wife if they are unable to do so fairly. This

¹² Kamal, A. (2024). Early Marriage in the Perspective of Islamic Law: A Case Study in Indonesia. *FITRAH: Jurnal Kajian Ilmu-ilmu Keislaman*, 10(1), 45-60. Doi: <https://doi.org/10.24952/fitrah.v10i1.11146>

demonstrates how Islam values men's innate desire to establish a home and their inherent character. Nonetheless, Islamic law establishes precise standards for aptitude. As long as he can do it fairly, a man is allowed to have up to four wives. But if he can't do this, then merely one lady is sufficient.¹³ While the Muslim wedding ceremony may have a religious component, it is a civil contract that makes sexual relations valid under Islamic law. Marriage in Islam is often described poetically, depicting the mutual love and rights that exist between a man and a woman. Islam places great emphasis on mutual love and respect between husband and wife. Men are also specifically commanded to treat their wives with kindness and respect. The Prophet Muhammad is reported to have said: "The most perfect in faith among the believers is the one who is best in character and best to his wife." This procedure must meet the following criteria:¹⁴

- 1) Conducted in the presence of at least two witnesses.
- 2) Consists of an offer from one party and an acceptance from the other party.
- 3) Both parties must agree to the marriage.
- 4) Includes a dowry given by the groom to the bride.
- 5) Both parties can determine the terms and conditions of the contract, including the amount and nature of the dowry.

Muslim family law represents those aspects of Sharia law (i.e. Islamic law) that govern marriage, divorce, maintenance, child custody, and inheritance.¹⁵ Those who believe in the importance of state registration of Muslim marriages emphasize that it is an integral part of social reform. However, it is also seen as problematic when it serves only the interests of the majority and hinders the religious understanding of minorities, particularly some conservative Muslims who believe that marriages within the Muslim community should be handled by religious scholars and not the state. Therefore, from an Indonesian perspective, for example, the state plays a significant role in the Indonesian marriage

¹³ Nassuruddin, A. S. M., Mubarak, M. Z., Mamat, Z., & Zaim, A. I. L. A. M. (2024). Konsep *Ḥiyāl* dalam Perkahwinan: Satu Tinjauan Awal: The Concept of *Ḥiyāl* in Marriage: A Preliminary Review. *RABBANICA-Journal of Revealed Knowledge*, 5(2), 133-149.

¹⁴ Jaafar-Mohammad, I., & Lehmann, C. (2011). Women's rights in Islam regarding marriage and divorce. *Journal of Law and Practice*, 4(1), 3.

¹⁵ Uddin, I. (2018). Nikah-only Marriages: Causes, motivations, and their impact on dispute resolution and Islamic divorce proceedings in England and Wales. *Oxford journal of law and religion*, 7(3), 401-426. <https://doi.org/10.1093/ojlr/rwy051>

system, such as the existence of state marriage registration.¹⁶ In legal matters under the state's jurisdiction, state authorities essentially strive to fulfill the rights and obligations of the parties to a marriage and ensure balance within the marriage. In a *misyâr* marriage, where one party relinquishes their obligations, the fundamental question of whether this is registered with the state is raised, as the state obliges each married couple to exercise their rights and obligations in accordance with the Marriage Law.

The changing attitudes of society toward marriage registration, as demonstrated in the previous section, underscore optimism about the effective functioning of the state as a legal authority. Does this mean that people are now more inclined to hand over their religious affairs to state agents? If so, to what extent does this affect the role of traditional leaders? Referring to Law No. 22/1946 concerning the registration of marriage, divorce, and reconciliation of Muslims, Article 6 of the Compilation of Islamic Law states that marriage ceremonies must be performed in the presence and under the supervision of a marriage registrar. According to Islam, the family is an institution whose stability is inextricably related to both the happiness of the individual and the happiness of the community (*ummah*). That is why Islamic jurists describe the family as a *lubnâh* (brick) necessary for the building of society.¹⁷

Following the unsuccessful coup attempt in 1965, another significant step in marriage administration was accomplished in 1966. In 1966, the "Cabinet Praesidium" issued Instruction No. 31/U/IN/12/1966, making civil registry services open to all Indonesian nationals. This act authorised the registration of non-Muslim marriages, which had previously been barred by Dutch-era registration regulations. Finally, in 2006, the legislature passed the Civil Registration legislation, which reformed the old population registration system and consolidated several colonial and independence-era rules and regulations into a single legislation. Although the 2006 law eliminated religious and ethnic discrimination in the registration system, a previously questioned aspect, the Ministry of Religious Affairs and local religious affairs offices still

¹⁶ Nisa, E. F. (2018). The bureaucratization of Muslim marriage in Indonesia. *Journal of Law and Religion*, 33(2), 291-309. doi: <https://doi.org/10.1017/jlr.2018.28>

¹⁷ Haneef, S. S. S., & Razak, M. A. B. A. (2017). Stabilizing muslim marriages: Some reflections on ethical dimension of family law reform. *Mazahib*, 16(1), 33-49. doi: <http://dx.doi.org/10.21093/mj.v16i1.816>

oversaw Muslim marriages and divorces. Meanwhile, non-Muslim marriages were recorded by the Ministry of Home Affairs and local civil registry officers.¹⁸ This registration is the state's role in fulfilling the rights and obligations of the parties in a marriage.

Family law reforms implemented by various Muslim countries broadly cover three aspects: marriage, divorce, and inheritance. One form of reform in the area of marriage is marriage registration. This is considered crucial because it aims to establish order in marriage within society, protect the sanctity of marriage, and specifically protect women in domestic life.¹⁹ This protection is a sort of family harmony. Marriage is referred to as a *mītsâqan ghalîza*, indicating that it is a serious agreement that cannot be taken lightly. Before signing the Kabul consent contract, all parties involved, including the prospective husband and wife and guardian, must consider the consequences and prepare themselves physically and spiritually. This allows marriage to serve as a means of connecting with the Creator.²⁰

From the Divine perspective, laws relating to marriage must be known by Muslims as an indicator for living a moral and legal life. Knowledge of the law has a great impact on the civilized life of Muslims.²¹ Marriage holds a central position in Islamic tradition, embodying a divine institution ordained by God for the fulfillment and sanctity of human relationships. The rules and regulations governing marriage in Islam are deeply rooted in religious texts, including the Quran, Hadith, and scholarly interpretations. This comprehensive analysis seeks to explore and dissect these rules, offering a deeper understanding of the principles underlying Islamic marriage.²² So the foundation of marriage is to establish a state of balance in the relationship between husband and wife. Marriage registration is used to prevent

¹⁸ Cammack, M. (2009). Legal aspects of Muslim–non-Muslim marriage in Indonesia. *Muslim-Non Muslim Marriage: Political and Cultural Contestation in Southeast Asia*, Singapore: Iseas Publishing.

¹⁹ Mustika, D. (2011). Pencatatan Perkawinan Dalam Undang-Undang Hukum Keluarga Di Dunia Islam. *INOVATIF/ Jurnal Ilmu Hukum*, 4(5).

²⁰ Hidayah, N. (2022). Pernikahan Komitmen Ilahi Perspektif Al-Misbah Dan At-Thabari. *REVELATIA Jurnal Ilmu Al-Quran Dan Tafsir*, 3(1), 66-82. doi: <https://doi.org/10.19105/revelatia.v3i1.5613>

²¹ Sharmin, S. S., & Azad, M. M. (2018). Laws of Muslim Marriage from the concept of the Holy Qur'an. *International Journal of Engineering and Applied Sciences (IJEAS)*, 5(7), 29-33.

²² Dariyo, A. (2021). Conversion of religion in Muslim marriage lives. *Psikis: Jurnal Psikologi Islami*, 7(1), 86-94.

inequalities in the exercise of rights and obligations as husband and wife. Marriage registration is not regulated in classical literature (*fiqh* texts). Marriage is a private subject in which the government should not meddle. This is a common explanation given by individuals opposed to marriage registration. They contradict the regulation's good side, which is that marriage registration acts as demographic data for things like marriage, divorce, and the status of children's inheritance rights. This is because when there are issues or problems with marriage, legal action requires an official marriage certificate.²³

Marriage registration is a critical component for the validity of marriage. This is intended to protect citizens in the process of starting a family; additionally, a registered marriage will provide certainty, protection, and legal force for the husband, wife, and children, as well as guarantees and protection of certain marriage-related rights, such as the right to inherit, and so on. The majority of the community is Muslim, which has a significant impact on the implementation of marriage in Indonesia, where a marriage is regarded lawful if it fits religious requirements without being registered.²⁴ Therefore, the aspect of balance in marriage is important, so that the parties who marry bind themselves to the rights and obligations that must be carried out.

Indonesia is not an Islamic state, but it is a predominantly Muslim country. The laws applied are those inherited from the Dutch colonial era, namely the Criminal Code (KUHP), the Civil Code (KUHPER), the Regional Regulations (RBG), and the Islamic Religious Law (HIR). Furthermore, there are also regulations specifically designed for Muslims regarding civil law, including marriage, wills, inheritance, waqf, and the resolution of Islamic economic disputes. All of these are regulated in the Compilation of Islamic Law and Law Number 1 of 1974 concerning marriage. The regulations contained in the Compilation of Islamic Law and the Marriage Law do not all align with the provisions of Islamic jurisprudence. For example, regarding marriage, Articles 5 and 6 of the Compilation of Islamic Law require that marriages be registered and conducted in the presence and under the supervision of a

²³ Lathifah, I. (2015). Pencatatan perkawinan: melacak akar budaya hukum dan respon masyarakat Indonesia terhadap pencatatan perkawinan. *Al-Mazaahib: Jurnal Perbandingan Hukum*, 3(1). <https://doi.org/10.14421/al-mazaahib.v3i1.1379>

²⁴ Faizal, L. (2016). Akibat Hukum Pencatatan Perkawinan. *ASAS*, 8(2). doi: <https://doi.org/10.24042/asas.v8i2.1247>

marriage registrar.²⁵ Marriage registration is an effort by the state to protect the rights and obligations of husband and wife.

In *misyâr* marriages, the potential for them to become unregistered marriages can arise and violate the Marriage Law, as they are not registered with the state. Regarding the invalid registration of marriages with the state registration agency, this case can be outlined as follows:²⁶

- 1) Essentially, the function of registering a marriage at a civil registry office is to provide evidence (*bâyyinah*) to prove that they are truly married to another person. Therefore, one form of evidence considered valid as sharia-compliant evidence (*bâyyinah syar'iyâh*) is an official document issued by the state. When a marriage is registered at a civil registry office, a person must of course have an official document that can be used as evidence (*bâyyinah*) before a judicial panel, in the event of a dispute related to the marriage, and the dispute arises from the marriage, such as inheritance, child custody, divorce, maintenance, and so on. However, an official document issued by the state is not the only sharia-compliant evidence.
- 2) In the developed and advanced civil registration system, no Islamic government has ever criminalized those who entered into marriages not officially registered with state institutions. Furthermore, the vast majority of people at that time married without registering with civil registration institutions. It cannot be said that at the time, these institutions were not yet developed, and that society was not as complex as it is today. This is because Muslim rulers and scholars at that time understood that the origins of the law on marriage registration were not obligatory, but permissible. They also understood that sharia evidence extends beyond written documents.
- 3) In Islamic law, it is true that the state has the right to impose *mukhalâfat* sanctions on those who commit *mukhalâfat* acts.

In the development of the validity of *misyâr* marriage, it was also strengthened by the decree of the 18th Islamic Fiqh Convention in April

²⁵ Quthny, A. Y. A., & Muzakki, A. (2022). Pencatatan Pernikahan Perspektif Hukum Islam dan Undang-Undang Nomor 1 Tahun 1974. *Asy-Syari'ah: Jurnal Hukum Islam*, 8(1), 25-40.

²⁶ Maloko, M. T. (2015). Unregistered marriage in Islamic law perspective a critical study of Islamic law compilation. *Al-Mawarid: Jurnal Hukum Islam*, 49-68.

2004 in Makkah al-Mukarramah, which reads: "The Islamic Fiqh Convention stipulates that marriage contracts that have emerged recently, although they have different names, characteristics and descriptions, are all subject to Sharia law that has been established by the fulfillment of the pillars and conditions of marriage and the absence of prohibitions in the contract. Some contracts are based on the following laws:²⁷

- 1) A marriage contract in which the woman waives her rights to housing, maintenance, circulation of property, or any part thereof, and allows her husband to visit her house at any time of the day or night.
- 2) A marriage contract is valid because the woman resides in her family's home and can meet whenever they wish, whether at her family's home or elsewhere. These and other similar contracts are valid if their essential conditions are met and there are no prohibitions against them. However, this is the opposite of what is essential.

From an international legal perspective, international treaties, such as the 1948 United Nations Declaration of Human Rights, and other treaties, such as the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child, among others, uphold universally applicable values. Marriage is a fundamental right protected by international treaties. Article 16 of the Universal Declaration of Human Rights emphasizes that everyone, regardless of sex or gender, has the freedom to marry and to found a family. These rights apply to both spouses, not only during marriage but also after its dissolution. States explicitly define the legal aspects of marriage, including rights and responsibilities. States parties to international covenants take steps to ensure the well-being of both spouses during and after marriage and to ensure the safety of children. Article 23, section 3 of the International Covenant on Civil and Political Rights states that a marriage is not valid unless both parties give their free and uncontested consent. If the problem is related to a *misyâr* marriage, then there is an agreement between the two parties who agree to each other's wishes; in a *misyâr* marriage, there is a partial elimination

²⁷ Anadi, Y. R., & Deuraseh, N. (2023). The phenomenon of development *misyâr* marriage from the perspective of Islamic law and human rights. *De Jure: J. Hukum dan Syar'iah*, 15, 99-114. doi: <https://doi.org/10.18860/j-fsh.v15i1.19013>

of the wife's rights, one of which can be in the form of not providing external support to the wife, such as living expenses, property, and residence; the partial elimination of the wife's rights is carried out by both parties with free and full consent. This agreement results in a marriage that can be carried out, so that rights and obligations arise, as well as other consequences of the *misyâr* marriage agreement.²⁸ the elimination of some rights in *misyâr* marriage, which is legally contrary to the provisions of positive law in Indonesia regarding marriage law

Misyâr Marriage Practices and Legal Problems

Misyâr marriage is practiced in Saudi Arabia and Egypt. In Saudi Arabia, Abdullah bin Baz issued a fatwa, and in Egypt, Sheikh Muhammad Sayyid Tantawi, the Egyptian Mufti, formalised the marriage in 1999. This marriage is a legal union between a man and a woman. However, in terms of rights and obligations, it differs from a traditional Islamic marriage. This is because the wife does not live in the same house as her husband and does not expect financial or residential support from him. In other words, the husband does not have to provide material support for his wife. According to Yusuf Qaradawi, a religious expert has no reason to restrict a woman from executing *tanâzul* in accordance with the *misyâr* marriage model. Because she is a lady with *bâilgh*, who is reasonable and knows what is best for her. Marriage is one of the most important events in anyone's life, regardless of where they live. In Islam, marriage is referred to as "*mîtsâqan ghalîza*".²⁹

Women have property rights in terms of material possessions. Women, like males, receive an inheritance when they marry. Unlike in the past, women were regarded as heirlooms to be inherited. The percentages vary, however, due to variances in their tasks. Men are

²⁸ Anadi, Y. R., & Deuraseh, N. (2023). The phenomenon of development misyâr marriage from the perspective of Islamic law and human rights. *De Jure: J. Hukum dan Syar'iah*, 15, 99-114. doi: <https://doi.org/10.18860/j-fsh.v15i1.19013>; Burhan Latip, Muhammad Husni Abdulah Pakarti, Nik Salida Suhaila Nik Saleh, Muhammad Zakir Husain, and Normadiah Daud. 2025. "Prohibition Vs Persistence: Contract Marriages Between the Objectives of Islamic Law and Local Legal Realities in Indonesia". *An-Nisa: Journal of Islamic Family Law* 2 (4): 342-60. <https://doi.org/10.63142/an-nisa.v2i4.471>.

²⁹ Ishak, A. M. (2024). Analisis Nikah misyâr Perspektif Yusuf Al Qaradawi. *AL-SULTHANIYAH*, 13(2), 116-126. <https://doi.org/10.37567/al-sulthaniyah.v13i2.3511>; Ahmad, Chaidir Ali, Muhsan Syarafuddin, Kirama Nasim Manbi Ushama, and Jamaluddin Jamal Muhsen. 2025. "The Concept of the Ideal Couple: Buya Hamka's Perspective in Islamic Marriage Law". *An-Nisa: Journal of Islamic Family Law* 2 (4): 315-25. <https://doi.org/10.63142/an-nisa.v2i4.366>.

inherently strong and powerful. As a result, men are charged with safeguarding and caring for weaker women. They are the home leaders who bear the moral and material obligations of women and children, such as clothes, food, housing, and ensuring the entire family's safety and stability.³⁰ The opinion that prohibits *misyâr* marriage is in accordance with the basic concept of *maqasîd asy-syarî'ah* (i.e., *jâlb al-mâsalih wa dâr'u al-mafasîd*). Meanwhile, the group that allows *misyâr* marriage appears relevant to *mâqasid asy-syarî'ah* in the realm of *hifdh al-din*, *hifdh al-nasab*, *hifdh al-mâl*, and *hifdh al-nafs* at the levels of *dhâruriyyat*, *hajjiyâh*, and *tahsiniyyâh*.³¹ Regarding the legal status of *misyâr* marriages, there are pros and cons among the ulama. The pro scholars are, Shaykh Abd al-Aziz bin Baz, Shaikh 'Abd al-Aziz Alu ash-Shaikh (Mufti of the Kingdom of Saudi Arabia), Shaykh Ali Jum'ah ash-Shafi', Yusuf al-Qaradawi, Wahhab az-Zuhaili, Ahmad al-Hajji al-Kurdi, Shaykh Su'ud ash-Shuraym (imam and preacher of the al-Haram Mosque), Shaykh Yusuf Duraywis They argue that in a *misyâr* marriage, all the pillars and conditions of the marriage have been fulfilled, so there is no reason to say it is cancelled. Apart from that, this marriage also creates benefits according to Sharia, namely that both husband and wife fulfill inner satisfaction when carrying out biological relations. In fact, according to Yusuf al-Qaradawi, *misyâr* marriage is a solution for unmarried women and old maids. Meanwhile, scholars who oppose it include Nahr al-Bani, Muhammad Zuhayy, Ali Qurah Dagi, Ibrahim Fadhil, Abdul Sattar al-Jubali, and Sheikh Abdullah bin Baz. According to them, *misyâr* marriage does not fulfill one of the requirements of marriage, namely *i'lan* (announcement). Furthermore, this marriage does not embody the orientation of marriage, such as living together, procreation, there is no justice between the wives, and even insults the dignity of women. This type of marriage is suspected of having the aim of destroying Islamic teachings. Furthermore, there are scholars who abstain, among them Sheikh Muhammad bin Salih al-Uthaymin. He argued that the arguments put forward by scholars for and against it are

³⁰ Hermanto, A., Wulandari, D., & Meriyati, M. (2020). Nikah *misyâr* dan terpenuhinya hak dan kewajiban suami istri. *Ijtimaiyya: Jurnal Pengembangan Masyarakat Islam*, 13(2), 131-160. DOI: <https://doi.org/10.24042/ijpmi.v13i2.6555>

³¹ Dedi, S. (2018). NIKAH MISYÂR (Analisis Maqashid asy-Syari'ah). *Al-Hurriyah: Jurnal Hukum Islam*, 3(1), 41-52. doi: <https://doi.org/10.30983/alhurriyah.v3i1.554>

not convincing and therefore require further study.³² Thus, the potential for conflict in carrying out marriage can occur through *misyâr* marriage.

An important religious value held in high regard by Muslims is marriage, stemming from the special emphasis given to marriage and family life in the Qur'an and Sunnah, where Muslims are strongly encouraged to marry. This religious value is emphasized by various norms and provisions concerning marriage in the two primary sources of Islamic law, the Qur'an and Sunnah.³³ In Islam, marriage is not simply a matter of love and affection. More than that, Islam teaches that marriage should create a harmonious, loving, and compassionate family and foster better generations through the family. Therefore, marriage requires a process and requires hard work to achieve the desired Islamic family. It can even become a happy family according to Islam. This requires knowledge, material resources, and, of course, a sincere intention to worship Allah SWT.³⁴

In Indonesia, the concept of *misyâr* marriage has not been formally regulated by law. Existing laws, such as Law No. 1 of 1974 concerning Marriage and Law No. 16 of 2019, which amended Law No. 1 of 1974, as well as the Compilation of Islamic Law (KHI), only clearly regulate the pillars and requirements for a valid marriage, marriage registration, and the rights and obligations of husband and wife.³⁵

Every human being has the basic right to continue their lineage through marriage, namely carrying out a marriage that is carried out according to their respective cultures and beliefs (religions). 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 the One Almighty God, as regulated in Article 1 of Law No. 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law). Every person or couple who has entered into marriage

³² Dedi, S. (2018). NIKAH MISYÂR (Analisis Maqashid asy-Syariâ€™ah). *Al-Hurriyah: Jurnal Hukum Islam*, 3(1), 41-52. doi: <https://doi.org/10.30983/alhurriyah.v3i1.554>

³³ Alqawasmi, A. (2021). Marriage and divorce practices in Islamic centers in Italy. *Oñati Socio-Legal Series*, 11(4), 959-989. DOI: <https://doi.org/10.35295/osls.iisl/0000-0000-0000-1198>

³⁴ Iriani, S. (2018). Fenomena pernikahan dini dalam perspektif Islam (Studi kasus di Desa Kalikuning). *Jurnal Penelitian Keislaman*, 14(2), 153-161. doi: <https://doi.org/10.20414/jpk.v14i2.700>

³⁵ Permana, A. A. (2025). Nikah Misyar dalam Analisis Perbandingan Undang-Undang Indonesia dengan Kompilasi Hukum Islam. *Arus Jurnal Sosial dan Humaniora*, 5(3), 3699-3704. doi: <https://doi.org/10.57250/ajsh.v5i3.1754>

has a bond of obligations and rights between them both and the children born from the marriage.³⁶

Fair treatment is a fundamental right of women in marriage according to Islamic law. Husbands are required to treat each other fairly, both in terms of affection, respect, and meeting needs. This justice is not limited to one aspect, but encompasses all aspects of domestic life. Justice is a principle that must be upheld to maintain harmony and balance in the husband-wife relationship. Fair treatment is often interpreted as a husband's obligation not to be harsh, neglectful, or discriminatory towards his wife. The Qur'an, in Surah An-Nisa, verse 19, reminds husbands to treat their wives kindly and not to harm them physically or mentally.³⁷

From a human rights perspective, marriage is viewed as a dimension of the emergence of rights and obligations for both parties. The basic concept of marriage within human rights generally emphasizes balance in relationship patterns without diminishing the rights of either partner. Therefore, a key aspect of marriage is building a healthy family structure. This fundamental meaning of marriage aligns with human rights.³⁸ From a human rights perspective, marriage is viewed as a dimension of the emergence of rights and obligations for both parties. The basic concept of marriage within human rights generally emphasizes balance in relationship patterns without diminishing the rights of either partner. Therefore, a key aspect of marriage is building a healthy family structure. This fundamental meaning of marriage aligns with human rights.

In the paradigm of *misyâr* marriage, there is the potential for forced marriages, because one party relinquishes their rights. A closer look at the factors that contribute to forced marriages above reveals that forced marriages are in fact contrary to the principles of human rights, as they are carried out without the consent of one or both parties, but rather through coercion or even threats. Yet, it is known that every individual has the right to act according to their personal will as part of the right to

³⁶ Susanti, D. O. (2016). Urgensi Pencatatan Perkawinan (Perspektif Utilities). *Rechtidee*, 11(2), 166-181. DOI: <https://doi.org/10.21107/ri.v11i2.2428>

³⁷ Hamdiyah, H. (2025). Hak-Hak Perempuan dalam Perkawinan: Perspektif Hukum Islam dan Hak Asasi Manusia. *Abdurrauf Science and Society*, 1(3), 303-314. doi: <https://doi.org/10.70742/asoc.v1i3.207>

³⁸ Mubarak, M. A., & Dinyati, D. V. (2023). HUKUM ISLAM DAN HAM (Tinjauan Hukum Poligami dan Kesetaraan Hak dalam Perkawinan). *An-Nawa: Jurnal Studi Islam*, 5(1), 47-58. doi: <https://doi.org/10.37758/b024x332>

individual freedom as regulated in Article 4 of Law No. 39 of 1999 concerning Human Rights.³⁹ Therefore, there are rights and obligations that are lost and cause problems in marriage.

The paradigm in marriage certainly places equality of rights and obligations, so that if one party releases their obligations then the marriage is unbalanced, so that if marriage is reviewed from the perspective of human rights itself, it is a right that is owned in a marital status. This means that marriage also has a guarantee that the rights of a man and a woman who carry out the marriage are guaranteed by a rule that regulates human rights regarding marriage. The Universal Declaration of Human Rights or UDHR has adjusted the rules regarding marriage that have been ratified by Law No. 29 of 1999 concerning Human Rights, which was then also stipulated in positive law in Indonesia, namely Law No. 1 of 1974 concerning Marriage.⁴⁰ In this perspective, the meaning of equality becomes the foundation of marriage. *Misyâr* marriages like this are common among couples who are having an affair or who are hiding their marriage from the husband's family, the first wife, and so on. Of course, it's haram if there's no marital status, unlike if there's a valid marriage contract.⁴¹ *Misyâr* marriage, viewed from the marriage law, where the purpose of marriage is a physical and spiritual bond, can cause social problems in the household.

In a sociological context, *Misyâr* marriages resemble contract marriages. In Indonesia, the practice of contract marriages often occurs in areas that are centers of tourism or labor migration, such as Puncak, Bogor, or areas with a high number of foreign immigrants. Various reports have found that this practice is carried out through intermediaries who manage the entire process without oversight by the state or legitimate religious institutions. These relationships are often transactional and short-lived, substantially resembling rental relationships rather than marriage contracts. In fact, this practice is sometimes manipulated into a form of exploitation of local women, who

³⁹ Marzuki, I., & Siroj, A. M. (2022). Pemaksaan Perkawinan Dalam Konteks Kajian Hak Asasi Manusia Dan Undang-Undang Tindak Pidana Kekerasan Seksual. *REUSAM: Jurnal Ilmu Hukum*, 10(2), 215-226. doi: <https://doi.org/10.29103/reusam.v10i2.10444>

⁴⁰ Rahma, S. F. M. (2023). Analisis Pernikahan Dini Atas Hak Anak Dalam Perspektif Hak Asasi Manusia (Studi Kasus: Kecamatan Pringapus Kabupaten Semarang). *Gema Keadilan*, 10(3), 127-137.

⁴¹ Hermanto, A., Wulandari, D., & Meriyati, M. (2020). Nikah misyar dan terpenuhinya hak dan kewajiban suami istri. *Ijtima'iyya: Jurnal Pengembangan Masyarakat Islam*, 13(2), 131-160.

lack bargaining power in contract negotiations and, more importantly, lack legal protection in the event of conflict. In this context, the meaning of marriage as a "mitsaqan ghalizha" or solid agreement is diminished.⁴² This has become a social problem for society, so it is possible that it will give rise to adultery.

CONCLUSION

The paradigm in marriage places a valid agreement in the perspective of a strong bond/*Mitsâqan ghalîza*. The practice of marriage in Islamic law is positioned as a sacred agreement with the fundamental aim of building a family that is *Sakinah, Mawâdah and Rahmâh*. *Mitsâqan ghalîza* In the Marriage Law is placed as the basic foundation in building a marriage with the basis of balance being built. The view of *misyâr* marriage which provides legal arguments on the basis of *bâligh* that one party can release their obligations in marriage, this without any sharia reasons such as illness will cause an imbalance in marriage because it is considered that marriage does not aim to create a physical and spiritual bond in which the rights and obligations that bind each partner. The paradigm of the Marriage Law in Indonesia, in essence, builds a balance in the relationship between husband and wife, so that the purpose of marriage in the Law as an adoption in Islamic marriage law, places a balance of rights and obligations in the marriage relationship, so that one of them is through state control by registering marriages so that a balance in the relationship between the two occurs. In the Indonesian marriage law system, *misyâr* marriages can be categorized as not fulfilling the obligations of husband or wife. Potentially, from a sociological perspective, *misyâr* marriage can result in a contractual marriage which is legally inconsistent with the principle of *Mitsâqan ghalîza* in Islamic marriage law and Islamic marriage law in Indonesia.

⁴² Mustafa, F., Fuad, F., Mawariza, P., Suthon, H., & Aziz, J. K. (2025). The Deconstruction of Marriage Law in Islam: A Critical Analysis of The Practice of Contract Marriage in The Modern Era: Dekonstruksi Hukum Perkawinan Dalam Islam: Analisis Kritis Terhadap Praktik Kawin Kontrak Di Era Modern. *Al Hairy/ Journal of Islamic Law*, 1(1), 51-74. doi: <https://doi.org/10.64344/hry.v1i1.14>

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