



REVIEW OF THE MARRIAGE LAW ON WAHBAH ZUHAILI'S VIEWS ON MISYAR MARRIAGE

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Abstract: *Misyar marriage is a form of marriage in which, in practice, the wife does not receive the rights she should rightfully obtain from her husband, such as financial support and a place to live. Recently, misyar marriages have also occurred in Indonesia. There is a debate about the status and position of misyar marriages, with the majority of scholars considering them prohibited (haram), as the wife is deprived of certain rights. However, Wahbah az-Zuhaili is one scholar who holds a different view on the legality of misyar marriages. In his Fatawa Mu'ashirah, az-Zuhaili expresses his opinion on the permissibility of this type of marriage. This research is a normative legal study, specifically a library research approach. The research nature involves content analysis, and legal materials are collected through document studies. The Marriage Law in Indonesia has several provisions that are inconsistent with the practice of misyar marriages, including the purpose of marriage, marriage registration, rights and obligations of spouses, marriage agreements, and the requirements for husbands wishing to practice polygamy. In broad terms, the implementation of misyar marriages, when examined in various aspects within the Indonesian Marriage Law, is not in accordance. The author disagrees with Wahbah az-Zuhaili's view regarding the permissibility of such marriages. The author believes that this type of marriage tends to bring more harm than benefit. The government should actively participate in monitoring through authorized marriage institutions, and if possible, marriages of this nature should be prohibited in Indonesia.*

Abstrak: *Nikah misyar adalah sebuah bentuk pernikahan yang pada praktiknya istri tidak mendapatkan hak-hak yang semestinya ia peroleh dari suaminya, seperti nafkah dan tempat tinggal. Belakangan ini nikah misyar juga terjadi di Indonesia, Terdapat perdebatan mengenai status dan kedudukan nikah misyar, dalam hal ini mayoritas ulama banyak yang menghukumi haram terhadap pernikahan misyar, namun Wahbah az-Zuhaili merupakan salah satu ulama yang memiliki pandangan berbeda terhadap hukum nikah misyar. Dalam Fatawa Mu'ashirah, az-Zuhaili berpandangan tentang kebolehan pernikahan ini. Penelitian ini merupakan penelitian hukum normatif, adapun jenis penelitian yang penulis gunakan*

yakni penelitian *library research* (kepastakaan). Sifat penelitian pada penelitian ini adalah *content analysis* (analisis isi), dan pengumpulan bahan hukum dalam penelitian ini adalah dengan menggunakan studi dokumen. UU Perkawinan di Indonesia memiliki beberapa ketentuan-ketentuan yang tidak sejalan dengan praktik pernikahan *misyar*, diantaranya mengenai tujuan pernikahan, pencatatan nikah, hak dan kewajiban suami istri, perjanjian nikah dan mengenai syarat-syarat yang harus dipenuhi oleh suami yang ingin berpoligami. Dengan demikian secara garis besar, pelaksanaan pernikahan *misyar* ketika ditinjau dalam berbagai aspek yang terdapat di dalam UU Perkawinan Indonesia adalah tidak sejalan. Penulis tidak sependapat dengan pandangan Wahbah az-Zuhaili mengenai kebolehan pernikahan semacam ini. Penulis merasa pernikahan ini cenderung lebih banyak mengandung kemudharatan daripada kemaslahatan. Pemerintah seharusnya turut serta melakukan pengawasan melalui lembaga yang berwenang dalam bidang perkawinan. Dan jikalau bisa, hendaknya pernikahan semacam ini dilarang dilakukan di Indonesia.



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A. INTRODUCTION

The definition of marriage in Article 1 of Law Number 1 of 1974 is a relationship that involves both physical and spiritual aspects between two individuals with the aim of creating a happy and lasting bond based on the Almighty God. Meanwhile, in Article 2 of the Compilation of Islamic Law, it provides an understanding that marriage is a solemn contract or a strong covenant *mitssaqaan ghalidzaan* to adhere to Sharia guidance, and implementing it is a form of worship.

After marriage, the husband has the responsibility to provide maintenance (*nafkah*) to his wife as one of his obligations. Maintenance is divided into two categories, namely, physical maintenance (*nafkah lahir*) and spiritual maintenance. Physical maintenance typically takes the form of material support, including housing, food, and clothing. On the other hand, spiritual maintenance typically involves non-material aspects, such as engaging in sexual relations, love, and affection.¹

¹ Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan* (Jakarta: Kencana, 2006), 165.

Nevertheless, there are various cases of unconventional marriages, one of which is known as "misyar marriage" The term "misyar" is derived from the word "sara," which means to travel or embark on a journey, often associated with a man who frequently moves from one location to another or undertakes journeys. Subsequently, this term is used to designate a specific type of marriage.²

Misyar marriage is a form of matrimony in which, in practice, the wife does not receive the rights she should rightfully obtain from her husband, such as financial support. Misyar marriage can also be defined as a marital arrangement where the woman relinquishes half of her rights, which she would typically receive in marriage, such as material support and accommodation.³

The withholding of material support by the husband is a distinctive feature that sets misyar marriage apart from other types of marriages. However, the execution of the contract is similar to a conventional marriage, with all its pillars and requirements fulfilled according to Sharia regulations. This type of marriage is mostly entered into by women with already established economic status who seek the husband's protective function. In this arrangement, the woman relinquishes her right to financial support, and the husband is not obligated to provide for such support.⁴

This type of marriage was originally practiced among business professionals who traveled to distant locations, even abroad, for extended periods to manage their businesses. During their temporary stays, they would marry local women from the vicinity where they conducted their business.⁵

² A H M Ershad Uddin, "The Practice and Legitimacy of Misyār Marriage: a Critical Analysis Within Islamic Law," *The Journal of Near East University Islamic Research Center* 9, no. 2 (2023): 257.

³ Intan Pelangi dkk., "The Misyar Marriage and Family Law Reform in Indonesia," *Smart: Journal of Sharia, Tradition and Modernity* 3, no. 1 (2023): 17.

⁴ Lathifah Munawaroh dan Suryani S, "Ketimpangan Pemenuhan Hak Istri pada Pernikahan Misyar dalam Pemikiran Wahbah Al-Zuhaily," *Muslim Heritage* 6, no. 1 (2021): 49.

⁵ Helmi Basri, *Nawazil Ahkam Usroh (Aplikasi Teori Nawazil pada Problematika Hukum Keluarga)* (Indonesia: Guepedia, 2021), 17.

Recently, misyar marriages have also occurred in Indonesia. The spread of misyar marriages to Indonesia is rooted in several factors. Initially, this marriage practice was mostly carried out by Arab tourists towards local residents. However, over time, it has evolved beyond this scenario. Both husband and wife in misyar marriages are now native Indonesians. This type of marriage is identified by two fundamental characteristics: Firstly, the husband and wife do not live together for an extended period during the marital relationship. Secondly, the husband does not practically support the economic aspects of the family.⁶

In this regard, the majority of scholars deem misyar marriages as prohibited (haram) because they are considered incompatible with Sharia provisions and the objectives of marriage. They are seen as unable to foster a healthy marital relationship, such as living together, nurturing affectionate bonds, and ensuring fairness to the wife. Among the numerous scholars who declare misyar marriages as forbidden, Wahbah az-Zuhaili is one of those who hold a different view on the legal status of misyar marriages. In his *Fatawa Mu'ashirah*, az-Zuhaili expresses his perspective on the permissibility of this type of marriage.⁷

The author is keen to conduct research based on the previous descriptions and further explore the topic of misyar marriages, particularly regarding the fatwa issued by Wahbah az-Zuhaili that allows misyar marriages. Az-Zuhaili is one of the scholars with a distinct perspective on the legality of misyar marriages. To ensure relevance, the author will narrow the focus of the research on this fatwa to the examination of marriage laws applicable in Indonesia, specifically Law No. 1 of 1974, amended by Law No. 16 of 2019 regarding Marriage. Considering that such marriages are also beginning to occur and spread in Indonesia, the author believes that the Marriage Law is crucial in addressing marriages in the country. This includes aspects such as the legality of marriage,

⁶ Ratno Lukito, "Continuity and Change in Law: Confabulating Misyar Marriages in Indonesia," *Onati Socio-Legal Series* 12, no. S1 (2022): 250.

⁷ Agung Tri Nugroho, "Problematika Nikah Misyar dalam Tinjauan Sosiologis dan Psikologis," *Al-Qodhi : Jurnal Hukum Keluarga Islam* 1, no. 1 (2021): 88.

legal protection, distribution of responsibilities, and protection of women's rights.

B. RESEARCH METHODS

This paper uses a normative legal study, specifically employing a library research approach. The nature of the research is content analysis. Two types of legal materials are utilized: primary legal sources and secondary legal sources. The primary legal source in this study is Wahbah Zuhaili's book, "Fatawa Mu'ashirah," while the secondary legal source is the Marriage Law, and legal materials are gathered through document studies.

C. DISCUSSIONS

Wahbah Zuhaili's Views on Misyar's Marriage

Wahbah bin Musthafa az-Zuhaili is recognized as a prominent scholar in the field of knowledge, particularly in exegesis (tafsir) and Islamic jurisprudence (fiqh). He was born in Dir 'Athiyah, in the Qalmun region, Rif Province, Damascus, on the 25th of Shawwal 1350 H, precisely on the 6th of March 1932. Zuhaili passed away at the age of 83 on August 8, 2015, precisely on the 23rd of Shawwal 1436 H. From childhood to old age, his life has been filled with dedication to scholarly activities, making almost all of his works a reference for the current generation.⁸

Wahbah Zuhaili's significant focus on academic pursuits has led to his extensive involvement in the field of education, resulting in numerous outstanding works derived from his intellectual prowess. He is renowned as an expert in Islamic law and a specialist in the field of Ushul Fiqih, acknowledged internationally. His role as a public intellectual and a moderate figure in issuing fatwas is well-recognized. He has produced a total of 500 scholarly works, including articles, books, and papers.⁹

⁸ Lathifah Munawaroh dan Suryani S, "Ketimpangan Pemenuhan Hak Istri pada Pernikahan Misyar dalam Pemikiran Wahbah Al-Zuhaily," 54.

⁹ Akhmad Rizal Amiruddin, "Metode Ijtihad Wahbah Zuhaili dan Aktualisasinya Dalam Konteks Kekinian," *SHIBGHAH: Journal of Muslim Societies* 3, no. 1 (2021): 54.

Among the numerous scholars who declare misyar marriages as prohibited, Wahbah Zuhaili is one of the scholars who holds a different view on the legal status of misyar marriages. In his *Fatawa Mu'ashirah*, Zuhaili expresses his perspective on the permissibility of this type of marriage.

رَوَاجُ الْمَسْيَارِ زَوَاجٌ مُكْتَمَلٌ الْأَرْكَانِ حَيْثُ يُرْجَدُ الْإِجَابُ وَالْقَبُولُ مِنَ الطَّرَفَيْنِ مَعَ حُضُورِ الْوَالِيِّ الْعَدْلِ وَشَاهِدَيْ عَدْلٍ نَقَاتٍ، ذُكُورِ الْمُسْلِمِينَ بِالْغَيْبِ عَاقِلِينَ، وَلَكِنْ تَتَنَزَّلُ الْمَرْأَةُ عَنْ شَيْئَيْنِ: حَقِّهَا فِي الْقِسْمِ (الْمَيْبِتِ عِنْدَهَا دَوْرِيًا بِمَا يُعَادِلُ زَمَنَ الْمَيْبِتِ عِنْدَ امْرَأَةٍ أُخْرَى) وَحَقِّهَا فِي النَّفَقَةِ، وَلَا بُدَّ مِنْ تَسْجِيلِهِ عِنْدَ الدَّوْلَةِ حِفَاطًا عَلَى حُقُوقِ الْمَرْأَةِ، وَيُكْرَهُ كِتْمَانُهُ كَرَاهَةً شَدِيدَةً. هَذَا الزَّوْاجُ وَإِنْ كَانَ صَحِيحًا مَشْرُوعًا فِي الظَّاهِرِ إِلَّا أَنَّهُ لَا يُحَقِّقُ مَقَاصِدَ الزَّوْاجِ الثَّابِتَةِ، وَالسُّكُنِ وَالْإِطْمِئْنَانَ وَالْإِشْرَافَ عَلَى الْمَنْزِلِ وَنَحْوِ ذَلِكَ، فَهُوَ فِي رَأْيِي مَكْرُوهٌ.

"Misyar marriage is a form of matrimony that fulfills all its pillars perfectly, with a valid contract (*ijab qabul*), the fairness of the guardian, and the fairness of two witnesses, under the condition that the man is a Muslim, mature, and of sound mind. However, in misyar marriages, the wife willingly foregoes two rights that she should rightfully receive, namely the right to reside together and the financial support that should be provided. Although this marriage must be officially recorded to secure the rights of the wife, keeping it secret is strongly discouraged. Legally, this marriage is valid according to Sharia, but it falls short of achieving the goals of marriage such as happiness, peace, nobility, and other objectives. Therefore, I believe that despite being permissible legally, misyar marriage is deemed *makrooh*".¹⁰

Based on the explanation, Wahbah az-Zuhaili states that the practice of misyar marriage, when viewed from the contractual perspective, is considered valid because all the conditions and essential elements of marriage have been fully and perfectly fulfilled. This perspective is based on the principle of "The original legal status of a matter in contractual law is permissible." This principle applies to various types of contracts, including marriage contracts, which are considered valid when they meet the fundamental elements stipulated by Sharia. The validity holds, with the condition that the contract is not utilized as a means to engage in forbidden (*haram*) actions. Furthermore, Wahbah az-Zuhaili elaborates:

¹⁰ Wahbah Az-Zuhaili, *Fatawa Mu'ashirah* (Damaskus: Dar al-fikr, 2003), 226.

وَالْتَسَجِيعُ أَوْ الْمَعَارِضَةُ يَكُونُ بِحَسَبِ الطَّرُوفِ، وَ بِحَسَبِ كُلِّ حَالَةٍ عَلَى جِدَةٍ، فَفَدَّ يَكُونُ مَرُغُوبًا لِتَحْقِيقِ عِفَّةِ الْمَرْأَةِ وَصَوْنِهَا إِذَا غَلَبَ عَلَى ظَانِّهَا الْوُقُوفُ فِي الْحَرَامِ مِنْ غَيْرِ ذَلِكَ. وَأَعَارِضُهُ إِذَا كَانَتْ الْمَرْأَةُ فِي حَالِ إَعْتِدَالٍ وَلَا يُوجَدُ شَبَقٌ أَوْ رَغْبَةٌ مَلِحَةٌ، وَأَطَالِبُ الرَّجُلِ الْمُتَزَوِّجِ بِهَذِهِ الصِّفَةِ أَنْ يُكْتَنَزَ التَّرَدُّدُ عَلَى هَذِهِ الزَّوْجَةِ، وَيُشْعِرُهَا بِأَنَّهُ زَوْاجٌ بِالْمَعْنَى الصَّحِيحِ لَا نِصْفٌ أَوْ رُبُعٌ أَوْ سُدُسٌ زَوْجٍ مَثَلًا.

"The inclination or objection towards misyar marriage depends on specific situations, which can be assessed on a case-by-case basis. At times, misyar marriage is desired or encouraged as an effort to safeguard a woman's chastity and prevent her from engaging in forbidden behavior. I do not endorse this type of marriage when a woman is in normal conditions and lacks strong urges or sexual ambitions. I believe that a man entering into marriage in such a situation should regularly visit his wife and consider himself a husband in the truest sense, not a half, a quarter, or a sixth of a husband".¹¹

Another perspective on misyar marriage can be viewed in the context of an individual's situation, where sometimes it is allowed based on necessity. For example, a woman might be permitted to enter into a misyar marriage if she is concerned about preserving her chastity and fears falling into forbidden actions if she remains unmarried. However, her potential husband may lack the financial capability to provide for her. In this context, misyar marriage is considered permissible due to the justification of necessity. The consideration of necessity as a factor in determining legal validity can be applied in cases where there is no clear nash provision. Nevertheless, such cases are regarded as beneficial and have positive value.¹² There are several arguments or reasons presented by Wahbah az-Zuhaili in establishing the legal permissibility of misyar marriage, namely:

Firstly, preserving the dignity of a woman is something that is inherent in human nature and a social phenomenon. If a man actively contributes to achieving this goal, he will be rewarded, and this aligns with religious teachings. According to az-Zuhaili, this reason makes misyar marriage permissible

¹¹ Az-Zuhaili, 227.

¹² Ismanul Fajri, Helmi Basri, dan Arisman, "Analisis Pendapat Wahbah Al-Zuhaili (W. 1437 H) Tentang Nikah Misyar Perspektif Maqashid Al-Syari'ah," *Familia (Jurnal Hukum Keluarga)* 4, no. 1 (2023): 55.

because, in this type of marriage, one of the purposes of marriage is fulfilled, preserving the honor of a woman as a wife.¹³

Secondly, fundamentally a marriage that meets the conditions and pillars as regulated by Sharia is considered valid, as long as it is not utilized as a means to engage in forbidden activities. In misyar marriages, there is no evidence of any illicit intentions. Az-Zuhaili, in his explanation, delves deeper into the aspects of fiqh munakahat regulations, stating that misyar marriage is in accordance with and does not contradict the conditions and pillars of marriage.

Furthermore, Wahbah az-Zuhaili argues that any contract that fulfills the pillars and conditions is valid, as long as it does not serve as a bridge for forbidden actions, such as tahlil marriages (marriage with a divorced woman with the intention of remarrying her) and mut'ah marriages (temporary marriages). Misyar marriage is not intended for forbidden purposes.¹⁴

Thirdly, if one of the partners voluntarily relinquishes half of their rights after the marriage contract, this is not considered a violation of Sharia. This reason is more related to the assessment of the marital agreement aspect.¹⁵

If we examine the arguments and several reasons presented by Az-Zuhaili, it can be observed that he employs the *istislahi ijtiḥad* method. The *istislahi ijtiḥad* method is a legal reasoning approach that involves gathering general verses with the intention of creating universal principles aimed at protecting and bringing about benefits. This is because the essence of establishing Sharia is to achieve welfare.¹⁶

¹³ Lathifah Munawaroh dan Suryani S, "Ketimpangan Pemenuhan Hak Istri pada Pernikahan Misyar dalam Pemikiran Wahbah Al-Zuhaili," 60.

¹⁴ Lathifah Munawaroh dan Suryani S, 64.

¹⁵ Fajri, Basri, dan Arisman, "Analisis Pendapat Wahbah Al-Zuhaili (W. 1437 H) Tentang Nikah Misyar Perspektif Maqashid Al-Syari'ah," 60.

¹⁶ Muhammad Roy Purwanto, *Reformasi Konsep Masalah Sebagai Dasar dalam Ijtihad Istislahi*, Cetakan 1 (Yogyakarta: Universitas Islam Indonesia, 2017), 83.

Misyar Marriage in Indonesia

Indonesia, as the home to the world's largest Muslim population, is undoubtedly a significant location to study how Islamic family law functions in real life. Not only does religious law touch nearly every aspect of the daily lives of the people, but there is also concurrent legal pluralism.

Recently, misyar marriages have also occurred in Indonesia. Initially, this marriage practice was mainly carried out by Arab tourists towards local residents. However, over time, it is no longer the case. Both husbands and wives entering into misyar marriages are now native Indonesians.¹⁷

Misyar marriage participants typically conceal their marital status. This type of marriage follows a polygamous pattern, where a man already has a wife. Misyar marriage is interpreted as an effort to overcome obstacles in marriage. Although theoretically, Islamic marriage is considered eternal and only terminates in emergency situations through divorce, misyar marriage is seen as a solution to overcome minor hindrances in the union of husband and wife, especially related to economic conditions.¹⁸

Among other factors contributing to the occurrence of misyar marriages is the understanding among individuals involved that misyar marriage serves as a means to fulfill their sexual needs, particularly when they are far from their first wives. That's why they decide to marry again with a woman who can satisfy their sexual desires when they are not at home. For them, misyar marriage is a convenient way to alleviate their desires without violating religious prohibitions.¹⁹

¹⁷ Mochamad Rahman Firdian, "Factors and Reasons That Influenced the Misyar Marriage Phenomenon in Surabaya Urban Communities," *Journal of Social Science* 3, no. 1 (2022): 138.

¹⁸ Lukito, "Continuity and Change in Law: Confabulating Misyar Marriages in Indonesia," 249.

¹⁹ Lukito, 254.

Analysis Of Wahbah Az-Zuhaili's View on Misyar Marriage in The Context of Law No. 1 Of 1974 Amended By Law No. 16 Of 2019

In this section, the author will analyze Wahbah az-Zuhaili's views on misyar marriage using Law Number 1 of 1974 concerning Marriage as the analytical tool. This regulation is referred to as positive law, which should serve as a guide for the Indonesian society, including being a reference for decision-makers such as judges or the government in establishing policies.

Based on the explanations provided earlier, the author will analyze Wahbah az-Zuhaili's views by delving into the objectives of marriage, the validity of a marriage, marriage registration, the rights and obligations of spouses, marriage agreements, and polygamy, as they are considered relevant to the research object.

Firstly, concerning the purpose of marriage, Article 1 of Law Number 1 of 1974 states that the purpose of marriage is to create a relationship full of happiness and lasting (eternal) with a foundation in the Almighty God. Therefore, when looking at the definition of misyar marriage, which explains that it is a marriage where a wife relinquishes rights that she should rightfully obtain from her spouse, including financial support and a place to live, Wahbah az-Zuhaili explains that one of the reasons misyar marriage is permissible is because it fulfills one of the purposes of marriage, which is to preserve the honor of a woman as a wife.

According to the author, living in a marital relationship by giving up the rights of one of the partners, such as withholding financial support from the wife, even if she is financially capable, rationally makes it difficult to achieve a harmonious, happy, and lasting marriage life, as outlined in Article 1 of Law Number 1 of 1974 regarding the purpose of marriage.

Secondly, concerning the validity of a marriage. Article 2, paragraph (1) of Law Number 1 of 1974 states that a marriage is declared valid if it is conducted in accordance with the laws of religion and the beliefs embraced. Misyar marriage is considered valid when viewed from the contractual perspective, as all the required conditions and pillars in the marriage process have been fulfilled and

align with religious provisions.²⁰ As explained by Az-Zuhaili, misyar marriage is a valid marriage as its conditions and pillars are complete, including the presence of *ijab*, *qabul*, the fairness of the guardian, and the fairness of two witnesses, with the condition that the man is a Muslim, mature, and of sound mind.

Thirdly, regarding the marriage registration. Every marriage must be recorded in accordance with the prevailing regulations, as stated in Article 2, paragraph (2) of Law Number 1 of 1974. The marriage registration process is governed by Article 2 of Government Regulation Number 9 of 1975. It stipulates that for individuals who adhere to the Islamic faith, marriage registration is carried out by the Marriage Registrar Officer (PPN) at the Office of Religious Affairs (KUA), in accordance with the provisions specified in Law Number 32 of 1954 concerning Marriage, Divorce, and Reconciliation. Conversely, for those who do not adhere to the Islamic faith, marriage registration is conducted by the Marriage Registrar Officer (PPN) at the Civil Registry Office.²¹

In misyar marriages, Az-Zuhaili argues that such marriages should be registered or documented by the state, and keeping them secret is strongly discouraged. However, in reality, participants in misyar marriages often do not register them as they should. Misyar marriage is also known as "tourism marriage," where a man travels for months and then marries a woman in the foreign area. Most misyar marriages are conducted by men who already have wives. Therefore, such marriages are challenging to register due to the failure to meet the established requirements.²²

Fourthly, regarding the rights and obligations of husband and wife. In the Marriage Law, Article 34, paragraph (1) states that "The husband is obligated to care for his wife and fulfill all basic needs for household life to the best of his

²⁰ Bing Waluyo, "Sahnya Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jurnal Media Komunikasi Pendidikan Pancasila dan Kewarganegaraan* 2, no. 1 (2020): 198.

²¹ Nasrudin, Nur Mohamad Kasim, dan Lusi Margareth Tijow, "Pencatatan Perkawinan Berdasarkan Penerapan Objektifikasi Hukum Perkawinan Islam di Indonesia," *Jurnal Syntax Admiration* 2, no. 10 (2021): 1950.

²² Parlindungan Simbolon, "Nikah Misyar dalam Pandangan Hukum Islam," *Jurnal Al-Himayah* 3, no. 2 (2019): 178.

ability". This contradicts the implementation of misyar marriage, as explained by Wahbah az-Zuhaili in his fatwa, stating that in this type of marriage, there is *tanazul*, which means the waiver of the wife's right to financial support and residence by her husband. In a misyar marriage, it is evident that the obligation of providing financial support from the husband to the wife is not fulfilled, even though it may be waived by mutual agreement.

Fifthly, regarding the marriage agreement. In misyar marriages, there is an agreement concerning *tanazul*, especially regarding financial support, which is one of the consequences of marriage. Therefore, in this situation, if a wife declares relinquishing her right to financial support, it falls under the category of a promise.²³ If the description of misyar marriage mentioned above is compared with the Marriage Law, it creates inconsistency. Article 29, paragraph (2) explains that an agreement can be declared invalid if it is not in harmony with the principles of law, religion, and morality.

Sixthly, regarding polygamy. Basically, Law Number 1 of 1974 concerning Marriage adheres to the principle of monogamy, as outlined in Article 3, paragraph (1): "a man is allowed to marry only one wife, and a woman is allowed to marry only one husband." However, in another part of the law, it is explained that polygamy can be justified in specific (particular) situations.²⁴

According to Wahbah az-Zuhaili's perspective, misyar marriage is a form of matrimony involving a man and a woman, conducted through the *ijab qabul* process with the presence of witnesses and a guardian. In this context, the woman voluntarily waives her rights, such as material financial support and residence. Additionally, the wife is willing to forgo her turn to stay overnight with her husband to allow it to be given to another wife. In reality, most misyar marriages are entered into by men who already have wives. However, due to specific requirements or situations, the wife in a misyar marriage may not obtain her rights as stipulated by religious provisions.

²³ Muhammad Fu'ad Syakir, *Perkawinan Terlarang* (Jakarta: CV. Cendekia Sentra Muslim, 2002), 34–35.

²⁴ Idrus dan Fuadi Shifriyan, "Poligami Dalam Kajian Sad Dzari'ah," *Jurnal Islam Nusantara* 04, no. 01 (2020): 64.

This is certainly not in line, as emphasized by the Marriage Law, specifically in Article 5, paragraph (1), points b and c, which explain that if a husband wishes to practice polygamy, he is obliged to meet certain conditions and criteria, namely: "ensure that the husband has the ability to fulfill the needs of his wives and their offspring." This is followed by the next point: "ensure that the husband can treat his wives and children fairly".

D. CONCLUSIONS

Among the many scholars who declare misyar marriages as prohibited, one of the scholars with a different view on the legality of misyar marriages is Wahbah Az-Zuhaili. In his Fatawa Mu'ashirah, Az-Zuhaili expresses his perspective on the permissibility of this type of marriage, presenting several reasons. He argues that the conditions and pillars of a marriage are fully met in misyar marriages, which can safeguard the honor of women and prevent them from engaging in illicit behavior. Additionally, if one of the spouses voluntarily reduces some of their rights after the marriage contract, it is not considered a violation of Sharia.

Based on this exposition, when examined within the context of the Marriage Law applicable in Indonesia, there are several provisions that are not in line with the practice of misyar marriages. These include the objectives of marriage, marriage registration, the rights and obligations of spouses, marriage agreements, and polygamy, as discussed in the previous section. Therefore, broadly speaking, the implementation of misyar marriages, when evaluated in various aspects outlined in the Indonesian Marriage Law, is not in alignment. The author disagrees with Wahbah Az-Zuhaili's perspective on the permissibility of such marriages.

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