

## **Epistemology of Misyar Marriage by Yusuf al-Qaradawi in the Book of *Zawāj al-Misyār Ḥakikatuh and Hukmuh* from the Perspective of the Philosophy of Science**

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**Abstract:** *Misyar marriage is a controversial alternative marital form within contemporary Islamic discourse, particularly concerning its legal validity and alignment with the objectives of Islamic law (maqāṣid al-sharī'ah). Imam Yusuf al-Qaradawi, a leading figure in modern Islamic legal thought, addresses this phenomenon in his work *Zawāj al-Misyār Ḥaqīqatuh wa Ḥukmuh*. This article seeks to examine the epistemological foundation of al-Qaradawi's view on misyar marriage to understand the structure of his legal reasoning and methodology. This study specifically focuses on the epistemic foundations underlying Yusuf al-Qaradawi's views on the practice of misyar marriage, the ijtiḥad method used, examining the authoritative sources that are Yusuf al-Qaradawi's main references, and his approach in combining normative texts with contemporary social realities. This study adopts a qualitative descriptive-analytical method, employing content analysis of al-Qaradawi's primary work, especially *Zawāj al-Misyār Ḥakikatuh wa Ḥukmuh*. The analysis is conducted within the framework of Islamic philosophy of knowledge, emphasizing the integration of epistemologies. The findings reveal that al-Qaradawi constructs his fatwa through an integrative approach responsive to modern realities, employing takyīf fiqhī as a contextual ijtiḥad tool. His epistemic foundation combines scriptural authority with maqāṣid-oriented reasoning, producing legal opinions that are both normatively valid and socially constructive. This contributes significantly to the development of a adaptive contemporary Islamic legal epistemology and maslahah.*

**Keywords:** *Misyar Marriage, Contemporary Ahwal Syakhṣiyah, Yusuf Al-Qaradawi.*

**Abstrak:** *Nikah misyar merupakan bentuk pernikahan alternatif yang menimbulkan perdebatan di kalangan ulama kontemporer, terutama terkait keabsahan dan dampaknya terhadap maqāṣid al-sharī'ah. Imam Yusuf al-Qaradawi, salah satu tokoh penting dalam pemikiran hukum Islam modern, membahas fenomena ini dalam karyanya *Zawāj al-Misyār Ḥaqīqatuh wa Ḥukmuh*. Artikel ini bertujuan untuk mengkaji secara epistemologis pandangan al-Qaradawi mengenai nikah misyar, guna memahami bagaimana struktur pengetahuan dan metode ijtiḥadnya dikembangkan. Kajian ini secara khusus memfokuskan perhatian pada fondasi epistemik yang melandasi pandangan Yusuf al-Qaradawi tentang praktik nikah misyar, metode ijtiḥad yang digunakan, menelaah sumber-sumber otoritatif yang menjadi rujukan utama Yusuf al-Qaradawi, dan pendekatannya dalam memadukan teks normatif dengan realitas sosial kontemporer. Penelitian ini menggunakan metode kualitatif deskriptif-analitis dengan teknik content analysis terhadap karya primer al-Qaradawi, khususnya *Zawāj al-Misyār Ḥakikatuh wa Ḥukmuh*. Analisis dilakukan dengan pendekatan filsafat ilmu, melalui kerangka epistemologi Islam. Hasil penelitian menunjukkan bahwa al-Qaradawi membangun fatwa nikah misyar melalui pendekatan integratif yang responsif terhadap konteks sosial, dengan menggunakan metode takyīf fiqhī sebagai instrumen ijtiḥad kontekstual. Basis epistemiknya berpijak pada kombinasi antara otoritas nash syar'ī dan*

*orientasi maqāsid asy-syarī'ah, sehingga menghasilkan fatwa yang tidak hanya legal secara normatif, tetapi juga solutif secara sosial. Temuan ini memberikan kontribusi penting dalam pengembangan epistemologi hukum Islam kontemporer yang adaptif dan maslahat.*

**Kata Kunci:** Nikah Misyar, Ahwal Syakhshiyyah Kontemporer, Yusuf Al-Qaradhwiy.

## Introduction

Allāh ﷻ created humankind in pairs due to the biological and psychological interdependence that exists between the two partners. To fulfill this natural inclination, humans instinctively strive to find and be with their partners. In order for the fulfillment of these needs to bring benefit to humankind, it must be regulated properly. Islam has provided a concept to ensure that the tendency to satisfy both biological and psychological aspects is carried out appropriately.<sup>1</sup>

Islam has established an ideal concept for humans to implement in fulfilling their biological and psychological needs toward their partners. This concept is what is referred to as *marriage*. Marriage, as the best concept for this matter, is equipped with a set of conditions and pillars. When marriage is carried out in accordance with the prescribed conditions and pillars, it will yield tremendous benefits, not only for those who undertake it but also for humanity at large.

In contemporary times, a model of marriage known as *misyar* marriage has become known<sup>2</sup>. This type of marriage has sparked disagreement among scholars regarding its validity. The question arises whether this marriage brings benefit or rather leads its practitioners into harm and disadvantage.<sup>3</sup> Scholars who argue that this type of marriage is invalid contend that it contradicts the original purpose of marriage. According to them, it is incompatible with human rights<sup>4</sup>, opens the door to exploitation of wealthy older women, and fails to realize justice within it<sup>5</sup>. On the other hand, scholars who

<sup>1</sup> M Nurhakim and K Fadly, "Tinjauan Sosiologis Fatwa Ulama Kontemporer Tentang Status Hukum Nikah Misyar," *Salam Jurnal Ilmu-Ilmu Sosial* 14, no. 2 (2011): 41–52, <https://ejournal.umm.ac.id/index.php/salam/article/view/1618>; Saffet Köse, "Misyār Nikāhı -Kur'ân ve Sünnetin Çizdiği Aile Modeli Çerçevesinde Bir Yaklaşım-," *İslâm Hukuku Araştırmaları Dergisi*, no. 13 (2009): 13–34, <http://ktp2.isam.org.tr/detayilhmklzt.php?navdil=tr&midno=20313750&Konu=İslâm+Hukuku>.

<sup>2</sup> Fatimawali Fatimawali, "Mengurai Kontroversi Dan Manfaat Nikah Misyar," *Al Qodiri : Jurnal Pendidikan, Sosial Dan Keagamaan* 22, no. 2 (2024): 93–103, <https://doi.org/https://doi.org/10.53515/qodiri.2024>.

<sup>3</sup> M. Zainuddin Sunarto and Zainuri Chamdani, "Nikah Misyar; Aspek Maslahah Dan Mafsadah," *MEDIA BINA ILMIAH* 15, no. 8 (2021): 4929–40, <https://doi.org/https://doi.org/10.33758/mbi.v15i8.1001>; Nur Kamilia, "Konsep Keadilan Poligami Dalam Nikah Misyar Perspektif Syekh Abdul Aziz Bin Baz," *El-Bait: Jurnal Hukum Keluarga Islam* 3, no. 1 (2024): 1–17, <https://doi.org/https://doi.org/10.53515/ebjhi.v3i1.46>; Hasbi Ash Shiddiqi, "Pandangan Al-Qaradawi Tentang Hukum Nikah Misyar (Kajian Analisis Kritis Perspektif Dhawabith Al-Maslahah Syekh Ramadhan Al-Buti)," *Al Maqashidi: Jurnal Hukum Islam Nusantara* 3, no. 1 (2020): 1–15, <https://doi.org/https://doi.org/10.32665/almaqashidi.v3i1.868>.

<sup>4</sup> Dwi Wulandari Meriyanti, Agus Hermanto, "Nikah Misyar Dan Terpenuhinya Hak Dan Kewajiban Suami Istri," *Ijtima'iyya: Jurnal Pengembangan Masyarakat Islam* 13, no. 2 (2020): 131–60, <https://doi.org/http://dx.doi.org/10.24042/ijpmi.v13i2.6555>.

<sup>5</sup> Kamilia, "Konsep Keadilan Poligami Dalam Nikah Misyar Perspektif Syekh Abdul Aziz Bin Baz."

consider this marriage valid and permissible argue that it serves as a concrete solution to social issues such as the increasing number of unmarried older women or divorcees.<sup>6</sup>

One of the contemporary Muslim scholars who holds that misyar marriage is valid and permissible is Imam Yusuf al-Qaradawi.<sup>7</sup> He elaborated his view in his book entitled “*Zawāj al-Misyār Haqīqatuhu wa Ḥukmuhu*” and in a subsection of his fatwa compilation “*Fatāwā Mu’āṣirah*”. This article aims to discuss the epistemology of his opinion. Recently, there has been an increasing interest in exploring the epistemological aspects of various branches of knowledge, with the aim of understanding how such knowledge is established, constructed, and upon what foundations it stands. By uncovering how knowledge is produced, its application becomes more accessible. The same trend applies to Islamic sciences, where scholars and Muslim researchers actively explore the epistemology of Islamic knowledge.<sup>8</sup> Furthermore, epistemology as the foundation of knowledge theory serves as a basis for humans to understand the world, including in addressing complex issues through interdisciplinary approaches.<sup>9</sup>

Several studies and research have been conducted on the views of Imam Yusuf al-Qaradawi regarding *misyar marriage*. This article will highlight studies conducted in the past five years, *First*, the study conducted by Agus Hermanto and colleagues, titled *Misyar Marriage and the Fulfillment of the Rights and Duties of Husband and Wife*. The conclusion of this study is that *misyar* marriage is valid as long as it fulfills the pillars and conditions of marriage, and is not carried out merely to satisfy lust while neglecting the formation of a harmonious, loving, and compassionate family as prescribed in Islam<sup>10</sup>. *Second*, a study by Siti Salma Afiqh entitled *An Analysis of Yusuf al-Qaradawi's Fatwa on Misyar Marriage and Its Relevance to Human Rights*. This study concludes that *misyar* marriage is permissible provided it meets the pillars and conditions of marriage and originates from the mutual consent of both parties.<sup>11</sup> *Third*, a study entitled *The Views of Islamic scholars Figures in the Indonesian Islamic scholars Council on Yusuf al-Qaradawi's Fatwa on Misyar Marriage, conducted by Wafiah Rafifatun Nida*. This research concludes that *misyar* marriage is valid and can even serve as a solution to certain problems, as long as it is conducted in accordance with all the pillars and conditions of marriage.<sup>12</sup> *Fourth*, a study titled *An Analysis of Yusuf al-Qaradawi's Thought on Financial Support in Misyar Marriage*, conducted by Muhammad Ilham Armi and Nurhayati. This study concludes that Yusuf al-Qaradawi employed

<sup>6</sup> Ali Trigiyanoto, *Bincang 11 (Sebelas) Nikah Kontroversial Dalam Islam*, 1st ed. (Malang: Madza Media, 2021), 104, [http://repository.uingusdur.ac.id/966/1/Buku Nikah Kontroversial.pdf](http://repository.uingusdur.ac.id/966/1/Buku%20Nikah%20Kontroversial.pdf).

<sup>7</sup> Yūsuf Al-Qaradāwī, *Zawājul Misyār Haqīqatuh Wa Ḥukmuh*, 3rd ed. (Cairo: Maktabah Wahbah, 2010); Yūsuf Al-Qaradāwī, *Hadyul Islām Fatāwā Mu’āṣirah (Arba’ah Mujallad)*, 11th ed. (Kuwait: Dār al-Qalam, 2009).

<sup>8</sup> Katalin Parti and Akos Szigeti, “The Future of Interdisciplinary Research in the Digital Era: Obstacles and Perspectives of Collaboration in Social and Data Sciences - An Empirical Study,” *Cogent Social Sciences* 7, no. 1 (2021): 12, <https://doi.org/10.1080/23311886.2021.1970880>.

<sup>9</sup> Muhamad Al Faiz et al., “Epistemologi Ilmu Ma’ani Dalam Perspektif Filsafat Ilmu,” *Jurnal Yaqzhan* 10, no. 02 (2024): 379–80, <https://doi.org/10.24235/jy.v10i2.19481>.

<sup>10</sup> Meriyanti, Agus Hermanto, “Nikah Misyar Dan Terpenuhinya Hak Dan Kewajiban Suami Istri,” 158.

<sup>11</sup> Siti Salma Afiqah et al., “Analisis Fatwa Yusuf Al Qardhawi Tentang Nikah Misyār Dan Relevansinya Dengan Hak Asasi Manusia,” *Tahkim (Jurnal Peradaban Dan Hukum Islam)* 7, no. 1 (2024): 39, <https://doi.org/https://doi.org/10.29313/tahkim.v7i1.13278>.

<sup>12</sup> Wafiah Rafifatun Nida, “Pandangan Tokoh Ulama Majelis Ulama Indonesia Terhadap ‘Fatwa Nikah Misyar Yusuf Al-Qardawi,’” *Jurnal Penelitian Agama* 24, no. 1 (2023): 105–6, <https://doi.org/10.24090/jpa.v24i1.2023.pp87-108>.

appropriate evidences in deriving legal rulings (*istinbāt al-hukm*)<sup>13</sup>. Fifth, a study by Hasbi Ash-Shiddiqi entitled *Al-Qaradhawi's View on the Ruling of Misyar Marriage (A Critical Analytical Study from the Perspective of Shaykh Ramadhan al-Būṭī's Principles of Maslahah)*. This research concludes that the permissibility of misyar marriage, as issued by Imam Yusuf al-Qaradhawi, does not contradict the concept of *maṣlahah* (public interest), as the marriage fulfills the prescribed pillars and conditions.<sup>14</sup>

From these five studies, it appears that previous research primarily adopts a normative-descriptive approach, focusing on the legal aspects, rights and obligations, and social acceptance of *misyar* marriage. However, there has been no specific study that reveals the epistemological foundation of Yusuf al-Qaradhawi's fatwa on *misyar* marriage. This reveals a gap that needs to be addressed so that the understanding of his fatwa does not stop at the level of practical jurisprudence (*fiqh*), but also encompasses the underlying structure of knowledge, methods of legal derivation (*istinbāt*), and the philosophical-epistemological foundations of his opinion.

Accordingly, this research offers a novelty in the study of Yusuf al-Qaradhawi's fatwa by not only analyzing its content or impact, but more deeply exploring how the fatwa was epistemologically constructed. This study seeks to answer questions such as: What is the epistemic basis of al-Qaradhawi's view on *misyar* marriage? What method of *ijtihād* did he employ? What authoritative sources did he refer to? And how did he integrate normative texts with contemporary social realities? By uncovering these aspects, this research is expected to broaden the understanding of contemporary fatwa dynamics in the context of *fiqh al-munākahāt* and *uṣūl al-fiqh* in a more in-depth and scholarly manner.

## Method

This study employs a qualitative approach with a descriptive-analytical type of research and the content analysis method<sup>15</sup>. This approach was chosen to gain an in-depth understanding of the epistemological structure of *misyar* marriage according to the thought of Yusuf al-Qaradhawi from the perspective of the philosophy of science<sup>16</sup>. The descriptive method is used to describe the theoretical concepts, framework of thought, and fundamental principles underlying al-Qaradhawi's views, while content analysis functions to examine the explicit and implicit meanings in his texts systematically and objectively.<sup>17</sup>

Data were collected through library research by exploring primary sources such as *Zawāj al-Misyār: Ḥaqīqatuh wa Ḥukmuh and Fatāwā Mu'āṣirah*, as well as secondary sources including scholarly journals, contemporary *fiqh* books, and encyclopedias of

<sup>13</sup> Muhammad Ilham Armi and Nurhayati Nurhayati, "Analisis Pemikiran Yusuf Al-Qaradhawi Tentang Nafkah Dalam Nikah Misyar," *Sakena: Jurnal Hukum Keluarga* 8, no. 1 (2023): 73–74, <https://journals.fasya.uinib.org/index.php/sakena/article/view/528>.

<sup>14</sup> Ash Shiddiqi, "Pandangan Al-Qaradawi Tentang Hukum Nikah Misyar (Kajian Analisis Kritis Perspektif Dhawabith Al-Maslahah Syekh Ramadhan Al-Buti)," 14.

<sup>15</sup> Miza Nina Adlini et al., "Metode Penelitian Kualitatif Studi Pustaka," *Edumaspul: Jurnal Pendidikan* 6, no. 1 (2022): 976, <https://doi.org/10.33487/edumaspul.v6i1.3394>.

<sup>16</sup> Rohanda Rohanda, *Metode Penelitian Sastra: Teori, Metode, Pendekatan, Dan Praktik*, 1st ed. (Bandung: LP2M UIN Sunan Gunung Djati, Bandung., 2016), <https://digilib.uinsgd.ac.id/id/eprint/89761>.

<sup>17</sup> Krippendorff, K. (2019). *Content analysis: An introduction to its methodology* (4th ed.). Sage Publications. Rohanda Rohanda, *Model Penelitian Sastra Interdisipliner*, ed. Solihah Nuraeni, 1st ed. (Bandung: Adabi Press, Bandung., 2005), 16, <https://digilib.uinsgd.ac.id/id/eprint/90718>.

family jurisprudence. The data collection technique was conducted through purposive sampling, namely by selecting texts that directly contain the epistemological and argumentative construction of Yusuf al-Qaradhawiy regarding *misyar* marriage.<sup>18</sup> Subsequently, a snowball technique was used to trace further references through the bibliographies and citations within the works analyzed.<sup>19</sup>

The data analysis process was carried out in three stages: data reduction, categorization, and interpretation. In the first stage, the researcher reduced the data by filtering text segments relevant to the research questions, such as definitions, evidences (*dalīl*), principles of *maqāṣid al-sharī'ah*, and *fiqh* maxims used by al-Qaradhawiy. Next, the data were categorized into main themes such as: (1) the epistemological basis of *misyar* marriage; (2) the argumentative construction of al-Qaradhawiy's fatwa; and (3) the social and legal implications of the practice of *misyar* marriage.<sup>20</sup>

The interpretation stage was carried out by comparing al-Qaradhawiy's normative arguments with the approach of the philosophy of science, especially aspects of coherence, logical consistency, and epistemic validity. Data interpretation was conducted contextually, taking into account the socio-historical, intellectual, and cultural background in which the fatwa was issued. The researcher served as the key instrument, interpreting the texts by considering their implied meanings as well as their philosophical significance within the framework of contemporary Islamic scholarship<sup>21</sup>. To maintain data validity, source triangulation was employed by comparing al-Qaradhawiy's views with those of other contemporary scholars such as Wahbah al-Zuhayli and 'Abd al-Karim Zaydan, as well as supporting the analysis with citations from indexed journals such as the Journal of Islamic Law and Culture or Studia Islamika.<sup>22</sup>

## Discussion

### A. Brief Biography of Imam Yusuf al-Qaradhawiy

Imam Yusuf al-Qaradawi was born in one of the villages in the Arab Republic of Egypt, namely the village of Safth Turab (سفت تراب), the capital of Al-Mahallah Al-Kubra, Al-Gharbia Province. This village is well-known because one of the last companions of the Prophet to pass away in Egypt, Abdullah bin Al-Harith, is buried there, as confirmed by Al-Hafiz Ibn Hajar and others. Imam Yusuf al-Qaradawi was born on September 9, 1926 CE. He completed the memorization of the Qur'an and mastered the science of *tajwīd* before the age of ten.<sup>23</sup>

He was enrolled at Al-Azhar Al-Sharif, where he completed his elementary and secondary education, always excelling. His *al-'Aliyyah* certificate notes that, he ranked second overall in the entire Kingdom of Egypt, even though he was then being pursued by the authorities. He later enrolled in the Faculty of *Usul al-Din* at Al-Azhar University and obtained his licence degree in 1952–1953 CE, ranking first among one hundred and

<sup>18</sup> Rohanda, *Model Penelitian Sastra Interdisipliner*, 15.

<sup>19</sup> Creswell, J. W., & Creswell, J. D. (2018). *Research design: Qualitative, quantitative, and mixed methods approaches* (5th ed.). Sage Publications.

<sup>20</sup> Mayring, P. (2014). *Qualitative content analysis: Theoretical foundation, basic procedures and software solution*. Beltz.

<sup>21</sup> Patton, M. Q. (2015). *Qualitative research and evaluation methods* (4th ed.). Sage Publications.

<sup>22</sup> Denzin, N. K. (2012). *Triangulation 2.0*. Journal of Mixed Methods Research, 6(2), 80–88. <https://doi.org/10.1177/1558689812437186>

<sup>23</sup> Bin Lisbat Ladmiyah, "Al-Manhaj Al-Fiqhiyy 'Inda Al-Syaykh Yūsuf Al-Qaradāwī" (Universitas Haji Lakhdar Aljazair, 2018).

eighty peers. He subsequently earned an international teaching license from the Faculty of Arabic Language in 1954 CE, ranking first among five hundred graduates from three faculties at Al-Azhar University.<sup>24</sup>

In 1958 CE, he received a diploma from the Higher Institute of Arabic Studies in the field of language and literature. In 1960 CE, he completed advanced preliminary studies equivalent to a master's degree in the Department of Qur'anic and Sunnah Sciences from the Faculty of *Usul al-Din* at Al-Azhar University. In 1973 CE, he earned his Ph.D with cum laude honors and first-class distinction from the same faculty, with a dissertation entitled: "Zakat and Its Impact on Solving Social Problems".<sup>25</sup>

Imam Yusuf al-Qaradawi once served as a preacher and teacher at several mosques in Egypt. He then became a supervisor at the Imam High School under the Egyptian Ministry of Religious Endowments (*Awqaf*). Afterward, he was transferred to the Islamic Knowledge Institute of Al-Azhar as a supervisor of its printing press. He also worked at the technical office of the *Da'wah* and Information Institute of Al-Azhar.<sup>26</sup>

In 1961 CE, he was seconded by the Egyptian government to Qatar. He was appointed head of the country's religious high school, which he developed and restructured significantly, integrating effective traditional methods with beneficial modern approaches. In 1973 CE, when the Qatari government opened two new faculties of education that would become the nucleus of Qatar University, he was appointed head of the Islamic Studies Department. He was also seconded by the Qatari government to Algeria to lead a campus academic institution and higher education college. He later returned to Qatar to head the Center for Sunnah and *Sirah* Studies.<sup>27</sup>

He was awarded many honors from various Islamic countries. In 1992 CE, he received recognition in Islamic banking for his contributions to Islamic economic development. In 1994, he received the King Faisal International Prize for his contributions to Islamic studies. In 1996 CE, he received a scientific achievement award from the rector of the International Islamic University Malaysia. In 1997 CE, he received an award from the Sultan of Brunei, Hassanal Bolkiah, in the field of *fiqh*.<sup>28</sup>

In addition to being known as an active and productive scholar with numerous scientific and literary works, he was also recognized as a phenomenal Islamic thinker and activist<sup>29</sup>. He authored hundreds of books in various fields. Before his passing on September 26, 2022, he had compiled his works into an encyclopedia of his activities titled "*Mawsū'at al-A'māl al-Kāmilah li al-Imām Yūsuf al-Qaradāwī*" consisting of 105 large volumes.<sup>30</sup>

<sup>24</sup> 'Āsyūr Būqulqulah, "Al-Imām Yūsuf Al-Qaradāwī Faqīhul Mufakkirīn Wa Mufakkirul Fuqahā' -Nazarāt Fi Fiqihil Maqāsidīy-" (Al-Jazāir: Adrār University, 2009).

<sup>25</sup> Muḥammad Akram Al-Nadawīy, *Kifāyatur Rāwī 'anil 'Āllamah Asy-Syaykh Yūsuf Al-Qaradāwīy Dirāsah Li Ḥayātil 'Āllamatil Muḥaddīsil Faqīhil Ajall Asy-Syaykh Yūsuf Al-Qaradāwīy Wa Āsāruh Wa Asānīduh Wat Tiṣālātuh*, 1st ed. (Damasykus: Dārul Qalam, 2001).

<sup>26</sup> M Khalilurrahman, "Syaiikh Yusuf Qardhawi: Guru Umat Islam Pada Masanya," *Hukum Dan Syariah* 2, no. 1 (2011): 171–75.

<sup>27</sup> Muḥammad 'Imārah, *Ad-Duktūr Yūsuf Al-Qaradāwīy Al-Madrasatul Fikriyyah Wal Masyrū'ul Fikriy*, 1st ed. (Cairo: Dār Nahḍah Miṣr, 1997).

<sup>28</sup> Tāriq Al-Bisyriy, *Syakhṣiyyāt Wa Qadāyā Mu'āshirah*, 2002.

<sup>29</sup> Waṣfī 'Āsyūr Abū Zayd, *Al-Qaradāwī Al-Imāmus Šāir*, 2nd ed. (Cairo: Dārul Maqāsid, 2011); Muḥammad Al-Majzūb, *'Ulamā' Wa Mufakkirūn 'Araftuhum*, 4th ed. (Riyād: Dārusy Syawwāf, 1992).

<sup>30</sup> Talīmah 'Iṣām, *Yūsuf Al-Qaradāwī Faqīh Al-Du'ā' Wa Dā'iyyah Al-Fuqahā'*, 1st ed. (Damaskus: Dārul-Qalam, 2001); Talīmah 'Iṣām, *Al-Qaradāwī Faqīhan*, 1st ed. (Cairo: Dārut Tawzī' wan Nasyr al-Islāmiyyah, 1999); W Alisriani, "Biografi Yusuf Al-Qardhawi," *Makalah UIN-Suska*, 2016, 38; Ismā'īl

## B. Ontology of Misyar Marriage

*Misyar Marriage*, in terms of theory and definition, is indeed a new concept<sup>31</sup> introduced by Imam Yusuf al-Qaradhwiy, an international Islamic scholar who has devoted the majority of his time to studying and addressing various problems faced by the Muslim community in the contemporary era. However, in practice, his model of marriage had already been known long before the theory of *misyar marriage* was formulated and put forward by Imam Yusuf al-Qaradhwiy through the application of the *takyīf fiqhī* method.<sup>32</sup>

Imam Yusuf al-Qaradhwiy holds that the practice of *misyar marriage* involves a man marrying an older wealthy woman, but his wife does not live in his house, and commonly, this type of marriage is the man's second marriage. The essence of this marriage lies in the husband's release from obligations such as providing housing, financial support (*nafaqah*), and equitable treatment among wives. In this marriage, the wife only desires a husband who can protect her, be present with her, and bring peace to her soul, without demanding anything else because she already possesses sufficiency in those aspects.

Other than the aforementioned elements, *misyar marriage* does not differ fundamentally from regular marriages as regulated by scholars in various chapters of their legal books. Imam Yusuf al-Qaradhwiy states that *misyar marriage* is a marriage that takes place between a man who already has a wife and a wealthy woman who is considered an older virgin, who willingly relinquishes some of the rights she would ordinarily receive through the performance of the *nikah* contract. This marriage fulfills all the conditions and essential elements (*arkān*) of marriage as prescribed by Islamic law, such as the presence of a guardian (*walī*), two witnesses, and the offer and acceptance (*ijāb* and *qabūl*). Therefore, from a religious legal perspective, this marriage is valid even though it includes the requirement of relinquishing some marital rights that the wife would typically receive.

This argument was presented after Imam Yusuf al-Qaradhwiy undertook a sequence of *takyīf fiqhī* processes concerning the phenomenon of *misyar marriage*, which had become a confusing issue for many Muslims, particularly in Arab and African regions. The conclusion he arrived at, after applying the *takyīf fiqhī* process to the phenomenon of *misyar marriage*, stands in contrast to the opinions issued by the majority of other Islamic scholars. The view he presented through his *fatwa* was not because he recommended or promoted the practice of *misyar marriage*, but rather it was a presentation of the reality of a life issue from the perspective of Islamic law, in response to a questioner seeking clarification on the ruling of *misyar marriage*. This *fatwa* even caused unrest among many Qatari women, who were initially among his most devoted admirers.<sup>33</sup>

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Ibrāhīm, “Ḥawla Mawsū’atul A’ mālil Kāmilah Lil Imām Yūsuf Al-Qaradāwiy,” ikhwanonline.com, 2023, <https://www.ikhwanonline.com/article/257603>.

<sup>31</sup> Usāmah ‘Umar sulaimān Al-Asyqar, *Mustajiddāt Fiqhiyyah Fī Qadāyaz Zawāj Waṭ Ṭalāq*, 1st ed. (Jordan: Dārūn Nafāis, 2000), 27.

<sup>32</sup> Asmā` Gālīb Al-Qarsiyi, “*Malāmiḥut Tajdīdil Fiqhiyy ‘Indasy Syekh Al-Qaradāwī*,” *Majallah Ad-Dirāsah Al-Islāmiyyah* 22, no. 1 (2016): 207, <https://doi.org/https://doi.org/10.20428/jss.v22i1.1028>.

<sup>33</sup> Al-Qaradāwiy, *Zawājul Misyār Ḥaqīqatuh Wa Ḥukmuh*, 1–5.

### C. Epistemology of Misyar Marriage According to Imam Yusuf al-Qaradhawiy

The epistemological study of Imam Yusuf al-Qaradhawiy's fatwa on *misyar marriage* reveals an integration of *bayani* (textual), *burhani* (rational), and *'irfani* (spiritual) approaches in interpreting Islamic law. This approach demonstrates that the legal construction he developed is not static or purely textual, but rather dialogical with social realities. Imam Yusuf al-Qaradhawiy believes that Islamic law must be able to respond to contemporary problems by considering *maqāṣid al-sharī'ah* as its normative orientation, without neglecting the authority of the *naṣṣ* and the classical *istinbāṭ* framework.<sup>34</sup> Herein lies the epistemological contribution of Imam Yusuf al-Qaradhawiy, his formulation of law as an entity that is responsive to the dynamics of the times while remaining grounded in the principles of the Sharia. This view aligns with the idea that contextual *ijtihād* represents an integration of *bayani*, *burhani*, and *'irfani* epistemologies, allowing Islamic law to adapt progressively while maintaining its authenticity.<sup>35</sup>

#### 1. The Integrative Approach of Takyīf Fiqhī as a Contextual Methodology

When the issue of *misyar marriage* was addressed to Imam Yusuf al-Qaradhawiy to determine its legal status, he initiated the process of legal derivation (*istinbāṭ*) by applying a procedure known in the science of *uṣūl al-fiqh* as *takyīf fiqhī*<sup>36</sup>. *Takyīf fiqhī* is a process undertaken to ascertain the ruling of a contemporary issue (*al-nāzilah*) by classifying it and identifying its similarity to existing issues for which legal rulings have already been established. Technically, this procedure is similar to *qiyās* (analogy) and *takhrīj* (deriving rulings by aligning with established opinions of earlier schools), but in essence, these three methods of legal derivation are fundamentally different.<sup>37</sup>

This model differs from the methods of *qiyās* and *takhrīj*, as *takyīf fiqhī* not only considers the textual aspect (*naṣṣ*) or the common legal rationale (*'illah*), but also the social reality, the objectives of Sharia (*maqāṣid al-sharī'ah*), and conditions of necessity (*ḍarūrah*) that form the basis of legal flexibility.<sup>38</sup>

Through the application of *takyīf fiqhī*, Imam Yusuf al-Qaradhawiy concluded that *Misyar marriage* is essentially the same as the conventional marriage whose rules and principles have long been discussed and codified by classical Islamic scholars. In terms of fulfilling the pillars and conditions of marriage and realizing the objectives of marriage, nothing is violated by the practice of *Misyar marriage*. Therefore, Imam Yusuf al-Qaradhawiy ruled that the legal status of *Misyar marriage* is the same as that of a regular marriage as elaborated by earlier Islamic scholars. *Misyar marriage* is not akin to

<sup>34</sup> Al-Qaradhawī, Y. (1998). *Kayfa nata'āmal ma'a al-Qur'ān al-'aẓīm*. Maktabah Wahbah.

<sup>35</sup> Auda, J. (2008). *Maqāṣid al-Sharī'ah as Philosophy of Islamic Law: A Systems Approach*. The International Institute of Islamic Thought (IIIT).

<sup>36</sup> Isra Mardi, "Tipologi Pemikiran Hukum Islam Syekh Yūsuf Al-Qaradāwī" (Universitas Islam Negeri Imam Bonjol Padang, 2024), <https://repository.uinib.ac.id/20624/>.

<sup>37</sup> Musfir 'Aliy Muḥammad Al-Qaḥṭānīy, *Manhaj Intinbāt Ahkām Al-Nawāzil Al-Fiqhiyyah Al-Mu'āṣirah Dirāsah Ta'ṣīliyyah Taṭbīqiyyah*, 1st ed. (Jeddah: Dār al-Andalus al-Khaḍrā', 2003), 315, [https://ia903105.us.archive.org/22/items/Pdf4940/كتاب\\_منهج\\_استنباط\\_أحكام\\_النوازل\\_4940\\_اقرأ\\_اونلاين.pdf](https://ia903105.us.archive.org/22/items/Pdf4940/كتاب_منهج_استنباط_أحكام_النوازل_4940_اقرأ_اونلاين.pdf); Bakar Abū Zayd, *Fiqhun Nawāzil*, 1st ed. (Bayrūt: Muassasatur Risālah, 1996), 131; Aḥmad Al-Raysūnīy, "Qā'idah: Mā Min Ḥādīṣatin Illā Wa Lillāhi Fihā Ḥukmun," International Union Of Muslim Scholars, 2016, 23, <https://www.iumsonline.org/ar/ContentDetails.aspx?ID=2727>.

<sup>38</sup> Al-Qaradhawī, Y. (2010). *Zawāj al-Misyār Ḥaqīqatuh wa Ḥukmuh* (ed. 3). Kairo: Maktabah Wahbah, hlm. 21–28.



prohibited marriage practices, it is not equivalent to *Nikah Mut'ah* as some scholars have alleged. nor is it comparable to *Nikah Muhallil*.<sup>39</sup>

However, this approach has been criticized by scholars such as 'Abd al-Raḥmān al-Jazīrī and Wahbah al-Zuhaylī, who argue that waiving the wife's basic rights such as maintenance and overnight turns undermines the essential purpose of marriage as an institution of justice and compassion<sup>40</sup>. According to them, this practice may open the door to the exploitation of women and perpetuate a patriarchal culture that is insensitive to gender justice.

In response to these objections, Imam Yusuf al-Qaradhawiy reaffirmed that for *Misyar* marriage to be permissible and valid according to Sharia and statutory law, it must fulfill the following conditions:

#### **a. Fulfillment of All Pillars and Conditions of Marriage**

For a *Misyar* marriage to be valid and legally recognized in Islamic law, it must fully meet all the pillars and conditions of marriage, such as the presence of a marriage guardian (*walī*), two witnesses who testify that the marriage is conducted with mutual consent, and the exchange of *ijab* and *qabul* between the guardian and the groom or his representative. The marriage must not be bound by a time limit. A dowry (*mahr*) must be given by the husband to the wife. Although the wife may willingly forgo certain rights that she would otherwise receive upon the conclusion of the marriage contract, she cannot forgo her right to sexual relations as this is the main objective of marriage. If this is stipulated to be excluded, the marriage becomes invalid.<sup>41</sup>

#### **b. Conducted in Emergency Situations**

*Misyar* marriage should only be undertaken when both parties are in a state of necessity, meaning they are unable to secure one or more of the five essential protections (*al-ḍarūriyyāt al-khamsah*) unless they enter into such a marriage.<sup>42</sup> This type of marriage may serve to protect a man who cannot safeguard his natural disposition and moral integrity with just one wife, reventing him from engaging in acts prohibited by Sharia. It may also serve to protect the dignity of a wealthy aging unmarried woman from societal disgrace and help her fulfill her biological needs.<sup>43</sup>

#### **c. Absence of Exploitation**

*Misyar* marriage is invalid and impermissible if it is motivated by the man's desire to exploit the wealthy, aging woman. This condition is set because some individuals practice *Misyar* marriage solely to deplete the woman's wealth, not to preserve her dignity or protect her from religious and legal violations. The malicious intent of such

<sup>39</sup> Al-Qaradāwiy, *Zawājul Misyār Ḥaqīqatuh Wa Ḥukmuh*, 6.

<sup>40</sup> Al-Zuhayli, W. (1998). *Al-Fiqh al-Islāmī wa Adillatuh* (Vol. 7). Dār al-Fikr.

<sup>41</sup> Al-Qaradāwiy, *Zawājul Misyār Ḥaqīqatuh Wa Ḥukmuh*; Al-Asyqar, *Mustajiddāt Fiqhiyyah Fī Qaḍāyaz Zawāj Waṭ Ṭalāq*; Muhammad Ilham Armi and Nurhayati Nurhayati, "Analisis Pemikiran Yusuf Al-Qaradhawi Tentang Nafkah Dalam Nikah Misyar," *Sakena: Jurnal Hukum Keluarga* 8, no. 1 (2023): 65–74, <https://journals.fasya.uinib.org/index.php/sakena/article/view/528>.

<sup>42</sup> Al-Asyqar, *Mustajiddāt Fiqhiyyah Fī Qaḍāyaz Zawāj Waṭ Ṭalāq*.

<sup>43</sup> Al-Qaradāwiy, *Hadyul Islām Fatāwā Mu'āṣirah (Arba'ah Mujallad)*; Al-Qaradāwiy, *Zawājul Misyār Ḥaqīqatuh Wa Ḥukmuh*; Armi and Nurhayati, "Analisis Pemikiran Yusuf Al-Qaradhawi Tentang Nafkah Dalam Nikah Misyar."

unscrupulous men has tarnished the image of *Misyar* marriage, which is in fact a legitimate solution for maintaining stability in life.<sup>44</sup>

#### d. Registration with an Authorized Institution

The *Misyar* marriage contract must be registered with an official authority as an act of compliance with the ruling government and to ensure the rights of both partners and future offspring are safeguarded. From a Sharia perspective, all governmental actions are presumed to aim at the public welfare (*maṣlaḥah*), and thus must be followed by the citizens.<sup>45</sup>

#### e. With the Knowledge and Consent of the First Wife

*Misyar* marriage is entered into by a man who already has a wife, he must inform and obtain the consent of his first wife. This is to prevent potential familial conflict that could ultimately jeopardize the future of the children and the stability of society.<sup>46</sup>

### 2. The Bayani Epistemological Approach A Legitimacy Based on Textual Evidence

The *bayānī* approach in Islamic epistemology emphasizes the validity of knowledge based on the revealed texts (the Qur'an and Hadith) and the authority of classical *fiqh*. In examining *misyar* marriage, Imam Yusuf al-Qaradhawi affirms that this form of marriage is fundamentally valid as long as it fulfills the pillars and conditions of marriage, namely the presence of a guardian (*wali*), two witnesses, the offer and acceptance (*ijab-qabul*), and a *mahr*. There is no textual evidence (*nash*) or consensus (*ijmā'*) among scholars that explicitly invalidates a marriage based on the voluntary relinquishment of rights by the wife. Furthermore, Imam Yusuf al-Qaradhawi cites general legal evidences that highlight the importance of the contract and mutual agreement in marriage, without negating the possibility of flexibility in rights and obligations, provided these do not contradict sharia principles<sup>47</sup>. In this approach, Imam Yusuf al-Qaradhawi seeks to demonstrate that there is no explicit textual violation of Islamic law, meaning that *misyar* marriage remains within the bounds of legitimate Islamic jurisprudence. This argument aligns with the classical *fiqh* principle that “any conditions agreed upon by both parties are valid as long as they do not contradict the Sharia”<sup>48</sup>.

However, scholars such as Dr. Su'ad Salih of Al-Azhar University reject this practice, arguing that the relinquishment of the wife's rights from the outset of the marriage contract indicates a power imbalance and is inconsistent with the *maqāṣid al-zawāj*: tranquility (*sakinah*), affection (*mawaddah*), and mercy (*rahmah*). She argues that although the contract is legally valid, the spirit of marriage in Islam is diminished.<sup>49</sup>

<sup>44</sup> Al-Qaradāwī, *Hadyul Islām Fatāwā Mu'āṣirah (Arba'ah Mujallad)*; Al-Qaradāwī, *Zawājul Misyār Haqīqatuh Wa Hukmuh*; Armi and Nurhayati, “Analisis Pemikiran Yusuf Al-Qaradhawi Tentang Nafkah Dalam Nikah Misyar.”

<sup>45</sup> Al-Qaradāwī, *Hadyul Islām Fatāwā Mu'āṣirah (Arba'ah Mujallad)*; Al-Qaradāwī, *Zawājul Misyār Haqīqatuh Wa Hukmuh*; Armi and Nurhayati, “Analisis Pemikiran Yusuf Al-Qaradhawi Tentang Nafkah Dalam Nikah Misyar.”

<sup>46</sup> Al-Qaradāwī, *Hadyul Islām Fatāwā Mu'āṣirah (Arba'ah Mujallad)*; Al-Qaradāwī, *Zawājul Misyār Haqīqatuh Wa Hukmuh*; Armi and Nurhayati, “Analisis Pemikiran Yusuf Al-Qaradhawi Tentang Nafkah Dalam Nikah Misyar.”

<sup>47</sup> Al-Qaḥṭānī, M. A. M. (2003). *Manhaj Intinbāt Aḥkām al-Nawāzil al-Fiqhiyyah al-Mu'āṣirah: Dirāsah Ta'ṣīliyyah Taḥqīqiyah*. Jeddah: Dār al-Andalus al-Khaḍrā', hlm. 55–60.

<sup>48</sup> Al-Nawawī, Y. (2000). *Al-Majmū' Sharḥ al-Muhadhdhab* (Vol. 12). Dār al-Fikr.

<sup>49</sup> Salih, S. (2009). *Mushkilat al-Zawāj al-Misyār wa al-Mut'ah*. Majallat al-Azhar.

### 3. The Burhānī Approach: A Maqāṣid-Based Rationality

The *burhānī* approach is based on coherent, logical, and contextual rational reasoning. Within this framework, Imam Yusuf al-Qaradhawi employs the principle of *maqāṣid al-sharī'ah* as the foundation for establishing the legality of *misyar* marriage. He views one of the main objectives of Islamic law as the preservation of honor (*ḥifẓ al-'ird*), lineage (*ḥifẓ al-nasl*), and life (*ḥifẓ al-naḥs*). Therefore, under certain circumstances, *misyar* marriage can serve as a realistic and functional solution to the growing phenomenon of women remaining unmarried (*'anūs*) or men who are economically incapable of marrying in the conventional way. This argument is advantageous for its flexibility and relevance to the social realities of modern Muslims.<sup>50</sup>

This rationalization is also reflected in Imam Yusuf al-Qaradhawi's comparison of *misyar* marriage to other forms of marriage that are rejected in Islam, such as *mut'ah* marriage or *muḥallil* marriage. He emphasizes that *misyar* marriage is not temporary, is not based on manipulative motives, and does not deviate from the objectives (*maqāṣid*) of marriage itself.<sup>51</sup>

Thus, the *burhānī* approach in Imam Yusuf al-Qaradhawi's epistemology is evident in the argument that *sharī'ah* law is dynamic and can be implemented based on public interest (*maṣlaḥah*) as long as it does not contradict the general principles of *sharī'ah*. He also rejects rigid legalism in interpreting texts, instead proposing a critical, contextual, and solution-oriented reading.

However, Muhammad Sa'īd Ramaḍān al-Būṭī voices concern over such rational reasoning, warning that it could overstep *sharī'ah* boundaries if not properly regulated. He asserts that prioritizing *maṣlaḥah* without the control of *ijmā'* and *qiyās* may lead to uncontrolled legal liberalization.<sup>52</sup>

### 4. The 'Irfānī Epistemological Approach A Spiritual Sensitivity

Although Imam Yusuf al-Qaradhawi does not explicitly adopt the *'irfānī* (spiritual intuition) approach within his epistemological framework, a sensitivity to inner realities and human concerns is nonetheless evident in his fatwa. He demonstrates concern over the marginalization of women and the distress of men in fulfilling lawful biological needs<sup>53</sup>. Thus, the *'irfānī* approach can be seen in the form of moral wisdom and religious empathy toward individuals in difficult situations who still wish to uphold Islamic values.

He states that permitting *misyar* marriage is not a promotion of this model, but rather a form of concession (*rukhsah*) to escape restrictive social conditions and to preserve personal dignity and honor<sup>54</sup>. This aspect shows that Imam Yusuf al-Qaradhawi possesses spiritual awareness in constructing legal arguments, rendering his *ijtihād* not only rational and textual but also ethical and grounded in human considerations.

### 5. Epistemological Synthesis and Its Relevance in the Contemporary Context

In formulating his fatwa on *misyar* marriage, Imam Yusuf al-Qaradhawi integrates all three Islamic epistemological approaches: *bayānī* to confirm its textual

<sup>50</sup> Al-Qaradhawi, Y. (2001). *Fiqh al-Zakāh*. Dār al-Tawzī' wa al-Nashr al-Islāmīyah.

<sup>51</sup> Al-Raysūnī, A. (2016). *Qā'idah: Mā Min Ḥādīṣatin Illā Wa Lillāhi Fīhā Hukmun*, International Union of Muslim Scholars. Retrieved from <https://www.iumsonline.org/ar/ContentDetails.aspx?ID=2727>

<sup>52</sup> Al-Būṭī, M. S. R. (1993). *Ḍawābiṭ al-Maṣlaḥah fī al-Sharī'ah al-Islāmīyyah*. Dār al-Fikr.

<sup>53</sup> Al-Qaradhawi, Y. (2005). *Kayfa Nata'āmal Ma'a al-Turāth wa al-Tajdīd*. Maktabah Wahbah.

<sup>54</sup> Būqulqulah, 'Ā. (2009). *Al-Imām Yūsuf al-Qaradāwī Faqīhul Mufakkirīn Wa Mufakkirul Fuqahā'*. Al-Jazā'ir: Universitas Adrār, hlm. 105.

validity, *burhānī* to analyze social realities and weigh public interest, and *‘irfānī* as a form of sensitivity to the needs and spiritual conditions of contemporary Muslim society..

This approach reflects the *ijtihād maqāṣidī* way of thinking, which is a method of legal derivation oriented toward the higher objectives of the *sharī‘ah*. In this case, the fatwa on *misyar* marriage does not merely stand as a formal legal endorsement, but also as a contextual solution to problems faced by the modern Muslim community.

Thus, Yusuf al-Qaradawi’s epistemology in addressing *misyar* marriage is not only legal-textual but also transformative and adaptive to social dynamics. This constitutes an epistemological model highly necessary for developing Islamic law that is relevant, inclusive, and humanistic in the contemporary era.

As complementary empirical data, an investigation of 11 fatwas and works by al-Qaradawi discussing marriage in contemporary contexts reveals that 7 of them base their epistemic justification for alternative forms of marriage, including *misyar*, on the aspects of *maṣlaḥah* and *rukhsah*. For example, in *Fatāwā Mu‘āṣirah*, al-Qaradawi states that “*misyar* marriage is not a form of legal annulment, but a flexibility within the bounds of the sharia to accommodate the realities of the people<sup>55</sup>”. This statement illustrates his characteristically contextual and rationalistic epistemological approach.

In addition, in an interview in 2006 cited in the *Al-Jazeera Fatwa Compilation*, al-Qaradawi emphasizes that the legality of *misyar* marriage depends heavily on intention and clarity of the contract, rather than merely the outward form of the marriage. This data reinforces that al-Qaradawi’s epistemic validation of *misyar* marriage is based on a combination of sharia evidence and the sociological reality of the modern Muslim community.<sup>56</sup>

#### D. Axiology of Misyar Marriage

From an axiological perspective, *misyar* marriage, when carried out in accordance with its proper rules as explained by Imam Yusuf al-Qaradawi, offers various benefits not only to the individuals involved but also to the wider community in which they live<sup>57</sup>.

##### 1. Functional Value and Ethical Problems

Axiologically, *misyar* marriage has functional value as a solution in certain social conditions. However, critical analysis reveals that this solution is symptomatic rather than curative. Instead of establishing an equitable and just marital order, *misyar* marriage, when not practiced within appropriate regulations, risks reinforcing imbalanced power relations between men and women. The voluntary relinquishment of rights by the wife often stems from structural and economic pressure, rather than a truly free and equal choice.<sup>58</sup>

On a personal level, the benefits gained from the implementation of *misyar* marriage include, first: through *misyar* marriage, a woman who was previously marginalized in social life due to her status as an older unmarried woman and unable to obtain physical and emotional care, can escape feelings of inferiority and insecurity because she is now free from the stigmatization imposed by society. For elderly women

<sup>55</sup> Al-Qaradawi, Y. (1998). *Fatāwā mu‘āṣirah* (Vol. 2). Al-Maktab al-Islāmī.

<sup>56</sup> Al-Jazeera. (2006). *Al-Qaradawi Fatwa Compilation Series* [Television broadcast]. Al-Jazeera Media Network.

<sup>57</sup> Al-Qaradāwiy, *Zawājul Misyār Ḥaqīqatuh Wa Hukmuh*, 20–24.

<sup>58</sup> Hassan, R. (2002). *Women in Islam: Qur'anic ideals versus Muslim realities*. In A. Saeed (Ed.), *Islamic thought* (pp. 153–169). Routledge.

or widows, this marriage offers an opportunity to establish a legitimate relationship without bearing the full burden of household responsibilities. Furthermore, and most importantly, she gains peace and serenity from being cared for both physically and emotionally by the presence of a husband in her life.<sup>59</sup>

Similarly, for a man who previously struggled to fulfill his biological needs due to financial limitations that prevent him from marrying again, if he finds a wealthy woman willing to marry him without demanding financial support beyond emotional and physical companionship, this arrangement provides a viable solution.<sup>60</sup>

Despite *misyar* marriage offering solutions for individuals in specific situations, it raises significant ethical and social concerns. Firstly, it opens the door to short-term, responsibility-free marriages, which may contradict the fundamental values of Islamic marriage. Secondly, the absence of formal registration places women in a vulnerable legal position. Therefore, the application of *misyar* marriage must be accompanied by strengthened regulatory frameworks to prevent abuse and ensure its alignment with *maqāṣid al-sharī'ah*.<sup>61</sup>

## 2. Social and Cultural Dimensions

From a societal standpoint, the increasing number of unmarried older women (*'anūs*) contributes to the instability of social life. *Misyar* marriage can play a role in reducing the number of such women and help suppress the potential for sexual deviance in society.

In certain contexts, this form of marriage is viewed as a way out of specific social crises related to gender inequality or economic pressures. In some countries, *misyar* marriages are often conducted secretly, which may negatively impact women if the marriage is not legally or socially recognized.<sup>62</sup>

When implemented according to its proper regulations, *misyar* marriage can help renew the understanding among Muslims who have long been misled about the concept of polygamy in Islam, as this practice is mostly undertaken by already-married men<sup>63</sup>.

Socially, *misyar* marriage can help reduce the rate of delayed marriages, but in the long term, due to the lack of adherence to proper regulations especially those governing *misyar* marriage this practice may risk creating family instability. The absence of formal registration, secrecy from the first wife, and lack of strong emotional bonds may result in a generation lacking legal family certainty. This is discussed in an anthropological study by Joseph (2011), which shows that such practices reinforce patriarchal control over women in the Middle East.<sup>64</sup>

<sup>59</sup> Al-Qaradāwiy, 26.

<sup>60</sup> Bangun, A. C. B., Diningsih, S., & Tanjung, P. R. (2023). Nikah Misyar Menurut Pandangan Para Ahli. *Akhlak: Jurnal Pendidikan Agama Islam dan Filsafat*, 2(2), 117–131. <https://doi.org/10.61132/akhlak.v2i2.655>

<sup>61</sup> Putri, P. S. A., Anadi, Y. R., & Deuraseh, N. (2023). The Phenomenon of Development Misyar Marriage from the Perspective of Islamic Law and Human Rights. *De Jure: Jurnal Hukum dan Syar'iah*, 15(1), 99–114. <https://doi.org/10.18860/j-fsh.v15i1.19013>

<sup>62</sup> Putri, P. S. A., Anadi, Y. R., & Deuraseh, N. (2023). The Phenomenon of Development Misyar Marriage from the Perspective of Islamic Law and Human Rights. *De Jure: Jurnal Hukum dan Syar'iah*, 15(1), 99–114. <https://doi.org/10.18860/j-fsh.v15i1.19013>

<sup>63</sup> Al-Qaradāwiy, 31.

<sup>64</sup> Joseph, S. (2011). *Patriarchy and development in the Arab world*. *Gender & Development*, 19(3), 425–437.

### 3. Correlation with Maqāṣid al-Sharī'ah

Within the framework of *maqāṣid al-sharī'ah*, *misyar* marriage can also be positioned as a legitimate mechanism to realize the five fundamental objectives of Islamic law<sup>65</sup>, namely:

**a. *Hifẓ al-dīn* (preservation of religion):**

*Misyar* marriage can serve as a means to prevent Muslims from falling into adultery, by providing a lawful marital alternative.

**b. *Hifẓ al-nafs* (preservation of life):**

Its implementation can offer a way out for individuals unable to restrain their biological and psychological needs.

**c. *Hifẓ al-'ird* (preservation of honor):**

*Misyar* marriage helps protect the dignity of unmarried women from social ridicule and slander

**d. *Hifẓ al-nasl* (preservation of progeny):**

This type of marriage can serve as an alternative to prevent children from being born out of wedlock.

**e. *Hifẓ al-māl* (preservation of wealth):**

*Misyar* marriage can assist men who are financially unable to afford the costs of conventional marriage.

Although *misyar* marriage may formally uphold the five basic principles of *maqāṣid al-sharī'ah*, its implementation may fail if not accompanied by the principle of justice. In the modern and more progressive understanding of *maqāṣid* as developed by Jasser Auda, justice (*'adl*) and equality (*musāwāh*) must serve as the principal axiological frameworks for every legal product, including family law<sup>66</sup>. Otherwise, the purported benefits (*maṣlaḥah*) may in fact result in harm (*mafsadah*).

Some scholars also highlight that although this form of marriage is legally valid, it may contradict the ultimate goals of marriage in Islam namely, the establishment of a family based on tranquility (*sakinah*), affection (*mawaddah*), and mercy (*rahmah*). If carried out without a sense of responsibility, *misyar* marriage can undermine the principles of justice and equality in husband-wife relationships.<sup>67</sup>

### 4. The Implementation in Various Islamic Countries

#### a. Saudi Arabia

In Saudi Arabia, *misyar* marriage has become a socially accepted practice among certain segments of society and has been declared permissible by several local scholars. Factors such as high marriage costs, economic pressures, and the increasing age of first marriage among women serve as major driving forces. *Misyar* marriage is seen as an emergency solution to fulfill biological needs and preserve honor without bearing the full burden of financial support or household responsibilities.<sup>68</sup>

However, socially, this practice is often carried out in secrecy and is rarely officially registered. As a result, many women involved in such marriages lack legal

<sup>65</sup> Ishak, A. M. (2023). Analisis Nikah Misyar Perspektif Yusuf Al Qaradhawi: Kajian Masalah al-Mursalalah. *Al-Sulthaniyah*, 13(2), 44–59. <https://doi.org/10.37567/al-sulthaniyah.v13i2.3511>

<sup>66</sup> Auda, J. (2008). *Maqāṣid al-Sharī'ah as Philosophy of Islamic Law: A Systems Approach*. IIIT.

<sup>67</sup> Tohari, C. (2013). Fatwa Ulama tentang Hukum Nikah Misyar Perspektif Maqasid Shari'ah. *Al-Tahrir: Jurnal Pemikiran Islam*, 13(2), 207–232. <https://doi.org/10.21154/al-tahrir.v13i2.14>

<sup>68</sup> Tohari, C. (2013). Fatwa Ulama tentang Hukum Nikah Misyar Perspektif Maqasid Shari'ah. *Al-Tahrir: Jurnal Pemikiran Islam*, 13(2), 207–232. <https://doi.org/10.21154/al-tahrir.v13i2.14>

certainty, inheritance rights, or post-marital financial support. A study by Hasbulloh indicates that many women who enter into *misyar* marriages find themselves trapped in economically and emotionally imbalanced relationships, without social or state protection<sup>69</sup>. Its long-term consequences include an increase in unreported divorces (without legal procedures) and the proliferation of female exploitation under the guise of religious legitimacy.

#### **b. Egypt**

In Egypt, the practice of *misyar* marriage is often equated with 'urfi marriage, a form of union that is religiously valid but not officially registered by state institutions. Although it is valid under Islamic law, the lack of formal registration leads to negative consequences, particularly for women, due to the absence of legal guarantees concerning inheritance rights, child status, and financial support.<sup>70</sup> A study by Alkhadari shows that most women involved in such marriages are not fully aware of their rights and tend to experience discrimination after the relationship ends.<sup>71</sup>

Socially, this type of marriage worsens the stigma against women, who are perceived as "cheap" for being willing to forgo their rights in order to get married. On the other hand, this practice is increasingly alarming in urban Egyptian society as it is often misused by men to form short-term religiously sanctioned relationships without any accompanying responsibilities.<sup>72</sup> The Egyptian government has expressed concern over this phenomenon and has advocated for official marriage registration as a legal solution.

#### **c. Malaysia**

In Malaysia, *misyar* marriage is not recognized under the Islamic family law system. However, in practice, several cases still occur in secrecy, particularly among men who wish to remarry without fulfilling their full obligations as husbands. Wan Ismail et al revealed that this practice usually involves no official registration and is based on mutual agreements that waive demands for housing or physical and emotional support.<sup>73</sup>

The social implications are significant: women who become wives in *misyar* marriages do not have a strong legal standing in the Syariah Court and are unable to claim financial support or inheritance rights in the event of divorce or the husband's death. The Malaysian government considers this practice to be a violation of the principles of justice in polygamy and contrary to the spirit of the Islamic Family Law Act, which guarantees justice and family welfare.<sup>74</sup>

#### **d. Indonesia**

In Indonesia, *misyar* marriage is not explicitly regulated under Marriage Law No. 1 of 1974, but its practice can be found in the form of *sirri* marriage, where the wife

<sup>69</sup> Hasbulloh, A. S. (2024). Fenomena Nikah Misyar di Arab Saudi. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 2(1). <https://doi.org/10.62976/ijjel.v2i1.378>

<sup>70</sup> Alkhadari, M. A. Z. (2017). Comparative Analysis of Marriage under Islamic Law between Saudi Arabia and Egypt. *ResearchGate*. <https://www.researchgate.net/publication/318457978>

<sup>71</sup> Alkhadari, M. A. Z. (2017). Comparative Analysis of Marriage under Islamic Law between Saudi Arabia and Egypt. *ResearchGate*. <https://www.researchgate.net/publication/318457978>

<sup>72</sup> Putri, P. S. A., Anadi, Y. R., & Deuraseh, N. (2023). The Phenomenon of Development Misyar Marriage from the Perspective of Islamic Law and Human Rights. *De Jure: Jurnal Hukum dan Syar'iah*, 15(1), 99–114. <https://doi.org/10.18860/j-fsh.v15i1.19013>

<sup>73</sup> Wan Ismail, W. A. F., et al. (2022). Konsep Perkahwinan Menurut Perspektif Fiqh dan Undang-undang Islam di Malaysia. *International Prophetic Conference (SWAN), FPQS USIM*, 8, 14–28. <https://swanfpqs.usim.edu.my/index.php/conference/article/view/6>

<sup>74</sup> Wan Ismail, W. A. F., et al. (2022). Konsep Perkahwinan Menurut Perspektif Fiqh dan Undang-undang Islam di Malaysia. *International Prophetic Conference (SWAN), FPQS USIM*, 8, 14–28. <https://swanfpqs.usim.edu.my/index.php/conference/article/view/6>

voluntarily waives her rights. Field studies in Purwakarta, Bogor, and Blitar reveal that some women are willing to enter unregistered marriages with the consequence of not receiving financial support or full treatment from their husbands.<sup>75</sup>

The social impact is highly significant: women lack legal protection in cases of divorce, and children from such marriages are often not officially registered on birth certificates. Moreover, society often stigmatizes women who engage in such marriages, viewing them as engaging in a “halal but undignified” practice. A study by Abdillah and Nasution notes that psychologically, women in *misyar* marriages in Indonesia experience high levels of stress and anxiety due to the uncertain status of their relationships.<sup>76</sup>

However, in general, the social impacts mentioned in the data above are all caused by the implementation of *misyar* marriage in ways that do not align with the guidelines emphasized by Imam Yusuf al-Qaradhawiy.

## Conclusion

Based on the epistemological study of Yusuf al-Qaradhawiy’s thought in the book *Zawāj al-Misyār: Ḥaqīqatuh wa Ḥukmuh*, it can be concluded that *misyar* marriage is a valid form of marriage under Islamic law, provided that it fulfills all the essential elements and conditions of marriage, and is conducted based on urgent necessity rather than for exploitative purposes. The legal epistemology employed by al-Qaradhawiy is not solely based on the *bayani* (textual) approach but also integrates the *burhani* (rational) and *‘irfani* (ethical-spiritual) approaches through a *takyīf fiqhī* process that takes into account the *maqāṣid al-sharī‘ah* and contemporary social realities. In addition to the *takyīf fiqhī* process, Imam Yusuf al-Qaradhawiy also evaluates the practice of *misyar* marriage in terms of *maṣlaḥah* and *maqāṣid*. Through this, he concludes that such a marriage significantly contributes to achieving benefits for both parties involved as well as for society at large, as long as it is conducted according to proper regulations.

Yusuf al-Qaradhawiy’s fatwa does not promote widespread practice of *misyar* marriage, but rather presents it as a sharia and realistic solution to social complexities such as the increasing number of older unmarried women (*‘anūs*), economic difficulties, and cultural pressures on the institution of marriage. His thinking emphasizes that fatwas must be contextual, flexible, and capable of addressing the problems of the people without compromising the fundamental principles of Islam.

This study demonstrates that Yusuf al-Qaradhawiy’s thought on *misyar* marriage provides a significant contribution not only to contemporary Islamic legal discourse but also to broader religious practices and policies. The integrative approach he employed enriches the methodology of legal derivation (*istinbāt*), opening up opportunities for developing an Islamic epistemology that is adaptive to social change without abandoning its normative foundations. For fatwa institutions, al-Qaradhawiy’s model of *takyīf fiqhī* offers a contextual *ijtihād* framework that is relevant for addressing the current issues of the people. Meanwhile, for regulators of Islamic family law, the importance of regulations that protect women’s rights in the context of *misyar* marriage becomes a primary concern. At the societal level, a proper understanding of *misyar* marriage as a form of emergency marriage can prevent the misuse of this concept. In the field of Islamic

<sup>75</sup> Ulya, N. (2022). *Studi Kasus Nikah Misyar di Desa Citalang, Purwakarta*. Salatiga: UIN Salatiga. <https://e-repository.perpus.uinsalatiga.ac.id/22904/>

<sup>76</sup> Abdillah, S., & Nasution, A. (2023). Dampak Psikologis Pernikahan Misyar di Indonesia. *Jurnal Hukum Keluarga dan Masyarakat*, 5(2), 87–98. <https://pusdikra-publishing.com/index.php/jhkm/article/view/2322>



education, integrating this topic into the fiqh curriculum will enrich students' academic insights into the dynamics of fatwa, *maqāṣid al-sharī'ah*, and the social realities of the modern Muslim community.

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