

# Continuity and change in law: Confabulating misyar marriages in Indonesia



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## Introduction

In classical fiqh literature, marriage is one of the foremost legal issues discussed by Muslim jurists. This reflects putatively how those jurists view and treat the issue of marriage as an important topic in the Islamic legal corpus. It is unsurprising that discourse on marriage is engaged in such tremendous detail. One factor that makes this issue so sensitive is that marriage legalizes an otherwise illicit sexual relationship. Practically speaking, marriage can only be justified if the sexual relationship between a man and a woman is justified by God through the law that was revealed to them. Talking about marriage should therefore involve the sacred legal corpus where the verbatim rules are directly found, not the mere methodological references by which we can ascertain the decisions for the novel cases appearing in society. The idea of sacredness in the law is here required to assure its efficacy in the midst of many new ideas of marriage operating in line with the pace of the new social values living in the Muslim world.

This discussion of marital relationships must take place within the scope of the classical Islamic legal corpus, in which the legal sources of Qur'an and prophetic traditions remain the foundation. Accordingly, while new values and traditions of marriage may be developed in the modern milieu of Muslim society, such expansions cannot be viewed as existing beyond the sacred traditions of Islam. Legal queries concerning the status and efficacy of laws must always be referred to the sacred Islamic legal corpus. This perspective allows for new and evolving customs in marital relationships, thereby invigorating marital life while maintaining inviolate adherence to Islamic law. It is within this paradigm that the Islamic marriage law as espoused in myriad fiqh literature maintains its integrity. Differently put, even as social changes occur the basic tenets of Islamic law remain sacred. The marital relationship between husband and wife should in principle follow the rules enumerated in the basic Islamic legal texts to maintain the continuity of the law, while cautiously embracing new values and culture and facilitating legal changes to protect the efficacy of this sacred relationship.

Misyar marriage should be separated from other kinds of non-conventional marriage since the latter is basically the one deviating from the traditional patterns of marriage in a society, and free from the influence of religion. In misyar, however, we can find the sacred factors of the marriage imbuing into the common idea of the conventional relationship, except for the fact that the husband and wife do not reside at the same place and the husband does not give any financial support. Therefore, misyar marriage exemplifies the tension between sacred laws and cultural change. This is a current

marriage arrangement practiced by many Muslims, putatively expressing the new conception of the marital relationship. Debate has unsurprisingly revolved around the nature, status and position of *misyar* in Islamic marriage law. Many Muslim legal scholars have rebuffed *misyar* as illegal as it is essentially a “marriage for discarded women and economically unstable men.”<sup>1</sup> States, however, have allowed their people to practice this type of marriage, based on the opinion that the *misyar* does not run afoul of the main principle of Islamic law.<sup>2</sup> A number of countries have tolerated its existence rather than labelling the practice, relegating it to a grey area under Islamic law, neither patently accepted nor prohibited.<sup>3</sup>

As the most populous Muslim country, Indonesia faces this dilemma. The actual number of Muslim couples in Indonesia who practice the *misyar* marriage remains unknown. While it is believed that there are many such arrangements, the empirical research and data is incomplete. Indeed, there are many pitfalls in conducting empirical research on the subject. Impediments to reliable research on *misyar* marriage include: (1) in the modern era, people view marital life as a concealed affair, not properly part of the public sphere or appropriate to inquire about; and (2) the practice is rather unrecognizable in Indonesia. These factors make it difficult to fully apprehend the scope of its practice and in turn to discern the perspectives on the subject of jurists and Islamic law experts in the country.

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<sup>1</sup> Zakaria 2010: “*Misyar* is routinely presented as a pragmatic solution to sate the sexual appetites of men in a society where sexual promiscuity is strictly prohibited and even prosecuted through *hadd* punishments. The argument in favor of *misyar* normally runs along the following lines: *misyar* marriage allows those who are unable to provide a home or support a wife full-time an opportunity for female companionship, broadly interpreted.”). Ibn Uthaimen or Al-Albani is one of a few Islamic scholars confirming on the illegality of *misyar* marriage as it runs counter to the objectives of Islamic marriage law, see “*Misyar* Marriage” 2017. Also, Komsan 2009.

<sup>2</sup> For instance, Saudi Arabia, a country which has prominently legalized this kind of marriage following the opinion of the Saudi Ulama on this issue. One eminent Saudi scholar, Shaikh Abdullah Bin Sulaiman Bin Menie, who is a member of the Supreme Ulama Council, was quoted as saying that *misyar* is legal since it meets the requirements for a lawful marriage under Islam. See Atta n.d. See also Otto 2010, 164-165 (at 165: “Iran’s reinstatement of Islamic values and traditions induced Saudi *‘ulama* to accept novelties such as *misyar* marriages as legally valid.”).

<sup>3</sup> Such as Malaysia relatively silent or unclear on the case in concern. See Zaman 2006: “Due to the recent exposition on the issue of marriage by *misyar* by a few major Malay newspapers including Berita Harian and Utusan Malaysia, some people have confused the term between what is *socially* acceptable and what is *Islamically* acceptable. It has even reached the corridors of power, where the Minister for Women Affairs commented on the issue and said in a statement that it is “unacceptable”. Others with more Islamic knowledge, such as the Menteri Besar of Kelantan, say that they find that there are no problems with this type of marriage”.

This paper focuses on the theory and practice of *misyar* marriage in Indonesia. The primary aim is for a clearer understanding of the phenomenon of the marriage within the contemporary Indonesian Muslim families, including their perspectives on this marriage and how to cope with problems that may arise. From a theoretical perspective, this study evaluates the effectiveness of a dialogue surrounding the doctrine and practice of marriage in Islamic law, and whether *misyar* can be reconciled with the sacred law and current secular legal positivism, culminating in a general perspective of modern law.

The study follows two basic lines of inquiry. First, the theoretical sphere of the *misyar* marriage, where the discussion focuses on the nature of the marriage and the opinions of Muslim jurists viewing the practice, mainly from the perspective of Islamic legal doctrines. Second, the study examines the practical phenomenon of this kind of marriage in Indonesia. By comparing the classical doctrines and rules of marriage in Islam with the real practice of *misyar* marriages of Indonesian Muslim couples, the study sheds a new analytical light on the issue. The hope is that this discussion clarifies how Islamic law is understood and maintained in the modern lives of Muslims. The field research performed informs the understanding of the practical aspects of the *misyar*. In this case, sampling has been chosen as the best method to get the data; as well as a way to cope with the difficulties in finding respondents. This primary source of information is invaluable to make sense of the difficulties of reconciling *misyar* with the sacred fundamentals of Islamic law.

## Understanding *misyar* marriage

Etymologically, *misyar* marriage is a new term, unrecognizable in the traditional canons of Islamic law.<sup>4</sup> It is indeed a new phenomenon, forming a new understanding of the marital relationship with much looser arrangements which is different from traditional marriage. *Misyar* is an Arabic term, literally meaning a dynamic movement, i.e., walking, from one place to another (al-Anshori 1414 H, II: 252). Someone who walks a lot or likes to walk regularly is what the term connotes in a common parlance (al-Mutlaq 1423 H., 75). Thus, when this term is used as an adjective attached to the term marriage (*nikah, zawaġ*), the compounded term “*Zawaġ Misyar*” or *misyar* marriage refers to a practice of an arrangement in which the husband does not stay continuously in one place with his

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<sup>4</sup> Muhammad Rabi' Alfi Zaini Thahir, “*Masa'il Mustajidah fi 'Aqd al-Zawaġ*”, Unpublished Class Paper (Kuala Lumpur: International Islamic University, n.d.), 39-40. See also in general, Al-Asyqar 2000.

wife, but visits her regularly at his discretion. The novelty of the term “zawaj misyar” appears in classical fiqh literature.<sup>5</sup> In Arabic, the term “misyar” connotes the act of passing by a certain place for a short period of time. Jurists have therefore used the term to refer only to a marital relationship where the husband does not live with or provide the wife with necessary expenses. As commonly understood by people in the Gulf countries, the term describes a marriage where the bride and groom enter into a marriage contract under all conditions of Islamic marriage, but the woman gives up a number of her standard rights including accommodation, maintenance and the husband’s overnight company.

Speaking on this issue, the renowned jurist, Yusuf al-Qardhawi, does not dwell on the terminology, but rather focuses on the marital contract and legal consequences attached thereto. He regards misyar marriages as a legal alternative form of marriage, so long as all parties to the marriage fulfill its terms and conditions. This kind of marriage is not outside the realm of acceptable arrangements under Islamic family law. As explained by majority Sunni Muslim jurists, formation of a lawful marital relationship mandates four basic requirements: (1) a bride and groom; (2) a guardian (*wali*) of the bride; (3), two witnesses; and (4) an explicit offer (*’ijab*) and acceptance (*qabul*). Among those Sunni jurists, it is only the Malikite school which seems to require a dowry as an additional marriage requirement (al-Dasuki n.d. II: 21). It seems clear that in Yusuf Qardlawi’s mind that as long as both parties agree to the form of the relationship, the marital bond should not be torn down, as the basic law of Islamic marriage is not principally concerned with how the couple arranges the relationship. It does not matter whether the couple is willing to live together or whether the husband provides financial maintenance (*nafaqah*) for his wife. In a country like Saudi Arabia, where misyar marriage is allowed, or at least the government is silent on the issue, people commonly follow the legal opinions of such scholars as Shaykh ‘Abd al-‘Azeez ibn Baaz and Shaykh ‘Abd al-‘Azeez ‘Aal al-Shaykh (al-Munajjid 2008), who consistently advocate this type of marriage.

At the other end of the spectrum, some prominent jurists have come out against the above ideas espoused by Yusuf Qardlawi. These jurists argue that, in spite of the classical jurists’ silence, misyar marriage is not acceptable because it can have dire

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<sup>5</sup> See Yusuf al-Qardhawi’s statement about the term “al-Misyar” as a term not recognizable in Arabic dictionaries but commonly used in many Gulf countries, in al-Mutlaq 1423 H, 316–317. Also, Amir Fiqih Alqadafi, *Nikah Misyar di Indonesia (Kajian Sosiologi Hukum Terhadap Praktek Nikah Misyar di Banyuwiru, Kabupaten Jember)*, Unpublished Master’s Thesis (Yogyakarta: UIN Sunan Kalijaga Yogyakarta, 2016), 49–52.

consequences for the woman. They theorize that Misyar is demeaning to the wife in the arrangement, and it can bring about social chaos because nefarious people may take an advantage of the marriage. To make matters worse, when a family has children born from a misyar marriage, raising children in the midst of such a marriage is predominantly undertaken in their father's absence. These reasons have prompted prominent Ulama' in Saudi Arabia to recently change their minds concerning some of the problems which arise from this kind of marriage. Shaykh al-'Uthaymeen, for instance, has changed his views on the misyar marriage, following in the footsteps of other jurists such as Shaykh al-Albaani who have found misyar illegal from its inception.<sup>6</sup>

In response to opponents, jurists who defend the misyar marriage, mainly base their arguments on the premise that the misyar is entered into without disregarding the basic principles of marriage in Islam. For instance, misyar marriage contracts have no time limit (as in the case of mut'ah marriage), and meet the requirements of the bride's guardian, requisite witnesses, and public announcement. This means that practically, misyar marriage differs from other common marriage contracts, only in the absence of the husband and no accommodation for the wife. These elements, however, sound bizarre to some jurists.

Proponents essentially have determined that misyar is legal because the arrangement is not specifically proscribed under Islamic law, premising legality primarily upon meeting the basic requirements of Islamic marriage under Islam's sacred textual sources, i.e., the holy Qur'an and Prophetic Sunnah. The marriage bond is valid when both parties of the contract deliberately fulfill these requirements, even absent the blessing of the family, or other social or cultural foundations surrounding the family. Opponents, argue that this kind of marriage is not characteristic of an Islamic family because of the negative ramifications of such an arrangement. Husband and wife living under one roof is indeed an essential condition for majority of jurists. This view is based on the traditional nuclear familial structure wherein the father, mother and offspring live together. This view follows the parenting paradigm where the father and mother as core members of the family keep the marital structure intact. From the traditional fiqh perspective, husband and wife should not be separated as this could lead to the collapse of the marriage itself. Islamic law of divorce has ruled that a husband and wife's separation can be evidence of deep familial fissures, resulting in fatal damage to the marital relationship. Under this line of thinking, misyar marriage should not be legal as it closely resembles an endangered

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<sup>6</sup> al-Munajjid 2008. See also al-Mutlaq 1423 H, 320 onwards.

marriage. Worse still, the children born in such a marriage will suffer without the nurturing of both parents.

The traditional views of the Islamic marriage, however, are not without challenges, particularly when a new paradigm is, slowly but surely, infused into people's understanding of marriage. Current social and cultural values have in reality influenced our understanding and in turn driven us to new attitudes. Certain circumstances have fostered the emergence of the misyar marriage in many Muslim countries: First, the domination of the culture of monogamous marriage since the second half of the twentieth century; the spread of the Western legal traditions in newly decolonized areas, especially Muslim majority nations, creating a new paradigm of marriage where polygamy is more and more seen as contradictory to the tenets of family law. More Muslim states have now criminalized the practice of polygamy, or are at least have become apprehensive about it, creating uncertainty for anyone wishing to have more than one wife. This has resulted in silent or informal polygamous marriages, which maintain the status quo of the relationship with other members of the original marriage and extended family. Misyar marriage meets these goals. The misyar marriage in such cases act as "under the table" polygamous marriages. The second wife lives separately and the husband maintains the illusion of the monogamous marriage by living with his first wife. The husband visits the second wife on a certain schedule as agreed by the wife. This may or may not involve financial support for the second wife, depending on her own economic resources.

Second, new socio-economic conditions have led to misyar marriages. The rising costs of dowries and marriage arrangements and the growth of the divorce rate have certainly exacerbated men's apprehension toward traditional marriage in general. There is a new reluctance of men to get married in the face of economic burdens.<sup>7</sup> It is logical therefore to use the misyar as way to avoid the hardships of a conventional marriage. In such circumstances, however, a man must find a woman willing to forego the emoluments of a traditional marriage. Third, a new way of thinking about marriage may conform better to current work life. Advancement of the technology has promulgated different working arrangements, particularly working remotely, giving flexibility to all aspects of life, including marriage. People travel from one place to another to meet the demands of the work, while marital life of the workers should still be maintained. In such situations, misyar marriage may facilitate a remote working situation without compromising marital life. A man may travel often for lengthy periods, staying in touch to maintain the family.

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<sup>7</sup> See, for instance, Bahry 1982. Also, Al Mamun 2017.

This lowers the burden of a traditional marriage and increases economic opportunity in the changing working landscape. The wife can tend to stay with the family while the husband is away. The emergence of this kind of marriage thus particularly answers the need to build a marital bond in a new social and cultural environment.

Beyond the costs and benefits of misyar marriage, this kind of marriage has indeed sparked curious questions on the nature of marriage in Islam and how it is actually understood in Muslim society. People's opinions of misyar marriage seem to correlate with their views that the sexual relationship itself is one of the basic reasons to create a marital union. As already understood, sexual activities between man and woman cannot be lawfully done without the involvement of religious functionaries to solemnize the relationship. Yet, the parties to marriage may have the right to decide whether their marriage is really intended for procreation or merely for pleasure. As commonly understood, procreation is the impetus for marriage. For other couples, however, marriage is mainly a recreation, without any burden to create a complete nuclear household.<sup>8</sup> In such a modern society, misyar marriages may also work as a kind of recreational panacea where a couple builds the marriage to legitimize their sexual cohabitation. Here, as long as the basic conditions of an Islamic marriage are met, there is no prohibition on the relationship, regardless of distance. This construct implicates the very nature of Islamic marriage traditionally understood as primarily a procreative undertaking. Marriage under this perspective performs the sociological and religious institution where a family legally exists to work together to perpetuate human life on earth. It follows that family members should live together to accomplish this objective. A long distant relationship, especially if permanent, will fail to achieve such ideas. Negative impacts of that kind of marriage, the logic states, will persist, rendering misyar marriage incompatible with basic Islamic mores.

These pros and cons must be evaluated in the context of Indonesian Muslims' everyday lives; their understanding of what marriage is and how they may decide to take a plunge into misyar marriage. Certain values and ideologies form the basis for their considerations in this model of marriage and coping in a majority sunni Muslim society with traditional views of marriage. The next pages will address this.

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<sup>8</sup> On recreation and procreation, see Levin 2015. Also, Gubrium and Holstein 1994, Kellner 1999.



## The Indonesian style of misyar marriage

Indonesia, home to the world's largest Muslim population, is certainly a good place to study how Islamic family law works in real life. Not only does religious law touch nearly every aspect of people's everyday lives, but also the presence of coincident legal pluralism. It is common that people in the archipelago see plural normativity in life, and have as such grown accustomed to it. Conflict arising from different laws and legal sources and agents are accordingly inevitable. There is a common proclivity to accommodate differences in laws and legal views to facilitate equitable resolutions. People address the normative plurality through at least three models, assimilation, acculturation, and compartmentalization.<sup>9</sup> These are based essentially on the three ways of approaching the problems: non-conflictual, conflictual and 'standoffish' attitudes. The non-conflictual approach results in an amalgamation of laws, possibly even more in the form of legal syncretism and assimilation, according to how different legal values and thoughts are expressed in the actual lives of Indonesian citizens. The conflictual approach, on the other hand, posits the conflict of laws as totally different, invoking the disparate power relationship among competing perspectives. These differences in laws lead to an adversarial approach and a 'zero-sum game' where one perspective must give ground to another's gain. Certainly, this perspective bases its arguments on a win-lose model, "all or nothing." with the effect that acculturation of law appears as the best model in law-creation. When the legal conflict is unreconcilable, compartmentalization is invoked. It is a possible model particularly when plural normativity appears as a coliseum of an eternal conflict between different laws. In Indonesia, the ascendance of Islamic law in the country's politics has resulted in the state's generosity toward the creation of Islamic positive laws, accommodating Islamic normative orderings as mostly emanating from fiqh literature. The third, standoffish approach, suggests an attempt to resolve legal conflicts by maintaining and following different laws for different populations who coexist. The standoffish expression usually appears in everyday life when people are indifferent to certain laws dissimilar to their opinions. The legal disparities are not challenged but remain dispassionate toward influencing the laws of other populations.

In the case of misyar marriage, Indonesian Muslims seem to have silently embraced the practice, even though different views may come to the surface when comprehensive studies are conducted on the phenomenon. As this is basically an incognito undertaking,

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<sup>9</sup> See in detail on those models, Lukito 2013, 198-209.

no one seems to pay close attention to the subject. One possible presumption is that most people in the country do not recognize the term describing the marriage even if they have actually practiced it.<sup>10</sup> In this situation, most people feel disdain when informed that there is a neighboring couple in a *misyar* marriage, witnessing, for instance, that the couple are apparently not living together. Most often, observers are reticent about the practice. Thus, they will not show their disagreement, let alone challenge the practice despite the conflict with their religious and legal views. This is what we can say as one example of the standoffish approach when seeing differences in law: *misyar* marriage may not accord with most people's view of the marriage in Indonesia, but challenging the practice openly remains untenable. This is one picture of internal plural normativity existing in Indonesian Islam where Muslims living in the same community have different ideas on certain legal issues, in this case a *misyar* marriage. As traditional views of marriage law remain a dominant part of the culture in the Indonesian Islam, *misyar* marriage is not commonly seen as the best alternative. Opposing *misyar* marriage, therefore becomes subordinate to 'keeping the peace.'

In this study, the practice of *misyar* marriage is understood as providing leeway for some Muslims to overcome hindrances to a marital relationship in accordance with Islamic teachings. Islamic marriage is basically a legal contract undertaken by fulfilling basic conditions and requirements to assure that the marital bond is respected uninterrupted during the lives of both husband and wife. Theoretically, marriage in Islam is not sanctioned for a defined period, but should rather be perpetual, truncated only upon an emergency through divorce. In this framework, *misyar* marriage may work to solve trivial problems that would otherwise hinder the union between husband and wife. Due to certain economic conditions, for instance, a husband is unable to provide accommodations for his wife to live at the same place or to pay her a fixed, regular sum of money. The wife on the other hand can live independently outside of the husband's control. Such an arrangement only works where both husband and wife have a certain, similar understanding of Islamic law. The case studies below explore these perspectives and how they can preserve a marriage.

Because the majority Muslim population in Indonesia embraces Sunni Islam, their marriage practices usually conform to a Sunnite Islamic marriage model, which practically proscribes any traditions viewed as transgressing the basic principles of

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<sup>10</sup> Interestingly, one interviewee of this research expressed his understanding of this model of marriage with such a peculiar term as "Nikah Wisata" (touristic marriage).

Islamic marriage law. Examples of this are marriages for limited periods (*mut'ah*, commonly accepted in Shi'ite Islam), or *nikah kontrak* in Indonesia, marriage contracts done without the involvement of religious state functionaries, or lately a commonly practiced *nikah sirri*, i.e., Islamic marriage contract undertaken with no state registration ('*urfi* marriage in Saudi Arabia).<sup>11</sup> Marriages such as the *misyar* type possibly implicates Sunni traditions as it deviates from the common marital bond where the husband lives together with his family and provides economic support for the family. At the very least, common people in the country may view the practice of *misyar* marriage as inapposite to Sunnite Islamic law. Given the views of the common Indonesian, the research revealed peculiar ways to cope with neighbors by those practicing *misyar* marriage.

## Responses and Data Collection

It is indeed not an easy undertaking to dig into a peculiar form of marriage. As *misyar* marriage is both sacred and taboo, researchers have run into repeated roadblocks in finding real data. Worse still, when dealing with such a sensitive subject, few couples in these unique and uncommon relationships are not willing to open up about their lifestyle. Thus, the main challenge in this research is how to approach those in *misyar* marriages and get them to talk about themselves. While the assumption is that the practice of *misyar* marriage in Indonesian society is not uncommon, most who are in such relationships conceal them. To address this problem for this study, random sampling was used as the most appropriate alternative to collect data in the field. During the course of this research, we found six couples in *misyar* marriages, living in three different cities across the island of Java: Yogyakarta (the province of the Special Region of Yogyakarta), Jember, and Sidoarjo (both in East Java). These marriages were identified by two basic common characteristics: First, the husband and wife did not live together for a significant duration of time during the marital relationship; and second, the husband did not practically support the economic aspects of the family. The research used personal interview, focusing on certain themes dealing only with their cognition of the marriage, reasons for entering into such relationships, and how they deal with these relationships on a daily basis. In conducting the interviews, the researchers tried as much as possible to maintain a dialogue indirectly and delicately to organically unearth data on this phenomenon.

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<sup>11</sup> See in general, Voorhoeve 2012. On '*urfi* marriage, see Thahir n.d., 31-38; Zahrah 1971.

Cognitively, the interviews dealt mainly with the questions related to their general understanding about: (1) Marriage according to Islamic law; (2) requirements and conditions of marriage in Indonesia; (3) the purpose or purposes of marriage. The second aspect dealt with the practicalities of misyar marriage, inquiring about: (1) Basic perspectives about misyar marriage; (2) the reasons for the husband living separately from the wife and/or not supporting her life. The last line of questions focused on how they present their relationship to the outside world, namely: (1) Why they have decided to practice the misyar marriage; (2) how they can manage the relationship with children (if any); (3) the relationship of the misyar marriage with polygamous or unregistered marriages; and (4) their strategy to deal with other people who disapprove of their marriage. Altogether, the questionnaire was comprised of nine questions encompassing these three aspects of the research subject.

The table below describes the six respondents spread over three places of the research horizon, as follows:

<b>NO</b>	<b>CITY</b>	<b>RESPONDENTS (IN INITIALS, MALE/ FEMALE)</b>	<b>DURATION OF MARRIAGE</b>	<b>KIND OF MARRIAGE</b>
1	Yogyakarta	RU (M)	15 years	Unregistered, monogamous marriage
2	Sidoarjo	YU (F)	3 years	Unregistered marriage; with the husband doing polygamous marriage
3	Jember	ZE (M)	1,5 years	Monogamous, willing to registering the marriage
4	Jember	OM (F)	3 years	Unregistered marriage; the husband doing Polygamous marriage
5	Jember	MO (M)	1 year	Unregistered, polygamous marriage
6	Jember	HM (M)	6 months	Unregistered, polygamous marriage



To understand their responses, it is important to apprehend the other living conditions of the research subjects. First, RU is a husband living in Yogyakarta after being laid off from the company where he worked in Jakarta. He returned to his hometown in the throes of bankruptcy with an uncertain future. He built a family with three children since early 1980s but this marriage fell apart when his first wife proposed a divorce in response to his decision to marry again with another woman. His relationship with his second wife therefore is basically monogamous following the dissolution of his first marriage. After some years of marriage to wife number two, due to economic circumstances, RU decided to live separately in Yogyakarta from his current wife, while his wife and their only daughter moved to Jakarta, her home town. This misyar marriage is therefore a result of economic hardship they had faced since early in their marriage. Interestingly, the long-distance relationship has continued until now, exemplifying a stable misyar marriage. Sometimes the wife visits him in Yogyakarta, though not on a regular basis because her job as a babysitter in Jakarta makes it difficult. Different from his first marriage, the second marriage followed a misyar model as he and his wife do not live together and he basically gives no financial support to his wife for her life in Jakarta. The wife seems to have accepted her husband's difficulty and along with that, the condition that living in a standard way of marriage cannot be realized. What is interesting to note is that their misyar marriage could be maintained despite rarely visiting each other.<sup>12</sup>

The second respondent, YU is a woman living alone in Sidoarjo. She decided to end her marriage as she could not continue her marital bond. She was adamant that she could not love her husband any longer, although her husband begged her to continue their (at that time) twenty-year marriage. She then fell in love with a married man whom she had met not long after her separation from her former husband. The man was well-established and wealthy. He lived in another city with his wife and two children. This man proposed a misyar marriage arrangement to her where he would remain with his family and periodically visit her in her own home in Sidoarjo. The proposal also included that her misyar husband would only partially support her life because she has her own work and thus was economically independent. She decided to accept his proposal as she understood that the man's relationship with his wife was basically unhealthy. Thus, they got married under the agreed conditions. She deeply believes that she is nevertheless

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<sup>12</sup> Intermittent interviews with RU between 21-23 August, 2017.

fortunate as she could finally find a true love, although her new husband cannot be with her every day.<sup>13</sup>

ZE was the husband in a conventional marriage who lived in a small village in Jember, while his wife lived a considerable distance away in Lampung (the Island of Sumatra). As a man with a diminished financial means, he desired to marry another woman who would accept him and not burden him financially. ZE was basically an underemployed person with an uncertain fate while his misyar wife was a widow earning income from her job as a housemaid in Singapore. For the misyar wife, marrying ZE was probably done for the sake of maintaining her image as a respected woman, particularly as a widow. It was thus understandable that she did not expect to be an economic liability but rather instilling the image of a family. For ZE, on the other hand, depending on his relatively well-off wife may not be looked on favorably, leading to the choice to live separately and without obvious financial support. The couple therefore preferred a misyar marriage over a conventional one as they could continue their relationship without any hindrances. In this case, the couple agreed that they would not continue living together after they had a baby as doing so would allow each to continue their efforts to find employment. The husband could maintain their marital relationship by way of visiting the wife occasionally. Interestingly, ZE had, toward the end of the research study, expressed his willingness to register the marriage in a state office (*Kantor Urusan Agama*, KUA) so as to guarantee the future life of their child as by doing so the legal status of the child can be ensured.<sup>14</sup>

OM is a female who maintained her misyar marriage for about three years with a married man. In this case, misyar marriage seemed to be undertaken as the aforementioned 'loophole' for Muslims to undertake an "under the table" polygamous marriage, avoiding the legal system. In this case, OM herself was a widow with two children who seemed to need a new marriage to continue raising her children. Marrying with her second husband had allowed fulfilment of her sexual desire as well as accommodate her child-rearing and the need to keep up her image as a widow. Feeling the stigma of living as a widow, finding a spouse was for her the best way to resolve the issue. OM accepted the facts that her new husband could not live with her continuously as he also had his original family to take care in another city. However, by maintaining a "long distance" relationship,

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<sup>13</sup> Interviews with YU on 19 and 20 September 2017, and 19 December 2017.

<sup>14</sup> Interviews with ZE on 5, 6 January 2018. ZE and his misyar wife were, at the end of the study, in an uncertain relationship as the wife felt that ZE has just benefited her so far and is not responsible with the family. They were at the time unsure on how to deal with their misyar child.

she could achieve her dream of becoming a good wife. OM accepted the arrangement because of her own financial independence.<sup>15</sup>

MO was in a conventional marriage with no children. He was a businessman who always traveled selling clothing. Since long time before he had indeed intended to marry another woman living in a different city far away from the place he usually stayed with his first wife. There was an agreement between MO and his second wife to build a marital relationship without living together as the wife understood that MO could not stay continuously in one place because of his business. She also accepted that MO had already been married with his first wife, with no offspring. In the view of MO, his misyar wife did not depend on him economically as she could rely on her own business, a small grocery store she had started long before they got married. Here, MO deliberately understood misyar as a way to fulfill his sexual needs, particularly when he was away from his first wife. That was why that he decided to get a second marriage with a woman with whom he could satisfy his sexual longing when he was away from home. Misyar marriage was for him a good way to appease his passions without transgressing religious prohibitions on extramarital sexual relations.<sup>16</sup>

HM, who also lived in Jember, was a man with two misyar wives, in addition to his conventional long-term marriage. Sharing similar ideas about marriage as the above MO, HM undertook the first and second misyar marriages consecutively about six months before the interviews. In his view, husband and wife do not necessarily live together. They may stay separate as long as the two agree to do so and have mutual understanding to maintain the relationship although in a long-distance way. In HM's view, misyar was also the best way for someone to marry covertly or polygamously without registering in the state record. He theorized that as long as the basic elements of an Islamic marriage were fulfilled, the marriages were essentially legal and accepted according to Shariah. HM realized that he could not transgress the Islamic marriage law as he felt an obligation to be a good Muslim. A misyar marriage was therefore for him one of the best ways to satisfy his libido. In other words, misyar marriage, he felt, was a solution to maintain people's submission to the laws of God as revealed through his Prophet, even if the state may have different laws on marriage. HM also believed that many of his friends have entered into misyar marriages under similar conditions.

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<sup>15</sup> Interview with OM on 20 and 25 December 2017.

<sup>16</sup> Interview with MO on 19 and 20 November 2017.

It is not an exaggeration therefore that for some people misyar marriage is the best solution to satisfy their desires while pretextually following Islamic law, especially for those who do not want to live together with their wives, such as in the case of unregistered or polygamous marriage. This view is based on the belief that Islamic law does not obligate a husband to always stay together with his wife, and that no requirement exists under Islamic law to support their families. In other words, any kind of marriage may be done without the need to take too much concern with the state marriage regulations as long as Shari'ah law is ostensibly followed. That is why HM prefers so far to take a misyar marriage with someone he loves insofar as the woman can accept his conditions.<sup>17</sup>

## Analysis

From the above cases, it is understandable that making the decision to have a misyar marriage is not a simple undertaking. It involves a number of deliberations so that the argument to start the marriage appears viable and logical. It is interesting to note that all respondents decided to undertake a misyar marriage outside of the Indonesian legal system. They seem even to use this kind of marriage as a loophole for selfish purposes, similar to polygamous and or unregistered marriages (*nikah sirri* or *zawaj 'urfi* as in Saudi Arabia). Only ZE (the respondent from Jember) who appeared to maintain his monogamy expressed his willingness to shift the misyar to a conventional marriage by registering it in the state marriage registration office (KUA) in the near future. The data reveals that ZE's case is uncommon. The case of RU in Yogyakarta, on the other hand, tends to prove that monogamous misyar marriage can be maintained for a relatively longer time by the couple as they do not intend to change their status into a registered one due to the economic burdens lingering in their lives. If this is true, the practice of misyar marriage as conveyed in this research may mark the clarity of the nature and characteristic of this marriage, not merely understood on the perspectives of its pragmatic aspects but also the theological and cognitive aspects on which the marriage is built.

Regarding the cognitive aspects, all the misyar parties seem to agree that Islamic law of marriage is basically a simple one, regulating Muslim behavior of marital life without making any encumbrances, thus allowing them to stay distant from its practice. Marriage is the tradition of the Prophet Muhammad, whoever hates the tradition will not be counted

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<sup>17</sup> Interview with HM on 21 and 22 November 2017.



as his true followers.<sup>18</sup> In this way, marriage is essentially a tradition of Islam as it is essentially the way of bringing people closer to their nature. Related to this belief is their understanding that in building a marital status one will only need to consider no more than four basic elements, namely, the existence of a bride and groom, a dowry, two witnesses, and an explicit offer (*ijab*) and acceptance (*qabul*). In the case where a man wants to marry a widow, he will not need to involve the guardian or family of the woman. She can stand by and for herself to get married. Related to this, all respondents agreed of course that misyar marriage is not prohibited under Islamic law, as long as it is done in accordance with the four requirements already set forth therein. Therefore, the misyar marriage is a legal way of marriage so far as it is performed following the Islamic marriage law, while the aspects of practical life in the post contract, such as the way the husband and wife behave towards each other, are the matters in which custom may work for them.

The main concern of Islamic law here is that marriage should not be only for a limited time. Marriage is for the sake of building a prosperous and perpetual family, keeping pace with a changing and complicated society. It is with this basic cognition that misyar marriage is not seen by the respondents to this research study as something deviating from Shari'ah. There are thus the factors of continuity and change here. The research subjects' arguments in favor of the misyar marriage are certainly correlated to their desire for such arrangements. Overall, respondents seem to base their understanding upon a comprehension that misyar marriage serves their prurient desires and that sexual relationship is not merely a way for people to have offspring. We can assume safely that sex is also up to our needs to enjoy life. It is a procreative pursuit, indeed. But it is also a recreation as well. Misyar marriage may be viewed as the way people find the way to have ostensibly legal sexual intercourse without transgressing Islamic law. It seems here that the respondents dismiss the teaching in classical fiqh in which the husband should stay in the same home with the wife. Indeed, when science and technology have developed in such a rapid way, the form of relationships would also be transformed in line with the modern development. In a practical way, the modern marital bonds may not be expressed in which physical contacts are important. Through advances in communication technology, a marriage can still continue although separated by great distance.

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<sup>18</sup> The hadith, "An-Nikahu min sunnati faman lam ya'mal bisunnati falaysa minni...." See in Sunan Ibnu Majah, hadith No. 1836.

The other element to consider is regarding the established obligation for the husband to provide for the life of his wife and children. Indeed, it is a legal obligation in conjunction with the Islamic teachings that a husband is the leader of his wife.<sup>19</sup> This kind of human relationship might be questionable in this post-modern era where people have different paradigms of gender and sexual relations (Di Stefano 1991, Blume and Blume 2003; in general, Sands and Nuccio 1992, Minda 1995). Where women can have their own economic resources, they may not be treated as subordinate to the man. The wife should be treated as equal to the husband according to the law; she is thus certainly capable of having her own financial independence as well as that of the husband. Differently put, *misyar* marriage in this case is basically a kind of new marital venture in which both parties of the marriage may be released from the obligation to stay together uninterruptedly and develop their own economic independence. One respondent opined that he can be free from the obligation to provide his wife's financial needs because his wife had her own business, guaranteeing her sustainable life in his absence.<sup>20</sup>

It is important to note here that all research respondents in *misyar* marriages were of the opinion that the marriage contract was valid even though the marriage was not registered in the state office. They preferred to use the argument that registration is not a requirement in Islamic marriage law. Again, as long as the four conditions of legal marriage are fulfilled, the marriage is considered as valid and acceptable in Islam. Non-registered marriage, which is commonly seen as non-conventional as well as illegal by the government, is nonetheless normal in their view. It is by way of this understanding that *misyar* has been used somehow as a channel to possibly accepting other kinds of marriage so far in conflict with the state law. Thus, a number of marital relationships such as unregistered marriage (*nikah sirri*), polygamous marriage and other uncommon forms of marriage may not be rebuffed in Indonesia as long as they are done in accordance with Shari'ah. Under this argument, *misyar* can be justified to surrounding people. In the field, this research found a common clue that *misyar* marriage is done in relation to the other uncommon marriages namely the unregistered (*nikah sirri*) and polygamous marriage. Almost all respondents used the *misyar* as a way to have a polygamous marriage and in so doing they deliberately did not register their marriages.

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<sup>19</sup> "Al-rijalu qawwamuna 'ala al-nisa bima fadhdhala allahu ba'dluhum 'ala ba'dlin wa bima anfaqu min amwalihim." (An-Nisa', 34).

<sup>20</sup> Interview with ZE in Jember on 6 January 2018.

It is interesting to see how people in misyar marriages dealt with people challenging the practice. As it is regarded as a peculiar, uncommon form of marriage, misyar marriage may be frowned upon. It is comprehensible that most people in the country remain doubtful of misyar marriage. They mostly question the validity of the marriage as it is commonly done without the involvement of the state registration or public observation (*walimah al-ursy*). It is common that misyar is done with no state registration because in most cases it is taken by a man who has already been in a marital bond and the misyar marriage is essentially illegal under Indonesian law. In this research, three out of four male respondents decided on a misyar marriage when they were already married, while two female respondents met their misyar spouses who remained in their first conventional marriages. Indeed, this brings some bureaucratic complications as Indonesian marriage law basically does not allow polygamous marriage. Polygamy is not allowed except in some emergency conditions, where having a second wife is an unavoidable need, due to a sickness or an incapacitated present wife. Registering a polygamous marriage would therefore cause difficulties, not only because of such bureaucratic entanglements but also social problems posed by people active in contesting the practice of the marriage.

The research has shown that parties to misyar did not care much what people thought and said about their marriages, or if so, they believed that people could accept the fact that such a marriage is common enough in the society. The respondents in Jember, especially were sure that people there acknowledge the practice of misyar marriage, although they may not agree with it. Slowly but surely, misyar seems to have become a new kind of marriage for those who want to plunge into a sexual relationship with no state involvement. That is why those engaged in the practice analogize their acts to *nikah sirri* (unregistered marriage) and polygamous marriage. It is thus like a triangular marriage, in which the three kinds of non-conventional marriages are developed into one. If that is true, we can assume that misyar marriage is practically interconnected with polygamy and *nikah sirri*, according to which the three models are basically interwoven into one single operation. This might be the main character of the misyar marriage as found in Indonesia. People usually only show their indifference to the practice with little concern for its legal position. The common attitude towards the marriage can thus be described as a standoffish way of acting, since their refusal of the practice of misyar will not be expressed with much exertion. This is somehow positive to the misyar performers since their practices are not commonly openly challenged.

While it is not clear however why people decided to undertake the misyar marriage, the six respondents above seemed to show a common feature of reasoning motivating the persons to choose this unconventional marriage, namely simplifying their relationships. Misyar marriage is very simple for most of them as they can start the marriage without bureaucratic hassles of state administrative regulations or economic burdens of conventional marriage. It is even more undemanding as people may use it as an effective channel for doing other non-conventional marriage. This is what seems to appear in this research. Half of the four male respondents have benefited from the misyar model to succeed in their polygamous marriage, and all of them have factually done the misyar by way of unregistering their marriage. In this case, one respondent (ZE) has expressed his willingness to register his misyar marriage with the prime motive to guarantee the legal status of his only child in accordance with the state law. All other respondents, however, were silent on this idea. They saw no need at all for registering their misyar marriage in the state office.

It is important also to consider how the misyar couples manage their relationships to sustain them. From this research, RU (Yogyakarta) was the only respondent who had successfully maintained his misyar marriage for more than ten years. His *nikah sirri* with a woman from Jakarta has worked for more than fifteen years and finally decided to have a long-distance relationship with the wife after the economic troubles looming their family. It is not clear why they did not decide to register the marriage even though there was a child born from the marriage. The couple were even persistent to continue the marriage through a long-distance marital bond following their economic problems. Yet, beyond the duration of the marriage, as a kind of long-distance relationship, the misyar seems not a relationship that can be easily maintained. All respondents concurred that their marital bonds were somehow weak and obscure and could break down easily.<sup>21</sup> Only through persistent and strong motivations could they maintain the marriage. In most cases, the male domination was still present. This non-conventional marriage has basically no strong legal basis and was thus at the discretion of the husband. For someone like YU in Sidoarjo, love was the only motive to maintain her misyar marriage with her husband in Yogyakarta; yet, for other respondents, economic and sexual desires may become the driving forces to sustain the marriage. Each person certainly has their own cost and benefit calculations to extend the duration of their marital relationship, according to which

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<sup>21</sup> For instance, such an understanding was expressed putatively in interviews with RU and YU separately in Yogyakarta and Sidoarjo.

a deeper and detailed field research may need to discover such a complicated phenomenon in the society.

## Conclusion

This study has tried to convey the phenomenon of misyar marriage in some cities in Java, Indonesia, as a way to answer the curiosity about this kind of unconventional marital institution. It has basically shown that this is a practical form of marriage performed in Indonesian Muslim society. Although misyar is still an uncommon practice, slowly but surely more people will see this method as an answer to their needs of building more relaxed and flexible marital relationships away from any burdens or inconveniences resulting from state administration.

The commonality of this marriage is clear in its practice where it remains detached from state involvement. Misyar marriage is essentially a non-state bond, according to which all legal consequences that may appear from the relationship would have no formal legal significance. It starts with an unofficial contract between bride and groom, usually involving religious experts having no relationship with the state offices. The form of relationship between husband and wife lays consequently beyond the mainstream structure of a common marriage, the couple may thus live separately, having less direct encounter such as that of a conventional nuclear family where husband, wife and possibly children stay together. It is also common that the husband does not act as a progenitor of the family economy so that the wife is not financially dependent on her husband as she usually can provide for herself in her everyday life. Or if the husband is generous enough, the wife will usually receive some portion of financial help subsidizing her needs. This does not mean that this kind of marital relationship is baseless, viewed from Islamic legal underpinnings. Misyar marriage is viewed by many scholars as essentially an Islamic way marriage as it is built on the basis of Islamic teachings. One way or the other, the misyar contract starts with religious functionaries, inviting Ulama or a religious official to solemnize the marriage. The marriage is also formed considering the four elements of Islamic marriage law as agreed upon by many Islamic scholars, i.e., a bride and groom, a dowry, two witnesses, and an explicit offer (*ijab*) and acceptance (*qabul*). This is what we can say as the continuous part of Islamic marriage law, as whatever the form of marriage we are willing to create, all four basic requirements should be fulfilled. While the form of relationship between husband and wife in this misyar

marriage is what we say as the non-continual part of the religious law. Two basic characters of the misyar lay in the fact of the separation of the couple's place to stay and the least responsibility of the husband to the wife's financial contribution. These factors are basically the aspects of the law which can be altered in conjunction with the changing of time and place.

Indonesian Muslims seem to cleverly adopt this kind of marriage in order to fulfill their needs. People may have different purposes in their marriage, but all comes from two basic variables of sexual relationship: procreation and recreation. Procreation directs people to create a complete family where the husband-and-wife relationship can result in the birth of the children, while recreation is the idea that sexual activities should not always be directed to create an offspring but more a fun and enjoyment encounter between different sexes. Here, the misyar marriage is more following the second idea that the couple form their marital building not up to creating a complete nuclear family but more to get a fun and relaxed legal cohabitation. That seems why we can see that performers of the misyar marriage in Indonesia tend to relate the misyar with polygamous and unregistered (*nikah sirri*) marriages. There is a common proclivity that misyar, polygamous and *nikah sirri* are united as one venture, accumulating the three non-conventional marital relationships into one peculiar marriage transaction. The couple deciding to start a misyar marriage will usually do it through an unregistered marital contract and interestingly undertaken with the married husband who remains in his first registered marriage relationship. The recreational factors of the misyar appears also in the inclination of most respondents not to have a child from the marriage.

It seems logical to think that this misyar marriage is just a new way for modern people to think about their marriage. Modernity have indeed brought us new values of marital relationships which will reconstruct or even destruct our old understanding. More and more people tend to believe that it is not necessary to live together or that a husband may not become the only source of family income as individualist principles have become the basis of the whole social structure. It is with this phenomenon that religion is becoming a culprit that someone can use or abuse its teachings in order to fulfill their individual purposes. Religious law is not anymore viewed as merely God's legal teachings but the human way of thinking about normative orderings as well. We are thus capable of considering misyar marriage as a religious legal action because of its submission to the basic religious law, yet we have to think also how the misyar practices will give certain results in the structure of the family. This is because law and social change have basically a reciprocal connectivity according to which this kind of research

needs to be continued by involving more comprehensive variables of study in the future to comprehend the phenomenon of misyar marriage more profoundly.

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