Mut'ah Marriage Law in Perspective of Sayyid Husain Al-Thaba’thabaí and Their Relevance with Family Law in Indonesia

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Abstract

This study aims to examine Al-Thaba’thabaí ’s thoughts on Mut'ah marriage and its relevance to family law in Indonesia. This research is a type of library research by descriptive-analytical approach. The primary data in this study are the Qur'an, Hadith, books by Al-Thaba’thabaí, the 1945 Constitution, Law Number 1 of 1974 concerning National Marriage Law, PP. Number 9 of 1975 as the implementing regulation of Law no. 1974, and INPRES No.1/1991 on the Compilation of Islamic Law (KHI). This study uses deductive thinking techniques and the data analysis uses maqashid sharia theory. The results show that Al-Thaba’thabaí ’s thoughts on the permissibility of Mut'ah Marriages are not relevant to the purpose of marriage and the purpose of making legislation. As the purpose of making the law is the value of justice, usefulness, and legal certainty, besides the law is also made to create benefit in society. Al-Thaba’thabaí’s thought regarding Mut'ah Marriage must be rejected because it violates the values of the legal objectives, namely justice, benefit, and legal certainty, and also harms the values of benefit. To provide firmness to prohibit the practice of mut'ah marriage in Indonesia, it is necessary to amend Article 2 of Law Number 1 of 1974 concerning Marriage to "a legal marriage is carried out following their respective religions and registered following the legislation. invitation".

Keywords: Mut'ah marriage; Husain Al-Thaba’thabaí; family law in Indonesia
Abstrak


Kata kunci: Pernikahan Mut'ah; Husain Al-Thaba’thabaí; hukum keluarga di Indonesia

Introduction

Marriage is part of religious law and is the sunnah of the Prophet SAW. In the pages of Islamic history, especially on the Tasyri Date side, there are two kinds of marriage. The first is called the Daim Marriage (ordinary marriage, i.e. without a time limit), and the second is called the Mut'ab Marriage (a marriage that is limited to a certain period).

Daim marriage is practiced and believed to be a legal marriage model by all Muslims. While mut'ab marriage is practiced and believed to be a lawful and legal marriage model by some Muslims, especially in the Shi'i Imamiyah sect or sect, and is declared unlawful and invalid by the majority of other Muslims,

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1 Mustafa Sa'id Al-Khin, Asr Al-Ikhtilaf Fi Al-Qawaid Al-Ushuliyah Fi Ikhtilaf Al-Fuqaha’ (Beirut: Muassasat al-Risalat, 1981).
especially among the Sunnis. Specifically for Indonesian Muslims, the same rules are also formulated in Article 4 of the Compilation of Islamic Law which reads "Marriage is legal if it is carried out according to Islamic law", and Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage states that a valid marriage carried out according to the law of each religion and belief.²

Islamic religious law that is understood, believed, and practiced by some Muslims (including possible Indonesian Muslims), then both _daim_ marriages and _mutʿab_ marriages are specifically carried out or practiced by citizens. Indonesia, which is Muslim with a Shi'ite school of thought, both are legal according to the laws in force in Indonesia.

Then, it should be noted that concerning marital problems, in Indonesia at this time a phenomenon appears, namely the birth of a type of marriage model called contract marriage. Before researching the reality of contract marriage in the community, it was not clear whether this marriage model was categorized as _daim_ marriage or _mutʿab_ marriage, or maybe not both. Information about it has recently been found in the mass media, both in print and electronic media. Based on information from the mass media, both printed and electronic, contract marriages have been widely practiced by some people in several areas in Indonesia, both in urban areas and in poor areas.

The areas where such contract marriages occur are in Indonesia, especially in Cisarua Bogor, in Cianjur Regency, West Java,³ in Jepara Regency, Central Java,⁴ in Kalisat Village, Rembang sub-district, Pasuruan district, East Java,⁵ and in Singkawang, Bengkayang district, West Kalimantan.⁶

The law of _Mutʿab_ marriage has the pros and cons. Both of which are strong in terms of _istikālāl_.⁷ Normatively, both are based on the Qur’an, al-Sunnah, the opinions of friends and rational arguments. According to the rules of _ijtihād_.⁸ Actually, there is a way out if there are two contradictory arguments, namely employing _jamʿu_, _tarjīḥ_, _naskh_ and _mauquf_.⁹

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⁵ Ibid.
⁸ Muhammad Roy dan Jauhari Purwanto, _Perubahan Fatwa Hukum Dalam Pandangan Ibn Qayyim Al-Jauziyyah_ (Yogyakarta: Universitas Islam Indonesia, 2017); Muhammad Roy Purwanto,
Almost all Sunni scholars’ view, *mut'ab* marriage as a form of marriage that is forbidden in Islam based on the Qur’an, authentic Hadith, and reason. This is due to their thinking that the marriage that is commanded (permitted) in the Qur’an is permanent. The Hadith of the Prophet also shows its prohibition with the affirmative phrase "until the Day of Resurrection" and other logical reasons. The prohibition of this marriage with the appointment of several narrations.\(^\text{10}\) Many hadiths explain the law on the prohibition of Mu'ath marriage, including in the book of Sahih Bukhari chapter 38 on *Maghāzi* and marriage, Sahih Muslim chapter on marriage, and others. Likewise, the opinion is also supported by the scholars namely Hanafi, Maliki, Shafi'i, Hambali, and the number of friends and *Thabīn*.

Concerning *mut'ab* marriage, one of the figures who has thoughts about Mu'ath marriage is Al-Thaba'thabaí. Muhammad Husain Al-Thaba'thabaí.\(^\text{11}\) According to Ḥaḍīth in An-Nisa verse 24, it is the legal basis for Mu’ath marriage and this understanding has been quoted by previous people, namely the commentators among the companions and *tabi’in* such as Ibn Abbas, Ibn Mas’ud, Ubay bin Ka’ab, Qatada, Mujahid, Sa’in, Ibn Jubair, al-Hasan and others, including the school of priests of *Ahlu Bait ’alaisalam*.\(^\text{12}\)

*Mut'ab* marriage models and *daim* marriages (including contracts outside the contract) are legal marriages. So, as long as the basis used as a measuring tool to assess the validity of a marriage is Law No.1 of 1974, of course, there is no choice but to state that there is a form of contract marriage that can and should be declared valid. If the registrar's officials remain in view and their stance refuses to register, then the solution is firstly, by submitting the case of contract marriage to the Court following the Supreme Court's jurisprudence on interfaith marriages. Secondly, by formulating a new marriage law that contains rules regarding contract marriages. As long as the basis used as a measuring tool to assess the validity of a marriage is Law No.1 of 1974, of course, there is no choice but to state that there is a form of contract marriage that can and should be declared valid. If the registrar's officials remain in view and their stance refuses to register, then the solution is first by submitting the case of contract marriage to the Court following the Supreme Court's jurisprudence on interfaith marriages. Secondly, by formulating a new marriage law that contains rules regarding contract marriages. As long as the basis used as a measuring tool to assess the validity of a marriage is Law No.1 of 1974, of course, there is no choice but to state that there is a form of contract marriage that can and should be declared valid. If the registrar's officials remain in view and their stance refuses to register, then the solution is first by submitting the case of contract marriage to the Court following the Supreme Court's jurisprudence on interfaith marriages. Secondly, by formulating a new marriage law that contains rules regarding contract marriages. As long as the basis used as a measuring tool to assess the validity of a marriage is Law No.1 of 1974, of course, there is no choice but to state that there is a form of contract marriage that can and should be declared valid. If the registrar's officials remain in view and their stance refuses to register, then the solution is first by submitting the case of contract marriage to the Court following the Supreme Court's jurisprudence on interfaith marriages. Secondly, by formulating a new marriage law that contains rules regarding contract marriages. As long as the basis used as a measuring tool to assess the validity of a marriage is Law No.1 of 1974, of course, there is no choice but to state that there is a form of contract marriage that can and should be declared valid. If the registrar's officials remain in view and their stance refuses to register, then the solution is first by submitting the case of contract marriage to the Court following the Supreme Court's jurisprudence on interfaith marriages. Secondly, by formulating a new marriage law that contains rules regarding contract marriages. As long as the basis used as a measuring tool to assess the validity of a marriage is Law No.1 of 1974, of course, there is no choice but to state that there is a form of contract marriage that can and should be declared valid. If the registrar's officials remain in view and their stance refuses to register, then the solution is first by submitting the case of contract marriage to the Court following the Supreme Court's jurisprudence on interfaith marriages. Secondly, by formulating a new marriage law that contains rules regarding contract marriages. As long as the basis used as a measuring tool to assess the validity of a marriage is Law No.1 of 1974, of course, there is no choice but to state that there is a form of contract marriage that can and should be declared valid. If the registrar's officials remain in view and their stance refuses to register, then the solution is first by submitting the case of contract marriage to the Court following the Supreme Court's jurisprudence on interfaith marriages. Secondly, by formulating a new marriage law that contains rules regarding contract marriages. As long as the basis used as a measuring tool to assess the validity of a marriage is Law No.1 of 1974, of course, there is no choice but to state that there is a form of contract marriage that can and should be declared valid.
marriage to the Court following the Supreme Court's jurisprudence on interfaith marriages.

Regarding to the phenomena above, there are some relevance previous researchs. Firstly, Mardjudo, Abd. Basyir (2012) concered Mut'ab Marriage in the Perspective of the Indonesian Ulama Council and the Compilation of Islamic Law of Doctoral (S3) thesis, State Islamic University of Alauddin Makassar. The findings of this study explain that according to the Indonesian Ulama Council, mut'ah marriage is against Marriage Law No. 1 of 1974 and the Compilation of Islamic Law. In addition, mut'ah marriage also causes unrest among the community, especially parents. Meanwhile, according to the Compilation of Islamic Law, mut'ah marriages include unregistered marriages, while recording is proof of the legal certainty of marriage. Because it is not recorded, the Mut'ab marriage will cause problems. In addition, mut'ah marriages have a very detrimental impact on women and also on children born as a result of relations from mut'ah marriages. It is recommended that all forms of marriage must be recorded by the officer. Officers are expected to always see the marriage that took place whether it has been recorded or not. Because there are people who think it is not important to register a marriage, or because they are so busy that they forget to go to the place of marriage registration.13

Seconly, RR Dewi Anggraeni and Muhammad Affan Gofar focused on Perspective on Contract Marriage in National Law and Islamic Law and the Legal Consequences It Causes, MIZAN: Journal of Islamic Law, FAI Ibn Khaldun University (UIKA) Bogor. Vol. 3 No. 2 (2019), they found that there were legal consequences for wives regarding marital status, namely not being recognized by the state because the state does not regulate contract marriage, the wife only gets social and economic status. Regarding joint property, because contract marriage is not recognized, then the marriage cannot be prosecuted. Other legal consequences for children based on Article 42, 43 Paragraph 1 regarding the position of the child, the child only has a civil relationship with his mother, the child does not have an inherited relationship with his father, because a child in contract marriage is considered an unrecognized child out of wedlock.14

The novelty of this study with other studies is that this study examines Al-Thaba’thaba’i thoughts about mut'ah marriage and its relevance to family law in Indonesia, using a statute approximation approach with maqashid sharia theory.

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Discussion

Marriage in Islamic Law and Positive Law

Marriage is a general Sunatullah and applies to all His creatures, both in humans, animals, and plants. It is a way that Allah SWT, has chosen as a way for His creatures to reproduce, and preserve their life.¹⁵ As the Word of Allah QS. Al-Zariyyat [49]: 49 namely:

وَمِنْ سَكَّلِ هَذِهِ مَيْنَىٰ حَلَفُنَا رَوْحِينَ لَعَلَّكُمْ تَذَكَّرُونَ

"And We created everything in pairs so that you may remember the greatness of Allah."

Sayyid Sabiq in his book Fiqh Sunnah defines marriage as follows:

الزَّوْجِيَّةُ اللهُ الخَلْقِ التَّكْوِيْنُ امَةٌ لََ ا الََُ الَِنْسَانِ اَوْ لََُ الحَي َوَانِ اوْ الََُ الن َّبَاتِ

"Marriage is one of the sunnatullah that generally applies to all God's creatures, both humans, animals, and plants."¹⁶

The word marriage in the Qur'an is sometimes used to refer to a marriage contract, but sometimes it is also used to refer to a sexual relationship. The word of God in the QS. An-Nisaa' [4] verse 3:

وَإِنَّ جَفَّرَ أَلْلَهُ أَلْلَهُ أَلْلَهُ فَأَكِثَرُوا مَا طَابَ لَكُمْ مِنْ أَلْسِنَةِ مَقْتَلِْيْ وَتَذَكُّرُونَ فَإِنَّ جَفَّرَ أَلْلَهُ

"And if you are afraid that you will not be able to do justice to (the rights of) an orphaned woman (if you marry her), then marry (other) women that you like: two, three or four. Then if you are afraid that you will not be able to do justice, then (marry) only one, or the slaves you have. that is closer to not doing wrong."

Another example is the word of Allah QS. An-Nisa' [4]: 22, which read:

"And do not marry women your father has married, except in the past. Verily, it is a very abominable act and is hated by Allah and the worst way (to be taken)."

The two verses above are understood to parse and interpret solely to carry out the marriage contract (marriage), not meaning al-wath'u or al-jima'u (having sexual relations). Wath'u or al-jima'u,17 as Allah says in QS. Al-Baqarah [2] verse 230:

"Then if the husband is mentally retarded (after the second divorce), then the woman is no longer lawful for him until she marries another husband. Then if the other husband divorces her, there is no sin for them (the former first husband and wife) to remarry if both think they will be able to carry out Allah's laws. These are the laws of Allah, He will explain to a people who (want to) know."

This verse explains that marriage is defined as al-wath'u or al-jima'u (having sexual relations). If a wife has divorced her first husband twice, then she can still reconcile with her first husband. If the husband has dropped talaq for the third time, then the husband cannot remarry his ex-wife, unless there is a muballil. It means, the ex-wife must marry another man (second husband), divorce, perform of iddab, then she can marry again with the first husband.18

The scholars have different opinions in understanding the meaning of marriage, some interpret it essentially and majaziy, as follows:

The first opinion (Imam Shafi’i) is authenticated by Abu Thayib, Mutawali, and Qadi Husayn: that marriage is essentially used to refer to a marriage contract, and sometimes it is used majazily to mention sexual relations. This is an authentic opinion of the Shafi’i School.19

The second opinion (Imam Hanafi): argues that marriage is essentially used to refer to sexual relations. But sometimes it is used majaziy to refer to the marriage contract.20

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18 Ibid., p. 192.
Chapter 1 Article one of Law no. 1 of 1974 states that marriage is an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on God Almighty.\(^{21}\)

Based on above understanding, it can be concluded that marriage is an inner and outer bond between a man and a woman as husband and wife with a very noble goal, namely to form an eternal and happy family based on the One Godhead.\(^{22}\)

The formulation of the meaning of marriage By "inner and outer bond" it is meant that marriage is not enough only to have an "outward bond" or "inner bond" but must be both. A “birth bond” is a visible bond. Expressing the existence of a legal relationship between a man and a woman to live together, as husband and wife, in other words, can be called a "formal relationship". On the other hand, an "inner bond" is an informal relationship, an invisible bond. Although it cannot be seen as real, the bond must exist. Because without the inner bond, the outer bond will become fragile.\(^{23}\) Based on the formulation of the meaning of marriage above, it can be concluded that marriage must be based on inner and outer ties, and in practice, there is no time limit.

**Mut‘ah Marriage**

The definition of fiqh scholars also mentions marriage is a gate to meet biological needs. So as if the purpose of marriage is only for privilege'. This definition illustrates that the price woman only lies in womanhood biologically (physically).\(^{24}\) Marriage according to the law is carried out in order to form a sakinah family as the purpose of marriage.\(^{25}\)

The word of mut‘ah is an Arabic term derived from the word ma-ta’-an etymologically contains several meanings including:

1. Pleasure, as contained in the word of God: (Surah 3:14).
2. Equipment, as the word of Allah SWT, (QS.5:96) \(^{26}\)


\(^{22}\) K. Wantjik Saleh, Indonesian Marriage Law (Jakarta: Ghalia Indonesia, 2000), p. 17.

\(^{23}\) *Ibid.*, p. 15


Mut'ab marriage is the marriage of an intelligent and conscientious woman with a Muslim man, with a certain dowry for a certain period, and the man accepts this agreement.\textsuperscript{27}

Mut'ab marriage in legal terms is usually called "Marriage for a certain period" in the sense that at the time the contract is declared, the marriage bond is valid until a certain period when that time has come, the marriage is terminated automatically without going through a divorce.

Meanwhile, Muhammad Rawwas Qal'ahji, mut'ab marriage is: mut'ab marriage is a marriage until a certain time limit, if that time limit has arrived then there will be separation (between husband and wife by itself).\textsuperscript{28}

**The Purpose of Mut'ah Marriage**

The purpose of marriage is to maintain oneself.\textsuperscript{29} This goal can be realized through all types of marriage, whether permanent marriage, mut'ah marriage, or marriage with slaves.

Mut'ab marriage and permanent marriage, in terms of substance there should be no difference. Each of them is a marriage, through the process of consent and qabul although with a different formula, in addition, both require a dowry. Marriage is a natural decree, which has never disappeared and will not disappear from human society. The continuity of this natural provision will not experience a collision except with the act of adultery, a strong act to prevent the realization of a household building. The act of adultery makes it hard for humans to get married and directs the potential for lust to adultery. So, one of the goals of Mut'ab marriage is to prevent the spread of sex communism that attacks society in this modern era.

Apart from the above objectives, mut'ab marriage is a means for pleasure, biological distribution, the desire to have children, the desire to get satisfaction, and others that are intertwined between men and women. It is very unreasonable if there is an understanding that mut'ab marriage is just a game with women or vice versa. For the sake of spreading the truth, mut'ab marriage is indeed sufficient for the above purpose for people who want to elevate Islamic law which contains convenience and love, such as talaq and polygamy.

**Sayyid Husain Al-Thaba’thabai Thoughts About Mut’ah Marriage**

The full name of al-Allamah Al-Thaba’thabai is Muhammad bin Husain bin al-Sayyid Muhammad bin Husain al-Mizra Al Asghar Shaykh al-Islami Al-

\textsuperscript{27} Jannati, Comparative Fiqh of the Five Madhabs, p. 465.
\textsuperscript{28} Muhammad Rawwas Qal'ahji, Mausu'ah Fiqhi 'Umar Ibn Khatththab (Kuwait: Maktabah Fallah, 1981), p. 597.
\textsuperscript{29} Ja'far Subhani, The Warm And Controversial In Fiqh. Terj, Irwan Kurniawan (Jakarta: Lentera Basritama, 1999), p. 103.
Thaba’thabaí al-Tabrizi al-Qadhi. The nickname Al-Thaba’thabaí was ascribed to one of his grandfathers named Ibrahim Al-Thaba’thabaí bin Ismail al-Dibaj. Allamah is an honorary title in Arabic, Persian, and other Islamic languages meaning highly educated.30 While the nickname Sayyid indicates that he is a descendant of the Prophet and specifically this title in this sense is used in Persia.31 Allamah Al-Thaba’thabaí was born in Tabriz, Iran on 29 Zulhijjah 1321 H/ 1892.

Sayyid Muhammad Husain Al-Thaba’thabaí was born in the city of Tabriz, on 29 Zulhijjah 1321 H/1892 AD. He was born into a family of scholars and descendants of the Prophet Muhammad who for fourteen generations had produced prominent scholars. His mother died when he was five years old, four years later his father died. Since then, to carry on with his daily life, a wali (caretaker of the parents' estate) handed over Al-Thaba’thabaí and his younger daughter to a male servant and a female servant.32

*Mut’ab* marriage or contract marriage is a marriage practice that was permitted by the Prophet in the early days of Islam and scholars agree that the Qur’an Surah an-Nisa verse 24 is about *mut’ab* marriage.

> "And (it is also forbidden for you to marry) a married woman, except for the slaves you have (God has set the law) as His decree for you. and it is lawful for you other than this (namely) to seek wives with your wealth to marry them, not to commit adultery. So the wives you have enjoyed (interfered with) between them, give them the dowry (perfectly), as an obligation; And there is no reason for you in what you have given up for one another, after determining the dowry, verily Allah is Knowing, Wise."

Both Sunnis and Shiites agree that this verse deals with the law of *Mut’ab* marriage. Based on An-Nisa verse 24 and its *asbab an-nuzul*, both Shia and Sunnis believe that the practice of *Mut’ab* marriage is a lawful marriage.

However, the debate and difference of opinion between the two are whether the permissibility of *mut’ab* marriage is still lawful until now or the permissibility of *mut’ab* marriage has been *mansukh* and has become unlawful.

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31 Ibid. p. 288
32 Thabataba’i, This is Islam, an Effort to Understand All Islamic Concepts Easily (Jakarta: Pustaka Hidayah, 1992), p. 17.
Therefore, there are differences of interpretation among the commentators in interpreting the letter an-Nisa’ this verse 24.

According to Al-Thaba’thabaí, the an-Nisa’ verse 24 is the legal basis for mut’ah marriage and this understanding was quoted by previous people, namely the commentators among friends and tabi’in such as Ibn Abäs, Ibn Mas’ūd, Ubay bin Ka’āb, Qatādah, Mujāhid, Saddy, Ibn Jubair, al-Hasan and others, including the school of Imams of Ahlul Bait.\(^{33}\)

According to Al-Thaba’thabaí in this commentary, it is clearly stated that what is meant by ﻗُوْلَﻩُمْ ﻗَفَانُوهُنَّ ﺍِّﺟُوزَرِهُمْ ﻓَرِيضَةَ is for the term mut’ah marriage without a doubt.\(^{34}\) This verse is a Madaniyyah verse contained in the Qur'an Surah an-Nisa’ verse 24, which was revealed in the middle of the time after the Prophet Muhammad migrated from Mecca to Medina. This can be proven by other verses, and there is no doubt that this mut’ah marriage took place and was carried out by the Companions at that time. Many narrations explain this event, what is clear is that this marriage, which was given the name of mut’ah marriage, was already amid the companions of the Prophet. This marriage is not disclosed except by the term mut’ah.\(^{35}\)

"So the wives you have enjoyed (interfering) with them, give them the dowry (perfectly), as an obligation."

"When you have enjoyed by getting themselves, then pay their dowry as an obligation."\(^{36}\)

Then on lafaz ﻓَوْلَﻩُمْ ﻗَفَانُوهُنَّ ﺍِّﺟُوزَرِهُمْ ﻓَرِيضَةَ possible it can also be said mausbul and lafaz ﻗُوْلَﻩُمْ فَوْلَﻩُمْ ﺍِّﺟُوزَرِهُمْ ﻓَرِيضَةَ is his silab mausbul. While dhomir on labfa back to ﻗُوْلَﻩُمْ ﻗَفَانُوهُنَّ ﺍِّﺟُوزَرِهُمْ ﻓَرِيضَةَ mausbul so that the meaning is:

\(^{33}\)Tabataba’i, Al-Mizân Fi Tafsir Al-Quran, Volume IV, p. 277.

\(^{34}\)Tabataba’i, p. 271.

\(^{35}\)Tabataba’i, p. 272.

\(^{36}\)Tabataba’i, p. 271.
"And those whom you have enjoyed are women, so pay them as an obligation."

So based on the explanation above according to Al-Thaba’thabai what is meant by the word of Allah:

فَمَا أَسْتَمَتْعُمُوهُمْ بِهِمْ فَقَاتَأُوْهُمْ أُجُورُهُمْ فَرِيْضَةً ۚ وَلَا خَيْرٌ عَلَيْكُمْ فِي مَا تَرْضَيْتُمْ بِهِۚ مِنْ بَعْدِ الْفَرِيْضَةِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيِّمًا

It is a tafri’ or previous discussion branch of the word of Allah that preceded it, because because of in life نَمَا as tafri’ juz’i over kulli (the top half of the whole) without a doubt. So what has been discussed earlier, means the word of Allah:

وَأَجْلًا لْكُمْ مَا وَزَآهُ دَاوُرُهُمَّ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ مَحَصِّبَينَ غَيْرَ مُسْفِهِنَّ

"And it is lawful for you other than that (namely) to seek wives with your wealth to marry them, not to commit adultery."

Thus the word of God فَمَا أَسْتَمَتْعُمُوهُمْ until the end is tafri’ juz’i over kulli or tafri’ juz’i from parts of the kulli. So Al-Thaba’thabai without hesitation explains that what is meant by this verse is mut’ab marriage.37

According Al-Thaba’thabai, it is clear that the error of those who consider this verse to be related to da’im marriage is not mut’ab marriage. Because holding a period of marriage demands to having fun from him. Perhaps some of them mentioned that the letters and in فَمَا أَسْتَمَتْعُمُوهُمْ is for litta’kid (affirmation) and the meaning is you are having fun or with the meaning of.

According to this meaning based on its legal size and following the meaning of the demand for the condition of ۱ with the meaning of, it is not according to the reply that accompanies it, according to Al-Thaba’thabai what is meant by the word of Allah:

فَقَاتَأُوْهُمْ أُجُورُهُمْۚ

"Then pay the dowry to them in full."

Indeed, the dowry is obligatory because of the contract and does not depend on the meaning of having fun, and the obligation of the dowry is to be

37 Tabatabai’, p. 271.
paid half because of the contract and half because of dukhūl. Based on the verses that were revealed previously, it has been mentioned about the obligation to give a dowry according to its size so that it is not obligatory to repeat the discussion because it has been mentioned in the word of Allah: The verse about the dowry in Surah an-Nisa' (4): 4.

"Give a dowry (dowry) to the woman (whom you marry) as a gift willingly".

Al-Thaba’thabai rejects all opinions that say the letter an-Nisā’ verse 24 which is the argument for the permissibility of mut‘ah marriage has been manskh. According to him, there is no verse that manskh it, because of what the Sunni scholars have said which states that this verse has been masked by surah al-Mu‘minun verse 5-7, the verses of divorce, the iddah verse, and the inheritance is not appropriate because it is not following the Nasikh mansūkh rules. In Al-Mu‘minun Verses 5-7

walāddin‘hum līfrū’wujāhīm ḥaṣfūtūn ellsā‘ā‘il ‘āroz-jēhim aw mā malikūt ‘āzimēhim fā‘īlimūm ‘ūgūr ‘umlūmiyīm bissīmnīm ellsīmnīm ellsīmnīm al‘ūdūn

"And those who guard their private parts, Except for their wives or their slaves; then verily in this they are blameless. Whoever seeks behind it, then they are the transgressors."

According to Al-Thaba’thabai this verse cannot interpret the letter an-Nisā’ verse 24 regarding mut‘ah marriage because it is not following the nasikh mansūkh rules. Because the in Al-Mu‘minun was revealed in Mecca while the An-Nisā’ verse 24 regarding mut‘ah marriages was revealed in Medina, according to Al-Thaba’thabai, surah Al-Mu‘minun was revealed earlier than the verse regarding mut‘ah marriages, so the makiyyah verse can't be mansukh by the Madaniyyah verse.

According to Al-Thaba’thabai as above in the divorce verse, 'iddah and inheritance cannot be mansūkh verses about marriage mut‘ah, because of the relationship between the marriage verse mut‘ah with the verses of divorce, 'iddah and inheritance are the relationships of 'ām and khāṣ or mutlaq and muqayyad are not nasikh-mansūkh relations.

As stated in the verse on inheritance, it refers to marriages that are 'ām (general) namely da‘im marriages and mut‘ah or munqathi marriages, then the

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38 Tabataba‘i, p. 273.
39 Tabataba‘i, p. 274.
40 Tabataba‘i, p. 274.
41 Tabataba‘i, p. 274.
sunnah specializes by setting aside one of them, namely mut’ah marriages, as well as the case with divorce verse.\footnote{Tabataba’i, p. 274.}

If the verse regarding mut’ah marriage can be a manskh with the verse 'iddah, according to Al-Thaba’thabai, this opinion is not clear at all, because according to him in Mut’ah marriage, there is also 'Iddah but the count of 'iddah in mut’ah marriage is different from 'iddah in 'iddah marriage. However, according to Al-Thaba’thabai, if there is a difference in 'iddah between daim marriage and mut’ah marriage, this is interpreted with takhsbis (specialization) instead of nasikh (deleted/copied).\footnote{Tabataba’i, p. 274.}

Sayyid Husain Al-Thaba’thabai Thoughts and Its Relevance to Family Law in Indonesia

The analysis used in this study is the theory of maqashid al-shari’ah. Syatibi explained that maqashid sharia have been directly mentioned in the Qur’an and Sunnah or deduced from this by several scholars. All these things indicate the urgency of fulfilling maslahah (jalb al-masalih) of all mankind and to save them from harm (daf’u al-mafasid / dar’u al-mafasid).\footnote{Syarial Dedi, “Ushul Fiqih Menurut Paradigma Filsafat Ilmu (Kajian Ontologi, Epistemologi, Dan Aksiologi),” Al-Istinbath Jurnal Hukum Islam vol 5, no. 2 (2020).}

Al-Syatibi did not explain the definition of maqashid sharia in his book, he immediately explained the details of the contents maqashid sharia from the distribution. Syatibi shared maqashid be two, qasdu al-syari’ (God’s purpose) and qasdu al-mukallaf (purpose of mukallaf). Syatibi mentions that maqashid sharia is a reference used to determine the law so that there is conformity with the objectives of shari’a’. As-Syatibi formulated the concept of maqashid khomsah or the five objectives of sharia:

1. Hifz Din (maintaining religion)
2. Hifz Nafs (care for the soul)
3. Hifz Nasl (care for offspring)
4. Hifz Mall (maintain the property)
5. Hifz ’Aql (maintaining Intellect)

Thoughts The concept of allowing mut’ah marriage by Al-Thaba’thabai when viewed from the side of benefit and harm, then mut’ah marriage can be said to have more negative aspects, this is what women suffer from. In Al-Thaba’thabai ’s concept of mut’ah marriage, husband and wife do not inherit from each other, this is contrary to Islamic law in general. Islamic Shari’ah
regulates the inheritance relationship between husband and wife and the arrangement of its parts.

The secret behind the arrangement of mutual inheritance relationships given to women is to raise women's self-esteem, as during the jahiliyyah period women were objects that were used as inherited assets. Therefore, Islam came to give justice to women by giving a share of inheritance to women, namely half of the men.

The concept of *mut'ah* marriage which was conceptualized by Al-Thaba’thabai in the study of *maqasid* sharia analysis could not fulfill the conditions to be said to be *maqasid* sharia, because in the concept of *mut'ah* marriage there were inherent civil rights to women in the form of abolished inheritance rights. That the husband and wife in a *mut'ah* marriage do not inherit from each other.

Then, regarding to the right to support the wife, in a *mut'ah* marriage, the husband is not obliged to provide for the wife, because it has assumed that the property given is sufficient at the beginning when there is an agreement regarding the time and dowry that has been determined at the beginning before the marriage is carried out.

Then regarding to child right custody, children who are born in *mut'ah* marriages are still related to their biological fathers, but in *mut'ah* marriages, if the agreement for the marriage period is completed, there will be a separation between the father and mother. In the event of separation of the parents, the child becomes crippled and less than perfect in his upbringing. Parenting is very closely related to child growth, as Heri Haryanto said in his research that the family is the most important institution in the process of child development. In a family, children get the rules or norms, values, and education that are needed to deal with the environment in which they live.

Through education, each individual is expected to understand and learn the norms that exist in society. Family care provides the basis for the formation of character behavior, morals, and children's education. If in the process of interaction, parents tend to be open, then the interactions that exist in the family-run harmoniously and dynamically will then lead to cooperation within the family. Harmonious interaction will be able to facilitate the child's socialization process. However, if the interaction process that is established is not harmonious, the child's socialization process will also be hampered, it will have an impact on the child's behavior pattern. Often heard cases of deviations in the behavior of children whether in childhood. From this research, it can be

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46 Setiawan, p. 286.
understood that parental care is very influential on the development and growth of children, especially in the emotional and mental development of children.

Based on analysis *maqasid* sharia to maintain property or *bifz mall* (maintaining property) on the wife’s property rights in the form of inheritance rights and livelihood rights and also to maintain *bifz’s nasl* (maintaining offspring), then the *mut’ah* marriage conceptualized by Al-Thaba’thabai must be rejected, because the formulation of the concept of marriage does not reflect the purpose of the law in it.

To provide strict rules regarding the prohibition of the practice of *mut’ah* marriage in Indonesia, it is also necessary to have a written rule to create legal certainty regarding regulations concerning regulations in Indonesia, so in this case, it is necessary to propose an amendment or amendment to Law No. 1 of 1974 concerning Marriage in Article 2 Paragraph (1) "Marriage is valid if it is carried out according to the law of each religion and belief". Paragraph (2) "Every marriage is recorded according to the prevailing laws and regulations". Based on this article, there will be multiple interpretations of the regulations regarding the validity of marriage in Indonesia, because *mut’ah* marriage is a marriage that is justified by some Shia Muslims.

To provide firmness to prohibit the practice of *mut’ah* marriage in Indonesia, it is necessary to amend Article 2 of Law Number 1 of 1974 concerning Marriage to "a legal marriage is carried out following their respective religions and registered following the legislation. invitation".

**Conclusion**

Al-Thaba’thabai’s thoughts on family law in Indonesia, Al-Thaba’thabai’s thoughts on the permissibility of *mut’ah* marriages are not relevant to the purpose of marriage and the purpose of making legislation. As the purpose of making law is the value of justice, usefulness, and legal certainty, besides that the law is also made to create benefit in society. Al-Thaba’thabai’s thought regarding *mut’ah* marriage must be rejected because it violates the values of the legal objectives, namely justice, benefit, and legal certainty, and also harms the values of benefit. To provide firmness to prohibit the practice of *mut’ah* marriage in Indonesia, it is necessary to amend Article 2 of Law Number 1 of 1974 concerning Marriage to "a legal marriage is carried out following their respective religions and registered following the legislation. invitation".

**References**


Harahap, Pangeran. “NKawin Kontrak Di Indonesia (Problema Hukum Dan Solusinya)o Title.” UIN Sumatera Utara, 2011.


