

Mut'ah Marriage Controversy Between Widow and Widower from a Positive Law Perspective

Putri Sinta Santiara⁽¹⁾, Fatihatul Anhar Azzulfa⁽²⁾
⁽¹⁾⁽²⁾ IAI Badrus Sholeh Kediri
Correspondence: purisinta3010@gmail.com

Submitted: October 9, 2023

Revision: December 30, 2023

Accepted: March 3, 2024

Abstract

The phenomenon of mut'ah marriage has consistently been the main focus of Islamic fiqh studies. This research aims to explore the practice of mut'ah marriage, particularly between widows and widowers in Manggis Village, as well as explain its implications under positive law. Mut'ah marriage, which is a form of temporary marriage, is a prevalent phenomenon in Manggis. Starting with the majority of individuals engaging in this form of marriage due to the location of their work outside of Java, to alleviate feelings of loneliness, the practice of mut'ah continued to develop and expand. The above research is a field study, which belongs to the qualitative group, using case study methodology. The findings of this study reveal that the factors that influence mut'ah marriages between widows and widowers include religious, family, environmental, psychological, economic, and biological needs. Although the regulations governing marriage do not explicitly discuss the permissibility of mut'ah marriage, it is considered haram because it is not in accordance with the purpose of marriage established by Indonesian legislation.

Keywords:

Mut'ah marriage; Widow; Widowers

Introduction

A complete and joyous matrimony is a splendid period in the cycle of existence wherein two individuals who have pledged themselves to a valid agreement, by occupying the aisle that they envisioned, attain their shared desires. This reaffirms the notion that when two individuals unite, they yearn for nothing other than the establishment of a harmonious, affectionate, and compassionate household.¹

¹ (Fadhilah et al., 2020)

There exists a divergence of opinions among scholars with regards to this matter. According to the Quran, a Muslim is an individual who has fully surrendered to the will of Allah and His commands, and believes in the absolute unity of God, untainted by any form of idolatry. Marriage is one of the various stages of human life, and the legality of entering into matrimony in Islam is systematically examined in the Quran and Hadith.²

M. Abu Zahroh interprets marriage as a bond that transforms the legal relationship between a man and a woman from invalid to valid, a contractual agreement that legitimizes the companionship and cooperation between a man and a woman throughout their lives. Adhering to their respective rights and obligations under Sharia Law³, A. Rasdiyanah explains that marriage can be perceived as a permissible vessel that aligns with the Islamic perspective on romantic attraction.⁴

Islam prohibits engaging in zina (adultery) and encourages avoiding any pathways that may lead to immoral behavior. It also prohibits hidden forms of adultery or prostitution disguised within the institution of marriage. Therefore, according to Islamic teachings, marriage should only occur when all involved parties have met the conditions and requirements outlined in Sharia law.⁵ However, there's an increasingly intricate and debated aspect related to marriage known as mut'ah marriage.

Nikah mut'ah is a well-known concept within the Indonesian Muslim community. In Indonesian, it's translated as "contract marriage." In this context, contract marriage is typically understood as a temporary arrangement, agreed upon through specific pillars, terms, and procedures, with both parties consenting at the start of the contract. It differs from 'prostitution' in several ways. While certain conditions and procedures may apply to sexual intercourse in contract marriage, prostitution is generally seen as a means for men to fulfill their desires without any emotional connection. Moreover, unlike marriage, prostitution doesn't involve seeking permission, observing 'iddah

² (Ajjahidi & Rahmadhani, 2022)

³ (Purwanto, 2014)

⁴ (Ajjahidi & Rahmadhani, 2022)

⁵ (Hidayatulloh, 2014)

(waiting period after divorce or widowhood), or following other administrative procedures.⁶

Mut'ah marriage sharply contrasts with the established principles of marriage in Indonesia, outlined in UUP number 1/1974 Article 2 Paragraph (2), which mandates that marriages must adhere to relevant regulations and be officially registered. This paragraph signifies that lawful unions should be documented and recognized by state institutions.⁷ Some research categorizes mut'ah marriages as questionable unions because they center on a man's desires for the woman he marries.⁸ Within Sunni Indonesian society, Nikah Mut'ah is viewed as a form of concealed prostitution.⁹ As these marriages lack legal recognition and regulation within the marriage legal framework, engaging in them constitutes a criminal offense under the prevailing law.¹⁰ The prevalence of Mut'ah is on the rise due to various factors, including socio-cultural influences leading to an unhealthy cultural blend, declining levels of female education,¹¹ economic necessities, and familial pressures.¹² Therefore, Muhammad Sabir suggests that the government should take a more assertive and explicit stance in addressing the issue of mut'ah marriages.¹³

The issue of mut'ah marriage has gained traction within the Indonesian Muslim community, notably observed in various regions like Manggis Village, Puncu District, and Kediri Regency. Inhabitants in these areas have engaged in mut'ah marriages. The trend typically starts with a significant portion of the population temporarily working outside their home region (often as project workers). They seek companionship during their work assignment, entering into a marriage agreement that concludes when the project work ends. Subsequently, the individuals involved revert to their previous status as widows or widowers. These marriages are witnessed solely by immediate family members and do not involve formal officeholders or legal authorities.

⁶ (Lubis, 2020)

⁷ (UU No. 1 Tahun 1974 Tentang Perkawinan, n.d.)

⁸ (May, 2012)

⁹ (Rais, 2014)

¹⁰ (Amnar, 2020)

¹¹ (Purwanto, 2014)

¹² (Wahab et al., 2018)

¹³ (al-Hamidi, 2008)

This study aims to capture the practice of Mut'ah marriage in Manggis Village, shedding light on its root causes. The goal is to use the Mut'ah landscape in Manggis Village to understand why these marriages exist, despite contradicting the legal norms in Indonesia. Recognizing this ongoing phenomenon remains crucial in upholding Islamic law, making it a focal point in the ongoing effort to preserve Islamic teachings. Hence, researchers endeavor to re-examine this phenomenon, emphasizing that Islamic studies persist despite the evolving times.

Method

In essence, this study falls into the category of qualitative research, presenting a narrative description of a phenomenon.¹⁴ It is a field study, examining the subject through a case study approach, closely examining the integration of positive law in Indonesia concerning Mut'ah marriage and its underlying factors. The research draws on both primary and secondary data sources. Primary data comprises observations and interviews conducted at the research site situated in Manggis Village, Puncu District, Kediri Regency. The study involves five pairs of Mut'ah marriage practitioners and spans from August to November 2022. Secondary data sources include legislative documents, Islamic legal literature, as well as relevant books and journals discussing Mut'ah marriage. Data collection methods employed in this research involve several stages of observation and interviews. The study takes a descriptive analytical approach, objectively describing the findings encountered in the field and analyzing them in the context of positive law.

The Essence of Mut'ah Marriage

Marriage is a word or phrase that comes from the Indonesian language, while marriage is a word or phrase that comes from the Arabic language. Nikah comes from the verb *nakaha*, *yankihu*, *nikahan* which can also be understood as al-jam'u wa al-dhammu (merging or gathering).¹⁵ The terminology of marriage means a sacred and eternal event that allows men and women to have sexual relations aimed at realizing

¹⁴ (Satori, 2011)

¹⁵ (Lubis, 2018)

the relationship *sakinah, mawaddah and rahmah*.¹⁶ Marriage can be interpreted as a sacred and strong agreement to commit to living together legally between husband and wife to form an eternal family, supporting each other, loving each other, happy and peaceful. It is emphasized again that marriage is a bond that has purity and *sunnatullah*, so marriage is part of *gharizah insaniyyah* (human instinct).¹⁷

Etymologically, *mut'ah* marriage can be represented in various breadths of meaning in itself, in Arabic literature, it comes from the word *mata'a, yamta'u, mutu'an* which means long, up, become, go, beautiful, flexible and gentle.¹⁸ Manzur in the oral dictionary *al - ' Arab* that *mut'ah* means an event of having fun with women, but you do not want it to continue together.¹⁹ Abror argues that *mut'ah* marriage is a person who wants to marry a woman for a certain period of time and also provide something, such as food, clothing, livelihood, or other facilities. When the time was up, they immediately parted without divorce or inheritance.²⁰

In some views, according to Al-Sabuni and Ibn Hajar al-'Asqalani, a man marries a woman by paying her dowry until the expiration of a certain time (according to agreement) by both parties, which is limited, for example, one month, two months, one day, or two days, when that time expires, the woman is left alone.²¹ Shaykh Muhammad Ali al-Sabani defines it as the practice of a man hiring a woman by paying a dowry in exchange for their agreement to live together for only a certain period of time; once that period has elapsed, the woman is abandoned because the man only legally marries her for an agreed period of time, which can be as little as one day, one week, or one month.²²

According to Sayyid Sabiq, a man who marries a woman for a day, a week, or a month is said to be in a *mut'ah* marriage since the goal of the marriage is to enjoy each other's company momentarily until a prearranged period has passed.²³ When it comes to the definition of *mut'ah* marriage, which is defined as a marriage between a man

¹⁶ (Azzulfa, 2022)

¹⁷ (Lubis, 2018)

¹⁸ (Tim Peneliti Nusantara, 2014)

¹⁹ (Bin Muhammad Mukarran, n.d.)

²⁰ (Abror, 2020)

²¹ (Aji, 2022) (Karlina, 2018)

²² (Zaid, 1979)

²³ (Ridwan, 2014)

and a woman that is confined by a contract, with the duration of the marriage restricted by agreed terms and the amount paid as a dowry, researchers attempt to narrow down some of the perspectives held by the Jumhur Ulama mentioned above. And the entire purpose of this contract marriage, also known as mut'ah marriage, is to satisfy lust or have some quick fun.

Mut'ah marriage has been practiced since the era of the Prophet Muhammad. Nevertheless, it is prevalent within the Muslim community. Among those who endorse mut'ah marriage are adherents of Shia Islam. The reason behind their support for mut'ah marriage in the Islamic society is rooted in their belief that it possesses a unique significance.²⁴ It is worth noting that this privilege does not serve as a justification for mut'ah marriage being merely a means to satisfy one's carnal desires or to treat women as commodities for hire. Rather, the purpose of legalizing mut'ah marriage is to serve as a preventive measure against individuals engaging in adultery.²⁵

The historical context of allowing temporary marriage (mut'ah) by the Prophet occurred during a period of instability in Islamic law, notably during travel and wartime. However, this practice was later prohibited. Initially, mut'ah marriage was permitted due to the transitional phase of Islamic society from pre-Islamic ignorance (jahiliyyah) to Islam. During this time, adultery was widespread, and Islam encouraged believers to engage in warfare, resulting in prolonged separation from their spouses. Some individuals had strong faith, enduring the separation, while others struggled, leading to increased incidents of adultery among those lacking conviction. Those deeply committed to their religious beliefs even sought measures like castration or impotence to avoid temptation.²⁶ As the hadith narrated by Imam Muslim:

عن عمر بن دينار قال سمعت الحسن بن مُحَمَّدٍ يُحَدِّثُ عن جابر بن عبد الله وس الله لَمَةَ بِنِ الْأَكْوَعِ قَالَ
خَرَجَ عَلَيْنَا مُنَادِي رَسُولِ اللَّهِ ص.م. فَقَالَ إِنَّ رَسُولَ اللَّهِ ص.م. قَدْ أذِنَ لَكُمْ أَنْ تَسْتَمْتِعُوا بِعِنِي مُتْعَةَ النِّسَاءِ

'Amr bin Dinar reported: I heard al-Hasan bin Muhammad narrating from Jabir bin 'Abdullah and Salamah bin Akwa' saying: the Messenger of Allah (saw) came

²⁴ (Fadhilah et al., 2020)

²⁵ (Wagiyem, 2016)

²⁶ (Hidayatulloh, 2014)

out among us and said: Verily, the Messenger of Allah (peace and blessings of Allah be upon him) authorized mut'ah for women.²⁷

The above Hadith allows mut'ah to his companions with the permission of the Prophet. But the permissibility is based on the context. Mutah marriage was first permitted by the Prophet in the year of the conquest of Mecca. But he still prohibited it that year. Some people claim that the Battle of Khaibar was when mut'ah marriage was banned. But the facts show that it was the year of the conquest of Mecca. The prohibition of eating donkey meat was during the wars of Khaybar.

According to Yusuf al-Qardhawi, the reason mut'ah was allowed in the beginning was because humans were in a transitional stage from the jahiliyah period to Islam. Adultery was often practiced in the jahiliyah period because it was very easy to do. They strongly objected to being forced to leave their wives after Islam came, and they were forced to travel long distances as part of jihad and war. Their weak faith made them afraid of falling into adultery. Of course, this is worse and wrong than mut'ah.²⁸

There exist disparities in the conveyance of information concerning the duration of the prohibition of mutah marriage in certain regions, presumably attributable to the reluctance exhibited by certain companions. It is plausible that certain companions were uninformed about the prohibition and held the belief that mutah marriage was permissible under specific circumstances. Consequently, it was necessary to reassert the declaration of the prohibition. Umar would not have found it necessary to reaffirm the prohibition during his era had it not been for the previous uncertainty. The disclosure of the ban further illustrates the paramount importance of halting this practice.²⁹

فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً

So those wives among whom you have enjoyed yourselves, give them their dowries (in full) as an obligation.

²⁷ (Muslim Ibn al-Hajjaj, t.th.)

²⁸ (Purwanto, 2014)

²⁹ (Rahmat Hakim, 2000)

The aforementioned verse affirms that mut'ah, a form of temporary marriage that entails a dowry as its reward, serves as the fundamental basis for the institution of mut'ah. Scholars of Ahlu Sunnah interpret the term "istamta'tum" as denoting the act of marriage. Despite the Shia's legalization of mut'ah marriage, there exists a distinction from the viewpoint of the Sunni Ulama, who adamantly declare mut'ah marriage as unequivocally prohibited. Scholars of the Malikiyyah and Shafi'iyah schools of thought classify mut'ah as an invalid form of marriage due to its inherent flaw of being bound by a predetermined time limit. Moreover, according to the Hanafiyyah school, mut'ah marriage fails to satisfy the necessary conditions for a valid union. The Hanbalis, on the other hand, describe this type of marriage in terms of a mutually agreed-upon duration. If a man enters into a marriage contract with a woman and stipulates that he will divorce her at a specific time during the marriage, he is subject to ta'zir, which entails disregarding the existence of mut'ah marriage.³⁰

The majority of scholars understand QS. al-Nisa': 24 as permission to enter into a mutah marriage, but this happened in the early era of Islam, and the permission has been canceled or annulled, according to the Sunni scholar Al-Qurtubi. In addition, there are many traditions that can be referred to that show that the companions of the Prophet performed mutah marriages, which were not prohibited by him but were later annulled. There is no Qur'anic verse that authorizes mutah marriage, according to Ibn Taymiyyah in his book, *Manhaj al-Sunnah al-Nabawiyah*. The Sunnis adopt the view of all the Ulama, namely the Khulafa' al-Rashidin, including the Companion Ali, in addition to the view of Umar bin Khattab. Interestingly, the Shia actually allow it, even though Ali r.a. forbade or did not support it. They assert that even if a mutah marriage takes place, it is still void.³¹

An important note from the above explanation is that mut'ah marriage is actually when a man and woman bind themselves in a bond for a certain period of time, then it is considered a mut'ah marriage. This marriage was approved by the Prophet, but in the Jahilyyah era, under certain conditions. Therefore, mut'ah marriage is only

³⁰ (Wagiyem, 2016)

³¹ (Hidayatulloh, 2014)

permitted in times of war or when traveling far; otherwise, it is prohibited and absolutely forbidden.³²

The Reality of Mut'ah Marriage Between Widows and Widowers in Manggis Village, Puncu Kediri

In Indonesia, mutah marriage is a phenomenon that often occurs in tourist areas, commercial areas and certain neighborhoods with residents who have low socioeconomic, religious, and educational backgrounds. Particularly in the Bogor and surrounding areas, Indonesian citizens often enter into mutah marriages with foreign nationals. Loneliness is the main factor for tourists looking for a female or male partner in Indonesia, resulting in the practice of mut'ah marriage during the work contract period or during tourist visits.³³ The customers are mostly foreigners, especially those from the Middle East, in which case the perpetrators see nikah mut'ah as an important aspect of one's livelihood. Even in the Jepara region, there are parents who have daughters who believe that they will get a better life or a stable economic income if their daughters are willing to marry mutah (contract marriage) by setting the highest dowry. Thus, mutah marriages are believed to be financially beneficial despite sexual exploitation.³⁴

Furthermore, mut'ah marriage is rampant in the East Java area located in Kalisat Rembang Pasuruan. This phenomenon has been cultivated as a village of siri marriage or contract marriage. Kalisat village women enter into contract marriages, both with other villagers and with people from outside the village who in fact work in the industrial sector. Economic considerations are the main driver behind the decision to enter into contract marriages. Contract marriages are common in this area because there is a network of suppliers or agents responsible for finding 'marriage broker' women.³⁵

In contrast to certain phenomena aforementioned, the existence of mut'ah marriage in Puncu is derived from the majority of the Manggis community's migration

³² (Faizal & Qohar, 2021)

³³ (Lubis, 2020)

³⁴ (Lubis, 2018)

³⁵ (Purwanto, 2014)

from Java to engage in projects within industrial areas, as per the expiration of contractual agreements. There is no specific catalyst for this practice, but the primary motive for the community is to alleviate the solitude experienced during migration and employment. Despite the fact that some couples have mutually agreed to abstain from engaging in sexual relations akin to that of a husband and wife, this decision is based on the fact that both partners have offspring from previous marriages. Within Manggis, the majority of individuals partaking in mut'ah marriage are widows and widowers. They contend that if they no longer possess the legal bond of a husband or wife, then mut'ah marriage becomes a viable option. The duration of mut'ah marriage in this region is relatively protracted, consisting of a minimum period of one year and a maximum period of four years (dependent upon the duration of the project being pursued). The individuals engaging in mut'ah marriage are members of the Manggis community, specifically migrants (project workers) and ordinary individuals.³⁶

The results showed that the reality of revealing the phenomenon of mut'ah marriage in Manggis village is not something easy. This is because the phenomenon is not something that is commonplace, such as in several areas, namely Kalisat Pasuruan Regency and in the Puncak Bogor area. This phenomenon is a veiled disgrace and is private (only family and relatives know). Rumors of the phenomenon no doubt invited the surrounding community (neighbors) who heard of the case to seek the truth, but for details, we do not know for sure. The community only knows that there is a neighbor who is married, and the two of them have behaved like husband and wife, such as going together for a long time to the project site and so on.³⁷

As explained by Shi'a Imamiyah leaders, mut'ah marriage is a temporary agreement for a marriage with a specific contract (ijab kabul). Like a legal marriage, the dowry is also included in it. This is similar to mut'ah marriage, as told by Midah (51 years old; widow): after being acquainted for three months with Santo (60 years old; widower), they agreed to get married; the marriage contract process was held simply, and only the nuclear family knew about it. During their marriage, Midah was facilitated to open a food stall while accompanying her husband until the duration of his work

³⁶ (Arbi (a pseudonyms), personal communication, Agustus 2022)

³⁷ (Adi (a pseudonyms), personal communication, Agustus 2022)

contract at the project ended. They agreed that once the work contract ended, everything related to the rights and obligations of husband and wife would end.³⁸

This practice also applies to the couple Niha (57 years old; widow) and Riki (60 years old; widower). Both said:³⁹

“Nggeh awale kito niki rencang, nyambut ten panggen kang sami, kito sering ngobrol sareng, kulo nyambut damel tiang sepah, larene nyambut damel tiang sepah kalian putro-putronipun. Kulo ten mriki piyambak, kesepen, mboten enten kang ngrumat, minimal nyiapaken rasukan, daharan, utawi lan sakpinunggalane. Kalian ngge betah rencang criyos. Nah pas kalian larene kang betah perlindungan saking gangguan garwonipun kang riyen. Nggeh mesakne larene pas sakit mboten enten kang ngerumat. Ngeraos cocok kulo ajak simah larene”⁴⁰

They're longtime friends who share stories frequently. Niha revealed that her ex-husband often demands money even after their divorce. If she refuses, he threatens to approach her and behave aggressively. In response, Riki proposed a temporary marriage (*mut'ah*) as they work together abroad. He thinks this arrangement could shield Niha from her ex-husband, providing companionship while they're overseas. At least, there'd be someone to help with work attire, share stories, cook meals, and more.

Ubaid (40, widowed) and Iin (54, widowed) find themselves in a comparable situation. Originating from their friendship and shared feelings of loneliness while residing abroad, they made a mutual decision to avoid a physical relationship akin to that of a married couple. Their rationale was to prevent complications once their agreed marriage period concluded. Instead, they opted to fulfill the roles and obligations of a husband and wife, albeit on a temporary basis.⁴¹

The practice of temporary marriage was also carried out by Rio (30 years old; widower) and Riska (27 years old; widow). Their closeness began when both realized they didn't have partners. Because Rio was about to work abroad, he invited Riska to

³⁸ (Midah dan Santo (a pseudonyms), personal communication, July 28, 2022)

³⁹ (Niha dan Riki (a pseudonyms), personal communication, Agustus 2022)

⁴⁰ (Niha dan Riki (a pseudonyms), personal communication, Agustus 2022)

⁴¹ (Ubaid dan Iin (a pseudonyms), personal communication, Agustus 2022)

open a food stall near the construction project. To avoid negative judgment from others, they agreed to enter into a temporary marriage. As they both recounted:

*"Mangke nak wekdal e sampun telas, proyek e sampun mantun, nggeh kito sampun, mbalik dateng butuhe piyambak-piyambak. Kito mboten purun nak sampek gadah yugo maleh, pun cukup niki mawon. Kulo fokus nyambut damel nggih damel lare-lare. Simah niki nggih namung ngancani kalih tambah butuh"*⁴²

Both of them said that if the duration of their work on the construction project was over, then this marriage would also end and they would return to their respective activities, ending the husband and wife relationship between the two of them. They agreed at the beginning of the marriage contract that they would refrain from having sexual relations as husband and wife because they both had children. The purpose of this marriage was only to accompany her husband while he worked and to use this momentum to increase her income during the marriage.

Furthermore, the marriage was processed simply and in a sirri manner for private reasons. The wedding ceremony was not held as a party as usual, only limited to the nuclear family who knew. In this case there were no "marriage brokers" or certain individuals who facilitated or found partners for the perpetrators. They are purely personally looking for a partner who is considered to be able to accompany them while working on development projects. Regarding the existence of this mut'ah marriage phenomenon, the community tends to be ignorant and only knows enough. Because according to the majority of the community, if you are married then behaving like a husband and wife is allowed, such as living in the same house.⁴³

Mut'ah Marriage Between Widows and Widowers: Factors and Positive Law Review

Marriage is essentially a contract, and contracts are a common concept in terms of civil law agreements in Indonesia. Since everyone who enters into an agreement anticipates that the promise will not be broken midway, the agreement itself is very

⁴² (Rio dan Riska (a pseudonyms), personal communication, July 27, 2022)

⁴³ (Soleh (a pseudonyms), personal communication, Agustus 2022)

important in the legal system, just like a marriage must last a lifetime and cannot be broken.⁴⁴

Article 1 of the Marriage Law contains the ideal purpose of a marriage which should be a common goal between husband and wife. However, along with the development of the times in practice, the purpose of a marriage is often deviated from. In this case, the rise of mut'ah marriage, whose existence persists in the current 4.0 era. Based on the above reality, it can be narrowed down regarding the factors that underlie the Manggis community to carry out mut'ah marriage, including:

a. Religious Factors

Religion is a basic guideline in running life for every human being. The reality of the community shows a low understanding of religion, especially about marriage, therefore the existence of this phenomenon is still commonplace, as stated by one of the citizens 'pokok e nek wis ijab kabul yo berarti wis ora opo opo lapo wae' i.e. when Ijab Kabul means that the marriage is valid and it is lawful to do anything.⁴⁵ Geertz understands the Javanese religion as abangan, which is a variant of Islam. Although abangan are Muslims, they do not understand how Islam should be practiced as well as acting like santri.⁴⁶ The majority of the community is Muslim, but the field findings show a lack of insight into the community which results in being unusual by justifying the existence of mut'ah marriage.

b. Family and Environmental Factors

The family is the smallest social group in society and is the foundation for the personal growth of each member. Since interactions within the family have a direct impact on how people live their daily lives, the family is an important consumer group.

⁴⁴ (Cuaca, 2020)

⁴⁵ (Adi (a pseudonyms), personal communication, Agustus 2022)

⁴⁶ (Syarif, 2019)

“Yowes ora opo opo, pokok ben ono koncone ono sing ngurusi gawe urip bendinone lan entuk nafkah, syukur-syukur langgeng ben iso nguripi anak lan sak piturute”⁴⁷

The family validates that mut'ah marriage can lead to positive impacts such as being able to be an obedient wife (companion) with her temporary husband, moreover getting a living so that she can support her children.

c. Psychological Factors

The practice of mut'ah in Manggis gives an unfavorable image, especially to village officials and local village leaders. Even though the practice of mut'ah is done secretly, the rumors are loud in the ears of the officials. In interviews with officials, researchers always found attempts to remove the stigma of 'Mut'ah village'. They provided information that what was rampant was not mut'ah (contract marriage) but nikah sirri. This was done because they felt uncomfortable with the stigma.⁴⁸

In fact, those who enter into mut'ah marriages also experience negative psychological impacts. Disorientation in married life is experienced by the perpetrators. Building a family that is sakinah, mawadah, and rahmah with pious and sholehah children who will continue the ideals of their parents is actually something that should be thought about and aimed for in a household. However, they do not think about this because they are only fixated on fulfilling their material needs and living life in the place where they work (project). They realize that this mut'ah is detrimental to family life and is more likely to cause evil.⁴⁹

d. Economic Factors

The economic issue is a crucial factor that keeps this practice in existence. The agreement to provide sustenance to fulfill needs and offer a specific amount of money every month enables cohabitation to run smoothly in managing household life together. Numerous economic problems arise in modern life, particularly in Indonesia. This issue falls under domestic problems rooted in economic matters, where many issues between spouses emerge, as well as problems in the relationship between parents and their children.

⁴⁷ (Arbi (a pseudonyms), personal communication, Agustus 2022)

⁴⁸ (Gartaman (a pseudonyms), personal communication, Agustus 2022)

⁴⁹ (Ubaid dan Iin (a pseudonyms), personal communication, Agustus 2022)

One dominant aspect within the relationship between men and women in the context of marriage also involves economic matters. Even the phenomenon of mut'ah could be one of the considerations regarding the family's economic situation. As mentioned above, the sustenance received as a temporary wife can meet the needs of her biological children, alleviating concerns and providing tranquility even though the relationship is temporary.

e. Biological Factors

Sexuality encompasses various characteristics, including biological, social, psychological, and cultural aspects, while sex refers to the physical or biological elements of females and males commonly referred to as gender. One fundamental desire of every human is to fulfill their sexual needs. In societies with more freedom, individuals can fulfill their sexual needs based on their preferences and the sexual orientations of others involved in the practice of mut'ah, as seen among those involved in Manggis.⁵⁰ According to the accounts, the majority of participants have agreed to set aside the fulfillment of their biological needs to avoid new complications. This might seem improbable in conventional marital life, yet the researchers found no instance among the participants where anyone had children resulting from such mut'ah arrangements.

The practice of mut'ah should indeed be a significant concern for the majority of Muslim society. Furthermore, in making moral judgments, the authoritative body in this matter, MUI (Indonesian Ulema Council), responded to this issue by issuing a fatwa prohibiting mut'ah in Indonesia. This decision stems from defining problems and aligning with the opinions of some Sunni scholars, which serve as guidelines for the majority in Indonesia.

The MUI's Fatwa No. 02/MUNAS/2010⁵¹ highlights that the ban on mut'ah marriages is rooted in QS. Al-Mu'minun: 5-6, specifying that permissible sexual relations involve women in the roles of wives or slaves. However, the Indonesian Ulema Council differentiates women in mut'ah marriages from wives or slaves due to the distinctive contractual terms of mut'ah unions compared to traditional marriages.⁵²

⁵⁰ (Tahir et al., 2017)

⁵¹ (MUI, 2014)

⁵² (Jamaluddin, 2020)

Additionally, the MUI's stance on the legitimacy of mut'ah marriages takes into account sociological aspects, notably the rising occurrence of such unions among certain Muslim circles in Indonesia, especially within the younger urban population. Various sectors—parents, scholars, educators, and the broader Indonesian Muslim community—have expressed growing concerns about this trend. Furthermore, the predominant Sunni Muslim population in Indonesia largely opposes mut'ah marriages.

In accordance with the prevailing legal framework in Indonesia, the role of the state in addressing all aspects related to marriage has been regulated for a significant period of time by Law Number 1 of 1974 concerning Marriage and Article 4 of the Compilation of Islamic Law (KHI). The fundamental principles for the legitimacy of a marriage are outlined in Article 2, paragraphs (1) and (2) of the Law on Marriage (UUP), and it is important to note that these criteria should be seen as cumulative rather than alternative conditions for a valid marriage. This provides a solid foundation for the Muslim community to carry out the registration of their marriages in accordance with the existing legal provisions. However, it is worth mentioning that certain circumstances may present limitations to this article due to the potential for multiple interpretations and a lack of penalties for those who infringe upon it.

In the realm of marriage regulation in Indonesia, specifically under UUP No. 1 /1974 regarding Marriage, an explicit requirement for daim (permanent) marriage is emphasized due to its intention of establishing a joyous and enduring family or household. This justification holds no pertinence with regards to nikah mutah. In contrast to the transitory nature of nikah mutah, which involves consenting male and female parties, the KHI, as a comprehensive framework within the Marriage Law, places greater emphasis on the concept of permanent (eternal) matrimony.

Legal and religious norms have converged to establish explicit regulations concerning the factors to be taken into account during the performance of a marriage ceremony. These factors encompass the prerequisites for marriage, as well as a multitude of other crucial elements that contribute to the progression and fulfillment of marital relationships. However, none of the provisions within the existing Indonesian legislation governing contractual marriages delineate the specific arrangements pertaining to such unions. The author posits that the institution of mut'ah marriage is

essentially designed to serve as an outlet for carnal desires or simply as a source of amusement, thereby diminishing the status of women. Despite the absence of clear legal guidelines regarding this practice in Indonesian law, the author maintains that this particular model of marriage cannot be justified. In order to interpret the prohibition of mut'ah marriage, one may refer to the fundamental essence of marriage as stipulated in Indonesian legislation, which emphasizes the enduring nature of marital unions. Therefore, mut'ah marriage violates the provisions of the prevailing positive law in Indonesia.

Conclusion

Mut'ah marriage is the act of a man and woman entering into a bond for a specific period of time, as agreed upon by both parties. The presence of mut'ah marriage in Manggis can be attributed to various factors. From a religious perspective, many people lack an understanding of the legal pillars and conditions of marriage according to Indonesian marriage regulations. Additionally, family and environmental factors contribute to the acceptance of mut'ah marriage. Psychologically, this practice leads to disorientation and instability in the actions of those involved. Furthermore, economically, the primary motivation behind mut'ah is to acquire temporary companionship. Informants emphasize that the pursuit of biological fulfillment is disregarded to avoid negative consequences. In terms of its compatibility with Indonesian marriage laws, such as UUP No. 1/1974 and KHI, this practice is highly contradictory as it deviates from the fundamental purpose of marriage, which is to establish a permanent union rather than a temporary one, even if both parties are in agreement.

Reference

- Abror, K. (2020). *Hukum Perkawinan dan Perceraian* (Cet Ke-2). Ladang Kata.
- Adi (a pseudonyms). (2022, Agustus). *Interview with Neighbors of Mut'ah Nikah Perpetrators* [Personal communication].

- Aji, A. M. (2022). Legalitas Kawin Kontrak Dalam Persepsi Hukum Islam. *SALAM: Jurnal Sosial Dan Budaya Syar-i*, 9(1), Article 1. <https://doi.org/10.15408/sjsbs.v9i1.24855>
- Ajjahidi, M. H., & Rahmadhani, A. L. (2022). NIKAH MUT'AH DALAM MASYARAKAT MUSLIM INDONESIA SERTA PANDANGAN HUKUM POSITIF TENTANG PELAKSANAANYA. *Journal of Indonesian Comparative of Syari'ah Law*, 5(2), Article 2. <https://doi.org/10.21111/jicl.v5i2.8912>
- al-Hamidi, A. D. (2008). Nikah Mutâ€™ah dalam Sorotan Hukum Islam dan Hukum Positif. *Al-Qanun: Jurnal Pemikiran dan Pembaharuan Hukum Islam*, 11(1 Juni), Article 1 Juni. <https://doi.org/10.15642/alqanun.2008.11.1>
- Amnar, Z. (2020). ANALISIS PERKAWINAN KONTRAK MENURUT PERSPEKTIF UNDANG-UNDANG: Studi Kasus Perkawinan Kontrak Kecamatan Cisarua Bogor. *AL-IKHTISAR: The Renewal of Islamic Economic Law*, 1(1), Article 1.
- Arbi (a pseudonyms). (2022, Agustus). *Interview with Guardian of Mut'ah Nikah Performer* [Personal communication].
- Azzulfa, F. A. (2022). PENALARAN ISTIṢLAḤIYYAH DALAM PENCATATAN PERKAWINAN DI INDONESIA. *Jurnal Al-Hikmah*, 10(2), Article 2.
- Bin Muhammad Mukarran. (n.d.). *Lisan Al-'Arab*. Sar Sadir.
- Cuaca, M. N. G. (2020). NIKAH MUTH'AH (KAWIN KONTRAK) DALAM PERSPEKTIF HUKUM POSITIF INDONESIA SERTA AKIBAT HUKUM ATAS HARTA PERKAWINAN DAN HARTA WARIS. *Diponegoro Private Law Review*, 7(1), 92–102.
- Fadhilah, S. R., Ristiana, U. N., & Aminah, S. (2020). INTERPRETASI HADIS-HADIS TENTANG NIKAH MUT'AH (KAJIAN TEMATIK). *TAJDID: Jurnal Ilmu Ushuluddin*, 19(2), Article 2. <https://doi.org/10.30631/tjd.v19i2.126>
- Faizal, L., & Qohar, A. (2021). STATUS HUKUM NIKAH MUT'AH DALAM PERSPEKTIF MAHMUD SALTUT DAN KONTRIBUSINYA TERHADAP PEMBAHARUAN HUKUM KELUARGA DI INDONESIA. *Al-Mashlahah Jurnal Hukum Islam dan Pranata Sosial*, 9(01), Article 01. <https://doi.org/10.30868/am.v9i01.1331>

- Gartaman (a pseudonyms). (2022, Agustus). *Interviews with Manggis Village Officials* [Personal communication].
- Hidayatulloh, H. (2014). PRO-KONTRA NIKAH MUTAH DALAM PERSPEKTIF MAQASID AL-SHARI'AH. *Religi: Jurnal Studi Islam*, 5(1), Article 1.
- Jamaluddin, Y. (2020). NIKAH MUT'AH PERSPEKTIF TAFSIR NUZULI AL-JABIRI. *AL-WAJID: JURNAL ILMU AL-QURAN DAN TAFSIR*, 1(1), Article 1. <https://doi.org/10.30863/alwajid.v1i1.810>
- Karlina, K. (2018). Nikah Mut'ah dalam Perspektif Hadis: Studi Komparatif Antara Ibnu Hajar Al-'Asqalāniy dalam kitab Fath̄ Al-Bārī dan Muḥammad Baqir Al-Majlisi dalam kitab Mir'atul 'Uqūl fī Syarḥi Akhbāri Ar-Rasūl. *Holistic Al-Hadis*, 4(1), Article 1. <https://doi.org/10.32678/holistic.v4i1.3224>
- Lubis, A. A. A. M. R. (2018). *NIKAH MUTAH DI MATA HAMKA*. Semesta Aksara. https://www.academia.edu/41077060/NIKAH_MUTAH_DI_MATA_HAMKA
- Lubis, A. A. A. M. R. (2020). NIKAH MUTAH: KONTEKSTUALISASI NARASI DAN NALAR NIKAH MUTAH. *istinbath*, 19(1), Article 1. <https://doi.org/10.20414/ijhi.v19i1.207>
- May, A. (2012). Kontroversi Status Hukum Nikah Mut'ah (Analisis terhadap Pendapat Para Ulama). *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum*, 46(1), Article 1. <http://asy-syirah.uin-suka.com/index.php/AS/article/view/36>
- Midah dan Santo (a pseudonyms). (2022, July 28). *Interview with Mut'ah Nikah Perpetrators* [Personal communication].
- MUI. (2014). *Himpunan Fatwa Keuangan Syariah; Dewan Syariah Nasional MUI*. Erlangga.
- Muslim Ibn al-Hajjaj. (t.th.). *Sahih Muslim*. al-Maktabah al-Thaqafiyah.
- Niha dan Riki (a pseudonyms). (2022, Agustus). *Interview with Mut'ah Nikah Perpetrators* [Personal communication].
- Purwanto, M. R. (2014). Nikah Mut'ah dan Implikasinya dalam Kehidupan Sosial: Studi Kasus Nikah Mut'ah di Desa Kalisat Kabupaten Rembang Pasuruan Jawa Timur. *AN NUR: Jurnal Studi Islam*, 6(2), Article 2. <https://jurnalannur.ac.id/index.php/An-Nur/article/view/45>
- Rahmat Hakim. (2000). *Hukum Perkawinan Islam*. Pustaka Setia.

- Rais, I. (2014). PRAKTEK KAWIN MUT'AH DI INDONESIA DALAM TINJAUAN HUKUM ISLAM DAN UNDANG-UNDANG PERKAWINAN. *AHKAM: Jurnal Ilmu Syariah*, 14(1), Article 1. <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/1246>
- Ridwan, M. S. (2014). PERKAWINAN MUT'AH: PERSPEKTIF HUKUM ISLAM DAN HUKUM NASIONAL. *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam*, 1(1), Article 1. <https://doi.org/10.24252/al-qadau.v1i1.630>
- Rio dan Riska (a pseudonyms). (2022, July 27). *Interview with Mut'ah Nikah Perpetrators* [Personal communication].
- Satori, D. (2011). *Metodologi Penelitian Kualitatif*. Alfabeta.
- Soleh (a pseudonyms). (2022, Agustus). *Interview with the Community of Manggis Village, Puncu Subdistrict* [Personal communication].
- Syarif, F. (2019). MEMAHAMI GEERTZ MEMBACA ISLAM JAWA. *Realita: Jurnal Penelitian Dan Kebudayaan Islam*, 17(2), Article 2. <https://doi.org/10.30762/realita.v17i2.122>
- Tahir, J., Ht, A. Q. G., Abubakar, A., & Salenda, K. (2017). FAKTOR-FAKTOR PENYEBAB NIKAH SIRI DI SULAWESI BARAT. *Jurnal Diskursus Islam*, 5(2), Article 2. <https://doi.org/10.24252/jdi.v5i2.7083>
- Tim Peneliti Nusantara. (2014). *Studi Komparatif Buku; Mengenal dan Mewaspadaai Penyimpangan Syi'ah di Indonesia*. Titisan.
- Ubaid dan lin (a pseudonyms). (2022, Agustus). *Interview with Mut'ah Nikah Perpetrators* [Personal communication].
- UU No. 1 Tahun 1974 tentang Perkawinan. (n.d.). Retrieved March 13, 2023, from <https://peraturan.bpk.go.id/Home/Details/47406/uu-no-1-tahun-1974>
- Wagiyem, W. (2016). STUDI KOMPARASI TENTANG NIKAH MUT'AH PERSPEKTIF ULAMA SUNNI DAN SYI'AH. *Al-Maslahah: Jurnal Ilmu Syariah*, 12(2), Article 2. <https://doi.org/10.24260/almaslahah.v12i2.552>
- Wahab, A. J., Kustini, K., & Ali, M. (2018). FENOMENA KAWIN KONTRAK DAN PROSTITUSI 'DAWAR' DI KAWASAN PUNCAK BOGOR. *Al Qalam*, 35(1), 127–152. <https://doi.org/10.32678/alqalam.v35i1.1847>

Zaid, M. 'Ubaid A. (1979). *Maka Nat Al-Mar'ah Fi Al-Islam*. Dar al-Nahdah al-'Arabiyyah.