

The Pros And Cons Of The Legal Ruling On Misyar Marriage And Its Proposed Solutions

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ABSTRACT

Misyar marriage is a contemporary phenomenon in Islamic family law that has generated intense debate among scholars and academics, particularly concerning the tension between the formal validity of the marriage contract and the substantive objectives of marriage. This study aims to analyze the pros and cons of the legal ruling on misyar marriage and to formulate solutions for addressing it from the perspective of Islamic law. The research employs a qualitative method based on library research, using normative, socio-legal, and maqāṣid al-sharī'ah analytical approaches. The main argument of this study asserts that legal assessment of misyar marriage is inadequate if it relies solely on the fulfillment of the pillars and conditions of marriage; rather, it must be evaluated in light of the objectives of the Shari'ah and the principle of preventing harm. The findings indicate that although misyar marriage may be considered formally valid and may offer limited benefits under certain circumstances, in practice it has the potential to generate more dominant harms, particularly with regard to the protection of women and children, uncertainty over financial maintenance responsibilities, and the degradation of the purpose of marriage as a *mithāqan ghalīzan*. Therefore, this study emphasizes that the permissibility of misyar marriage, if considered at all, should be highly restricted and accompanied by strict conditions. The proposed solutions include normative, ethical, and institutional approaches to ensure justice and protection within Islamic family law.



Introduction

Marriage in Islam is commonly understood as a solemn and binding covenant (*mithaqan ghalīzan*) that does not merely stop at the formal fulfillment of its pillars and conditions, but rather aims to establish tranquility, responsibility, and mutual protection between spouses. (Malisi, 2022) Within the landscape of contemporary fiqh, a form of marriage known as *nikah misyar* has emerged namely, a marriage that formally fulfills the pillars and conditions of marriage but is accompanied by an agreement in which certain rights of

the wife, such as financial maintenance, residence, or equitable division of time, are waived or not claimed.

This phenomenon has become a field of debate because, on the one hand, it is viewed as a social adaptation to economic constraints and particular circumstances, while on the other hand, it is criticized for eroding the substantive objectives of marriage and opening up new forms of vulnerability, especially for women and children. Socio-legal studies on *misyār* in Indonesia reveal tensions between sacred law and cultural change, as well as how the practice is “narrated” and negotiated within social spaces that are not always easily captured by formal legal frameworks.(Lukito, 2022) Therefore, reading *nikah misyar* solely through the lens of formal *fiqh* as a matter of whether it is “valid or invalid” risks oversimplifying the issue and obscuring the ethical dimensions, the protection of rights, and the accompanying social impacts.(Rouf, 2024)

The urgency of this topic is reinforced by the fact that the debate on *nikāḥ misyār* lies at the intersection of three dynamics: contemporary fatwa discourse, transformations in modern family relations, and demands for the protection of vulnerable groups within family law.(Hilal, 2021) A number of recent studies emphasize that the controversy surrounding *misyār* is not merely a dispute between “text and reality,” but rather reflects divergent frameworks for assessing public interest (*maṣlahah*): whether it is sufficient to rely on the fulfillment of the pillars and conditions of marriage, or whether it must be evaluated through the objectives of the *Shari‘ah* (*maqāṣid al-shari‘ah*) and the presence of tangible risks of harm (*ḍarar*).

One example is research that considers *misyār* “conditionally permissible,” subject to strict requirements such as the wife’s genuinely voluntary consent and the absence of coercion or exploitation, while still acknowledging ethical problems when the practice is intertwined with secrecy and the neglect of economic rights. Conversely, other studies emphasize that *misyār* practices often culminate in the relinquishment of women’s rights such as maintenance and housing which socially may generate *mafsadah* and harms that outweigh claims of *misyār* as a “practical solution.” (Martyana, 2022)

Within the realm of Indonesian family law, which also confronts issues related to the fulfillment of economic rights during and after marriage or divorce, discourse on financial rights and dispute resolution demonstrates that interpretive factors and substantive protection are often more decisive than mere normative formalities.(LINDA, 2024) Accordingly, the state of the art may be summarized as follows: contemporary studies have mapped issues of legality, social context, and certain *maqāṣid* dimensions; however, an argumentative synthesis is still needed one that balances the pro and contra positions while offering an operational framework of solutions to prevent vulnerability and rights related disputes.

This article advances the thesis that debates on the legal status of *nikāḥ misyār* are insufficient if they stop at a verdict of “valid/invalid” based on contractual formalism. Instead, they must be framed as a tiered evaluation: (1) minimal *fiqh* validity (pillars and conditions), (2) ethical appropriateness and rights protection (anti *ḍarar* and non exploitation), and (3) conformity with the objectives of the *Shari‘ah* (*maqāṣid*) and the governance of family law (registration, evidentiary mechanisms, and guarantees of rights). Within this framework, “pro” arguments may be read as conditional permissibility acceptable only when the waiver of rights does not produce structural harm, does not

involve concealment, and is accompanied by concrete protection for the more vulnerable party.

Conversely, “contra” arguments gain strength when *misyār* is practiced as a normalization of the husband’s abdication of obligations, employs secrecy to evade accountability, or generates predictable negative impacts on the dignity and economic security of women and children. A socio legal reading underscores that the way society “narrates” *misyār* practices and the motives behind them actively shape their social status. Therefore, solutions cannot be limited to normative fatwas alone, but must also include risk-prevention instruments and mechanisms for the restoration of rights. At the same time, ISLAMICA’s tradition as an interdisciplinary journal encourages the integration of normative analysis with sensitivity to social ethics and the quality of religious life in modern contexts. (Hilmy & Syafaq, 2024)

The article is structured as follows. The first section outlines the concept of *nikah misyar* and clarifies terminological distinctions to avoid conflation with other forms of marriage that are often misunderstood in public discourse. The second section presents a map of “pro” arguments, emphasizing the fulfillment of pillars and conditions and claims of limited *maṣlahah* under certain circumstances, along with constraints on permissibility. The third section sets out “contra” arguments, highlighting the erosion of the objectives of marriage, substantive injustice, and the potential for systemic *ḍarar*. The fourth section offers a critical synthesis by weighing pro and contra arguments through *maqāṣid* analysis and a socio-legal reading particularly regarding rights vulnerability and problems of proof and registration to ensure that conclusions are not merely normatively idealistic. The fifth section proposes tiered solutions: ethical standards and conditions of permissibility (if considered), the strengthening of premarital literacy and mediation, and recommendations for family law governance to protect economic rights and the dignity of vulnerable parties, before concluding with directions for future research.

The research method employed is library research with a normative-argumentative approach, enriched by the perspective of *maqāṣid al-sharī‘ah* and a socio-legal reading. Primary data consist of *fiqh* literature and fatwa discourse as the normative framework, while secondary data include scholarly articles from the past five years, particularly those indexed in Scopus to capture global and socio-legal developments as well as articles from ISLAMICA to situate the interdisciplinary context. (Nurhayati, Lias Hasibuan, 2021) Analytical techniques involve: (1) mapping pro and contra arguments (claims, reasons, and evidence), (2) testing coherence against the principles of anti-*ḍarar* and rights protection, and (3) weighing *maṣlahah* based on *maqāṣid* across the dimensions of protection of religion, life, lineage, property, and human dignity. Through this method, the article aims not merely to “take sides,” but to formulate an accountable middle path: identifying when *misyār* might be viewed as a highly restricted *rukhsah*, when it must be rejected due to dominant harm, and which remedial mechanisms are most reasonable for the context of contemporary Muslim societies.

Methods

This study employed a qualitative research design based on library research and normative legal analysis to examine the legal controversy surrounding *nikāḥ misyār* and to formulate possible solutions within the framework of contemporary Islamic family law.

Library-based legal research is appropriate when a study seeks to interpret legal doctrines, concepts, principles, scholarly arguments, and legal texts systematically rather than to measure social phenomena statistically (Nyathi, 2023). The normative approach enabled the study to examine the validity, legal reasoning, and underlying principles of nikāḥ misyār, while the socio-legal perspective provided a broader framework for assessing how legal norms interact with social realities, gender relations, family structures, and mechanisms of rights protection (Afandi, 2022).

The research relied on both primary and secondary documentary sources. Primary sources consisted of classical and contemporary literature on fiqh al-munākahāt, uṣūl al-fiqh, Islamic legal maxims, maqāṣid al-sharīʿah, and the legal opinions of contemporary Muslim scholars concerning nikāḥ misyār. These materials were used to identify the legal foundations, evidences, arguments, and juristic reasoning underlying permissive and restrictive positions on misyār marriage. Secondary sources comprised peer-reviewed journal articles, scholarly books, book chapters, and socio legal studies published primarily between 2021 and 2026 that address misyār marriage, Islamic family law, marriage contracts, women's and children's rights, and contemporary family transformation. Recent scholarship demonstrates that the study of misyār requires attention not only to contractual validity but also to social context, legal protection, and changes in contemporary Muslim family structures (Lukito, 2022).

The literature was selected purposively according to four criteria: relevance to the research questions, academic credibility, recency of publication, and direct contribution to the legal or socio-legal analysis of marriage. Priority was given to peer-reviewed international journal articles, Scopus-indexed publications where available, publications with verifiable Digital Object Identifiers (DOIs), and authoritative academic works directly addressing Islamic family law. Studies that merely mentioned marriage without providing substantive relevance to nikāḥ misyār, maqāṣid al-sharīʿah, marital rights, or contemporary family-law debates were excluded. This selection strategy was intended to ensure that the analysis was based on literature directly connected to the legal controversy examined in this study.

Data were analyzed through qualitative content analysis. Content analysis provides a systematic procedure for identifying, classifying, comparing, and interpreting explicit and implicit meanings within documentary materials, particularly when researchers need to extract arguments, concepts, legal reasoning, and recurring categories from texts (Griffin & Griffin III, 2021). The use of content analysis also requires transparent identification of the unit of analysis, coding categories, and interpretive procedures to avoid methodological ambiguity (White, Samuel, & Peattie, 2021).

The analytical process was conducted in four stages. First, the study identified and coded the principal legal claims, evidences, juristic arguments, and legal rationales presented by scholars who permit or oppose nikāḥ misyār. The arguments were subsequently classified into several analytical categories, including contractual validity, voluntary waiver of marital rights, maintenance obligations, housing, transparency, polygamy, protection of children, women's economic security, and the objectives of marriage. This process produced a structured map of the principal arguments supporting and opposing the practice (Shihan & Zaroum, 2022).

Second, the study conducted comparative normative analysis by examining the internal coherence of the opposing legal positions. The analysis compared their legal bases,

interpretive methods, assumptions concerning marital rights, and assessments of *maṣlaḥah* and *mafsadah*. Comparative legal analysis was not used merely to determine which opinion had greater textual support, but to identify differences in legal reasoning and the normative consequences arising from each interpretation. This approach is particularly important in contemporary legal research because doctrinal analysis requires systematic engagement with legal rules, principles, interpretations, and competing legal arguments (Nyathi, 2023).

Third, the findings were evaluated through a *maqāṣid al-sharī'ah* framework. The analysis examined whether the consequences attributed to *nikāḥ misyār* supported or undermined the protection of religion (*ḥifẓ al-dīn*), life and psychological well-being (*ḥifẓ al-nafs*), lineage and family continuity (*ḥifẓ al-nasl*), property and economic security (*ḥifẓ al-māl*), and human dignity (*ḥifẓ al-ird*) (R Benhalim, 2024). The *maqāṣid* approach is particularly relevant to contemporary Islamic legal reasoning because it allows legal opinions to be evaluated according to the purposes and consequences of Islamic law rather than solely through formal compliance with contractual requirements (Shihan & Zaroum, 2022). Accordingly, the assessment of *misyār* marriage focused on both formal validity and substantive outcomes, particularly justice, protection, responsibility, and prevention of harm.

Fourth, a limited socio-legal comparison was undertaken to contextualize the normative findings within contemporary Muslim societies. Socio-legal research integrates internal legal reasoning with the external social environment in which legal rules operate, allowing researchers to examine the interaction between law, institutions, social practices, and lived experience (Afandi, 2022). This dimension was necessary because research on *misyār* marriage demonstrates that the practice is shaped by economic pressures, social expectations, migration, changing gender roles, legal registration, and public perceptions (Lukito, 2022). Contemporary family research in the Arab Gulf similarly shows that marital practices must be situated within broader demographic, economic, and social transformations affecting Muslim families (Al Khalifa, Al Saleh, & Al Kubaisi, 2024).

To enhance analytical credibility, the study applied source triangulation by comparing different categories of literature, including normative *fiqh* discussions, contemporary legal scholarship, socio-legal research, and studies concerning the social consequences of non conventional marriage. The conclusions were derived only after comparing these perspectives and examining the consistency between legal arguments and their anticipated consequences. This strategy reduced dependence on a single school of thought or legal position and strengthened the transparency of the interpretive process.

The final stage involved synthesizing the results through a risk-benefit and rights-protection framework. Each major argument was assessed according to its potential *maṣlaḥah*, foreseeable *mafsadah*, degree of protection provided to vulnerable parties, and consistency with the objectives of Islamic marriage. This process allowed the study to move beyond the binary question of whether *nikāḥ misyār* is simply permissible or prohibited. Instead, the method provides a systematic basis for determining the circumstances in which *misyār* may constitute a highly restricted legal concession and the circumstances in which it should be rejected because the risks of injustice, exploitation, or neglect outweigh the claimed benefits.

Results and Discussion

Conceptual Framework of Nikah Misyar in Islamic Jurisprudence

Nikāḥ misyār, often referred to as “misyār marriage,” is a form of marriage contract that, from a fiqh perspective, generally fulfills the pillars and conditions of marriage, but is accompanied by an agreement in which the wife voluntarily waives certain rights, such as the right to financial maintenance (nafaqah) or housing, as well as a living arrangement that is not necessarily co residential as in conventional marriage.(Hardyansah, 2022) This practice has emerged as a response to social changes, including high labor mobility, the rise of economically independent women, the complexity of concealed polygamy, and the desire of some parties to “formalize” relationships in order to avoid zinā without bearing the full socio economic consequences of marriage.

Accordingly, nikah misyar is not merely a question of the validity of the contract (formal legality), but also a problem concerning the objectives of marriage (maqasid al-shari‘ah), the protection of women’s and children’s rights, and the potential for abuse such as concealing polygamy, evading maintenance obligations, or weakening legal protection. The pro and contra debates revolve around two axes: (1) the formalistic-contractual axis (as long as the pillars and conditions are fulfilled, the marriage is valid), and (2) the teleological-maṣlaḥah axis (whether the practice preserves dignity, justice, and family resilience or instead normalizes inequality). (Alnaief & Haswa, 2024)

The urgency of this study is reinforced by recent research indicating that the debate does not end with the question of “permissible or not,” but extends to social consequences and the design of rights-protection mechanisms. Studies on misyār within contemporary Islamic legal discourse and state contexts highlight the tension between contractual flexibility and the need for regulation to prevent structural vulnerabilities for women. (Aziz, 2023)

In Indonesian socio-legal scholarship, several studies emphasize that acceptance or rejection by ‘ulamā’ and religious authorities often depends on the extent of harm and the potential manipulation of maintenance obligations and mu‘asharah bi al-ma‘ruf. This means that evaluation cannot stop at “valid by contract,” but must also assess whether the practice is “just and protective” in lived reality. At the same time, gender equality discourse in religious spaces including scholarly perceptions of women’s roles and authority shapes how society evaluates non-conventional marriage practices. Consequently, the misyār debate must be situated within a broader landscape of power relations, gender norms, and family resilience. The state of the art thus reveals a significant gap: while many writings accumulate fiqh-based pro and contra arguments, far fewer propose operational solution models both normative and social to prevent rights violations, ensure transparency, and strengthen the protection of women and children within the framework of maqāṣid and existing legal systems.

Departing from this gap, the article advances the thesis that the legal status of nikāḥ misyār cannot be adequately assessed solely through the formal validity of the contract. It must be tested against the parameters of maqāṣid al-shari‘ah (the protection of religion, life, intellect, lineage, and property), the principle of relational justice (mu‘āsharah bi al-ma‘rūf), and the principle of preventing harm (dar’ al-mafāsid). Accordingly, its resolution requires the design of clear ethical standards/conditions and robust mechanisms for rights protection. (Al Khalifa et al., 2024)

Within this framework, the “pro” position is understood as conditional permissibility, emphasizing situations of necessity and genuinely voluntary consent, while the “contra” position is understood as substantive prohibition when the practice functions as a means of neglecting maintenance, fostering concealed polygamy, or undermining the objectives of familial tranquility. The solutions proposed in this article are not abstract compromises, but a concrete roadmap that integrates: (1) criteria of necessity and transparency; (2) minimum protection clauses that cannot be waived (certain non-waivable rights); (3) mechanisms of proof and registration that guarantee access to justice; and (4) education and the strengthening of literacy on family rights.

The article is structured as follows. The first section explains the background, operational definition of nikāḥ misyār, the conceptual problem (contract versus objectives), and the formulation of research questions and thesis. The second section outlines the map of “pro” arguments (textual evidence and fiqh maxims, the logic of necessity, and limits of permissibility) and situates them within the framework of maqāṣid and family ethics. (Rabea Benhalim, 2023) The third section presents the “contra” arguments (indications of mafsadah: injustice in maintenance, vulnerability of women and children, manipulation of polygamy, and disruption of social order), including a comparison with regulatory contexts in several contemporary Muslim jurisdictions to examine how states respond to “non-standard” forms of marriage. The fourth section offers an analytical synthesis, including a comparative table of evidences and legal rationales (‘illat), a risk benefit matrix, and a model of solutions (minimum rights standards, registration/protection mechanisms, and policy/educational recommendations). The concluding section summarizes the findings, theoretical and practical contributions, limitations, and directions for future research.

The research method employed is qualitative, using a library research design and comparative normative analysis. (Moleong, 2022) Primary sources include fiqh al-munākahāt literature, principles of uṣūl al-fiqh, and the works and arguments of contemporary scholars central to the misyār debate. Secondary sources consist of academic journal articles from the past five years that examine misyār from fiqh, maqāṣid, and positive/state law perspectives, including studies highlighting the tension between contractual flexibility and rights protection. Analytical techniques include: (1) content analysis to extract premises, evidences, and legal rationales from pro and contra arguments; (2) maqāṣid-based evaluative analysis to assess whether practical consequences align with the objectives of the Sharī‘ah; and (3) limited comparative analysis to identify regulatory patterns and institutional responses in contemporary contexts.

Social Background and Context of the Emergence of Nikah Misyar

The phenomenon of nikah misyar (often also written as zawāj al-misyār) did not emerge in a social vacuum. Rather, it arose as a “practical response” to shifts in family relations, changes in gender roles, and economic pressures within modern Muslim societies. A number of studies emphasize that this practice is widely known as a form of marriage that formally fulfills the pillars and conditions of a valid contract, yet is followed by an agreement often initiated by the wife to relinquish certain rights, such as financial maintenance, housing, or overnight stays, in order to accommodate particular social circumstances. (Mariani, 2025) This practice of “reducing rights” is commonly understood as a form of tanāzul (voluntary waiver of rights), which some scholars consider legally valid

when undertaken freely. Nevertheless, it continues to provoke debate because it is seen as potentially normalizing inequality and weakening the protective objectives of marriage.

In contemporary literature, nikāḥ misyār is often mapped as part of the dynamics of “alternative marriage contracts” that have developed in the Gulf region alongside rapid modernization, urbanization, and the reorientation of family values. Introductory studies on family research in Gulf countries situate misyār within a broader landscape of social transformation: rising levels of women’s education and labor-force participation, economic growth, technological change, and large-scale migration that collectively reshape household structures and marital expectations. (Rahman, Al-Ghanim, Hossain, & Umar, 2025)

Within this framework, nikāḥ misyār can be read as a social symptom: it reflects negotiations between fiqh norms (legal-formal standards) and increasingly complex social realities, such as labor mobility, economic vulnerability, and stigma toward widows or unmarried women. Several studies note that misyār gained prominence in Saudi Arabia and Egypt in the late 1990s (often dated around 1999), within societies undergoing rapid change while still maintaining strong norms of family honor and social control over sexual relations.

Under such conditions, a “practical solution” that remains visibly ḥalāl (valid in contractual terms) becomes attractive to some individuals. Emotional and biological needs can be met without bearing the “full package” of conventional marriage financial maintenance, housing, and permanent cohabitation or without disrupting established work patterns and routines. From the perspective of family demography and economics, several contexts are frequently identified as fertile ground for misyār: (1) rising ages at marriage and high marriage costs (mahr, wedding ceremonies, housing); (2) increasing numbers of unmarried or career-oriented women and widows who face social stigma outside the institution of marriage; (3) imbalances in the marriage market due to labor migration, mobility, or particular social structures; and (4) the desire for secrecy in certain cases, such as concealed polygamy or relationships not intended to be known by extended families. Family research frameworks in the Gulf emphasize that marriage studies in GCC countries must be read through the lens of development/modernization and changing gender roles, noting that alternative contracts such as misyār have become a recurring theme in regional marriage studies.

At the same time, it is important to note that these socio-economic rationales also explain why criticism of misyar is so intense. Critics commonly highlight the potential for exploitation and the uncertainty of protection, particularly for women and children, since the waiver of maintenance or housing rights may create new vulnerabilities when relationships deteriorate through conflict, divorce, or custody disputes. From a legal-policy perspective, such seemingly “private contracts” may generate broader social costs, including stigma, uncertainty of legal status, and disputes over children’s rights. Consequently, debates for and against misyār cannot be separated from the social context in which it emerges. (Mardi, Kodir, & Rohanda, 2025)

Another important dimension of the emergence of nikah misyar is migration and transnational family life. Studies of Gulf families show that the GCC region has become a major destination for international migration, with millions of migrant families living under temporary residence permits tied to employment contracts. As a result, household configurations and cohabitation patterns are often unstable or non-permanent. In such

settings, “distance-based” marital arrangements spouses living apart, high mobility, and periodic visits become more common, socially encouraging more flexible marital models that do not require full time co residence.

Misyar is often understood as a form of visiting marriage: the husband visits the wife at specific times, while the wife remains in her own home or with her family, and arrangements regarding maintenance and housing are negotiated. Introductory Gulf family research explicitly describes misyār as a form of secret or concealed polygamy, in which the husband typically visits the wife at her or her family’s residence rather than bringing her into his household, and in which the marriage may not be publicly announced. This description helps explain why misyar aligns with conditions of migration, labor mobility, and the desire to preserve social reputation, while also clarifying its vulnerabilities secrecy, power asymmetries, and limited accountability.

Advances in communication technology have accelerated the spread of ideas, the normalization of practices, and social resistance alike. Notably, research based on public discourse data from social media indicates that misyār has become a topic that provokes a wide spectrum of emotions and moral judgments within Muslim societies. One open-access data-driven study analyzes a corpus of 5,108 Kurdish-language comments from YouTube and Facebook to map public perceptions of misyār with sentiment labels ranging from positive and negative to neutral and skeptical demonstrating that the issue occupies an intensely contested social space.

This indicates that misyār is not merely a fiqh debate within academic circles, but a social phenomenon negotiated openly in digital spaces, where pro and contra arguments evolve alongside “politics of reputation” and value contestation. From a methodological perspective in socio-religious studies, such digital data also suggest that the emergence of misyar must be read as a practice continually reshaped by public discourse: acceptance, rejection, humor, cynicism, and moral justification all influence how the practice is understood and enacted.(Karim, 2024)

Thus, the contemporary “context of emergence” of misyar is not only socio-economic but also socio digital. In Indonesia, discourse on nikah misyar generally appears within contemporary Islamic family law debates, particularly concerning the relationship between “religious validity” and “state administrative order,” as well as issues of protecting women’s and children’s rights. One normative-historical study situates misyār as a phenomenon developing across the Muslim world and generating controversy due to the reduction of rights within spousal relations, with particular attention to its connection to human rights and women’s right to marry.

Other studies more specifically address the position of misyār within frameworks of protection for women and children in Indonesia. While the contract may be considered fiqh-valid when the pillars and conditions are fulfilled, the practice of waiving maintenance or housing rights is seen as potentially conflicting with protection principles, given the absence of strong mechanisms to guarantee rights fulfillment in cases of dispute especially regarding financial support and child care.

These arguments are crucial for the contextual chapter, as they show that when misyar “migrates” as an idea into Indonesia, it immediately encounters the regime of positive law (the Marriage Law and child protection regulations). Consequently, the context of its emergence in Indonesia is shaped by a tug of war between fiqh authority, state authority, and the demands of social protection.(Amania & Muzainah, 2023)

Table 1. Synthesis of the Pros and Cons of Nikāḥ Misyār

Contextual Factors Behind Emergence	Forms of "Solutions" Sought	Vulnerable Points Triggering Controversy
Rapid modernization & changing gender roles (women's education/careers) (Springer)	Flexible marriage arrangements without full cohabitation	Waiver of rights may normalize inequality and undermine the protective objectives of marriage
High marriage costs & economic barriers	"Access" to marriage with lighter financial commitments	Vulnerable to transactional relationships and weak accountability
Migration & transnational families (high mobility) (Springer)	Visiting marriage: husbands visit periodically	Lack of transparency, uncertainty of marital status, and disputes over rights
Contestation of discourse in digital media (ScienceDirect)	Normalization or delegitimization of the practice through public discourse	Moral polarization and stigma toward women and children
Encounter with positive law (Indonesia)	Attempts to achieve "religious legitimacy" while maintaining "social security"	Gaps in protection when marriage registration and rights guarantees are weak

Pros and Cons of the Legal Ruling on Nikah Misyar

The legal debate on nikah misyar in contemporary fiqh is rooted in differing perspectives on the relationship between the formal validity of the marriage contract and the substantive objectives of marriage.(Anadi & Deuraseh, 2023) Within the framework of classical fiqh, the validity of marriage is determined by the fulfillment of its pillars and conditions, namely the existence of ijab qabul, a guardian (wali), witnesses, and a mahr. As long as these elements are fulfilled, the contract is deemed legally sah, regardless of how rights and obligations are exercised after the contract takes place.

However, Islamic jurisprudence also recognizes the ethical and teleological dimensions of marriage, which position marriage as a mīthāqan ghalīẓan a strong covenant aimed at realizing tranquility (sakinah), affection (mawaddah), and mercy (raḥmah).(Karim, 2024) The tension between these two dimensions the legal formal and the substantive-teleological constitutes the primary arena of the pro and contra debate on nikah misyar among contemporary scholars and academics. Those who permit nikah misyar base their position on the fundamental fiqh principle that the default ruling of transactions (mu'āmalāt) is permissibility (al-aṣl fī al-ashyā' al-ibāḥah), unless there is explicit evidence prohibiting them. Within this context, nikāḥ misyār is considered valid because it does not violate the pillars and conditions of marriage agreed upon in Sunni jurisprudence.(Hasannia & Masoudian, 2021)

This argument emphasizes that the waiver of certain rights, such as financial maintenance or housing, is understood as tanāzul (voluntary relinquishment of rights), which is legally valid as long as it is carried out voluntarily by the wife. In fiqh, certain rights may indeed be waived through mutual agreement, just as a wife may waive her turn

in a polygamous marriage or postpone claiming maintenance. Beyond formal validity, proponents also stress the dimension of *maṣlaḥah*. *Nikāḥ misyār* is viewed as a pragmatic solution to prevent illicit relations (*sadd al-dharā'i'*) under specific social conditions, such as high mobility, economic constraints, or the status of women who face difficulties entering conventional marriage (widows, career women, or women with family dependents). From this perspective, *misyār* is considered “preferable” to non-marital relationships that are clearly prohibited.

Some contemporary scholars even frame *misyār* as a form of *rukhsah* (legal concession) in particular situations of social necessity, provided that it is not intended to deceive or harm any party. This approach underscores the flexibility of Islamic law in responding to changing circumstances. (Setiyani, Saprudin, & Nurhairunnisa, 2024) Nevertheless, despite its apparent normative strength, the pro argument faces serious criticism when confronted with empirical practice. Socio-legal studies indicate that claims of “voluntary consent” are often problematic, as unequal power relations may place women especially those in weaker economic or social positions in situations where they relinquish rights not out of genuine choice, but due to structural compulsion. At this point, the pro argument risks falling into formal legalism that overlooks substantive justice.

Conversely, scholars who reject *nikah misyar* base their stance on a critique of the substance of marriage itself. They argue that *misyār* reduces marriage to a mere legal contract intended to legitimize sexual relations, without a commitment to building a stable and sustainable household. From this perspective, *nikah misyar* contradicts the purpose of marriage as a *mithaqan ghalīẓan*. The neglect of obligations such as maintenance and housing is viewed as a denial of the husband’s responsibilities, which lie at the core of family leadership (*qiwamah*). Accordingly, *misyār* is seen as incompatible with the spirit of *mu‘āsharah bi al-ma‘rūf* (conducting marital relations in a proper and ethical manner).

The contra arguments also highlight the social impact of *nikāḥ misyār* on women and children. This practice is considered to open space for exploitation, as women’s rights become objects of negotiation within unequal power relations. Socio-legal studies in Indonesia show that non-conventional marriage practices often place women in vulnerable positions when conflicts, divorce, or disputes over economic rights arise. In terms of child protection, *nikāḥ misyār* is also criticized due to the lack of clarity regarding financial support, caregiving arrangements, and the social status of children. When spousal relations are non-co-residential and lack accountability, children risk becoming the most disadvantaged parties.

From the perspective of *maqāṣid al-sharī‘ah*, opponents argue that *misyār* generates more *mafsadah* than *maṣlaḥah*. The practice has the potential to normalize the evasion of the husband’s responsibilities, concealed polygamy, and the commodification of marriage. In the long term, this is seen as undermining the family institution and social order. In summary, the legal debate on *nikāḥ misyār* reflects a contest between two paradigms: the legal-formal paradigm, which emphasizes the validity of the contract, and the teleological-ethical paradigm, which prioritizes the objectives and social consequences of marriage. Both paradigms have foundations within the Islamic legal tradition, yet they yield different conclusions when confronted with concrete practice.

This is where further analysis based on *maqāṣid al-sharī‘ah* and a socio legal approach becomes crucial an analysis that evaluates not only texts and contracts, but also power relations, risks of harm, and the capacity of legal protection. The following chapter will

develop this analysis to assess whether, and under what conditions, nikāḥ misyār may be considered or should instead be rejected, and how its resolution can be formulated in normative and institutional terms.

Critical Analysis of Nikāḥ Misyār from the Perspective of Maqāṣid al-Sharī'ah

In contemporary Islamic law, maqāṣid al-sharī'ah functions as an evaluative framework to assess whether a legal practice is not only formally valid, but also aligned with the fundamental objectives of the Sharī'ah. Marriage, as a foundational institution in Islam, has a strong maqāṣid dimension because it is directly related to the protection of religion (ḥifẓ al-dīn), life (ḥifẓ al-nafs), lineage (ḥifẓ al-nasl), property (ḥifẓ al-māl), and human dignity (ḥifẓ al-'ird). Therefore, every form or variant of marriage, including nikah misyar, must be examined not only in terms of contractual validity, but also in terms of the extent to which it fulfills or instead undermines these objectives. (Fazlin, 2023)

The maqāṣid approach becomes particularly relevant because the debate on nikāḥ misyār reveals the limitations of a formalistic fiqh approach that stops at the fulfillment of pillars and conditions. A number of contemporary Islamic legal studies emphasize that formal legality does not always equate to substantive justice, especially in family matters that are deeply embedded in power relations and social inequality. In this sense, maqāṣid al-sharī'ah serves as a “normative bridge” between legal texts and social realities.

From the perspective of ḥifẓ al-dīn, proponents of nikah misyar argue that the practice helps preserve religious values by providing a lawful avenue for male female relations, thereby preventing zina. This argument is often advanced in urban and migrant contexts, where economic and social barriers make conventional marriage difficult to attain.

However, a maqāṣid-based approach demands a deeper evaluation: is the “prevention of zinā” sufficient to justify a form of marriage that may empty moral and social responsibilities of their substance? If nikah misyar is practiced with the intention of avoiding commitment, concealing relationships, or manipulating religious norms for unilateral interests, it risks reducing religion to mere formal legitimation rather than a value system that shapes moral conduct and responsibility. In this context, ḥifẓ al-dīn cannot be separated from the moral integrity of religious practice.

The dimension of ḥifẓ al-nafs encompasses the physical and psychological protection of individuals within marriage. (Devi & Aminuddin, 2025) Nikah misyar practices that neglect financial maintenance and permanent cohabitation often place women in situations of emotional and economic uncertainty. Socio legal studies indicate that the lack of long-term commitment in such relationships can generate psychological stress, insecurity, and vulnerability when the relationship ends unilaterally.

From a maqāṣid perspective, security and tranquility (sakinah) are essential elements of protecting life. When marriage operates in a “visiting” pattern with minimal accountability, these objectives are difficult to achieve. Thus, even if not always in violation of formal law, nikah misyar may conflict with ḥifẓ al-nafs if it is not accompanied by adequate protective guarantees. The dimension of ḥifẓ al-nasl constitutes a crucial point in critiques of nikah misyar. Marriage in Islam aims to ensure the continuity of lineage that is legally, socially, and economically protected. In misyār practices, separate living arrangements and the waiver of maintenance obligations can create ambiguity regarding responsibility for children, particularly in cases of conflict or divorce. (Alwi & Ummah, 2025)

Comparative studies of family law show that marital models not integrated into state systems of registration and protection often hinder the fulfillment of children's rights, such as financial support, education, and care. From a maqāsid perspective, any practice that increases the risk of child neglect must be regarded as a serious mafsadah, thereby weakening claims of maṣlaḥah associated with nikah misyar.

Nikah misyar is often promoted as a "low cost" solution, yet this is precisely where the issue of ḥifz al-māl becomes salient. The wife's waiver of maintenance rights frequently places women in economically vulnerable positions, especially when the relationship ends without mechanisms for rights restoration. Studies on family law practices show that women in non conventional marital relationships tend to face difficulties in claiming economic rights due to weak evidence, lack of registration, and limited social recognition.

Within the maqāsid framework, protection of property does not merely mean preventing expropriation, but also ensuring distributive justice within family relations. If nikah misyar functions as a means for husbands to evade economic responsibility, it directly contradicts ḥifz al-māl and the principle of justice in family transactions.

The aspect of dignity and honor (‘ird) represents an ethical dimension often overlooked in legalistic debates. Misyar practices that are secretive or not socially announced risk generating stigma toward women and children, particularly in societies where family norms and honor remain strongly upheld. Sociological research indicates that the concealment of marital relationships often has a greater negative impact on women's reputations than men's.

From a maqasid perspective, safeguarding honor is not only about reputation, but also about fair social recognition. When nikah misyar places women in the position of "hidden wives" without public acknowledgment, the practice contradicts the objective of protecting dignity, which is one of the foundations of Islamic family law.

Based on an evaluation of the five primary maqāsid, it can be concluded that nikah misyar occupies a zone of normative ambiguity. At certain levels, it may offer limited maṣlaḥah, particularly in preventing zinā and adapting to specific social conditions. However, when assessed comprehensively, the accompanying potential mafsadah especially in relation to the protection of life, lineage, property, and dignity tends to be more dominant.

The maasyid al-shari'ah approach thus encourages a shift from the question "Is it valid?" to "Is it just and protective?" This shift is essential to avoid reducing Islamic law to contractual legalism that ignores its ethical and social objectives. In this context, many scholars conclude that the permissibility of nikah misyar if considered at all must be highly restricted and subject to strict conditions, accompanied by strong protective mechanisms.(Ana, 2021)

A maqāsid based analysis opens the way for more constructive solutions. Rather than adopting a black and white position, this approach demands the establishment of minimum standards of rights protection that cannot be negotiated away, the strengthening of registration and accountability, and premarital education that emphasizes the moral and social responsibilities of marriage. The following discussion will develop these implications into normative, ethical, and institutional solutions applicable to contemporary Islamic family law, particularly in the Indonesian context.

Legal Solutions for Addressing Nikah Misyar

The results of the pro contra analysis and the maqāṣid al-sharī'ah based evaluation discussed earlier indicate that the core problem of nikāḥ misyār does not lie merely in the validity or invalidity of the contract, but rather in the absence of guarantees for substantive protection for the parties involved, especially women and children. Therefore, legal solutions to nikāḥ misyār require a paradigm shift from a legal-formal approach toward a protective normative approach that places relational justice and the prevention of harm as primary objectives. (Halilurrahman & Luwihita, 2023)

This approach aligns with recent trends in Islamic family law studies, which emphasize that contractual validity cannot be separated from the ethical and social objectives of marriage. Contemporary Islamic legal scholarship affirms that family law must be understood as an instrument of protection (protective law), rather than merely a mechanism for validating private contracts. Accordingly, solutions to nikāḥ misyār cannot take the form of "unconditional permissibility" or "absolute prohibition" without regard to context; instead, they must be formulated as clear and operational standards of protection. (Akhtar, 2020)

The first solution that may be formulated is normative standardization in the form of strict conditions should nikāḥ misyār be considered permissible. (Kasim & Sari, 2021) This approach is grounded in the principles of maqāṣid al-sharī'ah and the legal maxim dar' al-mafāṣid muqaddam 'alā jalb al-maṣālih (preventing harm takes precedence over achieving benefit). Several normative conditions that may be proposed include:

1. Fully informed and free consent (informed consent) from the wife, without economic, social, or psychological pressure.
2. Prohibition of waiving essential rights (non waivable rights), such as basic maintenance, health protection, and responsibility toward children.
3. Transparency of the contract, including written clarification of the rights and obligations of both parties.
4. The marriage must not be intended as a means to evade responsibility, conceal polygamy, or facilitate sexual exploitation.

These formulations are consistent with the views of contemporary scholars who permit misyār only in a very limited and conditional manner, emphasizing that such permissibility constitutes a rukhsah (legal concession) rather than a general norm. Without such standardization, nikāḥ misyār risks becoming a mechanism for legitimizing injustice in contradiction to the objectives of the Sharī'ah.

Beyond normative solutions, addressing nikāḥ misyār also requires an ethical cultural approach that emphasizes responsibility and mu'āsharah bi al-ma'rūf (proper and ethical marital conduct). Many studies indicate that the main problem of nikāḥ misyār lies not in the concept of the contract itself, but in the ethos of the relationship it produces whether it is grounded in responsibility and mutual care, or merely in unilateral satisfaction.

In this context, premarital education grounded in Islamic family values becomes a crucial solution. Such education must emphasize that marriage is not a temporary contract or an instrument for individual gratification, but a moral institution that carries a social trust (amānah). This ethical approach resonates with discussions in ISLAMICA that stress the importance of enhancing Muslim religiosity beyond fiqh legalism toward ethics and social responsibility. (Faiz, Huda, Rohmad, Solikhudin, & Sovia, 2023) Through such ethical reinforcement, nikāḥ misyār is no longer perceived as a "shortcut," but is instead subjected

to moral scrutiny: does it truly deliver justice and tranquility, or does it conceal irresponsibility behind the façade of religious legality?

The third solution is institutional in nature, namely strengthening the role of the state and religious institutions in regulating and supervising nikāḥ misyār practices. Comparative studies of family law demonstrate that the absence of regulation or institutional oversight often amplifies the risk of harm to weaker parties in non-conventional marriages. In the Indonesian context, institutional solutions may include:

1. Strengthening marriage registration, including mandatory registration for all forms of marriage to ensure access to legal protection.
2. Providing legal protection mechanisms for women and children in non co residential marital relationships.
3. An active role for 'ulamā' and fatwa institutions in issuing contextual, protective, and substantively just guidance.
4. Integrating family law policies with principles of women's and children's protection already recognized in national law.

This institutional approach underscores that nikāḥ misyār is not merely a private matter, but a public issue with implications for social order and the protection of citizens' rights. Based on the discussion above, the most realistic solution for addressing nikāḥ misyār is an integrated model that combines three layers of approach: (Fatimawali, 2024)

1. Normative: the establishment of strict, maqāṣid-based conditions for permissibility.
2. Ethical: the internalization of responsibility and relational justice through education and family-oriented religious discourse.
3. Institutional: the strengthening of regulation, registration, and legal protection mechanisms.

This model enables Islamic law to remain responsive to social change without sacrificing its protective and justice-oriented objectives. In other words, nikāḥ misyār, if considered at all, must be positioned as a closely supervised exception rather than a value-neutral alternative. This approach simultaneously addresses critiques of fiqh legalism and reinforces the role of maqāṣid al-sharī'ah as the heart of contemporary Islamic family law reform.

Conclusion

This study examines nikah misyar as a contemporary Islamic family law phenomenon situated at the intersection between the formal validity of the marriage contract and the demand for substantive justice in husband wife relations. Based on conceptual, social, and normative analyses, it can be summarized that nikāḥ misyār, from a formal fiqh perspective, generally fulfills the pillars and conditions of marriage and is therefore considered valid by some scholars when accompanied by the mutual consent of the parties. However, an approach that stops at contractual validity alone proves inadequate to address the complexity of issues that arise in its social practice.

The main findings of this study indicate that the pro and contra polemics surrounding nikāḥ misyār stem from differing paradigms of legal assessment. Those who permit it emphasize the flexibility of Islamic law, the principle of original permissibility, and claims of pragmatic maṣlaḥah, such as the prevention of illicit relations and adaptation to specific social conditions. Conversely, those who oppose it focus their critique on the erosion of the objectives of marriage as a mīthāqan ghalīzan, gendered power imbalances,

and the potential mafsadah manifested in the neglect of financial maintenance, uncertainty in child protection, and the degradation of women's dignity. An analysis based on maqasid al-shari'ah reveals that although nikah misyar may produce limited benefits, its potential harms tend to be more dominant, particularly in relation to the protection of life, lineage, property, and honor.

The central argument of this article affirms that the legal status of nikah misyār cannot be determined solely through a legal-formal approach, but must be tested against the parameters of maqāsid al-shari'ah and the principle of preventing harm. Within this framework, the permissibility of nikah misyar if considered at all should be positioned as a highly restricted and strictly conditional exception, rather than as a normative alternative to Islamic marriage. In the absence of clear standards of protection, the practice of nikah misyar risks becoming a means of legitimizing injustice within family relations.

As an implication, this article formulates solutions for addressing nikah misyar through an integrated approach: normative (the establishment of conditions for permissibility and minimum non-waivable rights), ethical (the reinforcement of responsibility and mu'āsharah bi al-ma'ruf), and institutional (strengthening marriage registration, the role of the state, and protective scholarly guidance). This approach underscores that reform in Islamic family law cannot be achieved merely through fatwas of permissibility or prohibition, but must be directed toward substantive protection and relational justice. In this way, Islamic law remains responsive to social change without losing its primary orientation as an instrument for safeguarding family dignity and welfare.

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