

## Mut'ah Marriage among Migrant Workers: A Socio-Legal and Maqāṣid al-Sharī'ah Analysis

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**Abstract:** The phenomenon of *mut'ah* marriage among migrant workers reflects a contemporary problem in Islamic family law that can no longer be understood merely as a classical juristic debate. Labor mobility, prolonged family separation, and socio-economic vulnerability have encouraged the practice of *mut'ah* marriage as a form of rationalization for the biological and emotional needs of migrant workers. This study aims to analyze the practice of *mut'ah* marriage through a socio-legal and *maqāṣid al-sharī'ah* approach in order to examine the relationship between legal norms, social realities, and the protection of family institutions. The study employs an empirical legal method with a socio-legal approach by integrating Islamic law, Indonesian positive law, and empirical studies related to migrant workers and *mut'ah* marriage. The findings reveal that *mut'ah* marriage not only raises issues of legal validity but also creates structural vulnerabilities for women and children due to the absence of adequate legal protection. From the perspective of *maqāṣid al-sharī'ah*, the practice contradicts the principles of *ḥifẓ al-nasl* and *ḥifẓ al-'ird* because it reduces marriage to a temporary and transactional relationship. This study further finds that *mut'ah* marriage develops within a gray area between religious law, state law, and the social needs of migrant workers. The article argues that *mut'ah* marriage should be positioned as a socio-legal and family resilience issue rather than merely a juristic disagreement.

**Keywords:** *mut'ah* marriage, migrant workers, socio-legal, *maqāṣid al-sharī'ah*, Islamic family law.

## Introduction

The dynamics of global industrialization and the acceleration of labor mobility have generated new sociological and legal challenges that significantly affect contemporary family and social structures. Amid the demands of modern employment, individuals—particularly migrant and field workers who are required to live far from their families for extended periods—often experience complex socio-religious dilemmas.<sup>1</sup> Migrant workers frequently encounter psychological pressures in the form of social alienation and unmet biological and emotional needs that cannot be properly fulfilled within lawful marital relationships. This condition encourages some groups to look for alternative solutions, one of which is through the practice of *nikah mut'ab* (contract marriage). This practice is based on the agreement of a specific time limit and gives rise to profound theological and sociological debates about morality and legal certainty.

In this context, the phenomenon of *mut'ab* marriage, or temporary contractual marriage, has re-emerged as a controversial practice among migrant workers who live separately from their spouses for prolonged periods. This form of marriage is generally conducted based on an agreement specifying a predetermined duration in order to fulfill temporary biological and emotional needs.<sup>2</sup> Workers living far from their legitimate spouses often experience loneliness, emotional instability, and insufficient social support, conditions that encourage some individuals to seek alternative means of satisfying their desires without entering permanent marital commitments.<sup>3</sup>

Biological impulses, loneliness, and weak social control are frequently identified as the primary factors contributing to the emergence of *mut'ab* marriage among migrant and transient workers. Separation from family and the absence of supportive social environments increase vulnerability to instant and pragmatic solutions.<sup>4</sup> Weak moral supervision, limited understanding of Islamic legal principles, and highly permissive work environments further exacerbate the problem. Consequently, some workers perceive *mut'ab* marriage as a comparatively “safer” alternative to extramarital relations.<sup>5</sup>

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<sup>1</sup> Cut Ratna Sari, "Pengaruh Trauma Emosional Terhadap Hubungan Interpersonal di Kalangan Dewasa Muda," *Course Work Universitas Medan Area* 1, no. 2 (2024): 4–8.

<sup>2</sup> Rohim, Ahmad Hidayat, dan Aspandi, "Nikah Mut'ab dalam Persepektif Kompilasi Hukum Islam dan Syi'ah," *Jurnal Riset Rumpun Ilmu Sosial, Politik dan Humaniora* 4, no. 4 (2025): 228–40, <https://doi.org/10.55606/jurrish.v4i4.6476>.

<sup>3</sup> Putri Aulia dan Anisa Fitriani Azizah, "Hukum Islam dan Fenomena Pernikahan Kontrak Antara Legalitas dan Moralitas," *Judge: Jurnal Hukum* 6, no. 2 (2025): 77–91, <https://doi.org/doi.org/10.54209/judge.v6i02.1325>.

<sup>4</sup> Muhammad Sirajul Munir, Ishaq Ishaq, dan Ahmad Junaidi, "Fenomena Praktik Nikah Mut'ab di Kalangan Santri Sunni di Desa Jambesari Kabupaten Bondowoso," *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan* 18, no. 4 (2024): 2692, <https://doi.org/10.35931/aq.v18i4.3593>.

<sup>5</sup> Inge Bethzeda Stefany dan Rifqi Ridlo Phahlevy, "Perselingkuhan Sebagai Dasar Putusan Perceraian Di Pengadilan Agama Sidoarjo," *IJIS: Indonesian Journal of Islamic Studies* 13, no. 2 (2023): 65–85.

Nikah *mut'ah* is often claimed as a practical solution to avoid adultery, but this practice still causes quite a long legal debate, both in terms of Islamic law and positive Indonesian law.<sup>6</sup> The debate on nikah *mut'ah* does not only dwell on the classical fiqh aspect, but has intersected with the protection of human rights in the modern era. Various literature reviews in the last five years have highlighted this practice from various points of view. A recent study shows that there is a dilemma between legality and morality among contemporary society regarding the practice of contract marriage which is often used as a cover to legalize extramarital relationships.<sup>7</sup>

From the perspective of Indonesia's positive law and the protection of children's rights, family law experts also highlight how the absence of official registration in nikah *mut'ah* has direct implications for the loss of civil rights, such as maintenance and inheritance rights for women and children resulting from such marriages.<sup>8</sup> In addition, sociologists see that the psychological distress of distance separation often triggers social vulnerabilities in the work environment that require stronger institutional attention.<sup>9</sup> On the other hand, the literature that discusses aspects of pure Islamic law is still divided between views that are forbidden and those that provide leniency in certain emergency conditions.<sup>10</sup>

Marriage is seen as a very strong and sacred contract that aims to form a family of *sakinah*, *mawaddah*, and *rahmah*.<sup>11</sup> This principle emphasizes chastity, sustainability, and moral and social responsibility between husband and wife. Nikah *mut'ah* which is temporary clearly does not meet this essence because the contract is limited by time and is not intended to build a lasting family.<sup>12</sup> This practice has the potential to degrade the dignity of women because the relationships formed are only transactional and temporary. In the view of the sharia *maqashid*, this is contrary to

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<sup>6</sup> Muhamad Ali, "Hukum Nikah Mut'ah Dan Hubungannya Dengan Pembentukan Keluarga Sakinah," *Risalah: Jurnal Pendidikan dan Studi Islam* 1, no. 1 (2016): 30–41.

<sup>7</sup> Zulfiqar Bhisma Putra Rozi, "Pemidanaan Terhadap Pelaku Kawin Mut'ah (Kawin Kontrak) Perspektif Hukum Islam," *Rewang Rencang: Jurnal Hukum Lex Generalis* 6, no. 6 (2025): 18–22, <https://doi.org/10.55606/jurrish.v4i4.6476>.

<sup>8</sup> Ahmad Supiannor dan Anwar Hafidzi, "Pernikahan Dalam Perspektif Hukum Positif Dan Fikih Syafi'i: Analisis Komparatif Empat Aspek Dasar," *Jurnal Riset Rumpun Ilmu Sosial, Politik dan Humaniora* 4, no. 4 (2025): 233–36.

<sup>9</sup> La Ode Aan Sanjaya, Jamaluddin Hos, dan Ratna Supiyah, "Kontrol Sosial Masyarakat Terhadap Maraknya Seks Bebas Di Kalangan Pelajar (Studi Di Desa Roda Kecamatan Kolono Kabupaten Konawe Selatan)," *Neo Societal* 3, no. 2 (2018): 442–45.

<sup>10</sup> Inge Bethzeda Stefany dan Rifqi Ridlo Phahlevy, "Perselingkuhan Sebagai Dasar Putusan Perceraian Di Pengadilan Agama Sidoarjo," *IJIS: Indonesian Journal of Islamic Studies* 13, no. 2 (2023): 70–74.

<sup>11</sup> Abdi Samra Chaniago, "Memaknai Mitsaqan Ghalizha sebagai Kunci Harmoni Keluarga Islam," *Landraad: Jurnal Syariah & Hukum Bisnis* 2, no. 2 (2023): 181–96, <https://doi.org/10.59342/jl.v2i2.409>.

<sup>12</sup> Aulia dan Azizah, "Hukum Islam dan Fenomena Pernikahan Kontrak Antara Legalitas dan Moralitas."

the purpose of safeguarding one's offspring (hifz al-nasl) and maintaining honor (*hifz al-'ird*).<sup>13</sup>

By looking at various social, moral, and legal aspects, it is important to conduct an in-depth study of Islamic law's view on nikah *mut'ah*, especially those carried out by foreign service workers. This study can provide a clearer understanding of the boundary between human needs and shari'a prohibitions. In addition, the results of the research are also expected to be able to provide alternative solutions in accordance with Islamic principles in dealing with social and biological pressures of workers. In this context, religious education and moral development are very important as a form of prevention.

Although studies on nikah *mut'ah* have been widely discussed, there is a significant research *gap*. Most of the current literature only reviews nikah *mut'ah* from the perspective of normative jurisprudence partially or from the perspective of general criminal law. There have not been many studies that integrate the sociological approach of foreign service workers with the analysis of *contemporary maqashid al-shari'ah*, especially related to the principles of honor protection (*hifz al-'irdh*) and protection of offspring (*hifz al-nasl*) in the context of family law in Indonesia.

This study aims to critically examine the legal status of nikah *mut'ah* among foreign service workers, analyze its positive legal implications in Indonesia, and offer alternative solutions that are more dignified and in accordance with humanitarian and sharia values. The main contribution of this research is to offer a new synthesis between the *maqashid al-shari'ah* approach, the protection of women's and children's rights, and family resilience policies for workers in the modern employment sector.

## Literature Review

The debate on the validity of nikah *mut'ah* continues to evolve discourse in contemporary Islamic legal literature, which brings together normative legal approaches and modern socio-legal studies. In the literature of the Ahlussunnah wal Jamaah madhhab, the ability to nikah *mut'ah* in the early days of Islam is considered to have been permanently erased (*nasakb*) based on the authentic hadith narrated by Imam Muslim from Sabrah bin Ma'bad.<sup>14</sup> The majority of scholars, including the Hanafi, Maliki, Shafi'i, and Hanbali schools, agree that time restrictions in marriage undermine the essence of the contract and violate the essential purpose of a lasting marriage bond.<sup>15</sup> On the other hand, the literature that examines the perspective of the Shia Imamiyah school argues that the postulates of the ability to nikah *mut'ah*

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<sup>13</sup> Arief Budiman Adlin dan Akhmad Husaini, "Strategi Mengatasi Dampak Digiseksual Terhadap Keharmonisan Keluarga Muslim Di Era Society 5.0 Perspektif Maqashid Syariah," *CENDEKIA: Jurnal Ilmu Pengetahuan* 5, no. 3 (2025): 1118–11127.

<sup>14</sup> Mohamad Thooyib Madani, "Kontroversi Nikah Mut'ah," *Kabilab: Journal of Social Community* 1, no. 2 (2016): 409–14.

<sup>15</sup> Syaiful Bahri, "Makna Perkawinan dalam Bingkai Maqasid al-Syari'ah," *Al-Hukama': The Indonesian Journal of Islamic Family Law* 5, no. 2 (2015): 487–93, <https://doi.org/10.15642/al-hukama.2015.5.2.487-503>.

remain valid and do not experience *nasakh*, and are positioned as an instrument of legal flexibility to respond to social dynamics and prevent adultery in urban society.<sup>16</sup>

In the context of positive law and social studies in Indonesia, studies on the practice of marriage outside the state register show serious legal implications for the protection of women and children. Research conducted by Rozi (2025) emphasizes that unregistered marriages do not give birth to legal consequences as stipulated in Law Number 1 of 1974 concerning Marriage.<sup>17</sup> This is strengthened by the study of Aditya and Hasbillah (2025), which highlights the vulnerability of the status of children resulting from mut'ah marriages due to the absence of civil protection from the state.<sup>18</sup>

Furthermore, psychological and sociological studies show that the separation of migrant workers from their families for a long duration triggers emotional and psychological vulnerability.<sup>19</sup> This condition is exacerbated by a lack of social control and pressure from the work environment, which makes migrant workers vulnerable to abusing religious teachings to legalize transactional relationships.<sup>20</sup> Although the above studies have discussed nikah mut'ah from a normative perspective, there is a significant research *gap*. Most of the literature only separates the study of classical jurisprudence and the partial positive legal consequences without looking at the root of the problem of the sociology of labor.<sup>21</sup> Therefore, this study critically bridges this gap by combining the vulnerability of *transient labor* and *maqashid al-shari'ah analysis*.

## Theoretical Framework

To examine the phenomenon of nikah mut'ah among *foreign service workers*, this study uses two main analytical frameworks that are narrated in depth.

### 1. *Maqashid Al-Shari'ah* Approach (Imam Al-Syatibi)

This approach focuses on the five basic principles of human welfare (*al-daruriyyat al-khams*). In the context of foreign service workers, the practice of nikah mut'ah violates two very basic important pillars. First, the principle of maintaining

<sup>16</sup> Arif Nursihah, "Nikah Mut'ah Perspektif Shi'ah," *Jurnal Tajdid* 15, no. 2 (2016): 130–40.

<sup>17</sup> Zulfiqar Bhisma Putra Rozi, "Pemidanaan Terhadap Pelaku Kawin Mut'ah (Kawin Kontrak) Perspektif Hukum Islam," *Rewang Rencang: Jurnal Hukum Lex Generalis* 6, no. 6 (2025): 18–22, <https://doi.org/10.55606/jurrish.v4i4.6476>.

<sup>18</sup> Muhamad Rizki Aditya dan Ahmad 'Ubaydi Hasbillah, "Implikasi Hukum Terhadap Anak Hasil Perkawinan Mut'ah: Perspektif Hukum Islam Dan Hukum Positif Di Indonesia," *Kampus Akademik Publishing: Jurnal Ilmiah Penelitian Mahasiswa* 2, no. 4 (2025): 876–80.

<sup>19</sup> Ririn Mayasari, "Differences in Loneliness and Subjective Well-Being Levels in Individuals Living Far From Family Reviewed Through Pet Ownership," *Psychoborneo: Scientific Journal of Psychology* 6, no. 1 (2018): 25–28, <https://doi.org/10.30872/psikoborneo.v6i1.4523>.

<sup>20</sup> La Ode Aan Sanjaya, Jamaluddin Hos, dan Ratna Supiyah, "Kontrol Sosial Masyarakat Terhadap Maraknya Seks Bebas Di Kalangan Pelajar," *Neo Societal* 3, no. 2 (2018): 442–45.

<sup>21</sup> Arief Budiman Adlin dan Akhmad Husaini, "Strategi Mengatasi Dampak Digiseksual Terhadap Keharmonisan Keluarga Muslim di Era Society 5.0 Perspektif Maqashid Syariah," *Cendekia: Jurnal Ilmu Pengetahuan* 5, no. 3 (2025): 1118–22.

honor (*hifz al-'irdh*), where this practice is considered to degrade the dignity of women because the relationship formed is transactional and temporary, not to build a sacred and lasting bond.<sup>22</sup> Second, the principle of safeguarding offspring (*hifz al-nasl*), where marriage limited by time does not provide certainty of fate and proper protection for offspring or children born.<sup>23</sup>

## 2. Legal Subjectivity Theory

This theory is used to analyze the recognition of legal subjects in the face of Indonesia's positive legal system. Based on Indonesia's positive legal framework, a marriage is not only seen from the validity of the procession according to religion, but must also meet material and formal requirements based on Article 1 and Article 2 of Law Number 1 of 1974 concerning Marriage. Legal subjects such as husbands, wives, and children are only recognized by the state if the marriage is legally registered. Therefore, the practice of nikah mut'ah that is temporary and unrecorded will alienate the legal subject from his civil rights.

## Research Methods

This study uses a socio-legal approach that combines normative-doctrinal analysis and an empirical-sociological approach to examine the practice of nikah mut'ah among foreign service workers.<sup>24</sup> This approach was chosen to look not only at the legality aspects of religious texts and legislation, but also at the work of the law in the social reality of society, especially related to the dynamics of labor mobility and the protection of human rights.<sup>25</sup>

The data used in this study is sourced from primary data and secondary data. Primary data was obtained through relevant case studies and field findings regarding the practice of nikah mut'ah in the Puncak Bogor area as well as cases involving public figures.<sup>26</sup> Based on the findings of the case, this practice is often carried out secretly by involving intermediaries or brokers, and is driven by economic factors and the vulnerability conditions of workers.<sup>27</sup>

Meanwhile, secondary data consists of primary, secondary, and tertiary legal materials. Primary legal materials include Law Number 1 of 1974 concerning

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<sup>22</sup> Syaiful Bahri, "Makna Perkawinan dalam Bingkai Maqasid al-Syari'ah."

<sup>23</sup> Muhamad Rizki Aditya dan Ahmad 'Ubaydi Hasbillah, "Implikasi Hukum Terhadap Anak Hasil Perkawinan Mut'ah."

<sup>24</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2017), 35–42.

<sup>25</sup> Zulfiqar Bhisma Putra Rozi, "Pemidanaan Terhadap Pelaku Kawin Mut'ah (Kawin Kontrak) Perspektif Hukum Islam," *Rewang Rencang: Jurnal Hukum Lex Generalis* 6, no. 6 (2025): 18–22, <https://doi.org/10.55606/jurrih.v4i4.6476>.

<sup>26</sup> Siti Sarah Maripah, "Fenomena Kawin Kontrak Di Kawasan Puncak Bogor," *Sosietas: Jurnal Pendidikan Sosiologi* 6, no. 2 (2016): 1–12, <https://doi.org/10.17509/sosietas.v6i2.4239>.

<sup>27</sup> Zulfiqar Bhisma Putra Rozi, "Pemidanaan Terhadap Pelaku Kawin Mut'ah (Kawin Kontrak) Perspektif Hukum Islam," 20–22.

Marriage and the Compilation of Islamic Law (KHI).<sup>28</sup> Secondary legal materials include classical and contemporary jurisprudence literature, articles from reputable scientific journals, and various literature on the social vulnerability of transient labor.<sup>29</sup> The tertiary legal materials include legal encyclopedias, language dictionaries, and supporting scientific articles.

Data collection techniques are carried out through library *research* and documentation, namely by tracing and reviewing literature and legal documents relevant to the subject matter.<sup>30</sup> All collected data were then analyzed using descriptive-analytical methods with comparative and philosophical approaches.<sup>31</sup> A comparative approach is used to compare the views of the Ahlussunnah wal Jamaah and Shia madhhab regarding nikah mut'ah.<sup>32</sup> Meanwhile, a philosophical and analytical approach is used to dissect the implications of the application of positive legal norms in Indonesia on the protection of women and children based on the perspective of *maqasid al-shari'ah*, especially the pillars of hereditary protection (*hifz al-nasl*) and honor protection (*hifz al-'irdh*).<sup>33</sup>

## Result and Discussion

### A. Conceptual Repositioning of Mut'ah Marriage: From Classical Fiqh Discourse to Contemporary Legal Problems

Nikah mut'ah in classical jurisprudence literature is often placed as a khilāfiyyah issue between Sunni and Shia madhhabs. However, such a purely normative approach becomes inadequate when this practice re-emerges in the context of modern society, especially in the midst of the dynamics of labor mobility. In this context, nikah mut'ah is no longer just a theological debate, but has transformed into a contemporary legal problem that is multidimensional: normative, social, and structural.

Historically, the ability to nikah mut'ah in the early days of Islam was understood as a form of *rukhsah* (dispensation) under certain conditions, such as war

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<sup>28</sup> Lukmanul Hakim, "Perkawinan Mut'ah: Pandangan Islam dalam Ketatanegaraan Indonesia," *Manajerial: Journal Manajemen Pendidikan Islam* 1, no. 1 (2022): 1–8, <https://doi.org/10.70143/manajerial.v1i1.80>.

<sup>29</sup> Rinin Mayasari, "Perbedaan Tingkat Kesepian dan Kesejahteraan Subjektif Pada Individu yang Tinggal Jauh Dari Keluarga Ditinjau Melalui Kepemilikan Hewan Peliharaan," *Psikoborneo: Jurnal Ilmiah Psikologi* 6, no. 1 (2018): 25–28, <https://doi.org/10.30872/psikoborneo.v6i1.4523>.

<sup>30</sup> Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020), 45–50.

<sup>31</sup> Muhaimin, 60–65.

<sup>32</sup> Agus Supriadi Robiah, Irfan Bakti, dan M. Maulidiyan Syah, "Hukum Nikah Mut'ah: Analisis Pemikiran Juhur Ulama dan Syiah Imamiyah," *Simpati: Jurnal Penelitian Pendidikan dan Bahasa* 1, no. 4 (2023): 185–90, <https://doi.org/10.59024/simpativ1i4.472>.

<sup>33</sup> Syaiful Bahri, "Makna Perkawinan dalam Bingkai Maqasid al-Syari'ah," *Al-Hukama': The Indonesian Journal of Islamic Family Law* 5, no. 2 (2015): 487–93, <https://doi.org/10.15642/al-hukama.2015.5.2.487-503>.

situations or the high mobility of the companions.<sup>34</sup> However, the majority of Ahlussunnah scholars affirm that this ability has been permanently removed (*nasakh mu'abbad*) through sahih hadith.<sup>35</sup> Within the framework of the fiqh proposal, this abolition shows that Islamic law is dynamic but remains oriented towards long-term social stability.

The problem is that in contemporary discourse, some of the practice of nikah mut'ah has actually been reduced to an instrument for the legalization of temporary sexual relations. This shows an epistemological degradation of the concept of the marriage contract itself. From the perspective of Islamic legal theory, a marriage contract is not just a contract (*'aqd mu'āwāḍah*), but also contains the dimensions of worship (*ta'abbud*) and morality (*akblaq*).<sup>36</sup> Therefore, the limitation of time in the marriage contract is not only a technical issue, but touches the ontological core of the institution of marriage.

Recent literature reinforces this criticism. The study of Aulia and Azizah (2025) shows that the practice of contract marriage in Indonesia often operates in a gray space between legality and morality, and even tends to be a form of *legal disguise* against covert prostitution.<sup>37</sup> In this framework, nikah mut'ah can no longer be understood as an alternative to sharia, but rather as a distortion of the principles of Islamic family law.

Furthermore, if analyzed using *the legal pluralism approach*, the practice of nikah mut'ah reflects the clash between three legal systems at once, namely normative Islamic law (fiqh), state law (*positive law*), and social norms of society. When these three systems are not aligned, there is a so-called *normative dissonance*, which is the tension between the norms that are believed in and the practices that are practiced.<sup>38</sup> In the context of foreign service workers, these tensions are often resolved pragmatically through nikah mut'ah.

Thus, an important argument that needs to be emphasized is: nikah mut'ah in the contemporary context can no longer be positioned as a difference of sect alone, but must be read as a problem of modern family law that has implications for the protection of human rights, especially women and children.

## **B. Maqāṣid al-Syarī'ah's Critique of Nikah Mut'ah: From Normative Legitimacy to Substantive Delegitimization**

<sup>34</sup> Wahbah al-Zuhayli, *al-Fiqh al-Islami wa Adillatuhu* (Damascus: Dar al-Fikr, 1985).

<sup>35</sup> Muslim ibn al-Hajjaj, *Ṣaḥīḥ Muslim*, Kitab al-Nikah.

<sup>36</sup> Ibn 'Ābidīn, *Radd al-Muḥtār 'ala al-Durr al-Mukhtār* (Beirut: Dar al-Fikr).

<sup>37</sup> Putri Aulia dan Anisa Fitriani Azizah, "Hukum Islam dan Fenomena Pernikahan Kontrak Antara Legalitas dan Moralitas," *Judge* 6, no. 2 (2025): 77–91, <https://doi.org/10.54209/judge.v6i02.1325>.

<sup>38</sup> Sally Engle Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (1988): 869–96.

The approach of maqāṣid al-syarī'ah provides a more substantial framework of analysis than the textual approach alone. In this perspective, the validity of a legal practice is determined not only by literal evidence, but also by its conformity with the purpose of the Shari'ah (*maqāṣid*).

### 1. Dysfunction of Hifz al-'Ird (Honor Protection)

In the structure of maqāṣid, the protection of honor (*hifz al-'ird*) is closely related to the dignity of human beings, especially women. Nikah mut'ah, in its empirical practice in Indonesia, shows a strong tendency as an unequal transactional relationship. This relationship is unequal because men have full control over the duration and sustainability of the relationship and women are in a position of economic and social vulnerability.

In contemporary Islamic legal literature, this condition is categorized as a form of gendered vulnerability, which is a vulnerability based on power relations.<sup>39</sup> This is contrary to the principles of justice (*'adl*) and reciprocity (*mu'āsyarah bi al-ma'ruf*) in marriage.

Even sharper, if analyzed using Jasser Auda's version of maqāṣid approach (systems approach), nikah mut'ah fails to meet the principles, first, *holistic system* (because it only focuses on biological aspects), second, purposefulness (not leading to family sustainability), and third, justice orientation (causing inequality in relationships).<sup>40</sup> Thus, maqāṣid, nikah mut'ah undergoes substantive delegitimization, even though it once had historical legitimacy.

### 2. Disruption of Hifz al-Nasl (Protection of Descent)

The principle of *hifz al-nasl* is not only related to the birth of a child, but also includes: certainty of nasab, family stability and protection of children's rights. In the practice of nikah mut'ah, all aspects are in a problematic condition. Children born from temporary relationships have the potential to experience uncertainty of legal status, especially in a legal system that requires marriage registration.

Aditya and Hasbillah's (2025) research shows that children from undocumented marriages experience vulnerabilities in access to civil rights, including inheritance and legal recognition.<sup>41</sup> In the perspective of maqāṣid, this condition is a clear form of *mafsadah* (damage). Furthermore, if associated with *the theory of intergenerational justice*, nikah mut'ah not only has an impact on the perpetrator, but

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<sup>39</sup> Arief Budiman Adlin dan Akhmad Husaini, "Strategi Mengatasi Dampak Digiseksual...", *Cendekia* 5, no. 3 (2025).

<sup>40</sup> Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008).

<sup>41</sup> Muhamad Rizki Aditya dan Ahmad Ubaydi Hasbillah, "Implikasi Hukum Terhadap Anak Hasil Perkawinan Mut'ah," 2025.

also creates injustice across generations. Children are the ones who bear the consequences of an unstable relationship.

### **3. Reduction of the Meaning of Marriage: From Mitsāqan Ghalīzan to a Temporary Contract**

The Qur'an refers to marriage as *mitsāqan ghalīzan* (a very strong covenant). This concept affirms that marriage has spiritual, social and legal dimensions. Nikah mut'ah reduces this concept to a short-term contract oriented towards the fulfillment of momentary needs. In the perspective of modern contract theory, this kind of relationship is closer to a *temporary intimate contract*, rather than a family institution. As a result, there is a commodification of human relations, where the relationship between husband and wife is reduced to a time- and reward-based transaction. In the legal sociology literature, this phenomenon is often referred to as *the commodification of intimacy*.<sup>42</sup>

Based on the above analysis, it can be affirmed that first, in maqāṣid, nikah mut'ah is not only partially problematic, but also has systemic failure. Second, this practice does not fulfill the basic purpose of sharia, and even produces mafsadah that is greater than its benefits. Third, therefore, in the contemporary context, nikah mut'ah must be positioned not as merely a "khilafiyah", but as a practice that is not substantively legitimate within the framework of modern Islamic law.

### **C. Nikah Mut'ah and the Crisis of Legal Subjectivity in Indonesia's Positive Legal System**

In Indonesia's positive legal perspective, the existence of a legal relationship is determined not only by the normative legitimacy of religion, but also by the formal recognition of the state. In this context, nikah mut'ah presents a fundamental problem in the form of a crisis of legal subjectivity, namely the non-recognition of the parties as legitimate legal subjects in the national legal system. This is because the practice of nikah mut'ah in general does not meet the administrative provisions in the form of marriage registration as stipulated in Law Number 1 of 1974 and the Compilation of Islamic Law.

The non-fulfillment of these formal aspects has implications for the occurrence of legal *exclusion*, which is a condition in which individuals factually undergo social relations as husband and wife, but judicially do not obtain legal recognition and protection. In modern legal theory, legal subjectivity is a construction given by the legal system through the recognition of legitimate relationships.<sup>43</sup> Thus, nikah mut'ah places the perpetrator in a liminal space between legality and illegality, which ultimately creates legal uncertainty.

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<sup>42</sup> Eva Illouz, *Consuming the Romantic Utopia* (Berkeley: University of California Press, 1997).

<sup>43</sup> Hans Kelsen, *Pure Theory of Law* (Berkeley: University of California Press, 1967).

This condition has a significant impact on women who are involved in the practice of nikah mut'ah. Without legal recognition, women do not have the right to alimony, legal protection, or social security as wives.<sup>44</sup> From a gender justice perspective, this situation reflects structural inequalities that reinforce women's subordinate positions in social relations. Contemporary family law literature shows that unregistered marriages are one of the main factors of women's vulnerability, especially in terms of legal protection and access to justice.<sup>45</sup>

Furthermore, children born from a mut'ah marriage relationship face more complex legal issues. Based on Article 43 paragraph (1) of the Marriage Law, children born out of wedlock only have a civil relationship with their mother and mother's family. This results in the loss of the child's right to paternal recognition, inheritance, and broader legal protection. From a human rights perspective, this is contrary to the principle of the best interests of the child, which emphasizes that every child has the right to protection and recognition without discrimination.<sup>46</sup>

Thus, nikah mut'ah not only poses normative problems, but also creates structural injustices that are cross-generational. Children are the ones who bear the consequences of unstable and unrecognized legal relationships. Within the framework of maqāṣid al-shari'ah, this condition is clearly contrary to the principle of *ḥifẓ al-nasl* (protection of offspring), which demands certainty of nasab and protection of children's rights.<sup>47</sup>

On the other hand, the phenomenon of nikah mut'ah also shows the fragmentation between normative Islamic law and state law. Some perpetrators use religious legitimacy to justify practices that are legally illegal by the state. From the perspective of legal pluralism, this condition reflects the failure of integration between formal legal systems and socio-religious norms, thus creating a grey legal space that is vulnerable to abuse.<sup>48</sup> In this space, law loses its regulatory power, while religious norms are instrumentalized for pragmatic interests.

#### **D. Vulnerability of Foreign Service Workers and Rationalization of Mut'ah Marriage in a Socio-Legal Perspective**

The practice of nikah mut'ah among foreign service workers cannot be comprehensively understood without considering the social context that surrounds it. High labor mobility, separation from family for a long time, and psychological pressure in the form of loneliness and biological needs are the main factors that drive the emergence of this practice.

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<sup>44</sup> Ahmad Supiannor dan Anwar Hafidzi, "Pernikahan Dalam Perspektif Hukum Positif dan Fikih Syafi'i," *Jurnal Riset Rumpun Ilmu Sosial* 4, no. 4 (2025): 233–36.

<sup>45</sup> Musawah Global Movement, "Child Marriage and Unregistered Marriages," (2020).

<sup>46</sup> United Nations, *Convention on the Rights of the Child* (1989).

<sup>47</sup> Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008).

<sup>48</sup> Sally Engle Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (1988): 869–96.

From the perspective of legal sociology, this condition can be explained through the concept of social dislocation, which is the disconnection of individuals from the social structure that usually functions as a mechanism of moral control.<sup>49</sup> When individuals are outside of a stable social environment, the norms that bind behavior become weakened. As a result, individuals tend to seek alternatives that are perceived to be able to meet biological and emotional needs without having to explicitly violate norms. In this context, nikah mut'ah is often perceived as a "safer" solution than adultery, although it is still problematic substantively.

This phenomenon shows the existence of religious rationalization of the practice of nikah mut'ah. The perpetrator does not see this practice as a violation, but rather as a form of compromise between biological needs and religious norms. However, in the analysis of Islamic law, this rationalization reflects a mistake in understanding the method of establishing law (*istinbāt al-ḥ ukm*), because it ignores the dimension of maqāṣid al-syarī'ah which emphasizes the purpose and wisdom behind a law.<sup>50</sup>

Furthermore, the practice of nikah mut'ah cannot be separated from economic factors. Women who engage in this practice are often in economically vulnerable conditions, so they accept these relationships as a form of survival strategy. From a political economy perspective, this condition shows the existence of an unequal power relationship, where men as the party with economic resources hold control over the relationship. This situation has the potential to lead to a form of covert exploitation that substantively approaches the legalized practice of prostitution through religious narratives.<sup>51</sup>

Within the framework of *the moral economy*, individuals often adjust moral norms to the practical needs at hand.<sup>52</sup> Nikah mut'ah then becomes a form of compromise between moral demands and social reality. However, this compromise is pseudo-because it does not solve the root of the problem, but instead expands the space for injustice, especially for women and children. The social impact of this practice is also very significant. Temporary relationships do not provide emotional or social stability, so they have the potential to cause psychological trauma, especially for women who are left after the contract period ends. In addition, this practice also contributes to the weakening of the family institution as a basic social unit in society. In the long run, this condition can disrupt the social order and moral values that are the foundation of social life.

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<sup>49</sup> Émile Durkheim, *The Division of Labor in Society* (New York: Free Press).

<sup>50</sup> Wahbah al-Zuhayli, *al-Fiqh al-Islami wa Adillatuhu* (Damascus: Dar al-Fikr, 1985).

<sup>51</sup> Putri Aulia dan Anisa Fitriani Azizah, "Hukum Islam dan Fenomena Pernikahan Kontrak Antara Legalitas dan Moralitas," *Judge* 6, no. 2 (2025): 77–91, <https://doi.org/10.54209/judge.v6i02.1325>.

<sup>52</sup> E.P. Thompson, "The Moral Economy of the English Crowd," *Past & Present* (1971).

Thus, nikah mut'ah in the context of foreign service workers is not just an individual moral issue, but a reflection of the structural vulnerabilities produced by modern socio-economic dynamics. Therefore, the solution approach is not enough only through normative prohibition, but must involve structural interventions that are able to address the root of the problem, including economic, social, and institutional aspects.

### **E. Legal and Policy Reconstruction: An Integrative Approach between Maqāṣid al-Syarī'ah and State Protection**

The issue of nikah mut'ah among foreign service workers shows that a purely normative legal approach is no longer adequate to answer the complexity of modern social problems. The prohibition of fiqh and positive legal provisions have indeed confirmed the invalidity of the practice, but empirical reality shows that nikah mut'ah still takes place in secret in various regions. This condition indicates a gap between legal norms (*law in the books*) and social practices (*law in action*).<sup>53</sup> Therefore, it is necessary to reconstruct a legal approach that not only emphasizes the prohibitive aspect, but also presents structural solutions oriented towards human protection and strengthening family resilience.

In the perspective of contemporary maqāṣid al-syarī'ah, law is understood not only as a set of legal-formal rules, but as an instrument for realizing human benefits (*jalb al-maṣāliḥ*) and preventing harm (*dar' al-mafāsīd*).<sup>54</sup> This approach requires the state not to stop at the prohibition of nikah mut'ah, but also to address the social factors behind its emergence, such as the social isolation of migrant workers, weak spiritual formation, and women's economic vulnerability. Thus, the legal orientation must move from a repressive approach to a preventive and rehabilitative approach.

In the context of foreign service workers, the state has a constitutional responsibility to ensure the protection of family institutions as affirmed in Article 28B paragraph (1) of the 1945 Constitution which states that everyone has the right to form a family and continue offspring through legal marriage. However, this protection is not enough to be realized through marriage regulations alone. The state must also present social policies that support the sustainability of the family life of migrant workers and field workers who live far from their spouses for a long time.

From the perspective of *family resilience theory*, family resilience is not only determined by the personal relationship between husband and wife, but is also influenced by structural support from the work environment and the state.<sup>55</sup> Therefore, companies and government institutions that employ foreign service

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<sup>53</sup> Roscoe Pound, *Law in Action and Law in Books* (New York: American Law Review, 1910), pp. 12-18.

<sup>54</sup> Abu Ishaq al-Syatibi, *al-Muwafaqat fi Usul al-Shari'ah* (Beirut: Dar al-Kutub al-'Ilmiyyah), pp. 8-10.

<sup>55</sup> Froma Walsh, *Strengthening Family Resilience* (New York: Guilford Press, 2016), pp. 45-52.

workers need to provide policies that support the psychological and emotional stability of workers, such as periodic leave, family communication facilities, psychological counseling services, and spiritual coaching on a regular basis. This kind of policy is important to reduce social vulnerability which is often the entrance to the practice of nikah mut'ah.

In addition, strengthening legal literacy and religious literacy is also an important part of policy reconstruction. The phenomenon of nikah mut'ah shows that some people still understand Islamic law textually and partially without considering the main purpose of sharia. In the perspective of maqāṣid, an understanding of law that is only oriented towards formal legality without paying attention to the dimension of substantive justice has the potential to produce legal distortions.<sup>56</sup> Therefore, religious education must be directed at strengthening family values, moral responsibility, and the protection of human dignity, not just a literal discussion of halal-haram.

Legal reconstruction also needs to be directed at strengthening the protection of women and children as the most vulnerable groups in the practice of nikah mut'ah. So far, the legal system has placed women as the parties who bear the social and economic consequences of unrecorded relationships. From a human rights perspective, these conditions indicate the state's failure to meet the principles of non-discrimination and protection of vulnerable groups.<sup>57</sup> Oleh karena itu, pendekatan hukum keluarga Islam di Indonesia perlu dikembangkan ke arah yang lebih responsif terhadap isu perlindungan perempuan dan anak melalui integrasi antara nilai-nilai syariah dan prinsip HAM modern.

Dalam kerangka hukum Islam kontemporer, integrasi tersebut sesungguhnya memiliki legitimasi epistemologis yang kuat. Jasser Auda menegaskan bahwa maqāṣid al-syarī'ah harus dipahami secara multidimensional dan kontekstual, sehingga hukum Islam mampu merespons perubahan sosial modern tanpa kehilangan substansi moralnya.<sup>58</sup> With this approach, the prohibition of nikah mut'ah is no longer understood only as a matter of normative texts, but as an effort to protect human honor, family stability, and social justice.

Furthermore, the practice of nikah mut'ah among foreign service workers shows that the main problem is not only biological needs, but also the crisis of social relations in modern society. High labor mobility has created a new form of alienation (*modern alienation*) that has an impact on the weakening of family institutions.<sup>59</sup> In such situations, religion is often used as an instrument of legitimacy to solve social

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<sup>56</sup> Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London: International Institute of Islamic Thought, 2008), pp. 21–39.

<sup>57</sup> United Nations, *Convention on the Elimination of All Forms of Discrimination Against Women* (New York: United Nations, 1979), pp. 4–6.

<sup>58</sup> Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, pp. 245–52.

<sup>59</sup> Anthony Giddens, *Modernity and Self-Identity: Self and Society in the Late Modern Age* (Stanford: Stanford University Press, 1991), pp. 172–79.

problems that should be a shared responsibility between the state, society, and work institutions. Therefore, the settlement of the practice of nikah mut'ah must be carried out through an interdisciplinary approach that integrates law, sociology, psychology, and public policy.

Thus, the legal reconstruction of nikah mut'ah is not enough only through strengthening the norms of prohibition, but must be directed towards the development of a more comprehensive social protection system. The approach of maqāṣid al-syarī'ah provides a strong theoretical basis for shifting the legal orientation from mere legality to substantive protection of humanity. In this context, the state functions not only as a regulator, but also as a social actor responsible for maintaining human dignity and the sustainability of family institutions in the midst of the dynamics of modern society.

## **6. Model of Solutions and Strengthening Family Resilience in the Perspective of Contemporary Islamic Law**

The phenomenon of nikah mut'ah among foreign service workers demands the birth of a model of solution that does not stop at moralistic approaches and normative punishment. Such an approach has proven ineffective because it fails to touch the root of the structural problem. Therefore, a more comprehensive solution model is needed by placing family resilience at the center of legal and social policies.

In the perspective of contemporary Islamic law, the family is seen as a fundamental institution in maintaining the social and moral stability of society. The concept of the family in Islam functions not only as a biological space, but also as a space for moral education, psychological protection, and the formation of social identity.<sup>60</sup> Therefore, any form of practice that reduces the meaning of the family to a temporary relationship is contrary to the great purpose of sharia in building a civilized society.

Strengthening family resilience for foreign service workers must start from a more humane labor policy reform. The state and companies need to view workers not merely as instruments of economic production, but as individuals with emotional, spiritual, and social needs. In this context, overly exploitative work policies that separate workers from their families for long periods of time indirectly contribute to social vulnerability.<sup>61</sup> Therefore, the provision of family leave, communication flexibility, and psychosocial support are important parts of prevention strategies.

In addition, a community-based approach also needs to be strengthened. A healthy social environment has an important function as a mechanism for moral

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<sup>60</sup> Wahbah al-Zuhayli, *al-Fiqh al-Islami wa Adillatuhu*, vol. 7 (Damascus: Dar al-Fikr, 1985), pp. 29–35.

<sup>61</sup> Guy Standing, *The Precariat: The New Dangerous Class* (London: Bloomsbury Academic, 2011), pp. 10–24.

control and emotional support. In Durkheim's sociological theory, the weakening of social solidarity can give birth to a condition of anomie, which is a situation when individuals lose their grip on norms in their lives.<sup>62</sup> In the context of migrant workers, the anomie condition often arises due to social isolation and weak community supervision. Therefore, the establishment of religious communities and moral development forums in the work environment can be one of the effective preventive measures.

On the other hand, religious education also needs to be reoriented from a legalistic approach to an ethical approach and *maqāṣid*. So far, some people understand the law of marriage only within the framework of the validity of the contract, without understanding the dimensions of social and moral responsibility contained in it. In fact, the essence of marriage in Islam is the creation of relationships based on *sakinah*, *mawaddah*, and *rahmah*.<sup>63</sup> When marriage is reduced to a temporary contract to meet biological needs, the value of the sanctity of marriage is degraded.

Furthermore, the state also needs to strengthen the legal protection system for women and children victims of unregistered marriages. So far, women have often been the most disadvantaged parties because they have lost legal protection and experienced social stigma after the relationship ended. Children born of these relationships also face identity problems and civil rights protection. In the perspective of *maqāṣid al-shari'ah*, this condition is clearly contrary to the principles of the protection of honor (*hifz al-'ird*) and the protection of offspring (*hifz al-nasl*).<sup>64</sup> Therefore, Islamic family law reform in Indonesia needs to be directed at strengthening substantive protection for vulnerable groups.

In the end, the phenomenon of *nikah mut'ah* among foreign service workers shows that the problem of modern family law cannot be solved only with a textual approach to classical jurisprudence. A more contextual, integrative, and human-oriented approach to Islamic law is needed. The approach of *maqāṣid al-shari'ah* provides room to build legal formulations that are more responsive to the challenges of modern society without losing the basic principles of sharia. Thus, the solution to the practice of *nikah mut'ah* must be directed at strengthening family institutions, protecting the rights of women and children, and building a more just and dignified social system.

## Conclusion

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<sup>62</sup> Émile Durkheim, *Suicide: A Study in Sociology*, trans. John A. Spaulding and George Simpson (New York: Free Press, 1951), pp. 241–58.

<sup>63</sup> Abdi Samra Chaniago, "Memaknai Mitsaqan Ghalizha sebagai Kunci Harmoni Keluarga Islam," *Landraad: Jurnal Syariah & Hukum Bisnis* 2, no. 2 (2023): 181–96, <https://doi.org/10.59342/jl.v2i2.409>.

<sup>64</sup> Abu Ishaq al-Syatibi, *al-Muwafaqat fi Usul al-Shari'ah*, vol. 2, 20–25.

The phenomenon of nikah mut'ah among foreign service workers shows that the practice of temporary marriage can no longer be understood solely as a classical fiqh debate between Sunni and Shia sects, but has developed into a contemporary family law problem that is closely related to social dynamics, economic vulnerability, and the protection of human rights. High labor mobility, separation from family for a long time, psychological pressure, and weak social control are factors that encourage the emergence of rationalization of the practice of nikah mut'ah as an alternative to fulfilling biological and emotional needs. However, this practice essentially shows a distortion of the main purpose of marriage in Islam.

In the perspective of Islamic law, the majority of Ahlussunnah scholars affirm that nikah mut'ah has been abolished (*nasakh*) and no longer has legal legitimacy. An analysis based on *maqāṣid al-shari'ah* shows that the practice of nikah mut'ah is contrary to the principles of honor protection (*hifz al-'ird*) and the protection of offspring (*hifz al-nasl*), because the relationship established is temporary, transactional, and does not guarantee the continuity of the family institution. This practice also has the potential to reduce women to the object of contractual relationships and create legal uncertainty for children born from these relationships.

From the perspective of positive Indonesian law, nikah mut'ah does not meet the requirements for the validity of marriage because it is not in accordance with the principle of eternal marriage as stipulated in Law Number 1 of 1974 and the Compilation of Islamic Law. As a result, the practice does not cause legal consequences and creates a crisis of legal subjectivity for women and children. Women lose legal protection as wives, while children have the potential to experience problems with recognition of their *nasab*, inheritance, and other civil rights. This condition shows that nikah mut'ah not only raises normative problems, but also gives birth to structural injustices that are social and cross-generational.

This study emphasizes that the settlement of the practice of nikah mut'ah is not enough to be carried out through a prohibitive and moralistic approach alone. An integrative approach is needed that combines Islamic law, state protection, and social policies based on family resilience. The approach of *maqāṣid al-syarī'ah* provides a relevant theoretical foundation for directing Islamic law on the protection of human dignity, social justice, and the welfare of the family. Therefore, strengthening family resilience policies for foreign service workers, increasing religious literacy oriented towards *maqāṣid*, and legal protection of women and children are important steps in preventing the development of the practice of nikah mut'ah in the midst of the dynamics of modern society.

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