

A Critical Analysis of Sayyid Husain al-Thabâthabâ'i's Thoughts on *Mut'ah* Marriage in the Book of *Tafsîr al-Mizân*

Liky Faizal^{1*}, Abd. Qohar², Ali Abdul Wakhid³, Hilmi Yusron Rofi'i⁴

Abstract: This article discusses Sayyid Husain al-Thabâthabâ'i's thoughts on *mut'ah* marriage (contract marriage) in his book *Tafsîr al-Mizân*. The aim is to gain a broader understanding that can be used as material in preparing better legislative regulations. This research is descriptive library research, using secondary data sources in the form of primary and secondary legal materials. The results of the study show that according to al-Thabâthabâ'i, *mut'ah* marriage is a legal marriage, as explained in *Tafsîr al-Mizân*, where the word *istamtâ'tum* refers to the term *mut'ah* marriage. However, the MUI fatwa states that the *mut'ah* contract is not a valid marriage and is contrary to the laws and regulations in Indonesia. The MUI considers *mut'ah* marriage to be something that does not follow Sharia principles. Therefore, to prohibit the practice of *mut'ah* marriage in Indonesia, it is recommended that there be changes to Article 2 of Law Number 1 of 1974 concerning Marriage to read: "A valid marriage is the marriage carried out following religion and is registered in accordance to statutory regulations."

Keywords: *Mut'ah* Marriage, Sayyid Husain al-Thabâthabâ'i, *Tafsîr al-Mizân*

Abstrak: Artikel ini membahas pemikiran Sayyid Husain al-Thabâthabâ'i tentang nikah *mut'ah* dalam kitab *Tafsîr al-Mizân*. Tujuannya untuk mendapatkan pemahaman yang lebih luas yang dapat dijadikan bahan dalam menyusun suatu aturan perundang-undangan yang lebih baik. Penelitian ini merupakan penelitian kepustakaan (*library research*) yang bersifat deskriptif, dengan menggunakan sumber data sekunder berupa bahan hukum primer dan bahan hukum sekunder. Hasil penelitian menunjukkan bahwa menurut al-Thabâthabâ'i, nikah *mut'ah* adalah pernikahan yang sah, sebagaimana dijelaskan dalam *Tafsîr al-Mizân*, di mana kata *istamtâ'tum* merujuk pada istilah nikah *mut'ah*. Namun, fatwa MUI menyatakan bahwa akad *mut'ah* bukan akad nikah yang sah dan bertentangan dengan peraturan perundang-undangan yang berlaku di Indonesia. MUI menganggap nikah *mut'ah* sebagai sesuatu yang tidak sesuai dengan prinsip syariat di Indonesia. Oleh karena itu, untuk melarang praktik nikah *mut'ah* di Indonesia, disarankan adanya perubahan pada Pasal 2 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan menjadi: "Perkawinan yang sah adalah yang dilaksanakan sesuai dengan agama masing-masing dan dicatatkan sesuai dengan peraturan perundang-undangan".

Kata kunci: nikah *mut'ah*, Sayyid Husain al-Thabâthabâ'i, *Tafsîr al-Mizân*

*Corresponding Author

^{1,2,3,4}Universitas Islam Negeri Raden Intan Lampung

E-mail: ¹likyfaizal@gmail.com, ²abdul.qohar@radenintan.ac.id, ³aliabdulwakhid@radenintan.ac.id,

⁴hilmiyusron.rofiie@gmail.com

Introduction

Islam divides marriage law into two types.¹ The first is *daim* marriage which is a type of marriage that is common among Muslims and is considered valid. The second is *mut'ah* marriage (a temporary marriage by contract) which is considered *harâm* (strictly forbidden) and invalid by the majority of Muslims, especially Sunnites,² but is carried out and accepted as a valid and *halâl* (allowed) marriage by some Muslims, especially in the Shia Imâmîyah school of thought.³

For Indonesian Muslims, a valid marriage is as formulated in the Compilation of Islamic Law (KHI) Article 4 which reads “A marriage is valid if it is carried out according to Islamic law”,⁴ and Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage which states that a valid marriage is if it is carried out according to the laws of each religion and belief”.⁵ Based on this provision, every valid marriage according to Islamic law will be understood, believed in, and practiced by Muslims including Indonesian Muslims.⁶

One of the issues related to marriage in Indonesia is the rampant practice known as contract marriage. This type of marriage can be equated with *mut'ah* marriage because it has a time limit.⁷ According

¹ Elkhairati Elkhairati, ‘Pembatasan Usia Perkawinan (Tinjauan Undang-Undang dan *Maqâshid Asy-Syari'ah*)’, *Al-Istinbath: Jurnal Hukum Islam*, 3.1 (2018): 87–106; See also Gandi Liyorba Indra, M. Yasin Al Arif, and Abdul Qodir Zaelani. “The Ideal Age For Marriage in The Compilation of Islamic Law (KHI) and Psychology.” *Al-'Adalah*, 20.1 (2023): 1-18.

² Subhan Subhan, ‘Dialektika Sunni dan Syiah Melacak Argumentasi Hukum Nikah Mut'ah’, *AT-TURAS: Jurnal Studi Keislaman*, 5.1 (2018): 1–20; See also Fithriah Wardi, “مشروعية نكاح المتعة عند الامامية الاثني عشرية وموقف المذاهب الاسلامية منها”. *Malaysia Journal Syariah & Law* 7.2 (2019): 51-63.

³ Mustafa Sa'id al-Khin, *Asr al-Ikhtilâf Fi al-Qawâid al-Ushuliyah Fi Ikhtilâf al-Fuqahâ'* (Bayrût: Muassasat al-Risalat, 1981), pp. 23-26.

⁴ Edi Gunawan, ‘Pembaruan Hukum Islam dalam Kompilasi Hukum Islam’, *HUNAF: Jurnal Studia Islamika*, 12.2 (2015): 281–305.

⁵ Pemerintah Republik Indonesia, *Undang-Undang R.I Nomor 1 Tahun 1974 Tentang Perkawinan dan Kompilasi Hukum Islam* (Bandung: Citra Umbara 2012), pp. 1-2.

⁶ Agus Hermanto, “Rekonstruksi Konsep Hak dan Kewajiban Suami Isteri dalam Perundang-undangan Perkawinan Indonesia.” *Justicia Islamica* 15.1. (2018): 49–86.

⁷ Abd Qohar and others, ‘Mut'ah Marriage Law in Perspective of Sayyid Husain al-Thaba'thaba'î and Their Relevance with Family Law in Indonesia’, *al-Istinbath: Jurnal Hukum Islam*, 7.1 (2022): 223–240.

to information obtained from printed and electronic mass media, contract marriage has been widely practiced by some people in several regions, especially in tourist destinations in Indonesia, such as Cisarua Bogor, Cianjur Regency of West Java province,⁸ Jepara Regency, Central Java,⁹ Kalisat Village, Rembang District, Pasuruan Regency, East Java,¹⁰ and Singkawang, Bengkayang Regency, West Kalimantan.¹¹

For Sunnite and Shi'ite scholars, the practice of *mut'ah* marriage has advantages and disadvantages.¹² Both are normatively based on the Qur'an, Sunnah, the views of the companions, and logic.¹³ However, based on the Qur'an, authentic hadith, and common sense, most Sunnite scholars believe that *mut'ah* marriage is prohibited. This is because, in Sunnite beliefs, marriage is eternal and does not recognize a time limit.¹⁴ Meanwhile, according to Shi'ite scholars, including Sayyid Husain al-Thabâthabâ'i,¹⁵ *mut'ah* marriage has a legal basis, namely Surah al-Nisa verse 24 as has been stated by previous scholars from the *Ahlul Bait 'alaihissalam*, as well as commentators from the companions and tabi'in such as Ibn Abbas, Ibn Mas'ud, Ubay bin Ka'ab, Qatada, Mujahid, Sa'di, Ibn Jubair, al-Hasan, and others.¹⁶

⁸ Edi Wahyono, 'Terperangkap Kawin Kontrak di Puncak', 2021 <<https://news.detik.com/x/detail/intermeso/20210620/Terperangkap-Kawin-Kontrak-di-Puncak/>>.

⁹ Andi Ahmad S, 'Bukan Hanya Memenuhi Syahwat, Kawin Kontrak di Jepara Juga Dilakukan Demi Bisnis', 2021 <<https://bogor.suara.com/read/2021/06/21/082333/bukan-hanya-memenuhi-syahwat-kawin-kontrak-di-jepara-juga-dilakukan-demi-bisnis>>.

¹⁰ Andi Ahmad S, 'Bukan Hanya Memenuhi Syahwat, Kawin Kontrak di Jepara Juga Dilakukan Demi Bisnis', 2021.

¹¹ Antara News, 'Tidak Semua Kawin Kontrak Negatif', 2010 <<https://www.antaranews.com/berita/211549/tidak-semua-kawin-kontrak-negatif>>.

¹² Muhammad Roy Purwanto, 'Different Qiraat and Its Implication in Different Opinion of Islamic Jurisprudence', *Al-Mawarid*, 8.2 (2013): 5-7.

¹³ Muhammad Roy dan Jauhari Purwanto, *Perubahan Fatwa Hukum dalam Pandangan Ibn Qayyim al-Jauziyyah* Universitas Islam Indonesia (2017): 19-22; See also Asrul Hamid, and Dedisyah Putra. "The Existence of New Direction in Islamic Law Reform Based on The Construction of Ibnu Qayyim Al-Jauziyah's Thought." *JURIS Jurnal Ilmiah Syariah*, 20.2 (2021): 247-257.

¹⁴ Muhammad Ibrahim Jannati, *Fiqh Perbandingan Lima Madhab* (Jakarta: Cahaya 2007), pp. 476-477.

¹⁵ Thabathabâ'i, *al-Mizân Fi Tafsîr al-Qurân*, IV (Bayrût: Muassasah al-Islâm, 1991), pp. 576-577.

¹⁶ Mahmud Syaltut, *al-Fatawâ, Dirâh Li Musykilah al-Muslim al-Mu'âshir Fi al-Hayah al-Yaumiyah al-Âmmah* (Mishr: Dâr el-Shorouq, 2004), pp. 467-468.

In Indonesia, the majority of Sunnite scholars, which was later strengthened by the MUI Fatwa Decree Number Kep-B-679/MUI/XI/1997 concerning *mut'ah* marriage, believe that *mut'ah* marriage is *harâm* by presenting various arguments, both in the form of *naqly* arguments (textual arguments) and *'aqly* arguments (logical arguments). Specifically for *naqly* evidence, the evidence that prohibits *mut'ah* marriage that is often put forward by the majority of scholars includes QS. al-Mu'minun 5-6 as follows:

وَالَّذِينَ هُمْ لِأَفْئِدَتِهِمْ أَحْفَظُونَ إِلَّا عَلَىٰ أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ
فَإِنَّهُمْ غَيْرُ مَلُومِينَ

*“And those who guard their private parts, except for their wives or the slaves they own. So, in this case, they are truly blameless.”*¹⁷

The pros and contras of *mut'ah* marriage have attracted the attention of several intellectuals and encouraged them to conduct studies from various approaches and perspectives. Among them is: research conducted by Mulyanti et al., which studies the Contextual Interpretation of the Hadith of *Mut'ah* Marriage.¹⁸ There is also another study from the Postgraduate Doctoral Program of UIN-North Sumatra conducted by Pangeran Harahap studying the problem of contract marriage in Indonesia from the perspective of legal problems and solutions. His research concluded that if the validity of a marriage is only based on Law No. 1 of 1974, then every marriage carried out with Islamic law guidelines is considered valid. Therefore, it is necessary to rearrange the rules regarding this so that there is clarity in determining the validity of a marriage.¹⁹

On the other hand, Mardjudo, who conducted research on temporary marriage from the perspective of the Indonesian Ulema Council (MUI)

¹⁷ Ibnu Munzir, *Lisân al-'Arab* (Bayrût: Dâr al-Ahya'û al-Turast al-'Araby, 2013), pp. 12-13; Departemen Agama RI, *Al-Qur'an dan Terjemahannya* (Bandung: Diponegoro, 2015), pp. 23-24

¹⁸ Cermi City Mulyanti and Tias Febtiana Sari, 'Interpretasi Kontekstual Hadis Nikah Mut'ah: Studi Kasus Kawin Kontrak di Indonesia', *Al-Tadabbur: Jurnal Ilmu al-Qur'an dan Tafsir*, 6.02 (2021): 375–384.

¹⁹ Harahap Pangeran, 'Kawin Kontrak di Indonesia (Problema Hukum dan Solusinya)' Pascasarjana UIN-SU, 2011), pp. 45-46.

and the Compilation of Islamic Law (KHI), strengthened the opinion of the Indonesian Ulema Council which stated that temporary marriage violates the Compilation of Islamic Law and Law Number 1 of 1974. In addition, temporary marriage also harms women and children born from this marriage model and causes dissatisfaction in society, especially among parents.²⁰ Other researchers on the same topic are RR Dewi Anggraeni and Muhammad Affan Gofar who studied the Contractual Marriage from the perspective of National Law and Islamic Law and its legal consequences. Their research concluded that the wife is at risk of her marital status in the form of the marriage not being recognized by the state but only obtaining social and economic status. Furthermore, in terms of guardianship and property, children from a temporary marriage are not entitled to their father's inheritance and the father also has no rights to the child because the mother has all the rights.²¹

The non-recognition of the marriage by the state, according to the conclusion of Ibnu Fiyan Afifi's research, has resulted in both parties being unable to file a lawsuit regarding the marriage, including the issue of children and joint property. Children resulting from a contractual marriage are considered unrecognized and illegitimate children so they only have a civil relationship with their mother and do not have a reciprocal inheritance relationship with their father.²² This is one of the additional legal consequences for children based on Article 42, 43 Paragraph 1 concerning the status of children.²³ Similar to this conclusion, Ahmad Basyir's research concludes that ambiguity

²⁰ Abd. Basyir Mardjudo, 'Nikah Mut'ah dalam Perspektif Majelis Ulama Indonesia dan Kompilasi Hukum Islam' (Univeritas Islam Negeri Alauddin Makassar, 2012), pp. 42-43.

²¹ RR Dewi Anggraeni dan Muhammad Affan Gofar, 'Perspektif Kawin Kontrak dalam Hukum Nasional dan Hukum Islam Beserta Akibat Hukum yang Ditimbulkannya', *MIZAN: Journal of Islamic Law*, 3.2 (2019): 227-228.

²² Ibnu Fiyan Afifi, 'Tinjauan Yuridis Mengenai Kawin Kontrak Serta Akibat Hukumnya Terhadap Istri Dan Anaknya', *UNNES Law Journal*, 3.1 (2014): 22-23.

²³ Ardian Arista Wardana, 'Pengakuan Anak di Luar Nikah: Tinjauan Yuridis Tentang Status Anak di Luar Nikah', *Jurnal Jurisprudence*, 6.2 (2017): 160-65; Compare Hasbi Umar, Husin Bafadhal, and Ika Rusmayanti. "Kedudukan Hukum Anak Lahir Diluar Nikah dari Hubungan Sedarah (Incest) Menurut Hukum Islam dan Hukum Positif." *Adbki: Journal of Islamic Family Law*, 4.1 (2022): 35-45.

regarding the status of children from marriage can be detrimental to their social growth.²⁴ Meanwhile, Faizal Lukman's research states that *mut'ah* marriage can complicate the arrangement of inheritance rights and responsibilities in the family due to the non-permanent marital status.²⁵

Moreover, Yuliana Jamaluddin, in her research reviewing Nuzuli al-Jabiri's view on *mut'ah* marriage, explains that in his position as a mediator between Sunnites and Shi'ites, al-Jâbiri believes that *mut'ah* marriage can be accepted in several circumstances, especially in emergencies. Unfortunately, his interpretive argument still has many weaknesses, especially in how the emergency idea is explained. In addition, the sources, methodology, and validity of his interpretation are still widely questionable.²⁶

On the other hand, Muhammad Muhajir's research tries to answer the question about "*mut'ah* marriage" and explains the reasons behind the Shiite al-Thabâthabâ'i fiqh which permits the marriage. Thus, Muhammad Muhajir appears as a supporter of the Shiite school of law in its interpretation.²⁷

This work is different from previous works because he critically analyzes Sayyid Husain al-Thabâthabâ'i's thoughts on *mut'ah* marriage from the perspective of the Indonesian Ulema Council (MUI). The results of this study are very relevant to the needs of Indonesian marriage legislation, especially in answering the polemic about contract marriage (*mut'ah* marriage).

²⁴ Ahmad Basyir, "Nikah Mut'ah dalam Perspektif Hukum Islam," *Jurnal al-Istinbat*, 8.2 (2020): 78-91.

²⁵ Faizal Luqman, "The Practice of Mut'ah in Indonesia: Legal and Social Challenges," *Jurnal JIL*, 1.1 (2021): 15-30.

²⁶ Yuliana Jamaluddin, 'Nikah Mut'ah Perspektif Tafsir Nuzuli al-Jabiri', *al-Wajid*, 1.1 (2020): 3-4.

²⁷ Muhammad Muhajir, 'The Views of Contemporer Mut'ah Marriage Among Yogyakarta Shi'ite Leaders', *Dialog*, 44.2 (2021): 219-220.

Research Methods

This research is included in the category of library research,^{28,29} which uses descriptive analysis and a statute approach. The main sources of this study are the Qur'an, Hadith, the 1945 Constitution, Law Number 1 of 1974 concerning Marriage, Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI), and the Book of *Tafsîr al-Mizân* by al-Thabâthabâ'i. Data analysis in this study uses a deductive reasoning process and is then assessed qualitatively. The analysis of this study is based on the theoretical perspective of Gustav Redbruch on the purpose of law.

Results and Discussion

Mut'ah Marriage

The word *mut'ah* in Arabic comes from the word *amatta'a* or *istamta'a* which etymologically means pleasure and satisfaction.³⁰ Terminologically, *mut'ah* marriage is a bond between a man and a woman for a predetermined period of time and with a predetermined wage.³¹ The scholars of the Shia Imâmiyah school define *mut'ah* marriage as a contract that binds a couple to marry for a certain period of time with certain provisions.³² *Tafsîr al-Mizân* by al-Tabâthabâ'i explains *mut'ah* marriage as one type of valid marriage based on reference to the word "enjoy" in the Qur'an, Surah al-Nisa, verse 24.³³ Al-Tabâthabâ'i further emphasizes that *mut'ah* marriage has a significant spiritual component in addition to being a physical bond.³⁴

²⁸ Hans Wehr, *A Dictionary of Modern Written Arabic*, (Otto Harrassowitz Verlag, 1979), pp. 890-891.

²⁹ Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif Dan R&D* (Bandung: Alfabeta, 2016), pp. 10-11.

³⁰ Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif Dan R&D* (Bandung: Alfabeta, 2016), pp. 10-11.

³¹ Yusuf Qardhawi, 'Halal Haram Dalam Islam' (Solo: Era Intermedia, 2003), pp. 269-270.

³² Baiq Maedani Sulistiani, 'Perkawinan Suku Sasak Antara Menak (Bangsawan) Dengan Jajar Karang (Orang Biasa) Perspektif Maqashid Syariah Di Lombok Tengah' Universitas Pesantren Tinggi Darul'Ulum (2022): 11-12.

³³ Husain Thabâthabâ'i, *Tafsîr al-Mizân*, 1 (Teheran: Alhoda, 1996), pp. 456-457.

³⁴ Muhammad al-Ghazali, *Fiqh al-Nikah* (Jakarta: Gema Insani Press, 1999), pp. 45-46.

Meanwhile, one of the purposes of making marriage lawful is to protect against adultery.³⁵ This purpose can be achieved through marriage, whether permanent or temporary.³⁶ Meanwhile, the purpose of *mut'ah* marriage in theory is to provide a way for men and women to satisfy their desires for pleasures and other things.³⁷

In the beginning of Islam, *mut'ah* marriage was indeed a marriage that was permitted based on the revelation of Allah SWT in Surah al-Nisa: 24. In addition, the Prophet also allowed it for a certain period of time. The question that arises now is whether this ability is valid only for a certain time or forever. This is where the controversy occurs.

The majority of Sunnite Ulama' believe that the permissibility of *mut'ah* marriage has been abrogated and is no longer permitted.³⁸ They quoted a hadith stating that the Messenger of Allah prohibited *mut'ah* marriage after the Khaibar War. This hadith was narrated by 'Umar bin Khattâb and is found in several hadith sources.³⁹ Imam Nawawi and Ibn Qudâmah also underlined in their writings that *mut'ah* marriage is *harâm* (strictly forbidden) to maintain the integrity and dignity of marriage in Islam.⁴⁰ On the other hand, according to the Shia Imâmiah (Ja'fariyah school of thought), no hadith negates the halalness of *mut'ah* marriage. Therefore, the marriage is considered still *halâl* (permissible). This opinion is different from the opinion of the four Sunnite schools of thought (*madzhab*) which prohibit it because this provision has been removed. Moreover, Indonesian clerics, who are mostly Sunnite, also forbid the marriage. The prohibition on *mut'ah* marriage was confirmed

³⁵ Ja'far Subhani, *Yang Hangat dan Kontroversial dalam Fiqih*. Trans, Irwan Kurniawan (Jakarta: Lentera Basritama, 1999), pp. 103-104.

³⁶ Asmal May, 'Kontroversi Status Hukum Nikah Mut'ah (Analisis Terhadap Pendapat Para Ulama)', *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum*, 46.1 (2012): 6-7.

³⁷ N. Haider, "Temporary Marriages in Islamic Law," *Journal of Islamic Studies*, 15.1 (2021): 13-29.

³⁸ Zanariah Noor, "'Isteri Sementara': Perselisihan Pendapat Ulama Mengenai Nikah Mut'ah dalam Mazhab Sunni dan Syiah', *Jurnal Fiqh*, 11 (2014): 141-74.

³⁹ Abu Hurairah, *Sahih Muslim*, Hadis No. 1406 (Bayrût: Dâr al-Kutub al-Ilmiyyah, 2005), pp. 256-257.

⁴⁰ Imam Nawawi, *Syarah Sahih Muslim*, Vol. 9 (Bayrût: Dâr al-Kutub al-Ilmiyyah, 1997), pp. 179-180.

through the MUI fatwa no. Kep-B-679/MUI/XI/1997 which stated that *mut'ah* marriage is contrary to social norms and applicable laws.⁴¹

Sayyid Husain al-Thabâthabâ'i's Thoughts on *Mut'ah* Marriage

Sayyid Muhammad Husain al-Tabâthabâ'i was born on 29 Zulhijjah 1321 H/1892 M, in Tabriz. His full name is Muhammad bin Husayn bin al-Sayyid Muhammad bin Husayn al-Mizra al-Asghar Shaykh al-Islâmi al-Thabâthabâ'i al-Tabrizi al-Qâdhi. The name al-Thabâthabâ'i is believed to have been given by his grandfather, Ibrahim al-Thabâthabâ'i bin Ismail al-Dibaj. In Arabic, Persian, and other Islamic languages, the honorific title "Allâmah" means "very learned".⁴² However, the nickname Sayyid, specifically used in Persia, indicates that he is a descendant of the Prophet.⁴³

Allâmah al-Tabâthabâ'i was born into a family of intellectuals and descendants of the Prophet Muhammad, which has produced prominent scholars for fourteen generations. When he was five years old, his mother died, and four years later, his father died. Since then, by a guardian (manager of their parents' inheritance), al-Tabâthabâ'i and her sister were entrusted to a male servant and a female servant to take care of their daily lives.⁴⁴

Furthermore, as previously stated, al-Tabâthabâ'i believes that *mut'ah* marriages are permissible. He based his opinion on Surah an-Nisa verse 24 and the Prophet's approval in the early days of Islam.

وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ كَتَبَ اللَّهُ عَلَيْكُمْ وَإِجْلَ
لَكُمْ مَا وَرَاءَ ذَلِكَ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ مُحْصِنِينَ غَيْرَ مُسْفِحِينَ فَمَا

⁴¹ MUI, *Fatwa Majelis Ulama Indonesia No. Kep-B-679/MUI/XI/1997* (Jakarta: MUI, 1997), pp. 5-6.

⁴² Thabathaba'i, *Al-Mizân Fi Tafsir Al-Quran*, IV, (Bayrût: Muassasah al-Islam, 1991), pp. 480-481.

⁴³ Thabathaba'i, *Al-Mizân Fi Tafsir Al-Quran*, IV

⁴⁴ Thabathaba'i, *Inilah Islam, Upaya Memahami Seluruh Konsep Islam Secara Mudah* (Jakarta: Pustaka Hidayah, 1992), pp. 17-18.

اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَاتُوهُنَّ اُجُورَهُنَّ فَرِيضَةً وَلَا جُنَاحَ عَلَيْكُمْ فِيَمَا
تَرَاضَيْتُمْ بِهِ مِنْ بَعْدِ الْفَرِيضَةِ اِنَّ اللّٰهَ كَانَ عَلِيْمًا حَكِيْمًا

“And (it is also forbidden for you to marry) married women, except for the slaves you own (Allah has established this law) as His decree for you. And it is permissible for you other than that (namely) to seek wives with your wealth to marry, not to commit adultery. So the wives whom you have enjoyed (interfered with) among them, give them their dowries (perfectly), as an obligation; and there is nothing for you in what you have given up for each other, after determining the dowry, surely Allah is All-Knowing, All-Wise.»⁴⁵

This verse, among the Sunnite and Shi'ite groups, is recognized as related to the law of *mut'ah* marriage.⁴⁶ They also agree that *mut'ah* marriage is a marriage that was previously permitted based on the letter of an-Nisa verse 24 and its *asbâb al-nuzûl* (cause of revelation).⁴⁷ However, the two groups have different interpretations and different opinions on the issue of whether *mut'ah* marriage is still permitted or has been prohibited.⁴⁸

The previous scholars, namely the interpreters from among the companions and Tabi'in, including Ibn Abâs, Ibn Mas'ûd, Ubay bin Ka'âb, Qatâdah, Mujâhid, Saddy, Ibn Jubair, al-Hasan, and others, including the imams of Ahlul Bait, have agreed on the permissibility of this marriage.⁴⁹

According to al-Thabâthabâ'i in his tafsir book, what is meant by the word *اسْتَمْتَعْتُمْ* is for the term *nikah mut'ah* and this is not in doubt.⁵⁰ Surat al-Nisa' verse 24 which contains this Madaniyyah passage

⁴⁵ RI, *Al-Qura'an dan Terjemahannya*.

⁴⁶ Ayatullah Abul Qasim Gourji, 'Nikah Mut'ah dalam Pandangan Syi'ah', *Musâwa Jurnal Studi Gender dan Islam*, 1.2 (2002): 118-119.

⁴⁷ Muhammad Muhajir and Muhammad Fadli Kamil, 'The Views of Contemporer Mut'ah Marriage among Yogyakarta Shi'ite Leaders: Pandangan Tokoh Syiah Yogyakarta Tentang Nikah Mut'ah dan Implementasinya di Era Kontemporer', *Dialog*, 44.2 (2021): 216-219.

⁴⁸ Machasin Machasin, 'Nikah Mut'ah: Kajian Atas Argumentasi Syi'ah', *Musâwa Jurnal Studi Gender dan Islam*, 1.2 (2002): 39-55.

⁴⁹ Thabathaba'i, *al-Mizân Fi Tafsîr al-Qurân*.

⁵⁰ Thabathaba'i, *al-Mizân Fi Tafsîr al-Qurân*.

was revealed after the Prophet Muhammad SAW migrated from Mecca to Medina⁵¹ There is no doubt that this *mut'ah* marriage occurred and was carried out by the companions at that time as evidenced by other passages. The fact that this marriage is known as *mut'ah* marriage and occurred among the companions of the Prophet SAW is proven by the many stories that describe this incident. The name “*mut'ah*” is the only way to describe the phenomenon.⁵² Allah Says:

فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً

“So the wives whom you have enjoyed (interfered with) among them, give them their dowries (perfectly), as an obligation”⁵³

According to al-Thabâthabâ'i, the dhamir (pronoun) به in this verse returns to what is indicated by the word of Allah, وَأَحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكَ which means something that is permissible. So مَا in this verse is, للتوقيت which is to determine or limit. While the word مِنْهُنَّ is *muta'alliq* (related) to the word اسْتَمْتَعْتُمْ , so it means:

فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً

“When you have enjoyed getting them, pay their dowry as an obligation”⁵⁴

Then the مَا in the phrase فَمَا اسْتَمْتَعْتُمْ allows it to be said that *maushûl* and the phrase اسْتَمْتَعْتُمْ is the *silah* of *maushûl*. While dhamir in *lafaz* به returns to مَا *maushûl* so that the meaning is:

فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً

“And the people you have enjoyed are women, so pay them as an obligation”⁵⁵

⁵¹ Raja Raja Ritonga, ‘The First Class of Women Heir Member In The Observation of Surah An-Nisa Ayat 11, 12 and 176’, *Al-Adalah: Jurnal Syariah dan Hukum Islam*, 6.1 (2021): 1–17.

⁵² Ritonga, ‘The First Class of Women Heir Member In The Observation of Surah An-Nisa Ayat 11, 12 and 176’.

⁵³ RI, *Al-Qur'ân dan Terjemahannya*.

⁵⁴ Thabathaba'i, *al-Mizân Fi Tafsi'r al-Qurân*.

⁵⁵ Thabathaba'i, *al-Mizân Fi Tafsi'r al-Qurân*.

So, according to al-Thabâthabâ'i, what is meant by the word of Allah in Surah al-Nisa: 24 is a commentary or branch of discussion of the other words of Allah preceding it because **فَ** in the word **فَمَا** as a commentary on *juzy* (branch of discussion) over *kully* (the whole) without a doubt. So, the meaning of the word Allah SWT in the verse that is like the previous one

وَاحِلًا لَكُمْ مَّا وَّرَاءَ ذٰلِكُمْ اَنْ تَبْتَغُوْا بِاَمْوَالِكُمْ حٰصِنِيْنَ غَيْرَ مُسْفِحِيْنَ

“And it is permissible for you other than that (namely) to seek wives with your wealth to marry, not to commit adultery.”

Thus, the word of Allah **فَمَا اسْتَمْتَعْتُمْ** until the end of the verse is a commentary on the *kully* or a commentary on the *kully* parts. So what is meant by this verse is for *mut'ah* marriage.⁵⁶ Therefore, He asserts, that the opinion that assumes that this verse refers to *da'im* marriage (permanent marriage) is wrong because this verse refers to *mut'ah* marriage which is marked by the obligation to respect the marriage period. This confusion, according to him, may have occurred because some of them said that the letters **س** and **ت** in **اسْتَمْتَعْتُمْ** are for *litta'kid* (affirmation) so that the meaning is you are happy or with the meaning **مُتَعَمَّتْ**. If this meaning is used as a measure of validity and the meaning of demand for the condition of **اسْتَمْتَعْتُمْ** with the meaning of **تمتعتم** then the next command that accompanies it (to give a reward) becomes odd.

Furthermore, al-Thabâthabâ'i also emphasized that what is meant by the word of Allah: **فَاتُوهُنَّ اُجُوْرَهُنَّ** (*So pay them the dowry in full*) refers to the obligation to pay the dowry because of a contract and not depending on the meaning of having fun. Because, if so, the meaning of the obligation of the dowry becomes half paid because of the contract and the other half because of *dukhu'l* (*coitus*).⁵⁷ Whereas the verses revealed previously, namely the letter al-Nisâ' [4]: 4,⁵⁸ clearly explain that giving a dowry is obligatory according to its size.

⁵⁶ Thabathaba'i, *al-Mizân Fi Tafsi'r al-Qurân*.

⁵⁷ Thabathaba'i, *al-Mizân Fi Tafsi'r al-Qurân*.

⁵⁸ Thabathaba'i, *al-Mizân Fi Tafsi'r al-Qurân*.

Al-Tabâthabâ'i rejects all opinions stating that the Surah al-Nisâ' verse 24 which is the evidence for the validity of *mut'ah* marriage has been *mansûkh* (abrogated). According to him, there is not a single verse that states that the verse is *mansûkh* as is the opinion of Sunnite scholars who state that this verse is *mansûkh* by the Surah al-Mu'minun verses 5-7 which read:

وَالَّذِينَ هُمْ لِأَعْيُنِهِمْ هَحْفِظُونَ إِلَّا عَلَىٰ أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ
فَإِنَّهُمْ غَيْرُ مَلُومِينَ فَمَنْ ابْتَغَىٰ وَرَاءَ ذَلِكَ فَأُولَٰئِكَ هُمُ الْعَادُونَ^{٥٩}

*“And those who guard their private parts, except for their wives or the slaves they own; So in fact they are not blameless in this matter. Whoever looks for what is behind it, then those are the people who go beyond the limits”.*⁵⁹

In his opinion, this verse refers to the meaning of ‘*âm* (general) both *da'im* and *mut'ah* or *munqathi* marriage”. Then the Sunnah of the Prophet has excluded one of them, namely *mut'ah* marriage, as is the case with the verse of divorce.⁶⁰

Furthermore, al-Tabâthabâ'i also emphasized that as the verse about ‘*iddah* (period of waiting) with non-*mansûkh* inheritance, so is the verse about *mut'ah* marriage with the verse of *talak* (divorce).⁶¹ This is because the relationship between the verse about divorce and the verse about *mut'ah* marriage is the relationship between ‘*âm* (general) and *khâsh* (special) or *muthlaq* (absolute) with *muqayyad* (relative) and not the relationship of *nâsikh-mansûkh* (abrogation).⁶² Al-Tabâthabâ'i also emphasized that it is completely baseless if the provision on *mut'ah* marriage can be abolished by the provision on ‘*iddah*. Because even though ‘*iddah* also exists in *mut'ah* marriage, the calculation of ‘*iddah* in *mut'ah* marriage is different from the calculation of ‘*iddah* in *da'im* marriage. This difference is only a *takhshîsh* (specialization) and not a

⁵⁹ Thabathaba'i, *al-Mizân Fi Tafîr al-Qurân*.

⁶⁰ Thabathaba'i, *al-Mizân Fi Tafîr al-Qurân*.

⁶¹ Thabathaba'i, *al-Mizân Fi Tafîr al-Qurân*.

⁶² Thabathaba'i, *al-Mizân Fi Tafîr al-Qurân*.

naskh (removal).⁶³ He also added that like *da'im* marriage, *mut'ah* marriage also functions to protect women's rights including the right to dowry and financial support during the marriage period.⁶⁴

Criticism of Sayyid Husain Thabâthabâ'i's Thoughts on *Mut'ah* Marriage and Its Implications for Marriage Law in Indonesia

According to Gustav Radbruch's theory of the purpose of law, which is the basis of the analysis in this study, every law that is passed must have at least three basic values, namely justice, certainty, and benefit. These three values are the legal principles that must be prioritized so that the law can achieve its goal.⁶⁵

Justice, both essential justice and distributive justice, according to Radbruch is the main goal of law. The law must treat everyone fairly and equally by giving each individual their due rights.⁶⁶ This concept of justice, if interpreted as distributive justice, means the distribution of rights and obligations in a balanced manner in society. Justice also involves equal treatment under the law without discrimination based on status, power, or other factors.⁶⁷

If this theory is associated with al-Tabâthabâ'i's belief in the validity of *mut'ah* marriage, then obstacles will arise in upholding justice. This is because one form of the application of justice in marriage is the upholding of the rights and obligations of men and women in a balanced manner.⁶⁸

⁶³ Thabathaba'i, *al-Mizân Fi Tafîr al-Qurân*

⁶⁴ R. Musthafa, "The Role of *Mut'ah* in Contemporary Islamic Society," *Jurnal Al-Istinbatt*, 3.1 (2020): 88-89.

⁶⁵ Gustav Radbruch, *Rechtsphilosophie*. 4th ed. (Stuttgart: Koehler, 1950), pp. 105–108; About Gustav Radbruch see Emha, Zidney Ilma Fazaada, Ana Silviana, and Musahadi Musahadi. "Waqf Land Certification Postponement for Place of Worship Due to the Obscurity of the Toll Road Expansion Project (Re-overview of Gustav Radbruch's Three Basic Legal Values Theory)." *Al-Abkam*, 32.1 (2022): 17-40.

⁶⁶ Titon Slamet Kurnia, 'Hukum dan Keadilan: Isu Bagian Hulu dan Hilir', *Refleksi Hukum: Jurnal Ilmu Hukum*, 10.1 (2016): 17–32.

⁶⁷ Titon Slamet Kurnia, 'Hukum dan Keadilan: Isu Bagian Hulu dan Hilir', *Refleksi Hukum: Jurnal Ilmu Hukum*, 10.1 (2016).

⁶⁸ Z Adhlyati and A Achmad, 'Melacak Keadilan dalam Regulasi Poligami: Kajian Filsafat Keadilan Aristoteles, Thomas Aquinas, dan John Rawls. *Undang: Jurnal Hukum*, 2.2 (2020): 409–431.

In a *da'im* (permanent) marriage, husband and wife have equal legal status and responsibilities, for example in terms of household management, joint property, inheritance,⁶⁹ including in this case the rights of children as every child born from a legitimate marriage has a relationship, both blood relations and civil relations.⁷⁰ This will be different from the situation in *mut'ah* marriage, where when the contract expires and the marriage period ends, the relationship of rights and obligations is also severed, including the responsibility of the ex-husband in terms of child support.

Furthermore, al-Tabâthabâ'i's view can also be assessed through the second principle, namely, legal certainty (*rechtssicherheit*). According to Radbruch, the main requirement of law is certainty. Legal certainty is needed to realize the ideal of equality before the law without discrimination.⁷¹ The law must be positive in the sense that it applies with full confidence and must be obeyed so that the law is truly beneficial. The law that has been passed will bind all parties and cannot be revoked,⁷² so that society will move towards order with legal certainty.⁷³

The principle of equality and the prohibition of discrimination if linked to *mut'ah* marriage as imagined by al-Tabâthabâ'i, shows that something is missing. According to Islamic law, a woman having the status of a wife has the right to maintenance, *mut'ah* maintenance, inheritance, and other benefits from her husband. But in *mut'ah* marriage, the married woman does not have the same rights as the wife in a *da'im* marriage because she is merely an object of sexual pleasure. Likewise, related to the wife's right to obtain maintenance, in a *mut'ah* marriage the husband is not required to provide maintenance because the assets given from the beginning are considered sufficient and following the

⁶⁹ Pengurus Pusat MUI, *Fatwa MUI tentang Nikah Mut'ah Nomor Kep-B-679/MUII XII/1997* (Jakarta: Pengurus Pusat MUI, 2004), pp. 1-2.

⁷⁰ Siti Nurjanah, 'Keberpihakan Hukum Islam Terhadap Perlindungan Anak', *Al-Adalah*, 14.2 (2018): 391-432.

⁷¹ Sidharta Arief, Meuwissen Tentang *Pengembangan Hukum, Ilmu Hukum, Teori Hukum dan Filsafat Hukum*, (Bandung: PT Refika Aditama, 2007), pp. 8-9.

⁷² O. Notohamidjojo, *Soal-Soal pokok Filsafat Hukum* (Salatiga: Griya Media, 2011), pp. 33-34.

⁷³ Atang Hermawan Usman, 'Kesadaran Hukum Masyarakat dan Pemerintah Sebagai Faktor Tegaknya Negara Hukum di Indonesia', *Jurnal Wawasan Yuridika*, 30.1 (2014): 26-53.

terms and conditions, the time and amount of dowry that have been agreed upon before the marriage takes place. In addition, there is also no provision that husband and wife can inherit each other or have rights to joint property. This all clearly shows discrimination against women who are married through *mut'ah*.

The above indicators are not only a form of injustice and discrimination against women married through *mut'ah* but also show the absence of the third legal principle, namely welfare. According to Radbruch's perspective, one of the requirements for realizing the purpose of the law is the existence of a welfare value. Meanwhile, in a *mut'ah* marriage, if viewed from the characteristics and legal consequences that arise, the element of welfare is almost non-existent unless the husband's biological needs are met and the wife receives compensation for it.

From several indicators above, it appears that *mut'ah* marriage not only deviates from the true purpose of marriage but also has a detrimental impact on women.⁷⁴ Therefore, the practice of *mut'ah* marriage in the context of legal objectives must be rejected because it damages the values of legal objectives, namely justice, benefit, and legal certainty.

On the other hand, the MUI firmly rejects *mut'ah* marriage and states that such a marriage contract is not a real marriage contract. This assertion is based on several reasons, including First, in *mut'ah* marriage, there is no joint property and a relationship of mutual inheritance, whereas marriage is a means to realize joint property and inheritance. Second, the marriage has a time limit whereas Islamic law stipulates that the purpose of marriage is to form a prosperous, eternal family and have children. Third, the *iddah* period of *mut'ah* marriage is different from the *'iddah* period of ordinary marriage. In addition, the MUI also views *mut'ah* marriage as outside the corridor of applicable laws and regulations, including Law Number 1 of 1974 concerning Marriage. This is because the main purpose of the practice of *mut'ah* marriage is only to fulfill biological needs/pleasure alone. This is very different, even contradictory, to the general purpose of marriage as outlined in Islamic teachings.

⁷⁴ Gustav Radbruch

Based on the facts above, *mut'ah* marriage must be rejected and cannot be implemented in Indonesia because it does not fulfill the elements of justice and contradicts the purposes and principles of marriage law in Indonesia. If *mut'ah* marriage is permitted, there will be a negative impact on the continued fate of women and children born from the marriage, wives and children will lose their right to obtain sustenance and inheritance, and their marriage will not be legally recognized. Thus, the concept of family life as stated in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law will be ignored.

Conclusion

Sayyid Husain al-Thabâthabâ'i's view on *mut'ah* marriage, as written in the Book of *Tafsîr al-Mîzân*, firmly supports the permissibility of *mut'ah* marriage. This is because, according to his perspective, marriage is indeed permitted in the Qur'an as stated in Surah al-Nisâ, verse 24. In addition, al-Thabâthabâ'i rejected the view of Sunnite scholars that this verse was abolished by Surah al-Mu'minun: 5-7 including the hadith of the prophet which forbade the practice after the battle of Khaibar. *Mut'ah* marriage, which was claimed to be permissible by Sayyid Husain al-Tabâthabâ'i, after being criticized through the legal theory of Gustav Redbruch, turned out not to fulfill the principles of law, namely justice, certainty, and benefit. Therefore, this type of marriage mode cannot be accepted and even contradicts the values of life in Indonesian Muslim society.

In this regard, so that this marriage does not gain support from the applicable legal regulations, the author recommends that Article 2 of Law Number 1 of 1974 concerning Marriage be amended to read "*A valid marriage is a marriage that is carried out according to the provisions of each religion and is recorded according to the applicable laws and regulations*". Thus, the clarity of *mut'ah* marriage prohibition in Indonesia can be realized and get support from the applicable laws and regulations.

Author Contribution

Liky Faizal is responsible for creating the concept, developing the methodology, maintaining data accuracy, and writing the Initial Draft. In addition, Abdul Qohar handles administration and financial reports. Ali Abdul Wakhid is responsible for finding sources for translation, administration, and funding. Hilmi Yusron is responsible for editing, perfecting the final manuscript, and running the article publication process.

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