

Married 'Urfi Sheikh Muhammad Ali Jum'ah's Thoughts and Their Relevance in the Modern Era

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Abstract: While marriage is an Islamic law and essentially a necessity, there are contradictions between the term and the application of marriage in society. One of them is nikah 'urfi, which is seen as invalid based on the rules of a country but is valid in the view of sharia. This article aims to reveal Muhammad 'Ali Jum'ah's thoughts on nikah 'urfi, furthermore the relevance of nikah 'urfi in the modern era. This article uses a descriptive qualitative approach and literature type by examining writings to solve a problem in a critical and in-depth manner. The approach in this article is to examine the thoughts of Muhammad 'Ali Jum'ah. The results of writing the article found that nikah 'urfi is a marriage that fulfills all the pillars and conditions, but is not recorded at the marriage registration institution. Nikah 'urfi is a marriage with complete terms and conditions, this marriage is valid and has been legalized by the Fatwa Institute of Dār al-Ifta' Egypt, through the Fatwa of Mufti Diyar of the Arab Republic of Egypt Muhammad 'Ali Jum'ah. This fatwa was issued due to the prevalence of 'urfi marriage and the high cost of marriage. Contemporary scholars differ in opinion, with some legalizing and others forbidding it in light of current conditions.

Keyword: 'Urfi Marriage, The Thought of Muhammad 'Ali Jum'ah

Abstrak: Nikah adalah merupakan syariat Islam dan pada dasarnya adalah suatu kemestian, namun terjadi kontradiktif antara istilah dan aplikasi pernikahan di tengah masyarakat. Satu di antaranya adalah nikah 'urfi yang di pandang tidak sah berdasarkan aturan suatu negara namun sah dalam pandangan syariat. Artikel ini bertujuan untuk mengungkap pemikiran Muhammad 'Ali Jum'ah tentang nikah 'urfi, lebih lanjut relevansinya nikah 'urfi di era modern. Artikel ini menggunakan pendekatan deskriptif kualitatif dan jenis kepustakaan dengan menelaah tulisan-tulisan untuk memecahkan suatu masalah dengan cara kritis dan mendalam. Pendekatan dalam artikel ini adalah menelaah pemikiran tokoh Muhammad 'Ali Jum'ah. Hasil penulisan artikel ditemukan bahwa nikah 'urfi adalah nikah yang terpenuhi semua rukun dan syarat, namun tidak tercatat di lembaga pencatatan nikah. Nikah 'urfi merupakan nikah yang lengkap syarat dan rukunnya, nikah ini sah dan telah dilegalisasi oleh Lembaga Fatwa Dār al-Ifta' Mesir, melalui Fatwa Mufti Diyar Republik Arab Mesir Muhammad 'Ali Jum'ah. Fatwa ini diterbitkan karena maraknya nikah 'urfi dan mahalnya biaya pernikahan. Ulama kontemporer berbeda pendapat, sebagian menghalalkan dan sebagian lagi mengharamkan dengan melihat kondisi yang berkembang saat ini.

Kata Kunci: Nikah 'Urfi, Pemikiran Muhammad 'Ali Jum'ah

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Article History: Received: May 15, 2023; Revised: June 01, 2023; Accepted: July 12, 2023

DOI: <https://doi.org/10.24042/smart.v2i2.14626>

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A. Introduction

Law Number 1 of 1974 concerning Marriage, as stated in Article 2 states: "Every marriage is recorded according to the applicable legislation". Basically, the validity of a marriage is considered valid according to religious law and the beliefs of its adherents. Of course, this includes marriages that are declared valid according to Islamic law, if they are in accordance with the applicable provisions in Islamic law itself. Meanwhile, marriages that are carried out outside the supervision of the Office of Religious Affairs or the Marriage Registrar Supervisory Officer (P3N), although valid under Islamic law, are considered to have no legal force according to articles 5 and 6 of the Compilation of Islamic Law (KHI).

This explains that a marriage has fulfilled the conditions and pillars of marriage, if the marriage is carried out according to the religion and beliefs of the community, but does not have legal force if it is not proven by a marriage certificate. This will have a negative impact and can harm one party from a married couple who have entered into marriage. There are various terms circulating in the community regarding the term or name of a marriage that is carried out by not being registered with the Office of Religious Affairs or the Marriage Registrar Supervisory Officer (P3N). Some are referred to as *nikah siri*, *nikah under the hand*, *lari nikah* and *nikah 'urfi*. This last term is a term used in several Arab countries such as Egypt and so on. It does not rule out the possibility that other terms also exist according to the customs and beliefs of a country or region.

The problem is that there is often a debate among ordinary people about the position of *nikah 'urfi* in Islam, whether this marriage is valid according to Islamic views or not. This is due to differences in the scholars' understanding of the *nash* that is used as evidence. For this reason, in this paper the author tries to explain some definitions and views of contemporary scholars about marriage *'urfi*.

There are several definitions of *nikah 'urfi*, including: a. *Nikah 'urfi* is a marriage that fulfills the conditions and pillars and is used for an unrecorded marriage contract; (Kamal Şaleh al-Bana, 2005, p. 6) b. *Nikah 'urfi* is a contract that takes place between a man and a woman, the conditions and pillars of marriage are fulfilled, and there are no impediments to marriage. This marriage is not documented, and does not have a marriage certificate;(Mani', n.d., p. 56) c. *Nikah 'urfi* is a marriage that is not registered but fulfills the pillars and conditions of marriage, because the marriage contract and registration are two different things;(Jum'ah, 2005, p. 325.) d. *Nikah 'urfi* is an unrecorded marriage, a marriage contract that is written on plain paper and is between the husband and wife only;(Imran, 2001, p. 17) e. *Nikah 'urfi* is a marriage that is not recorded, and is a description of an agreement between a man and a woman or a young man and a young woman who are still students, which takes place without the knowledge of the family and community, by writing on a sheet of paper the agreement or without writing anything, then hiring two witnesses, and then the two live together.

This marriage is called *nikah 'urfi* (customary marriage) because it is a custom and habit that has existed in the Muslim community since the time of the Prophet and the noble Companions, where there was no need to record the marriage contract without any contradiction from time to time..(Azmi, n.d., p. 11) Ibn Taymiyyah said: "There is no need for a *wali hakim* to give a woman in marriage,

according to the consensus of the scholars".(Taimiyah, n.d., p. 34) With regard to recording, this is not the case with contracts, because the scholars, when they defined contracts, did not include recording in them, and neither did contemporary scholars. Abdul Halim stated that marriage is a contract of mutual consent, and it is not a contract that is a problem that requires recording, because it is not required in sharee'ah, and the law does not require anything other than witnesses. Recording is only required when hearing a claim of annulment. (Asy-Syarif, n.d., p. 20)

There are several research results that are relevant to the study of this article, including research by Huzaini,(Huzaini, 2020) This research examines that it is called nikah 'urfi, because this marriage is a custom and habit that has been running in the Muslim community since the time of the Prophet SAW, where they do not need to record their marriage contract without any problems in their hearts. Another research by Khoirul Abror,(Abror, 2019) Abror's research explains that unregistered marriages are legal as long as they fulfill the conditions and pillars as in Islamic law. Furthermore, in the development of contemporary fiqh thinking, there is no need for legal dualism or dichotomy between the state and religion in terms of marriage law, everything is united in the new Indonesian fiqh. Further research by Arisman,(Arisman, 2021) This research concludes the opinion of classical scholars and MUI fatwa that the law of underhand marriage or nikah sirri or nikah 'urfi which fulfills the terms and conditions is valid according to Islamic law. The difference in attitude between Middle Eastern Ulama in Egypt and Jordan represented by Sheikh Mahmud Shalthut, Yusuf al-Qaradawi, Sheikh Ali Thanthawi, Abdul Fattah Amru and Ali Harawi with MUI as a representative of religious attitudes in Indonesia, is motivated by various sociological factors in each country. From the research as above, the research is more on the legal status of 'urfi marriage which is analyzed in Islamic law and Indonesian law. While the difference or reserach GAP of this article is to analyze Muhammad 'Ali Jum'ah's thoughts on nikah 'urfi, then want to see the extent of the relevance of nikah 'urfi in today's modern era.

B. Metode

This article uses a descriptive qualitative approach and literature type by examining writings to solve a problem in a critical and in-depth manner. The approach in this article is to examine the thoughts of Muhammad 'Ali Jum'ah, which aims to explore Muhammad 'Ali Jum'ah's thoughts related to 'urfi marriage, then analyzed by looking at the relevance of 'urfi marriage in the modern era, the approach used wants to review in terms of the legal basis of Muhammad 'Ali Jum'ah's thoughts, his history and his arguments related to 'urfi marriage.

C. Discussion

Conception of 'Urfi Marriage

Zawaj 'Urfi or Zawag 'Urf according to Egyptian dialect, which is a marriage that fulfills the conditions of marriage but is not officially recorded by government officials who handle marriages. Etymologically al-'urfu is connected to al-'Urf, in Arabic it means al-'ilm (knowing). In terminology 'Urf has different meanings according to several scholars. Abdul Wahab Khalaf: 'Urf is something that has been

recognized and practiced by the community in the habit of both words, deeds and passive forms of action (leaving).(Khalāf, 1998, p. 99)

Wahbah al-Zuhaili: 'Urf is anything that people have become accustomed to from any action that is common among them or words whose absoluteness they know have a specific meaning that is not applicable in grammar and does not cause misunderstanding.(Al-Zuhaili, 1999, p. 97.) Muḥammad Abu Zuhrah, (Zuhrah, 1998, p. 81) is something that has become a habit of the community in terms of muamalah and is sustainable in all their activities. Abdul Aziz al-Khayyaṭ: 'Urf is something that people know well, is accepted by common sense, is in accordance with good habits, and does not contradict the Shari'ah. Abdul Aziz Khayyaṭ (al-Khayyat, 1970, p. 24) adding that 'urf is a custom that applies in the life of the community; d. Muhammad al-Ruki, (al-Ruki, 1998, p. 217) It is something that people know and are accustomed to, whether it relates to words or deeds, so that it becomes common and customary; according to the Law, it is divided into two: 1). 'Urf is a previous and continuing custom, but it does not violate basic manners and sources; 2). 'Urf is something that is established by the community and must be respected.

Looking at some of the definitions above, the majority of scholars say that this marriage is in accordance with sharia because the contract occurs in accordance with the applicable pillars and conditions. Basically, there is no significant difference between legal marriage and nikah 'urfi. The difference is only between official and unofficial, because 'urfi marriage is valid in the view of Islam due to the fulfillment of all the requirements of marriage such as ijab qabul, dowry, guardian and witnesses, it's just that it is not considered official by the government because it has not been registered with the local marriage registrar so it is easy to be sued.

Abdul Fattah Amr, (Baqi, p. 199) He said: "An 'urfi marriage is easy to forge and challenge, unlike a legal marriage which is difficult to challenge". From this statement, it is natural that there is contradiction among scholars, because they look at the concept of benefit in the midst of Muslim society. However, on other occasions it is considered a solution for people who want to get married but do not have enough money to get married and provide accommodation.

Shaykh Muhammad 'Ali Jum'ah's view

The phenomenon of 'urfi marriage, which was developing in Egyptian society, required 'Ali Jum'ah to issue a fatwa aimed at providing explanation and understanding of the relevant law. As a mufti he has the capability in this regard. 'Ali Jum'ah, (jum'ah, 2005, p. 325) In his book al-Kalim aṭ-Ṭayyib FatāwāAṣriyyah, he gives a concise and concise explanation of the ruling on 'urfi marriage. The book, which summarizes his various fatwas, mentions some of his arguments in issuing a fatwa on 'urfi marriage, expressed as follows:

وصلتني رسائل كثيرة تسأل عن قضية الزواج خاصة الزواج العرفي غير الموثق عند الجهات الرسمية هل هو حلال ام حرام هل تترتب عليه آثار هل يشترط فيه الولي كيف يتم ما موقفه القانوني وموقفه في المجتمع وهل بالجملة تقدم عليه أولا تقدم وأشياء أخرى حول أنواع وصور الزواج العرفي التي شاعت وذاعت وأراد الناس أن يعلموا حكما لله فيها. ونحن نقدم مقدمة بسيطة وسهلة عما يسمى بالعقد: هناك نظرية للعقد في الاسلام تشمل عقد البيع وتشمل عقد الزواج وتشمل عقد الهبة وتشمل أي عقد: وهو أن كل عقد له أشياء داخلية في حقيقته تحقق هويته وتحقيق العقد للهوية معناه:

يترتب آثارها عليها وإذا كانت عقودا فاسدة لا أن يترتب عليه أثر العقد. كل العقود هكذا إذا كانت عقود صحيحة فإنه يترتب عليها الآثار.

[Many letters have reached me asking about the issue of marriage, especially 'urfi marriage that is not recorded in the official registry, is it lawful or unlawful? Does it have legal consequences? Is a guardian required? How is it carried out? What is its position in terms of the law? What is its position in society? Did we mention all of this or not? There are various types and forms of 'urfi marriage that have developed in the community and they want to know the ruling of Allah on this marriage. As a preliminary point, we explain what is meant by a contract: there is a view on contracts in Islam, which includes sale and purchase contracts, marriage contracts, grant contracts and any other contracts, which is that each contract has its own consequences. If the contract is valid, then it must be followed by the consequences of the contract, but if it is not valid then there are no consequences for it].

'Ali Jum'ah did not immediately answer the questions posed to him. Rather, he gave an understanding of contracts first, whether they were sale and purchase contracts, marriage contracts or other contracts. He also explained that each of the contracts mentioned in his book has its own consequences. For the marriage contract, 'Ali Jum'ah explained the consequences as follows:

عقد الزواج ماذا يترتب عليه يترتب عليه: حل الاستمتاع بين الرجل والمرأة. ويترتب عليه: أن كلا منهما يرث الآخر إذا مات أثناء العقد. ويترتب عليه: ثبوت النسب إذا حدث ولادة في هذا العقد أو أثناء هذا العقد أو بناء عليه بمعنى أنه من الممكن أن يكون الرجل قد طلق امرأة وهي حامل وعندما تلد فإن هذا الولد هو ابنه وابنها بلا شك في الشريعة الإسلامية. ويترتب عليه: وجوب النفقة على الرجل للمرأة. ويترتب عليه: أنه يحرم على الرجل أن يجتمع مع زوجته هذه التي عقد عليها أن يجتمع معها أكثر من أربعة بمعنى أن ما يكون في ذمته أربع فقط. ويترتب عليه: حرمة الجمع بين المرأة وأختها فلا يتزوج الرجل المرأة ويتزوج أختها في نفس الوقت إذا أراد أن يتزوج أختها فعليه أن يطلق الأولى ثم بعد ذلك ينتظر حتى تمضي عدتها ثم بعد ذلك يتزوج أختها أو عمتها أو خالتها فإنه يحرم أيضا الجمع بين المرأة وأختها وبن المرأة وعمتها وبن المرأة وخالتها كل هذا هو الذي يترتب على عقد الزواج الصحيح. ويترتب عليه: أن تصح المرأة مشغولة بزواج وفاتت العدة لأنه يحرم على المرأة أن تجمع بين زوجين أبدا. ولذلك يحرم عليها أن تتزوج رجلا آخر إلا إذا طلقها زوجها

[The marriage contract has the following consequences: 1. it is permissible for the husband and wife to have sexual relations; 2. one of them inherits from the other if he dies in the middle of the marriage contract; 3. there is clarity in the offspring in case of birth during the marriage contract or in the middle of the marriage contract, i.e. if the husband divorces his wife while she is pregnant, if she gives birth, then the child is his second child without any doubt according to Islamic law; 4. the husband is obliged to provide maintenance for his wife; 5. it is forbidden for the husband to have more than four wives, because he is responsible for only four of them; 6. It is forbidden for a husband to join his wife and her sister (a husband cannot marry his wife and her sister at the same time; if a husband wants to marry his wife's sister, he must divorce his first wife first, then wait until his 'iddah is over, then marry his wife's sister or his father's sister or his mother's sister). It is haraam for a wife to serve her husband's needs, and it is haraam for her to marry another man unless her husband

has divorced her and the 'iddah has ended, because it is haraam for a wife to have two husbands together forever].

From the consequences that he has mentioned, the contract also has pillars as conditions for the validity of the contract. This is explained by 'Ali Jum'ah as follows:

إذا: هناك أركان وهناك شروط تجعل هذا العقد صحيحا نستطيع أن نأخذ هذه الأركان وهذه الشروط من الآثار التي تترتب على العقد الصحيح. كل عقد للزواج أو الطلاق أو للبيع أو للشراء يتكون من ثلاثة أركان: العاقدان: ينبغي أن يكون هناك بائع ومشتري أو زوج وزوجة والعاقدان هنا ينبغي أن يتوافر- أي يشترط - في العاقد أن يكون قاصدا للزواج أي مدركا أن الذي يفعله الآن هو عقد زواج. وألا يكون مجنونا ولا صبيا صغيرا لا ينشئ مثله عقد زواج لذا ينبغي أن يكون عاقلا. وينبغي أن يكون خاليا من الموانع الشرعية فالرجل الذي يتزوج أربعاً مثلاً لا يجوز له أن يتزوج الخامسة لأن هذا حرام والعقد باطل وما يفعله فوق أربعة هو زنا - والعياذ بالله تعالى - مردود عليه ولا يترتب عليه آثار لأن الزنا هدر لأنه معصية وكبيرة من الكبائر وخبيثة من الخبائث التي يجب على المسلم أن يتره نفسه عنها. إذا العاقدان ينبغي أن يكون عاقلا هو القبول والايجاب المرأة تقول زوجتك وينبغي أن يكونا خاليين من الموانع الشرعية. الركن الثاني من اركان الزواج نفسي.

[There are pillars and conditions that make this contract valid, we can take these elements (pillars and conditions) of marriage as implications for a valid contract. All contracts, whether marriage, divorce, or buying and selling, have three pillars, namely: 1. Two parties to the contract; there should be a seller and a buyer, and a wife and a husband. In a marriage contract, the person doing the contract knows that he wants to get married, and he knows what he is doing, and he is not insane or a child, and he is not in a state where it is forbidden to get married, such as getting married for the fifth time after having four wives, because this is forbidden and the contract is null and void, and what he is doing is adultery, which is rejected and does not have any consequences, and a Muslim should avoid doing this. 2. Qabul and ijab, where the woman says: I give myself in marriage to you, and the man accepts].

After discussing the contract and its pillars, then 'Ali Jum'ah, (Jum'ah, p. 327) begins to explain the issue of guardians in marriage contracts. In this regard, he refers to several well-known and recognized madhhabs, which he explains as follows:

ومصر منذ خمسمائة سنة ومنذ الفترة العثمانية وهي تأخذ بمذهب الإمام الأعظم أبي حنيفة النعمان أبو حنيفة ومذهبه يرى أن الولي شرط كمال وليس ركنا من اركان العقد لأن الحديث يقول: بولي وشاهدي عدل. هنا الولي أصبح ركنا وهذا ما قاله الشافعي. واستدل ايضا بأن النبي صلى الله عليه وسلم جعل كل نكاح بلا ولي باطلا واستدل أبو حنيفة على عدم جعل الولي ركنا في العقد بقوله: (فلا تعضلوهن أن ينكحن) فنسب النكاح إليه. إذا: المرأة التي بلغت رشدها وهو سن ١٥ سنة عنده تمكن أن تتولى العقد بنفسها. ومن هنا يتضح لنا أن أقل ما في المذاهب الإسلامية وهو ما عند الإمام أبي حنيفة- أن أركان العقد: - العاقدان - الصيغة: وهي القبول والايجاب (تقول زوجتك نفسي فيقول قبلت). - الشاهدان: إنما هما من العدول الذين بهما يتم عقد النكاح. شهود المسلمين

[In Egypt for five hundred years and since the Ottomans adopted the madhhab of the great Imam Abu Hanifah al-Nu'man, Imam Abu Hanifah and his madhhab regarded the wali as a condition of completion only, not as a pillar of the contract, based on a hadith that says: "With a guardian and two fair witnesses." Whereas according to Imam Shafi'i, the guardian is a pillar of the contract, he relied on the hadith: "Any marriage without a guardian is void." Imam Abu Hanifah relied on the Qur'anic verse. "So do not you (the guardians) prevent them (the wives) from remarrying their future husbands, if there is consent between them in a way that is just." According to Imam Hanafi, if a woman reaches the age of 21, she can do the marriage contract herself. Therefore, the pillars of marriage according to the Hanafi school of thought are: the two people doing the marriage contract, the *ṣigat* (*Ijab-Qabul*), and two fair witnesses].

He also explained this in a Certificate in 2005, which states about the guardian as a complementary condition, as follows:

... عقد الزواج الصحيح هو ما توفرت فيه الشروط والأركان الشرعية وهي: الإيجاب والقبول والشاهدان والمهر وحضور ولي الزوجة عند جمهور الفقهاء عدم جعل الولي ركنا من أركان العقد بشرط رشاد المرأة وكفاءة الزوج وثبوت مهر المثل على الأقل فإذا تم العقد بين رجل وامرأة خالين من الموانع الشرعية مع توفر بقية الأركان والشروط فإنه يكون عقد نكاح صحيح وتترتب عليه اثاره الشرعية.

[... A valid marriage contract is one that fulfills all the conditions and pillars according to sharee'ah: *Ijab-Qabul*, two witnesses, dowry, and a guardian for the woman according to the majority of scholars. The Abu Hanifah school of thought - which is the official school of thought in Egypt on this issue - does not make the guardian one of the pillars of the marriage contract, on condition that the woman is intelligent, of the same age as her husband, and that there is a mahr, for example. If there is a marriage contract between a man and a woman with no shar'i impediments, and all the pillars and conditions are met, then the contract is valid, and there are consequences under Islamic law].

'Ali Jum'ah, (Jum'ah, Tasdiq Dar al-Ifta al-Misriyah, p. 2005) gives a fatwa on the validity of marriage without a guardian because it refers to the Abu Hanifah school of thought which says that the guardian is a complementary condition of a contract and not an absolute condition, with the argument that "Egypt has used the Abu Hanifah school of thought since five hundred years ago during the reign of the Ottoman Empire". (Jum'ah, 2005, p. 329)

This is in contrast to the Shafi'i school of thought, which is the majority school of thought in Egypt. He explains this as follows: While Imam Shafi'i made it a pillar of marriage, in a hadith it is said that: "Any marriage without a guardian is void." (Jum'ah, 2005). This opinion is supported by the Prophet's hadith, as follows: (As-Sajastānī, n.d., p. 634.)

... أيما امرأة نكحت بغير إذن موليتها فنكاحها باطل "ثلاث مرات" فإن دخل بها فالمهر لها بما أصاب منها فإن تشاجروا فالسلطان ولي من لا ولي له.

[... Any woman who marries without the permission of her guardian is invalid, invalid, and if her husband has intercourse with her, then she is entitled to her dowry. If they disagree, the ruler is the guardian of those who have no guardian].

In another hadith it is mentioned:(Muḥammad bin Yazīd Abū Abdullah al-Qazwainī, n.d., p. 605.)

وفي حديث عائشة "والسلطان ولي من لا ولي له... لا نكاح إلا بولي

[... *There is no marriage unless there is a guardian, in the Hadith of Aisha: And the ruler is the guardian of the one who does not have a guardian*].

In another hadith, it is also mentioned in a different wording but has the same meaning:(Muḥammad bin Yazīd Abū Abdullah al-Qazwainī, n.d.)

فنكاحها باطل. فإن أصابها فلها مهرها بما أصاب منها. فإن ... أيما امرأة لم ينكحها الولي فنكاحها باطل فنكاحها باطل
اشتجروا فالسلطان ولي من لا ولي له.

[... *If a woman marries without a guardian, her marriage is void; if she marries without a guardian, her marriage is void. If her husband has intercourse with her, then she is entitled to her dowry. If they disagree, the ruler is the guardian of the one who has no guardian.*].

In 'urfi marriage, in addition to problems related to the contract and guardianship, there are also problems related to the dowry of the woman to be married, whether it is included as a pillar in the contract or is a consequence of the contract. In this case 'Ali Jum'ah, combines the opinions of two major schools of thought in Egypt, namely the Shafi'i school and the Hanafi school. He explains this as follows:

وبعد ذلك هناك قضية المهر: هل المهر ركن داخل في العقد أو أنه مترتب على العقد الإمام أبو حنيفة والإمام الشافعي
يريان مترتب على العقد. إذا لولم يحدد المهر قبل العقد وعنده فالعقد صحيح حلال وبذلك تتم كل الآثار التي ذكرناها
من أنه يحرم على الرجل أن يتزوج أختها وأن يتزوج أمها أبداً أو يتزوج عليها أختها يعني إلا إذا طلقها. أما إذا عقد على
إمرأة ولها بنت فقد حرمت عليه بنتها أبداً. بنتها إذا دخل بها
أي الأمر- لأن العقد على البنات يحرم الأمهات والدخول بالأمهات يحرم البنات إلى آخر الأحكام المترتبة من أن فلانا-
قد تزوج فلانة ويأتي الأمر هنا من أنه قد سرنا عبر
القرون بهذه الصورة حتى سنة ١٣١١م.

[*The Hanafis and Shaafa'is are unanimously agreed that the dowry is a condition of the contract or an effect of the contract. If there is no restriction on the dowry before the contract and during the contract, then the contract is valid, and all the consequences of the contract apply, such as what we have mentioned above: it is haraam for the husband to marry his wife's sister, to marry her mother forever, and to marry her sister unless he has divorced her. But if the contract is with a woman who has a daughter, then it is haraam for her to marry her daughter forever if she has intercourse with her mother, because the contract with the daughter directly haraams her mother, and this is a consequence of the contract, and this has been the case for many years 1931*].(Jum'ah, 2005, p. 328.)

'Ali Jum'ah, revealed the urgency of recording marriage in an institution appointed by the government, there are several consequences that will occur if a marriage is not recorded. However, according to 'Ali Jum'ah, marriage registration is not a necessity on the grounds that marriage and marriage registration are two different dimensions. He explains this as follows:

رأي المشرع ورأي الحاكم ورأي الأمر أننا نوثق هذا الزواج حتى يسمع عند القاضي عند حدوث أي نزاع بين الرجل والمرأة لأن الذمم خربت ولأن الشهود تموت ولأن الناس لم تعد بهذا الضبط الاجتماعي الأول وأننا كنا ، مليون في عهد محمد علي أصبحنا الآن . مليون نسمة في مصر والمسلمون كلهم في أقطار الأرض كم كانوا ولكن الآن ماشاء الله مليار و ألف. إذا هذا الوضع جعل هناك عصرا جديدا ومقتضيات أخرى لقضية سماع الدعوى وسماع عقد الزواج وليس لقضية إنشاء الزواج فلا بد أن نفرق في أذهننا بين قضية إنشاء الزواج وقضية إنشاء توثيقه لأنه لو كان هناك خلو من الموانع الشرعية وامرأة قالت لرجل خال أيضا من الموانع الشرعية: زوجتك نفسي وقال قبلت أمام اثنين شهود انعقد هذا العقد شرعا. وإذا كان العقد قد انعقد شرعا فإنه لا ينقصه الا قضية التوثيق عند الحكومة وقضية التوثيق عند الحكومة تحافظ على الآثار وليست تنشئ هي ولا العقد الآثار التي تترتب على هذا العقد فلو أن امرأة تنازلت عن هذه الآثار وقالت أنا أتزوجك ولا اطلب منك نفقة ولا اطلب منك ميراثا ولا شيئا والرجل كان من الصالحن الأتقياء الذين لا يريدون أبدا أن ينكروا نسبا. فهذا العقد عقد صحيح شرعا وهذا العقد وإن لم يوثق إلا أنه تترتب عليه آثاره وينبغي علينا أن نعرف هذا لأن القول بغير هذا سيجرنا إلى مصيبة كبرى وهي أن تعتقد المرأة المتزوجة عرفا مثلا على سبيل الخطأ أنها غير متزوجة فتذهب فتتزوج رجلا آخر وتكون مصيبة في الشرع لأنها تكون قد جمعت بين رجلين. هذا الزواج الذي أسموه بالزواج العرفي زواج صحيح تترتب عليه آثاره ويجب على الرجل والمرأة أن يراعي الله في ذلك وإذا أراد الانفصال فلينفصلا ولكن المرأة والرجل لا يقدمان على هذا الزواج إلا وهما يعرفان أنهما لا يستطيعان أن يذهبا إلى المحكمة أو إلى القاضي وإلى محل النزاع بين الناس لعدم وجود الوثيقة المثبتة للزواج.

[The government encourages the registration of these marriages, so that judges will hear claims when there is a dispute between husband and wife, because it is feared that witnesses may forget, die, or the husband lies, and people today have developed rapidly, far different from the time of the Prophet. This is a new problem, and there are other problems for the response to the lawsuit and the marriage contract. According to 'Ali Jum'ah, the marriage contract and the registration are two different dimensions, because if there are no impediments to marriage, and the woman does the same by saying I give myself in marriage to you, then it is accepted by the man in the presence of two witnesses, then this contract is valid according to sharee'ah. If the marriage contract has been done in accordance with sharee'ah, then there is nothing wrong with it except that it should be registered with the government, and registration is for the purpose of safeguarding the consequences, not the marriage itself. If a woman gives up all that she has and all the consequences of the marriage contract by saying to a man, 'I am married to you and I do not ask anything from you in terms of maintenance, inheritance or anything else', then as righteous men who fear Allah, they are the ones who do not want to deny their offspring forever. The marriage contract is a valid contract, even if it is not registered and there are consequences to the contract. We should know this, so it is not permissible for a wife who is married in 'urfi to think that she is not married, then she marries another man, which would be a great calamity, because this marriage is called 'urfi marriage, which is a valid marriage and has consequences for the contract, so it is obligatory for the husband and wife to protect Allah swt in such

cases. And if they want to separate, they both know that they cannot take their divorce case to court, because there is no record of it.](Jum'ah, 2005, pp. 328–329)

The above explanation makes it very clear that a marriage does not always have to be recorded, on the grounds of the history that occurred at the time of the Prophet and was followed by the Companions and Taabi'in. 'Ali Jum'ah has a positive attitude towards anyone who wants to get married and maintain their marriage. Furthermore, according to him, this kind of marriage is what is known as *nikah 'urfi*, which occurs with the willingness of both parties to the contract, dowry and agreement to live together. He explains this as follows: This is a valid marriage according to *sharee'ah*, and although it is not recorded, it does not diminish the rights and obligations of the two parties. This is called *nikah 'urfi*, and it is a valid marriage. If they divorce midway through the marriage, they know that they cannot resolve their problems in the religious courts. (Jum'ah, 2005, p. 329.)

From the explanation of the fatwa analysis above, it can be concluded that: *'urfi* marriage, which is currently rampant in Egyptian society in general, has been legalized by the Egyptian fatwa institution known as *Dār al-Ifta' al-Miṣriyah*, through the fatwa of its mufti 'Ali Jum'ah.

Sociologically, this *'urfi* marriage arose due to the high cost of marriage in Egypt, of course, this cost problem is very complicated for some people, the emergence of the fatwa of 'Ali Jum'ah on *'urfi* marriage is a little enlightening, and makes marriage affairs easy and does not get challenges or lawsuits both government sanctions and social sanctions.

From this gap, polygamy has a place in society, polygamy is getting stronger because it also gets additional legitimacy, sociological and psychological. A wealthy old man could easily take on more wives. The tradition of imposing the cost of marriage on the groom does not benefit either party, because marriage is very difficult to materialize, and marriage at the age of thirty and above is a result of the long wait for stability.

The Relevance of 'Urfi Nikah in the Modern Era

After seeing some of the scholars' opinions on *nikah 'urfi*, a straight thread can be drawn that it must first be distinguished between marriage and registration, because these two things are different in law. A marriage will be considered valid in sharia if the pillars and conditions of marriage are fulfilled, this marriage will remain valid in Islam even without recording, because recording is not included in the pillars and conditions of a marriage.

It cannot be said that marriage without registration is invalid, if the pillars and conditions of marriage have been fulfilled, but this is the opinion of many people and also the opinion of some contemporary scholars. The debate between scholars in this regard, of course, is based on arguments aimed at the common good.(Al-Hadad, 1993, p. 59.)

Although this *'urfi* marriage is debated, this *urfi* marriage has many impacts and can even be a solution for some people, both in the marriage relationship itself and in the social community, among the impacts are: First, the impact on the husband, can be in the form of positive and negative impacts. The positive impacts include; some husbands want to protect themselves, but are unable to meet the costs of marriage; the possibility of the wife being a widow and having children; the rules that apply in society; or the husband's job which requires him to travel frequently

to several places and stay there for some time, a marriage like this cannot be officially held, so *nikah 'urfi* is the solution.

As for the negative impact on the husband, it will open up a lot of prejudice if it is not advertised, it is appropriate for the husband to avoid this, because then peace will be created for the couple in particular and the surrounding community. Second, the impact on the wife, *'urfi* marriage provides a solution for spinsters, widows, women who live alone, and women with special circumstances, It will be difficult for them to get married officially, as is the case for a young woman who wants to protect herself, but the regulations limit the age of marriage, so this *'urfi* marriage is needed at this time. A wife whose husband dies needs a pension to continue her life and that of her children, if she wants to remarry and it is done legally, then the pension will be cut off. (Syarif, n.d., p. 11) *'urfi* marriage also has a negative impact on the wife, among other things, it will be difficult to sue if there is a dispute between the two partners, because there is no record, and sometimes witnesses may forget or they are gone, when the husband just leaves her, then the wife's rights will be neglected. (Imran, 2001, p. 29)

Causing negative stigma such as adultery, the wife will bear more suffering if the husband denies this marriage. Third, the impact on society, the positive impacts include: For young people who want to get married and do not have the cost of marriage and are not bound by government regulations. Provides convenience for husbands who want to be polygamous, because Islam allows marriage to more than one wife. The negative impacts include: neglecting the rights of children and making it difficult to recognize them, not achieving the objectives of the Sharia in this marriage in some circumstances, such as love, security, tranquility, giving birth to pious offspring, if the husband's purpose of marriage is only to get pleasure. *'Urfi* marriages lead to corruption in society and are a cause of the spread of venereal diseases, because the husband likes to change his wives. (Imran, 2001, p. 166)

Of the many impacts that exist, for some people this will certainly be beneficial and the only solution. However, as a human being who carries out the mandate on this earth and uses his or her mind in a healthy way, he or she should not ignore the benefits that religion offers. For those who truly love their spouse, and value his or her existence, then it is good that registration is carried out, and also the benefits are so many, because of the changing times today, and there may be a lot of deception, although in fact there is no guarantee that a marriage will be intact and peaceful forever if the marriage is registered or not, but at least there is clarity of legal status from the state which will be used as strength if something unwanted happens, because we will definitely intersect with the government, because it will be difficult for the couple to explain their status in court.

Among the benefits of registration are: 1). Protecting rights from being wasted, whether the rights of husband and wife or the rights of children in the form of *nasab*, *nafkah*, inheritance and so on. This official record is authentic evidence that cannot be challenged to obtain these rights; 2). Resolving disputes between husband and wife or their guardians when they dispute and disagree, because it is possible that one of them will deny a right for personal gain and the other party has no evidence because the witness is gone. So with this record, it cannot be denied; 3). Notes and writings will last for a long period of time, so that even if the

signatory has passed away, the record can still be used at any time. Hence, the scholars made writing one of the ways of determining the law. 4). Marriage records will protect a marriage from an invalid marriage, because it will be examined in advance some of the conditions and pillars of marriage and its obstacles; 5). Closing the door to false confessions in court, where some people with corrupt hearts may falsely claim to have married a woman in order to bring down their opponents and defame their honor just because of the ease of a marriage with false witnesses.

In view of the above benefits of recording marriage contracts, almost all countries now make laws so that the marriages of their citizens are recorded by government-appointed officials. This law is a shar'i policy enacted by the government because it sees the benefits behind it as enormous, namely to safeguard rights and fear of denial, even though historically it is not clear that there was a marriage registry at the time of the Prophet (peace and blessings of Allaah be upon him) and the Companions; the Muslims in those days were content to perform marriages by means of a recitation and witnesses, without seeing the need to record them in an official record. The beginning of the recording of the marriage contract was when the Muslims began to postpone the dowry or part of the dowry, and the record of the postponement of the dowry was used as evidence of the marriage. Ibn Taymiyyah, (Taimiyah, Majmu Fatawa, p. 131) said: "*The Companions did not write down the dowry because they did not delay it, rather they gave it to the woman directly, and if any of them delayed it, they did so in a good way. When people delayed the dowry, even though it was a long time ago, and sometimes they forgot about it, they wrote down the delayed dowry, so that the record would be strong evidence of the dowry and that the woman was his wife.*" The meaning of delaying here is that the husband owes the dowry to the woman.

The meaning of delaying here is that the husband owes his wife for an unspecified period of time to pay the dowry. However, this happened after the time of the Prophet (peace and blessings of Allaah be upon him) and the Companions, and most of them paid their dowries in cash, even if it was a large amount. However, in recent times the dowry among the Arabs has become such a hardship that husbands find it difficult to pay it unless they owe it to their wives or pay it in installments. In fact, in the Arab world, both in Egypt and elsewhere, the marriage contract is still valid but the couple are not allowed to live together if the dowry has not been paid.

Islam is built on benefit and rejects harm. If this law were to be ignored today, there would be a great deal of harm and danger, and a great deal of strife, which would not be in accordance with our beautiful Shari'ah. If the government sees fit to legislate that marriage contracts should be recorded, then this is a valid law and it is obligatory for the people to abide by it and not break it. Allah says: [O you who believe, obey Allah and obey His Messenger, and the rulers among you].

Al-Māwardi, (AL-Mawardi, 1989, p. 30) said: "Allah obliges us to obey our leaders". There are many other proofs that oblige us to obey our leaders as long as the order is not something sinful, and in a popular fiqh rule it is said that the government's decree on the people depends on the maslahat (good)

Nevertheless, what needs to be underlined and understood is that nikah 'urfi or nikah sirri (for some people) is valid provided that all the pillars and conditions of

marriage are fulfilled, if they are not fulfilled then it is not valid. recording the marriage contract in official records is not a condition for the validity of a marriage. This means that a marriage is still valid if all the conditions have been fulfilled even if it is not recorded in a government institution. The government should accommodate a marriage instead of burdening it, and facilitate registration for those who live in remote villages, making it difficult to register their marriages. Seeing the need for marriage to be legalized by the government.

D. Conclusion

Straightening people's understanding of marriage is seen as very important, especially regarding marriages that are carried out in 'urf. So that it does not cause confusion and suspicion for the perpetrators of this 'urf marriage. In simple terms, this marriage can be said to be a marriage in which all the pillars and conditions are fulfilled, it is just that it is not recorded at the marriage registration institution and this marriage is valid. Nikah 'urf was already known in Islam before the existence of official registration as it is today, while registration is not a pillar and condition in the marriage contract. Sheikh Muhammad 'Ali Jum'ah stated that 'urf marriage is a marriage with complete conditions and pillars, this marriage is valid and has been legalized by the Egyptian fatwa institution known as Dār al-Ifta' al-Miṣriyah, through the fatwa of its mufti 'Ali Jum'ah (Grand Mufti of Egypt). The background to the birth of this fatwa is due to the widespread practice of 'urf marriage that occurs in the community due to the high cost of marriage, so with the fatwa marriage becomes easy and does not get challenges both government sanctions and social sanctions.

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