

ABSTRACT

Harmoko; Yusuf Qardhawi's Fatwa on Misyâr Marriage in terms of Positive Law and Urf under the guidance I: Dr.H.Jalaluddin, M.Hum. and II: Dr Rahmat Sholihin, M.Ag. at UIN Antasari Banjarmasin Postgraduate, (2022).

Keywords: *Misyâr* marriage, Yusuf Qardhawi, Positive Law, and *Urf*.

This study is entitled "Yusuf Qardhawi's Fatwa Regarding *Misyâr* Marriage in View of Positif Law and *Urf*." *Misyâr* marriage is a marriage in which the conditions and pillars are met, but the husband is *tana'ul* to his wife. The purpose of this study was to find out the fatwa on the permissibility of *misyâr* marriage by Yusuf Qardhawi, viewed from the perspective of Positif law that applies to Indonesian society. This research is deemed necessary, seeing that *misyâr* marriage has become a polemic among contemporary Ulama. Some Ulama agree with Yusuf Qardhawi by punishing "permissible". Some Ulama have condemned it as "haram" to do so. Some other scholars are *tawaqquf* and do not comment on the law.

Yusuf Qardhawi is a mufti in the country of Qatar who from Egypt. Many of his fatwa are related to contemporary issues, which are written in various books so that they are easy to become references. One of his books is "*Zawaj Almisyar Haqiqatuhu Wabukmubnu*" which is used as the primary legal material in the research. Yusuf Qardhawi defines *misyar* marriage that fulfills all the conditions and pillars, but the husband does not give birth to the second wife on his agreement (*tana'ul*). The existence of this *tana'ul* has become a polemic for the pros and cons.

The husband's obligation to support his wife is a consequence of the validity of a marriage contract. This has been explained explicitly in the Qur'an and hadth. In Positive law, namely the Marriage Law, it is found in Articles 30-34, in KHI Articles 80-84. According to *urf* in Indonesia, marriage is *walimah*, the husband provides for the wife, lives together, and takes care of the household together. Don't just come to provide for your wife and then leave again.

After analyzing by reviewing and reviewing existing references, and understanding according to the author's understanding, then the author concludes. There are two conclusions in the study. First, *misyâr* marriage according to positive law, the contract is valid, but the husband does not carry out the obligation to provide maintenance at birth, of polygamy does not fulfill the conditions of being capable and fair. This is certainly contrary to positive law. Second, according to *urf* *misyâr* marriage is very unusual in the general public, if it is done it is prone to slander, harming the wife and children of *misyar*, and other negative implications. The author follows the opinion of scholars who forbid this *misyâr* marriage.