



## CONTEMPORARY MARRIAGE AND SEXUAL PROBLEMS IN COMMUNITY LIFE FROM AN ISLAMIC LAW POINT OF VIEW

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### Abstrak

This paper aims to discuss contemporary problems that exist in social life. Among these problems are marriage contracts by telephone, underhanded marriages, family planning and restrictions on the number of children, marrying pregnant women due to adultery, homosexuals and lesbians, monogamy and polygamy. By conducting a literature study and a qualitative approach and descriptive analysis which previously verified the data. From data processing with this method, a finding was obtained that Muslims must be able to think rationally and critically to respond to such matters and the need to revisit solutions according to Islamic law to solve these problems. Contemporary problems are actually not far removed from the classical problems faced by the previous Ulama which have been discussed in classical books. This can still be answered by fatwas and interpretations of classical fiqh.

**Keywords:** *problems, contemporary, life, society, fiqh*

### Abstrak

*Tulisan ini bertujuan untuk membahas masalah-masalah kontemporer yang ada dalam kehidupan bermasyarakat. Diantara permasalahan tersebut yaitu akad nikah melalui telepon, pernikahan di bawah tangan, keluarga berencana dan pembatasan jumlah anak, mengawini wanita hamil karena zina, homoseksual dan lesbian, monogami dan poligami. Dengan melakukan studi pustaka dan pendekatan kualitatif dan analisis deskriptif yang sebelumnya telah dilakukan verifikasi data. Dari pengolahan data dengan metode tersebut maka didapatkanlah sebuah temuan bahwa umat Islam haruslah mampu berpikir rasional dan kritis untuk menyikapi hal demikian serta perlunya kembali meninjau solusi penyelesaian menurut hukum Islam untuk memecahkan masalah tersebut. Permasalahan kontemporer sebenarnya tidak jauh bergeser dari permasalahan klasik yang dihadapi pada masa para Ulama terdahulu yang telah dibahas dalam kitab-kitab klasik. Hal tersebut masih dapat dijawab oleh fatwa-fatwa dan hasil interpretasi dari fiqh klasik.*

**Kata kunci :** *masalah, kontemporer, kehidupan, bermasyarakat, fiqh kontemporer*

## INTRODUCTION

In the discussion, we have researched the book of Wahbah Zuhaili (Islamic Fiqh was Adillatuhu) in various problems starting from problems with restriction of descent, contemporary marriage and others. As for other references, there is a writing by Shaykh Yusuf al-Qaradawi entitled *halal and haram in Islam*. Contemporary issues are presented about deviant sexual behavior in the past and present.

The meaning of contemporary means at the same time, or, in the present, and today, so it can be concluded that Contemporary Fiqh is the development of fiqh thought. In this case, the reference point is how the response and methodology of Islamic law in providing answers to contemporary problems; as for the background to the emergence of modern fiqh issues, according to the author, there are several things, including (حسين & 'Awnī, 2015)

1. Because of current modernization, which covers the majority of Muslim-populated countries, the recent modernization has resulted in various changes in the social order of Muslims, including those involving political, social, and cultural ideologies, among other things. These changes appear to be driving people away from religious values. This happened because the various modifications gave birth to many social and cultural symbols not explicitly represented by established religious symbols or because the renewal of religious thought did not match the progress of modernization.
2. The system of western thought (positive law) has been established in most Muslim countries, which is factually easier to accept and practice. What is more, structural and cultural forces strongly support it, but the Islamic community still feels a kind of "irregularity" both psychologically, sociologically, and politically in acknowledging the Western conception. However, because a more contextual concept of Islam has not yet been realized, they just distrustfully follow an unIslamic notion. This finally aroused the instincts of Islamic law experts who were more relevant to the times.
3. Classical fiqh thinking (as opposed to contemporary fiqh thinking) is still based on textual, ad hoc, and partial understanding. The study's systematic framework is not comprehensive or current and less adaptable to changes.

The study of contemporary Fiqh law cannot be separated from Islamic law's material and formal aspects. Those are permanent in Islamic law (Tasyri'iyah) and relative (changeable) Ghairu-Tasyri. Contemporary Fiqh Goals. Dr. Yusuf Qardlawi, in one of his books, implicitly expresses the need for contemporary fiqh. The question arises with this progress: Can fiqh's science face modern times? Is it still relevant for Islamic law - born 14 centuries ago - to be applied today? Of course, we, as Muslims, will answer it. Islamic law can face the times and is still relevant to be used "not just talking, indeed. However, to get there, some conditions must be followed consistently. To realize the goal of creating contemporary fiqh, Qardhawi offers the concept of Ijtihad, Ijtihad, which needs to be reopened.(Dasūqī et al., 1990) They are retracing what the salaf scholars have done. In matters relating to social law, we need to be free

from sects. In the following, we also describe the views of Prof. Said Ramadan about a similar thing. All opinions must be weighed against the criteria of the Qur'an and the Sunnah. And all humans after the Prophet can make mistakes. (ابن قدامة، موفق الدين عبد الله، ابن عثمة al., 2001)

## **METHOD**

The research method used in this paper is a qualitative descriptive method. A research method based on post positivism is commonly used to examine the conditions of problems in marriage in the form of adultery, limiting the number of children, and marriage violence that the religious court does not record. Researchers act as key instruments and describe a situation objectively or based on facts that appear in society. In addition, according to other experts, qualitative descriptive research methods, including the opinion of Sukmadinata (2017, p. 73), describe existing phenomena, both natural and human-engineered in the form of actions by Muslim communities, that deviate from religious rules. Islam pays more attention to the characteristics, quality, and interrelationships between activities that cause problems.

## **DISCUSSION**

The development of the times impacts the disclosure of various problems of humankind, both the relationship between others and the surrounding natural life. The complexity of the problem will, of course, require problem-solving based on religious values.

### **1. Marriage Contract Through Internet and Phone Networks**

The marriage contract is based on consensual consent or voluntary, so its manifestations are consent and acceptance. Ijab is pronounced by the guardian, which means handing over the mandate of Allah to the prospective husband, and the future husband pronounces Kabul as a symbol of their willingness to accept the appointment of Allah (Aibak, 2006, p. 211).

Generally, a marriage contract by telephone is a marriage carried out by some people who allow it to carry out the wedding. Still, the two candidates are in a long-distance situation, where some of the conditions and pillars of a marriage cannot be carried out according to existing law. And so, the wedding or the consent process must be carried out using voice telecommunications, namely by telephone. A marriage contract by telephone is when the guardian pronounces the consent in one location while the husband pronounces the Kabul in another outlying area. Even though they do not see each other, the prospective husband can clearly hear the guardian's Ijab; conversely, the female guardian can clearly hear the husband candidate's acceptance speech. (Mughniyah, 2015, p. 210).

In a hadith narrated by Muslims, the Messenger of Allah said:

"Fear Allah in matters of women. They (women) are in your hands as a trust from Allah, and lawful for you with the word of Allah".

What is meant by "God's word" in the Hadith is the expression of consent and acceptance. Because the meaning of consent and acceptance is so essential for the validity of the marriage contract, many strict requirements must be met for its fact—Ittihad al-majlis (unified assemblies) in carrying out the contract. Abdurrahman al-Jaziri, in his book *al-Figh 'ala Mazahib al-Arba'ah* cites the agreement of mujtahid scholars requiring a united community for consent and acceptance. Thus, the marriage contract is invalid if the assembly does not unite between the community pronouncing the consent and the Kabul. After examining the opinions of scholars, there are two interpretations of what is meant by Ittihad (unity) assemblies, as follows: (Mughniyah, 2015, p. 211)

First, the unified assembly's statement's essence is the need for continuity between Ijab and Kabul. If the requirement for united communities is only for time continuity, then the united place is not the only thing to realize time continuity. In one room, for example, a guardian pronounces Ijab. In contrast, the prospective husband pronounces Kabul in another room during the ceremony using loudspeakers, and the continuity between Ijab and Kabul is clear. As a result of this viewpoint, two witnesses are not required to be able to see the parties who made the marriage contract. (Sayyid Sabiq, 2006, p. 82).

Second is the opinion that a united assembly is required, not only to ensure continuity between consent and Kabul but is very closely related to the duties of two witnesses who, according to this opinion, must be able to see with their own eyes that the consent and Kabul were pronounced, by the two witnesses who made the contract. It is known that among the conditions for a valid marriage contract, two witnesses must attend it. The two witnesses' duties, as agreed upon by the scholars, are primarily to ensure the validity of the consent and Kabul confidently, both from the editorial point of view and from the aspect of certainty that the Ijboth parties pronounce the Ijab and Kabul (Dasūqī et al., 1990).

From the above understanding, it can be seen that there is a requirement for a united assembly, not only to maintain continuity of time but also contains another condition, namely al Mu'ayanah, namely that both parties are present in one place because with that, the requirement to be able to see in real terms the pronouncement of Consent and Kabul (Ijab, Kabul) can be realized (Akmal-ad-Dīn al-Bābartī et al., 2007, p. 76).

One thing that needs to be underlined in the Shafī'i school's view is that the marriage contract issue has the meaning of Ta'abbud, which must be accepted as it is. Therefore, the implementation method is a matter of Tauqifiyah in that it must be tied to the pattern that the Prophet for his people has passed down. That is why the pronouncement of Ijab and Kabul must be as contained in the texts, such as the marriage pronouncement or Tazwij, not other accents by way of qiyas. So when viewed from the view of Syafi'iyah, it is clear that the practice of marriage contracts by telephone is not valid (al-Zuhayli & Al-Kattani, 2010, p. 76).

## 1. Underhand Marriage

Underhand marriages are performed by Islamic Law but are not served in front of a Marriage Registrar (PPN) as an official government official and are not registered with the Office of Religious Affairs. They do not receive a marriage certificate as formal legal evidence. While KH. Ma'ruf Amin stated that an underhand marriage meets all of the pillars and conditions outlined in fiqh (Islamic law). However, this marriage has not been officially registered with the competent authority as required by law. As a result, it is possible to define an underhanded marriage as one that is not carried out following the law. And marriages that do not follow the rules are considered illegal marriages. So they have no legal consequences for seeking legal recognition and protection (Majelis Ulama Indonesia, 2015, p. 68).

Underhand marriage is known as "Zawaj 'Urfi" in contemporary jurisprudence. This marriage meets the requirements of marriage but is not officially registered by a government employee who handles marriage. Urfi marriage is a custom and habit that has been prevalent in Muslim society since Prophet Muhammad's time. They do not have to record their marriage contract without problems with their breasts. The leading cleric who allows marriage in a Siri way is Dr. Yusuf Qardawi is one of the foremost contemporary Muslim scholars in Islam. He believes that unregistered marriages are valid as long as there is consent and witnesses (Qaraḍāwī, 2005, p. 87).

Meanwhile, the MUI fatwa regarding underhanded marriages also legalizes this marriage. In its legal provisions, MUI says, "marriage under the law is legal because the conditions and pillars of marriage are fulfilled, but it is forbidden if there is Madharah." In addition, MUI also emphasizes that marriages must be officially registered with competent authorities as a preventive measure to resist negative impacts. In the Compilation of Islamic Law in Indonesia, it is stated that the purpose of recording marriages carried out before and under the supervision of a marriage registrar is to obtain legal certainty because marriages performed outside the Marriage Registrar do not have legal provisions. Marriages can only be proven by a Marriage Certificate made by the Employee of Marriage Registration (Majelis Ulama Indonesia, 2015, p. 46).

## 2. The law of unregistered marriage, according to Mazhab, is as follows::

Salaf scholars describe Siri marriages/underhand marriages as a form of marriage that is not witnessed or there are witnesses. Still, the groom asks the witness to keep the marriage a secret. According to Imam Malik, Siri marriages are:

هو ال ذي يو صي فيه ال زوج الشهود مكتمه عن امراته, او عن جماعة ول و اهل منزل

Artinya:

*"A marriage that the husband ordered, the witnesses kept it a secret for his wife or congregation, even if it was a local family. "*

The Maliki school does not allow unregistered marriages. The marriage can be annulled, and the two perpetrators can be punished with hard (floating stoning) if there has been sexual intercourse between the two and he admits it or with the testimony of

four witnesses. The Shafi'i and Hanafi schools also do not allow unregistered marriages. According to Hambali, unions that have been carried out according to the provisions of Islamic law are valid, even though they are kept secret by the bride and groom, guardians, and witnesses. It's just that the law is makruh (Mughniyah, 2015, p. 251).

Meanwhile, Siri marriage, according to the Fiqh terminology, is not valid because apart from inviting slander, it is also contrary to the Hadith of the Prophet, which means:(Qaraḍāwī, 2005) "Do Walimah (Wedding) even with the goat dish."

### **3. Family Planning and Limiting the Number of Children**

The definition of family here is the smallest social unit in a society bound by legal marriage, commonly referred to as the nuclear family or nuclear family, which consists of husband and wife and children. It is not an extended family or extended family that includes other families. Closest. Family planning in English terms is called family planning or birth control, and some call it planning parenthood, according to WHO (World Health Organization). Family planning is an action that helps individuals or couples to achieve particular objectives, avoid unwanted births, get the desired births, regulate the interval between pregnancies and determine the number of children in the family. Mahmud Shaltut defines family planning as the regulation and spacing of births or an attempt to temporarily or permanently prevent pregnancy in connection with certain situations and conditions, both for the family concerned and for the benefit of society and the state. (Mir & Shaikh, 2013).

From the above definition, it can be concluded that family planning is the arrangement of a child's birth plan using a method or tool to prevent pregnancy. KB does not mean Birth Control which connotes limiting or preventing births contrary to the purpose of marriage, namely continuing offspring. Family planning in the sense of preventing pregnancy due to marital intercourse has been known since the time of the Prophet Muhammad, with the act of 'Azal, which is now known as "coitus-interruptus", namely ejaculation (Inzal al-mani) outside the vagina (Faraj) so that sperm does not meet the wife's ovaries. Thus it is impossible for pregnancy to occur because the husband's sperm cannot fertilize the ovaries. 'Azal was done by some of the Companions of the Prophet who kissed their slaves, but they didn't want them to get pregnant. The same applies to their wives after obtaining prior permission. They told this Azal incident to the Prophet while expecting the Prophet's guidance about the law. It turns out that the Prophet did not determine the law, while the revelation still coming down did not resolve the law (Sali et al., 2020).

Therefore, it can be concluded that any contraceptive method, as long as it does not cause permanent termination of pregnancy from its primary source (testicular tubes/vessels for men and ovarian vessels for women), is not prohibited. So the effort to prevent pregnancy which is not justified in Islam is castration. In medical terms, this method is called a vasectomy in men or a tubectomy in women, and abortion is popularly known as abortion. Abortion in any way is prohibited by the soul and spirit

of Islam, whether the fetus is alive or not, unless it has a strong reason, such as endangering the life of the mother. (Mir & Shaikh, 2013).

Regarding family planning or at least preventing pregnancy, "Family Planning" is known now that there are disagreements regarding the law of family planning among scholars, some of whom allow it and some who forbid it. Scholars who allow such as Imam al-Ghazali, in his book, "Ihya Ulumuddin," stated that 'Azal is not prohibited because the difficulties experienced by the mother are caused by frequent childbirth. The motives include: maintaining the mother's health, avoiding the challenges of life because of many children, and maintaining the beauty of the mother. (al-Zuhayli & Al-Kattani, 2010)

Then Sheikh al-Hariri (the Grand Mufti of Egypt) argued that it is legal to carry out family planning for individuals (individuals) with several provisions, such as space children. To avoid disease when she is pregnant. To prevent harm if she is pregnant and giving birth can bring her death (medically). To maintain the mother's health because every pregnancy always suffers from an obstetric disease. And to prevent children from being physically disabled if the husband or wife has a dirty condition (Abdi et al., 2021).

Furthermore, Mahmud Saltut argued that family restrictions were against Islamic law. For example, limiting the family to only three children in all situations and conditions. Or, in English, "Birth Control." Meanwhile, according to him, birth control does not conflict with Islamic teachings, for example, to space out births due to exceptional circumstances, whether related to the family concerned or related to the interests of society and the state. Another reason that allows it is a husband and wife with a dangerous disease, and it is feared that it will spread to their children (Šaltūt, 2009, p. 45).

Some scholars who forbid family planning are as follows: Madkour, Professor of Islamic Law at the Faculty of Law, in his writings: "Islam and Family Planning," stated, among others: "that he does not approve of family planning if there is no reason to justify the act He adhered to the principle: urgent matters allow forbidden acts". Abu 'Ala al-Maududi was one of the scholars who opposed the opinion of people who allowed birth control. According to him, Islam is a religion that runs by human nature. He said: " whoever changes the deeds of God and violates the laws of nature is fulfilling the orders of Satan." According to al-Maududi, one of the purposes of marriage is to maintain the human race and establish a civilized life (Ataullahjan et al., 2019). In addition to the opinions above, some scholars use arguments that reject family planning, including surah al-An'am: 151, and surah al-Isra: 31. The meaning of these two verses is not giving a chance to live and killing, even if not directly, because they are afraid of being poor (poor) even though Allah has guaranteed the sustenance of His servants. As the words of the Prophet mean: "Marry you with a woman who has the nature of love and many children because, in fact, I am proud of the number of you with other people." From the Hadith above, it can be understood that the Prophet Muhammad was very proud when he had many

people. Carrying out family planning means reducing the number of people outwardly; this is true, but of course, what is desired is a large and qualified community as his loyal followers, not opponents of the teachings of Islam that he brings. ( *المدخل الى الفقه* , 1991, *الاسلامي*, p. 76).

#### **4. Marrying a Pregnant Woman Because of Zina**

There is a problem with the legal status of a man marrying a woman who is pregnant with someone else's child and the legal status of a pregnant woman married to a man who impregnates her out of wedlock. In answering the question of the two legal qualities, Ahmad Sarwat's opinion was quoted from the Rumah Fiqh website page. According to him, several arguments include (Mughniyah 2015, p. 311). The first is the opinion of Imam Abu Hanifa, which explains that if the man who marries a pregnant woman is the man who impregnates her, it is permissible. Meanwhile, if the man who marries her is not the man who impregnated her, then the man is not allowed to have sex with her until she gives birth (2019 *إبراهيم & الحنفي/الحصكفي*, p. 78).

Imam Malik and Imam Ahmad ibn Hanbal said that a man who is not pregnant should not marry a pregnant woman except after the pregnant woman has given birth and the period of 'iddah has expired. Imam Ahmad added another condition: the woman must have repented of her adultery sin. If he has not repented of the sin of adultery, he still cannot marry anyone. This is mentioned in the book *Al-Majmu 'Syarah Al-Muhazzab* by Al-Imam An-Nawawi, juice XVI page 253 ( *نوي & عبد* 2007 *الموجود، عادل احمد*, p. 253). The third opinion of Imam Ash-Shafi'i explains that both men who get pregnant and those who do not get pregnant are allowed to marry her, as stated in the book *Al-Muhazzab* by Abu Ishaq Asy-Syairazi juz II, page 43. As for the Compilation of Islamic Law (KHI) with the instructions of the President of the Republic of Indonesia Number 1 of 1991 dated June 10, 1991. The implementation of which is regulated by the Decree of the Minister of Religion of the Republic of Indonesia Number 154 of 1991 has stated the following:

1. A pregnant woman out of wedlock can be married to a man who impregnates her.
2. Marriage with a pregnant woman, referred to in paragraph (1), can be carried out without waiting for the birth of her child.
3. With the marriage taking place when the woman is pregnant, remarriage is not needed after the child is born.

All opinions that allow pregnant women out of wedlock to be married to men who impregnate her depart from the following texts; from Aisyah R.A said, Rasulullah SAW was once asked about a person who commits adultery with a woman and intends to marry her, then he said: "Initially dirty deeds and finally got married (2021 *الريسوني*). What is unlawful cannot forbid what is lawful" (HR Tabarany and Daruquthuny). Also, with the following Hadith, Someone asked the Messenger of Allah; my wife is a person who likes to commit adultery. He replied: "Divorce him." "But I'm afraid of burdening myself." "Then Mut'ahilah him" (Narrated by Abu Dawud and An-Nasa'i).



The opinion is that it is forbidden for a man to marry a pregnant woman with another person's child because it will confuse the child's lineage (Abunasser, 2020).

The evidence is the following nash, and the Prophet SAW said: "Do not have intercourse (married) a pregnant woman (because of adultery) until giving birth." (HR Abu Daud and authenticated by Al-Hakim). Also, in another narration, the Prophet SAW said: "It is not permissible for a Muslim who believes in Allah and the last day to sprinkle his water on other people's crops." (HR Abu Daud and Tirmizy). So, in conclusion, if a man marries a woman pregnant with another person's child, the law is haram (according to Imam Malik and Imam Ahmad). As for if the pregnant woman is married to a man who conceived her out of wedlock, then the law is allowed. Meanwhile, if referring to the Compilation of Islamic Law, a pregnant woman out of wedlock can be married to a man who conceives her. (بنی سلامة, 2014).

## 5. Homosexuals and Lesbians

### a. Definition

Linguistically, homosexuality means having sex with a partner of the same sex, either male or female. But then the term homosexual has narrowed its meaning, which is intended for men who have sex with other men, which in Arabic is called Liwath. The same-sex relationship between women and women is called a lesbian, whose Arabic is called al-Sahaq. How do these homosexuals do their activities? For homo, a man inserts the penis (testicles) into another man's anus (anus) to get sexual satisfaction. Lesbian is done by masturbation (achievement of sexual satisfaction without sex), or it could be in other ways to get an orgasm (peak pleasure) or climax of the sex act (al-Marāghī et al., 2006).

### b. Impact

The impact of sexual deviation has been clearly seen in social life. Empirical data show that same-sex relationships, both gay and lesbian, have caused moral damage to the perpetrators, who are not only composed of a series of people who are not "religious" or occur in "liberal" countries. But it was also recorded that the perpetrators claimed to believe in Allah, and it happened in countries that adhered to religious law. According to Murthada Mutahhari, this phenomenon can be caused by today's human civilization, which has tended to understand materialism and pragmatism. They pursue momentary pleasures by abandoning religion and spiritual values. As a result, various means of generating lust and animal instincts have developed (Ali, 1985). According to psychiatrists, sexually deviant behavior in the form of homo and lesbians can eliminate a person's desire to get married. If any of them are married, he will order the man he likes to have sex with his wife as long as the man is willing to be gay (عبد الله عتر, 2021). If the gay offender is of advanced age, he invites and pays a sum to the man of his choice. As a result of the husband's behavior, the wife does not feel satisfied, and there are opportunities for the wife to have a relationship with the like (lesbian). Based on the research of Dr. Muhammad Rashfi published in his book *al-Islam wa al-Thib*

quoted by Sayyid Sabiq in his book *Fiqh Sunnah* that the impact caused by homosexuality is very negative on personal and community life. Islam strictly and clearly forbids this despicable act (Kamali, 2019).

## 6. Homosexual and Lesbian Law for the Perpetrators

Scholars have agreed that Islam forbids homosexuality and lesbianism, and the perpetrators who have been proven must be punished; however, in imposing a sentence on a gay person, authentic and clear facts are needed—both from the confession and testimony of witnesses. The fiqh scholars have different opinions regarding the witnesses required to prove homosexual acts. Malikiyah, Syafi'iyah, and Hanabilah believe that homo witnesses are the same as adultery witnesses, namely four men who are, and not one, a woman. Meanwhile, Hanafiah believes that homosexual witnesses are not the same as adultery witnesses because the harm caused by homo is lighter than adultery and does not cause the mixing of offspring (2010, محمد, p. 78).

Therefore, it is enough to prove homosexuality with only one witness, and it is not essential to connect it with adultery. If it can be proven convincingly from the facts, then according to Islamic law, homosexuals can be punished. What and how should homosexuals receive the punishment? There is also a difference of opinion among the scholars, which no more revolves around three penalties (Hasan Muhammad Naim al-Haq, 2016).

1. Sentenced to death.
2. Punished as punishment for adultery. If the perpetrator is a virgin (Ghairu Mukhson), he must be beaten a hundred times; if the perpetrator is married (Mukhson), he must be stoned to death.
3. Rewarded with ta'zir punishment.

The first opinion, among others, held by Imam Syafi'i that homosexual couples are sentenced to death. Imam Shafi'i's idea is based on the Hadith of the Prophet narrated by Khamsah (the five narrators of Hadith), except for Nasa'i, from Ibn Abbas Rasulullah said, which means: "Whoever finds someone else doing like the Prophet Lut's people, namely homosexuals, then kill the perpetrator and the person he treats (his partner)." Imam Shafi'i's opinion above is also supported by al-Munziri, that Abu Bakr and Ali had sentenced a homosexual couple to death. The second opinion was expressed by al-Auza'i, Abu Yusuf, and others that the punishment that homosexual perpetrators must receive is the same as the punishment for adultery, namely by being flogged and exiled for those who are not married and stoning to death for those who are married. The determination of this punishment is carried out by qiyas with the discipline of adultery, where the penalty for adultery as Ashal is clear and has existed as explained in the Prophet's Hadith, which means:

*"If a man has sex with another man, both of them are convicted of adultery."*

It is detailed again in another Hadith which means:

*"The punishment for homosexuals is like the law for adultery; if the perpetrator is Mukhson, he is stoned, and if Ghairu Mukhson is lashed one hundred times."*

The third opinion was put forward, among others, by Imam Abu Hanifah, who said that homosexual perpetrators could be subject to Ta'zir law, namely the punishment imposed for a crime or violation, which is not determined by the type and level of punishment by the Qur'an or Hadith. Ta'zir aims as educative; the severity of the As mentioned above, the ta'zir punishment sentence is left to the court (judge) imposed by Imam Abu Hanifah for homosexual perpetrators is based on the idea that homosexuality does not bring more dangerous consequences than adultery. So, according to him, homosexuality cannot be connected with adultery, plus the punishment is not contained in the Qur'an and Hadith, so it is more appropriate if the sentence is left to the judge (Ta'zir). Ta'zir penalty is also applied to lesbian perpetrators because they are not considered adultery and should be rehabilitated against the perpetrators. As the fatwa issued in the Kuwaiti fiqh encyclopedia (24/252) الموسوعة الفقهية :

اتَّفَقَ الْفُقَهَاءُ عَلَى أَنَّهُ لَا حَدَّ فِي السَّخَاقِ ; لِأَنَّهُ لَيْسَ زَنًى . وَإِنَّمَا يَجِبُ فِيهِ التَّعْزِيرُ ; لِأَنَّهُ مَعْصِيَةٌ أَاه .

*Scholars agree that there is no Had punishment for lesbian perpetrators because it is not an act of adultery but must be subject to Ta'zir discipline because it is an immoral act*

Imam al-Syaukani said the punishment put forward by the scholars mentioned above concluded that the stronger opinion is the first opinion that punishes homosexual perpetrators with the death penalty because it is based on authentic texts (Hadith), which have a clear meaning. (Zein et al., 2004, p. 76).

## CONCLUSION

First, the marriage contract by telephone is a marriage contract carried out by telephone where the guardian pronounces the consent in one place, and the husband pronounces the Kabul from another area far apart. Even though they do not see each other, the Ijab from the guardian can be heard clearly by the prospective husband; vice versa, the husband candidate's acceptance speech can be heard clearly by the female guardian.

Second, underhand marriage is a marriage that is not done according to the law. And marriages that are not carried out according to the rule are considered illegal marriages, so they have no legal consequences and seek legal recognition and protection.

Third, family planning is the arrangement of a child's birth plan using a method or tool that can prevent pregnancy. Family planning is planning a birth by planning a pregnancy because of employing or using a method or device/drug called contraception.

Fourth, if a man marries a pregnant woman with another person's child, it is haram (according to Imam Malik and Imam Ahmad). As for if a pregnant woman marries a man who impregnates her out of wedlock, then it is permissible. Meanwhile, if referring to the Compilation of Islamic Law, a pregnant woman out of a marriage can be married to the man who impregnated her.

Fifth, homosexual means having sex with a partner of the same sex, either male or female. But then the term homosexual has narrowed its meaning, which is intended for men who have sex with other men, which in Arabic is called Liwath. The same-sex relationship between women and women is called a lesbian, whose Arabic is called al-Sahaq.

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