

The Milk Al-Yamin Concept as a Validity of Sexual Relationship in a Modern Context: an Analysis of Muhammad Syahrur's Thoughts

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**The *Milk Al-Yamin* Concept as a Validity of
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Abstract

In the understanding of *fiqh turats*, the concept of *milk al-yamin* is affecting the legal protection for oppressed slaves during the Jahiliyah period. According to Syahrur, the concept of *milk al-yamin* had similarities and differences with the marriage contract. The similarity lies in the ability to have sexual relations, while the difference is that a marriage contract is not merely a sexual relationship, but it has a legal effect on the production of the rights and obligations of a husband and wife to build a family, and other social activities related to *mushaharah*. *Milk al-yamin* does not arrive at the emergence of rights and obligations as husband and wife as a result of a marriage contract. The concept of *milk al-yamin* that Syahrur understands for the present context is how the legal proposition (the Quran) remains suitable with the current era, not to be eradicated historically because it is no longer relevant. He built a new logic for the concept of *milk al-yamin* in the present context, which is called '*aqd ihsan*'. The concept of *milk al-yamin* understood by Syahrur enables the authorization of contractual marriage or *mut'ah* which were abolished according to the Sunni school of *fiqh*. The concept of contract marriage or *mut'ah* does not have general marriage conditions, because the purpose is not to build a family, but purely sexual relations, and does not belong to the category of formal marriage, although at the same time it is not *haram*. In consequence, the concept of *milk al-yamin* is not becoming a basis for legitimizing nonmarital sexual relations.

Keywords: *Milk Al-Yamin*, Sexual Relations, Modern Context, *fiqh*

***Konsep Milk Al-Yamin sebagai Keabsahan
Hubungan Seksual dalam Konteks Modern: Analisis Pemikiran***

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Abstrak

Dalam pemahaman fikih turats, konsep milk al-yamin lebih pada perlindungan hukum bagi hamba sahaya yang di masa Jahiliyah mereka tertindas. Menurut Syahrur, konsep milk al-yamin ada persamaan dan perbedaan dengan akad perkawinan. Persamaannya terletak pada kebolehan berhubungan intim, sedangkan perbedaannya adalah akad perkawinan bukanlah semata-mata hubungan seksual, tetapi berakibat hukum pada lahirnya hak dan kewajiban suami-istri untuk membina keluarga, dan aktivitas sosial lainnya terkait mushaharah. Sedangkan milk al-yamin tidak sampai pada timbulnya hak dan kewajiban sebagai suami-istri sebagaimana akibat akad perkawinan. Konsep milk al-yamin yang dipahami Syahrur untuk konteks sekarang adalah bagaimana dalil hukum (al-Qur'an) itu tetap sesuai dengan kondisi zaman, tidak sampai terhapus secara historis karena sudah tidak relevan. Ia membangun logika baru untuk konsep milk al-yamin dalam konteks kekinian, yang disebut dengan 'aqd ihsan. Konsep milk al-yamin yang dipahami Syahrur melahirkan hukum pembolehan kawin kontrak atau mut'ah yang dianggap telah di-nasakh hukumnya menurut fikih mazhab sunni. Konsep perkawinan kontrak atau mut'ah ini tidak memiliki syarat-syarat perkawinan pada umumnya, sebab tujuannya bukan membina keluarga, tetapi murni hubungan seksual, dan tidak termasuk kategori perkawinan resmi, meskipun pada saat yang sama ia tidak haram. Jadi konsep milk al-yamin sebenarnya bukan sebagai dasar legetimasi hubungan seksual nonmarital (di luar pernikahan).

Kata Kunci: Milk Al-Yamin, Hubungan Seksual, Konteks Modern, Fikih

Introduction

Nowadays, Muslims encounter many challenges related to Islamic law implementation. The rapid development of thought without a correct Islamic law methodological basis has become one of the reasons for the problem. For instance, a dissertation from UIN Sunan Kalijaga entitled "The Concept of *Milk Al-Yamin* Muhammad Syahrur as the Validity of Non-Marital Sexual Relationships", written by Abdul Aziz, has created a sensation among the public.

In his dissertation, he explained that sexual relations, both marital and non-marital, were sexual rights protected by the state, law, and government. However, in the Islamic jurisprudence tradition (*fiqh*), only marital sexual relationship is considered legal, while nonmarital sexual relations are perceived as illegal. Abdul Aziz concluded that Muhammad Syahrur's *milk al-yamin* concept is a new theory that can be used as a justification for the validity of nonmarital sexual relations. With this theory, nonmarital sexual relations are considered legal according to the Shari'ah, just as marital sexual relations. Thus, this concept offers wider access to sexual relations than the traditionalist concept of *milk al-yamīn*.

Abdul Aziz's conclusion caused a polemic in the society: is Muhammad Syahrur's *milk al-yamin* concept similar to the concept understood by *fiqh*? Or what is the actual concept of *milk al-yamin* according to both the *fiqh* and the thoughts of Muhammad Syahrur? Based on these problems, the research questions of this study are: how is the concept of *milk al-yamin* in the *fiqh* clause? How is the concept of *milk al-yamin* according to Muhammad Syahrur's thoughts? And what are the implications of the concept of *milk al-yamin* for Islamic family jurisprudence?

Muhammad Syahrur: The Short Biography

Muhammad Syahrur was born in Damascus, Syria, on April 11, 1938, as the son of Deyb ibn Deyb Syahrur and Siddiqad bint Salih Filyun. Syahrur completed his primary and secondary education at a school in his hometown. At the age of 19, in 1957, Syahrur obtained a high school diploma from Abd al-Rahman al-Kawabibi educational institution in Damascus. A year later, in March 1958, on a government scholarship, he departed to Moscow, USSR (now Russia), to study civil engineering (*al-hadathah al-*
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madaniyah). He spent five years from 1959 until he secured a Diploma in 1964, then he returned to his home country to devote himself to the Faculty of Civil Engineering, Damascus University, in 1965.

In 1969, Syahrur earned his Master's degree and three years later in 1972, he completed his Doctorate. In the same year, he was also officially appointed as a lecturer at the Faculty of Civil Engineering, Damascus University. He has been lecturing Soil Mechanics and Geology courses until now. Even though Muhammad Syahrur has basic vocational education, it does not mean that he does not have Islamic discourse. He was eventually interested in studying the Quran and hadith seriously with the philosophy of language and framed with exact science theories, even he also authored books and articles on Islamic thought. Besides several books in his academic specialization written and distributed in Damascus, such as the three-volume of Foundation Engineering (*Handasat al-Asasat*) and Land Engineering (*Handasat al-Turbat*).

The interesting history of Shahrur's intellectual journey is his serious attention to Islamic studies. According to him, Muslims are now imprisoned in a cage of a taken-for-granted (*musallamat*) truth, which has to be challenged. Backward beliefs, like a painting drawn from a mirror reflection, seem right when in essence they are wrong. Since the beginning of the 20th century, continued Syahrur, there have been various thought attempts to correct this error by presenting Islam as a faith and way of life. But unfortunately, because these efforts did not reach the most fundamental issue in Islamic thought like the Islamic creed, which should be studied philosophically. These efforts are unable to unravel the dilemma of true Islamic thought.

Shahrur's acquaintance and admiration for Marxist ideas occurred when he continued his study in Moscow—even though he did not claim to be a Marxist—and his encounter with Ja'far Dakk al-Babm, his close friend in Moscow and also a teacher in the field of language, played an important role in the development of his thoughts. From Ja'far Dakk al-Bab, Syahrur learned a lot about the language which led him to research various significant vocabularies in the Quran. Syahrur's intense discussion with Ja'far Dakk al-Bab was very beneficial in generating ideas expressed in his <http://jurnal.arraniry.ac.id/index.php/samarah>

monumental work: *al-Kitab wa al-Qur'an; Qira'ah Mu'asirah*. The writing of this book lasted for twenty years (1970-1990) through three stages of the process. The first stage (1970-1980), was a period of study and positioning the initial basis for the methodology of understanding *al-Dhikr*, *al-Risālah*, and *al-Nubuwwah* as well as several other keywords in the al-Qur'an. In this phase, Shahrur had not yet composed any thoughts on *al-Dhikr*. It was manifested as the influence of *taqlid* thoughts inherited and exist in the treasures of old and modern Islamic works, besides incline to Islam as an ideology (*aqidah*) both in the form of kalam and fiqh madhhab. Besides that, it was also influenced by the social conditions that happened at that time.

In ten years period, Syahrur found several things that had been mistakenly considered as the basis of Islam because he was unable to present a pure Islamic view in encountering the challenges of the 20th century. According to his view, it could be caused by two aspects: firstly, Islamic *aqidah* knowledge is taught in the Mu'tazilah or Ash'ari madrasas; secondly, knowledge of fiqh is taught in Hanafī, Māliki, Syāfi'ī, Hanbali or Ja'fari's Madrasas. According to Syahrur, if scientific and modern research is still limited by those aspects, then Islamic studies are at a vulnerable point.

The second stage began in 1980-1986. In 1980, Syahrur met his old friend, Dr. Ja'far (who studied language studies in the Soviet Union between 1958-1964). On this occasion, Syahrur conveyed his great concern for the study of language, philosophy, and understanding of the Qur'an. Syahrur later delivered his thoughts and dissertation in the field of language at Moscow University in 1973. The topic of his dissertation was on the linguistic view of 'Abd al-Qadir al-Jurjani (expert on *nahwu* and *balaghah*) and his position in General Linguistics. Through Ja'far, Syahrur learned a fair amount of linguistics including philology, and started to be informed of the views of al-Farra ', Abū' Alī al-Farisī and his students, Ibn Jinni and al-Jurjani. Since then, Shahrur argued that Arabic was a language that did not have a synonym, in consequence, a word would only have one meaning. Also, he argued that *nahwu* and *balaghah* could not be separated, thus according to him, there had been a misconception in teaching Arabic in various Madrasas and Universities.

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Since then, Syahrur began to analyze the verses of the Quran with a new model, and in 1984, he began to write his main thoughts with Ja'far which were acquired from the al-Kitab. Meanwhile, the third stage began in 1986-1990. At this stage, Syahrur started framing intensively his thoughts on certain topics. In the late 1985s and 1987, he completed the difficult first chapter of *al-Kitāb wa al-Qur'ān*. He completed and published the subsequent chapters in 1990. His book had been subjected to the critical views of established religious authorities based on his meticulous and detailed content of knowledge. To date, he has published through the same publisher, *al-Ahali*, four scientific papers as part of a series of publications which he calls "Modern Islamic Studies" (*Dirasat Islamiyyah Mu'asirah*). In addition to this series, he has written a small booklet and many articles in newspapers.¹

Muhammad Syahrur's Islamic Law Methodology Thought

Modern ulama are trying to discharge and abandon the stipulation model formulated by the ulema from the classic madhabs. They considered that the *usul al-fiqh* method was no longer relevant to answer modern problems. They try to formulate new and realistic legal rules in interpreting the law under current conditions. Among the modern figures who have implemented this new method is Muhammad Syahrur, with his theory of limit (*hudud*), who has opened the eyes of Muslims to more realistically understand the Quran so that it can continue to prosper in modern people's activities today. If it cannot be manifested, the Quran will remain as a memory in its practice, because it is considered irrelevant to the current life setting (empirical reality). It is not because the Quran is out of date, but because of the inability of its interpretation to adapt itself to the current era.

According to Muhyar Fanani, Syahrur is a reformer figure who truly adopts a new *usul al-fiqh* concept with a novel paradigm.

¹Muhammad Syahrur, *Islam and Faith: Basic Rules of Epistemological Reconstruction of the Pillars of Islam and the Pillars of Faith*, (trans. M. Zaid Sudi), Ed. I, IRCiSoD, Yogyakarta, 2015, p. 5-7, and Khairuddin, *Testimony of Women in the Perspective of Islamic Law; The Position of the Qur'an and the Sunnah in the Method of Establishing Islamic Law*, Sahifa, Banda Aceh, 2018, p. 388-391.

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The theory of *hudud*² which was introduced by Syahrur based on his new paradigm, the historical-scientific paradigm³, meanwhile the classical *usul al-fiqh* has a literalistic (textual) paradigm.⁴ From

²The *hudūd* theory is a theory which states that Allah only provides limitations in legal matters and humans are free to create laws according to their reasoning without violating the boundaries determined by Allah. Muhyar Fanani, *Fiqh Madani; Islamic Law Construction in the Modern World*, Ed. I, LkiS, Yogyakarta, 2010, p. xxxi.

³According to the author, what is meant by the historical-scientific paradigm is a new view offered by Syahrūr as a scientific method of understanding the text (*nas*) based on the reality of humanity and its experiences according to the conditions of a particular time and place (following the development of the times and the reality of a society).

⁴Literalistic paradigm is a paradigm that relies on text, either directly or indirectly. The term literalistic paradigm was taken by Muhyar Fanani from H.A.R. Gibb who stated that the orthodox conception of science emphasizes the narrow and literal (textual) conception of science. Meanwhile, the term literalism understood by Muhyar Fanani from al-Jābirī is related to the definition of *al-bayān*. According to al-Jābirī, in language, *al-bayān* has several meanings, including *al-zuhūr wa al-wudūh* (visibility and clarity). While terminologically, *al-bayān* means the search for clarity that pivots on *al-ashl* (foundation), namely the text (*naql, nas*), either directly or indirectly. From this explanation, implicitly, al-Jābarī defines the literalist paradigm as a paradigm based on *al-bayān* which in this case is text, either directly in the sense of considering the text as finished knowledge, or indirectly; in the sense of doing reasoning based on the text. In this paradigm, the reason is seen as unable to provide knowledge, unless it relies upon the text.

In this literalist thinking tradition, there are two ways to get knowledge; firstly, the way to get knowledge by sticking to the *zahir* text. This tendency has its roots in pre-Ibn Rushd (Andalusian) traditions and culminates in the Ibn Hazm era. This trend of textualism has actually been shown by al-Syāfi'ī, the founder of the science of *usul al-fiqh* and the founder of this paradigm of literalism. The means used in this first method are Arabic rules. Meanwhile, the target is the text of the Quran, hadith, and *ijma'*. Secondly, the way to get knowledge by holding on to the meaning of the text, not the *zahir* text. This tendency has its roots in the post-Ibn Rushd traditions, especially in al-Syātībī's initiative. Sticking to the meaning of the text will only be used if the *zahir* text is not able to answer new problems. Some scholars think that the second method has incorporated reasoning from the text into the literal discourse. It means that reasoning is used to capture the meaning of the text or to expand the range of the text.

In this case, according to Muhyar Fanani, al-Jābarī seems right when he says that the paradigm of literalism—al-Jābarī prefers to call it *bayāni* epistemology—is a unique product of the Arab-Islamic nation, as philosophy is a typical product of the Greek people, and science and technology is a product of <http://jurnal.arraniry.ac.id/index.php/samarah>

the ontological aspect, the area of study of traditional *usul al-fiqh* is the principles or methods of adopting the law or the arguments of *sama'i* (revelation) which includes the passages of al-Qur'an, *sunnah mutawatir*, and *ijma'*. Based on this understanding, experts of *usul al-fiqh* often mention rules with the *dalil syara' kulli*, such as *qiyas* and its arguments, the limitations of *'am*, *amr* (orders) and their indicators, rules about prohibition (*nahi*), *mutlaq*, *ijma' sarih* and *ijma' 'sukuti*. Based on this new paradigm, Shahrur re-interpreted several arguments for *syara' kullī*, such as *muhkamāt*, *sunnah*, *ijma'*, *qiyas*, *ijtihad*, and *mujtahid*.⁵

From the epistemological aspect, according to Muhyar Fanani, Syahrur offers a new epistemology in the field of *usul al-fiqh*. He mentions that the sources of knowledge in the *usul al-fiqh* sciences are the reason, reality (humanity and nature), and text. According to Muhyar Fanani, this is understandable, because Syahrur is not only a Muslim who acknowledges the revelations of the Qur'an, but he is also an engineer who engages in daily struggles against empirical experiences. Syahrur wanted to emphasize that in *usul al-fiqh* everything is rational. His view of reason as a source of knowledge cannot be separated from his

the Europe countries. This paradigm has created a unique tradition for the Islamic world, namely the tradition of understanding (*al-fiqh*), and has manifested itself in many Islamic scientific fields, such as *nahwu*, *usul al-fiqh*, *fiqh*, *kalam*, and *balaghah*. Muhyar Fanani, *Fiqh Madani*, p. 92.

⁵Muhyar Fanani, *Fiqh Madani*, p. 100-101. It is necessary to explain several terms according to Shahrur's definitions:

1. *muhkamāt* verse is another name that Syahrūr gave to *Umm al-Kitāb*. According to Syahrūr, these *muhkamāt* verses contain the choice to do or not to do something. Syahrur also named these *muhkamāt* verses as *qada'* (decision).
2. *sunnah* is the result of the creativity of the first *mujtahid* (Muhammad PBUH) in applying Islam implicitly for his time, not for all eras.
3. *qiyās* is the submission of scientific arguments and evidence by scientists from the field of natural, social science, and humanities (not religious scientists and *fatwa* institutions) for *ijtihad* (in *nash*) so that there is compatibility between an *ijtihad* and existing legal cases. According to Syahrur, *qiyās* only occurs in matters of permitting or prohibiting something, and it does not reach the level of proclaiming something as *halal* or *haram*. Muhyar Fanani, *Fiqh Madani*, p. xxi-xxx.

¹ <http://jurnal.arraniry.ac.id/index.php/samarah>

epistemological thinking that human reason is capable of providing knowledge.⁶

Apart from reason, Syahrur's use of reality (humanity and nature) as a source of knowledge in *usul al-fiqh* is also seen in his thinking about the necessity of using modern science in understanding legal verses and the involvement of all scientists in the process of *ijtihad*. It means that for Syahrur, the science of *usul al-fiqh* should not exclude the achievements of modern science, both in the natural sciences and humanities.⁷

Meanwhile, Syahrur's view of the text as a source of knowledge, according to Muhyar Fanani, is illustrated by his conception of the *muhkamāt* verses as a source of law. Shahrur defined the *muhkamāt* verses as part of *al-Kitāb*⁸ in the form of a

⁶Muhyar Fanani, *Fiqh Madani*, p.102-104.

⁷Muhyar Fanani, *Fiqh Madani*, p. 104.

⁸*Al-Kitāb* in the view of Shahrūr are all the verses in the *mushaf* from surah al-Fatihah to surah an-Nas. It is a collection of themes revealed by Allah to the Prophet Muhammad which includes the text and its contents, *risālah* and *nubuwwah*. Shahrūr divided *al-Kitāb* into four parts: *al-Qur'ān*, *as-sab 'al-matsānī*, *tafsīl al-Kitāb*, and *umm al-Kitāb*. The first and second parts (*al-Qur'ān* and *as-sab 'al-matsānī*) are called *mutasyābihāt* verses. The third part (*tafsīl al-Kitāb*) is called the verse which is neither *muhkamāt* nor *mutasyābihāt*, while the fourth part (*umm al-Kitāb*) are called *muhkamāt* verses. This is different from the understanding known so far, which identifies *al-Kitāb* as being identical to the *Qur'ān* which only consists of two classifications of a revelation: *muhkamāt* and *mutasyābihāt*.

Al-Qur'an understood by Syahrur are verses that talk about supernatural things which include issues of natural law and human life, such as issues of creation of nature, death, doomsday, promises and threats, the day of resurrection, calculation of charity, creation of birth and development, the laws governing nature, verses starting with *wa min āyātihī*, historical movements, and all the verses of the stories in *al-Kitāb*.

As-sab 'al-matsānī according to the conventional definition is the seven verses of al-Fatihah or seven long surahs. Meanwhile, according to Syahrūr, it is part of the *mutasyābihāt* verse in the form of seven verses that are separate from other verses and become the opening of the seven surahs, namely *alif lām mīm*, *hā mīm*, *tā sīn mīm*, *tā hā*, *yā sīn*, *kāf hā yā 'ain sād*, and *alif lām mīm sād*. For Syahrūr, other *fawātih suwar* (opener of surah), such as *sad*, *qāf*, *nūn*, *tā sīn*, *alif lām mīm rā*, and *alif lām rā*, cannot be called *as-sab 'al-matsānī* because these verses are still part of from another verse or not completely separate from other verses. Muhyar Fanani, *Fiqh Madani*, p. 145. Here Muhyar Fanani, who quoted Syahrūr's opinion, did not explain in more detail the meaning of the statement so <http://jurnal.arraniry.ac.id/index.php/samarah>

set of laws that bestow to the Prophet Muhammad which contained rules for human behavior (relating to matters of halal-haram), both in the form of *ibadah*, *mu'amalah*, and morals. The text that Shahrur understood was different from classic scholars, such as al-Syāfi'ī, al-Ghazālī, and al-Syātībī. According to them, the text including the Quran, sunnah, and ijma' can be used as a source of knowledge. As for Shahrur, only the Quran can be called a text. Everything outside the Quran is merely the result of an interpretation of the Quran, so it cannot be used as a source of knowledge.⁹

In terms of axiology, according to Muhyar Fanani, Syahrur did not deny the earlier *usul al-fiqh* axiology. For example, it can be seen through his application of rules and theories on detailed arguments to obtain the sharia law in terms of achieving *litahqīqi masālih an-nās* (the *maslahat* of humans), both in this world and in the hereafter. However, Syahrur gave greater emphasis to the importance of human welfare in the world. He performed it because he comprehended that this worldly aspect had been neglected. Syahrur changed the orientation of *usul al-fiqh* science from being too excessive on the theocentric aspect (divine values), to pay more attention to the anthropocentric aspect (humanity and

that the author had difficulty distinguishing between *fawātih suwar* which were categorized *as-sab' al-matsānī* and non-*as-sab' al-matsānī*.

According to Syahrūr, *Tafsīl al-Kitāb* is verses that are not included in the category of *muhkam* or *mutasyābih*, because it only explains the contents of *al-Kitāb*. The verse of *tafsīl al-Kitāb* falls into the category of *nubuwwah* verses. Verses that fall into this category do not contain regulations, nor do they contain any information other than an explanation of the content of *al-Kitāb*. Therefore, like the *mutasyābihāt* verse, the *tafsīl al-Kitāb* verse is not a realm of *ijtihād* nor is it a source of law. Muhyar Fanani, *Fiqh Madani*, page 146. For the author, this explanation is still very vague (difficult to understand), because Muhyar Fanani quoted Syahrur's explanation without giving examples of the verse.

Umm al-Kitāb is a part of a book that contains issues of worship, moral behavior, and law. According to Syahrūr, *umm al-Kitāb* was being called as *muhkamāt* verse or *risālah*. This verse is dynamic, historical, and influenced by situations and conditions, as well as subjective and related to social sciences. Muhyar Fanani, *Fiqh Madani*, p. 92. p. xxiv, xxxii. 143-144 and Muhammad Syahrūr, *Nahw Usul Jadidah li al-Fiqh al-Islami* (Modern Islamic Fiqh Methodology), trans. Sahiron Syamsuddin and Burhanudin, Ed. I, eLSAQ Press, Yogyakarta, 2004, p. 30-31.

⁹Muhyar Fanani, *Fiqh Madani*, p.105.

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nature). Therefore, Syahrur redefined it from the divine law to man-made law, without failed to pay more attention to the limits given by the God to humans. Therefore, the soul of Islamic law which was previously a *nas* (text), was transformed to *ijtihad*.¹⁰

From the description above, it can be understood that Shahrur saw the Quran as the only source of knowledge (including the source of law), while outside it (including the *sunnah*) was only an interpretation of the text (Quran). It means that Syahrur wants to emphasize that the Quran is a revelation that comes from God, while the *Sunnah* is not a revelation, but rather the *ijtihad* of the Prophet Muhammad against the Qur'an. Therefore, in the contemporary context, there is a high probability that the interpretation of Prophet Muhammad was highly influenced by the socio-politics and socio-culture of the Arab community at his time. In consequence, we should not position *sunnah* as a fixed price in interpreting a verse of the Quran. The author understands that Shahrur wants to set aside the *sunnah* when understanding the Quran, and focuses more on the three aforementioned sources of knowledge: reason, human and natural realities, and text (the Quran verses). With that said, in Shahrur's view, Islamic law is the result of the dialectic between reason, human reality, and nature, as well as the *hudud* of Allah in the Quran.¹¹

The paradigm shifts in *usul al-fiqh* science offered by Syahrur requires the redefinition of some earlier theories, like the *sunnah*. According to Muhyar Fanani when quoting Shahrur's opinion, *sunnah* is etymologically derived from the word *sanna*, which means *simplicity*, smooth water flow, as said *mā'un masnūn* (streams); the water flows easily. This is exactly what the Prophet did in applying the legal verses comfortably by moving or sometimes stopping within the boundaries of Allah (*hudud*) in encountering earthly problems. In terms of terminology, Syahrur defines *sunnah* as a methodology of applying laws or *al-Kitab* effortlessly and lightly without crossing Allah's boundaries in *hudud* issues or making local customary boundaries in non-*hudud*

¹⁰Muhyar Fanani, *Fiqh Madani*, p.108-110.

¹¹Muhyar Fanani, *Fiqh Madani*, p.106.

¹ <http://jurnal.arraniry.ac.id/index.php/samarah>

matters by considering actual reality (time, place, and the objective conditions in which the laws will apply).¹²

Milk al-Yamin Concept According to Fiqh

The term slavery or slave does not originally come from Islamic culture. The concept of *slave* existed long before Islam brought by the Prophet Muhammad PBUH was born. The presence of Islam is to uplift human dignity, including abolishing slavery. It can be seen that in the Quran there is not a single verse that allows slavery—even if it is mentioned, the context is about the manumission. Likewise, in history, there is no evidence to show that the Messenger of Allah made prisoners of war a slave. He freed the slave in Mecca, and the slave of Bani al-Mushthaliq and Hunain. Additionally, Rasulullah PBUH liberated the slave that he had in the era of Jahiliyah, including those who were gifted to him.¹³

With that said, Islam is indeed existing to eradicate slavery. To achieve this goal, Islam then established several related rules, including the provision of the affranchisement of the slaves in several cases of violations, such as *dhihar*¹⁴, oathbreaking, murder, and so on.¹⁵ Islam allows a free person to marry a slave, even Islam

¹²Muhyar Fanani, *Fiqh Madani*, p. 200-201.

¹³Sayyid Sabiq, *Fikih Summah*, (tran. Drs. Moh. Thalib), Volume 11, PT. Alma'arif, Bandung, 1994, p. 156.

¹⁴*Dhihar* comes from the word *dhahr*, which means *back*. In the reality, it may manifest when a husband says to his wife: your back is like my mother's back. Sayyid Sabiq quoted from the book *Fath al-Bari* that what is meant is the back only, not the other parts of the body, because generally, the back is a place to mount. Therefore, the mount is called the back. Women are being equated with the back because they are *men's mounts*. In the era of Jahiliyah, this *dhihar* could become *thalak*. Later, Islam came to invalidate it. Islam stipulates that a wife who gets *dhihar* will become *haram* as a sexual partner the couple paying *kafarat*. Sayyid Sabiq, *Fiqh Sunnah*, Volume 8, p. 115-116. The *kafarat* mentioned in surah al-Mujadalah verses 3-4, which means: "*Those who divorce their wives in this manner, then 'wish to' retract what they said, must free a slave before they touch each other. This 'penalty' is meant to deter you. And Allah is All-Aware of what you do. But if the husband cannot afford this, let him then fast two consecutive months before the couple touch each other. But if he is unable 'to fast', then let him feed sixty poor people.*"

¹⁵Sayyid Sabiq said there are seven ways in Islam related to the manumission of a slave: (1) liberating the slave is the way to get the grace of <http://jurnal.arraniry.ac.id/index.php/samarah>

allows a master to have sexual relations with his servant without getting married. When the slave gives birth to a child, the child becomes a free person. The mother remains a slave and she is not allowed to be sold or gifted to others, and she must be with her master forever. When the master dies, the mother will be independent automatically. This is what is called in fiqh as *umm al-walad*.¹⁶ For that reason, the concept of *milk al-yamin* in Islamic understanding is veritably the action of putting an end to slavery itself, not as a basis for legitimizing nonmarital sexual relations.

Milk al-yamin is a contract or ownership relationship of a master to a slave, whether he is obtained from war, trade, or other causes of ownership justified by the sharia. With this contract, a master is allowed to have sex with a female slave with some conditions. As the Commandement of Allah SWT in surah al-Mukminun [23]: 5-7:

Allah and His heaven (al-Balad verses 11-13). According to the hadith of Rasulullah PBUH, which means: "When a Bedouin Arab comes to the Messenger of Allah and says, O Messenger of Allah, show me an act that can place me into heaven. Rasulullah PBUH replied, you can free your slave, and eradicate slavery", (2) *Kafarat* of killing (an-Nisa 'verse 92), (3) *Kafarat* of the oath (al-Maidah verse 89), (4) *Kafarat* of *dhihar* (al-Mujadalah paragraph 3), (5) Buying a slave and liberating part of the *zakat asnaf* (at-Taubah verse 60), (6) The order to make a pact with the slave who wants her own release is called *mukatab* (an-Nur verse 33), and (7) Those who have vowed to liberate the slave, it is obligatory for them to fulfill it when their intention is achieved. Sayyid Sabiq, *Fiqh Sunnah*, Vol. 11158-161, p. 115-116.

¹⁶Muhammad Sadiq 'Afifi, *Al-Mujtama' al-Islami wa al-'Alaqat al-Dawliyah*, (Cairo: Maktabah Al-Khanzi, 1980) p. 217, and 'Abd Allah Nashih' Ulwan, *Nizham al-Riqq fi al-Islam*, Cairo: Dar al-Salam, 2003, p. 92. According to the opinion of the majority of ulemas except for Ibnul Qasim al-Maliki, a free man cannot marry a female slave, except with two conditions: getting worried if he commits adultery, and he is unable to present a dowry in the form of money or goods. Based on the commandement of Allah swt: "And whoever of you is not able to afford to marry from the free, believing women, then he may marry from among your believing young concubines in your possession and Allah knows best your faith; you are (sprung) the one from the other. So marry them with the permission of their masters and give them their Mahr on a reasonable basis within their customs..." (an-Nisa ': 25). This is a diligent opinion as mentioned in the book of Syarhul Khalil. However, Ibn Rushd said, "Ibnul Qasim's statement is the famous opinion of the Maliki school, specifically that a man can absolutely marry a female slave." Wahbah az-Zuhaili, *Fiqh al-Islam wa Adillatuhu*, Volume 9, Dar al -Fikr, Damsyiq, 1997, p. 6678.

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فَلَا يَحِلُّ لِرَجُلٍ أَنْ يَطَأَ امْرَأَةً فِي غَيْرِ زَوَاجٍ إِلَّا بِأَنْ يَكُونَ مَالِكًا لَهَا؛ لِقَوْلِهِ
تَعَالَى: وَالَّذِينَ هُمْ لِأُفْرُوجِهِمْ حَافِظُونَ إِلَّا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ
غَيْرُ مُلُومِينَ فَمَنْ ابْتَغَى وَرَاءَ ذَلِكَ فَأُولَئِكَ هُمُ الْعَادُونَ

Meaning: It is not legal for a man to have sexual relations with a woman without getting married unless the man is the owner of the woman (*milk al-yamin*), based on the verse, and those who guard their chastity except with their wives or those 'bondwomen' in their possession,¹⁷ for then they are free from blame, but whoever seeks beyond that are the transgressors.¹⁷

With *milk al-yamin*, a master may have sex with his female slave which is then called *sariyah*—without having a marriage contract. It does not mean that a master can have sex without a contract or a loose consensual relationship. What allows the relationship itself is the contract (*akad milik*), which is stated by the fiqh scholars as having a stronger status than the marriage contract. The *milk al-yamin* contract itself, apart from generating beneficial rights, also creates the right to have an intimate relationship.

مِلْكُ السَّيِّدِ لِأَمَتِهِ يُبِيحُ لَهُ وَطْأَهَا ذُونَ عَقْدٍ: لَا يَحْتَاجُ وَطْءُ السَّيِّدِ لِأَمَتِهِ إِلَى
إِنْشَاءِ عَقْدٍ زَوَاجٍ، وَلَوْ عَقْدَ النِّكَاحِ لِنَفْسِهِ عَلَى مَمْلُوكَتِهِ لَمْ يَصِحَّ النِّكَاحُ، وَلَمْ تَكُنْ
بِذَلِكَ زَوْجَةً. قَالَ ابْنُ قَدَامَةَ: لِأَنَّ مِلْكَ الرَّقَبَةِ يُفِيدُ مِلْكَ الْمَنْفَعَةِ وَإِبَاحَةَ الْبُضْعِ،
فَلَا يَجْتَمِعُ مَعَهُ عَقْدٌ أَوْ ضَعْفٌ مِنْهُ. وَلَوْ كَانَ الْحُرُّ مُتَزَوِّجًا بِأَمَةٍ، ثُمَّ مَلَكَ زَوْجَتَهُ الْأَمَةَ
انْقَسَحَ نِكَاحُهَا مِنْهُ.¹⁸

Meaning: The ownership of a master to a female slave allows sexual relations with her without a contract. It means that the master's intimate relationship with the slave does not require a marriage contract. If he created a marriage contract with the slave, then the marriage contract would be invalid. Because of the

¹⁷Tim Kementerian Wakaf dan Urusan Keislaman, *Al-Mausu'ah al-Fiqhiyyah al-Kuwaitiyyah*, [Kuwait: Darus Salasil], 1427 H, volume 11, p. 298, retrieved from <https://islam.nu.or.id/post/read/110590/konsep-milkul-yamin--hubungan-seks-tanpa-perkawinan-dalam-kajian-fikih>, accessed on. 5 October 2019.

¹⁸Tim Kementerian Wakaf, *Al-Mausu'ah...*, p. 297.
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marriage contract, the slave did not upgrade his status to become a wife. According to Ibn Qudamah, ownership of a slave may create beneficial ownership as well as the possibility of intimate relationships. So it is not permissible to bond within the marriage contract—a contract that is weaker than milk al-yamin. If a free man marries a female slave (who does not belong to him), then the married person will become his slave, and the marriage is nullified (because the property contract is shifted).

However, *milk al-yamin* does not automatically allow sexual relations, there are many other circumstances. The scholars describe the process starting from the origin of the possession of the slave (*milk al-yamin*), to the time the slave gives birth to the child of his master:¹⁹

First, the license for a master to have sex with his female slave is limited to slaves who are fully owned, not co-owned with other people, whether it is as the results of war, trade, gifts, or other causes of ownership justified by the Sharia—not from looting or thievery. However, according to Ali al-Shabuni, the possession of slave from the results of wars against unbelievers takes precedence, based on Allah's call to His Prophet: “O Prophet! Surely We have made permissible to you your wives to whom you have paid their Mahr and those (concubines) whom your right hand possesses out of those whom Allah has given to you as bounty of war.” (Surah al-Ahzab: 50). The reason why the slave who is obtained from war (*ghanimah*) is more important than the female slave who is obtained by other means is that war requires a great struggle and difficulties which cannot be equated with buying, giving, inheriting, and so forth.²⁰

Based on the aforementioned conditions, it can also be concluded that a man should not have sex with his female servant

¹⁹M. Tatam Wijaya, Alumni PP Raudhatul Hafizhiyyah Sukaraja-Sukabumi, Pengasuh Majelis Taklim “Syubbanul Muttaqin” Sukanagara-Cianjur, Jawa Barat. Retrieved from <https://islam.nu.or.id/post/read/110590/konsep-milkul-yamin--hubungan-seks-tanpa-perkawinan-dalam-kajian-fikih>, accessed on. 5 October 2019.

²⁰Muhammad Ali al-Shabuni, *Shafwah al-Tafasir*, [Kairo: Daru al-Shabuni], 1997, volume 2, p. 488. retrieved from <https://islam.nu.or.id/post/read/110590/konsep-milkul-yamin--hubungan-seks-tanpa-perkawinan-dalam-kajian-fikih>, accessed on. 5 October 2019. <http://jurnal.arraniry.ac.id/index.php/samarah>

who is co-owned with another person, no matter how small the ownership of the other person is. It also applies to the slave whose status was partially independent. However, if there is an intimate relationship between the master and the female slave who is co-owned, there is no penalty for fornication, because it is considered as *syubhat* and it is sufficient to be sentenced by *ta'zir*. Then, if the slave is pregnant, the child will have an ancestral lineage (*nasab*) to the master. Also, *milk al-yamin* does not work the other way around. It means that a woman who has a male slave, cannot have sex with her just because she owns him. There is no debate about this among ulemas specialized in fiqh.

Secondly, the female slave is Muslim or *kitabiyah* (Jewish and Christian) if the master who owns her is Muslim. If the slave is a Zoroaster or a pagan, it is not allowed for the Muslim master to have sex even though he is bound by *milk al-yamin*.

Thirdly, the wisdom of being allowed to have sex with a female slave is to protect the honor of the slave owner; maintain the honor of the female slave so that she does not tend to despicable acts (*zina*); The children of the slave will have lineage to the master and the freedom; after giving birth to a child, a female slave will have an epithet '*ummu walad*'; a female slave will get her freedom after the death of her master.

Fourth, in contrast to marriages that are limited by number, *milk al-yamin* opens the possibility of having more than four slaves as sexual partners as long as there are no obstacles. In *milk al-yamin* it is permissible to combine ownership between a female slave with her sister, her child, her mother, or with her aunt. If the master continues to have an intimate relationship, then marriage arrangements will apply: if he has sexual relations with one of his female slaves, then he is not allowed to have an intimate relationship with the slave's child or mother.

Fifth, the female slave who has an intimate relationship with her master cannot have a family relationship (*mahram*) with her master, either *mahram muabbad* or *mahram muaqqat*. It means, with *milk al-yamin*, a man cannot have sexual relations with his *mahram*, either because of lineage, breastfeeding, or marriage, such as mother, daughter, and daughter-in-law. The female slave who is a *mahram* of her master will get her manumission immediately even though she has recently been purchased.

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Sixth, after a man has sexual relations with a female slave, it is forbidden for him to marry the mother or child of the slave, as it is forbidden in a marriage to a free woman.

Seventh, the slave woman cannot be someone else's wife, or currently undergoing an *iddah* period, or in a period *istibra*²¹ of pregnancy (proven by the empty womb).

Eighth, if a master has two sister slaves through the *milk al-yamin* contract, then a master may choose one of them, not both, except after one of them being removed from ownership such as being sold or wedded to another person:

يَجُوزُ الْجُمُعُ بَيْنَ الْأُخْتَيْنِ أَوْ خَوَاهُمَا - كَالْمَرْأَةِ وَعَمَّتَيْهَا أَوْ خَالَتَيْهَا - فِي مِلْكِ الْيَمِينِ، لَكِنْ إِنْ وَطِئَ إِحْدَاهُمَا حُرِّمَتْ عَلَيْهِ الْأُخْرَى تَحْرِيمًا مُؤَقَّتًا، فَلَوْ وَطِئَ الثَّانِيَةَ أَثَمَ، وَهَذَا قَوْلُ الْجُمْهُورِ، وَاسْتَدْلُوا بِأَنَّ تَحْرِيمَ الْأُخْتَيْنِ الْمَنْصُوصِ عَلَيْهِ فِي قَوْلِهِ تَعَالَى: [وَأَنْ يَجْمَعُوا بَيْنَ الْأُخْتَيْنِ] مُطْلَقٌ، فَيَدْخُلُ فِيهِ التَّحْرِيمُ بِالزَّوْاجِ وَبِمِلْكِ الْيَمِينِ²².

It means, "It is permissible to unite two sister slaves or the like, like her and her aunt, in *milk al-yamin*. However, if the master has sex with one of them, then the other is temporarily *haram*. If he still has sex with the second, then he is a sinner. This is the opinion of the majority of the ulema. They perform *istidlal* against the *haram* of two sisters as stipulated in the text of the Qur'an, as Allah says, "And bring (in marriage) two sisters", (Surah al-Nisa: 23). The regulation is absolute and it applies to both marriage and *milk al-yamin*".

The Concept of *Milk al-Yamin* According to Muhammad Syahrur's Thought

In his book *Nahw Ushul Jadidah li al-Fiqh al-Islami* (Contemporary Islamic Fiqh Methodology), in Chapter IV entitled

²¹ *Istibra* according to language is asking for manumission. According to the Sharia, it is applicable for a female slave who waits for a period due to current or lost ownership, or by *syubhat*, or a waiting period for a woman who is adulterated to know the cleanliness of her womb, or for worship. Wahbah az-Zuhaili, *Fiqh al-Islam* ..., p. 7209

²² Tim Kementarian Wakaf, *Al-Mausu'ah*..., p. 299.
<http://jurnal.arraniry.ac.id/index.php/samarah>

Polygamy, the sub-chapter of marriage (*al-zawjiyyah*) and agreement (*al-mithaq*), Muhammad Syahrur begins his description with the statement that in *at-Tanzil al-Hakim* (al-Qur'an), marriage is mentioned on two main foundations: *mihwar al-'alaqah al-jinsiyyah* (sexual relations); and *mihwal al-'alaqah al-insaniyyah al-ijtima'iyyah* (human and social relations).²³

Firstly, sexual relations, listed in the Qur'an surah al-Mukminun verses 5-7, which means "... and those who guard their desire, except for their wives or their slave, then they are not disgraceful. Whoever is looking beyond it, then they are the ones who transgress". Secondly, human and social relations, contained in the Quran in several chapters: (1) *an-Nahlu* verse 72, which means "And Allah has made for you from your own souls (mates, spouses) of your own kind, and has made for you, from your mates, sons and grandsons.". (2) *al-Furqan* verse 54, which means "And He also created humans from water, then He made humans have offspring and *mushaharah*²⁴, and your God is almighty". (3) *an-Nisa* verses 20-21, which means "And if you wish to replace a wife by another and you have given one of them a heap of gold (as *Mahr*) then do not take from it anything; would you take it (what you promised) by slandering and manifest sin? And how could you take it while you have gone in unto each other and they have taken from you a solemn covenant?".²⁵

Here Syahrur wants to explain that the marriage covenant (*mithaq az-zawjiyyah*) is a very powerful agreement that the wives take from their husbands, and this is not in the position of *milk al-yamin*. A marriage agreement or marriage contract, which states a cash dowry or debt, has caused sexual relations to become from haram to halal in a legal context. However, life in marriage is not solely sexual relations, which does not exceed more than two percent in family life. It means that there are still 98% of daily life in marriage in the form of family activities as joint activities of

²³Muhammad Syahrūr, *Nahw Usul Jadidah* ..., p. 434-435.

²⁴*Mushaharah* means kinship that comes from marriage, such as son-in-law, brother-in-law, in-laws and so on. See *Al-Qur'an dan Terjemahnya*, Mujamma 'al-malik Fahd li Thiba'at al-Mushhaf asy-Syarif Madinah al-Munawwarah P.O. Box 6262, Kingdom of Saudi Arabia, p. 567.

²⁵Muhammad Syahrūr, *Nahw Usul Jadidah* ..., p. 434-438.
<http://jurnal.arraniry.ac.id/index.php/samarah>

husband and wife that arise as a result of the marriage contract. This joint activity includes the rights and obligations of each husband and wife to foster a family, including the life of their children and grandchildren, as well as other family relationships related to *mushaharah* and others, as a social activity.²⁶

Regarding the concept of *milk al-yamin* which is the focus of this study, Syahrur explained that the basis of sexual relations as mentioned in the al-Mukminun chapter has two possibilities: first, a husband-wife relationship; and second, the owner's relationship with *milk al-yamin*. In both relationships, there is a sexual relationship, as His emphatic commandment "... except for their wives or slaves they have". In this verse, there is a relationship difference between husband and wife and *milk al-yamin*, but they have similarities in sexual relations.²⁷

In the *turas* (classical) books, the concept of *milk al-yamin* has been synonymous with *ar-riq* (slave), given that the slavery system was generally accepted at that time. Here Syahrur wants to explain that the elimination of the concept of slavery in the present, causes an argument (verse) contained in *at-Tanzil al-Hakim* (al-Qur'an) no longer has any meaning or evidence in factual reality. It is as if the verse has been erased historically, even though it is repeated 15 times in the Qur'an. Therefore, according to Syahrur, the exact meaning of the term should be sought (*milk al-yamin*) for the present, because if not, then it means that there will be legal verses that erase themselves historically from time to time.²⁸

Furthermore, Syahrur said that in *at-Tanzil al-Hakim* (al-Qur'an), it was clearly stated about the existence of sexual relations between the master and *milk al-yamin* as in his words Surah al-Ahzab verse 50 which means "O Prophet, Indeed, We have legalized for you your wives, whom you have given your dowry, and the slave you have earned in a war which Allah has given you". Syahrur also said that the Quran explicitly states that there are no restrictions in sexual activity, and it is permissible to display jewelry between the wife and *milk al-yamin*, as in His words in Surah al-Mukminun verses 5-6 which means "... and people who

²⁶Muhammad Syahrūr, *Nahw Usul Jadidah* ..., p. 435-438.

²⁷Muhammad Syahrūr, *Nahw Usul Jadidah* ..., p. 435.

²⁸Muhammad Syahrūr, *Nahw Usul Jadidah* ..., p. 435.

¹ <http://jurnal.arraniry.ac.id/index.php/samarah>

guard their will, except for their wives or slave (milk al-yamin) which they have”, and in surah an-Nur verse 31: *aw ma malakat aymanuhunna* (or their slave).²⁹

Here Syahrur wants to emphasize that even though the marriage relationship and *milk al-yamin* have similarities in terms of the permissibility of sexual relations, they are different in terms of the after-effect of the contract (*akad*). Marriage is a social agreement between a man and a woman. It has several goals, including sexual relations, *mushahah*, passing on offspring, forming a family, and fostering a life together. A wedding causes a woman to be bound within marriage legal conditions, including dowry, divorce, *iddah*, and inheritance. In contrast to *milk al-yamin*, which is not mentioned in the Quran, Syahrur said that he found other regulations than a marriage that is applied to *milk al-yamin*.³⁰

For the present context, according to Syahrur, the concept of *milk al-yamin* can be equated with a temporary marriage contract (*zawaj al-misyar*) or *nikah mut'ah* (*zawaj al-mut'ah*). In this concept of contractual marriage, there are no conditions for marriage in general, because the aim is not to have a kinship, continue offspring, and build a family, but purely a sexual relationship, and it is not included in the category of legal marriage, although at the same time it is not haram. This concept, which Syahrur understood, is called *'aqd ihsan* (integrity covenant, the covenant of sexual relations). This term is in place of the term temporary marriage contract agreement (*zawaj al-misyar*) or *nikah mut'ah* (*zawaj al-mut'ah*).³¹

From the description above, it can be understood that Syahrur did not actually legalize non-marital sexual relations with the concept of *milk al-yamin*, but he prefers to equate it with the concept of a temporary marriage contract or *nikah mut'ah*, which in his term is called *'aqd ihsan*. The concept offered by Syahrur existed in order to answer legal problems which according to him, if not understood properly, could result in the eradication of a verse

²⁹Muhammad Syahrūr, *Nahw Usul Jadidah* ..., p. 435-436.

³⁰Muhammad Syahrūr, *Nahw Usul Jadidah* ..., p. 436.

³¹Muhammad Syahrūr, *Nahw Usul Jadidah* ..., p. 436.

¹ <http://jurnal.arraniry.ac.id/index.php/samarah>

of the Qur'an (legal argument) historically because its meaning is no longer suitable with the conditions of the current era.

Conclusion

Islam exists in order to uplift the dignity of human rights. Therefore, the term slavery or slave does not originally come from Islamic culture. But it has existed in earlier cultures, long before Islam came. In fact, the presence of Islam is to abolish slavery itself, by stipulating several rules related to the manumission of slaves in several cases of violations, such as *dhihar*, oathbreaking, murder, etc.

According to fiqh, in the concept of *milk al-yamin*, a master may have sex with his female slave without a marriage contract. This does not mean that he can have sex without a contract or a loose consensual bond. In fact, what allows the relationship itself is the *akad milik*, which is stated by the fiqh scholars as having a stronger status than the marriage contract. The *milk al-yamin* contract, besides producing benefits, also creates the right to have an intimate relationship. Thus, Islam allows a master to marry his slave, in order to elevate her status. When the master died, the slave and his child (from a marriage with the master) became free. Therefore, the concept of *milk al-yamin* in Islamic understanding is indeed intended to abolishing slavery itself, not as a basis for legitimizing non-marital sexual relations.

According to Muhammad Syahrur, the concept of *milk al-yamin* has similarities and differences with the marriage contract. The equation lies in the ability to have sex. The difference is that the marriage contract is not solely a sexual relationship, but has a legal effect on the birth of the rights and obligations of husband and wife to foster a family, including the life of their children and grandchildren, as well as other family relationships related to *mushahah* and others, as a social activity. Meanwhile, *milk al-yamin* does not lead to the emergence of rights and obligations as husband and wife as a result of the marriage contract. The concept of *milk al-yamin* which is understood by Syahrur in the present context is how the legal argument (verse al-Qur'an) remains in accordance with the conditions of the times, not until it is lost or erased historically because it is not updated. Because of that, he composed a new logic for the concept of *milk al-yamin* in a <http://jurnal.arraniry.ac.id/index.php/samarah>

contemporary context, which is termed *'aqd ihsan*. This contract can be regarded as the same as a temporary marriage contract or *mut'ah*.

The implication of family law is that the concept of *milk al-yamin* which was understood by Syahrur enable the authorization of contractual marriages or *mut'ahs* which were abolished according to the Sunni school of fiqh. However, it has no effect on family fostering, because the concept of temporary marriage contract or *mut'ah*, does not have general marital conditions, because the goal is not to have a kinship, continue offspring, and foster a family, but purely a sexual relationship, and it does not belong to the legal marriage category—although, at the same time, it is not haram.

References

- 9 'Abd Allah Nashih 'Ulwan, *Nizham al-Riqq fi al-Islam*, Kairo: Dar al-Salam, 2003. Wahbah az-Zuhaili, *Fqih al-Islam wa Adillatuhu*, Jilid 9, Dar al-Fikr, Damsyiq, 1997.
 - 8 *Al-Qur'an dan Terjemahnya*, Mujamma' al-malik Fahd li Thiba'at al-Mushhaf asy-Syarif Madinah al-Munawwarah P.O. Box 6262, Kerajaan Arab Saudi, t.t.
 - Khairuddin, *Kesaksian Wanita Dalam Pandangan Hukum Islam; Posisi al-Qur'an dan Sunnah Dalam Metode Penetapan Hukum Islam*, Sahifa, Banda Aceh, 2018.
 - 5 M. Tatam Wijaya, Alumni PP Raudhatul Hafizhiyyah Sukaraja-Sukabumi, Pengasuh Majelis Taklim "Syubbanul Muttaqin" Sukanagara-Cianjur, Jawa Barat. <https://islam.nu.or.id/post/read/110590konsep-milkul-yamin--hubungan-seks-tanpa-perkawinan-dalam-kajian-fikih>.
 - 5 Muhammad Ali al-Shabuni, *Shafwah al-Tafasir*, Kairo: Daru al-Shabuni, Volume. 2, 1997.
 - 9 Muhammad Shadiq 'Afifi, *Al-Mujtama' al-Islami wa al-'Alaqat al-Dawliyah*, Kairo: Maktabah Al-Khanzi, 1980.
 - Muhammad Syahrur, *Islam dan Iman: Aturan-Aturan Pokok Rekonstruksi Epistemologis Rukun Islam dan Rukun Iman*, (trans. M. Zaid Sudi), Ed. I, IRCiSoD, Yogyakarta, 2015.
- <http://jurnal.arraniry.ac.id/index.php/samarah>

14

Muhammad Syahrūr, *Nahw Usul Jadidah li al-Fiqh al-Islami* (Metodologi Fikih Islam Modern), Terj. Sahiron Syamsuddin dan Burhanudin, Ed. I, eLSAQ Press, Yogyakarta, 2004.

Muhyar Fanani, *Fiqh Madani; Konstruksi Hukum Islam di Dunia Modern*, Ed. I, LkiS, Yogyakarta, 2010.

Sayyid Sabiq, *Fikih Sunnah*, (terj. Drs. Moh. Thalib), Volume 11, PT. Alma'arif, Bandung, 1994.

5

Tim Kementerian Wakaf dan Urusan Keislaman, *Al-Mausu'ah al-Fiqhiyyah al-Kuwaitiyyah*, Kuwait: Darus Salasil, Volume 11, 1427 H.

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