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An Analysis of Islamic Jurisprudence on the Marriage of Pregnant Women from the Perspective of Legal Validity in Islamic Law

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Abstract:
The paper discusses the perspectives of Islamic jurisprudence on the marriage of pregnant women in terms of their legitimacy in Islamic law. The problem is still relevant, as it continues to generate divergent understandings in society, notably concerning the legality of the marriage contract, the status of marital relations, and legal implications following marriage. This study employs normative method with library research strategy. Data were analysed from primary sources such as the Qur'an, hadith, and opinions of Islamic jurists and secondary sources such as books, journal articles, and pertinent Islamic legal literature. The peculiarity of this study is that it discusses systematically the marriage of pregnant women by combining the validity of contract, the legal legitimacy and family welfare in one analytical frame. The data indicate that there are different opinions in Islamic jurisprudence on this issue. Some scholars allow marriage under specific conditions, others are more restrictive with legal rules. The divergences stem from varying readings of the textual evidence, the status of pregnancy and the purpose of lineage protection. The study indicates that the validity of such marriage should be carefully evaluated in light of the Islamic legal sources, scholarly perspectives, and the notion of public interest.

Keywords: *Islamic Jurisprudence, Marriage, Pregnant, Legal Validity, Islamic Law*

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INTRODUCTION

Marriage is a very significant institution in Islam. It is the way of protecting honour, lineage and peace in human existence. Marriage in Islamic law is not just a biological tie between a man and a woman but also a holy contract with legal, social and moral implications. Therefore, Islamic law gives considerable attention to the rules and restrictions of marriage so that the purposes of marriage can be realised properly in line with the principles of maqaṣid al-sharī'ah. The rise of social difficulties with marriage customs has been seen in modern society. Among them is the marriage of pregnant women before the conclusion of the marriage contract. This

occurrence has become a difficult topic since it encompasses moral, social and legal concerns, as well as disagreements in the views of Islamic jurists regarding the validity of such marriages. (A. Booley, 2019).

The causes of increased cases of pregnancy outside marriage are changes in social interaction patterns, the impact of globalisation, insufficient family supervision and limited religious awareness among the younger generation. This situation often leads the couple to get married immediately to hide social shame and to give legal status to the kid that will be born. In practice, society often takes it for granted that marriage is the instant answer to the problem of conception outside marriage. But from the standpoint of Islamic law, the matter is not that straightforward. There is a difference of opinion among the experts over the permissibility of a pregnant woman getting married, either to the guy who impregnated her or to another man. (M. Mohadi, 2023).

These disparities of thought are seen in the different schools of Islamic law. Some academics let a pregnant woman to be married to the father of the child immediately, without waiting for the birth of the child; while others insist on a waiting time, or even forbid the marriage until the mother gives birth. These disparities are attributable to different methods of legal reasoning (istinbāṭ al-aḥkām), readings of Qur'anic verses and prophetic traditions, and concerns of public welfare. This subject is particularly noteworthy in Indonesia because the Compilation of Islamic Law (KHI) states that a woman who gets pregnant out of wedlock can marry the man who impregnated her without waiting for childbirth. This verse is often debated by scholars and religious leaders as to whether it is consistent with the views of ancient jurists and the general purposes of Islamic law. (M.A. Alfarisi, M.J. Hayat, & A.R. Hakimi, 2023).

Under these conditions, a research gap is identified which constitutes an important basis for this work. First, there is a gap between the normative rules in ancient Islamic juridical literature and the practice of positive law in Indonesia on the validity of the marriage of pregnant women. Secondly, past studies have been primarily concerned with the positive legal or social aspects of such weddings, but have not extensively explored the Islamic jurisprudential analysis from different schools of thought in terms of the legitimacy of the marriage contract. Third, the variations in the public's interpretation of the legality of pregnancies in marriage continue to generate doubt in religious practices and Islamic family law. This circumstance illustrates that the problem of marrying pregnant women is not just a problem of formal legal elements, but also concerns the validity of Islamic law and the protection of the moral values of the society. (M. Cammack, L. Young, & T.B. Heaton, 2020).

The objective of this study is to find a solution by conducting a comprehensive Islamic juristic review of the validity of marriages with pregnant women. The study explores the viewpoint of experts from different schools of thought, legal reasons they use and their significance in the context of Islamic law in Indonesia. This method is expected to give a more

comprehensive explanation of the legal basis of such marriages, while at the same time explaining how Islamic law perceives the matter in terms of protection of lineage, honour and public welfare. Furthermore, this research is meant to be a reference for society, scholars and religious institutions to comprehend and respond to the practice of marrying pregnant women more proportionally in accordance with Islamic teachings. (F. Opwis, 2020).

The novelty of this research is the attempt to link the classical Islamic jurisprudential analysis with the contemporary reality of Islamic law in Indonesia in a more in-depth manner. Previous studies were more focused on only one school of thought or more on the juridical side of the Compilation of Islamic Law. This study compared the views of several schools of Islamic jurisprudence, and at the same time analysed the applicability of the Compilation of Islamic Law to modern legal practices. The study also places the issue of the validity of weddings involving pregnant women in the framework of maqāṣid al-sharīʿah, therefore it debates not only the legality of the marriage contract but also the aims of Islamic law in protecting religion, lineage, and social welfare. Thus, this study presents a more holistic picture compared to earlier research. (A. Quraishi Landes, 2022).

This study shows that the discrepancies in scholars' perspectives on the marriage of pregnant women are mainly impacted by the methodologies of legal interpretation and understandings of lineage (nasab), waiting periods (iddah) and safeguarding of public morals. Some scholars stress the need to maintain a clear lineage, and therefore, block or delay the marriage until the birth of a child. Others stress the need of public welfare and social harm prevention by allowing the marriage to occur immediately. This research also finds that the provisions in the Compilation of Islamic Law are orientated to pragmatic and sociological considerations to provide legal certainty to the mother and the child, although such provisions are still being debated from the perspective of classical Islamic jurisprudence. (W.B. Hallaq, 2019)

It is vital to do research on the validity of Islamic law in terms of Islamic jurisprudential analysis of marriages involving pregnant women. This work contributes not only academically to the progress of studies on Islamic family law but also to society to comprehend more deeply the dynamics of Islamic law in reacting to modern social problems. Furthermore, the results of this study are expected to be a reference for the establishment of Islamic legal policies that are more sensitive to the demands of society without ignoring the basic principles of Islamic law.

RESEARCH METHOD

This study uses qualitative method of research with normative juridical approach or library research method. This method is employed in the study of Islamic law regarding marriage of pregnant women from the standpoint of Islamic jurisprudence (fiqh) and its legal validity according to various schools of thought. The research is concerned with analysing the perspectives of Islamic jurists on the law of marrying pregnant women, the legal justifications

employed, and its importance to Islamic law in Indonesia, especially in the Compilation of Islamic Law (KHI). The data utilised in this research is qualitative data in the form of concepts, theories, opinions of scholars and legislative provisions concerning the marriage of pregnant women. Primary and secondary data are the data sources. Primary facts are from the Qur'an, Hadith, books of classical Islamic law and Compilation of Islamic Law. Meanwhile, the secondary data are gathered from books, scientific journals, papers, and past studies related to the research issue. The data gathering approaches are carried out through documentation studies and library research by studying various books linked to the object of the investigation. The instrument of the investigation is the researcher as the principal instrument supplemented by notes, documents, and scientific references. The data analysis is descriptively and analytically carried out through data reduction, data display, and conclusion drawing to get a comprehensive grasp of the legitimacy of marriage of pregnant women according to Islamic law. (H. Snyder, 2019)

RESULTS AND DISCUSSION

A. Scholars' Views on the Marriage of Pregnant Women

In the study of Islamic jurisprudence (fiqh), the marriage of a woman pregnant from adultery is among the concerns that has caused differences of opinion among academics. These variances are the result of different interpretations of the Qur'an and Hadith especially with regards to lineage (nasab), waiting periods (iddah) and the purpose of marriage in Islam. There are various schools of thought as to whether a woman can marry when pregnant before she has given birth.

The Hanafi school says a woman impregnated from adultery might marry either the man who impregnated her or another man. Pregnancy as a result of adultery does not constitute a genuine relationship in this school and is therefore not considered to be iddah like a divorced or widowed woman. Therefore, the marriage contract remains legitimate as long as the pillars and conditions of marriage are satisfied. But, some, especially some Hanafi scholars, suggest that martial relations should be postponed until the woman delivers the child in order to avoid doubt about the status of the kid. (K.S. Vikor, 2019).

The Shafi'i school likewise expresses a similar opinion. This school allows a lady pregnant from adultery to marry without waiting until she gives birth. The Shafi'i scholars believe that adultery does not require an iddah, as there was no legitimate marriage to begin with. Hence the woman is still permitted to do the marriage contract. This opinion is based on maslahah (public welfare), notably in defending the honour of women and ensuring social certainty in society.

Unlike the Hanafi and Shafi'i schools, the Maliki and Hanbali schools generally do not allow a pregnant woman to marry until she has given birth to the child. These two schools of thought are of the opinion that a woman pregnant owing to adultery must wait till the child is born so as to avoid confusion of lineage. They follow the notion of protecting the children (ḥifẓ

al-nasl) as one of the important aims of the Islamic law. The ban also aims to protect public decency and to prevent the belief that the crime of adultery may be easily redeemed by marriage. (J.E. Tucker, 2021)

Scholarly disagreements show that Islamic law permits ijtihad in order to deal with social problems arising in society. Some scholars emphasise socioeconomic welfare and protection of women, others emphasise lineage protection and moral ideals. The many interpretations in this case, therefore, show the flexibility of Islamic jurisprudence in reacting to current challenges in conformity with the goals of Islamic law.

Table 1: Legal Rulings on the Marriage of Pregnant Women in the Perspective of the for Schools of Thought

No	School Of Thought	Legal Status of Marriage for Pregnant Women	Main Reasons	Main Focus
1	Hanafi	Permits marriage for women pregnant due to adultery	Adultery does not establish legitimate lineage and is not considered *iddah*	Legal certainty of the marriage contract and social welfare
2	Syafi'I	Permits marriage without waiting for childbirth	No valid previous marital relationship, therefore no *iddah* applies	Protection of women and public welfare
3	Maliki	Prohibits marriage until childbirth	To prevent confusion of lineage and protect offspring	Protection of lineage (*ḥifẓ al-nasl*)
4	Hanbali	Prohibits marriage until childbirth	Maintaining clarity of lineage and public morality	Morality and prevention of social harm

The table clarifies the difference of opinion of four schools of Islamic law with regards to the decision on marriage of a woman who is pregnant owing to adultery. The Hanafi and Shafi'i

schools allow such a marriage on the grounds that adultery does not establish legitimate parentage, and it is not a part of the iddah, therefore the marriage contract is legal as long as its pillars and criteria are followed. On the contrary, the Maliki and Hanbali schools do not allow marriage until the lady has given child, so as to keep the lineage clean and not to confuse heritage. These disparities are a reflection of the variances in the approach of *istinbāṭ al-aḥkām* in Islam. Some scholars emphasise social welfare (*maslahah*), while others prioritise the safeguarding of lineage and moral values in society.

B. The Legal Validity of Marriage for Pregnant Women

The marriage in Islam is valid mainly on the basis of the fulfilment of its pillars (rukn) and its requirements (shurūt). The pillars of marriage include the presence of a groom and bride, the presence of a guardian (wali) for the bride, the presence of two witnesses, and a lawful offer and acceptance (ijab and qabul). If all these criteria are accomplished, then in essence the marriage contract is legitimate under Islamic law. However, there is some scholarly controversy as to the effect of pregnancy on the legitimacy of the marriage contract in the instance of an unwed pregnant woman. The opinions of experts diverge on this matter; some say that adultery's pregnancy does not invalidate marriage if conditions and pillars are met, while others say the marriage should be postponed until after birth for the sake of clear descent. (K.A. El Fadl, 2020)

In the positive law of Indonesia, this matter is expressly governed in the Compilation of Islamic Law (KHI), especially Article 53. This law allows a woman who becomes pregnant out of wedlock to marry the man who impregnated her without waiting for the child to be born. This rule shows that such marriages are recognised in law, with a view to providing legal certainty to the couple. It also notes that the state gives a legal way to remedy societal problems through legal marriage.

The major goal of this provision in the KHI is to provide legal protection to the mother and the child. It is assumed that a child born of such marriage will have a clear legal position especially with regard to lineage (nasab) and civic rights including maintenance, education and inheritance. For the mother, at the same time, this marriage represents a social and legal shelter from a long social shame. The law therefore aims to provide general welfare (maslahah) for all the concerned parties. (I. Amin, F. Efendi, & Hertasmaldi. (2022).

The KHI, however, allows such marriages, but conventional Islamic law (fiqh) still has varying perspectives. Some academics interpret this dispensation as a kind of ijtihad considering the social conditions of the time; others still stress prudence in concerns of lineage. This reflects the dynamic character of normative Islamic law in responding to positive law in resolving contemporary challenges.

Thus, it is acknowledged that the validity of married women is not only judged from the formal fulfilment of the pillars and conditions of marriage, but also by consideration of the wider

factors of public interest (maslahah). The KHI as positive Islamic law in Indonesia is an attempt to reconcile differences of opinion among scholars by presenting a more practical and responsive answer to the demands of society without disregarding the basic principles of Islamic law. (N. Audy, Marwin, & A. Hermanto, 2024).

C. Analysis of Maqashid al-Syariah

Marriage of a pregnant woman due to adultery may be interpreted from the perspective of maqāṣid al-syarīʿah (higher purposes of Islamic law) as an endeavour to accomplish public benefit (maṣlaḥah) and prevent harm (mafsadah) in society. One of the fundamental purposes of Islamic law is the preservation of honour (ḥifẓ al-ʿirḍ), lineage (ḥifẓ al-nasl), and social peace. And therefore, such a marriage is often considered as a solution, giving the lady and the child she is carrying legal and social protection. (M.H. Kamali, 2021).

From the point of view of ḥifẓ al-ʿirḍ, marriage serves to maintain a woman's dignity by eliminating the social stigma and negative judgement from society. Pregnancy outside marriage is sometimes subject to strong social pressure and marriage is seen as a way of regaining a clearer and more honourable social status. From the point of view of ḥifẓ al-nasl, marriage is also viewed as ensuring the accountability for the kid, especially in terms of financial support, education, and care. Marriage also brings a more organised Islamic and legal relationship between the parents and the kid. (M.N. Abdullah, & S. Hussin, 2024).

Moreover, from the perspective of maṣlaḥah mursalah, the marriage of pregnant women is also a practical way to maintain social stability. The ambiguous position of the kid in society often causes administrative and social problems, for example, the civil registration and the rights to inheritance. Marriage is therefore perceived as a means of reducing possible social conflict and providing legal clarity for those concerned.

But several scholars point to serious problems with this technique. Such marriages have their advantages, but the clearness of lineage (nasab) must be rigidly maintained. This is because one of the main purposes of Islamic law is to preserve pure lineage, in order to avoid any uncertainty that may impact the laws of inheritance, guardianship and family connections. The absence of suitable preservation of lineage clarity might also have detrimental moral effects on the society. e.g., it can be read that an adulterous relationship can be ended by marriage without any moral culpability. (Y.S.I. Al Fikri & A. Fu'ad, 2023).

Therefore, the study of maqāṣid al-syarīʿah on the marriage of pregnant women is to find a balance between the realisation of advantage and the suppression of harm. On the one hand, it protects dignity, lineage and social stability. On the other hand, the scholars stress the necessity of upholding the clear lineage and the moral standards so that the aims of the Islamic law are preserved in a holistic and proportionate manner.

CONCLUSION

Marriage of a pregnant woman from the point of view of Islamic jurisprudence (fiqh) has different viewpoints among academics. The Hanafi and Shafi'i schools often allow the marriage of a woman pregnant from adultery since adultery does not create a legal lineage nor is it deemed iddah, so the marriage contract is acceptable if the pillars and requirements are met. On the contrary, the Maliki and Hanbali schools forbid such a marriage until after the woman has given birth, mainly to preserve clear lineage and avoid any confusion of genealogy. In Indonesian positive law, Compilation of Islamic Law (KHI) states that a woman who is pregnant outside marriage can marry the man who impregnated her without waiting for childbirth. \"This provision is socially orientated and protects women and children and legal certainty in family disputes. This study indicates the flexibility of Islamic law in responding to contemporary societal challenges using ijtihad and maqāṣid al-syarī'ah principles. In addition, society has to have a more complete understanding to avoid confusion on the legal rule of the marriage of pregnant women. This study may also be of use to policy makers in reconciling classical juristic viewpoints with modern legal needs.

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