

Marriage Legality in Extramarital Pregnancy

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Abstract: Marriage involving a woman who is pregnant as a result of extramarital sex remains a contested issue in Islamic legal thought and carries important legal and social consequences. This study examines the views of the four Sunni schools of law on the validity of such marriage, analyzes the Indonesian Compilation of Islamic Law, and explores the implications of these legal positions. Using normative legal research and library-based analysis, the study draws on classical fiqh literature, statutory regulations, and contemporary scholarship. The findings show substantial differences among the four schools: some allow the marriage contract without restriction, while others prohibit it until childbirth or require additional conditions. In contrast, the Indonesian Compilation of Islamic Law adopts a pragmatic position by permitting the marriage of a pregnant woman outside wedlock to ensure legal certainty, protect the child's status, and preserve the woman's dignity. From the perspective of Islamic legal objectives, the issue is closely related to the protection of lineage and has legal, social, and psychological implications for the mother, child, and family.

Abstrak: Pernikahan yang melibatkan perempuan yang sedang hamil akibat hubungan di luar nikah masih menjadi isu yang diperdebatkan dalam pemikiran hukum Islam dan memiliki konsekuensi hukum serta sosial yang penting. Penelitian ini mengkaji pandangan empat mazhab Sunni tentang keabsahan pernikahan tersebut, menganalisis Kompilasi Hukum Islam di Indonesia, dan mengeksplorasi implikasi dari posisi hukum tersebut. Dengan menggunakan penelitian hukum normatif dan analisis berbasis studi kepustakaan, penelitian ini merujuk pada literatur fikih klasik, peraturan perundang-undangan, dan kajian kontemporer. Hasil penelitian menunjukkan adanya perbedaan yang signifikan di antara keempat mazhab: sebagian membolehkan akad nikah tanpa syarat, sedangkan yang lain melarangnya sampai persalinan atau mensyaratkan ketentuan tertentu. Sebaliknya, Kompilasi Hukum Islam di Indonesia mengambil posisi yang pragmatis dengan membolehkan pernikahan perempuan hamil di luar nikah untuk menjamin kepastian hukum, melindungi status anak, dan menjaga martabat perempuan. Dari perspektif tujuan hukum Islam, persoalan ini berkaitan erat dengan perlindungan keturunan dan memiliki implikasi hukum, sosial, serta psikologis bagi ibu, anak, dan keluarga.

Keywords: *Islamic Family Law; Extramarital Pregnancy; Four Sunni Schools; Indonesian Compilation Of Islamic Law; Marriage Validity.*

Introduction

Pregnancy out of marriage is one of the most sensitive and persistent challenges in contemporary Muslim societies (Teni Marzela et al., 2024). In Indonesia, the issue has become increasingly visible alongside concerns about adolescent sexual behavior, limited religious supervision, and weak family-based moral education. Recent social indicators suggest that a substantial proportion of pregnancies occur among adolescents, reinforcing public concern over the growth of premarital sexual relations and their legal and moral consequences (Budiman et al., 2023). This condition has made pregnancy out of marriage not only a social problem, but also a serious legal issue involving marriage validity, child status, and the long-term welfare of the mother and family (Psaki et al., 2021). In Islamic legal discourse, sexual relations out of a valid marriage are prohibited and treated as a major moral violation. The significance of this prohibition lies not only in its ethical dimension, but also in its legal implications for lineage, family order, and social protection (Habibah, 2022). For that reason, pregnancy resulting from extramarital relations raises difficult questions for Islamic family law, especially when communities seek to regularize the situation through marriage. The central legal tension lies between the imperative to preserve lineage and the social need to provide legal certainty and social protection for the woman and the child.

Classical fiqh offers no single uniform ruling on the marriage of a woman who is already pregnant due to extramarital relations (Horii, 2020). The four Sunni schools differ in their treatment of the validity of the marriage contract, the permissibility of consummation, and the conditions that must be met before marital life can begin. Some jurists allow the marriage contract, while others restrict marriage until childbirth or require additional moral conditions (Khalim et al., 2024). These differences reflect broader methodological divergences in interpreting legal evidence and in balancing textual norms with considerations of public welfare and lineage protection. In Indonesia, this issue is addressed in the Compilation of Islamic Law, which permits a woman who is pregnant outside marriage to be married to the man who caused the pregnancy without waiting for childbirth. This provision reflects a pragmatic legal policy aimed at preserving social order, protecting women's dignity, and ensuring the legal status of the child. At the same time, it also reveals a significant departure from more restrictive classical positions and has therefore become a subject of continuing legal debate in the literature on Islamic family law (Efrinaldi et al., 2023).

Although several studies have examined the issue from either a fiqh perspective or a statutory perspective, the existing literature remains fragmented. Many works discuss one school of law in isolation, while others focus narrowly on the text of the Compilation of Islamic Law without integrating a broader comparative analysis. Moreover, relatively few studies connect the doctrinal differences to their legal, social, and psychological implications for the mother, the child, and the family. This gap is important because the issue is not only doctrinal, it also concerns legal certainty, moral accountability, and the practical response of Islamic law to changing social realities. Against this background, this study aims to examine the positions of the four Sunni schools on marriage involving a woman pregnant due to extramarital relations, analyze the approach adopted by the Indonesian Compilation of Islamic Law, and explore the implications of these legal constructions. By combining classical jurisprudential analysis with contemporary Indonesian legal context, the study seeks to offer a more comprehensive and balanced understanding of how Islamic law addresses a problem at the intersection of morality, family law, and public policy.

Literature Review

Previous studies on marriage involving a woman pregnant due to extramarital relations can be grouped into three main strands. The first strand focuses on classical Islamic jurisprudence and the positions of the four Sunni schools. Studies in this area show that the jurists do not hold a single unified position regarding the validity of marriage in such circumstances. Some scholars permit the marriage contract, while others restrict it until childbirth or attach specific moral and legal conditions. This body of

literature demonstrates that the disagreement is rooted in different legal methodologies, especially in balancing textual interpretation, protection of lineage, and the prevention of moral harm (Aladin, 2018).

The second strand examines the Indonesian legal response through the Compilation of Islamic Law. These studies generally highlight Article 53 as a pragmatic legal provision that permits the marriage of a pregnant woman outside wedlock to the man responsible for the pregnancy (Nafisah et al., 2024). Scholars argue that this provision reflects an effort to accommodate social realities while maintaining legal certainty, protecting the status of the child, and safeguarding the dignity of the woman. At the same time, some literature notes that this approach represents a departure from stricter classical positions and raises questions about the extent to which codified law should adapt to social necessity (Hendrika & Fitriani, 2024). The third strand addresses the broader implications of such marriages, particularly their legal, social, and psychological effects (Astari & Chusniyah, 2021). Existing studies suggest that marriage in cases of extramarital pregnancy is not merely a doctrinal issue, but also a social-policy question involving family stability, child protection, public morality, and the long-term well-being of the mother and child (Entuu & Yusuf, 2023). However, many of these studies treat the implications separately from the doctrinal debate, resulting in an incomplete analytical picture.

Despite the growing number of publications on this issue, several gaps remain. *First*, most studies are either school-specific or purely statutory, and few provide a genuinely comparative reading across all four Sunni schools alongside the Indonesian Compilation of Islamic Law. *Second*, the literature tends to emphasize legal permissibility while giving less attention to the intersection between law, social stigma, and psychological burden. *Third*, relatively little research connects classical fiqh positions with contemporary legal policy and maqāsid-based reasoning in a single analytical framework. These gaps justify a more integrated study that combines comparative jurisprudence, positive law, and socio-legal analysis. In this context, the present study builds on previous scholarship while extending it in three ways. It compares the four Sunni schools more systematically, situates the Indonesian Compilation of Islamic Law within the broader trajectory of Islamic family law reform, and examines the implications of the ruling for women, children, and families. By doing so, the study contributes to the literature on Islamic family law, legal pluralism, and the contemporary codification of Islamic norms in Indonesia.

Method

This study employs a qualitative library research design with a normative-comparative approach. The primary sources consist of classical fiqh texts representing the four Sunni schools, while the secondary sources include the Compilation of Islamic Law, journal articles, and other relevant scholarly works. Data were collected through a systematic review of academic databases and digital libraries. The analysis used content analysis to identify juristic positions, supporting arguments, and legal reasoning, followed by a comparative legal approach to examine similarities, differences, and their relevance to contemporary Indonesian Islamic family law.

Results and Discussion

Juristic Positions Across the Four Schools

The four Sunni schools adopt distinct approaches to the validity of marriage involving a woman who is pregnant as a result of extramarital relations (Janur & Nasriah, 2022). The Hanafi school generally recognizes the validity of the marriage contract, while prohibiting consummation until childbirth. This position is based on the view that an illegitimate pregnancy does not constitute a legally recognized kinship relation that would invalidate the contract, whereas the temporary restriction on marital relations serves to prevent any confusion of lineage. By contrast, the Maliki school advances a more restrictive position by prohibiting marriage until the woman has delivered and completed a purification period. In this framework, pregnancy functions as a legal impediment similar to a waiting period, regardless of whether the prospective husband is the man responsible for the pregnancy or another man. The primary concern is

the preservation of lineage and the prevention of moral and legal ambiguity. The Shafi'i school adopts a comparatively permissive stance. It generally allows the marriage contract, whether the husband is the man who caused the pregnancy or another man (Muzakkir, 2022). This view is grounded in the absence of an explicit textual prohibition and in the principle that adultery does not nullify a person's legal capacity to enter into marriage. Some Shafi'i jurists even permit consummation before childbirth, although internal variation exists within the school. The Hanbali school, like the Maliki school, takes a restrictive view by prohibiting marriage until the woman gives birth. This position rests on the need to preserve clarity of lineage and prevent the mixing of paternity (Asman, 2020). Accordingly, both the termination of pregnancy and the completion of the waiting period are treated as prerequisites for a valid marriage.

Legal Divergence and Juristic Logic

A comparative reading of the four schools shows that the disagreement does not concern the moral prohibition of adultery itself, but rather the legal effect of pregnancy on the validity of a subsequent marriage. The more permissive positions of the Hanafi and Shafi'i schools prioritize contractual validity and the absence of a lineage connection between the unborn child and the biological father. In contrast, the Maliki and Hanbali schools emphasize preventive legal control and the safeguarding of lineage through the postponement of marriage until childbirth. This divergence reveals two broader tendencies in Islamic jurisprudence. One approach emphasizes the validity of the marital contract and rejects illegitimate pregnancy as a legal impediment, while the other stresses precaution, moral discipline, and the protection of lineage through temporal restriction. Despite these doctrinal differences, all four schools pursue the same normative objective: preserving family order, maintaining moral discipline, and preventing confusion in lineage (Rojudin, 2021).

The Indonesian Compilation of Islamic Law adopts a pragmatic and state-oriented position. Article 53 expressly allows a pregnant woman outside marriage to be married to the man who impregnated her without waiting for the child's birth, and the marriage is not required to be repeated after delivery (Dedi, 2019). This provision positions the KHI as a legal framework that prioritizes certainty, social protection, and family stability within Indonesian Islamic law. In practical terms, this approach reflects an accommodation of social reality. Pregnancy outside marriage does not always result from consensual adultery, it may also arise from rape or other circumstances in which the perpetrator is unknown or cannot be held legally accountable (Sabir, 2021). For this reason, the KHI seeks to protect women's dignity, reduce social stigma, and ensure that the child has a clear legal position within the family structure. The KHI also functions as a mechanism for minimizing the negative consequences of pregnancy outside marriage. By permitting immediate marriage, it provides a lawful avenue for formalizing responsibility, stabilizing the family unit, and creating a socially recognized environment for child upbringing. In this respect, the KHI reflects a policy of legal pragmatism rather than strict doctrinal conservatism (Kuswulandari & Dianti, 2024).

Implications for Islamic Family Law

The marriage of a woman pregnant from extramarital relations (*zina*) remains a pivotal issue in Islamic family law, intersecting moral doctrine, nasab protection, and social realities (Triyono, 2022). Classical fiqh debates transcend mere permissibility, addressing how law responds to post-violation circumstances. Consensus prohibits *zina*, but divergence arises on marriage's validity amid pregnancy, influencing contemporary codifications as Indonesia's Compilation of Islamic Law (KHI) (Azwar & Elfia, 2021). Hanafi jurists permit the marriage contract but prohibit consummation until childbirth, distinguishing contractual validity from sexual access to avert lineage confusion. This calibrated approach upholds formal legality while prioritizing paternity clarity, reflecting concern for social order without absolute barriers (Basuki et al., 2022).

Shafi'i scholars adopt broader permissiveness, validating marriage with the impregnator or another absent explicit textual impediments (Nurwandri & Syam, 2021). They separate moral sin from

legal incapacity, allowing even pre-birth consummation in stronger opinions. This methodological restraint balances lineage safeguards with practical functionality, avoiding undue prohibition extensions. Conversely, Maliki and Hanbali schools impose restrictions Maliki prohibits marriage until post-partum purification, analogizing pregnancy to 'iddah for moral restoration; Hanbali delays until birth to resolve *rahim* ambiguity and prevent *nasab* intermixture (Wan Halim & Desa, 2022). These preventive stances emphasize symbolic discipline, using law to deter normalization of illicit acts and preserve family morality. All madhhabs converge on *hifz al-nasl* (lineage preservation) but diverge strategically as permissive schools (Hanafi, Shafi'i) validate contracts with restrictions; restrictive ones (Maliki, Hanbali) postpone entirely (Zumaro, 2021). This reveals dual instincts legal continuity versus moral caution advancing *maqasid al-shariah*. KHI Article 53 pragmatically permits such marriages immediately, without post-birth repetition, prioritizing *maslahah* for women's dignity, stigma reduction, child certainty, and family stabilization (Teguh Abdurrohman Shodiq & Tajul Arifin, 2024). Unlike classical *fiqh*, it accommodates modern contexts like coercion or absent fathers, favoring remedial efficiency over punitive delay. Yet it raises tensions, does it dilute deterrence, risking moral accommodation. KHI's logic addresses non-consensual pregnancies, minimizing vulnerability versus rigid postponement's harms. It queries law's role moral guidance or social management with classical restrictiveness excelling in symbolism, KHI in repair (Madsaid et al., 2024).

Child implications persist because *nasab* attributes to the mother, limiting inheritance or guardianship despite marriage. This partial accommodation highlights law's limits in retroactively legitimizing descent (Hidayat, 2022). Socially, stigma burdens women disproportionately, fostering coerced unions vulnerable to discord. KHI protects but cannot erase psychological harms. Last, classical *fiqh* and KHI align on *nasab* or social order but differ in strategy: permissive validation, restrictive delay, or KHI's efficiency. This contextual *ijtihad* sustains Islamic principles amid vulnerability, urging balanced jurisprudence (Nabilah et al., 2025).

Conclusion

The analysis of the four major Sunni madhhabs reveals nuanced divergences in regulating the marriage of a woman pregnant from *zina*, reflecting distinct prioritizations of *nasab* preservation, ritual purity, and practical exigencies. While the Hanafi school permits the marriage contract but prohibits consummation until delivery to safeguard lineage clarity; the Maliki school imposes an absolute prohibition until post-partum purification, analogizing pregnancy to 'iddah; the Shafi'i school adopts the most permissive stance, allowing both marriage and consummation irrespective of the impregnator; and the Hanbali school defers marriage until birth to avert *rahim* ambiguity and *nasab* intermixture—these positions underscore a shared commitment to *maqasid al-shariah*, albeit with varying emphases on *hifz al-nasl* and *hifz al-din*.

In contrast, Indonesia's Compilation of Islamic Law (KHI), particularly Article 53, embraces a pragmatic, *maslahah*-oriented approach by permitting such marriages with either the biological father or another man, prioritizing the protection of women's dignity, mitigation of social stigma, and legal certainty for the child. This contextual adaptation bridges classical *fiqh* with contemporary socio-legal realities, exemplifying *ijtihad*'s dynamism in Muslim family law. Nevertheless, the implications extend profoundly into legal, social, and psychological domains: restricted *nasab* ties curtail inheritance and guardianship rights, while enduring stigma and psychological strain threaten marital harmony and child development. Future research should thus explore harmonized frameworks integrating madhhab pluralism with KHI provisions, fostering equitable jurisprudence that upholds justice ('*adl*), welfare (*maslahah*), and familial integrity in pluralistic societies.

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Conflict of Interest

The author declares no conflict of interest in the writing or publication of this article.

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