

## The Phenomenon of Pregnant Muslim Marriages in Lintau Buo Utara, Tanah Datar, West Sumatra

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### Abstract

A marriage where the woman is pregnant due to adultery is considered uncommon and taboo in Muslim society. The pregnancy is always kept secret by the prospective married couple and their families. The pregnant Muslim women marriage rate in *Lintau Buo Utara* is quite high. This study focuses on the case of pregnant women's marriages, specifically how the Office of Religious Affairs (KUA) officers may learn about the prospective bride's pregnancy and the family's actions after the prospective bride gives birth. The research was carried out in the form of a field study using the socio-legal research method with interviews conducted with relevant parties in this case. The results concluded that the majority of pregnant marriages at KUA *Lintau Buo Utara* were predominantly experienced by young couples at elementary and junior high education levels. KUA officials could discover about the future bride's pregnancy by observing the attitude of the prospective partner or their families during the registration process, the answers of the partner throughout the interview session, and the results of the examination done by the Public Health Center staff. The family's stance towards the pregnant woman's marriage is that the couple will hold a remarriage after the bride gives birth. The new findings in this study are related to the way KUA officers reveal the state of the prospective bride's pregnancy, which was originally kept secret. This is very important to be applicable to KUA officers in other areas.

**Keywords :** *Pregnant Muslim Marriages, Adultery, Office of Religious Affairs.*

### Abstrak

Perkawinan wanita dalam keadaan hamil karena zina merupakan peristiwa yang tidak lazim dan tabu dalam masyarakat muslim. Kehamilan calon mempelai wanita selalu dirahasiakan oleh calon pengantin maupun keluarga. Kasus perkawinan wanita muslim dalam keadaan hamil tergolong tinggi di Kecamatan Lintau Buo Utara. Penelitian ini bertujuan mengetahui cara petugas Kantor Urusan Agama (KUA) dapat mengetahui kehamilan calon mempelai wanita, dan untuk mengetahui tindakan keluarga setelah bayi lahir. Penelitian yang dilakukan adalah penelitian hukum sosial (*socio-legal research*) dengan melakukan wawancara kepada pihak-pihak terkait dalam kasus ini. Hasil penelitian menunjukkan bahwa pernikahan wanita hamil di KUA Lintau Buo Utara sebagian besar dilakukan oleh pasangan usia muda dengan pendidikan SD dan SLTP. Petugas KUA mengetahui kehamilan calon mempelai dengan melihat sikap pasangan calon atau keluarga ketika dalam proses pendaftaran, dan dari proses wawancara, serta dari hasil

pemeriksaan petugas Puskesmas. Pasangan perkawinan wanita hamil ini selanjutnya akan dilakukan nikah ulang setelah mempelai wanita melahirkan. Temuan baru dalam penelitian ini adalah terkait cara petugas KUA dalam mengungkap keadaan kehamilan calon mempelai wanita yang semula dirahasiakan. Hal ini sangat penting untuk dapat diterapkan bagi petugas KUA di daerah lain.

**Keywords:** *Kawin Hamil Wanita Muslim, Zina, Kantor Urusan Agama.*

## INTRODUCTION

Pregnancy outside of marriage happens when a woman has sexual intercourse with a man who is not her legal spouse. Intimate connections between unmarried couples are clearly referred to as adultery. Adultery is strongly prohibited in Islamic law, especially for Muslims, as it is considered a major sin, and it is stated through consensus (al-Ijma') among Muslim scholars. In Islamic jurisprudence's books, it is included in the topic of "*Kitab al-Hudud*" (maximum punishment), and the punishment for someone committed Zina is considered as ijma' (Ibn al-Munzhir, 1999). According to al-Shatibi in his book; *al-Muwafaqat*, there is no religion that permits adultery because the protection of lineage (*hifz nasl*) is considered the objective of all religions (*al-millah*) (Al-Shāṭibī, 2006).

This prohibition is mentioned clearly in many verses in al-Qur'an; al-Furqan: 68-70, al-Isra': 32 and also in hadith narrated by Abdulla ibn Mas'ud, mentioned that Zina is considered as *akbar al-kaba'ir* (the greatest sin) after the shirk and murder (Al-Zahabi, 2001). Those evidence respect to binding transmission (*qat'i al-thubut*) in which the source is *qat'i* (definitive), and the meaning (*al-dilalah*) is also definite text. Therefore, there is no contradiction among Muslim scholars that zina is prohibited and thus, it becomes *ijma'*.

Muslim scholars have discussed about the rule of *nikah al-zaniah* (marriage with a woman that committed adultery). Some scholars provide the conditions that the woman must have repented (*taubah*) from adultery sin and the majority of madhab scholars don't make it a condition (Ministry of Religion Affairs, 1983). But according to Abdul Karim Zaidan's view, the stronger opinion is the Hanbali school of thought in which states that there must be repentance (*taubah*) before marriage (Zaidan, 1993). Thus, based on *sadd al-dhara'i* this opinion is the good option.

In relation to the rule of the marriage status of a pregnant woman, if the pregnancy is from legal marriage, then all agreed that it is not permissible to hold the marriage, while for the pregnancy in *talaq ba'in bainunah al-kubra* (major irrevocable), the woman is not allowed to marry until the baby is born (Ministry of Religion Affairs, 1983).

Next, this paper will study the case discussed in which the rule of marriage where the woman is pregnant due to adultery (adolescent pregnancy). There are several opinions in *al-madhahib al-arba'ah* (the four Sunni schools); according to al-Madhab al-Maliki, al-Madhab al-Hanbali and based on Abu Yusuf's opinion, marriage is prohibited based on the hadith narrated by Aishah RA in Sunan Abi Dawud: "*Lā tūṭa' al-hāmil ḥattā taḍa'*" (There must be no intercourse with a pregnant woman till she gives birth) (Ibn Abidin, 2003); (Al-Hattab, 2003); Al-Buhuti, 1983). According to Madhab al-Hanafi and al-Shafi'i, it is allowed for women to marry as they argued that the prohibition is related to pregnant women in nikah sahiih (legal marriage), and the pregnancy due to Zina is not included in the al-Qur'an and the Sunnah. (Al-Kasani, 1993); (Ibn Abidin, 2003), (al-Bajuri, 2016).

In terms of customary provisions, adultery is also prohibited by Indonesian customary norms (Siregar & Sianturi, 2020). The customary law in most places prohibits people from committing adultery, particularly in societies with eastern communities, such as the *Minangkabau* people. The customary philosophy of *Minangkabau* is *Adat Basandi Syara', Syara' Basandi Kitabullah*. This philosophy emphasizes that its customs are based on religious provisions, and the religious provisions are based on the Qur'an (Abidin, 2019). In short, cases of the marriage of pregnant woman in several areas of *Minangkabau* is because of the community's incapacity to appropriately apply sanctions of customs despite the fact that they reject and condemn the offenders of marriages of a pregnant woman due to adultery, as happened in *Pantai Cermin* (Azwar & Elfia, 2021).

Research related to this discussion is found in several articles, including 1) Tsubaidah, who conducted library research on the views of the five schools of jurisprudence scholars regarding the law of marriage for pregnant women (Tsuaiabah, 2017); 2) Yustika examined the opinion of the KUA regarding pregnant marriage, including the basis and reasons used in marrying pregnant women as a result of adultery in KUA Kasihan District, Bantul (Yustika, 2014); 3) Dedi, who conducted library research related to the provisions of Article 53 of

the Compilation of Islamic Law concerning marriages of pregnant women due to adultery (Dedi, 2019); 4) Mansur, researched the effectiveness of applying fines in overcoming khalwat. in fact there are some areas in Aceh, which consider that marrying off a partner because of khalwat, is considered a form of fine (Mansur et al., 2020); 5) Paulus, researched the pattern of solving adultery cases in the Savu tribe community (Paulus et al., 2019); 6) Ahmed researched the impact of early marriage and early pregnancy on Bangladeshi youth (Ahmed, Shaila, Shamsun Nahar, Md. Nurul Amin, 2017); 7) Samano examined adolescents in Mexico City who became pregnant out of wedlock, and their relationship to the family context and the individual situations of these adolescents before, during and after pregnancy (Sámano et al., 2017); and 8) Taghipour, researching the importance of promotion for the prevention of early marriage is necessary for the promotion of psychological empowerment during pregnancy (Taghipour et al., 2016). Based on the previous research in the article above, the research that the author conducted is clearly different, because the focus of this research is the method used by KUA officers in uncovering the pregnancy of the prospective bride which has always been kept secret from the start.

The adultery which causes the marriages of pregnant women also occurs in other areas, including in *Lintau Buo*, *Tanah Datar*. There are at least 26 cases related to marriages of the pregnant woman that have been recorded from 2012 to 2017 (Zulfahmi, Personal Communications, November 3, 2019)

There are numerous occurrences of marrying pregnant women within the community of *Lintau Buo Utara*, which is an intriguing topic to study. This is because of the fact that *Lintau Buo Utara* is part of the *Luhak Nan Tuo/Luhak Tanah Datar*. That is the original area of the *Minangkabau* people, which is well-known for sustaining religious teachings and customary provisions. The philosophy of *Minangkabau* illustrates the strength of religious teachings in society. Therefore, how the phenomena of the marriage of pregnant women occur within the community of *Lintau Buo Utara* is explored in this article, such as the profile of the prospective bride and groom who get married at KUA *Lintau Buo Utara* and how KUA officers dig up information so they can find out about the prospective bride's pregnancy. Furthermore, it also discusses the families' reaction and efforts toward the marriage, such as deciding whether to hold a remarriage or not after the fetus conceived prior to marriage was born.

## RESEARCH METHOD

This research is categorized as legal research with a social nature (socio-legal research) where the phenomena and law within the society are examined. This study is legal research that uses the method of normative or doctrinal legal research. However, because the main topic of this study discusses social phenomena that arise as a result of normative law, thus, this study method is more aptly known as socio-legal research. It solely views the law as a social phenomenon. Therefore, in socio-legal research, law is always associated with social issues. Such studies are research that focuses on individual or community behavior in relation to the law. This is a qualitative study in which utilizing primary data collected directly from the field (Putri, M., & Shafra, 2021).

Hence, the main topic in this social research is about the causes and views of the community regarding legal deviations that occur in society, compliance with the rule of law, the role of legal institutions or agencies in law enforcement, implementation of the rule of law, and the influence of the rule of law on certain social matters or vice versa and the influence of certain social problems on the rule of law (Marzuki, 2007) as well as those proposed by Soerjono Soekanto (Soekanto & Abdurrahman, 2003). This article explains the details phenomenon of the cases of the marriage of pregnant women at *Lintau Buo, Tanah Datar* as to learn why marriages involving pregnant women are so common in this area in which it strongly adheres to its traditions and customs, *Adat Basandi Syara', Syara' Basandi Kitabullah*.

## RESEARCH FINDINGS AND DISCUSSION

### **The Cases of the Marriage of Pregnant Women Within the Community of *Lintau Buo Utara***

The case of marriages of pregnant women in *Lintau Buo Utara* is divided into two categories, which are the marriages of pregnant women that are recorded in the Office of Religious Affairs (KUA) and marriages of pregnant women which are carried out unregistered at the KUA . According to the Head of KUA, many cases were found unrecorded or unregistered at KUA. The real number is still unknown, but the number is assumed to be higher than those registered. The cases of unregistered marriages are commonly referred to as *nikah siri* as the marriage is not registered in KUA. This was done due to various reasons, thus resulting in marriages to be carried out with unideal procedures at

KUA (Erisman, Personal Communications, September 5, 2019). The recorded cases are presented in the following table:

Table 1. Pregnant Women's Marriage Data

| Years | Numbers |
|-------|---------|
| 2013  | 5       |
| 2014  | 4       |
| 2015  | 6       |
| 2016  | 1       |
| 2017  | 6       |
| 2018  | 4       |
|       | 26      |

The table 1 above shows that the number of marriages of pregnant women in *Lintau Buo Utara* fluctuates throughout the year, from 2013 to 2018. Although the trend seems to decrease to one case in 2016, in 2017, it increased drastically to 6 cases. Likewise, in 2018, the cases reached 4 cases. This data is a recapitulation of the cases found at KUA *Lintau Buo Utara*.

The profile of the prospective husbands is grouped according to their age range is shown in the following table:

Table 2. Age Profile of the Prospective Groom

| Age     | Sum | Percentage |
|---------|-----|------------|
| ≤ 17    | 1   | 10 %       |
| 18 – 21 | 6   | 60 %       |
| 22 – 25 | 1   | 10 %       |
| 26 – 30 | 0   | 0          |
| 31 – 35 | 1   | 10 %       |
| 36 – 40 | 1   | 10 %       |
| > 41    | 0   | 0          |
|         | 10  | 100%       |

The table 2 above shows that the age range of prospective groom that dominates in this case is 18-21 years old, with the percentage of 60% or 6 cases. There is also a prospective groom who is still 17 years old which amounts to one case. However, there is only one case recorded for the age range of 22-25, 31-35, and 36-40 years old. To sum up, most prospective grooms are still below the age limit required as ruled by the Indonesian Marriage Law. The profile of the prospective wife can be seen in the following table:

Table 3 . Age Profile of the Prospective Bride

| <b>Age</b> | <b>Sum</b> | <b>Percentage</b> |
|------------|------------|-------------------|
| < 17       | 4          | 40 %              |
| 18 – 21    | 6          | 60 %              |
| 22 – 25    | 0          | 0                 |
| 26 – 30    | 0          | 0                 |
| 31 – 35    | 0          | 0                 |
| 36 – 40    | 0          | 0                 |
| > 41       | 0          | 0                 |
|            | 10         | 100%              |

According to the table above, the age range is dominated by the 18-21 years old. In this age range, there are 60% or 6 cases. Meanwhile, the remaining are 17 years old and below with the percentage of 40% which involved 4 young women in which one of them was the exact age of 14 years old. Most of the prospective brides involved in these marriages are still below the age limit required by the Indonesian Marriage Law. The prospective groom’s education profile is shown the following table:

Table 4. Education Profile of the Prospective Groom

| <b>Education</b>                  | <b>Total</b> | <b>Percentages</b> |
|-----------------------------------|--------------|--------------------|
| Elementary School<br>(Unfinished) | 0            | 0                  |
| Elementary School                 | 6            | 60 %               |
| Junior High School                | 4            | 40 %               |
| Senior High School                | 0            | 0                  |
| Diploma                           | 0            | 0                  |
| Undergraduate                     | 0            | 0                  |
|                                   | 10           | 100                |

Based on the table above, it is known that the education of prospective grooms in cases of the marriage of pregnant women is elementary school, which is 60%, or 6 cases. Meanwhile, the remaining 40%, or four cases, are prospective grooms with only a junior high school education.

Table 5. Education Profile of the Prospective Bride

| <b>Education</b>               | <b>Total</b> | <b>Percentages</b> |
|--------------------------------|--------------|--------------------|
| Elementary School (Unfinished) | 0            | 0                  |
| Elementary School              | 2            | 20%                |
| Junior High School             | 7            | 70%                |

| <b>Education</b>   | <b>Total</b> | <b>Percentages</b> |
|--------------------|--------------|--------------------|
| Senior High School | 1            | 10%                |
| Diploma            | 0            | 0                  |
| Undergraduate      | 0            | 0                  |
|                    | 10           | 100%               |

The table 5 above describes that most of the education of the prospective brides have in the cases is in junior high school level in which it is recorded 7 cases or 70%. Meanwhile, the rest of the prospective brides are at the elementary school level. This amounts to 2 cases or 20%. The number of prospective brides in a high school education level is 10% or only one case. The profile of the job of prospective groom is stated in the following table:

Table 6. Job Profile of the Prospective Groom

| <b>Job</b>     | <b>Sum</b> | <b>Percentages</b> |
|----------------|------------|--------------------|
| Public Servant | 0          | 0 %                |
| Farmer         | 5          | 50%                |
| Private        | 5          | 50%                |
|                | 10         | 100%               |

Based on the table 6 above, it is known that half of the prospective grooms are working as farmers with the percentage of 50%. While the other half of them are entrepreneurs, recorded as 50% or 5 cases as well. In this category, private is meant for having precarious jobs. The profile of the prospective brides is shown in the following table:

Table 7. Job Profile of the Prospective Bride

| <b>Job</b>     | <b>Sum</b> | <b>Percentages</b> |
|----------------|------------|--------------------|
| Public Servant | 0          | 0%                 |
| Farmer         | 2          | 2%                 |
| Private        | 8          | 8%                 |
|                | 10         | 100%               |

The table above shows that the majority of prospective brides have a private job amounting to 80% or 8 cases. Thus, what is meant by private here is that the prospective bride does not have a permanent job. Meanwhile, the remaining 20% work as farmers.

### **Marriages of Pregnant Woman at KUA *Lintau Buo Utara***

Pregnancy outside of marriage is considered disgraceful and a humiliation if it occurs to a lady or a family. As a result, every person or family will want to conceal it and avoid being discovered by others. This is also what Zainal Azwar discovered, that the event of a marriage involving a pregnant lady because of adultery was a very embarrassing incident that affected the family's reputation (Azwar & Elfia, 2021).

Based on interviews with the Head of KUA *Lintau Buo Utara* it is known that The case of marriages of pregnant women in KUA *Lintau Buo Utara* is a marriage case which was originally an ordinary marriage that goes on in general. In 2017 and 2018, there were 10 cases in KUA *Lintau Buo Utara*. The ten cases of marriage involving pregnant women were initially out in the same manner as in the general marriage registration process. The couples and families who register the marriage application with the KUA only submit the application for marriage registration. There are even some parents (families) who do not know about their daughter's pregnancy while applying for the marriage registration. Thus, some of the families were shocked to hear the information from KUA that their daughter was already pregnant (Zulfahmi, Personal Communications, November 3, 2019).

Basically, there is no difference in the registration process for prospective brides who are pregnant or not (Mufidati, 2020). However, given the huge impact of pregnant women's marriages on family life in the future, KUA *Lintau Buo Utara* launched inquiries on the prospective bride and groom's status. As a result, the KUA officers attempt to figure out whether or not the lady who is in the process of registering a marriage is in a marital relationship with another man. They also attempted to determine the woman's pregnancy status. To find out the pregnancy status of the woman, the officers of KUA *Lintau Buo Utara* have their own way to find out (Erisman, Personal Communications, September 5, 2019) which is by the following order;

1. Look at the haste of the family or the couple who are applying for the marriage registration and the time of the marriage contract.

The ideal time to arrange a wedding is a minimum of 10 days. But in some circumstances, the marriage plan is expedited as some of the couples and families want the marriage contract to be signed as soon as possible,

which is in 3-4 days. As a result, if a KUA officer discovers a case related to this matter, they will strive to be more careful in investigating it and they will become suspicious that they will analyze it further and make more thorough efforts. During the inspection or screening of the prospective bride and groom, the KUA officer would then ask the couple and their families further in-depth questions (Erisman, Personal Communications, September 5, 2019).

## 2. Examination Data from the Public Health Center

A health certificate from the Puskesmas is one of the requirements for marriage registration at KUA *Lintau Buo Utara*. Therefore, the results of the examination from the doctor were used as a reference by the KUA officers in carrying out the marriage administration process. Among the examination data that piqued the officers' interest were the results of urine tests as evidence to determine whether the prospective bride is actually pregnant or not. If the urine test results show positive pregnancy, the KUA officer will perform a double check and provide special treatment for the couple's second inspection (Erisman, Personal Communications, September 5, 2019).

## 3. Inquiries regarding the duration of the couple's relationship

One of the queries posed to the couple was how long they had known each other and how long they had been dating. If it is discovered that the couple has been dating for a long period, they will be questioned about where they have been and what they have done. The KUA officer can typically identify whether the couple is lying or being truthful in their responses. This is done by KUA officers with their own tricks and methods in accordance with the experience that has been undertaken in handling many cases of marriage involving pregnant women (Erisman, Personal Communications, September 5, 2019).

If the KUA officer finds that the prospective bride is pregnant prior to marriage, the couple will then be given special treatment. This treatment is carried out to prevent the couple from making a poor choice in the future. Among the special treatment provided to the couple are; 1) Separating the couple from other prospective brides and grooms who are going through the typical marriage procedure; 2) Provide different screening materials from the other prospective brides and grooms; 3) Remind the couple, in particular, not to act wrongly in regards to the child being born, including by saying that if the

child is a girl, then the marriage guardian of the girl is a judge, not the biological father or the siblings. However, if it is a boy, then he cannot be the marriage guardian of the sister (*Erisman, Personal Communications, September 5, 2019*).

The cases that occurred at KUA *Lintau Buo Utara* involved the couple of the pregnant woman and man who impregnated the woman to be married with each other (*Zulfahmi, Personal Communications, November 3, 2019*). This is allowed in the view of most *Fiqh* scholars (*Fauzi, 2021*), as well as the provisions of Article 53 of the Compilation of Islamic Law (KHI) where a marriage between the pregnant women and men who impregnate them is allowed (*Dedi, 2019*). However, it is different if it is compared with the case that occurred in *Kediri*, pregnant women were married to men who did not impregnate them (*Fakhria, 2020*).

Other than that, there are cases concerning lottery marriage involving pregnant women that occurred in *Parang, Magetan*. In this case, the man who will marry the pregnant woman is randomly chosen as the woman have sexual relationship without the man wanted to be responsible of the consequences (*Eri Sofiana, 2020*).

If it is related to *Fatimah's* writings which suggests four categories of implementing pregnant women marriages, namely 1) *tambelan* marriages; 2) forced marriages; 3) emergency marriages; and 4) *ngangkat bapak* marriages (*Fatimah, 2021*); then the cases of marriage of pregnant women that occurred in *Lintau Buo Utara* is not included in any of the four categories of pregnant marriages. Although it is somewhat closer to the first category, namely *tambelan* marriage (a forced marriage due to pregnancy with the man who made her pregnant), but in this case in *Lintau Buo Utara*, most of the marriages that occur are not forced due to pregnancy. This is because in some cases, the family does not know that the prospective bride is pregnant.

According to several locals of *Lintau Buo Utara*, it is said that the process that will be taken by the family after the marriage is to reapply for a new marriage contract after the child is born (*Asmawati, Personal Communications, September 7, 2019*). Although this action is different from the direction given by the head of the KUA, which explains that the marriage contract of a pregnant woman does not need to be renewed as stipulated in the KHI. However, in certain circumstances, some of the cases resulted in the couple deciding to renew

their marriage contract after the child is born. Almost all of the informants and community members interviewed agreed on this point.

The findings of this study are that the haste of the family and the bride and groom in arranging the wedding process is the beginning of suspicion, whether the prospective bride is pregnant or not, then KUA officers are more intensive in uncovering the prospective bride's pregnancy, including by looking at the results of the medical team's examination. This is different from Yustika's research which stated that judges only marry off brides who are pregnant due to adultery, as long as the marriage is with the man who impregnated her (Yustika, 2014). The case is different from Samano's research regarding the pregnancies of Mexican City teenage girls who don't get married right away (Sámamo et al., 2017).

## CONCLUSION

Most marriages involving pregnant women in *Lintau Buo Utara* are experienced by couples within the age range of 21 and below. In terms of education, most of the prospective grooms are in elementary school, while the brides are in junior high school. The KUA officer only found out about the pregnant state of the prospective bride after seeing the attitude and behavior of the prospective bride and groom, and their families who applied for marriage. In addition, the pregnancy is also known from the answers given by the prospective bride and groom interviewed by officers, and sometimes from information based on the results of examinations done by the Puskesmas officers. The families' efforts for the couple who are married while the bride is pregnant are to arrange a remarriage after the child is born without the involvement of the marriage registrar. Several research findings were discovered as a result of this study's conclusions, especially related to the methods used by the officers in finding out the information to make sure they can ascertain the pregnancy status before applying a special treatment to the couple. This method can be used by KUA officers in other places that anticipate the arrival of a couple with a pregnant bride who does not inform the officials. This topic still has room to be investigated as future research on the matter of the procedure of remarriage after the child is born.

As the resolution of this paper, it is hoped that the government, in this case, the Ministry of Religion, the Ministry of Education, the Ministry of Social Affairs and the Ministry of Youth, the Ministry of Women's Empowerment and Islamic NGOs are expected to give serious attention to save and protect the generations. The preachers must focus on fixing the community regarding the dangers of adultery and its consequences. In addition, there must be laws that are enforced and punishments implemented if violations occurred.

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