



**REINTERPRETING PREGNANT MARRIAGE LAW IN INDONESIA:
A MAQĀSID-BASED COMPARATIVE STUDY OF MADHHABS
AND THE COMPILATION OF ISLAMIC LAW**

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Abstract

The issue of pregnant marriage has been extensively examined from both classical Islamic jurisprudential and positive legal perspectives, a significant gap remains in harmonizing the diverse views of the four Sunni madhhabs with Article 53 of the Compilation of Islamic Law through a comprehensive maqāṣid al-syarī'ah framework. This study aims to comparatively analyze the legal opinions of the Hanafi, Maliki, Shāfi'i, and Hanbali schools regarding the marriage of women pregnant as a result of zina and to examine their harmonization with Article 53 of the KHI. Employing a qualitative approach, this research adopts a doctrinal legal analysis based on library research of classical fiqh literature, the Compilation of Islamic Law, and relevant scholarly sources. The data were analyzed using content, comparative, and interpretative approaches grounded in maqāṣid al-syarī'ah. The findings reveal that the differences among the four madhhabs reflect diverse methodologies of ijtihād in pursuing the objectives of Islamic law rather than substantive legal contradictions. Furthermore, Article 53 of the KHI represents a legal formulation that can be harmonized with classical fiqh through an approach oriented toward public welfare (maṣlaḥah). This study contributes to the existing literature by proposing a maqāṣid al-syarī'ah-based harmonization framework that integrates the protection of lineage, human dignity, life, intellect, and family welfare as the foundation for reinterpreting the legal regulation of pregnant marriage within the context of Indonesian Islamic family law.

Keywords: *Reinterpretation of the Law; Madhhab; Compilation of Islamic Law*

A. Introduction

The marriage of women who become pregnant outside wedlock has emerged as an increasingly significant issue in the development of Islamic family law in Indonesia. This issue extends beyond the validity of the marriage contract under Islamic law and encompasses the protection of women, the legal status of children, and the legal response to ongoing social changes. Data from Indonesia's National Research and Innovation Agency (Badan Riset dan Inovasi Nasional/BRIN) indicate that approximately 10.7% of pregnancies in Indonesia are unintended, with the Java-Bali region accounting for nearly 60% of all reported cases (BRIN, 2025). These figures underscore that out-of-wedlock pregnancy remains a serious challenge to family development in Indonesia. In several regions, such as Bojonegoro Regency, premarital pregnancy has become one of the principal factors driving applications for underage marriage, increasing from 72 cases in 2024 to 78 cases in 2025 (User, 2026). These trends demonstrate that premarital pregnancy has direct implications for marriage practices and legal dispute resolution in Indonesia, thereby requiring more comprehensive attention from both Islamic and positive legal perspectives.

Since the enactment of Law Number 16 of 2019, which raised the minimum legal age for marriage, applications for marriage dispensation before the Religious Courts have remained consistently high, with out-of-wedlock pregnancy constituting one of the leading grounds for such requests (Antori et al., 2024). This phenomenon suggests that legal reform has evolved alongside increasingly complex social realities. Consequently, the issue of pregnant marriage should not be viewed merely as an individual moral concern but also as a matter involving the protection of women's rights, the best interests of the child, social stigma, and the need for legal certainty in the administration of Islamic family law. Sociological studies on Islamic family law in Indonesia likewise indicate that shifting social behavior necessitates more contextual legal interpretations oriented toward public welfare (*maṣlahah*).

From the perspective of classical Islamic jurisprudence (*fiqh*), the legal status of marrying a woman who is pregnant as a result of *zina* remains a subject of scholarly disagreement. The Hanafi and Shāfiʿī madhhabs generally adopt a more permissive position by allowing such marriages under certain conditions, whereas the Maliki and Hanbali madhhabs impose stricter limitations or require specific conditions before the marriage may take place in order to preserve lineage and prevent genealogical confusion (Mustarsidin & Khisni, 2018a). By contrast, Article 53 of the Compilation of Islamic Law (Kompilasi Hukum Islam or KHI) permits a woman who is pregnant outside marriage to marry the man responsible for the pregnancy without requiring the child to be born beforehand. This divergence reflects a normative tension between certain doctrines of classical *fiqh* and Indonesia's positive legal framework, particularly in balancing the protection of lineage, family welfare, and the need to address evolving social realities.

Scholarly discussions on the marriage of pregnant women have expanded from various perspectives, yet several conceptual and methodological gaps remain. Existing studies have examined the legal status and legitimacy of such marriages within Islamic family law and explored the normative arguments underlying those positions, but they have not provided a comprehensive comparative analysis of the differing views among the four Sunni madhhabs and their implications for Indonesia's legal system (Anfasa & Ja'far, 2024). Other studies have focused on Article 53 of the Compilation of Islamic Law by analyzing its implementation through the lens of *maqāṣid al-syarī'ah* (Binarsa & Nasution, 2021), its application in marriage administration and the conservative orientation of family *fiqh* within Offices of Religious Affairs (Fakhria, 2020), or its effectiveness in positive legal practice (Srirahma & Nanang Meiske Kamba, 2022). Although these studies have made valuable contributions to the discourse on pregnant marriage, they generally address classical *fiqh* and the KHI in a fragmented manner. Consequently, there remains a lack of systematic scholarship employing a comprehensive *maqāṣid al-syarī'ah* framework to reconcile the diverse opinions of the four Sunni

madhhabs with the legal construction embodied in Article 53 of the KHI within the broader context of Indonesian Islamic family law.

Against this backdrop, the present study aims to comparatively examine the legal perspectives of the Hanafi, Maliki, Shāfi‘ī, and Hanbali madhhabs on the marriage of women who become pregnant as a result of *zina* and to analyze their harmonization with Article 53 of the Compilation of Islamic Law through the lens of *maqāṣid al-syarī‘ah*. The novelty of this research lies in the development of a *maqāṣid*-based reinterpretative framework designed to explain and harmonize the doctrinal diversity among the four madhhabs with the legal formulation embodied in Article 53 of the KHI, thereby providing a more contextual understanding of pregnant marriage within the evolving landscape of Islamic family law in Indonesia.

B. Method

This study employs a qualitative research design using a comparative and normative approach through doctrinal legal analysis, focusing on classical Islamic legal sources and the Compilation of Islamic Law (Sugiyono, 2020). This approach was selected to examine the legal reasoning underlying the marriage of women who become pregnant as a result of *zina* according to the Hanafi, Maliki, Shāfi‘ī, and Hanbali madhhabs and to compare these perspectives with the legal construction embodied in Article 53 of the KHI. The four madhhabs were selected because of their authoritative status within the classical fiqh tradition and their substantial influence on the development of Islamic family law, including its formulation and application in Indonesia.

The study relies on both primary and secondary data sources. The primary sources consist of *Al-Umm* by Imam al-Shāfi‘ī, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* by Ibn Rushd, *Al-Aḥwāl al-Shakhṣiyyah* by Muhammad Jawad Mughniyyah, and *Al-Fiqh ‘alā al-Madhāhib al-Arba‘ah* by ‘Abd al-Raḥmān al-Jazirī. These works were selected because they systematically present the juristic opinions of the four Sunni madhhabs on various issues of Islamic law, including marriage. Secondary sources include the Compilation of Islamic Law, Indonesian statutory regulations concerning marriage, peer-reviewed journal articles, and academic books selected on the basis of their

authority, relevance, and contribution to the analysis of pregnant marriage and the *maqāṣid al-syarī'ah* perspective. Data collection was conducted through library research by systematically reviewing and examining these primary and secondary legal materials (Cissé & Rasmussen, 2022).

The data analysis was carried out in three stages. First, content analysis was employed to identify, classify, and synthesize the legal arguments advanced by each madhhab and the normative provisions contained in Article 53 of the Compilation of Islamic Law. Second, a comparative analysis was undertaken using four analytical indicators: the validity of the marriage contract, the legal requirements for the marriage, the protection of lineage and the legal status of the child, and the underlying legal reasoning supporting each normative position. Third, an interpretative analysis based on *maqāṣid al-syarī'ah* was applied to formulate a harmonized reinterpretation by integrating the comparative findings within the broader objectives of Islamic law, particularly the protection of lineage (*hifẓ al-nasl*), the promotion of public welfare (*maṣlaḥah*), and the realization of the overarching purposes of the *Sharī'ah*.

C. Results and Discussion

1. Results

a. The Legal Views of the Four Madhhabs on the Marriage of Pregnant Women Due to Zina

In the context of Islamic law, pregnant marriage refers to the marriage of a woman who is already pregnant as a result of a relationship outside a lawful marriage. In classical *fiqh*, it is generally understood as a marriage contract involving a woman who has conceived through zina, whether she marries the man responsible for the pregnancy or another man (Bahori et al., 2023). The legal discussion surrounding such marriages is closely associated with several fundamental concepts in Islamic jurisprudence, including the validity of the marriage contract, the observance of *'iddah* (waiting period), and the determination of the child's legal lineage (*nasab*) (Wahyu Fitria et al., 2024).

The Hanafi madhhab maintains that a woman who becomes pregnant as a result of *zina* may marry either the man responsible for the pregnancy or another man. If she marries the man who impregnated her, the marriage may be concluded without waiting for the completion of an *'iddah* period (Jazairi, 2002). Nevertheless, if the marriage takes place before childbirth, marital relations are prohibited until the pregnancy has ended (Rusyd, 2013). This position is derived from the interpretation of Qur'ān An-Nisā':23-24, which does not explicitly classify a woman pregnant through *zina* among those prohibited from marriage; consequently, the marriage contract is considered legally valid according to the Hanafi madhhab (Rusyd & Shiddiq, 2013).

In contrast, the Maliki madhhab holds that a woman pregnant as a result of *zina* may not marry until after giving birth. According to this view, a marriage contracted during pregnancy is deemed invalid (*fāsid*) because it may result in the commingling of lineage (*ikhtilāṭ al-ansāb*) (Mugniyyah, 1964). herefore, the woman must first undergo *istibrā' al-raḥim* – the process of ensuring that the womb is free from prior reproductive claims – before a valid marriage can take place (Zuhaili, 1991). Some classical jurists further analogize this requirement to the obligation of observing *'iddah* in cases involving invalid or doubtful marital relations (Fauzi, 2020).

Similarly, the Shāfi'ī madhhab permits a woman pregnant through *zina* to marry either the man responsible for the pregnancy or another man without waiting until childbirth (Nurwandri & Syam, 2021; Syafi'i, n.d.). This position is based on the premise that pregnancy resulting from *zina* does not give rise to an obligation of *'iddah*, as it does not originate from a valid marital union. As explained by Imam al-Nawawī, the purpose of *'iddah* is to preserve the clarity of lineage within lawful marriage, whereas pregnancy resulting from *zina* does not carry the same legal consequences (Jaziri, 1969). This view is further supported by the hadith stating, “الْوَلَدُ لِلْفَرَّاشِ وَلِلْعَاهِرِ الْحَجَرُ” indicating that legal lineage is attributed to a valid marriage rather than to the perpetrator of *zina* (Bukhārī, 2001).

The Hanbali madhhab adopts a more restrictive position by maintaining that a woman pregnant as a result of *zina* may not marry until

certain conditions have been fulfilled, including the expiration of the prescribed waiting period and sincere repentance for the act of adultery. This opinion is based on a hadith “watering another man’s crop,” which is interpreted as forbidding marital relations with a woman who is carrying a pregnancy resulting from a previous illicit relationship (Syaibah, 1997). In addition, the Hanbali madhhab requires genuine repentance as a prerequisite for the permissibility of such a marriage, relying on the hadith stating *اَلتَّائِبُ مِنَ الذَّنْبِ كَمَنْ لَا ذَنْبَ لَهُ* (Baihaqī, 2011; Hasunah & Susanto, 2016).

A review of the classical fiqh literature demonstrates significant diversity among the four Sunni madhhabs concerning the legal status of marrying a woman pregnant as a result of zina. The Hanafi and Shāfiʿi madhhabs generally permit such marriages, subject to certain legal considerations, whereas the Maliki and Hanbali madhhabs require the resolution of the pregnancy or the fulfillment of additional conditions before the marriage may lawfully proceed. These findings indicate substantial variation in the legal constructions governing the validity, prerequisites, and legal consequences of such marriages within the classical tradition of Islamic jurisprudence.

b. Regulation of Pregnant Marriage under Article 53 of the Compilation of Islamic Law

Article 53 of the Compilation of Islamic Law (Kompilasi Hukum Islam or KHI) specifically regulates the marriage of women who become pregnant outside a lawful marriage. Paragraph (1) provides that a woman who is pregnant outside marriage may marry the man responsible for the pregnancy. Paragraph (2) further stipulates that such a marriage may be solemnized without waiting for the birth of the child, while paragraph (3) affirms that no subsequent remarriage or renewal of the marriage contract is required after the child is born (Kompilasi Hukum Islam Pasal 53, n.d.). These provisions reveal three principal normative characteristics of Article 53. First, it permits the marriage of a woman pregnant outside marriage to the man who caused the pregnancy. Second, the marriage may be legally

concluded during the period of pregnancy without postponement until childbirth. Third, the validity of the marriage remains legally recognized after the child's birth, eliminating the need for a new marriage contract.

Within the framework of Indonesian Islamic family law, Article 53 constitutes a specific legal provision governing the status of marriages involving women who become pregnant as a result of zina. As part of the Compilation of Islamic Law, this provision serves as an important normative reference in the adjudication of Islamic family law matters, particularly those concerning marriage, inheritance, and endowments (waqf). Accordingly, Article 53 provides an explicit legal basis for recognizing and regulating marriages conducted during pregnancy outside wedlock, thereby establishing legal certainty for such unions within Indonesia's Islamic legal system.

c. Comparative Mapping of the Four Madhhabs and Article 53 of the Compilation of Islamic Law

The findings indicate that the legal opinions of the four Sunni madhhabs and the provisions of Article 53 of the Compilation of Islamic Law (KHI) exhibit both similarities and differences regarding the marriage of women who become pregnant as a result of zina. The comparison encompasses several key aspects, including the permissibility of such marriages, the conditions that must be fulfilled prior to the marriage contract, the legal status of the waiting period (*'iddah*) or *istibrā' al-raḥim*, and the continuity and legal validity of the marriage after the birth of the child.

Indicator Madhhab	The permissibility of marrying a woman who is pregnant as a result of adultery	The necessity of waiting for the birth of a child	The obligation of ' <i>iddah</i> or <i>istibrā'</i>
Hanafi	Permitted	No	It is not a condition of the contract
Maliki	Not permitted before giving birth	Yes	Required

Hanbali	Permitted subject to certain conditions	Once certain conditions have been met	Required
Syafi'i	Permitted	No	Not required
Article 53 of the Compilation of Islamic Law	Permitted with the man who impregnated her	No	Not specified as a requirement

Based on this comparison, the Hanafi and Shāfi'i madhhabs generally permit the marriage of women who become pregnant as a result of zina without requiring them to wait until childbirth. In contrast, the Maliki madhhab requires the completion of *istibrā'* al-raḥim or the termination of the pregnancy before such a marriage may be contracted. Similarly, the Hanbali madhhab imposes certain conditions that must be fulfilled before the marriage is considered permissible. Meanwhile, Article 53 of the Compilation of Islamic Law (KHI) stipulates that a woman who becomes pregnant outside marriage may marry the man responsible for the pregnancy, that the marriage may be solemnized without waiting for the birth of the child, and that no renewal of the marriage contract is required after the child is born.

Overall, the comparative findings demonstrate variations between the classical fiqh literature and the Compilation of Islamic Law regarding the legal regulation of marriages involving women who become pregnant as a result of zina. These variations are reflected in the permissibility of the marriage, the legal requirements governing its solemnization, and the provisions applicable to the woman's pregnancy at the time the marriage is concluded.

2. Discussion

The findings of this study demonstrate that the divergent opinions of the four Sunni madhhabs regarding the marriage of women who become pregnant as a result of zina do not represent contradictions in the fundamental principles of Islamic law. Rather, they reflect different methodologies of *ijtihād* employed to achieve the same overarching

objectives of the Shari'ah. Accordingly, the issue of pregnant marriage should not be reduced to a binary distinction between permissibility and prohibition; instead, it should be understood as a manifestation of differing legal priorities and approaches to protecting competing legal interests (Fatarib et al., 2025). From this perspective, the positions of the Hanafi, Maliki, Shāfi'ī, and Hanbali madhhabs are better characterized as normative variations in pursuing public welfare (*maṣlaḥah*) than as substantive disagreements within Islamic jurisprudence (Amrin, 2025; Asman, 2020; Nasruddin & Sulaemang, 2021).

The analysis further indicates that the legal framework adopted in Article 53 of the Compilation of Islamic Law is more closely aligned with the Hanafi and Shāfi'ī madhhabs, as it permits a woman who becomes pregnant through zina to marry the man responsible for the pregnancy without postponing the marriage until childbirth. Nevertheless, this alignment should not be interpreted as evidence that the Compilation of Islamic Law adopts any single madhhab in its entirety. Rather, Article 53 may be understood as a form of legislative *ijtihād* that selectively incorporates juristic opinions while taking into account the requirements of the national legal system, the need for legal certainty in family matters, and the evolving social realities of Indonesian society. In this sense, harmonization is achieved not through the predominance of one madhhab over another but through the contextual selection of legal norms that best serve contemporary legal objectives (Dedi, 2019).

The framework of *maqāṣid al-syarī'ah* provides a more comprehensive analytical foundation for understanding this harmonization. Existing debates on pregnant marriage have largely concentrated on *ḥifẓ al-nasl* (the protection of lineage), emphasizing issues such as genealogical certainty and the legal status of children born outside marriage (Fatarib et al., 2025). However, the findings of this study suggest that the legal implications of pregnant marriage extend beyond lineage preservation and encompass broader objectives of Islamic law. From the perspective of *ḥifẓ al-'ird* (the protection of dignity and honor), permitting such marriages may serve to safeguard women from the social stigma and

marginalization frequently associated with out-of-wedlock pregnancy. Likewise, viewed through the lens of *ḥifẓ al-nafs* (the protection of life), legal recognition of the marriage may contribute to the social and psychological well-being of both the mother and the child while reducing the risk of neglect and social vulnerability.

Furthermore, a *maqāsid*-based reinterpretation should also incorporate the dimensions of *ḥifẓ al-ʿaql* (the protection of intellect) and *ḥifẓ al-māl* (the protection of property), both of which have received relatively limited attention in the existing scholarship on pregnant marriage. From the standpoint of *ḥifẓ al-ʿaql*, legal responses to out-of-wedlock pregnancy should not be confined to moral condemnation but should instead promote rational, educational, and constructive solutions for those affected. Meanwhile, *ḥifẓ al-māl* highlights the importance of ensuring economic responsibilities within the family, including maintenance obligations, the protection of women's financial rights, and the welfare of children. Accordingly, a *maqāsid*-oriented analysis demonstrates that the legal regulation of pregnant marriage concerns not only the validity of the marriage contract but also the multidimensional protection of individuals and family institutions (Jalili, 2021).

These findings depart from much of the existing literature, which has generally examined pregnant marriage from a formal legal perspective, assessed the compatibility of Article 53 of the Compilation of Islamic Law with a particular madhhab, or limited its inquiry to comparative analysis (Asman, 2020; Hariyono & Anwarudin, 2022; Mustarsidin & Khisni, 2018b). Such approaches often reinforce a dichotomy between classical Islamic jurisprudence and Indonesia's positive legal system without providing a systematic mechanism for reconciliation. In contrast, this study demonstrates that *maqāsid al-syarīʿah* can function as a methodological framework capable of bridging juristic diversity and the demands of contemporary legal development. Within this framework, differences among the madhhabs are understood as alternative forms of

ijtihād directed toward the shared objectives of promoting public welfare and preventing harm (Qomaruddin & Rachamtullah, 2018).

Despite these contributions, the study also finds that Article 53 of the Compilation of Islamic Law does not fully resolve the complexities surrounding pregnant marriage in Indonesia. Although it provides a legal basis for marriages involving women who become pregnant outside marriage, it does not explicitly regulate mechanisms for addressing the psychological consequences experienced by women, reducing social stigma, or strengthening the broader legal protection of children. Moreover, its practical effectiveness remains influenced by variations in social conditions, cultural traditions, and levels of religiosity across different regions of Indonesia. Consequently, harmonization between classical fiqh and national legislation should be complemented by supportive social policies, public education initiatives, and institutional measures aimed at strengthening family resilience and ensuring the realization of the intended protective objectives.

Based on these findings, this study proposes a reinterpretation in which the harmonization of classical fiqh and Article 53 of the Compilation of Islamic Law should not be pursued by privileging a single madhhab as the definitive legal authority. Instead, it should be grounded in a *maqāṣid al-syarī'ah* framework that integrates the protection of lineage (*ḥifẓ al-nasl*), human dignity (*ḥifẓ al-'ird*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), and family welfare and economic security (*ḥifẓ al-māl*) as complementary and mutually reinforcing objectives. Through this approach, the diversity of juristic opinions may be regarded as a dynamic source of ijtihād, while Article 53 of the Compilation of Islamic Law may be understood as a contextual legal instrument capable of evolving in harmony with both the objectives of the Shari'ah and the changing social realities of Indonesian society.

D. Conclusion

This study finds that the divergent views of the four Sunni madhhabs on the marriage of women who become pregnant as a result of zina do not reflect substantive contradictions within Islamic law but rather

illustrate the diversity of *ijtihād* methodologies employed to achieve the objectives of the Shari‘ah. While the Hanafi and Shafi‘i madhhabs generally permit such marriages without requiring the birth of the child, the Maliki and Hanbali madhhabs impose specific conditions aimed at preserving the clarity of lineage and maintaining legal order. The study further demonstrates that Article 53 of the Compilation of Islamic Law is normatively more aligned with the permissive approach adopted by the Hanafi and Shāfi‘ī madhhabs. However, it should not be understood as a direct adoption of any single madhhab. Rather, it represents a form of contextual *ijtihād* designed to address the legal and social needs of Indonesian society while remaining faithful to the broader objectives of Islamic law.

Furthermore, this study shows that the harmonization of classical fiqh and Article 53 of the Compilation of Islamic Law can be effectively achieved through the framework of *maqāsid al-syarī‘ah*, which extends beyond the protection of lineage (*hifẓ al-nasl*) to encompass the protection of human dignity (*hifẓ al-‘ird*), life (*hifẓ al-nafs*), intellect (*hifẓ al-‘aql*), and family welfare and economic well-being (*hifẓ al-māl*). The principal contribution of this research lies in proposing a maqāsid-based reinterpretative framework that serves as a basis for harmonizing the diversity of classical juristic opinions with Indonesia’s positive legal system. Nevertheless, as this study is limited to normative legal analysis, future research should incorporate empirical approaches to examine the implementation of Article 53 of the Compilation of Islamic Law in judicial practice and social contexts, as well as to evaluate its effectiveness in promoting justice, protecting women, and safeguarding the best interests of children.

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