

The Mechanism of Pregnant Women's Marriage Out of Wedlock at the Sindangkasih District Religious Affairs Office from the Perspective of Islamic Law and Indonesian Positive Law

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Abstract

One phenomenon that continues to generate debate is the practice of marrying pregnant women out of wedlock. Therefore, the purpose of this study is to examine the practice of marrying pregnant women out of wedlock through a comparative analysis of Islamic law, Indonesian positive law, and their implementation at the KUA (Religious Affairs Office) in Sindangkasih District. The study used field research with a qualitative approach. Data sources included interviews with marriage registrars, observations of administrative procedures, and searches for marriage documents, while secondary data sources included fiqh literature, laws and regulations, and other documents. Data collection techniques included interviews with marriage registrars, observations of administrative procedures, and searches for marriage documents, and were analyzed using qualitative descriptive techniques. The results of the study indicate differing views in fiqh, with some schools of thought permitting marriage with men who impregnate before birth, while others require a delay to maintain clarity of lineage. In positive law, Article 53 of the Compilation of Islamic Law (KHI) takes a pragmatic approach, permitting such marriages as a form of protection for children and to prevent social stigma. Field

findings show variations in practice among marriage registrars due to differences in moral interpretation, social pressure, and understanding of the rules. This study concludes that harmonization among fiqh norms, state regulations, and social dynamics is key to ensuring the continued relevance and contextual applicability of Islamic family law in modern society.

Keyword: Marriage Of Pregnant Women, Islamic Law, KUA Sindangkasih.

Abstrak

Salah satu fenomena yang terus menimbulkan perdebatan adalah praktik pernikahan perempuan yang hamil di luar nikah. Maka tujuan penelitian ini adalah untuk mengkaji praktik pernikahan wanita hamil di luar nikah melalui analisis komparatif antara hukum Islam, hukum positif Indonesia, dan implementasinya di KUA Kecamatan Sindangkasih. Penelitian menggunakan penelitian lapangan dengan pendekatan kualitatif. Sumber data wawancara dengan penghulu, observasi prosedur administrasi, dan penelusuran dokumen pernikahan, dan sumber data sekunder dari literatur fiqh dan peraturan perundang-undangan dan dokumen lainnya. Teknik pengumpulan data dengan wawancara dengan penghulu, observasi prosedur administrasi, dan penelusuran dokumen pernikahan dan dianalisa dengan teknik deskriptif kualitatif. Hasil kajian menunjukkan adanya perbedaan pandangan dalam fiqh, dimana sebagian mazhab membolehkan pernikahan dengan laki-laki penghamil sebelum kelahiran, sementara mazhab lain mensyaratkan penundaan demi menjaga kejelasan nasab. Dalam hukum positif, Pasal 53 KHI mengambil pendekatan pragmatis dengan membolehkan pernikahan tersebut sebagai bentuk perlindungan terhadap anak dan pencegahan stigma sosial. Temuan lapangan memperlihatkan variasi praktik di antara penghulu akibat perbedaan interpretasi moral, tekanan sosial, dan pemahaman terhadap aturan. Penelitian ini menyimpulkan bahwa harmonisasi antara norma fiqh, regulasi negara, dan dinamika sosial merupakan kunci agar penerapan hukum keluarga Islam tetap relevan dan kontekstual dalam masyarakat modern.

Kata Kunci: Pernikahan Wanita Hamil, Hukum Fiqh, KUA Sindangkasih.

A. Introduction

Social changes in modern society have shifted perspectives on marriage, including views on pregnancy before marriage. What was once considered solely a moral violation is now also understood as an issue that touches on legal and administrative aspects of the state.¹ In Indonesia, this issue becomes even more

¹ Sulaiman Sumirahayu Sulaiman, "Perkawinan Wanita Hamil Menurut Peraturan Perundang-Undangan," *Kolaboratif Sains*, Vol. 6 No. 10 (2023): hlm. 4217, <https://doi.org/10.56338/jks.v6i10.4217>.

complex when linked to regulations based on Islamic law, particularly the provisions in the Compilation of Islamic Law (KHI), as well as the practices carried out by the Office of Religious Affairs (KUA) in handling marriages of couples facing such conditions.

One of the most controversial provisions in the KHI is Article 53, which stipulates that a woman who becomes pregnant outside of marriage can be married to the man who impregnated her without having to wait for the birth of her child.² This provision is seen as a pragmatic way to protect the lineage of the child and the social dignity of the pregnant mother, while preventing greater stigma and social harm.³ However, in practice, interpretation and implementation vary, mainly because KUA officials must balance religious norms, state regulations, and local social realities.

From a fiqh perspective, there are diverse views regarding the legitimacy of marriage for women who are pregnant out of wedlock. Some scholars, for example in the Shafi'i school of thought, allow the marriage to take place before birth as long as certain conditions are met,⁴ sedangkan mazhab lain lebih berhati-hati demi menjaga kejelasan nasab dan melindungi kehormatan keluarga.⁵ While other schools of thought are more cautious in order to maintain clarity of lineage and protect family honor. The maqasid al-syari'ah (objectives of sharia) approach is often used to justify this KHI provision as an effort to protect the interests of children and women, despite concerns about mafsadah such as the normalization of adultery.⁶

A number of empirical and juridical studies have attempted to unravel this dilemma. For example, research by Hariyono and Anwarudin shows that in some KUA, the implementation of pregnancy marriage is no different from ordinary marriage even though the pregnancy status is recorded in the marriage

² "Kompilasi Hukum Islam," n.d.

³ I Amin, F Efendi, and H Hertasmaldi, "Mashlahah Married Pregnant Perspective Article 53 Compilation of Islamic Law," *FOKUS Jurnal Kajian Keislaman Dan Kemasyarakatan* 7, no. 2 (2022): hlm. 103, <https://journal.iaincurup.ac.id/index.php/JF/article/view/5364>.

⁴ Ika Nur Hikmah & K. Muhammad Husni, " 'Hukum Pernikahan Wanita Hamil Diluar Nikah Menurut Imam Syafi'i,'" *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 1 (2016): hlm. 866., <https://doi.org/10.61104/alz.v3i1.866>.

⁵ Fitria Dewi Navisa Yoga Andika Pratama, Moh. Muhibbin, "Perkawinan Akibat Hamil Di Luar Nikah Dalam Perspektif Hukum Islam Dan Kuh Perdata," *DINAMIKA: Jurnal Ilmiah Ilmu Hukum*, no. 193 (2010): hlm. 99, <https://doi.org/10.35719/ijil.v2i1.114>.

⁶ Albar Firdaus, "Perkawinan Wanita Hamil Karena Zina Dalam Pasal 53 Kompilasi Hukum Islam Perspektif Maqasid Al-Syari'ah Imam Al-Shatibi," *Indonesian Journal of Islamic Law* 2, no. 1 (2021): hlm. 115, <https://doi.org/10.35719/ijil.v2i1.114>.

document.⁷ From a positive law perspective, Mustakim and Arifuddin highlight the KHI's response to the marriage of pregnant women outside of marriage, emphasizing that although it is legally permissible, there are important restrictions regarding the identity of the father. Meanwhile, Maman Komaruzaman's analysis uses Syatibi's *maṣlaḥah* theory to discuss the rationality of Article 53 as a legal instrument that considers the protection of offspring and social stability..⁸

The debate regarding *iddah* in cases of pregnancy outside of marriage covers biological and social aspects, as demonstrated by the study of Umi Hasunah and Susanto, which examined the provisions of *iddah* in the KHI and the application of *madhhab* arguments,⁹ sementara Sumirahayu menyoroti bagaimana hukum positif seperti UU Perkawinan mengatur pencatatan nikah bagi perempuan hamil.¹⁰ Meanwhile, Sumirahayu highlights how positive laws such as the Marriage Law regulate marriage registration for pregnant women. Based on diverse views and developing social dynamics, this study seeks to explore how the harmonization between *fiqh* norms, state regulations, and community practices is carried out at the Sindangkasih Subdistrict KUA, including the implementation of KHI, administrative procedures, and the interaction of social and religious values in the marriage of pregnant women outside of marriage, thereby producing theoretical understanding as well as policy recommendations to strengthen a more contextual Islamic family law framework.

B. Research Methods

The type of research used in this study is field research conducted at the Sindangkasih KUA in Ciamis Regency, using a normative-empirical legal approach. This type of research was chosen to examine the synchronization between *fiqh*

⁷ Hariyono & Anwarudin, "Tinjauan Kompilasi Hukum Islam Pasal 53 Tentang Pernikahan Wanita Hamil Di Luar Nikah," *Academia Jurnal Ilmu Sosial Humaniora* 1, no. 2 (2019): hlm. 38, <https://doi.org/10.54622/academia.v1i2.21>.

⁸ Maman Komaruzaman, "Legal Analysis of Pregnant Women's Marriage in Article 2 of Law No. 1 of 1974 and Article 2 of KHI in Perspective of *Maṣlaḥah Al-Syatibi*," *Al-Hakam: The Indonesian Journal of Islamic Family Law and Gender Issues* 2, no. 1 (2022): hlm. 282, 10.35896/alhakam.v2i1.282.

⁹ Umi Hasunah & Susanto, "'Iddah Perempuan Hamil Karena Zina Dalam Kompilasi Hukum Islam Pasal 53,'" *Jurnal Hukum Keluarga Islam* 1, no. 1 (2016): hlm. 100, <https://journal.unipdu.ac.id/index.php/jhki/article/view/616>.

¹⁰ Suhendro & Hasan Basri Divo Hadi Pratama, "'Perkawinan Wanita Hamil Di Luar Nikah Berdasarkan Kompilasi Hukum Islam Dengan Undang-Undang Nomor 1 Tahun 1974,'" *Semnashum: Seminar Nasional Hukum* 2, no. 1 (2024): hlm. 3, <https://journal.unilak.ac.id/index.php/samnashum/article/view/22498/6741>.

norms and the practice of marriage law for pregnant women outside of marriage as applied in the field. The research data was obtained from two main sources, namely primary data in the form of interviews with officials from the Sindangkasih Subdistrict KUA, religious leaders, and related parties, as well as secondary data including the Compilation of Islamic Law and Law Number 1 of 1974 concerning Marriage, as well as books, journals, and previous research results. Data collection techniques were carried out through interviews, documentation, and literature studies, while data analysis was conducted descriptively and qualitatively to interpret the relationship between legal provisions and practices in the field. This study specifically examines the validity and implementation of the law on marriage for pregnant women outside of marriage from the perspective of Islamic scholars, with the research location at the KUA of Sindangkasih Subdistrict, Ciamis Regency, as a representation of the implementation of Islamic legal norms in the context of local society.

C. Discussion and Research Results

The Concept of Marriage in Islam and Indonesian Positive Law

Marriage is *sunnatullah*, which is the command of Allah and His Messenger that is part of the implementation of Islamic law for every Muslim. Through marriage, a family is formed that is expected to be able to realize the objectives of Islamic law, namely to achieve benefit in life.¹¹ There are many verses in the Qur'an that talk about marriage, one of which is the word of Allah SWT found in Surah Al-Rum verse 21.

In this verse, there are at least three conclusions that can be drawn. The first is that Allah created humans in pairs, and that human pairs are of their own kind (humans). The second is that the purpose of marriage is to achieve tranquility. The third is that each marriage must be based on the qualities of *mawaddah* and *rahmah*. Prophet Muhammad SAW encouraged young people to marry when they are financially capable, because marriage can lower the gaze and preserve honor, while those who are not yet capable are advised to fast as a shield

¹¹ M.A. Nabiela Naily, S.SI., M.H.I. et al., *Hukum Perkawinan Islam Di Indonesia, Educacao e Sociedade*, vol. 1, 2016, http://www.biblioteca.pucminas.br/teses/Educacao_PereiraAS_1.pdfhttp://www.anpocs.org.br/portal/publicacoes/rbcs_00_11/rbcs11_01.htmhttp://repositorio.ipea.gov.br/bitstream/11058/7845/1/td_2306.pdf<https://direitofma2010.files.wordpress.com/2010/>.

to restrain their desires.¹² This view emphasizes that marriage in Islam is not merely a social formality, but a moral preventive measure to maintain honor and spiritual integrity.

A hadith narrated from 'Amr bin Hafsh bin Ghiyats explains that the Prophet Muhammad encouraged young men to marry when they were able, because marriage preserves one's gaze and honor, while those who are not yet able are encouraged to fast as a means of controlling their desires.¹³ In positive law, the legal basis for marriage is confirmed in Article 2 paragraphs (1) and (2) of the Marriage Law, which states that a marriage is valid if it is conducted according to the respective religious laws and must be registered in accordance with the applicable laws and regulations.¹⁴

The basis of marriage in the KHI, as stated in Articles 2–4, affirms that marriage is a strong contract (*mitsaqan ghalizhan*) as a form of obedience to Allah and aims to create a household that is *sakinah*, *mawaddah*, and *rahmah*. Marriage is declared valid if it is conducted in accordance with Islamic law, in line with Article 2 paragraph (1) of the Marriage Law. With this provision, the KHI serves to bridge *fiqh* norms and state law so that marriages are valid religiously and protected by law, while the concept of *sakinah mawaddah rahmah* is understood as the foundation of love, justice, and family responsibility.¹⁵

Marriage practices in Indonesia show a gap between *fiqh* ideals and social reality, as many couples marry without adequate mental preparation or understanding of sharia law. Research on premarital counseling emphasizes the need to strengthen education at the KUA (Office of Religious Affairs) so that the principles of *sakinah-mawaddah-rahmah* are truly realized in family life.¹⁶ In this context, the state plays an important role through registration, regulation, and

¹² Henderi Kusmidi Kusmidi, "Konsep Sakinah, Mawaddah Dan Rahmah Dalam Pernikahan," *EL-AFKAR: Jurnal Pemikiran Keislaman Dan Tafsir Hadis* 7, no. 2 (2018): hlm. 63, <https://doi.org/10.29300/jpkth.v7i2.1601>.

¹³ Mawardi Sufyan, "Analisis Kritis Makna 'Al-Syabab' Dan 'Istitha'Ah' Pada Hadits Anjuran Menikah."

¹⁴ Indonesia, Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Lembaran Negara 1974/ Nomor 1, Tambahan Lembaran Negara Nomor 3019

¹⁵ hamsah Hudafi, "Pembentukan Keluarga Sakinah Mawaddah Warahmah Menurut Uu No. 1 /1974 Dan Khi," *Al-Hurriyah: Jurnal Hukum Islam* 5, No. 2 (2020): hlm. 172, <https://www.scribd.com/document/942534629/Pembentukan-Keluarga-Sakinah-Mawaddah-Warahmah-Menurut-Undang-A-Undang-Nomor-1-Tahun-1974-Dan-Kompilasi-Hukum-Islam>.

¹⁶ Damrah Khair & Habib Shulton Asnawi Muhammad Irfan, "Reflection of a Decade of Pre-Marriage Guidance on Family Resilience in Indonesia," *SMART: Journal of Sharia, Tradition, and Modernity*, 2022, hlm. 63, 10.24042/smart.v1i2.11353.

socialization to protect the rights of husbands, wives, and children, while the implementation of marriage must still consider gender equality so that love, responsibility, and division of roles are balanced.¹⁷

With a combination of fiqh and positive law perspectives, marriage in Indonesia can be carried out as a legitimate institution that is spiritually meaningful and legally protected, so that families can be formed on a solid moral, social, and legal foundation. The harmonization of religious values and state law allows marriage to be not only a formal ritual, but also a means of social, moral, and child rights protection, so that the ideal of *sakinah mawaddah rahmah* can be realized in practice.

Mechanism for Marrying Pregnant Women Outside of Marriage at the Religious Affairs Office of Sindangkasih Subdistrict, Ciamis Regency

The phenomenon of pregnant women marrying outside of marriage in Sindangkasih Subdistrict, Ciamis Regency, is the result of interrelated social, cultural, and religious dynamics. Based on interviews with KUA officials and community leaders, the increase in these cases is linked to weakening family supervision and declining moral values in the surrounding environment, especially due to lax parental control over teenage social interactions. Factors such as unmonitored dating, excessive affection for partners, the influence of negative social environments, lack of parental attention, and weak religious education from an early age are the main triggers for out-of-wedlock pregnancies and the need for marriage as a solution.¹⁸

These factors show that the issue of pregnancy outside of marriage is not solely the fault of the individual, but also a collective failure of the social system to provide adequate moral protection and religious education. In many cases, parents only realize the risks their children face after the pregnancy has occurred. This shows that prevention is more effective through strengthening family resilience and religious education from an early age.

According to one community leader in Sindangkasih Subdistrict, from a social perspective, marriage to a woman who is pregnant out of wedlock is permissible as a form of moral and social responsibility, as well as an effort to

¹⁷ Azam Mabruy Al-Kautsar, "The Concept of Sakinah as a Normative-Theological Foundation for Gender Equality in Islamic Family Law," *Mediasas: Media Ilmu Syari'ah & Ahwal Al-Syakhsiyyah* 8, no. 3 (2025): hlm. 112, <https://doi.org/10.58824/mediasas.v8i3.436>.

¹⁸ Fulan (Bukan Nama Sebenarnya), Wawancara, Rumah Pelaku pada tanggal 17 Mei 2025.

prevent the perpetrators from falling into more serious immoral acts.¹⁹ This opinion is in line with the fiqh principle of dar'ul mafsadah muqaddamun 'ala jalbil mashlahah (preventing harm takes precedence over attracting benefit).²⁰ This means that marriage in this context is not merely a personal matter, but also part of an effort to prevent broader social damage.

Administratively, the mechanism for marrying pregnant women outside of marriage at the Sindangkasih Subdistrict KUA is not much different from normal marriages. Each couple must fulfill the pillars and requirements of marriage as stipulated in Islamic law and Law Number 1 of 1974 concerning Marriage, as well as the KHI, which has become positive law in Indonesia. However, there is an additional stage in the form of an Investigation Report (BAP) process for the bride-to-be who is pregnant.²¹

The BAP process at the KUA is carried out to ensure clarity regarding the status of the child by recording the party responsible for the pregnancy, thereby providing an important administrative basis and preventing the potential marriage of a girl to her biological father in accordance with the principle of sadd al-dzari'ah. Prospective brides who are pregnant at the time of marriage are also guided to understand their moral, legal, and religious responsibilities so that marriage does not merely cover up shame, but becomes the beginning of a better family. This practice reflects efforts to balance positive law, social norms, and Islamic teachings: the state guarantees the protection of children's and women's rights through administrative procedures, while Islamic law provides room for permissibility while emphasizing responsibility and the prevention of harm.

Islamic Law and Indonesian Positive Law Perspectives on Marrying Pregnant Women.

The fiqh view on marriage to a pregnant woman outside of marriage shows diversity of thought among the classical schools of thought. The Hanafi and Shafi'i schools generally allow a man who impregnates a woman to marry her before she gives birth, on the condition that no marital relations occur until the delivery process is complete.²² This opinion is based on the principle of repentance and

¹⁹ Imam Muhardi, selaku Tokoh Agama di Kecamatan sindangkasih, Wawancara, di Masjid Jamie Al-Amin pada tanggal 25 Mei 2025.

²⁰ Meitria Cahyani & Achmad Arif, "Analisa Kaidah Fiqh Dar'ul Mafāsīd Muqaddam 'Ala Jalbil Mashālih," n.d., <https://ejournal.unida.gontor.ac.id/index.html>.

²¹ Aden zulyaden, Selaku Kepala Kantor Urusan Agama Kecamatan Sindangkaish, Wawancara, Kantor Urusan Agama Kecamatan Sindangkasih pada tanggal 10 Mei 2025.

²² Wahbah Zuhaili, "Wahbah Az-Zuhaili, Al-Fiqh Al-Islami Wa Adillatuhu, Juz 7," n.d.

self-improvement as stated in the verse in Surah Al-Furqan verse 70, Allah SWT: *"Except for those who repent, believe, and do righteous deeds; then Allah will replace their evil with good."*

The above verse emphasizes that past mistakes do not necessarily close the door to legal redress for the perpetrator. By marrying the woman he impregnated, the man is considered responsible for his actions and is trying to remedy the situation. However, if the man who marries her is someone else who did not impregnate her, the majority of scholars argue that the marriage is not valid until the iddah period is over, as stated in the general rule in QS. Al-Nisa 'verse 22 which emphasizes the prohibition of mixing lineages.

In contrast, the Malikiyah and Hanabilah schools of thought take a stricter approach. They argue that a woman who becomes pregnant as a result of adultery cannot be married, either by the man who impregnated her or by another man, until she has completed her pregnancy. This approach stems from caution in preserving the purity of lineage (hifz al-nasl) and family honor (hifz al-'irdh). According to this view, postponing the marriage contract until after the birth is intended to avoid mixing bloodlines, which could potentially cause legal and social chaos.

In the context of Indonesian positive law, this issue is specifically regulated in Article 53 of the Compilation of Islamic Law (KHI), which states that women who become pregnant outside of marriage can be married to the man who impregnated them without having to wait for the child to be born.²³ This provision demonstrates the state's orientation towards practical benefits, especially in the protection of children and social stability. Although the KHI does not explicitly discuss the possibility of marrying a pregnant woman to another man, administrative practices at the KUA tend to reject this type of marriage, in line with fiqh and hadith caution against having sexual relations with a pregnant woman from another man.²⁴

The KHI does not explicitly regulate the possibility of marrying a pregnant woman to a man who is not the father, but administrative practice in the field tends to interpret that such marriages are not justified. This interpretation is in line with the hadith narrated by Abu Daud and Tirmidzi, which prohibits sexual

²³ "Kompilasi Hukum Islam."

²⁴ Ahmad Mustakim & Hasyim Arifuddin, "Respon KHI Dan Hukum Perkawinan Di Indonesia Terhadap Perkawinan Wanita Hamil Di Luar Nikah." JAS MERAH: Jurnal Hukum dan Ahwal al-Syakhsiyyah 2, no 2. (2023); hlm. 85.

intercourse with a pregnant woman from another man, as it could potentially mix lineages. Thus, Indonesian positive law takes a position that is close to the view of the majority of scholars who prioritize genealogical clarity.

In administrative practice, there are diverse interpretations among KUA officials. Some reject the marriage of pregnant women before giving birth on the grounds of maintaining the sanctity of the contract and avoiding the perception that the state legitimizes adultery. Conversely, others rely on Article 53 of the KHI and consider the welfare of the family.²⁵ Article 53 of the Compilation of Islamic Law (KHI) allows a pregnant woman to marry the man who impregnated her without having to wait for the child to be born, which normatively reflects the state's efforts to balance *maslahah* (public interest) and social responsibility.²⁶ An analysis of *maqāṣid al-syarī'ah* by several authors confirms this. For example, Gunawan in *Al Ittihad* states that Article 53 of the KHI shows priority to “*hifz al-nasl*” (protection of offspring) and “*hifz al-nafs*” (protection of oneself) as part of the objectives of *sharia*.²⁷

Ibnu Amin, Efendi, and Hertasmaldi highlight that Article 53 can be seen as a manifestation of *maslahah mu'tabarrah* (recognized benefit), namely protecting the honor of women and their families after the occurrence of social disgrace in the form of pregnancy outside of marriage, while maintaining the identity of descendants without administrative stigma.²⁸ Meanwhile, the NU Tangerang College of Sharia Sciences stated that this regulation, in terms of *maqāṣid syarī'ah*, prioritizes the benefits of protecting the lineage of children and the reputation of pregnant women over potential social and legal harm.²⁹

However, criticism has also arisen. Research conducted in Mlati District (Sleman Regency) by Binarsa and Nasution shows that the application of Article

²⁵ Rasyidah Rasyidah, Hariri Ocviani Arma, and Melia Rosa, “Kehamilan Sebagai Penyebab Perkawinan Di Kalangan Masyarakat Sedanau Perspektif Hukum Islam,” *Sakena: Jurnal Hukum Keluarga* 8, no. 2 (2023): hlm. 69.

²⁶ Ibnu Amin, Faisal Efendi, and Hertasmaldi, “Maslahah Married Pregnant Perspective Article 53 Compilation of Islamic Law.” *Fokus: Jurnal Kajian Keislaman dan Kemasyarakatan*, Vol. 7 No. 2, (2022), hlm. 107.

²⁷ Hariyono & Anwarudin, “Tinjauan Kompilasi Hukum Islam Pasal 53 Tentang Pernikahan Wanita Hamil Di Luar Nikah.” hlm. 49.

²⁸ Binarsa & Nasution, “Penerapan KHI Pasal 53 Di KUA Mlati: Kajian Maqāṣid Al-Syarī'ah,” *Millah: Journal of Religious Studies* 2, no. 2 (2021): hlm. 327, <https://doi.org/10.20885/millah.vol20.iss2.art6>.

²⁹ Muh Alpian, “Tinjauan Maqāṣid Al-Syarī'ah Terhadap Pasal 53 KHI (Studi Kasus Lawonua),” *Zawiyah: Jurnal Pemikiran Islam* 5, no. 1 (2019): hlm. 117., <https://doi.org/10.31332/zjpi.v5i1.1028>.

53 in the KUA is not always in line with the maqāṣid according to Imam al-Syatibi because, although there is some benefit (protection of lineage), there has been no systematic effort to protect collective maṣlaḥah as a whole, such as moral education or long-term prevention of adultery.³⁰ In addition, researcher Alpien, in the journal *Zawiyah*, argues that at the local level, the application of KHI Article 53 could actually reinforce negative norms if it is only seen as “quick legitimization” without addressing the social root causes of premarital sex.³¹ Field studies, including in Sindangkasih Subdistrict, show that social pressure, local moral considerations, and family responsibilities often have a greater influence on administrative decisions than the text of regulations alone.

National legal developments have also influenced this dynamic, particularly following Constitutional Court Decision No. 46/PUU-VIII/2010, which expanded the recognition of civil relations between children born out of wedlock and their biological fathers.³² This ruling is seen as an effort to strengthen the protection of children's rights, although it has sparked debate among scholars regarding its implications for the legal status of children born out of wedlock and the responsibilities of biological fathers.

When viewed from the perspective of maqashid al-syari'ah, both fiqh and state policy essentially prioritize the protection of offspring (hifz al-nasl) and the protection of children's lives and dignity (hifz al-nasl and hifz al-'irdh).³³ However, fiqh still requires repentance and confirmation of moral responsibility for the perpetrator of adultery so that marriage is not understood merely as a mechanism to cover up shame. Meanwhile, national law is more oriented towards reducing social impact and fulfilling the rights of children.

The difference in orientation between fiqh norms and positive law becomes apparent in their implementation. Fiqh departs from the ideal of contractual purity and moral order, while state law operates within an administrative framework that emphasizes legal certainty and social protection.³⁴

³⁰ Dhiya Dinar Kuswulandari & Flora Dianti, “Akibat Hukum Penerapan Pasal 53 KHI Sebagai Dasar Dispensasi Perkawinan Anak Di Bawah Umur,” *Syntax Literate: Jurnal Ilmiah Indonesia* 7, no. 9 (2022): hlm. 156, <https://doi.org/10.36418/syntax-literate.v7i9.14643>.

³¹ Marwa Anisa, “Tinjauan Filosofis Pasal 53 KHI: Perspektif Maqāṣid” (UIN Alauddin, 2024), [https://repositori.uin-alauddin.ac.id/29535/1/80100222001_A_Marwa Anisa.pdf](https://repositori.uin-alauddin.ac.id/29535/1/80100222001_A_Marwa%20Anisa.pdf).

³² Mahkamah Konstitusi, Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010.

³³ Fathurrahman Djamil, *Filsafat Hukum Islam* (Jakarta: Logos Wacana Ilmu, 1997), hlm. 54.

³⁴ Albar Firdaus, “Perkawinan Wanita Hamil Karena Zina Dalam Pasal 53 Kompilasi Hukum Islam Perspektif Maqasid Al-Syari'ah Imam Al-Shatibi.” hlm. 106.

At the KUA level, these differences in orientation often give rise to ethical dilemmas and variations in practice.

Harmonization between fiqh values and social needs can be achieved through a more contextual interpretation of fiqh, strengthening administrative regulations that guarantee substantive justice and protection for women, and educating the public so that the permissibility of marrying pregnant women is understood as an effort to protect children, not as justification for adultery. Through this approach, fiqh remains a moral foundation that preserves religious values, while positive law ensures its fair and responsive application to the dynamics of society, so that Islamic law remains alive, relevant, and capable of responding to modern social needs.

D. Conclusion

Research on the marriage of pregnant women outside of marriage at the KUA in Sindangkasih Subdistrict shows a convergence between the flexibility of fiqh, positive law, and social considerations, where differences in the views of scholars regarding the timing of marriage illustrate the flexible nature of fiqh. while Article 53 of the KHI provides a practical solution by allowing marriage without waiting for the birth as long as it is with the man who impregnated her; however, its application in the field is still influenced by moral considerations and variations in the interpretations of the penghulu (religious official). In Sindangkasih, general marriage procedures are tightened through examinations and the creation of investigation reports to ensure clarity of the man's responsibilities, and the community and religious leaders view marriage as the least harmful option to avoid stigma and protect the child. Overall, this practice reflects an effort to balance fiqh norms, state legal certainty, and social realities, so that its permissibility is understood not as a justification for adultery, but as a measure of protection and family life management.

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