

BETWEEN LEGALIZATION AND MORAL HAZARD: A *Maslahah-Mafsadah* Analysis of Prenuptial Pregnancy Marriage (Kawin Hamil) in Indonesian Islamic Law

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Abstract: This study critically examines the implementation of Article 53 of the Compilation of Islamic Law (KHI) in Indonesia, which permits marriage for women who become pregnant out of wedlock (kawin hamil). Using a qualitative case study approach in Lampung, the research draws on in-depth interviews with religious leaders and officials from the Office of Religious Affairs (KUA). It analyzes them through the frameworks of *uṣūl al-fiqh* and *maqāṣid al-shari‘ah*. Findings reveal that kawin hamil is widely seen as a necessary socio-legal solution. It protects the child's lineage (*nasab*) and preserves family honor (*irdh*). The Hanafi school and aspects of the Shāfi‘ī tradition justify this practice. Normatively, it is categorized as a *maslahah hajiyyah* (secondary public interest). However, the study identifies a normative tension. While the policy addresses immediate social concerns, it risks undermining the deterrent function (*zajr*) of Islamic law against *zina* (unlawful sexual relations). This creates an imbalance in the pursuit of the higher objectives of Sharia (*maqāṣid al-shari‘ah*). The protection of lineage (*hifz al-din*) and dignity (*hifz al-‘irdh*) is prioritized over religion in their preventive roles. The study concludes that legal-administrative measures alone are insufficient. It calls for a more holistic policy framework that includes moral counseling, religious education, and a balanced application of *maqashid* principles to uphold both legal certainty and spiritual-moral integrity in Islamic family law.

Keywords: Pregnant Marriage, Indonesian Islamic Law, Ushul Fiqh, Maslahah-Mafsadah, Maqashid Al-Syari'ah

Abstrak: Penelitian ini mengkaji secara kritis penerapan Pasal 53 Kompilasi Hukum Islam (KHI) di Indonesia, yang memperbolehkan pernikahan bagi perempuan yang hamil di luar nikah (kawin hamil). Dengan menggunakan pendekatan studi kasus kualitatif di Lampung, penelitian ini didasarkan pada wawancara mendalam dengan tokoh agama dan pejabat Kantor Urusan Agama (KUA), serta dianalisis melalui kerangka *ushul al-fiqh* dan *Maqashid Al-Syari'ah*. Temuan menunjukkan bahwa kawin hamil dipandang secara luas sebagai solusi sosial-hukum yang diperlukan. Praktik ini dianggap melindungi nasab anak dan menjaga kehormatan

keluarga ('irdh), serta memperoleh justifikasi dari mazhab Hanafi dan sebagian pandangan dalam tradisi Syafi'i. Secara normatif, praktik ini dikategorikan sebagai *mashlahah hajiyah* (kemaslahatan sekunder). Namun, penelitian ini menemukan adanya ketegangan normatif. Meskipun kebijakan ini mengatasi persoalan sosial yang mendesak, ia berpotensi melemahkan fungsi pencegahan (*zajr*) hukum Islam terhadap zina (hubungan seksual di luar nikah). Hal ini menciptakan ketidakseimbangan dalam pencapaian tujuan-tujuan utama syariat (maqāṣid al-shari'ah), di mana perlindungan terhadap nasab lebih diutamakan dibandingkan perlindungan terhadap agama (*hifz al-dīn*) dan kehormatan (*hifz al-'irdh*) dalam peran preventifnya. Penelitian ini menyimpulkan bahwa pendekatan hukum-administratif semata tidak memadai. Diperlukan kerangka kebijakan yang lebih holistik yang mencakup konseling moral, pendidikan agama, serta penerapan prinsip-prinsip maqāṣid yang seimbang untuk menjaga kepastian hukum sekaligus integritas moral dan spiritual dalam hukum keluarga Islam.

Kata Kunci: Pernikahan Hamil, Hukum Islam Indonesia, Ushul Fiqh, Maslahah - Mafsadah, Maqashid Al-Syari'ah

Introduction

The phenomenon of pregnant women marrying due to adultery (pregnancy marriage) in Lampung Province has become a practice that tends to be tolerated by some members of the public and religious leaders. This can occur for two reasons. First, the Compilation of Islamic Law (KHI) normatively permits the marriage of a pregnant woman to the man who impregnated her, as stated in Article 53 of the KHI.¹ Second, the views of some jurists,

particularly those from the Hanafi and Shafi'i schools, also permit pregnancy marriage,² so that normatively and theologically, this marriage practice is legitimate. The large number of underage girls who become pregnant due to adultery due to low education and free association,³ the large number of marriage dispensation cases, 8367 decisions nationally and 712 applications in Lampung, in the last 10 years,⁴ the assumption and consideration of court decisions that marriage dispensation for this marriage can bring benefits,⁵ indicates that

¹ Binarsa Binarsa and Khoiruddin Nasution, "Penerapan Kompilasi Hukum Islam Pasal 53 Tentang Kawin Hamil Dan Tajid Al-Nikah Di Kecamatan Mlati Dalam Tinjauan Maqasid Syariah," *Millah* 20, no. 2 (February 28, 2021): 327-54, <https://doi.org/10.20885/millah.vol20.iss2.art6>.

² Syukrawati Syukrawati, "Kedudukan Anak Hasil Kawin Hamil Karena Zina (Studi Perbandingan Antara Kompilasi Hukum Islam Dan Fiqh)," *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 14, no. 2 (March 30, 2016): 211-28, <https://doi.org/10.32694/010290>.

³ KM. Al Fathur Ikhsan Fathur, "Implications of Marriage by Accident," *Jurisprudensi: Jurnal Ilmu Syariah, Perundangan-Undangan Dan Ekonomi Islam* 15, no. 1 (February 5, 2023): 1-14,

<https://doi.org/10.32505/jurisprudensi.v15i1.5388>.

⁴ Kiki Adipratama, "Dispensasi Kawin Di Lampung," *Tribunlampung.co.id*, 2025, <https://lampung.tribunnews.com/2023/05/08/tahun-2022-sebanyak-714-anak-ajukan-dispensasi-kawin-di-lampung>; Direktorat Putusan Mahkamah Agung, "Putusan Dispensasi Nikah," 2025, <https://putusan3.mahkamahagung.go.id/direktori/index/kategori/dispensasi-nikah-1.html>.

⁵ Iim Fahimah and Zaenal Zaenal, "Maslahah and Sakinah Family's Review of Marriage Through Marriage Dispensation in Central Lampung Regency," *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, Dan Keagamaan* 9, no. 1 (August 16, 2022): 65, <https://doi.org/10.29300/mzn.v9i1.7516>; Imron

the phenomenon of pregnant marriage, both in Lampung and nationally, has received widespread social acceptance, and has the potential to reduce the role of law as a guardian of moral and social order. At the same time, this legal reality raises questions for ushuliyah regarding the suitability of legal policies to the objectives of sharia (maqashid al-syari'ah), particularly in maintaining offspring (hifzh al-nasl), honor (hifzh al-'irdh), and public welfare.

Research on marriage during pregnancy usually examines norms and procedures in both Islamic and positive law. However, few studies address this issue through the lens of usul al-fiqh. Ushul Fiqh is an aspect of applied and substantive knowledge in the establishment of Islamic law.⁶ The ushul fiqh approach focuses on understanding the '*illah* (legal reasoning) behind a situation before justifying it. It also considers the maslahah-mafsadah for both the law's object and subject. Additionally, it applies legal change rules based on time and place (*taghayyur al-ahkam bi taghayyur al-azminah wa al-amkinah*).⁷ The honor of pregnant women outside of marriage is something that must be protected.⁸ Article 53 of the KHI helps tackle challenges.⁹ It protects expectant mothers and their children.¹⁰ This indicates that the study

is primarily concerned with rules and procedures. This study addresses this gap by integrating normative and sociocultural studies. It employs the ushul fiqh framework to assess whether regulations governing marriage during pregnancy comply with the principle of maslahat or cause greater harm. This approach is urgent because legal policies allowing marriage during pregnancy can weaken the law's deterrent effect (zajr) and set a permissive social precedent.

This study examines the differing views of religious leaders and the people of Lampung on marriage during pregnancy, as set out in Article 53 of the KHI. It will also analyze the implications of these perceptions using the tools of ushul fiqh. This study explores the relationship between positive legal norms, fuqaha opinions, and local social institutions. It aims to develop legal policy recommendations that align with maqashid al-syari'ah and respond to societal changes. This study aims to inform the development of adaptive Islamic family law. It will continue to adhere to the basic principles of Sharia. This research says that the rules about marriage for pregnant women in Lampung do not meet Sharia goals. Religious leaders and the community support these regulations, but they aren't enough. They

Hadi, "Tinjauan Maslahah Atas Pertimbangan Hakim Dalam Memutus Permohonan Dispensasi Perkawinan Pada Masa Covid-19 Di Pengadilan Agama Giri Menang Lombok Barat," *Al-IHKAM: Jurnal Hukum Keluarga Jurusan Ahwal Al-Syakhshiyah Fakultas Syariah IAIN Mataram* 14, no. 2 (December 28, 2022): 97–122, <https://doi.org/10.20414/alihkam.v14i2.6924>.

⁶ Rasyid Al-Hafizh, . Fachrul Rozy and Zaim Rais, "Usul Al-Fiqh: Its Epistemology, Purpose, and Use," *DIKTUM: Jurnal Syariah Dan Hukum* 19, no. 1 (July 31, 2021): 1–15, <https://doi.org/10.35905/diktum.v19i1.1529>.

⁷ Khairuddin Hasballah et al., "Identifying 'Illat through Munasabah in Islamic Law: A Perspective of Imam Al-Ghazali," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (December 26, 2021):598, <https://doi.org/10.22373/sjhk.v5i2>.

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⁸ Tarmizi Tarmizi and Ekawati Hamzah, "Pregnant Marriage Maslahah Perspective," *Journal of Islam and Science* 9, no. 2 (July 31, 2022): 70–82, <https://doi.org/10.24252/jis.v9i2.29017>.

⁹ I Amin, F Efendi, and H Hertasmandi, "Mashlahah Married Pregnant Perspective Article 53 Compilation of Islamic Law," *FOKUS Jurnal Kajian Keislaman Dan Kemasyarakatan* 7, no. 2 (2022): 103, <https://journal.iaincurup.ac.id/index.php/JFK/article/view/5364>.

¹⁰ T Jamaluddin et al., "The Effectiveness of Child Protection Through Marriage Dispensation Policy in Maslahah Perspective," *American Journal of Society and Law* 2, no. 2 (May 21, 2023): 20–28, <https://doi.org/10.54536/ajsl.v2i2.1395>.

may cause more harm than good. These regulations aim to protect women's honor and unborn children. From the ushul fiqh view, we need to think about the more profound impacts of adultery. This act is a crime in Islam and calls for punishment.¹¹ Acceptance of pregnant marriage in society can lessen the law's deterrent effect. This shift might also promote more lenient behaviors in social interactions. Teen premarital pregnancies are rising. There are also many marriage dispensations. People often focus on short-term benefits over long-term harm. This shows we need to rethink our legal norms.

We should adopt a socio-cultural approach based on ushul fiqh. This will help legal policies align with the maqashid al-shariah. It will also restore the law's role as a social controller and protector of the public interest. The study of Pregnant Marriage has been examined from numerous perspectives. Nurus Shova¹² Emphasized the importance of Imam Shafi'i's fiqh. This view is essential for judges when considering dispensations for marriages resulting from pregnancies outside marriage. Musdar¹³ Examined the opinions of the Hanafi, Maliki, Shafi'i, and Hanbali schools. This revealed a variety of views on whether a marriage contract with a pregnant

woman is valid or not. Rizki and Habibi¹⁴ Examined the fundamentals of fiqh arguments. They highlighted the methodology of legal istinbath. This helps clarify the differing views on marriage during pregnancy. Asman¹⁵ Noted that Imam Shafi'i allowed a pregnant woman to marry. She could marry either the man who got her pregnant or another man. In contrast, Imam Ahmad bin Hanbal did not permit this marriage unless specific conditions were met. Riyan Erwin's¹⁶ The Study touches on marriage guardianship for daughters from pregnant marriages. In these cases, the biological father cannot be a guardian. Instead, a state-appointed judge assumes this role. Wiah and Sultan¹⁷ Examine why married pregnancy persists in society. This practice often stems from shame or the desire to uphold family honor. Thus, even though some families are reluctant to carry it out, they still marry off their pregnant daughters to maintain family honor.

These studies on married pregnancy focus on the theories and Islamic jurisprudence (*fiqh*) that highlight differences among schools of thought. They also explore how these differences apply in social and legal settings. Shova's study,¹⁸ "The Perspective of the Four Schools of Fiqh," clarifies Islamic

¹¹ Edi Kurniawan *et al.*, "Early Marriage, Human Rights, and the Living Fiqh: A Maqasid Al-Shari'a Review," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 20, no. 1 (May 28, 2020): 1-15, <https://doi.org/10.30631/alrisalah.v20i1.565>.

¹² Nurus Shova and Azmil Mukarrom, "Pandangan Imam Syafi'i Terhadap Perkawinan Wanita Hamil Atas Pertimbangan Hakim Dalam Mengabulkan Permohonan Dispensasi Kawin (Studi Putusan Penetapan Perkara Nomor : 70 / Pdt. P / 2023 / PA . Sby)," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. March (2024): 68-74.

¹³ Musdar, "Perspektif Empat Mazhab Fiqh Terhadap Akad Perkawinan Wanita Hamil," *HARISA: Jurnal Hukum, Syari'ah, Dan Sosial* 01, no. 1 (2024): 1-18.

¹⁴ Rizki Kurniawan and Habibi Al Amin, "Syafi'iyyah Fiqih Legal Reason In Determining The Status Of Children Result Of Affairs," *Maqasid* 12, no. 2

(2023): 73-87, <https://doi.org/10.30651/mqsd.v12i2.19893>.

¹⁵ Asman Asman, "Hamil Di Luar Nikah Dan Status Nasab Anaknya," *Shar-E: Jurnal Kajian Ekonomi Hukum Syariah* 6, no. 1 (2020), <https://doi.org/10.37567/shar-e.v6i1.9>.

¹⁶ Riyan Erwin Hidayat, "Problematika Kawin Hamil Dalam Hukum Keluarga," *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 3, no. 1 (June 26, 2022): 50-60, <https://doi.org/10.24042/el-izdiwaj.v3i1.12327>.

¹⁷ Al Wiah and Lomba Sultan, "Tinjauan Hukum Islam Tentang Kawin Hamil Karena Siri' (Studi Kasus KUA Kec. Pallangga Kab. Gowa)," *Qadauna: Jurnal Ilmiah Mahasiswa Hukum Keluarga Islam* 2, no. 2 (April 27, 2021): 408-23, <https://doi.org/10.24252/qadauna.v2i2.20085>.

¹⁸ Shova and Mukarrom, "Pandangan Imam Syafi'i Terhadap Perkawinan Wanita Hamil Atas

jurisprudence. The Hanafi and Shafi'i schools state there is no 'iddah (waiting period) for a pregnant woman from adultery. In contrast, the Maliki and Hanbali schools say she cannot marry until after giving birth. Musdar's study¹⁹ on "Fiqhyyah Legal Reasoning" shows how qiyas, istihsan, and maslahah mursalah help justify premarital marriage. Rizki and Habibi's study²⁰ on "Imam Shafi'i's View" offers a practical look. It shows how fiqh opinions shape the work of religious courts. Riyan's study,²¹ "The Problem of Pregnant Marriage," focuses on how the legal consequences of premarital marriage influence guardianship in marriage. Wiah's study, "Islamic Legal Review of Pregnant Marriage," highlights key factors like avoiding shame and preserving family honor. These factors help explain why premarital marriage continues in many communities.

This presentation demonstrates that fiqh literature and modern research reflect an ongoing dialogue between classical legal texts and contemporary social realities. Classical fiqh studies give a basic method. They show that the differences in premarital marriage laws come from the istinbath method. Practical-juridical studies further reinforce this. Researchers find that the issue of pregnant marriage involves more than just contract validity. It also relates to the protection of maqashid al-sharia, such as hifz al-nasl, hifz al-'irdh, and hifz al-din.

Pertimbangan Hakim Dalam Mengabulkan Permohonan Dispensasi Kawin (Studi Putusan Penetapan Perkara Nomor :70 / Pdt . P / 2023 / PA . Sby)."

¹⁹ Musdar, "Perspektif Empat Mazhab Fiqh Terhadap Akad Perkawinan Wanita Hamil."

²⁰ Kurniawan and Al Amin, "Syafi'iyyah Fiqih Legal Reason In Determining The Status Of Children Result Of Affairs."

²¹ Hidayat, "Problematika Kawin Hamil Dalam Hukum Keluarga."

²² Juhriati et al., "Ijin Perkawinan Terhadap Anak Dibawah Umur Yang Hamil Diluar Kawin," NALAR: Journal Of Law and Sharia 1, no. 1 (February

Furthermore, it shows how Islamic law interacts with today's Muslim society.

Meanwhile, many studies discuss the marriage of pregnant women due to adultery using a legal approach. Pregnant marriage in Indonesia is complex. It connects with legal rules, the Compilation of Islamic Law (KHI), and social norms. Juhriati et al.,²² The amendment to Marriage Law Number 16 of 2019 raised the minimum legal age for marriage to 19. However, it did not quickly decrease the practice of marrying due to pregnancy outside of marriage. This new regulation led to a substantial increase in requests for marriage dispensation in religious courts. People still view pregnancy outside of marriage as a valid reason to seek dispensation. Kurniawati²³ Highlighted a similar issue. She discovered that people sought marriage dispensation not only for pregnancy outside marriage but also because of social pressure and economic reasons. As a result, Law Number 16 of 2019 was seen as ineffective in reducing early marriage. Rojudin²⁴ Studied Article 53 of the Compilation of Islamic Law (KHI). He showed that a woman who becomes pregnant outside of marriage may marry the man responsible for the pregnancy before the child is born.

This helps preserve lineage and avoids social disgrace. In fact, the Jepara branch of the Indonesian Ulema Council (MUI)

13, 2023): 8-17,
<https://doi.org/10.61461/nlr.v1i1.13>.

²³ Rani Dewi Kurniawati, "Efektifitas Perubahan UU No 16 Tahun 2019 Tentang Perubahan Atas UU No 1 Tahun 1974 Tentang Perkawinan Terhadap Penetapan Dispensasi Kawin (Studi Kasus Di Pengadilan Agama Majalengka Kelas IA)," *Journal Presumption of Law* 3, no. 2 (October 9, 2021): 160-80, <https://doi.org/10.31949/jpl.v3i2.1505>.

²⁴ Asep Rojudin, "Studi Pasal 53 KHI Dalam Perspektif MUI Jepara," *Isti`dal : Jurnal Studi Hukum Islam* 7, no. 2 (November 2, 2021): 143-65, <https://doi.org/10.34001/istidal.v7i2.2604>.

emphasized the need for immediate marriage to ensure legal certainty and protect children's status. The literature shows a tension in Indonesia regarding child marriage. On one side, there are efforts to protect children and enforce regulations. On the other hand, families feel the need to uphold honor and preserve lineage.

Many studies indicate a consistent pattern in the implementation of regulations. Marriage dispensation is still the main legal way to address child marriage. This persists despite the new rules on the minimum legal marriage age, which are intended to lower it. Juhriati *et al.* Many see marriage dispensation as a "difficult choice." It lets child marriage persist, even with a higher minimum age for marriage.²⁵ Second, reasons for premarital marriage vary widely. Some are moral-religious, aiming to avoid adultery. Others are social, focused on preventing shame and societal pressure. Finally, legal reasons ensure the child's lineage, as noted by Dewi Kurniawati.²⁶ Rojudin²⁷ Favors Sharia views that support practical solutions. He often suggests immediate marriage to protect family interests and children. Many authors agree that the regulation of premarital marriage in Indonesia is not entirely effective. Social practices, religious demands, and family law often support immediate marriage as a way to address premarital pregnancies.

Researchers find that the literature on premarital marriage demonstrates a dynamic interplay among classical fiqh norms, positive law (KHI), and contemporary social realities. The differences in fiqh opinions are not merely textual; they are rooted in the methodologies of normative reasoning employed. Existing studies also demonstrate how the gap between fiqh and KHI poses a legal challenge in Indonesia. This includes a description of how the maqashid is practiced and negotiated in the social sphere. Researchers see that discussing premarital marriage is more than just the validity of the marriage contract. It also involves how Islamic law fits into the social context. Additionally, the theory of ushuliyah maqashidiyah supports the main argument.

Arofik and Yustomi²⁸ Examined the issue of a pregnancy in marriage through the lens of ushul fiqh. They found that the theory of maslahah mursalah facilitates the analysis of marriage dispensation policies. This means that the KUA sees a pregnant marriage as valid under Islamic law since it benefits society. Hamzah *et al.*²⁹ Highlight the importance of maslahah mursalah in marital life. They show that granting marriage dispensation helps mitigate social stigma and provides legal certainty. This effort aims to uphold justice and prevent harm. Sujana also uses the ushul fiqh *sadd al-dzari'ah* method.

²⁵ Juhriati *et al.*, "Ijin Perkawinan Terhadap Anak Dibawah Umur Yang Hamil Diluar Kawin."

²⁶ Kurniawati, "Efektifitas Perubahan UU No 16 Tahun 2019 Tentang Perubahan Atas UU No 1 Tahun 1974 Tentang Perkawinan Terhadap Penetapan Dispensasi Kawin (Studi Kasus Di Pengadilan Agama Majalengka Kelas IA)."

²⁷ Rojudin, "Studi Pasal 53 KHI Dalam Perspektif MUI Jepara."

²⁸ Slamet Arofik and Alvian Riski Yustomi, "Analisis Ushul Dan Kaidah Fikih Terhadap Implementasi Dispensasi Perkawinan Di Bawah Umur Di Kantor

Urusan Agama (KUA) Kecamatan Perak Kabupaten Jombang," *Usratuna: Jurnal Hukum Keluarga Islam* 4, no. 1 (December 29, 2020): 111–37, <https://doi.org/10.29062/usratuna.v4i01.260>.

²⁹ Ardiansyah S. Watowiti Hamzah Hasan, Muhammad Akbar Herman, "Analisis Maslahah Mursalah Terhadap Dispensasi Nikah Karena Kehamilan Di Luar Nikah," *Madani: Jurnal Ilmiah Multi Disiplin* 2, no. 1 (2024): 127–30, <https://jurnal.penerbitdaarulhuda.my.id/index.php/MAJIM/article/view/1667/1708>.

This helps assess why a judge grants a dispensation. The goal is to avoid adultery or promiscuity. So, the judge's decision, *mutatis mutandis*, aims to conceal evil. Nurul Mahmudah³⁰ Takes a different approach from earlier studies. She focuses on the linguistic parts of ushul fiqh. This focus has significant implications for legal decisions. Her study outlines the difference between clear (*dzahir, nash, mufassar, muhkam*) and unclear (*mujmal, musykil, mutasyabih*) terms. She connects these distinctions to the requirement of registering marriages. This helps clarify the understanding of these terms. Rahmadani,³¹ In her study, Ushul fiqh is presented as a means of determining lineage law. She compares traditional views with modern legal approaches. This helps show how both can protect children's rights.

Existing studies play a significant role in illustrating the use of ushul fiqh instruments as contemporary legal legitimacy. Arofik's study³² demonstrates that the theory of maslahah mursalah can justify favorable legal policies in Indonesia. Nurul Mahmudah³³ highlights that family law issues are closely connected to sharia formulations in ushul fiqh. This connection can directly affect administrative tasks such as marriage registration. Existing studies also reinforce the urgency of benefit as the basis for legal istinbath in cases of social emergency. Sujana³⁴ also contributes by demonstrating the application of preventive methods of ushul fiqh to protect society from moral

decay. Ushul fiqh serves several purposes: It acts as a theory of benefit (*maslahah mursalah*). It provides a preventive method (*sadd al-dzari'ah*). It offers a linguistic analysis of law (*lafaz dzahir* and *mujmal*). It aligns with the maqasid al-sharia in judicial practice. The article on marriage dispensations discusses age and out-of-wedlock pregnancy. It demonstrates how ushul fiqh helps justify and guide legal decisions in the public interest. The article on *lafaz* demonstrates that ushul fiqh maintains linguistic accuracy as the basis for legal determination. The study of children from pregnant marriages shows that ushul fiqh can lead to a more humanitarian view of the law. Researchers conclude that ushul fiqh is more than just a theory. It helps address family law issues in a way that adapts to context. At the same time, it remains consistent with the principles of maqashid al-sharia. Previous studies on premarital marriage focus on three main areas. First, classical Islamic jurisprudence looks at the views of the four schools of thought (*mazhab*). These studies explore the validity of a marriage for a pregnant woman due to adultery. One article is "The Perspective of the Four Schools of Fiqh on the Marriage Contract of a Pregnant Woman and the Reasoning of Islamic Law." Another explores how Islamic jurisprudence relates to Indonesian law, mainly the Compilation of Islamic Law (KHI). This is discussed in the article "Pregnancy Out of Wedlock in the Perspective of KHI and Islamic Fiqh." Also,

³⁰ Nurul Mahmudah and Nency Dela Oktora, "Relasi Antara Lafaz-Lafaz Dalam Ushul Fiqh Dengan Problematika Hukum Keluarga," *Syakhsiyah Jurnal Hukum Keluarga Islam* 2, no. 2 (2022): 222-41, <https://ejournal.metrouniv.ac.id/syakhsiyah/en/article/view/6169>.

³¹ Gema Rahmadani, "Penerapan Usul Fiqh Terhadap Penetapan Nasab Anak Kawin Hamil (Di Luar Nikah)," *AT-TAFAHUM Journal Of Islamic Law* 8, no. 2 (2024): 37-48, <https://jurnal.uinsu.ac.id/index.php/attafahum/article/view/22591/Zaidalfauza1>.

³² Arofik and Yustomi, "Analisis Ushul Dan Kaidah Fikih Terhadap Implementasi Dispensasi Perkawinan Di Bawah Umur Di Kantor Urusan Agama (KUA) Kecamatan Perak Kabupaten Jombang."

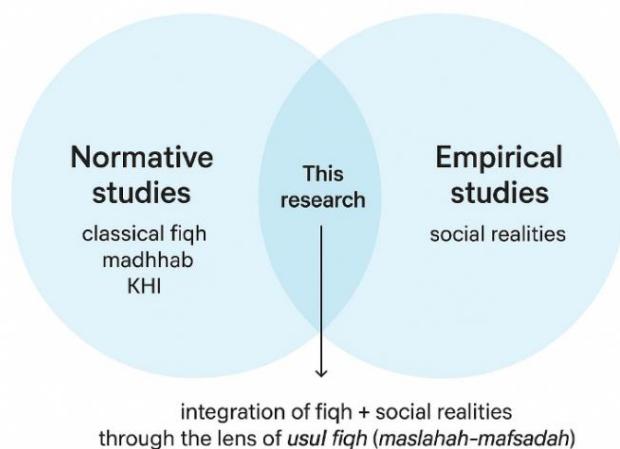
³³ Mahmudah and Oktora, "Relasi Antara Lafaz-Lafaz Dalam Ushul Fiqh Dengan Problematika Hukum Keluarga."

³⁴ Ratno Asep Sujana, "Permohonan Dispensasi Nikah Dalam Perspektif Saddu Dzari'ah," *An-Nahdliyyah: Jurnal Studi Keislaman* 2, no. 2 (2023): 61-83, <https://doi.org/10.70502/ajsk.v2i2.99>.

socio-legal studies highlight the social impacts and lineage protection in premarital marriage. You can find this in the articles "Dialectics of Premarital Marriage in Islamic Society" and "Marriage of a Pregnant Woman Due to Adultery in the Perspective of Islamic Law." Most past studies focus on the normative (classical Islamic law and KHI) and social aspects. However, they often fail to integrate ushul fiqh with local realities. This research is unique. It combines ushul fiqh, with its focus on maslahah-mafsaadah and maqasid sharia, with the study of pregnant marriage in Lampung. Previous articles have employed ushul fiqh tools such as maslahah mursalah and sadd al-dzari'ah. They often focused on marriage dispensation or normative analysis. However, they didn't specifically address the issue of pregnant marriage.

This research examines Article 53 of the Compilation of Islamic Law (KHI) and its application in Lampung. It then analyzes this within the context of maslahah-mafsaadah. This approach compares different schools of thought. It also examines how these regulations function in society and their impact on the achievement of the maqasid al-sharia. This research stands out in the existing literature. It's not just a classical fiqh study, a normative legal study, or a social study. Instead, it aims to unite these three areas within ushul fiqh. It addresses gaps left by previous research, which often focuses only on normative or procedural aspects. This study also connects the principles of maqashid al-syari'ah, the concept of maslahah-mafsaadah, and the rules of legal change (taghayyur al-ahkam). This approach is crucial for evaluating how legitimate marriages involving pregnant women align with Shari'a objectives. It also lays the groundwork for creating legal policies that adapt to social realities while preserving Shari'a values.

Figure 1.
Distinction and Novelty of Research



Source: Author, 2025

Method

This study adopts a qualitative, descriptive approach. It aims to explore how religious leaders and KUA officials view Article 53 of the Compilation of Islamic Law (KHI) in premarital marriage cases in Lampung Province. The strategy employed is a case study because the research focuses on a specific phenomenon occurring in the region. We collected primary data through in-depth interviews. Key informants included religious and community leaders and KUA officials. They played roles in premarital marriage. We selected informants based on their expertise in Islamic marriage law. We gathered secondary data from official documents, ushul fiqh literature, and past research on this topic. Data analysis involved data reduction, presentation, and interactive conclusions using the Miles & Huberman model. Then, it was interpreted through the ushul fiqh framework, focusing on maslahah-mafsaadah and maqashid al-syari'ah. This approach revealed both theoretical and practical implications of the research findings.

Result and Discussion

1. The Provisions for Pregnant Marriage in The Islamic Law Compilation (KHI)

The Compilation of Islamic Law (KHI) is the primary authority on marriage law in Indonesia. Article 53 outlines rules governing marriages involving pregnant women. This rule permits the Religious Affairs Office (KUA) and religious leaders to solemnize marriages for couples who become pregnant before marriage.

Table 1.
Regulation of Pregnant Marriage in The KHI

Article	Provision	Legal Implications
Article 53	A pregnant woman may marry a man who impregnates her without having to wait for the birth of the child.	This provides formal legality for a marriage to take place even if the prospective bride is pregnant, as long as the man who marries her is the one who impregnated her.

This table details Article 53 of the KHI. It clearly states the rules for marriage between a pregnant woman and the man who made her pregnant. This law simplifies the marriage process. This provision highlights administrative details and protects the child's status. However, it lacks preventive measures against adultery or any deviant behavior before marriage.

2. Polarization of Perceptions Regarding the Provisions on Pregnant Marriage in the KHI in Lampung

This sub-research will examine the general public's perceptions of existing and

applicable provisions on marriage during pregnancy. More details are presented as follows:

Mr. NY, a former marriage registrar in Metro City, expressed the view that marriages preceded by adultery are potentially problematic. However, he acknowledged that this practice was widespread during his tenure. His statement highlighted that there is no specific data on these cases, making it difficult to quantify the exact number. Mr. NY views premarital marriage as an unavoidable social phenomenon. In practice, the preferred solution is to marry the couple based on applicable positive law. He also emphasized that this view aligns with some jurists' opinions and is therefore considered religiously valid.

Mr. BS, a community and religious figure in Bandar Lampung, stated that premarital marriage is valid if the man who marries is the one who impregnates the woman. Mr. BS, a community and religious figure in Bandar Lampung, stated that premarital marriage is valid if the man who marries is the one who impregnates the woman.

Mr. SH, a marriage registrar in Central Lampung, noted that before Article 53 of the Compilation of Islamic Law (KHI) was enacted, marriages involving adultery were not allowed. However, since the introduction of this regulation, he often marries couples who are pregnant outside of marriage in accordance with the provisions. Mr. SH's statement also revealed that the Ministry of Religious Affairs does not view the implementation of Article 53 of the Compilation of Islamic Law (KHI) as legalizing adultery. Its primary focus is ensuring the legal status of valid marriages and protecting children's rights. Mr. SH acknowledged the significant changes in the practice of premarital marriages resulting from the regulatory changes. He implemented these provisions as a marriage

registrar, without broadening the interpretation to broader social or moral dimensions. He also stated that in cases of premarital marriage, the civil law aspect is the primary focus, while the moral or criminal elements are not a direct concern. The government considers this regulation relevant to the needs of family law in Indonesia.

Current views show that people tend to see premarital marriages as usual. Instead of viewing them as issues to be prevented, they accept and justify them. This perception generally refers to the legitimacy of the applicable law and the agreement of both families involved in the premarital marriage. This finding shows that people accept positive legal changes. However, it doesn't consider the possible adverse effects on social behavior. The Office of Religious Affairs (KUA) typically addresses premarital marriage issues through administrative measures. It doesn't emphasize prevention or encourage community values.

3. Opinions of Islamic Scholars on Pregnant Marriage

Scholars from four schools of thought offer a framework. This framework shapes how religious leaders view their field. Differences in interpretation among schools of thought provide a basis for argumentation.

Table 2.

Opinions of Scholars from the Fiqh School

Mazhab	Points of View on Pregnant Marriage	Conditions/ Restrictions
Hanafi	Permits marrying a pregnant woman, whether from adultery or a previous marriage.	There is no need to wait for the child to be born.

Syafi'i	Permits marrying a pregnant woman, whether from adultery or a previous marriage.	The iddah period must be completed if it is from a valid marriage; if it is from zina (fornication), wait until the baby is born.
Maliki	Does not permit marrying a pregnant woman from zina until childbirth.	Protection of Lineage
Hanbali	Similar to Maliki, it prohibits marriage until childbirth.	Protection of Honor and Lineage

The data present views from scholars across four schools of thought on marriage during pregnancy. The differences are evident in the lenient Hanafi school, in contrast to the strict Maliki and Hanbali schools. The table indicates that the Hanafi school is the primary authority for permissive sources. In contrast, the Maliki and Hanbali schools are less commonly used in Lampung.

Discussion

This study finds that religious leaders and KUA officials in Lampung are mostly OK with premarital marriage. They accept it if the man who got the woman pregnant is involved and follows Article 53 of the Compilation of Islamic Law (KHI). This practice is considered a common phenomenon rather than a serious problem, provided it complies with legal provisions. Community and religious leaders in Bandar Lampung shared similar views. They highlighted that premarital marriage is subject to positive legal regulation. Active representatives from Central Lampung, who are government officials, observed a change in attitudes. This shift happened after Article

53 of the KHI was enacted. It moved from prohibition to legal acceptance. The Ministry of Religious Affairs, along with KUA officials, thinks this regulation does not legalize adultery. Instead, it aims to establish legal certainty regarding marriage and to protect children's status. These findings confirm that most perspectives are oriented toward formal legitimacy rather than moral deterrence.

This idea matches views in fiqh literature. Scholars from the Hanafi and Shafi'i schools allow a woman pregnant from adultery to marry. She can marry either the man who got her pregnant or another man.³⁵ This view differs from that of the Maliki and Hanbali schools of thought, which emphasize the prohibition until the woman has given birth.³⁶ Research in Lampung reveals socio-legal practices consistent with the Hanafi-Syafi'i view. In Indonesia, these practices are backed by Article 53 of the Compilation of Islamic Law (KHI) for formal legitimacy. This shows that the Compilation of Islamic Law is closely linked to the growth of Islamic law in Indonesia. It always considers the views of jurists (*fuqaha*).³⁷ This highlights the relationship between classical fiqh and Islamic law in Indonesia, as shown in earlier studies. This study reveals that legal regulations, such as Article 53 of the KHI, shape how religious leaders and KUA officials perceive their roles as intermediaries.

These perceptions, in turn, contribute to the level of social acceptance of pregnant marriage, the dependent variable. Supporting factors, like the Hanafi and Syafi'i views, allow marriages of pregnant women to prevent adultery. This helps moderate and strengthen the effects of regulations on acceptance. The socio-cultural context of Lampung tolerates premarital marriage to protect family reputation. This acceptance helps legitimize the practice socially. This is consistent with the findings of Lutfi et al. and Wantu et al., who demonstrated societal acceptance of premarital marriage practices in regions other than Lampung.³⁸ This pattern of relationships suggests that positive legal and social norms reinforce the legitimacy of premarital marriage in ways not found in previous normative studies. From the perspective of ushul fiqh (Islamic jurisprudence), the practice of premarital marriage, as facilitated by Article 53 of the Compilation of Islamic Law (KHI) and by some Islamic schools of thought, can be categorized as the application of *maslahah hajiyah* (secondary benefit) in social practice. As Gunawan points out, this benefit is not urgent but rather a form of relief for the *mukallaf* (*Rukhshah*).³⁹ This aligns with Sri Wahyuni's assertion that *maslahah hajiyah* is a concept of benefit aimed at avoiding and perfecting social difficulties, without directly threatening a person's survival.⁴⁰ In this case,

³⁵ Nyrza Rizka A. R, M. Taufan B, and Yuni Amelia, "The Legal Status Of A Child Born Out Of Wedlock In The Perspective Of Syafi'i And Hanafi Schools," *Comparativa: Jurnal Ilmiah Perbandingan Mazhab Dan Hukum* 4, no. 1 (2023), <https://doi.org/10.24239/comparativa.v4i1.134>.

³⁶ Afif Mubaroq et al., "Kawin Hamil Perspektif Kompilasi Hukum Islam Dan Mazhab Fikih," *Jurnal Al-Wasith : Jurnal Studi Hukum Islam* 10, no. 1 (2025):15-26, <https://jurnal.unugha.ac.id/index.php/wst/article/view/1419/778>.

³⁷ Binarsa Binarsa, "Legalitas Hukum Kawin Hamil Di Indonesia Telaah Pada Penerapan KHI Pasal 53 Di Kecamatan Mlati Perspektif Fatwa Ibnu Taimiyyah," *Jurnal Indonesia Sosial Teknologi* 4, no. 5

(May 16, 2023): 526-42, <https://doi.org/10.59141/jist.v4i5.615>.

³⁸ Sastro Mustapa Wantu et al., "Early Child Marriage: Customary Law, Support System, and Unwed Pregnancy in Gorontalo," *Samarah* 5, no. 2 (2021), <https://doi.org/10.22373/sjhk.v5i2.9573>.

³⁹ Gunawan Gunawan, "Kebolehan Menikahi Wanita Hamil Dalam Pasal 53 Kompilasi Hukum Islam (Analisis Teori Maqashid Syari'ah)," *Al-Ittihad: Jurnal Pemikiran Dan Hukum Islam* 9, no. 1 (2023), <https://doi.org/10.61817/ittihad.v9i1.84>.

⁴⁰ Sri Wahyuni, "Studi Perbandingan Pemikiran Filsafat Hukum Islam Al-Ghazali, Asy-Syatibi, Dan Ibnu Khaldun," *Al-Mazaahib: Jurnal Perbandingan*

negative stigma against children and families can be viewed as part of the benefits of the hajj, as is the case with marriage administration.

However, in the context of a pregnant marriage, the adoption of this benefit has the potential to create a negative impact, namely, weakening the preventive function (*zajr*) against adultery. Ulfiyati emphasized that adultery is a major sin punishable by severe punishment under Islamic law.⁴¹ This weakening of sharia is a deviation from its maqasid. It mainly affects the protection of religion (*hifzh al-din*) and honor (*hifzh al-'irdh*). We must avoid this. Preventing harm associated with violations of religious honor takes precedence over avoiding negative stigma. This aligns with the principle of *tadāfu' al-mafāsid wa jālb al-masālih*, which emphasizes that preventing harm should take precedence over prioritizing benefits.⁴² Prioritizing administrative interests over moral ones can lead to unequal outcomes in the pursuit of Sharia goals. This indicates a decline in the maqasid al-sharia, in which protecting lineage (*hifzh al-nasl*) takes precedence over preserving religion and honor.

This study shows that legal rules that focus too much on administration can alter the role of law. Rather than guiding moral behavior, law may permit practices that Sharia strictly forbids. This confirms the analysis of M. Mukhis and Hermanto that Indonesian marriage law emphasizes the civil aspect of marriage.⁴³ This study differs from previous

research by focusing on the acceptance of religious leaders and KUA officials in Lampung. It offers an empirical analysis and links this to ushul fiqh. This study highlights how maslahah (benefit) and mafṣadah (harm) are negotiated in social practice and law. It reveals an imbalance in maqasid sharia that earlier literature has not addressed. The study shows that, without adequate moral guidance and legal education, individuals may misunderstand Article 53 of the Compilation of Islamic Law (KHI). They might see it as allowing adultery, which could be fixed by marriage. There is a need to rebuild policies. We should combine legal protections for children with moral prevention measures. This includes requiring repentance from married couples who are pregnant.

Policy implementation may include special premarital counseling, sharing ushul fiqh principles with religious leaders and KUA officials, and educational campaigns on Islamic family law within the Lampung community. This approach seeks to use marriage law to balance legal certainty and social morals. It follows the principles of maqasid al-syari'ah.

Conclusion

This study shows that in Lampung, premarital marriage is mainly seen as a formal solution. This aligns with Article 53 of the Compilation of Islamic Law (KHI). This article focuses on protecting children's status and family honor. KUA officials, along with religious and community leaders, generally support permissive views. This is in line with

Hukum 10, no. 1 (2022), <https://doi.org/10.14421/al-mazaahib.v10i1.2752>.

⁴¹ Nur Shofa Ulfiyati and Akh. Syamsul Muniri, "Perbedaan Sanksi Bagi Pelaku Zina Dalam Hukum Pidana Islam Dan Hukum Pidana Positif," *USRah: Jurnal Hukum Keluarga Islam* 3, no. 2 (2022), <https://doi.org/10.46773/usrah.v3i1.482>.

⁴² Isniyatun Faizah, Alantama Prafastara Winindra, and Dewi Niswatin Khoiroh, "Implementasi Kaidah Dar'ul Mafasid Muqaddamun 'Ala Jalbil

Mashalih Terhadap Pencatatan Perkawinan Di Indonesia," *As-Sakinah Journal of Islamic Family Law* 2, no. 1 (March 31, 2024): 1-11, <https://doi.org/10.55210/jhki.v1i2.333>.

⁴³ Agus Hermanto, "Larangan Perkawinan Perspektif Fikih Dan Relevansinya Dengan Peraturan Hukum Perkawinan Di Indonesia," *ASAS* 10, no. 02 (July 9, 2019):153-75, <https://doi.org/10.24042/asas.v10i0.2.4538>.

the Hanafi and some Shafi'i schools. Focusing too much on family benefit (maslahah hajiyyah) may overlook the need to prevent adultery (zina). This can lead to an imbalance in the realization of the maqasid al-shari'ah (goals of Islamic law). It will *impact hifzh al-nasl* (protection of the soul), *hifzh al-din* (faith), and *hifzh al-irdh* (honor). These findings indicate that legal legitimacy doesn't always align with the moral and preventive aims of sharia. This research suggests that the government and the Ministry of Religious Affairs need to revise Article 53 of the Compilation of Islamic Law (KHI). This revision should incorporate mechanisms for moral guidance. These include: Requirements for repentance; Premarital counseling; Teaching the values of maqasid al-syari'ah (principles of Islamic law). KUA officials and religious leaders should educate the public about Islamic family law. This effort can help ensure that premarital marriage isn't seen as a way to legalize adultery. The research shows the need to analyze *ushul fiqh* (Islamic principles). It should balance *maslahah* (benefit) and *mafsadah* (harm) in Islamic marriage law. The focus on *hifzh al-nasl* in Lampung highlights the need to understand maqasid al-syari'ah comprehensively. This shows that *Hifzh al-Din* and *Hifzh al-Irdh* are also important. This study focuses on Lampung's social context. It relies on qualitative data, so the findings may not generalize. Future research needs to widen its focus. Using quantitative data will help us understand premarital marriage practices nationwide.

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