

**THE RULING ON THE MARRIAGE OF A PREGNANT WOMAN
FROM AN ILLEGITIMATE RELATIONSHIP:
A Perspective from the Ulama Consultative Assembly Of North Aceh Regency, Indonesia**

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Abstract: This article examines the thoughts of the *Majelis Permusyawaratan Ulama* (MPU) administrators of North Aceh Regency regarding the marriage of pregnant women out of wedlock. Although this is a field study, the research first explores the Islamic jurisprudence (*fiqh*) perspective on the discussed topic and then reviews the MPU administrators' legal opinions on the matter. The study finds that, in Islamic jurisprudence, the permissibility of marriage for a pregnant woman out of wedlock is highly disputed based on the cause of the pregnancy. According to the Mâlikites and the Hanbalites, and agreed by Abû Yûsuf from the Hanafî school, the marriage is invalid due to adultery, whereas the Shâfi'ites and Abû Hanifah considered it valid. Nevertheless, the marriage is deemed invalid if the woman is still pregnant during the *'iddah* period. The MPU of North Aceh states that the marriage of a pregnant woman out of wedlock is legally valid but prohibited (*haram*) due to the potential for lineage confusion. They advise against such marriages to prevent possible issues regarding lineage and other related rights.

Keywords: Ulama, Aceh, Pregnant Woman out of Wedlock, Islamic family law

Abstract: Artikel ini mengkaji pendapat pengurus Majelis Permusyawaratan Ulama (MPU) Kabupaten Aceh Utara tentang pernikahan wanita hamil di luar nikah. Meskipun merupakan sebuah penelitian lapangan, studi ini terlebih dahulu mengkaji perspektif fikih tentang topik yang dibahas, dan kemudian meninjau pendapat pengurus MPU tentang topik tersebut. Studi ini mengajukan temuan bahwa dalam fikih Islam, pernikahan wanita hamil di luar nikah diperdebatkan berdasarkan penyebab kehamilan. Mazhab Mâlikî, Hanbalî, dan Abû Yûsuf (Hanafî) menolak keabsahan pernikahan wanita hamil akibat zina, sedangkan Mazhab Syafi'i dan Abu Hanifah menganggapnya sah. Meski demikian, pernikahan wanita hamil umumnya dianggap tidak sah selama masa *'iddah* jika hamil dari hubungan sah atau tidak sah. MPU Aceh Utara menyatakan pernikahan wanita hamil di luar nikah sah secara hukum tetapi haram, karena dapat menyebabkan ketidakjelasan nasab anak. Mereka menyarankan agar pernikahan seperti ini dihindari untuk mencegah potensi masalah nasab dan hak-hak lainnya.

Keywords: Ulama, Aceh, Wanita Hamil Di Luar Nikah, Hukum Keluarga Islam

INTRODUCTION

This article examines the legal opinions issued by of the *Majelis Permusyawaratan Ulama* (MPU) of North Aceh Regency regarding the marriage of pregnant women out of wedlock. Al-Mârâghî explains that Allah Swt. established various rules and laws with the purpose of ensuring that humans can attain happiness, starting today in this world and continuing into the hereafter (al-Maragi, 1946). As a perfect religion, Islam governs all aspects of daily human life, from the smallest matters to the most significant issues. This comprehensive guidance is intended to help humans achieve two forms of happiness: in this world and in the afterlife. Consequently, in Islam, there are various rules that address issues which may initially seem trivial, as well as larger themes such as social relations, governance, and marriage.

Marriage is one of the key themes to which Islam pays considerable attention. Islam regards marriage as a foundational element in building a better human civilization. Therefore, it regulates marriage based on ethical, moral, and religious principles. A healthy family environment will lead to a civilized society, which in turn has a positive impact on the formation of an educated nation. Islam views marriage as a sacred institution. This is because the marriage contract (*akad nikah*) is essentially a binding agreement and a commitment from a man to always protect and guide his wife in ways that are pleasing to Allah.

Accordingly, the Qur'an refers to marriage as *mitsaqan ghalizha* or a solemn covenant, as mentioned in Q.S. al-Nisâ' verse 21.

Al-Baghawi related to al-Hasan, Ibn Sirin, and al-Dhahhak who interpret the term *mitsaqan ghalizha* mentioned in the verse as the words spoken by the guardian (*walî*) during marriage solemnization. Typically, when pronouncing the marriage contract, the guardian would say: "I marry you off based on the conditions that Allah has imposed on the husband, namely: *imsakun bi ma'ruf aw tasrihun bi ihsan.*" *Imsakun bi ma'ruf aw tasrihun bi ihsan* means to either retain the wife with kindness or release her with grace. This represents a husband's commitment to maintaining the marriage in accordance with what pleases Allah. However, if the husband decides to end the marriage, he is expected to do so in a manner that is honorable and respectful. Al-Baghawi also cites interpretations from other commentators. He quotes al-Sha'bi, who stated that this verse aligns with the hadith of the Prophet Muhammad Saw.: "Fear Allah regarding your wives, for you have taken them as a trust from Allah, and their private parts have become lawful to you by Allah's word" (Al-Baghawi, 1997).

Al-Sya'rawi also elaborated on the meaning of Q.S. al-Nisâ' verse 21. He explained that "the understanding of this verse is that the words of the marriage contract can grant a new life. Every promise made between human beings is

generally considered a customary promise, except for the promise made between a man and the woman he marries. This promise is a heavy and serious one, and Allah Swt. does not use the term *ghalizh* (solemn) except for the promises made by the prophets and the marriage vow” (Al-Sya’rawi, 1997). Al-Sya’rawi’s interpretation clarifies that *mitsaqan ghalizha* refers to the marriage contract, and the essence of that contract is the commitment or promise produced by a husband to provide his wife with a new and dignified life. Al-Sya’rawi further explained that most promises between two people are simply ordinary promises, not deserving of the term *ghalizha*. However, marriage is an exception, as Allah Swt. refers to it as *mitsaqan ghalizha*.

The term *mitsaqan ghalizha* appears in the Qur’an three times: in Q.S. al-Nisâ’ verse 21, Q.S. al-Nisâ’ verse 154, and Q.S. al-Ahzab verse 7. When examining the latter two verses, it becomes evident that both discuss the covenant that Allah took from the Messengers and Prophets. This covenant refers to their commitment to fulfill the mission of spreading the religion and the laws that Allah has made obligatory. This is the promise that Allah describes as *mitsaqan ghalizha*. From this, we understand that Allah SWT mentions *mitsaqan ghalizha* in the Qur’an three times: once to refer to the marriage vow and twice to refer to the covenant of the Messengers in carrying out their

prophetic duties. This indicates that the marriage vow is extremely weighty, as Allah equates the responsibility of a husband to the responsibility borne by the Prophets and Messengers in fulfilling their mission of spreading the message of Islam. Consequently, the commitment and responsibility of a husband in marriage are considered as serious and burdensome as those carried by the Prophets in their prophetic and missionary roles.

Islam’s emphasis on the issue of marriage is also closely tied to its concern for the lineage (*nasab*) of a child. In Islam, lineage is considered a sacred and important matter that must be respected and preserved. Islam has established clear rules to ensure the authenticity of an individual's lineage. One such rule is the prohibition of conducting a marriage contract while the bride is pregnant. This prohibition is mentioned in Q.S. ath-Thalaq, which addresses the issue of *‘iddah* (the waiting period). The verse explains that if a wife is divorced while she is pregnant, her *‘iddah* lasts until she gives birth. In other words, she is not allowed to enter a marriage contract with another man until giving birth. This rule is designed to ensure the clarity of the child’s lineage. Sheikh Wahbah az-Zuhaili explains this prohibition clearly, stating that “the purpose of *‘iddah* is to ensure that a woman’s womb is free of pregnancy caused by another man, to prevent confusion of lineage and to preserve the authenticity of lineage” (al-Zuhaili, 1989).

Islamic law aims to preserve human welfare. The primary goal of Islam's existence is *li jalb al-mashalih wa dar' al-mafasid*—to bring about and protect welfare while preventing harm. Mushthafa al-Khin elaborates, “Islam was revealed with the purpose of protecting five key things and preventing harm to them. Hence, some say that Islam came to bring benefit and prevent harm, leading to the establishment of various laws such as the *hudud* punishments and *ta'zir* penalties for those who could harm these five key purposes” (Al-Khin et al., 1992). Islam's concern for lineage is further demonstrated by how it considers lineage one of the five primary objectives of the religion, or *maqashid al-syar'iyah al-khamsah*, as mentioned by Al-Laqqani in his poem: “It is obligatory to protect religion, life, property, lineage, intellect, and honor” (Syatha, 1997).

As a result, Islam prohibits anything that could lead to ambiguity regarding one's lineage, such as committing adultery (*zina*), which may result in pregnancy out of wedlock. Sheikh Sulaiman al-Jamal emphasizes that “*zina* is one of the gravest sins, and all religions agree on this. The punishment for those who commit *zina* is among the most severe because adultery is considered a crime against the honor and lineage of others” (Al-Jamal, n.d.). Theoretically, it can be concluded that Islam highly values marriage and strongly condemns *zina* (adultery), which significantly affects the uncertainty of a child's lineage.

In practice, the issues of marriage, lineage, and pregnancy out of wedlock continue to be problematic among Muslims in Indonesia. Various newspapers report cases of young couples marrying at an early age because the woman has already become pregnant. In 2023, the Aceh Provincial Ministry of Religious Affairs released data on child marriages, reporting 1,310 cases. Over the past five years, there have been 2,784 cases of early marriage in Aceh, one of the causes being free social interactions leading to pregnancies out of wedlock.

The occurrence of non-marital pregnancy has created a perception that marriage is a solution to such pregnancies. Many assume that once a pregnancy occurs out of wedlock, marriage becomes the only way to protect family's reputation and honor. However, they often overlook the significant legal implications of marriages driven by pregnancy. The family's focus tends to be on concealing the shame, believing that the problem can be resolved by marrying off the couple, as though the marriage has no legal consequences, such as the lineage of the child.

This article will specifically examine the views of Acehese scholars on the legality of marrying a pregnant woman out of wedlock, given the high number of early marriages in Aceh, some of which result from pregnancies outside of marriage. Research on the views of MPU administrators in North Aceh Regency has not been previously

conducted by scholars. Several researchers have explored the topic of marrying a pregnant woman out of wedlock. On a broader scale, Abdul Samad and Ali Abadi discussed this topic in the context of Iran's constitution (Samad & Abadi, 2023). Some researchers have also examined this issue from the perspective of Islamic jurisprudence and Indonesian legislation. However, there is limited research on this topic from the perspective of Acehese scholars. Nasaiy Aziz and Muksal Mina studied the issue of the lineage of children born out of wedlock based on MPU Aceh's fatwa (Aziz & Mina, 2017). However, the views of Acehese scholars on the marriage of pregnant women out of wedlock have not received much attention from researchers. Theoretically, this study contributes to the development of Islamic legal studies in Aceh.

METHOD

This study is a field research aimed at uncovering the opinions of the members of the *Majelis Permusyawaratan Ulama* (MPU) in North Aceh Regency regarding the legal status of marriage for women who become pregnant due to *zina* (adultery). The research data is categorized into two main types: (1) primary data, which is directly obtained from the social actions and statements of MPU members, and (2) secondary data, which consists of written materials that support the primary data. The selection of informants in this research employs

purposive sampling and snowball sampling methods (Sugiyono, 2009). Data collection was conducted through three main techniques: (1) interviews, which were conducted to gather direct information from the key informants; (2) observation, carried out in the field to directly observe the phenomena being studied; and (3) documentation, which involved collecting written data from the field. The data analysis process followed the data analysis technique model of Miles and Huberman, which includes data reduction, data presentation, and drawing conclusions (Miles & Huberman, 1994).

RESULTS AND DISCUSSION

Marriage of Pregnant Women Out of Wedlock in Islamic Jurisprudence

In the context of Arabic studies or Islamic jurisprudence literature, the marriage of a pregnant woman is often referred to as *al-tazawwuj bil hamil* or *nikah al-hamil*. In Islamic law, this marriage refers to a union between a man and a woman who is already pregnant. This situation can arise in two scenarios: first, the woman becomes pregnant before the marriage, and then she marries the man who impregnated her; second, the woman becomes pregnant by one man but marries another man who is not the biological father of the child (Mahyuddin, 2008). In brief, the marriage of a pregnant woman can occur either with the man responsible for the pregnancy or with another man. The concept of marrying a pregnant woman refers to a situation

where a pregnancy precedes the marriage, and the woman may marry either the man who impregnated her or someone else.

Essentially, a valid marriage is one that follows the proper procedures established by both religious and state laws, ensuring the legitimacy of the union. Islamic jurisprudence has established that a marriage involving a pregnant woman is not valid according to the views of the Hanbalî and Mâlikî schools (al-Kuwaitiyyah, 2012). However, this ruling is rarely used as a legal basis in Indonesian Muslim society, which predominantly follows the Shâfi'î school of thought.

The ruling that the marriage of a pregnant woman out of wedlock is invalid is based on the interpretation of Surah an-Nûr, verse 24: "The adulterer shall marry none but an adulteress or an idolatress, and the adulteress marries none but an adulterer or an idolater. Such behavior is forbidden for the believers." This verse condemns adultery and is understood by some scholars as evidence that marriages involving individuals who have committed *zina* (adultery) are invalid. These scholars focus on the latter part of the verse, where it is mentioned that such marriages are forbidden for the believers. They interpret this prohibition as having legal consequences, making such marriages invalid if performed (al-Kuwaitiyyah, 2012).

In the literature of Islamic jurisprudence, there are explanations that distinguish the validity of the marriage of

a pregnant woman based on the cause of her pregnancy, whether due to *zina* (adultery) or not. The validity of such marriages cannot be generalized under a single rule. The explanation for this distinction is as follows (al-Kuwaitiyyah, 2012):

الحامل من غير الزنى، أي من كان حملها ثابت النسب لا يصح نكاحها لغير من ثبت النسب منه قبل وضع الحمل باتفاق الفقهاء؛ لأن الحمل إذا كان ثابت النسب من الغير، سواء أكان من نكاح صحيح أم فاسد أم وطء شبهة لزم حفظ حرمة مائه بالمنع من النكاح، ولأن عدة الحامل لا تنتهي إلا بوضع الحمل، ولا يجوز نكاح معتدة الغير أثناء العدة لقوله تعالى: ﴿ولا تعزموا عقدة النكاح حتى يبلغ الكتاب أجله﴾ أي ما كتب عليها من التربص. ويجوز نكاح الحامل المطلقة البائن بينونة صغرى لمن له الحمل أي الزوج السابق؛ لأن العدة حق الزوج فلا يمنع من التصرف في حقه. أما المطلقة ثلاثا (البائن بينونة كبرى) فلا يجوز نكاحها إلا بعد وضع الحمل اتفاقا .

The above text explains that for a woman who is pregnant not because of *zina* (adultery), scholars agree that her marriage is invalid if her new husband is not the biological father of the child she is carrying. In other words, the marriage can only be considered valid if it is with the man who caused her pregnancy or the father of the child she is carrying.

This conclusion is based on the premise that a child conceived outside of *zina* has a clear and established lineage (*nasab*). This certainty of lineage can occur in cases where the pregnancy

results from a valid marriage, a marriage that is invalid, or even from a dubious sexual activity. In all three cases, the child's lineage is recognized by religion as being related to the biological father. This clarity of lineage is seen as a reason for prohibiting the marriage of the pregnant woman to another man who is not the father of the child. Marrying a pregnant woman to another man would effectively obscure or obscure the clear lineage of the child, which is acknowledged by religion and should be preserved.

Another reason is that a pregnant woman who is no longer in a marital bond is still undergoing the *'iddah* period. Whether the pregnancy resulted from a valid marriage, an invalid marriage, or a dubious marriage, she is required to observe *'iddah*. Due to her pregnancy, the *'iddah* period extends until she gives birth, as explained in Surah al-Baqarah, verse 235: "Do not marry them until they have completed their *'iddah*. Know that Allah knows what is in your hearts. So, fear Him. Know that Allah is Forgiving and Forbearing."

It can be emphasized that this explanation indirectly confirms that a pregnant woman not in a marriage bond, if her pregnancy is not due to *zina* (adultery), is still undergoing her *'iddah*, or in other words, she is in her *'iddah* as a pregnant woman. In other words, it is impossible to say that she is not in her *'iddah*.

From the above explanation, it can be concluded that a woman who is

pregnant and observing *'iddah* cannot enter into a new marriage. This means that such a marriage is invalid because she is in the *'iddah* period, and the woman is considered still bound by her previous marriage. Conversely, a woman pregnant due to *zina* has no *'iddah* obligation. The main issue of this article is the legality of the marriage of a woman who is pregnant due to *zina*.

If a woman is pregnant not due to *zina* (adultery), the scholars agree that she cannot be married to another man before completing her *'iddah*. This differs from the case of a woman pregnant due to *zina*. This issue is a matter of scholarly disagreement, with differing thoughts among the scholars. The following are the explanations found by the author (al-Kuwaitiyyah, 2012):

واختلف الفقهاء في صحة نكاح الحامل من زنى: فقال المالكية والحنابلة وأبو يوسف من الحنفية: لا يجوز نكاحها قبل وضع الحمل، لا من الزاني نفسه ولا من غيره؛ وذلك لعموم قوله ﷺ لا توطأ حامل حتى تضع. ولما روي عن سعيد بن المسيب أن رجلا تزوج امرأة فلما أصابها وجدها حبلى فرفع ذلك إلى النبي ﷺ ففرق بينهما.

From the above analogy, it can be understood that the Mâlikî, Hanbalî, and some Hanafî (Abû Yûsuf) schools of thought hold that a marriage to a woman who is pregnant due to *zina* (adultery) is prohibited and cannot be conducted until she gives birth. This prohibition is

absolute, whether the marriage is to the man who caused her pregnancy or to another man. One legal basis for this view is a hadith that prohibits such a practice. This hadith is presented in a general form, leading to the conclusion that marriage to a woman pregnant from *zina* is strictly forbidden. The hadith is as follows: “A pregnant woman cannot be married off until she has given birth” (al-Kuwaitiyyah, 2012).

As noted in the wording of the hadith, the term *la tutha'* is used, which literally means a prohibition on sexual relations. However, scholars who prohibit the marriage of a pregnant woman out of wedlock interpret this prohibition of sexual relations as a prohibition on marriage. This understanding is more appropriate because a husband is not forbidden from having sexual relations with his wife who is pregnant.

The interpretation of the hadith as a prohibition on marriage is further supported by the account of Sa'id ibn al-Musayyab, who narrated that a companion once married a woman, and after the marriage contract was completed, it was discovered that the wife was pregnant. This situation was reported to the Prophet Muhammad, who then decided to annul the marriage. The narration is as follows: “It was reported from Ibn al-Musayyab that a man married a woman, and it was then discovered that she was pregnant. This was reported to the Prophet, who subsequently separated them” (al-Kuwaitiyyah, 2012).

This hadith, narrated by Sa'id ibn al-Musayyab, is cited as evidence for the invalidity of marriage to a pregnant woman and is also mentioned by al-Baihaqi in hadith number 13891. Al-Baihaqi acknowledges this hadith and its chain of narration through Sa'id ibn al-Musayyab. The hadith is cited as follows (Al-Baihaqi, 2003):

١٣٨٩١ - أخبرنا أبو الحسن علي بن أحمد بن محمد بن داود الرزاز ببغداد، ثنا جعفر بن محمد بن نصير، ثنا إبراهيم بن علي العمري الموصلي، ثنا بسطام بن جعفر بن المختار، ثنا إبراهيم بن محمد المدني، عن صفوان بن سليم، عن سعيد بن المسيب، عن بصرة بن أبي بصرة الغفاري، أنه تزوج امرأة بكرًا، فدخل بها، فوجدها حبلى، فذكر ذلك للنبي ﷺ، ففرق بينهما، ثم قال: «إذا وضعت فاجلدوها الحد»، وجعل لها صداقها بما استحل من فرجها وكذلك رواه إسحاق بن إدريس، عن أبي إسحاق الأسلمي وهو إبراهيم بن محمد، وقد روي هذا من وجه آخر، عن ابن المسيب، عن النبي ﷺ مرسلًا.

On the other hand, scholars from the Shâfi'i school, as well as Imam Abû Hanifah and Imam Muhammad, argue that marriage to a woman pregnant from *zina* (adultery) is permissible and valid. It is because the prohibition of marrying a pregnant woman mentioned in the hadith pertains to a woman who is pregnant not due to *zina*, out of respect for the fetus. In contrast, a fetus resulting from *zina* is not afforded this respect, based on the hadith (al-Kuwaitiyyah, 2012).

These scholars interpret the prohibition in the hadith as applicable only to women who are pregnant not due to *zina*. The prohibition in the hadith is seen as protecting the honor of a legitimate conception, whereas *zina* is not a legitimate form of intercourse, and the resultant conception is not regarded with the same respect. This is evidenced by the fact that the lineage of a child born from *zina* is not acknowledged in relation to the biological father. Religion does not uphold the lineage of such a child because it does not recognize the child's legitimacy. This stance is supported by a hadith mentioned by Imam al-Bukhari, which states: "The lineage of a child is attributed to the husband; a child born from *zina* is not given the lineage to the father" (Al-Bukhari, 1422).

Examining the interpretation of this hadith, it can be understood that the hadith asserts that a husband can claim paternity of a child born from lawful intercourse within a valid marriage. Conversely, an adulterer is denied the paternity right over his biological child. The explanation of this hadith is as follows: "The child is attributed to the owner of the marriage bed, namely the husband, whereas the adulterer is excluded from the paternity of the child, even if the child resembles him" (Muhammad al-Amin Bin 'Abdullah al-'Alwi, 2018).

Meanwhile, concerning the thought of scholars who permit the marriage of a woman pregnant from adultery, this

permissibility remains a matter of scholarly dispute, whether it is absolute or contingent upon certain conditions. Most scholars view this permissibility as absolute, meaning that repentance is not a prerequisite. Specifically, the marriage is permissible and valid even if the adulterer has not repented. This thought is based on the action taken by 'Umar, who allowed the immediate marriage of adulterers after they were punished for adultery. If repentance were a prerequisite, 'Umar would have required them to repent before marrying. This explanation is reflected in the following statement: "According to the majority of scholars, repentance is not required for the validity of this marriage, as 'Umar punished the adulterers and then married them. However, the Hanbalî scholars condition the validity of this marriage on prior repentance, based on the verse stating that adulterers are forbidden to believers. Once they have repented, adulterers may enter into marriage" (al-Kuwaitiyyah, 2012).

The above text also explains how Hanbalî scholars view the matter differently. They tend to believe that while the marriage is permissible, it must be with the condition of prior repentance. They argue that an adulterer is forbidden to marry, except to another adulterer, until they have repented. It should also be emphasized that, according to the thought allowing marriage of a woman pregnant from adultery, this permissibility is general, whether marrying another

adulterer or a different man. This is reflected in the following explanation: "According to the thought permitting this marriage, the permissibility is the same, whether it is with another adulterer or a different man" (al-Kuwaitiyyah, 2012).

Legal Status of Marriage for a Pregnant Woman Outside of Wedlock According to the MPU Board

This study examines the views of the Majelis Permusyawaratan Ulama (MPU) members of Aceh Utara Regency on the legality of marriage for a woman who is pregnant outside of wedlock. The researcher has interviewed five key informants: *Teungku* H. Abdul Mannan (Chairman of the MPU Aceh Utara), *Teungku* H. Ismail TB (Honorary Council of the MPU Aceh Utara), *Teungku* Zainuddin Ibrahim (Chairman of Commission A of the MPU Aceh Utara), *Teungku* H. Ibnu Sakdan (Chairman of Commission B of the MPU Aceh Utara), and *Teungku* Jamaluddin Ismail (Chairman of Commission C of the MPU Aceh Utara). The following are the conclusions drawn by the researcher regarding the topic under investigation.

1. The Legality of Marrying a Woman Pregnant from Adultery

What is the ruling on marrying a woman who is pregnant because of adultery, either to the man who impregnated her or to another man? Based on interviews with key informants, it was found that the members of the MPU

Aceh Utara believe that the marriage of a pregnant woman is legally valid, as there is no requirement that the prospective bride must be non-pregnant. However, such a marriage is considered undesirable due to the potential ambiguity concerning the lineage of the child to be born. This ruling applies equally whether the marriage is with the man who caused the pregnancy or another man.

When asked this question, all five informants provided similar thoughts. *Teungku* H. Abdul Mannan stated, "The ruling is the same; the marriage is valid, whether with the man who caused the pregnancy or another man. The reason is the ambiguity of lineage, so the ruling is the same." *Teungku* H. Ismail TB added, "It's the same. It is valid because there is no requirement for marriage to be conducted with the bride not being pregnant." *Teungku* Zainuddin Ibrahim expressed, "There is no difference. It is valid, but still prohibited because it creates ambiguity regarding lineage." *Teungku* H. Ibnu Sakdan explained, "Whether with the man who caused the pregnancy or another man, the ruling is the same, which is prohibition. However, from the perspective of validity, it is valid." *Teungku* Jamaluddin Ismail said, "According to my understanding from studying, if it is valid, then it is valid. It's the same whether marrying the man who caused the pregnancy or another man, due to the reason of lineage ambiguity. So, the ruling is the same."

According to interviews with the members of the *Majelis Permusyawaratan Ulama* (MPU) Aceh Utara, although the marriage of a pregnant woman does not conflict legally with the conditions for a valid marriage in Islam, such marriages are still considered inadvisable and even prohibited by local customs. The primary reason for this prohibition is to avoid ambiguity in regard to the lineage of the child to be born. Lineage, or *nasab*, is significant in Islamic tradition and law. In this context, a marriage involving a pregnant woman, whether to the man who caused the pregnancy or to another man, is seen as potentially creating confusion about the biological father of the child. This can impact the child's rights, particularly concerning inheritance, guardianship, and family honor. The prohibition is also viewed as a form of social and moral protection within the community, aimed at maintaining order and the purity of lineage in the future. Therefore, although there is no specific jurisprudential rule that explicitly invalidates the marriage of a pregnant woman, local social norms and religious values provide stricter guidelines in such situations.

2. The Legality of Conducting the Marriage

Is it permissible to conduct such a marriage? According to interviews with key informants, it was found that the members of the MPU Aceh Utara believe that, as previously explained, the primary reason

for the prohibition of this marriage is the potential ambiguity in lineage that could arise from it. Therefore, such a marriage is prohibited to safeguard the lineage of the child to be born. However, if it can be assured that there will be no ambiguity regarding the child's lineage, then the marriage may be allowed. This could be achieved, for example, by having the family expressly state that the lineage is not attributed to the man marrying the mother.

The conclusions above are based on the statements of the five informants after being asked related questions. *Teungku* H. Abdul Mannan said, "If it can be assured that the lineage will not be confused later, then the marriage may be allowed. However, no family will undertake such a marriage if they intend to label the child because of adultery. Typically, such marriages are conducted to cover up a shame." *Teungku* H. Ismail TB stated, "It is not permissible, as it can cause ambiguity in lineage." *Teungku* Zainuddin Ibrahim opined, "Theoretically, it might be permissible, but in practice, it is very difficult. No family wants to expose their shame. If it can indeed be assured that the lineage will not be attributed to someone undeserving, then the marriage may be allowed." *Teungku* H. Ibnu Sakdan asserted, "It is not permissible. The negative consequences are greater." *Teungku* Jamaluddin Ismail said, "In my view, it is not permissible. This is to avoid a greater harm."

Based on interviews with the members of the *Majelis Permusyawaratan*

Ulama (MPU) Aceh Utara, it is concluded that marriage to a pregnant woman is generally prohibited within the context of local legal and customary norms. This prohibition aims to maintain the clarity of the child's lineage, given the potential for lineage ambiguity arising from such marriages. Lineage ambiguity can occur if the biological father's status is unclear, particularly in cases where a pregnant woman marries a man who is not the biological father of the child. This can lead to doubts about the child's rights, such as inheritance and social recognition.

However, there are exceptions to this rule. If the parties involved can clearly ensure that there will be no ambiguity regarding the lineage—such as through a decision agreed upon by the family not to attribute the lineage to the man marrying the mother—then the marriage may be considered permissible. In this case, the family must ensure that all potential issues of lineage ambiguity have been adequately addressed to avoid negative consequences in the future. Thus, while the general principle is to prohibit marriage to a pregnant woman to protect lineage clarity, there is flexibility in applying this rule if all parties can guarantee the clarity and certainty of the child's lineage.

3. Status of the Child's Lineage

What is the status of the lineage of a child born because of adultery? Based on interviews with key informants, it was found that the members of the *Majelis Permusyawaratan Ulama* (MPU) of North Aceh believes that the child's lineage cannot

be attributed to the man who caused the child's birth. The lineage is only recognized from the mother's side. In other words, the child is considered by religion to have only one parent, which is the mother.

This conclusion is based on statements from the five informants. When asked about this issue, each informant provided the following perspectives: *Teungku* H. Abdul Mannan explained, "The child's lineage is only applicable to the mother, not to the father." *Teungku* H. Ismail TB said, "According to religion (Islam), this child is considered to have no father; only the mother's lineage is recognized." *Teungku* Zainuddin Ibrahim stated, "This child has only one legitimate parent, which is the mother." *Teungku* H. Ibnu Sakdan emphasized, "The child's lineage is only acknowledged from the mother. The child has no lineage to the biological father." *Teungku* Jamaluddin Ismail explained, "The child's lineage is only established through the mother. The man who caused the child's birth does not have any lineage to the child."

Based on interviews with the members of the *Majelis Permusyawaratan Ulama* (MPU) of North Aceh, it was revealed that in the case of a marriage involving a pregnant woman, the child's lineage cannot be attributed to the man who impregnated her. Instead, the child's lineage is solely recognized from the mother's side. In other words, within the framework of religion and local law, the child is considered to have only one legitimate parent, which is the mother. This prohibition aims to avoid

confusion in determining lineage and to ensure clarity in ancestry.

In cases where a pregnant woman marries a man who is not the biological father of the child, the child's lineage remains attributed to the mother and cannot be attributed to the man who marries the mother after the child's birth. This measure is intended to maintain legal certainty and protect the child's rights, as well as to prevent complications related to inheritance and social status in the future. Through this approach, religion and local society seek to ensure that the child's lineage remains clear and unambiguous, thereby avoiding potential negative consequences stemming from lineage confusion that might arise from such marriages.

4. Child's Rights

What are the rights of inheritance, maintenance, and guardianship for a child born because of adultery? Based on interviews with key informants, it was found that the members of the *Majelis Permusyawaratan Ulama* (MPU) of North Aceh believes that due to the lack of lineage attribution to the man who caused the child's birth, the child also does not have inheritance, maintenance, or guardianship rights with respect to that man. This is because rights to inheritance, maintenance, and guardianship are determined by the existence of lineage attribution. In other words, if the religious authorities do not recognize the lineage between the child and the man who caused the child's birth, then

automatically, there are no inheritance, maintenance, or guardianship rights between them. The child and the man who caused the birth are considered by religion to be two individuals with no connection, akin to two strangers with no relationship whatsoever.

The conclusion above is based on the statements of the five key informants. Upon being asked about this issue, their views were as follows: *Teungku* H. Abdul Mannan stated, "There are no such rights because there is no lineage." *Teungku* H. Ismail TB said, "There are no such rights. All rights pertain only to the mother and her child." *Teungku* Zainuddin Ibrahim explained, "Inheritance, maintenance, and guardianship rights depend on lineage. Since there is no lineage between the child and the man, these rights do not exist." *Teungku* H. Ibnu Sakdan added, "Inheritance, maintenance, and guardianship rights exist between the child and the mother because they have lineage. However, this relationship does not apply to the man who impregnated the mother, including if the mother marries another man, as there is no lineage." *Teungku* Jamaluddin Ismail expressed, "There are no such rights because inheritance only applies to those with lineage. Without lineage, there are no rights to inheritance, maintenance, or guardianship."

Based on interviews with the members of the *Majelis Permusyawaratan Ulama* (MPU) of North Aceh, it is concluded that if a child does not have lineage attribution or recognition from the man

who fathered the child, the child is not entitled to rights such as inheritance, maintenance, and guardianship from that man. These rights can only be granted if there is a legitimate lineage recognition according to religious principles. In situations where the lineage of the child is not acknowledged by the man responsible for the birth, the child is considered to have no legal or social connection with the man. This means that, legally and religiously, the child and the man are treated as two individuals with no relationship or connection whatsoever. In other words, without recognition of lineage, the man has no obligation to provide maintenance or inheritance to the child, and the child does not have the right to receive guardianship from the man. This approach serves to ensure that the child's rights are guaranteed only within the context of clear and legitimate lineage recognition, and to avoid legal and social uncertainties that may arise from ambiguity in lineage determination.

CONCLUSION

In Islamic jurisprudence, the marriage of a pregnant woman outside of wedlock can be categorized based on the cause of her pregnancy, whether it is due to adultery or not. Scholars have varying thoughts on the validity of such a marriage. The Mâlikî, Hanbalî, and Abû Yûsuf (Hanafî) schools of thought hold that the marriage of a woman who is pregnant due to adultery is invalid, whether to the man who caused the pregnancy or to another person, until she

has given birth. This is based on Hadiths that prohibit engaging in sexual relations with or marrying a pregnant woman until after she has delivered. Conversely, the Shâfi'î school and Abû Hanifah argue that the marriage of a pregnant woman due to adultery is valid. They contend that the prohibition of marrying a pregnant woman only applies to those who are pregnant from a lawful union, not from an unrecognized adulterous relationship. On the other hand, most scholars agree that a woman who is pregnant from a lawful marriage or an illicit relationship (e.g., a doubtful or ambiguous relationship) cannot remarry until she has given birth, as she is still in her *'iddah* (waiting period). However, there is a difference of thought regarding the validity of the marriage of a pregnant woman resulting from a relationship that is considered lawful but deemed invalid in certain views. In the context of the legal status of marriages involving a pregnant woman outside of wedlock, the *Majelis Permusyawaratan Ulama* (MPU) of North Aceh has emphasized that such marriages are legally valid, but their implementation is considered haram (forbidden). The validity of the marriage is due to the fulfillment of its essential components and conditions, while its prohibition arises from the potential ambiguity in lineage that such marriages might create. The MPU of North Aceh views the primary implication of marrying a pregnant woman outside of wedlock as the lack of clarity regarding the child's lineage. The

child's lineage should not be attributed to the man who committed adultery or the man responsible for the pregnancy; however, such marriages often lead to societal assumptions that the lineage may be attributed to that man. Therefore, the MPU of North Aceh advises against engaging in such marriages. If such a marriage does occur, the family must commit to not attributing the child's lineage to the adulterer. Another implication of such marriages includes the absence of inheritance rights, marriage guardianship, and maintenance obligations. The stance of the MPU of North Aceh aligns with the Shâfi'î school in certain respects and conforms with the views of the other three major Sunni schools of jurisprudence in other aspects. Thus, their position remains within the framework of the four major schools of *fiqh* and is consistent with existing legal regulations in Indonesia.

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