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**ANALYSIS OF LEGAL REASONING OF JUDGE'S RULING NUMBER 0124/PDT.P/2019/PA.SAL  
CONCERNING PRE-MARRIAGE PREGNANCY MARRIAGE FROM AN ISLAMIC LEGAL PERSPECTIVE**

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**ABSTRACT**

Marriage age is the most crucial element in the household. The age limit for Indonesian citizens is principally intended so that anyone who marries has a mature mind, a mature soul and sufficient physical strength, so that the potential for marital breakdown which leads to divorce can be avoided because they have a mature understanding and awareness regarding the purpose of marriage. which focuses on aspects of inner and outer happiness. This research uses a type of normative legal research by examining regulatory aspects regarding the concept of implementing legal protection for marriage in Decision 0124/Pdt.p/2019/PA.Sal and Law Number 16 of 2019. The judge's reasons for granting marriage dispensation by the applicant are by considering the goodness or the benefit of the people, the benefit of the child being conceived by the bride who is currently 4 months pregnant. Granting the reason for marriage dispensation must be prioritized because it is feared that it will cause greater damage. These reasons are considered by the judge in granting the request for marriage dispensation in the Compilation of Islamic Law in Indonesia which is set out in Keppers No. 1 of 1991 and Decree of the Minister of Religion No. 154/1991 stipulates that a woman who becomes pregnant outside of marriage can only be married to the man who impregnated the woman. This kind of marriage can be carried out directly without waiting for the birth of the baby the woman is carrying and there is no need for remarriage (tajdidun nikah).

**Keywords:** Marriage, Pre-Wedding Pregnancy, Islamic Law**INTRODUCTION**

Marriage is the most crucial element in the scope of human life, in fact it is a basic need that exists in normal humans. Without marriage it can be a mistake for humans because it violates human nature itself. As Allah SWT said to our great Prophet Muhammad SAW, we as humans have been created in pairs. All creatures on earth were created by Allah SWT. in pairs or in pairs, whether humans, animals or plants so that reproduction occurs for the survival of each type of living creature. This kind of thing is innate to humans and other living creatures, namely that each creature was created by Allah SWT in pairs.<sup>1</sup> With marriage, human life will feel perfect, marriage is also a sunnah because it was exemplified by our great prophet Muhammad SAW. Human marriage cannot be compared to animals which are free to do whatever they want. Animal mating is done solely to fulfill their sexual needs and basic sexual desires. Meanwhile, marriage for humans is not like that. Human marriage is regulated by various rules and other ethics that uphold human values full of manners and morals. Therefore, human marriage must obey and comply with legal and normative procedures.<sup>2</sup> The principles of marriage have been formulated in Law Number 1 of 1974 concerning Marriage (henceforth: UUP 1974). For example, prospective husband and wife have matured in body and soul to be able to carry out marriage and manifest the goals of marriage well without divorce and to obtain good offspring.<sup>3</sup> In terms of mechanism, the marriage age is regulated in the 1974 UUP, namely in Article 7 paragraph 1 which reads "marriage is only permitted if the man is permitted to reach the age of 19 years and the woman reaches the age of 16 years."

The 1974 UUP is considered a portrait of Islamic law in the country.<sup>4</sup> Muslims in Indonesia have long wanted to have written marriage laws. This hope has emerged since the Dutch colonial period, Japanese colonialism, until independence. The birth of the expected marriage law only materialized at the

beginning of 1974, namely with the issuance of the 1974 UUP.<sup>5</sup>

The birth of the 1974 UUP started from the assumption that the legal regulations governing marriage issues in the past had been deemed incompatible with political developments and legal needs in the present.<sup>3</sup> However, for the makers of the 1974 UUP, this was the result of mapping various concepts of past marriage law and as a work to manifest a marriage law that was national in nature and in line with the legal needs of the Indonesian people, both now and in the future.

Then, in its development, this regulation underwent a transformation with the enactment of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 (henceforth: UUP 2019). This law only came into effect on September 16 2019. The provisions in Article 7 of the 1974 UUP were changed so that it reads, "Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years".<sup>4</sup>

With the above regulations limiting the age of marriage, according to the statutory definition, if a marriage is found below the specified age, whether from the perspective of the prospective husband or prospective wife, then this is considered an unlawful act on the grounds that the marriage is including underage marriage.<sup>6</sup> However, the provisions of article 7 paragraph (1) of the 2019 UUP are not enforced absolutely, because in urgent conditions that require a person to be unable to carry out the provisions regarding the minimum age limit for marriage as stated in the 2019 UUP, that person can apply for a marriage dispensation to the Court. Religion as regulated in article 7 paragraph (2) of the 2019 UUP which reads: "In the event of a deviation from the age provisions as referred to in paragraph (1), the parents of the man and/or the woman can ask the court for dispensation for very urgent reasons accompanied by sufficient supporting evidence."

Age at marriage is the most crucial element in building a household.<sup>7</sup> The age limit for Indonesian citizens is principally intended so that anyone wishing to marry is expected to have a mature mind, a mature soul and adequate physical strength. In this way, the potential for marital breakdown that leads to divorce can be minimized, because the couple already has a more mature understanding and awareness regarding the goals of marriage which focuses on inner and outer happiness.<sup>6</sup> However, the regulations that have been implemented by the government aimed at reducing the number of underage marriages are not in line with the facts found in society. This is characterized by the large number of marriage dispensation cases registered with the Religious Courts. The existence of this marriage dispensation actually triggers a contradiction with the Child Protection Law which regulates the prevention of early marriage.<sup>8</sup> The marriage dispensation itself is the granting of marriage permission by the court to prospective husbands/wives who are not yet 19 years old in order to get married.<sup>9</sup> This application may only be submitted if from a case-based perspective it is very urgent that the two prospective husband and wife must be married immediately as a manifestation of the *sad al d ari'ah* method in order to avoid the potential for greater harm. Thus, deviations from this may be possible with parental permission and dispensation from the court or authorized official.<sup>10</sup> For reasons of benefit, judges often grant requests for marriage dispensation.<sup>11</sup> Judges are officers who support the judiciary and are elements of the executor of judicial power who have the main task, namely carrying out examinations, trials and decisions on each case handled by the judge.<sup>12</sup> In carrying out examinations, trials and decisions on a case, a judge must utilize written law as the basis for his decision. However, if written law is not found or is deemed inadequate, then the judge can carry out legal interpretation. Judges have an obligation to carry out legal interpretation or legal findings so that the decisions they make can be in accordance with the law and society's sense of justice.<sup>13</sup>

## RESEARCH METHODS

This research utilizes normative legal research. This type of research examines elements of regulations regarding the idea of implementing protection of marriage law with aspects of Islamic law in Decision 0124/Pdt.p/2019/PA.Sal and UUP 2019. The method applied is descriptive analysis, namely a

descriptive and analytical approach in a situation. or symptoms as accurately as possible in order to confirm hypotheses to strengthen old theories or develop new theories. This kind of method is intended to provide an overview and description of the treatment that occurred. The data examined in this research is normative data based on legal analysis in terms of regulations in various court decisions.<sup>14</sup>The research method in question is literature study. Literature or bibliography is research carried out to find other secondary data, for example reviewing or reading other research results related to this research. First, identify legal documents in the form of laws, ministerial regulations along with other documents, documents in the form of scientific journals or books that are related to or the same as this research. Second, carry out a study of the data found in the field and the literature which should be prescriptive in order to identify, document and analyze the data and then draw conclusions based on the literature obtained by the author..

## RESULTS AND DISCUSSION

Alf the problem of pregnancy outside of marriage is one of the many forms of deviation, then the child realizes this mistake and often triggers various responses from parents who receive it after realizing that their child is pregnant outside of marriage.<sup>15</sup>This problem can occur due to various factors, for example, lack of supervision from parents, disharmony or a family with a broken home. Children will look for their own happiness and even vent their feelings of disappointment towards their parents and feelings of being too in love with their partner. Deviant and uncontrolled dating patterns of teenagers can lead to pregnancies outside of marriage. Uncontrolled lust is what causes pregnancy out of wedlock. Teenagers do not think about the causes and consequences of their actions. Things that trigger teenagers to have sex outside of marriage are seen as a form of channeling wrong affection when dating.<sup>16</sup> In this understanding, teenagers often view that the dating period is a period in which anyone is allowed to love or be loved by their girlfriend. Expressions of feelings of love or affection can be manifested in various ways, for example: giving gifts of flowers, hugging each other, kissing each other, and even having sex.<sup>16</sup>The occurrence of pregnancy outside of marriage will be a disgrace, both for yourself and your family. So like it or not, parents have to marry off their children. This marriage is usually called a marriage resulting from adultery.

A person who wishes to carry out a marriage must be 19 years old according to the provisions of article 7 paragraph 1 of the 2019 UUP. Article 2 paragraph 2 of the 1974 UUP outlines that every marriage must be registered and the registration is carried out at the Religious Affairs Office (KUA). Regarding issues like this, the KUA is not willing to register marriages because their age does not meet the requirements. After receiving a rejection from the KUA, they submitted a request for marriage dispensation to the religious court. This application can be made by the man's parents and/or the woman's parents can apply for a dispensation to the Court for very urgent reasons along with all adequate supporting evidence and in line with what is stipulated in article 7 paragraph 2 of the 2019 UUP.

Based on the application for marriage dispensation, it was submitted because the woman was pregnant. This is the reason why they want to get married immediately even though their age does not yet meet the requirements according to the applicable legal regulations. Pregnancy outside of marriage is the result of promiscuity and uncontrolled lust between partners. Pregnancy is an urgent reason stated in article 7 paragraph 2 for the judge to grant the request for a marriage dispensation. The judge's reasons for granting the applicant a marriage dispensation are by considering the good or benefit of the people, the benefit of the child being conceived by the bride who is currently 4 months pregnant, and to obtain legalization of rights from the state so that they have clear legal status, and in the future if there is a distribution Inheritance by parents, especially from the child's father, is not disadvantaged. Granting the marriage dispensation must be prioritized because it is feared that it will cause greater damage.<sup>17</sup>This is the reason that the judge considers when granting the request for marriage dispensation, hopefully this best legal solution can be accepted to provide legal guarantees for the new legal subject, namely the child

being conceived by the prospective bride. The judge's statement to grant the request for dispensation was strengthened by the rules contained in article 53 paragraph 1 of the Compilation of Islamic Law, namely "a woman who is pregnant outside of marriage may be married to the man who impregnated her". This shows that what the judge has done is correct in granting teenagers permission to marry even though their age does not meet the requirements.

Pregnancy outside of marriage is something that is very taboo in Indonesia and is an issue that is included in the category of adultery in Islam. This is an act of adultery which should be punished according to Islamic provisions. When the problem of pregnancy has occurred, another problem will arise, namely disgrace for the family. Because of incidents like this, the couple must hasten to get married so that their family can avoid greater disgrace.<sup>18</sup> From the perspective of Islamic law and provisions there are differences in viewing marriage due to pregnancy before marriage. To cover this disgrace, they are required to marry for the sake of each other and their families. Pregnancy marriage is a marriage between a woman who is pregnant outside of marriage, whether married to a man who impregnates her or who does not impregnate her.<sup>19</sup>

The Marriage Law article 2 paragraph 1 regulates regarding the marriage of pregnant women outside of marriage that "marriage is valid, if it is carried out according to the laws of each respective religion and belief." From this issue, it can be concluded that the conditions for carrying out a marriage are to fulfill and be based on provisions based on the religious provisions and beliefs of the prospective bride. Although the conditions for legal marriage according to state law are regulated in the 2019 UUP.

The most basic problem used as an excuse for anyone to marry a woman who is pregnant as a result of adultery is simply to cover the shame of the woman and her family. When disgrace has been covered by a legal marriage, it will indirectly bring various benefits. The promiscuous lifestyle which is increasing and carried out openly and filled with a sense of pride has resulted in a large number of pregnancies outside of marriage. This problem then triggers panic, both for the woman concerned and her family. In order to avoid embarrassment to society, the wedding was held quickly even though the bride was pregnant.<sup>20</sup>

Scholars have different views regarding marrying a woman who has committed adultery. This difference is influenced by different points of view regarding the interpretation of the sentence prohibiting marrying an adulterous woman as written in QS An-Nur (24): 3: "a man who commits adultery does not marry a woman who commits adultery, or a woman who is an idolater; and a woman who commits adultery is not married except to a man who commits adultery or a man who commits adultery, and this is prohibited for believers."<sup>21</sup> According to M. Quraish Shihab, basically, it is legal for a man to marry a woman he has committed adultery with. The child the woman is carrying is considered her child if it is born after six months from the time of the marriage contract. If it is less than six months old, the woman's husband recognizes the child as his own without saying that it is a child of adultery, his confession is justified until the child is given his name to him.<sup>22</sup>

There are differences in views according to several Islamic school scholars or imams which are explained in the fiqh opinions regarding pre-marital pregnancy:

#### 1. Opinion of the Hanafi School

Imam Abu Hanafi is of the view that marriage for a pregnant woman is valid provided that the man who marries her is the man who impregnated the woman. However, if a pregnant woman does not marry a man who did not impregnate the woman, the marriage is still legal, but it is not permissible to have sexual relations with the woman until she gives birth to the child she is carrying. Hanafiyah scholars view that women who become pregnant as a result of adultery are not required to have an iddah period, because this period is intended to protect their nasab so they are allowed to marry a pregnant woman without waiting for her iddah period.<sup>23</sup> Based on the word of Allah SWT in QS. An-Nisa verse 4 states that hamul women are not a group of women who are forbidden to marry, but are included in the mutlaq category, namely women who are lawful to marry.

## 2. Opinions of the Shafi'i School

Imam Syafi'i and other Shafi'iyah scholars think that it is permissible for women to marry because of adultery to be married to the man who impregnated the woman or another man without waiting for the birth of the child they are carrying. This marriage is permitted as long as the marriage requirements are met and there is a consent agreement. Women who become pregnant due to adultery do not have an iddah period and are permitted to marry and have sex with each other.

## 3. Opinions of the Maliki School

Imam Maliki believes that if he marries a woman who is pregnant because of adultery, then the marriage is not valid, whether the person marrying the man who got her pregnant or not the one who got her pregnant.<sup>24</sup> According to Imam Maliki, to marry a woman who is pregnant because of adultery, you must wait for the baby to be born first, after that you can marry her. Imam Maliki also believes that having sexual intercourse with a woman due to adultery is the same problem as being sexually assaulted due to syubhat, whether based on a false or false contract, and must comply with the iddah period.

## 4. Opinions of the Hanbali School

Imam Ahmad bin Hambal believes that if he marries a woman who is pregnant because of adultery, the marriage is invalid, whether the person marrying her is a man who has sex with her or someone who does not have sex with her. A woman who has committed adultery, whether she is pregnant or not, is not permitted to be married to a man who is aware of her condition except with the following requirements:

- a. The iddah period has finished, if you become pregnant, the iddah is complete until the child is born
- b. The woman has repented from her immoral behavior, and if she has not repented, then she is not allowed to marry him.<sup>25</sup>

In general, the opinions of fiqh scholars regarding the marriage of pregnant women because of adultery can be grouped into two views, namely those that forbid and those that allow marrying pregnant women because of adultery.<sup>26</sup> However, in a more detailed way, these views can be categorized into six:<sup>21</sup>

1. Based on Hasan's history, it is known that Abu Hanifah permitted the marriage of women who became pregnant because they committed adultery. However, before her child is born, she is not allowed to sleep with her husband, because there are no textual sharak rules that do not allow the marriage of women who become pregnant due to adultery.<sup>24</sup>
2. Abu Yusuf and Zukar think that the marriage of a woman who is pregnant as a result of adultery is not permissible, just as the marriage of a woman who is pregnant outside of adultery is not permissible (for example, being left for dead by her husband while pregnant), because it is not possible for them to sleep together, so it is not permissible to carry out a marriage.<sup>24</sup>
3. The Malikiyah scholars do not allow the marriage of a woman who becomes pregnant as a result of adultery absolutely until she is truly free from her pregnancy (*istibra'*) which is proven by three menstruation within three months. If the woman was married before *istibra'*, then the marriage is fasid (annulled automatically), because it is feared that there will be mixed offspring in the womb. Apart from that, the Prophet SAW. nor does it allow us to water what other people have planted.<sup>24</sup>
4. Cleric Shafi'iyah assume that women who become pregnant as a result of adultery can be married, because the pregnancy cannot be attributed to anyone (except the mother), the presence of pregnancy is considered the same as the absence of pregnancy.
5. The Hanabilah ulama stipulates two requirements regarding whether or not it is permissible to marry a woman who becomes pregnant as a result of adultery. According to the scholars of this school of thought, a man who knows that a woman has committed adultery, it is not halal for him to marry that woman unless he fulfills two requirements, namely:
  - a. The waiting period is over
  - b. The woman who became pregnant as a result of adultery has repented (regrets her behavior and will not repeat it again). Before repenting, it is forbidden for a woman to marry a believing man.<sup>24</sup>



6. Ibn Hazm believes that women who become pregnant as a result of adultery are permitted to marry even if the child they are carrying has not yet been born. Ibn Hazm explained that pregnant women who were not allowed to marry were pregnant women who were divorced or left for dead by their husbands. Women who are pregnant outside of a valid marriage are permitted to marry because they are not married and are not in the waiting period.

As for the Positive Law view, marrying a woman who becomes pregnant as a result of adultery is contained in the 1974 UUP in conjunction with PP No. 9 of 1975 concerning the implementation of the Law. However, in the Compilation of Islamic law the scope is more detailed, the prohibitions are stricter, and several points have been added as an implementation of existing statutory regulations. The issues that are considered in the Compilation of Islamic Law are reaffirmed and have been included in the 1974 UUP and PP No. 9 of 1975, one of which was related to the marriage of a woman who became pregnant as a result of adultery.

In the 1974 UUP, there are no explicit provisions regarding the marriage of pregnant women. However, there is an implicit provision, namely in Article 2 paragraph (1) which reads: "marriage is valid if it is carried out according to the laws of each respective religion and belief". Therefore, the marriage of a woman who becomes pregnant as a result of adultery is valid in accordance with article 2 paragraph 1 of the 1974 UUP and must also meet the requirements for the validity of a marriage.<sup>27</sup>

Referring to the judge's decision to grant the marriage dispensation request because the prospective bride was 4 months pregnant, was engaged, and had her own income, to avoid the development of adultery among teenagers and for the benefit of the community. In granting a dispensation for marriage, the judge also considers it in accordance with Islamic law which is bound by law and the Koran and takes into account the opinions of the ulama.

According to the Compilation of Islamic Law (KHI), it is used to conduct examinations and decide cases for judges in the religious courts in Indonesia. Marriage arrangements for pregnant women at KHI are regulated in CHAPTER VIII article 53 paragraphs (1), (2), (3). Marriage for pregnant women out of wedlock according to the KHI states that pregnant women out of wedlock can be married to men who impregnate the woman and can also be married to men who do not impregnate the woman because they want to give responsibility to the woman and the baby she is carrying, because she can So the woman who became pregnant did not happen entirely because of adultery. However, because the rape was carried out by a man whose whereabouts were not clear and the man's intention was to protect the shame of the woman who was pregnant out of wedlock.

The basis considered in the Compilation of Islamic Law regarding the marriage of pregnant women is QS An-Nur (24): 3 "a man who commits adultery does not marry a woman who commits adultery, or a woman who is an idolater; and a woman who commits adultery is not married except to a man who commits adultery or a man who commits adultery, and this is prohibited for believers." This provision can be interpreted to mean that whether or not it is permissible to marry a pregnant woman is an exception for the man who impregnated the woman, because the man who impregnated her is deemed appropriate to be the woman's soul mate. Meanwhile, a man who is a believer is not worthy of a woman who is like that. Therefore, apart from the man who impregnated the woman, it is forbidden for him to marry that woman.<sup>25</sup>

In the Compilation of Islamic Law in Indonesia which is regulated in Presidential Decree no. 1 of 1991 and Minister of Religion Decree no. 154/1991 stipulates that a woman who becomes pregnant outside of marriage can only be married to the man who impregnated the woman. Marriage with a pregnant woman can be done directly without waiting for the birth of the woman's child, and there is no need for remarriage (tajdidun nikah).<sup>28</sup>

## CONCLUSION AND SUGGESTION

### Conclusion

Pregnancy marriage is a marriage between a woman who becomes pregnant outside of marriage, whether she is married to a man who impregnates the woman or a man who does not impregnate her. The UUP only regulates implicitly the marriage of pregnant women, namely in Article 2 paragraph (1). Meanwhile, arrangements regarding the marriage of pregnant women in the KHI are outlined in a special CHAPTER, namely CHAPTER VIII, especially Article 53 paragraphs (1), (2), and (3). Islam prescribes marrying a good woman, with the aim of having a happy life in the future, both in the household and in society. Even though the marriage of someone who becomes pregnant during pre-nuptial marriage is legally valid by being married off to a man who impregnates her directly without waiting for the birth of the woman's child, and there is no need for remarriage (*tajdidun nikah*), even though we are obliged to avoid immoral acts such as adultery in this case. Because it is for the good of ourselves, our families, and/or also the good name of our environment which could be affected by these actions.

### Suggestion

The phenomenon of premarital pregnancy is no longer foreign to today's society, it is good for Muslim scholars to always remind people of the evils of immoral acts such as adultery. In the future, this research can become a charity so that it is useful for future learning

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