



Fikih of women pregnant due to adultery: a study of fatwa-fatwa nu, mui, and muhammadiyah

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ABSTRACT

This study attempts to explain that the marriage of pregnant women due to adultery is a classic problem whose legal status is still being contested. Pros and cons still color among the clergy regarding who can marry this woman. This paper intends to describe the reinterpretation of the marriage of pregnant women as a result of adultery which has been fatwaed by NU, MUI, and Muhammadiyah. The research method used is literature review with a descriptive-analytic approach. Furthermore, the data obtained from the research results are compiled and described and then analyzed based on the available theory, then a conclusion is given. The results of this study indicate that both NU, MUI, and Muhammadiyah agree that the marriage of a woman who is pregnant as a result of adultery can have a marriage, both with the man who committed adultery with her and with another person.

KEYWORDS

Marriage of pregnant women; adultery; NU; MUI; Muhammadiyah

I. Introduction

Today the association between young people is quite apprehensive. Advances in technology such as mobile phones, gadgets, Facebook, Instagram, Twitter and other internet facilities are alleged to be one of the factors causing abuse in promiscuity (Hikmah, 2018). According to SDKI, data in the field shows that around 59% of women and 74% of men have had sex before marriage and this was done when they were 15-19 years old. At the age of 17 years is the highest percentage by reaching 19%. Most of them are

teenagers who have had sexual intercourse with 12% of women getting pregnant and 7% of men getting pregnant (Djubaedah, 2019).

It is not surprising that many parents come to the Office of Religious Affairs (KUA) to marry off their child because the child is already pregnant as a result of promiscuity and has not had time to perform the marriage contract. At the same time, not a few parents have complained to the Court Office to apply for a marriage dispensation for their child who is pregnant out of wedlock (Adila, 2020), while the age of the child has not yet reached the minimum age limit for marriage. Interestingly, there are also parents who force their children to re-marry because their children are pregnant out of wedlock (Hasanah, 2018).

The community feels it is very important in understanding the meaning of re-marriage to children who are pregnant out of wedlock with the aim that they do not misunderstand the meaning of marriage for pregnant women out of wedlock, so that they do not judge that the marriage of pregnant women out of wedlock is invalid (Abror, 2018). While the marriage that took place was valid according to the terms and conditions of Islamic religious law as also stated in Law Number 1 of 1974 on marriage law in Indonesia. Not a few people think that marriage for pregnant women out of wedlock is illegal and must be re-married or *tajdidun nikah* (Mufidati, 2020).

Judging from the marriage law in Indonesia as contained in the Compilation of Islamic Law contained in the 1991 Presidential Decree and the Decree of the Minister of Religion Number 154/1991 it is stated that "a pregnant woman out of wedlock can only marry the man who made her pregnant." Marriage for pregnant women out of wedlock can take place without having to wait for their child to be born first and there is no need to re-marry (Nuriah, 2020).

According to the expert on Indonesian Interpretation M. Quraish Shihab, it is legal for a man to marry a woman who is pregnant as a result of adultery. According to him, the lineage of the child will be connected to his mother's husband if the child is born after six months have passed from the time he was married, but if the child is born less than six months then the husband must admit the child without having to say that he is a child of adultery. The mother's husband is also justified if he admits that the child is in a relationship with him, this could be due to the fact that there was a legal marriage that was not known before the woman became pregnant and also had the intention to maintain her good name in the eyes of other people (Soraya, 2020).

In line with M. Quraish Shihab, Suaib Lubis and Muhammad Idrus in their research, it was stated that women who become pregnant as a result

of adultery are absolutely permissible to marry either the perpetrator himself or someone else. The reason why women are allowed to marry is because the Qur'an itself does not mention that women are pregnant because adultery is a group of women who are forbidden to marry. Because it is permissible to be married, it is also permissible to have intercourse without having to wait for the birth of the child it contains (Lubis & Idrus, 2020).

It is different from the opinion of Yusuf al Qaradawi, where he is of the opinion that it is illegal for a man to marry a woman who is pregnant as a result of adultery. According to him, Allah only allows someone to marry a good woman from among the Muslims and People of the Book, as Allah SWT has said in QS. Al-Nisa', 4/24 (Qaradawi, 1974, p. 181). It seems that Yusuf al Qaradawi's view is very strict, even so he still gives the prostitute some leeway, that is by repenting to God with true repentance and the woman must visit her period at least once. He added one more condition, which is to ensure that the woman in question is completely sterile from sexually transmitted viruses, should be examined by a doctor or medical expert (Qaradawi, 1974, p. 181).

There are several studies related to the marriage of pregnant women as a result of adultery which have been published in scientific journals and in other publications. Among these journals are The Law of Marrying a Pregnant Woman because of Zina and the Position of Her Child (Mohtarom, 2020), pregnant Marriage In Marriage Lottery (Sofiana, 2020), Comparison of the Marriage of Pregnant Women due to Adultery according to Law Number 1 of 1974 concerning Marriage and Compilation of Islamic Law (Fatimah, 2021), The Law of Marrying a Pregnant Woman Due to Adultery According to the Views of Imam Shafi'i and Implemented in the Religious Affairs Office of Tanjung Pura (Lubis & Idrus, 2020), Idah Divorce for Pregnant Women Due to Adultery (Rahmat & Indriani, 2020), Marriage of Pregnant Women outside of Marriage in Islamic Law and Positive Law (Fauzi, 2020). The issue of the marriage of pregnant women as a result of adultery will always be interesting to study, especially since this case is a phenomenon that always sparks pros and cons in society. The existence of NU, MUI, and Muhammadiyah fatwas is a necessity which is used as a reference for the Indonesian people.

In line with the above information, research from the perspective of the NU, Muhammadiyah and MUI fatwa on marriages of pregnant women out of wedlock has never been carried out. This kind of research needs to be done because it can provide information and convince the public about the shortcomings and benefits that are obtained. In addition, the findings obtained can be the basis for development research conducted in

marriages of pregnant women out of wedlock. The results can also be used by the government, academics, the general public to understand the scope of the problem. Therefore, the purpose of this study was to analyze the existence of NU, Muhammadiyah, and MUI fatwas regarding marriages of pregnant women out of wedlock.

II. Method

This research is a type of qualitative research with a descriptive-analytic approach. This research is a study that discusses the views of Indonesian scholars who are affiliated with NU (Nahdlatul Ulama), (MU) Muhammadiyah, and (MUI) the Indonesian Ulama Council. The three mass organizations are considered to best represent the voice of Muslims in Indonesia when talking about religious issues. These religious studies can be accessed through existing media, such as print media, online, or published fatwas. Then these data were collected and analyzed in a descriptive analytical manner (Jaya, 2020).

III. Result and Discussion

Getting pregnant out of wedlock is a disgraceful act and it is not morally, the impact of pregnant women out of wedlock can result in whether or not it is unlawful to marry whether marry a man who impregnates her or not impregnate her. Some scholars say it is not justified (illegitimate) marrying a pregnant woman out of wedlock because there are verses in the Qur'an which clearly explain the law, some of them said it was permissible to marry a pregnant woman out of wedlock due to the law of marrying a pregnant woman out of wedlock who has regulated by the verses of the Qur'an, this opinion says because of women getting pregnant out of wedlock is not considered as forbidden for women married. The authors see that there are differences of opinion among scholars regarding the law of marrying pregnant women out of wedlock very interesting to describe.

1. Fatwa NU

Based on research in the field, NU scholars are more likely to give fatwas that they allow men to marry women who are pregnant as a result of adultery, whether the man is the one who impregnated her or not. It can be seen how NU scholars take references from authoritative books which explain that it is legal/permissible for a woman pregnant due to adultery to be married. Among the books that are a reference is the book *Raudhah at Talibin wa 'Umdah al Talibin* (Al-Nawawi, 1991), *bughyah almustarsyidin* (Rahman, 2009, p. 249), *Hasyiyah al Bajuri* (al Bajuri, n.d.), and *al Fiqh al Islam wa Adilatuhu* (Az-Zuhaili, 1989).

Imam Nawawi's opinion in the book *Raudhah and Talibin* emphasizes that there is no difference of opinion among scholars regarding the permissibility of a man marrying a woman who is pregnant as a result of adultery. The man may have intercourse with her without having to wait for the child he is carrying. Among the arguments that the scholars refer to is based on the Word of Allah SWT QS. An-Nisa 24:

﴿وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ ۚ كَتَبَ اللَّهُ عَلَيْكُمْ ۖ وَاجِلُ لَكُمْ مَا وَرَاءَ ذَلِكَ أَنْ تَتَّبِعُوا بِأَمْوَالِكُمْ مُحْصِنِينَ غَيْرَ مُسْلِفِينَ ۚ فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَلَهُنَّ أَجُورُهُنَّ أَجُورُهُنَّ فَرِيضَةً ۚ وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا تَرَاضَيْتُمْ بِهِ مِنْ بَعْدِ الْفَرِيضَةِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

and (you are also forbidden to marry) married women, except for the slaves you have (God has established that law) as His decree over you. And it is lawful for you other than that (namely) to find wives with your wealth to marry, not to commit adultery. So the wives you have enjoyed (mixed) among them, give them their dowry (perfectly), as an obligation; and there is nothing wrong with you regarding something that you have mutually agreed upon, after determining the dowry. Indeed, Allah is All-Knowing and All-Wise.

Through the verse above, women who become pregnant as a result of adultery are not in the category of women who are unlawful to marry. In addition, there is no evidence in the Koran that prohibits marrying a woman who becomes pregnant as a result of adultery (Qomaruddin & Rachamtullah, 2018). This opinion is also supported by Imam Shafi'i himself where he thinks that it is permissible to marry a woman who is pregnant because of adultery because there is no standard law in clear stipulation/explanation in the form of a separate format (Asy-Syafi'i, n.d., p. 358). Interestingly, this opinion is also supported by Imam Hanafi, as stated by Sayyid Sabiq that it is legal to marry a woman who is pregnant as a result of adultery without having to wait for her iddah to finish. Imam Shafi'i also asserted that it is legal to marry a woman who is pregnant due to adultery because such a woman is not an unlawful reason to marry (Nurwandri & Syam, 2021).

Among the foundations Imam Shafi'i states that the ability to marry a pregnant woman due to adultery is in accordance with the Word of God QS. An-Nur: 3. Imam Shafi'i's view also received support from Imam al Qurtubi who said that it is legal to marry a woman who is pregnant as a result of adultery. It was originally an act of adultery before there was a marriage contract, but it became legal when the marriage contract was carried out (Shihab, 2001, p. 166). Seeing this view, it is understandable that a woman who becomes pregnant as a result of adultery does not need an iddah period, so that the woman can carry out her marriage to a man who has impregnated her or someone else who has not impregnated her.

A similar thing was also stated by Qamaruddin that the ability to marry a pregnant woman due to adultery will certainly have a beneficial

impact/goodness in the context of maintaining the social stability of the community (Qomaruddin & Rachamtullah, 2018, p. 530). Qamaruddin also added that in matters of citizenship, for example, if this issue is ignored, it will become a new problem for the child born from the womb of a woman who is pregnant as a result of adultery. This means that data collection in terms of population will be a mess if the issues are not addressed specifically and should have a powerful formula. Having the ability to marry a woman who is pregnant as a result of adultery will certainly have an impact on maslahat and away from mafsadat/damage or chaos. However, with the possibility of marrying women who are pregnant as a result of adultery, it is certainly hoped that a new and greater mafsadat will not occur. As the practice arises, sex is everywhere. Islam strictly prohibits sexual relations without a marriage contract/legal marriage relationship. Pregnant or not pregnant even with various preventive efforts, for example by using condoms, this heinous behavior has damaged the order in various aspects of life. Do not let the holy children be found again in the trash with dirt and flies.

Further Wahbah Zuhaili in the book *Fiqh al Islam wa Adilatuhu* (Az-Zuhaili, 1989, p. 148) mentioned that the majority of scholars agree that a woman who is pregnant as a result of adultery is legally married to the man who committed adultery with her. So that according to him the marriage performed by the adulterous couple is legal in the eyes of Islamic law and they are also legal to have biological relations as husband and wife. It seems that Wahbah Zuhaili was inspired by QS. An-Nur: 3 which indicates that there is no prohibition of marriage for adulterers (Az-Zuhaili, 1989, p. 149). Some scholars understand that this verse is only a reproach against men who marry adulterous women while on the other hand it is a prohibition (Az-Zuhaili, 1989, p. 149).

In the book *Madzahib al Arba'ah* (Al Jaziri, 1994, p. 403) it is said that the majority of the Shafi'i school of thought allow women who are pregnant out of wedlock to be married to men who are not impregnating them and they can have intercourse without having to wait for their child to be born. Their reason is that the sperm produced by a woman who commits adultery is not considered to exist and has no honor value at all. Furthermore, Huzaemah Tahido Yanggo also stated that women who are pregnant out of wedlock may be married to men who do not impregnate them. He also reasoned that the woman was not a woman who was prohibited from marrying, thus things that are unlawful cannot forbid what is lawful, namely getting married (Yanggo, 2010, p. 60). Apart from that, the woman is also a woman who is not married, that is, she does not have legal ties with other men and the seeds she contains are not of honorable status and there is nothing wrong with the sperm inside being mixed with other people's seeds.

Then in the book *bughyah al Mustarsyidin* (Rahman, 2009, p. 249) it is said that a woman who becomes pregnant as a result of adultery may or may not marry the man who committed adultery with her. Even though he has sex with his pregnant wife, it is considered makruh. The opinion in the book is almost in line with KHI which is a reference in Indonesian legislation. The law adopted in Indonesia refers to KHI Article 53 which says;

1. A woman who becomes pregnant out of wedlock can be married to the man who made her pregnant.
2. Marriage with a pregnant woman referred to in paragraph (1) can be carried out without waiting for the birth of her child.
3. With the marriage taking place when the woman is pregnant, there is no need for re-marriage after the child is born.

Sayyid Abdurrahman seems to be referring to the QS letter. An Nisa' which states that there is no specific provision that there is a prohibition on marriage to women who are pregnant as a result of adultery, so that it is okay for any man who wants to marry her to enter into a marriage contract and they can automatically have intercourse as husband and wife. Sayyid Abdurrahman's opinion is also supported by Hanafi scholars who allow a woman who becomes pregnant out of wedlock to be married to any man, whether the man who got her pregnant or someone else who was not the culprit. However, the Hanafi school forbids intercourse with her until the child she is carrying is born (Az-Zuhaili, 1989, p. 149).

It seems that the views of NU scholars above are almost in line with the provisions contained in the Compilation of Islamic Law (KHI). In the KHI it is stated that there is a special chapter related to the marriage of pregnant women as a result of adultery which is contained in chapter VII Article 53 paragraphs 1, 2 and 3. According to the KHI that women who are pregnant as a result of adultery can be married to men who have already impregnated them without having to wait for the birth of a child who is in the womb. Then the marriage that has been carried out does not need to re-enter into a re-marriage or *tajdidun nikah*. What distinguishes the opinion of NU and KHI scholars is that NU scholars are of the opinion that a man who is pregnant may marry a woman who is pregnant as a result of adultery or conversely a woman who becomes pregnant out of wedlock may marry a man who did not impregnate her. KHI is of the opinion that women who become pregnant out of wedlock can only be married to the man who got her pregnant, not anyone else (KHI Pasal 5, ayat 1). Thus, the laws and regulations in Indonesia allow marrying a woman who is pregnant as a result of adultery.

It seems that both NU and KHI scholars allow women to marry as a result of adultery departing from the results of a compromise between Islamic law and customary law. The fact that in fiqh there are differences of

opinion/ikhtilaf is then related to the sociological and psychological approach of society, so that the results of combining ikhtilaf and 'urf can be drawn a conclusion that allowing pregnant women to marry out of wedlock contains more elements of maslahah/goodness than the elements of mafsadat/ forbid it (Nurwandri & Syam, 2021).

The possibility of marrying pregnant women due to adultery has the purpose of providing clear legal protection for unborn children and providing a solution for the court in finding and formulating new principles through more rational and actual constructions and breakthroughs. Having a foundation of great benefit, especially to his child in the future, that he has parents who can manage and provide for his life, future, and honor. Indeed, the child in the womb does not sin, but the two parents are the ones who sin as a result of committing acts forbidden by religion.

The implication for this fiqh view is that if a woman who is pregnant as a result of adultery wants to be married but the man who desecrated her does not want to be prepared to take responsibility for her actions or her whereabouts are unknown, then any man who is ready to marry her has the right to marry her. However, this view must be positioned in an 'emergency' situation in the sense that this view is a last resort when the man who is pregnant does not want to be held responsible for the actions he has committed or the events against the pregnant woman due to adultery are the result of a rape victim where the person concerned and the victim's family not willing with a man who has impregnated her, then this view can be adopted.

2. Muhammadiyah fatwa

Muhammadiyah in its Tarjih organization states that there are at least two answers regarding the issue of whether or not a man may marry a woman who is pregnant as a result of adultery (Fatwa Tarjih Muhammadiyah 2005). *First*, In the first or old Tarjih fatwa it is stated that a woman who becomes pregnant as a result of adultery can only be married to a man who has committed adultery with her. *Second*, in the second Tarjih fatwa it is stated that a woman who becomes pregnant as a result of adultery may be married to anyone, both those who impregnated her and those who did not impregnate her. According to the Tarjih Muhammadiyah fatwa team, there is no difference in the views of the two fatwas, or there is no need to question one another. Because according to them that the fatwa can change according to the conditions of time and place (*taghayyur al-fatwa*). Fatwas, in the view of the Tarjih team, can change according to developing conditions, of course, they must be based on justifiable evidence based on the Qur'an and al-Hadith (*Perbedaan Hukum Menikahi Wanita Hamil - Suara Muhammadiyah*, 2022).

Explanation of the Tarjih Muhammadiyah fatwa regarding the first opinion which states that women who become pregnant as a result of adultery are only legally married to those who impregnate them and are not legally married to other people, sourced from a hadith which states, *from Rifa'i bin Sabit al-Ansari (narrated), he said when he preached to us: Know that I do not speak to you except what I heard from the Messenger of Allah. At the time of the Hunain war he said, it is not halal for a person who believes in God and the Last Day to water other people's crops - that is to associate with pregnant women* (HR. Abu Dawud nomor 1844).

Departing from the hadith above, according to the fatwa of the Tarjih Muhammadiyah Council, it is illegal to marry a pregnant woman as a result of adultery by someone who did not impregnate her (*Perbedaan Hukum Menikahi Wanita Hamil - Suara Muhammadiyah*, 2022). As a consequence, the child who is born later has the status of a child resulting from adultery and cannot relate to the husband from his mother (Suaidi, 2022). The Majlis also cites the opinion of the fiqh scholars who state that if the person who marries is the man who impregnated her then "the child conceived by the mother is aged 4 months and above when she marries her then the child is an adulteress child who is only related to the mother, but vice versa, if he marries the mother while the child who is conceived is less than 4 months old, then the child can be related to the father who made him pregnant."

In addition to the evidence above, the Tarjih council also uses evidence from the Quran QS. At-Thalaq: 65/4 as the basis for issuing fatwas, *And women who no longer menstruate (menopause) among women-your wife if you are in doubt (about her iddah time), then their iddah time is three months; and so are women who do not menstruate. And women who are pregnant, their iddah time is until they give birth. And whoever fears God, God will surely make things easier for him in his affairs.*

Taking into account the verse above that a woman who becomes pregnant due to adultery may only be married after the child in her womb has been born. This means that neither the man who got her pregnant nor anyone else is allowed to marry her. This is entrusted to a pregnant woman whose husband has divorced her or her husband has died, so she may be married after she gives birth. It is permissible for the woman to marry after she has completed her postpartum period. However, the Tarjih team has a different view regarding men being allowed to marry women who become pregnant as a result of adultery (Bahri, 2021, p. 63).

Furthermore, the Tarjih council added the evidence of the Quran QS. An-Nisa: 4/23 as a basis for issuing fatwas. Taking into account the verse in that a woman who becomes pregnant due to adultery may only be married after the child in her womb has been born (Majalah SM No 14 Tahun 2022).

This means that neither the man who got her pregnant nor anyone else is allowed to marry her. This is entrusted to a pregnant woman whose husband has divorced her or her husband has died, so she may be married after she gives birth. It is permissible for the woman to marry after she has completed her postpartum period. However, the Tarjih team has a different view regarding men being allowed to marry women who become pregnant as a result of adultery.

According to the tarjih team, QS. An-Nur paragraph 3 still has a broad reach and does not specifically refer to who has the right to marry a woman who becomes pregnant as a result of adultery. The text reads "A woman who commits adultery may marry a man who is also an adulteress or a man who commits adultery with her or a man who is a polytheist. commit adultery or someone else may marry the woman (Majalah SM No 14 Tahun 2022).

However, the tarjih scholars did not only refer to and conclude that it is permissible for a woman who becomes pregnant as a result of adultery to be married to anyone, but the tarjih team also refers to the opinion of the fiqh scholars as was done by the nu scholars. In this case, the Muhammadiyah cleric's fatwa team also has two views regarding marrying a woman who is pregnant as a result of adultery. *First*, the fatwa team of the tarjih assembly looked at the book *fiqh al islam wa adillatuhu* (Majalah SM No 14 Tahun 2022) which states that the majority of scholars have no difference of opinion regarding the lawfulness of marrying a woman who is pregnant as a result of adultery by a man who impregnates her. This permissibility, according to the tarjih fatwa team, states that women who become pregnant due to adultery do not have an iddah period, while the iddah period only applies to women who are pregnant as a result of legal marriage. Thus, a woman who becomes pregnant as a result of adultery does not have an iddah period, so she may be married directly without having to wait for the iddah period as directed by qs. At talaq: 65/4 (Majalah SM No 14 Tahun 2022).

Second, The Muhammadiyah Tarjih Fatwa Team argues that it is permissible to marry a woman who is pregnant because of adultery, either by the impregnator or someone else. In this case the Muhammadiyah scholars refer to the opinions of the Shafi'i Imams and Hanafi Imams who state that neither the man who gets pregnant nor someone else is legal to marry him (Bahri, 2021). Meanwhile, Imam Malik and Imam Hambali are of the opinion that it is legal to marry a woman who is pregnant as a result of adultery with the condition that the person who marries her is a man who has impregnated her and both of them must repent (Aladin, 2018). Thus, the majority of scholars stated that the marriage of adulterers was considered valid, although there were several scholars who stated that it was invalid. The companion of the Prophet named Ibn Abbas illustrated that marriages by adulterers in a

marriage contract are still valid on the grounds that haram matters can become lawful if they are passed through a halal procession, namely by getting married. However, adultery will still be sinful and rewarded by Allah SWT for the violations that have been committed.

Looking at the conclusions of the tarjih team, it seems that this decision cannot be separated from the view of the compilation of Islamic law regarding the permissibility of a pregnant woman as a result of adultery being married to a man who impregnated her and the marriage can take place without having to wait for the child to be born and not having to re-contract at a later date after the child is born. These logical provisions are considered sufficient to answer the problems of today's modern society as a form of legal basis, where not a few people experience this condition and must find a solution. You can imagine if a woman who is already pregnant because of adultery is then prohibited from marrying the man who got her pregnant or not, then what happens is psychological pressure, damage to the social structure of society, disgrace to the family, and of course implications for administrative irregularities as citizens. The Muhammadiyah tarjih team believes that it is permissible for women to marry as a result of adultery to be married does not mean that this behavior is legalized, but that this is taken as a form of response to the problems of the growing community. It can also be concluded that there are different views from the Muhammadiyah tarjih fatwa team above, but what is adopted and upheld is the second fatwa, namely that women who become pregnant out of wedlock can be married to those who impregnate them or other people (Majalah SM No 14 Tahun 2022).

3. MUI fatwa

The MUI through its fatwa commission stipulates that men who commit adultery and other people who do not commit adultery may marry women who become pregnant as a result of adultery. This means that the MUI does not limit anyone who is allowed to marry the woman, whether it is the man who got her pregnant or the man who is not the perpetrator. The basic principles held by the MUI fatwa are:

a. Proof of the Qur'an

الرَّانِي لَا يَنْكِحُ إِلَّا زَانِيَةً أَوْ مُشْرِكَةً وَالزَّانِيَةُ لَا يَنْكِحُهَا إِلَّا زَانٍ أَوْ مُشْرِكٌ وَحُرِّمَ ذَلِكَ عَلَى الْمُؤْمِنِينَ

Adulterous men do not marry except adulterous women, or polytheist women; and adulterous women are not married except to adulterous men or polytheist men, and that is prohibited for believers (QS. An Nur: 23/3).

The above verse by MUI is considered as evidence that allows a man who commits adultery to marry a woman who is pregnant or not because of adultery. then MUI also added evidence from the Quran,

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and (you are also forbidden to marry) married women, except for the slaves you have (God has established that law) as His decree over you. And it is lawful for you other than that (namely) to find wives with your wealth to marry, not to commit adultery. So the wives you have enjoyed (mixed) among them, give them their dowry (perfectly), as an obligation; and there is nothing wrong with you regarding something that you have mutually agreed upon, after determining the dowry. Indeed, Allah is All-Knowing and All-Wise (QS. An Nisa': 4/24).

The verse above is used as an argument for the permissibility of another man who is not the perpetrator of adultery to marry a woman who is pregnant because of adultery. According to the MUI, the Qur'anic proposition is considered as the basic foundation that a man who does not commit adultery may marry a woman who is pregnant because of adultery.

b. Proof of the Prophet's Hadith

عن أبي هريرة رضي الله عنه، قال رسول الله صلى الله عليه وسلم لا ينكح الزاني المجلود إلا مثله (رواه ابو داود)

On the authority of Abi Hurairah, he said, the Messenger of God, may God bless him and grant him peace, said: a man who commits adultery and is punished with imprisonment will not marry recklessly with a similar / adulterous woman. (HR. Abu Dawud 221).

This hadith explains that a person who likes to commit adultery will only marry another person who also likes to commit adultery.

عن ابن عمران النبي صلى الله عليه وسلم قال لا يحرم الحرام الحلال (رواه امام ابن مجة)

It means: From Ibn Umar, the Messenger of God, may God bless him and grant him peace, said: "The unlawful act (adultery) does not cause the unlawful act to be lawful." (HR. Imam Ibn Majah 639).

The hadith above describes that it is permissible for a man who is not an adulterer to marry a woman who is pregnant because of adultery and the man is allowed to have a biological relationship as befits a legal husband and wife. This is built on the premise that cases that have been legally lawful do not affect cases that were previously convicted of illegality.

c. The Proof of Fiqh Rules

الأصل في الأشياء الإباحة حتى يدل الدليل على التحريم

Meaning: the legal basis for everything is permissible until evidence is found that convicts it as illegitimate.

In other terms, these rules state that the basic law of marriage is permissible, but if later there is evidence that proves its prohibition, the law of marriage turns into haram.

Regarding the issue of men who have not impregnated them being allowed to marry them, the MUI seems to be quite observant about this issue.

The MUI believes that not all women who become pregnant out of wedlock are caused by the factor of adultery, but there are cases where women who become pregnant out of wedlock are more due to other factors such as being forced or raped or the man having intercourse with her while the woman is sleeping. This view comes from Imam Hanafi and Imam Syafi'i who state that the majority of good women do not wish to commit adultery. Even if it does happen, it generally happens because there are several things, such as coercion, violence, hypnosis, anesthesia or sedatives, and so on (Mohtarom, 2020).

Another argument developed by the MUI is based on scientific considerations and Islamic law, including:

1. In biology, sperm that enter the uterus of a pregnant woman will not affect the finished fetus. Thus, there is no need to worry about the mixing of the sperm of the man who commits adultery with the sperm of the man who will legally marry her.
2. If a woman who is pregnant from adultery cannot be married, both for the perpetrator and for others, it will cause shame and a psychological burden on the woman, if the man who made her pregnant is not responsible.
3. The DKI Jakarta MUI Fatwa Commission is more inclined to Imam Shafi'i's opinion, because it is considered more in line with today's benefits, seen from the increasing promiscuity that has resulted in many pregnancies outside of marriage.

MUI's explanation above seems to be considered sufficient to contribute its own thought in the progress of Islamic law in Indonesia. This is because the MUI fatwa looks different from the provisions of the Compilation of Islamic Law (KHI) which also discusses who a woman who becomes pregnant as a result of adultery must marry. The KHI mentions several provisions regarding the marriage of pregnant women due to adultery:

1. A pregnant woman out of wedlock can be married to a woman who got her pregnant.
2. Marriage with a pregnant woman referred to in the first point can be carried out without waiting for the birth of her child
3. By holding a marriage when a woman is pregnant, there is no need to re-marry after the child she is carrying is born.

It seems that the provisions produced by KHI were inspired by the provisions of the Qur'an which states that *"Adulterous men do not marry except adulterous women, or polytheist women; and an adulterous woman is not married except to an adulterous man or a polytheist man, and that is prohibited for believers"* QS. An-Nur: 24/3). Thus, it seems that the KHI provisions are based on the understanding of the verse that not all men may

marry women who are pregnant as a result of adultery and those who are eligible to marry women who are pregnant as a result of adultery are men who are also adulterers. This means that a man who has the right to marry a woman who is pregnant as a result of adultery is the man who has committed adultery, while it is forbidden for other people who are not the perpetrators to marry her (Abror, 2017).

Both MUI and KHI provisions can be seen as controversial in society. Those who disagree will state that it is as if the MUI and KHI have given freedom and concessions to free sex behavior and tend to compromise on this indecent behavior. It also gives the impression that the MUI and KHI have legalized the law on legalizing adultery as their legal umbrella. The reason is, KHI in Article 53 does not state strict sanctions against the perpetrators of adultery, but instead provides opportunities and solutions for adulterers to get married immediately (Aladin, 2018). Whereas fiqh provisions state that if the adulterer is married then the penalty is to be whipped 100 times and then he is sentenced to stoning, while if the adulterer is unmarried then the punishment is that he must be whipped 100 times and then exiled to a foreign area for a year.

However, the issuance of KHI Article 53 will at least serve as a reference for the public that what KHI has determined is based on the provisions of Islamic law. According to KHI Article 53 that men who are allowed to marry women who are pregnant as a result of adultery are only men who have committed adultery while other people who are not the perpetrators are not allowed or unlawful. This means that KHI limits who can marry this woman.

IV. Kesimpulan

Ulama have different views regarding the issue of marrying a woman who is pregnant as a result of adultery. Some scholars allow these women to marry with the condition that they have to be with the man who got her pregnant, while some of these women can be married to any man without any conditions. This means that even men who don't impregnate her may marry her and she may have biological relations as befits a legal husband and wife. Whether you realize it or not, the practice of marrying pregnant women as a result of adultery/out of wedlock has become endemic in the wider community and this can be done as stated by NU, MUI, and Muhammadiyah. The three mass organizations allow women who become pregnant out of wedlock to be married to men who impregnate them or not. It is meant as form *maslahah mursalah* or take kindness so as to maintain the stability of life in society. The kindness referred to here is the kindness in determining the status of the woman and her child and at the same time safeguarding the

dignity and disgrace of the family in society. However, the permissibility of marrying a woman who becomes pregnant as a result of adultery does not necessarily constitute a formal legality for the act of adultery. Islam still strongly condemns the adultery behavior that is committed and orders people to try their best to avoid it. Seeing the conclusions above, it would be interesting to conduct further studies on the practice of marrying pregnant women out of wedlock which often occurs in society. Further studies can be carried out by paying attention to these marriage practices, both in terms of the underlying factors, the level of religious understanding of the perpetrators, as well as the situation and conditions of their families.

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