



IDDAH FOR WOMEN PREGNANT OUTSIDE MARRIAGE UNDER ARTICLE 53 OF THE KHI: ISLAMIC LAW AND LEGAL CERTAINTY AT THE MEDAN AMPLAS DISTRICT OFFICE OF RELIGIOUS AFFAIRS AND THE MEDAN RELIGIOUS COURT

Syahfitri Ani Siregar¹, Iwan²

^{1,2}Universitas Islam Negeri Sumatera Utara, Indonesia

Email: syahfitrianisiregar020101@gmail.com, iwan@uinsu.ac.id

Corresponding Author: syahfitrianisiregar020101@gmail.com

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Abstract

The Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) regulates the marriage of women who become pregnant outside marriage under Article 53 without requiring a waiting period (iddah), even though this issue remains a matter of juristic disagreement (ikhtilaf) among Islamic legal scholars, resulting in non-uniform implementation in practice. This study aims to analyze the legal status of iddah for women pregnant outside marriage under Islamic law, examine the regulation of Article 53 of the KHI and its implementation at Offices of Religious Affairs (KUA) and Religious Courts, and assess its implications for legal certainty in Indonesian Islamic family law. The study employs a descriptive-analytical normative-empirical legal research design, combining statutory, conceptual, and Islamic-law approaches through library research with case and sociological approaches through in-depth interviews with five informants at the Medan Amplas District Office of Religious Affairs and the Medan Religious Court. The findings show that jurists are divided into three groups regarding the permissibility of marrying a woman pregnant outside marriage, while Article 53 of the KHI accommodates only one of these positions without expressly addressing the other two. Field findings reveal a clear disparity in understanding: one Marriage Registrar applies the article in a textual-administrative manner without considering iddah, whereas another registrar in the same office continues to recommend *tajdid al-nikah* on the basis of juristic caution. This disparity is aggravated by the absence of a standardized Standard Operating Procedure and creates a judicial loophole when the man marrying the woman is not the man who caused the pregnancy, requiring judges to refer to Constitutional Court Decision No. 46/PUU-VIII/2010. These disparities lead to non-uniform marriage administration, potential uncertainty regarding the legal status of children, inconsistency in Religious Court decisions, and psychological-religious anxiety within the community. The study recommends clearer implementing regulations or technical guidelines regarding iddah in marriages involving pregnancy outside marriage in order to strengthen legal certainty in Indonesian Islamic family law.

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1. INTRODUCTION

Islamic family law in Indonesia has developed significantly through the establishment of various national legal instruments that provide guidance for resolving civil matters involving Muslims. One such instrument is the Compilation of Islamic Law (KHI), promulgated through Presidential Instruction No. 1 of 1991 and used as a reference in Religious Court practice (Presidential Instruction of the Republic of Indonesia No. 1 of 1991). The KHI represents a concrete effort to codify Islamic law in a form adapted to the needs of Indonesian society and is intended to provide uniform legal references for Religious Court judges in deciding cases concerning marriage, inheritance, and charitable endowments. Before the KHI



was introduced, judges frequently relied on various classical fiqh texts, a practice that could produce different rulings in substantially similar cases.

Among the provisions of the KHI that continue to generate academic debate and disparities in legal practice is Article 53 concerning women who are pregnant outside marriage. The article provides:

(1) A woman who is pregnant outside marriage may marry the man who caused her pregnancy. (2) The marriage of the pregnant woman referred to in paragraph (1) may be solemnized without first waiting for the birth of the child. (3) Once the marriage is solemnized while the woman is pregnant, a new marriage is not required after the child is born (Compilation of Islamic Law [KHI], Art. 53(1)-(3)).

This provision is fundamentally intended to provide legal protection for the woman and the child she is carrying by not requiring a waiting period (*iddah*), unlike the *iddah* ordinarily imposed on women whose marriages end through divorce or the death of a husband. Nevertheless, the formulation rests on a fiqh issue that remains disputed (*mukhtalaf fihi*) among jurists. Accordingly, the absence of a waiting period in Article 53 of the KHI is not based on a unanimously accepted rule but reflects the selection of one among several opinions developed in the tradition of *fiqh al-munakahat*.

Juristic disagreement regarding the marriage of a woman pregnant outside marriage may be grouped into at least three positions. The first permits such a woman to marry either the man who caused the pregnancy or another man without a waiting period, on the ground that the pregnancy did not arise from a valid marriage and therefore does not create an unlawful commingling of lineage. The second position, associated with Imam Abu Yusuf and Ibn Qudamah, holds that a woman pregnant outside marriage may marry only the man who caused the pregnancy, whereas marriage to another man is considered *fasid* while the pregnancy continues. The third position prohibits the marriage altogether until the woman has given birth, as a precaution to protect clarity of lineage (Dedi, 2019, pp. 74-77). Article 53 of the KHI substantially adopts the second position by permitting the marriage only with the man who caused the pregnancy (Dedi, 2019, p. 76). However, because the provision does not explicitly address the other two views-particularly the position requiring the woman to wait until childbirth as a measure of lineage protection-it leaves room for varying interpretations and practices.

In Islamic law, *iddah* is understood as a mandatory waiting period that a woman must observe after the termination of a marriage before entering into another marriage, with purposes that include preserving clarity of lineage, allowing room for reconciliation, and maintaining social order (Ghazaly, 2019, pp. 134-136). The issue becomes more complex when pregnancy occurs outside a valid marriage, because this condition is not directly regulated by scriptural texts concerning the *iddah* of women whose valid marriages have ended. Consequently, whether *iddah* applies in this context depends on juristic reasoning (*ijtihad*).

The issue is increasingly relevant because pregnancy outside marriage is not an uncommon phenomenon in Indonesian social life. Factors such as changing social values, external cultural influences, and weakened family and community control may contribute to such cases. When they occur, the law is expected to provide solutions that ensure the legality of marriage while protecting the interests of both the woman and the child she is carrying.

These different fiqh foundations have practical consequences. A study by Binarsa and Khoiruddin Nasution in Mlati District found that some members of the community, and even some marriage officials at Offices of Religious Affairs (KUA), continued to question the validity of marriages involving pregnancy when the ceremony was conducted before childbirth. This concern contributed to the practice of *tajdid al-nikah* (renewal of the marriage contract) after the child was born as a precautionary measure (Binarsa & Nasution, 2021, pp. 327-354). By contrast, Hariyono and Anwarudin found that some KUA offices administratively process such applications in the same manner as ordinary marriages once formal requirements have been met, without further examining *iddah* or lineage clarity (Hariyono & Anwarudin, 2022, pp. 34-55). These different approaches indicate that KUA officials and Religious Court judges do not yet share a uniform understanding of the status of *iddah* in marriages involving pregnancy, creating the possibility that Article 53 of the KHI will be applied differently across regions depending on the individual understanding of the official or judge handling the case.

Both studies, like many academic discussions of Article 53 of the KHI, largely rely on literature reviews or case studies conducted in a single location. As a result, relatively few studies have examined in depth how disparities in understanding are formed through the reasoning and practical experience of officials who encounter these issues in their daily work, whether at the level of marriage registration,

institutional supervision, or judicial adjudication. This study seeks to address that gap by presenting primary data from interviews with five key informants at two institutions directly involved in the implementation of Article 53 of the KHI: the Medan Amplas District Office of Religious Affairs and the Medan Religious Court. The informants include two Marriage Registrars holding different views in the same office, the head of the KUA, a judge, and a religious counselor who represents the community-reception dimension.

This lack of uniformity produces several concrete implications for legal certainty in Indonesian Islamic family law. First, it affects marriage administration because the absence of a clear standard regarding whether a waiting period is required results in different treatment across KUA offices in processing applications involving pregnancy. Second, it affects the clarity of a child's legal status, because the practice of *tajdid al-nikah*, which emerges from community doubts, may itself generate new questions regarding the lineage of a child born before the renewed contract. Third, it affects the consistency of Religious Court decisions in cases involving the legal status of marriages during pregnancy, including marriage-dispensation petitions and applications to determine a child's parentage. These implications demonstrate that Article 53 of the KHI is not merely a theoretical issue in *fiqh al-munakahat* but also a practical matter that directly affects legal certainty for the public.

Based on the foregoing, this study addresses four questions: (1) what is the legal status of *iddah* for women pregnant outside marriage under Islamic law; (2) how does Article 53 of the KHI regulate the marriage of women pregnant outside marriage; (3) how is the provision empirically implemented at the Medan Amplas District Office of Religious Affairs and the Medan Religious Court from the perspective of the officials who handle such cases; and (4) what are the implications of these disparities for legal certainty in the practice of Islamic family law in Indonesia? The study is expected to contribute to the development of Islamic family law, enrich empirical evidence regarding the implementation of Article 53 of the KHI, and provide an academic basis for understanding the relationship between *fiqh* norms and national positive law.

2. RESEARCH METHOD

This study employs a normative-empirical legal research method with a descriptive-analytical orientation. The normative dimension is pursued through three approaches: a statutory approach examining the Compilation of Islamic Law and Law No. 1 of 1974 on Marriage; a conceptual approach examining *iddah*, legal certainty, and *maqasid al-shariah*; and an Islamic-law (*shar'i*) approach based on the Qur'an, *hadith*, and juristic opinions. The normative analysis is complemented by an empirical or sociological approach designed to capture how Article 53 of the KHI operates in practice and is interpreted differently by implementing officials. This combination is commonly used in legal research seeking to bridge the distance between *das sollen* (law as it ought to be) and *das sein* (law as practiced) (Soekanto, 1986, pp. 10-15, 51-52).

Primary empirical data were collected through in-depth interviews conducted in February 2025 at two locations: the Medan Amplas District Office of Religious Affairs (KUA) and the Medan Religious Court. Informants were selected purposively on the criterion that they directly handled, supervised, or otherwise encountered cases concerning the marriage of women pregnant outside marriage in the course of their duties. Five informants were selected: H. Ahmad Fauzi, a Marriage Registrar at the Medan Amplas KUA; KH. Zainuddin, a Marriage Registrar at the same KUA; Muhammad Lukman Hakim Hasibuan, Head of the Medan Amplas KUA; Dr. Yusri, a judge at the Medan Religious Court; and Ustaz Ridwan, a religious counselor and community figure in Medan Amplas District. The inclusion of two Marriage Registrars from the same office was intended specifically to test whether disparities in the interpretation of Article 53 of the KHI occur only between regions or KUA offices, as prior studies suggest, or may also occur at the individual level within the same institution.

The interviews were semi-structured and used open-ended interview guidelines, allowing informants to explain their reasoning, experience, and positions narratively. Before each interview, the researchers explained the purpose and objectives of the study, and all information obtained was recorded and documented in accordance with the principles of empirical legal research. The interview data were supplemented by primary legal materials, including the Qur'an, *hadith*, the Compilation of Islamic Law, and Law No. 1 of 1974 on Marriage; secondary legal materials, including books, scholarly journal articles, and prior studies on *iddah*, marriage during pregnancy, and legal certainty; and tertiary legal materials, including legal dictionaries and encyclopedias.

The data were analyzed qualitatively by combining a deductive method with source triangulation. Deductive reasoning was used to interpret the norms of Article 53 of the KHI and relate them to fiqh principles and the theory of legal certainty, while source triangulation was used to compare statements across informants and to assess them against primary and secondary legal materials. This process was intended to strengthen the validity and depth of the evidence before drawing comprehensive and argumentative conclusions (Sugiyono, 2020, pp. 133-140).

3. RESULT AND ANALYSIS

The Status of Iddah for Women Pregnant Outside Marriage from the Perspective of Islamic Law

Linguistically, iddah means counting. Terminologically, it refers to the waiting period that a woman is required to observe after the termination of a marriage before she may enter into a subsequent marriage (Ghazaly, 2019, pp. 134-136). The legal basis of iddah includes Qur'an 2:228, which instructs divorced women to wait for three quru', and Qur'an 65:4, which provides that the iddah of a pregnant woman continues until she gives birth. Textually, both verses concern iddah within the context of a valid marriage terminated by divorce. Applying these rules to pregnancy occurring outside marriage therefore requires independent fiqh reasoning (Qur'an 2:228; Qur'an 65:4).

Islamic jurists differ regarding the validity of marriage for a woman pregnant outside marriage and, indirectly, regarding whether she must observe a waiting period. The first group permits her to marry without a waiting period, whether to the man who caused the pregnancy or another man, because pregnancy resulting from zina does not establish legitimate lineage and therefore does not create a lineage that must be protected from commingling. The second group, represented by Imam Abu Yusuf and Ibn Qudamah, holds that the marriage is valid only if contracted with the man who caused the pregnancy; marriage to another man is regarded as fasid during the pregnancy because of concern over the mixing of reproductive lineage (talqih al-nasl) between a child conceived through zina and a child of the new husband. The third group holds that the woman may not marry at all until she gives birth, based on stricter caution concerning lineage and the principle of blocking the means (sadd al-dhari'ah), so that immediate marriage does not appear to conceal or normalize zina (Dedi, 2019, pp. 75-77).

Viewed through the theory of maqasid al-shariah, all three positions ultimately seek to protect lineage (hifz al-nasl), one of the five essential interests safeguarded by Islamic law alongside religion, life, intellect, and property (Abu Zahrah, 1958, pp. 366-370). Their divergence lies in how hifz al-nasl is best realized. The first group emphasizes immediate benefit for the mother and child through accelerated legalization of the marriage, whereas the second and third groups emphasize caution against potential lineage confusion when marriage is conducted without considering a waiting period. Thus, the absence of juristic consensus on iddah for women pregnant outside marriage does not arise from weak legal evidence but from different assessments of the maslahah and mafsadah associated with each legal option. Al-Syatibi likewise emphasizes that legal determination in muamalah should take account of the most dominant public benefit among available alternatives (al-Syatibi, 1997, Vol. II, pp. 8-12).

Article 53 of the Compilation of Islamic Law: Normative Basis and Scope for Interpretation

Article 53 of the KHI provides that a woman pregnant outside marriage may marry the man who caused her pregnancy, that the marriage may take place without waiting for the child to be born, and that no repetition of the marriage contract is required after childbirth (KHI, Art. 53(1)-(3)). Substantively, this formulation accommodates the second juristic position associated with Imam Abu Yusuf and Ibn Qudamah, which permits marriage during pregnancy only with the man who caused the pregnancy. The formulation also reflects an attempt to reconcile Islamic law with customary practices found in parts of Indonesian society; in this view, the benefit of permitting such a marriage is considered greater than prohibiting it, provided that the man marrying the woman is presumed to be the man who caused the pregnancy (UIN Sunan Kalijaga Digital Repository, n.d.).

The difficulty is that Article 53 of the KHI does not further explain the basis for selecting this particular juristic view or clarify its position regarding the two other views found in fiqh al-munakahat. This absence of explanation leaves implementing officials room to interpret the same norm differently. At the national level, prior studies have already identified such tendencies: some regions display a precautionary orientation through the practice of tajdid al-nikah (Binarsa & Nasution, 2021, pp. 340-344), whereas others show a more permissive approach by processing applications involving pregnancy in essentially the same manner as ordinary marriages (Hariyono & Anwarudin, 2022, pp. 41-45). This

broader pattern provides the starting point for the empirical inquiry into how similar disparities occur and are understood by officials at the Medan Amplas District Office of Religious Affairs and the Medan Religious Court.

Field Findings: Divergent Perspectives of Officials and the Community on the Implementation of Article 53 of the KHI in Medan Amplas District and the Medan Religious Court

To obtain a more concrete picture of how Article 53 of the KHI is understood and implemented in practice, this study collected statements from five informants representing five distinct but interconnected domains: textual-administrative, contextual-fiqh, structural-institutional, judicial, and sociological-community perspectives. Taken together, these perspectives show that disparities in understanding Article 53 are not merely interregional but may also arise among individuals working within the same institution.

Textual-Administrative Perspective: An Understanding Based on Legal Positivism

At the level of the Office of Religious Affairs, officials' understandings of Article 53 of the KHI vary considerably according to their epistemological orientation. H. Ahmad Fauzi, a Marriage Registrar at the Medan Amplas KUA, described a textual-administrative tendency in processing marriage applications involving pregnancy (A. Fauzi, personal communication, February 10, 2025). Fauzi explained that he relies strictly on the normative wording of Article 53 of the KHI and does not engage in extensive fiqh reasoning concerning the juristic disagreements underlying the provision.

According to Fauzi, because the KHI expressly allows the marriage to take place before childbirth and states that no new marriage is required afterward, state law does not recognize an iddah requirement in this situation. The procedure at his KUA is therefore the same as for an ordinary marriage; a pregnancy certificate from a midwife functions only as an administrative document for marriage registration rather than as a basis for special treatment or postponement (A. Fauzi, personal communication, February 10, 2025). Fauzi's approach represents officials who regard the KHI as the final legal reference, reflecting what legal scholarship identifies as legal positivism: an orientation that treats the text of enacted law as the principal source of legal validity without relying on norms external to the text (Marzuki, 2020, pp. 58-63). Within this orientation, legal certainty is understood as strict compliance with positive law, which can result in limited engagement with classical fiqh discourse requiring precaution, including the principle of sadd al-dhari'ah used by some jurists to justify postponing marriage during pregnancy.

Contextual-Fiqh Perspective: Precaution and the Practice of Tajdid al-Nikah

In contrast to the textual approach, KH. Zainuddin, another Marriage Registrar at the same Medan Amplas KUA, demonstrates a markedly different mode of reasoning despite working in the identical institution (Zainuddin, personal communication, February 10, 2025). Zainuddin recognizes Article 53 of the KHI as a compromise among different juristic views, yet personally gives greater weight to the principle of precaution (ihtiyat) in protecting lineage. In practice, although he continues to process the marriage while the woman is pregnant in accordance with the KHI—because doing so is part of his official duty as a Marriage Registrar—he consistently advises and strongly recommends that the couple perform tajdid al-nikah (renewal of the marriage contract) after the child is born.

Zainuddin explained that tajdid al-nikah is not an absolute administrative condition for the issuance of a marriage certificate but a form of reconciliation between positive law and fiqh-based caution. In his view, pregnancy outside marriage leaves a form of internal and juristic uncertainty, so renewal of the contract is intended to provide psychological reassurance to the couple and the community while reducing doubts concerning the validity of the child's lineage (Zainuddin, personal communication, February 10, 2025). This cautious position corresponds to the *usul al-fiqh* principle of sadd al-dhari'ah, namely blocking a means that may lead to harm (*mafsadah*) even when the means is formally permissible. Al-Zuhaili explains that sadd al-dhari'ah is one of the juristic methods used to anticipate greater harm in the future (al-Zuhaili, 2011, Vol. VII, pp. 875-880). Zainuddin's approach demonstrates that, in practice, a marriage official may function not only as a civil registrar but also as a religious authority responding to fiqh-based concerns in the community, thereby encouraging a practice of tajdid al-nikah that is not expressly regulated by the KHI.

Structural Perspective: Absence of Standard Operating Procedures and Disparities in Service

The disparity between Fauzi's and Zainuddin's approaches—remarkably occurring in the same office—was confirmed by Muhammad Lukman Hakim Hasibuan, Head of the Medan Amplas KUA (M. L. H.

Hasibuan, personal communication, February 12, 2025). Lukman stated that differences in treatment among officials and even among KUA offices arise from the absence of a standardized Standard Operating Procedure (SOP) or technical guideline from the Directorate General of Islamic Community Guidance of the Ministry of Religious Affairs concerning how the iddah dimension and precaution regarding lineage should be handled under Article 53 of the KHI. In the absence of detailed written guidance, each marriage official effectively retains a different scope of individual *ijtihad* even while operating under the same institutional structure.

Lukman noted that the absence of a uniform standard has generated direct consequences for public services. He has received complaints from community members who felt confused or unfairly treated because policies differed across districts; for example, couples married in a more permissive district were surprised when they were later advised in their own area to undertake *tajdid al-nikah* (M. L. H. Hasibuan, personal communication, February 12, 2025). His account confirms that disparities in understanding Article 53 of the KHI do not remain at the level of individual interpretation but translate into legal uncertainty experienced by citizens receiving different administrative treatment for legally comparable cases. This finding also supports the conclusion that the underlying problem lies not only in Article 53 itself but in the absence of derivative regulations capable of linking the norm to consistent implementation.

Judicial Perspective: Evidentiary Complexity and the Legal Loophole in Article 53 of the KHI

At the judicial level, Dr. Yusri, a judge of the Medan Religious Court, emphasized complexities in the implementation of Article 53 of the KHI that were not fully anticipated by its drafters (Yusri, personal communication, February 18, 2025). He explained that in marriage-dispensation cases involving pregnancy, Article 53 is often invoked as a legal basis for granting the petition in order to prevent greater harm. However, he identified a crucial loophole: Article 53 requires marriage to “the man who caused her pregnancy,” whereas courtroom proceedings sometimes reveal that the man seeking to marry the pregnant woman is not the biological father but another man willing to conceal the family’s social disgrace.

In such circumstances, Yusri stated that Article 53 becomes textually inapplicable and that judges must turn to other jurisprudence, particularly Constitutional Court Decision No. 46/PUU-VIII/2010 concerning the civil relationship between a child born outside marriage and the biological father (Yusri, personal communication, February 18, 2025). He further noted that the absence of technical guidance from the Supreme Court on how to respond to juristic disagreement surrounding Article 53 frequently complicates judicial reasoning (*ratio decidendi*), particularly in proceedings concerning the determination of a child’s parentage and inheritance disputes involving children from marriages that were later renewed through *tajdid al-nikah*. In his view, inconsistency in judicial reasoning in such cases is a direct consequence of the ambiguous status of iddah in the KHI.

Sociological Perspective: Community Reception and the Need for Inner Religious Certainty

From a sociological perspective, Ustaz Ridwan, a religious counselor and community figure in Medan Amplas District, emphasized that law does not operate in a vacuum but continually interacts with the religious consciousness of society (Ridwan, personal communication, February 20, 2025). He observed that people at the grassroots level continue to place strong emphasis on religious caution and clarity of lineage. When a pregnant woman is married without a waiting period, doubts (*syubhat*) may circulate within the community concerning the validity of the marriage and the status of the child who is born.

According to Ridwan, the practice of *tajdid al-nikah* encouraged by some marriage officials, such as KH. Zainuddin, is widely accepted because it serves as a form of reassurance for the community’s religious doubts. At the same time, he regretted the absence of a uniform state rule, which generates public unease. He stressed that the community needs a clear fatwa or official guideline from state religious authorities, including the Ministry of Religious Affairs or the Indonesian Ulema Council, regarding the status of iddah in these cases. Legal certainty should therefore be experienced not only administratively through possession of a marriage certificate but also psychologically and religiously as inner reassurance regarding the permissibility of the marriage and the child’s lineage (Ridwan, personal communication, February 20, 2025). Ridwan’s account illustrates that formal legal norms require social acceptance in order to operate effectively. Rahardjo similarly argues that good law must be able to coexist with the legal consciousness of society rather than merely being imposed from above (Rahardjo, 2009, pp. 91-95).

Comparative Analysis: Convergences and Divergences between Field Findings and Classical Fiqh Constructions

When the five field perspectives are compared with the three juristic positions described earlier, the relationship is not entirely linear. Fauzi's approach, for example, appears close in practical outcome to the first juristic position because both result in the absence of a waiting period. Epistemologically, however, the two differ substantially. The first juristic position rejects the need for iddah on the basis of a fiqh argument that pregnancy resulting from zina does not create legitimate lineage and therefore does not generate a lineage interest requiring protection from commingling. Fauzi reaches a similar practical conclusion simply because Article 53 of the KHI does not explicitly mention iddah. Procedurally, therefore, Fauzi implements the second view selected by the KHI-marriage only with the man who acknowledges causing the pregnancy-but his underlying orientation is closer to the first position's relative indifference to iddah itself.

Zainuddin presents the opposite pattern. Administratively, he follows the second juristic position accommodated by the KHI, yet internally he shares the central concern of the third position: the possibility of lineage confusion when marriage occurs without sufficient caution. His recommendation of *tajdid al-nikah* can be understood as an attempt to reintroduce the precautionary element of the third view into the procedural framework of the second view without violating the positive law that he is obliged to apply as a state official. This phenomenon may be described as normative hybridity: the combination of formal compliance with positive law and informal fulfillment of fiqh-based demands not expressly accommodated by that law.

The account of KUA Head Lukman Hakim Hasibuan confirms that this hybridity is not merely a personal coincidence but a structural consequence of the open-ended character of Article 53 of the KHI in the absence of implementing guidance. Without a standardized SOP, a textually singular norm functions in practice as a legal space filled differently by the individual reasoning of each marriage official, as clearly demonstrated by Fauzi and Zainuddin despite their service in the same office.

Yusri's testimony reveals another dimension not captured by the preceding perspectives: the KHI's choice to accommodate the second juristic view-requiring marriage to the man who caused the pregnancy without a waiting period-may be more vulnerable to misuse than the third view, which requires waiting until childbirth. Without an interval during which the identity of the man who actually caused the pregnancy can be verified more carefully, a rapidly arranged marriage may create an opportunity for a formal marriage with a man who is not the child's biological father, solely to conceal family disgrace. Within the framework of *maqasid al-shariah*, this creates an irony: a legal option intended to achieve immediate benefit (*maslahah ajilah*) for the mother and child by accelerating legal marriage may instead produce a new *mafsadah* in the form of lineage uncertainty, precisely the outcome the norm seeks to avoid.

Ridwan's perspective complements the other four by demonstrating that the issue extends beyond formal law to the dimension of social acceptance. Although Article 53 of the KHI provides an administratively valid legal solution, the legal certainty experienced by the public does not stop at formal legality; it also requires a sense of internal and religious security. Together, the five field perspectives show that disparities in understanding Article 53 are multilayered rather than merely textual. They involve differences in individual epistemology, structural regulatory gaps, judicial evidentiary loopholes, and demands for social-religious legitimacy that are not fully answered by the existing norm.

The Legal Loophole in Article 53 of the KHI: Proving Biological Paternity and Its Intersection with Constitutional Court Decision No. 46/PUU-VIII/2010

Yusri's finding concerning the legal loophole in Article 53 of the KHI requires further elaboration because of its broad implications for the legal status of children. The phrase "the man who caused her pregnancy" in Article 53(1) of the KHI assumes that the identity of the man responsible for the pregnancy can be known and established with relative ease when an application for marriage is submitted (KHI, Art. 53(1)). In judicial practice, however, as Yusri explained, this assumption does not always correspond to reality. The identity of the man marrying the pregnant woman may rest solely on the parties' own statements, without a scientific verification mechanism such as Deoxyribonucleic Acid (DNA) testing. Consequently, neither the KUA nor the Religious Court necessarily possesses a legal instrument capable of establishing the material truth of that claim.

If it later emerges that the husband is not the biological father of the child conceived before the marriage, Article 53 of the KHI can no longer serve as a sufficient legal basis because its normative condition-marriage to "the man who caused her pregnancy"-was never fulfilled. In such circumstances, Yusri explained that Religious Court judges must refer to other jurisprudence, particularly

Constitutional Court Decision No. 46/PUU-VIII/2010. That decision held that Article 43(1) of Law No. 1 of 1974 on Marriage was unconstitutional insofar as it was interpreted to eliminate the civil relationship between a child born outside marriage and a man who, on the basis of science and technology or other lawful evidence, is proven to have a blood relationship with the child as the biological father (Constitutional Court Decision No. 46/PUU-VIII/2010, decided February 17, 2012). Under the ruling, a child born outside marriage may have a civil relationship not only with the mother and the mother's family but also with the man proven to be the biological father and his family, provided that the blood relationship can be established.

The intersection between Article 53 of the KHI and Constitutional Court Decision No. 46/PUU-VIII/2010 reveals a fundamental regulatory gap. Article 53 was designed to regulate the validity of a marriage, not to determine the biological truth of paternity, whereas the Constitutional Court decision was designed to regulate the civil relationship of a child born outside marriage, not the validity of a marriage involving pregnancy. When the two issues converge in a single case—for example, when the woman marries a man who is later shown not to be the biological father—Religious Court judges face an absence of technical guidance on how the two legal frameworks should be reconciled. The difficulty is particularly acute in relation to the child's lineage status, the right of a future daughter to a marriage guardian, and inheritance rights. The issue becomes even more complicated when connected to the practice of *tajdid al-nikah*, because renewing the contract after childbirth does not itself answer the question of biological paternity and may create an additional layer of uncertainty.

From the perspective of *maqasid al-shariah*, this loophole indicates that protecting lineage (*hifz al-nasl*), which underlies Article 53 of the KHI, cannot be achieved solely through certainty in marriage procedure. It also requires confidence in the material truth of the biological relationship. Syarifuddin argues that the determination of lineage in Islamic law should ideally rest on convincing evidence rather than merely formal acknowledgment (Syarifuddin, 2014, pp. 210-214). A comparative study by Afkarina and Romadhan similarly highlights biological-paternity proof as a weakness when Article 53 of the KHI is compared with Article 32 of the Indonesian Civil Code concerning the legitimation of children born outside marriage. Both legal instruments have yet to integrate advances in modern biological testing into registration or evidentiary mechanisms in court (Afkarina & Romadhan, 2023). Therefore, any technical clarification of Article 53 should consider incorporating a verification mechanism, at least for disputed cases before the Religious Courts.

Implications of Interpretive Disparities and the Legal Loophole in Article 53 of the KHI for Legal Certainty in Islamic Family Law

Legal certainty refers to a condition in which law can be applied consistently so that it provides protection and clarity for society (Rahardjo, 2006, p. 55). In the context of Islamic law, legal certainty concerns not only written rules but also the conformity of their implementation with justice, utility, and the objectives of the Sharia (Marzuki, 2020, pp. 136-139). Based on the normative analysis and field findings discussed above, disparities in the interpretation of Article 53 of the KHI and its accompanying legal loophole produce at least four concrete implications for legal certainty in Indonesian Islamic family law.

The first implication concerns marriage administration. The contrast between Fauzi and Zainuddin, who work in the same KUA, demonstrates that the absence of technical guidance clarifying the position of Article 53 regarding juristic disagreement over *iddah* leads some officials to apply the article strictly according to its normative wording, while others—driven by personal religious caution or local social pressure—add an unwritten recommendation to perform *tajdid al-nikah*. As confirmed by Lukman Hakim Hasibuan, two couples in legally comparable circumstances can therefore receive different administrative treatment, potentially even from different officials in the same office, rather than only across different KUA jurisdictions as reported in prior studies.

The second implication concerns clarity in the legal status of children. The practice of *tajdid al-nikah*, which arises from doubts among some marriage officials and community members about the validity of marriage during pregnancy, may itself generate new questions regarding the status of a child born before the renewed marriage contract, including the child's civil rights in relation to the father. The problem becomes more complex when combined with the loophole identified by Yusri, namely the possibility that the man who marries the woman is not the biological father. In that situation, the child's lineage status may become suspended between two different legal regimes: Article 53 of the KHI, which focuses on the validity of the marriage, and Constitutional Court Decision No. 46/PUU-VIII/2010, which focuses on biological relationship.

The third implication concerns consistency in Religious Court judgments. In cases connected with marriage during pregnancy, such as marriage-dispensation petitions, applications to determine a child's parentage, or inheritance disputes involving a child from a marriage later subjected to *tajdid*, judges may produce divergent reasoning because no guideline explains how juristic disagreement concerning *iddah* and the evidentiary problem of biological paternity should be treated within the framework of Article 53 of the KHI. Yusri's account indicates that judges may be required to reason independently from case to case without a uniform basis, a condition that theoretically creates room for inconsistent ratio decidendi among judges and Religious Courts.

The fourth implication, particularly evident in Ridwan's sociological perspective, concerns inner and religious certainty within the community. Legal certainty understood solely in formal-legal terms, such as the issuance of a marriage certificate, does not necessarily generate psychological reassurance for the parties or full acceptance within the surrounding community as long as *fiqh*-based doubts regarding marriage without a waiting period remain unanswered by official religious authorities. Complete legal certainty in Islamic family law should therefore be assessed not only through administrative legality but also through social-religious legitimacy. As Ridwan emphasized, the community needs a clear official *fatwa* or guideline from the state's religious authorities regarding the status of *iddah* in such cases.

These four implications demonstrate that the issue of *iddah* under Article 53 of the KHI is not merely an academic debate in *fiqh al-munakahat*. It directly affects legal certainty and the protection of the rights of women and children in the practice of Islamic family law in Indonesia. Greater clarification is therefore required through implementing regulations, circular letters, or technical guidelines issued by competent authorities so that Article 53 can be applied more uniformly by KUA offices and Religious Courts throughout Indonesia while also addressing the public need for religious reassurance.

4. CONCLUSION

Four conclusions may be drawn from the findings and discussion. First, the status of *iddah* for women pregnant outside marriage remains a disputed issue (*mukhtalaf fih*) among Islamic jurists, who can be divided into three positions: permission to marry without a waiting period to any man, permission to marry without a waiting period only to the man who caused the pregnancy, and prohibition of marriage altogether until childbirth. Article 53 of the KHI accommodates the second position without explaining the basis for its selection or its stance toward the other two. Second, field findings from the Medan Amplas District Office of Religious Affairs and the Medan Religious Court show that disparities in interpreting Article 53 occur not only across regions, as earlier studies have suggested, but also among individual officials within the same institution, as demonstrated by the contrasting textual-administrative and contextual-*fiqh* approaches of two Marriage Registrars working in the same office. Third, the disparity is rooted in the absence of a standardized SOP and produces a critical legal loophole when the man marrying the pregnant woman is not the biological father of the child, requiring Article 53 of the KHI to be reconciled with Constitutional Court Decision No. 46/PUU-VIII/2010 concerning the civil relationship between a child and the biological father. Fourth, these interpretive disparities and legal gaps result in non-uniform marriage administration, potential uncertainty over children's legal status, inconsistency in Religious Court decisions, and psychological-religious anxiety within society. Legal certainty regarding marriage involving pregnancy outside marriage has therefore not been fully realized in Indonesia, either in formal-legal or social-religious terms.

This study recommends that the competent authorities, particularly the Directorate General of Islamic Community Guidance of the Ministry of Religious Affairs and the Supreme Court, formulate technical guidelines clarifying the status of *iddah* in marriages involving pregnancy outside marriage as an explanation of Article 53 of the KHI. Such guidance should also regulate a mechanism for verifying the identity of the man responsible for the pregnancy in order to close the legal loophole identified in this study and promote uniform implementation at KUA offices and Religious Courts throughout Indonesia. Future research should empirically examine these interpretive disparities across a wider geographical scope and specifically assess the effectiveness of *tajdid al-nikah* in providing certainty regarding a child's lineage status from the perspective of Islamic family law.

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