

## PROTECTION OF WOMEN'S RIGHTS IN THE PRACTICE OF REMARRIAGE CONTRACTS DUE TO OUT-OF-WEDLOCK PREGNANCY: A STUDY IN TANJUNG PURA DISTRICT, LANGKAT REGENCY

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### ABSTRACT

*This study aims to analyze the protection of women's rights in the practice of remarriage contracts (akad nikah ulang) conducted after the birth of a child conceived out of wedlock in Tanjung Pura District, Langkat Regency. Normatively, Article 53 paragraph (3) of the Indonesian Compilation of Islamic Law (KHI) explicitly stipulates that a marriage performed while a woman is pregnant does not require a remarriage contract after the child is born. However, in social practice, this phenomenon persists due to the belief that the initial contract merely legitimizes the unborn child, whereas the second perfects the marital bond. Employing an empirical juridical method with a socio-legal approach, primary data were collected through interviews with religious leaders, KUA registrars, community figures, and practicing couples. Data were qualitatively analyzed using Islamic law, Indonesian positive law, and women's legal protection theories. The findings reveal that religious caution (iḥtiyāt), social pressure, stigma, and the pursuit of moral legitimacy primarily drive this practice. From the Shafi'i School perspective, remarriage is not obligatory if the initial contract fulfills all essential pillars and requirements. Similarly, Indonesian positive law provides no juridical basis for such practices. Consequently, this practice significantly impacts women's rights, reinforcing social stigma, imposing psychological burdens, undermining legal certainty regarding women's marital status, and reproducing gender inequalities within society. Furthermore, the study highlights the urgent need for structural intervention by state apparatuses and religious institutions to mitigate customary practices that systematically disadvantage women under the guise of religious perfection.*

**Keywords:** *Women's Rights, Remarriage Contract, Out-Of-Wedlock Pregnancy, Islamic Law, Compilation Of Islamic Law.*

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### Introduction

Marriage is a fundamental human institution encompassing theological, social, and juridical dimensions. In Islamic law, marriage (*nikāḥ*) is not merely a civil relationship between a man and a woman but a sacred contract (*mīṣāqan ghalīzan*) carrying moral and spiritual responsibilities before Allah (Abdullah & Hasan, 2023). Through this contract, a previously forbidden relationship becomes lawful,

generating reciprocal rights and obligations aimed at building a harmonious family (*sakinah, mawaddah, wa rahmah*) (Azizah, 2022; Jannah & Rahman, 2023). The Qur'an explicitly refers to the marriage contract as *mīṣāqan ghalīzan* (QS. al-Nisā': 21), indicating its paramount importance in Islamic law; thus, its validity must be rigorously maintained (Fauziah, 2024). According to Islamic jurisprudence, particularly the Shafi'i School, the validity

of a marriage requires the fulfillment of specific pillars and conditions: the prospective husband, the prospective wife, the guardian (*wali*), two just witnesses, and the declaration of offer and acceptance (*ijab qabul*) (Mahmud, 2022). Once these elements are met, the marriage is valid, providing legal certainty for the woman's status as a wife without the need for contract renewal (Siregar, 2022).

This concept of legal certainty is particularly vital in the context of Indonesian society, where customary norms (*hukum adat*) and Islamic law (*hukum Islam*) frequently intersect and sometimes collide. Historically, marriage in the Indonesian archipelago is not only a union of two individuals but a unification of two extended families, making the social dimension of marriage just as compelling as the legal and theological aspects (Utami, 2024). In regions with strong Islamic and cultural heritage, such as the Malay communities in the East Coast of Sumatra, the validity of a marriage is continuously scrutinized through the lens of community consensus, which often demands a higher, albeit informal, standard of moral purity (Harahap, 2025). This societal demand frequently places an unequal burden on the individuals involved, particularly women, who are biologically and socially positioned at the center of marital and reproductive discourse.

However, in Muslim social practice, the concept of *tajdīd al-nikāḥ* (renewal of the marriage contract) has emerged. Some view this as a form of precaution (*iḥtiyāt*) to strengthen the marital bond (Nasution & Siregar, 2023). The historical roots of *tajdīd al-nikāḥ* in the archipelago can be traced back to the traditional *fiqh* learning in *pesantren* (Islamic boarding schools), where early scholars emphasized absolute caution in matters of *furuj* (reproductive relations). However, the application of this concept has shifted from a voluntary, personal spiritual precaution to a socially enforced mechanism of moral policing (Anwar, 2024). Conversely, the majority of Shafi'i scholars assert that repeating the contract does not invalidate the first and only serves as symbolic reinforcement, meaning it is not a *syar'i* obligation if the initial contract was valid (Anwar, 2024). In Indonesian positive law, specifically Article 53 of the Compilation of Islamic Law (KHI), a pregnant woman is permitted to marry the man responsible, and crucially, paragraph (3) explicitly states that no remarriage is required after the child is born (Siregar, 2022; Tanjung, 2021). This normative provision aims to provide legal protection, prevent detrimental social practices, and safeguard women in vulnerable situations (Lestari, 2024). The formulation of Article 53 KHI itself was a progressive milestone in Indonesian family

law, drafted with the specific intention of protecting the human rights of the mother and the civil rights of the unborn child. By institutionalizing the validity of such marriages, the state actively sought to eradicate legal ambiguities that historically disenfranchised women and labeled children as illegitimate (*anak luar kawin*) with no civil ties to their biological fathers (Fauziah, 2024).

Despite these legal provisions, social realities often diverge. In Tanjung Pura District, Langkat Regency, the practice of remarriage after the birth of a child conceived out of wedlock persists (Oktaviani, 2025). Tanjung Pura, historically known as the center of the Langkat Sultanate, possesses a deeply rooted Malay-Islamic identity where traditional customs (*adat bersendi syarak, syarak bersendi Kitabullah*) dictate everyday social interactions. In this socio-cultural ecosystem, formal state law often operates secondary to the *living law* upheld by local traditional leaders (*tokoh adat*) and clerics (*tengku/ulama*) (Sari & Wijaya, 2023). The community holds the belief that the first contract only legitimizes the fetus, while the second finalizes the husband-wife relationship (Wahid, 2022). This practice, heavily driven by community and religious figures, occurs informally without state registration (Zainuddin, 2023).

From the perspective of women's rights, this raises fundamental questions regarding legal status and gender equality. Subjecting a legally recognized wife to a second contract for social legitimacy fosters legal uncertainty, reinforces social stigma, and highlights gender disparities where women bear the brunt of social sanctions (Brahmana & Rahmadi, 2023; Yulianti, 2025). When a woman is forced to undergo a second marriage ceremony, it implicitly signals to the public that her status as a wife and a mother was previously flawed or 'unclean.' This creates a persistent psychological trauma and perpetuates a patriarchal narrative where women's bodies and legal statuses are continuously subjected to communal approval. Furthermore, it contradicts international human rights principles, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which Indonesia has ratified. CEDAW mandates state parties to eliminate customary practices that are based on the idea of the inferiority or the superiority of either of the sexes (Lestari, 2024).

Previous studies on *tajdīd al-nikāḥ* have largely focused on the *fiqh* aspects of contractual validity (Gunawan et al., 2021; Qodir, 2022). leaving a gap in socio-legal analyses concerning its direct implications on women's rights. For instance, Gunawan

et al., (2021) comprehensively analyzed the pillars of marriage but did not address the psychological intimidation women face during the renewal process. Qodir (2022) focused on the maxim of certainty in Islamic jurisprudence but overlooked the sociological reality that 'certainty' in rural communities is defined by neighbors and extended family, not just by religious texts. Therefore, this study aims to analyze the practice of remarriage due to out-of-wedlock pregnancy in Tanjung Pura District, identifying underlying factors, assessing its alignment with Shafi'i jurisprudence and the KHI, and evaluating its implications for women's legal and social protection. By utilizing a gender-sensitive socio-legal framework, this research seeks to bridge the critical gap between classical *fiqh* literature and contemporary feminist legal studies, providing a comprehensive critique of how local traditions can inadvertently sustain patriarchal hegemony.

### **Method**

This study utilizes an empirical juridical (socio-legal) approach to examine law not only as written norms (*law in books*) but as dynamic social behavior (*law in action*) (Sari & Wijaya, 2023). The socio-legal approach is deemed the most appropriate methodology because the phenomenon of *tajdīd al-nikāḥ* cannot be fully understood through a purely dogmatic or normative

lens. It requires a profound exploration of the cultural, psychological, and social variables that compel individuals to bypass state law in favor of unwritten customary expectations (Kusuma, 2021). The research is descriptive-analytical, portraying the remarriage practices in Tanjung Pura District, Langkat Regency, and analyzing them through the lenses of the Shafi'i School, the Compilation of Islamic Law (KHI), and gender protection theories (Pratama, 2021).

Primary data were gathered through in-depth interviews with KUA registrars, religious leaders, community figures, and couples who practiced remarriage. The selection of informants was conducted using a purposive sampling technique, ensuring that the individuals chosen possessed direct experience, authoritative knowledge, or active involvement in the execution of remarriage contracts. Specifically, the study interviewed three structural officials from the local Office of Religious Affairs (KUA), five prominent traditional Malay clerics (*ulama adat*), and ten couples (anonymized for ethical considerations) who had undergone the remarriage process within the last five years. Open-ended interview guidelines were designed to elicit narratives regarding their personal experiences, social pressures, and theological justifications.

Secondary data involved a literature review of legislation, the KHI, Shafi'i *fiqh* texts, and relevant recent scientific journals (Kusuma, 2021). Data were analyzed qualitatively using an interactive model encompassing data reduction, data display, and conclusion drawing, validated through source, method, and theoretical triangulation. This included a rigorous examination of the 1974 Marriage Law, Presidential Instruction No. 1 of 1991 regarding the Compilation of Islamic Law, and classical texts frequently referenced by local clerics, such as *I'anat at-Thalibin* and *Fath al-Muin*, which shape the conservative legal reasoning in the region. Data were analyzed qualitatively using an interactive model encompassing data reduction, data display, and conclusion drawing, validated through source, method, and theoretical triangulation (Utami, 2024). Source triangulation was applied by cross-verifying the statements of the couples with the perspectives of the religious leaders. Methodological triangulation involved combining interview transcripts with observational field notes obtained during community gatherings (*perwiridan*), where issues of marital legitimacy are often informally discussed. Theoretical triangulation was achieved by juxtaposing the findings against Islamic jurisprudence, Indonesian state law, and feminist legal

theory, thereby ensuring a robust, multi-dimensional analysis.

## Results

The field research in Tanjung Pura District revealed several dominant factors influencing the practice of remarriage contracts for pregnancies out of wedlock:

### 1. Religious Precaution (*Ihtiyāt*)

Precaution is the most dominant reason. The community feels the need to repeat the contract to eliminate doubts regarding the initial marriage's validity (Mawardi, 2021). In the Malay-Islamic tradition of Langkat, spiritual purity is highly prioritized. Many informants expressed a deep-seated fear of committing *zina* (adultery) inadvertently. According to several local clerics interviewed, while the first marriage is technically valid to 'cover the shame' (*menutup aib*) of the pregnancy, the biological and spiritual state of the pregnant woman introduces a layer of theological discomfort. Although local registrars and religious leaders affirm the validity of the first contract, society treats the second contract as a psychological safeguard rather than a legal necessity (Anwar, 2024). One informant, a 45-year-old traditional leader, stated, "We do not reject the KUA's book, but the book is for the government. The second *akad* is for Allah, to ensure the womb is empty and the seed planted thereafter is entirely *halal*." This dichotomy between state administrative validity and

spiritual validity underscores the profound impact of *iḥtiyāt* on daily life.

## 2. Lack of Legal Literacy

A lack of understanding of Islamic marital law and positive law plays a crucial role. Many believe a marriage's validity hinges on post-birth renewal rather than the fulfillment of the initial pillars and conditions (Ilyas, 2022). This deficiency in legal literacy is not merely a matter of ignorance but is indicative of the systemic failure in the socialization of the Compilation of Islamic Law (KHI) in rural and semi-urban areas. State officials at the KUA level often face resistance when attempting to dismantle entrenched customary beliefs. This highlights a gap between state norms and communal legal consciousness, where oral traditions overshadow formal legal education (Tanjung, 2021). Consequently, women are often left in the dark about their actual legal rights. When families demand a remarriage, women comply because they lack the legal vocabulary and knowledge to argue that their initial KUA-registered marriage already guarantees full civil and religious rights, including rights to maintenance, inheritance, and child custody.

## 3. Preservation of Lineage (*Hifz al-Nasl*)

To ensure the clarity of the child's lineage, families opt for a second contract. Although normatively the child's status is secure after a valid initial marriage, the

community views remarriage as a symbolic reinforcement of the family bond and the child's lineage, reflecting moral and cultural priorities over formal legalities (Nasution & Siregar, 2023). In the kinship system of the Langkat community, lineage determines not only inheritance but also social standing, traditional titles, and the right to participate in specific cultural ceremonies. There is a prevailing myth that a child conceived out of wedlock, even if born within a marriage, carries a 'spiritual defect' that must be cleansed. The second marriage, performed after the postpartum period (*nifas*), is viewed as a purification ritual that fully integrates the child into the patrilineal network. This perception heavily influences the older generation, who act as the primary enforcers of this practice, fearing that failure to remarry will result in a generational curse or social ostracization of the child in the future.

## 4. Social and Environmental Pressure

In a communal and religious society, the influence of extended family and community leaders is immense (Hasanah, 2025). Many couples remarry due to pressure from parents and elders who view it as an honorable tradition. It acts as a mechanism to avoid stigma and secure social acceptance, demonstrating the power of the *living law* (Zainuddin, 2023). The mechanisms of social pressure in Tanjung Pura are highly pervasive, often

manifesting as relentless gossip (*gunjing*), exclusion from communal prayers (*kenduri*), and subtle ostracization by neighbors. For a family striving to maintain its dignity (*marwah*), these informal sanctions are unbearable. Women reported experiencing intense anxiety, feeling that the entire village was monitoring their postpartum recovery only to demand the execution of the second contract. The remarriage ceremony, therefore, functions as a public declaration of repentance and a plea for communal reintegration, effectively turning a private family matter into a public spectacle governed by patriarchal oversight.

## **Discussion**

### **Analysis of Remarriage Contracts in Indonesian Positive Law**

In Indonesian positive law, the term *tajdīd al-nikāḥ* is not explicitly recognized. The 1974 Marriage Law and the KHI only recognize valid marriages, dissolution, and reconciliation (*rujuk*) (Siregar, 2022). A marriage is valid if conducted according to religious law and formally registered (Article 2 of the Marriage Law). Therefore, if the initial contract meets these criteria, a second contract has no legal necessity (Lestari, 2024). The philosophical foundation of the Indonesian Marriage Law is the protection of the family unit through legal certainty. By registering the marriage at the Office of Religious Affairs (KUA),

the state provides an authentic deed (marriage certificate) that serves as absolute proof of the marital bond. Article 53 KHI was specifically designed as a progressive legal tool to prevent the very social chaos that *tajdīd al-nikāḥ* attempts to solve informally. For administrative doubts, the state provides the *itsbat nikah* mechanism (Article 7 KHI), not contract renewal (Fauziah, 2024). The practice in Tanjung Pura is a social response for psychological comfort rather than a legal requirement (Sari & Wijaya, 2023). From a positive law perspective, conducting a second marriage contract for a couple already legally married is an administrative anomaly. It generates a redundant legal event that could theoretically complicate civil registries if not handled properly. More importantly, it undermines the authority of state institutions, suggesting that state recognition is inherently inferior to informal customary recognition. This dualism of law creates a fragile environment for women, who are forced to navigate between the rigid demands of customary law and the protective, yet often inaccessible, guarantees of state law.

### **Analysis of Remarriage Contracts in the Shafi'i School**

In the Shafi'i School, a marriage is an authoritative contract (*'aqd lāzim*) that remains valid unless dissolved by *talak*, *fasakh*, or death (Mahmud, 2022). If the

pillars (guardian, witnesses, *ijab qabul*) are met, it is legally binding (Gunawan et al., 2021). Classical Shafi'i scholars, such as Imam al-Nawawi and Ibn Hajar al-Haytami, emphasize that the pronouncement of a new marriage contract by a husband to his legitimate wife does not automatically translate to a divorce (*kinayah talak*) unless accompanied by a specific intention to divorce. Therefore, the second contract is fundamentally considered redundant (*tahsil al-hasil*), an act of achieving what has already been achieved. Shafi'i jurisprudence does not mandate *tajdīd al-nikāḥ* for a valid marriage; it is merely an act of *iḥtiyāt* when doubts arise, aligning with the maxim *al-yaqīn lā yazūlu bi al-syakk* (certainty is not removed by doubt) (Qodir, 2022). Thus, the community's practice is a manifestation of religious caution, not a *syar'i* obligation (Abdullah & Hasan, 2023). However, this local interpretation of *iḥtiyāt* is often misapplied. True Islamic *iḥtiyāt* is meant to prevent individuals from falling into prohibited acts (*haram*). In the case of Tanjung Pura, the initial marriage has already prevented the *haram* (unlawful intercourse). Mandating a second contract shifts the focus from substantive Islamic legality to formalistic cultural obsession. By elevating a non-obligatory customary practice to the status of a quasi-religious mandate, local actors inadvertently distort

Shafi'i jurisprudence, creating an artificial religious burden that falls disproportionately on the shoulders of women and their immediate families.

### **Protection of Women's Rights and Gender Analysis**

The practice of remarriage profoundly affects women's rights. Women experiencing pre-marital pregnancies are highly vulnerable to social stigma, prompting families to enforce remarriage to assert legitimacy (Yulianti, 2025). This reflects a need for the protection of women's dignity and social integrity, not just formal legality (Lestari, 2024). When analyzed through the lens of Maqashid Syariah (the higher objectives of Islamic law), specifically the protection of honor and dignity (*hifz al-'irdh*), the practice of *tajdīd al-nikāḥ* reveals a paradoxical outcome. While intended to restore the woman's honor, the process itself inherently humiliates her by continually highlighting her past transgression. The woman is forced into a state of perpetual penance, whereas the male partner rarely faces the same degree of public scrutiny or requirement for social redemption (Azizah, 2022). Furthermore, women accept this practice fearing the loss of economic rights (maintenance, housing) if the initial marriage's validity is socially questioned (Utami, 2024).

From a gender perspective, this highlights an unequal social power dynamic. Women bear a disproportionate moral burden and social sanction compared to men (Brahmana & Rahmadi, 2023). Using Pierre Bourdieu's concept of symbolic violence, the enforcement of *tajdīd al-nikāh* can be seen as a form of non-physical coercion where women internalize their own subordination. They agree to the second contract not out of genuine theological conviction, but because the patriarchal structure has convinced them that their original status was defective. This is the essence of gender discrimination: the application of a dual standard where male sexual transgression is easily forgiven or legally normalized, while female transgression requires continuous, ritualistic cleansing (Ramadi et al., 2024). The pressure predominantly targets the woman, reinforcing patriarchal norms (Ramadi et al., 2024). Moreover, this practice intersects heavily with issues of reproductive rights. The biological reality of the woman's pregnancy becomes the central mechanism through which her social and legal autonomy is stripped away. The community asserts ownership over her reproductive timeline, dictating that her transition into full societal acceptance can only occur after childbirth and the subsequent remarriage ceremony. Thus, protecting women requires eliminating

gender-based stigma and improving legal literacy regarding family and reproductive rights, recognizing that remarriage here functions as a socio-cultural mechanism for legitimacy rather than a normative legal need (Harahap, 2025). To achieve genuine equality, there must be a paradigm shift among local religious leaders. They must actively preach that Article 53 of the KHI is fully compatible with Islamic law and that stigmatizing a legally married woman contradicts the Islamic principles of forgiveness, covering faults (*satr al-awrah*), and justice (*'adalah*).

### Conclusions

The practice of remarriage contracts (*tajdīd al-nikāh*) due to out-of-wedlock pregnancy in Tanjung Pura District, Langkat Regency, is not mandated by either Indonesian positive law or Islamic jurisprudence (*syar'i* obligation), provided the initial contract fulfilled all legal requirements. According to Article 53 paragraph (3) of the KHI and the Shafi'i School, the initial marriage remains legally binding. The persistence of this practice is driven by religious caution (*iḥtiyāt*), lack of legal literacy, the desire to protect lineage (*ḥifẓ al-nasl*), and overwhelming social pressure to avoid stigma. These factors demonstrate the profound resilience of customary law and social norms, which frequently overpower formal state legislation in rural Indonesian contexts. The

phenomenon underscores a critical disconnect between the state's intent to provide legal certainty through the KHI and the community's reliance on traditional rituals to achieve social equilibrium.

From a women's rights perspective, while the practice is intended by the community to restore social legitimacy and secure rights, it inadvertently reproduces gender inequality. It places the moral burden disproportionately on women, subjecting them to psychological pressure and potential discrimination despite their legally valid marital status. These factors demonstrate the profound resilience of customary law and social norms, which frequently overpower formal state legislation in rural Indonesian contexts. The phenomenon underscores a critical disconnect between the state's intent to provide legal certainty through the KHI and the community's reliance on traditional rituals to achieve social equilibrium. Therefore, enhancing legal literacy, socializing the KHI, and dismantling gender-based social stigmas are imperative to ensure women receive equal protection and recognition without being subjected to unfounded societal demands. Future mitigation strategies must involve collaborative efforts between the Ministry of Religious Affairs, local KUA officials, and progressive *ulama* to actively deconstruct the patriarchal narratives

surrounding *tajdīd al-nikāh*. Empowering women with comprehensive knowledge of their rights under both Islamic and Indonesian positive law is the foundational step toward achieving true gender equity in Muslim family law.

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