

LEGAL CONSEQUENCES OF PREGNANCY OUT OF WEDLOCK IN ARTICLE 53 OF THE KOMPILASI HUKUM ISLAM (KHI) CONCERNING CHILD CUSTODY

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Abstract

Background - Pregnant marriage, as regulated in Article 53 of the Compilation of Islamic Law (KHI), is a social phenomenon that has significant legal implications, especially related to the status of the child born and his custody. Article 53 of the KHI states that a pregnant woman out of wedlock can marry the man who impregnated her. However, children born from the marriage only have a relationship with their mother, unless there is an acknowledgment from the father. This condition raises various legal problems, especially in terms of child custody (hadhanah).

Purpose - This study aims to analyze the consequences of the law of pregnant marriage as stipulated in Article 53 of the KHI on child custody

methodology - normative juridical methods. The approach used includes legislative, conceptual, and case approaches. The data used are in the form of primary and secondary legal sources, which are analyzed descriptively-analytically.

Findings - The results of the study show that in the case of pregnant marriage, child custody is more likely to be given to the mother according to the principles of Islamic law, because the child only has a nasab relationship with his mother. However, religious courts can grant custody to other parties, including the biological father, if it meets the principle of best interest of the child. The implementation of Article 53 of the KHI must continue to prioritize the protection of children as the most vulnerable party in cases of marriage and pregnancy. Thus, this study provides an in-depth understanding of the impact of marriage and pregnancy law on child custody and offers recommendations for the implementation of laws that are more in favor of children's interests.

Originality - Originality: This study is novel because it analyzes the specific relationship between the provisions of Article 53 of the Compilation of Islamic Law (KHI) on pregnant marriage and its implications for child custody (hadhanah). This focus provides a new perspective on issues that have not been discussed in depth, especially in the context of law implementation in Indonesia. Value: Academic: This study makes an important contribution to the study of Islamic law and family law in Indonesia by highlighting the application of relevant articles in the context of pregnant marriage cases. Practical: This research is useful for legal practitioners, religious courts, and the public to understand how the rules in the KHI apply to child custody arrangements in cases of pregnant marriage, so that it can be a guide in the legal process. Social: Provides insight for the community on how Islamic law pays attention to aspects of justice and child protection in complex family situations

Keywords: Pregnant Marriage, Article 53 of the KHI, Child Custody, Compilation of Islamic Law.
