The Law on Marriage for Pregnant Women Due to Adultery in the Socio-Cultural Perspective of Society

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Abstract

This research wants to explore the law, factors and causes, implications, public perception, and efforts to overcome pregnancy in marriage due to adultery. This research method is a qualitative descriptive approach. Data collection techniques through a. Observation at the research location. In-depth interviews with informants. Documentation of existing data such as meeting notes, books, and archives related to research. The conclusion is that the impact of cases of pregnant marriages due to adultery which occur repeatedly has shown that there is a form of announcement that reflects a shift in the socio-cultural perception of society regarding the issue of marriages of pregnant women due to adultery. This reality is contradictory in the context of social law. Efforts to address the problem of pregnant marriages have been carried out by existing social institutions that do not represent comprehensive and systematic efforts. Therefore, reconstruct the societal paradigm regarding the issue of marriage, and pregnancy due to adultery. To resolve problems that must receive attention from various parties.

Keywords: Marriage Law, Pregnant Women, Adultery, Society

A. Introduction

Marriage is part of the legal instruments prescribed by Islam. This marriage law binds the relationship between men and women who are not mahram, which gives rise to rights and obligations between the two. Marriage is also a form of realization of God's promise to make women wives of the male type (body), so that compatibility and perfect humanity can be realized. He also creates a sense of mawaddah and ar-rahmah between the two of them so that they help each other complete their lives.

The essence of marriage is not only an external bond but also an inner bond between husband and wife in a household life that is harmonious, peaceful, and fostered with love by the will of Allah SWT. It is not only worldly-oriented but also spiritual, making it a sacred matter that must be accounted for morally and spiritually.

The realization of this is that Islam regulates marriage issues in a very detailed and thorough manner. Islam sets the conditions and pillars of marriage. In fact, not only, Islam also provides instructions and guidance starting from the pre-wedding process, starting from selecting a partner,
the process leading up to marriage, to its implementation. All of this is carried out by adhering to
the noble values of Islam.

This is not only a form of manifestation of the urgency and nobility of the institution of
marriage, but also to ensure the realization of the goals of marriage. Therefore, this is where formal
legal certainty is important to ensure the realization of the goals of a marriage. In this case, the
institution of marriage has an important role in forming relationships whose existence is
recognized. However, in subsequent developments, the institution of marriage is faced with various
challenges that could threaten its existence. Namely when faced with social problems that can
disturb the sanctity of the institution of marriage. One of them is the emergence of the problem of
pregnancies that occur outside of marriage. This problem becomes increasingly complicated when
in today's social life it turns out that cases like this often occur in society. The various factors
behind the marriage of pregnant women due to adultery in Bandung Regency reflect the social
problems within it.

Problems of education, quality of family and environment as well as understanding of
traditions which are reduced by the development of society are things that need to be considered
regarding the incidence of marriages of women who become pregnant due to adultery. These
realities include the marriage of pregnant women due to adultery which occurs in the Bandung
Regency area with various causal factors.

This problem is not only related to the number of cases of pregnant marriages due to adultery
that occurs, but from a sociological aspect, this is of concern because there is still a repetition of
the same cases without maximum mitigation efforts. The repetition of cases of marriage of
pregnant women due to adultery is even accompanied by a culturally permissive attitude. This
attitude is reflected in the case of marriages of women who become pregnant due to adultery, most
of which are celebrated as normal marriages so that the impression of discomfort, shame, or
disgrace becomes an excuse. Distortion of understanding related to the marriage of pregnant
women due to adultery has become a social fact that represents contradictory societal perceptions
regarding efforts to overcome the problem of marrying women pregnant due to adultery.

The marriage of pregnant women due to adultery as part of a legal issue has become a
discourse among fiqh scholars so on this issue there are various views. As Syafi’i allowed and
considered his marriage to be valid. Abu Hanifah also thinks so but adds the requirement that
a pregnant woman can be married but cannot have sex before she gives birth. Meanwhile, the
opposite opinion was given by Maliki and Ahmad Ibn Hambal who forbade the implementation of
this marriage

The perception of formal law that does not touch on the existence of elements of deviation
from norms in the issue of the marriage of pregnant women due to adultery as part of a social
problem has implications for the weak functioning of the law in terms of social control. Law as an
existing instrument in people's lives will ultimately reflect the degradation of moral values and a
paradigm shift in a society that is influenced by the permissiveness of legal instruments and the
need for dynamization of legal provisions in realizing their objectives by the problems, conditions,
and needs of society.

Likewise, the socio-cultural perception that exists in society should be able to play a role in
preventing and dealing with cases of pregnant women marrying because of adultery. Socio-cultural
forces that have existed long before legal formalization with moral values, religious norms, and
various patterns of social interaction are important aspects that can play a role in social control,
including in the field of marriage law. However, the reality represents a shift in values regarding
this matter.

Apathy or low levels of social awareness, individualism, discomfort, and permissiveness in
society have implications for the lack of efforts to address the issue of marriage incidents involving
women becoming pregnant due to adultery. This is also indicated by the public's perception of
understanding and awareness of the law regarding the marriage of pregnant women due to adultery
which does not indicate that the issue of this marriage event is a worrying social problem. This is
a study that needs to be carried out because the problem of marriage incidents involving pregnant
women due to adultery has legal and sociological implications which also influence the social structure in the context of the realization of legal order.

B. Research Methods

This research is descriptive qualitative, namely by describing the application of legal regulation in the context of its implementation in society to explain it systematically, factually, and accurately. According to Soerjono, and Soekanto, descriptive research is also intended to confirm hypotheses, so that it can help strengthen old theories or develop new theories.

1. Data Source

This research is included in the field research category so the type of data used is primary data in the form of findings or facts obtained from the field. The data source in this research is the people of Bandung Regency, represented by sources who have relevance to the marriage problem of women who become pregnant due to adultery. The data sources in this case are the perpetrators of pregnant marriages due to adultery, the parents of the perpetrators of pregnant marriages, employees of the religious affairs office, religious leaders, community leaders, and local government officials.

2. Data Collection Techniques

Data collection techniques are an important element in research. Therefore, the use of data collection techniques is closely related to the relevance of the type and objectives of the research. In this research, the following data collection techniques were used:

   a. Observation This observation technique is a data collection technique carried out through direct observation of the research object. This observation was carried out on the social or socio-cultural patterns that exist in Bandung Regency, the paradigm and attitudes of society towards the widespread marriage of pregnant women due to adultery, social behavior such as social patterns, the role of parents in child development, the social cohesion of families experiencing this problem, as well as various actions from elements of society and the state as well as activities of social organizations, both formal and informal, which represent a form of response to the marriage of pregnant women due to adultery.

   b. An interview is a conversation with a specific purpose carried out by two parties, namely the interviewer who asks questions and the interviewee who provides answers to those questions. With interviews, it is hoped that researchers will obtain more in-depth information about the topic being researched, which cannot be found through observation.

   c. Documentation is a technique for searching for data in the form of notes, transcripts, books, newspapers, magazines, inscriptions, agenda meeting minutes, and so on, both as a source of study, explanation, and strengthening of data obtained from the field. Documentation in this research includes collecting data or information through written materials, whether from statutory regulations, books, archives, as well as field notes, or the results of interviews and photographs during the research.

C. Results and Discussion

1. Objective Conditions of Marriage for Pregnant Women Due to Adultery in Bandung Regency

Cases of repeated marriages of pregnant women due to adultery indicate that there are social problems that have not been or are not being handled properly. The social problem that is the cause
of cases of pregnant women marrying due to adultery is an issue that is closely related to the implications and efforts to overcome this kind of marriage problem.

For the people of Bandung Regency, the issue of marrying pregnant women due to adultery is not a new and extraordinary problem. Most people view the marriage of pregnant women because adultery is a common thing. This is not only influenced by society's lack of comprehensive understanding of the law regarding the marriage of pregnant women due to adultery, but it is also due to the culture that has developed in social life and the large number of cases of pregnant marriages that occur.

There are various indicators commonly used by society to determine that a marriage is the marriage of a woman who is pregnant due to adultery. Among these indicators are the following:

a. There is a rush to a wedding. Javanese wedding customs, with all their elements, require preparation for the bride and groom's family. It is not only a matter of material things but for the Javanese people, marriage as an important event in the stages of human life must be taken into account when determining the day of the contract (ijab qabul).

b. Changes in a woman's physical condition (perpetrators of pregnant women marrying due to adultery) Marriages of pregnant women due to adultery that occur in teenagers can be indicated by the physical changes in question. The public can find out about this at the wedding reception or when interacting with the person concerned. Physical changes in young women indicate the physical appearance of someone pregnant or pregnant.

c. Birth distance from the marriage contract. The gestational age that is commonly understood both in terms of general public understanding and medical parameters is the basis for the normal gestational age, which is approximately nine months and ten days. In other words, if the distance between the marriage contract and the birth is less than the normal gestational age or the distance between the birth and the contract is only a few months apart from the baby's physical appearance at a normal gestational age, then this is strong evidence that the marriage that occurred was a pregnant marriage.

d. Information that is developing in the Bandung Regency community which still has good sociological ties, generally social interaction takes place quite closely between members of the community. This is not only proven through the practice of social life with the values of cooperation which are still often found in various community activities, but the closeness of this interaction can also be seen from the fact that community members have known each other for quite long distance, not only between RWs.

2. Factors that cause pregnant women to marry due to adultery in Bandung Regency

Marriage is an event that is considered important both from a religious and sociological perspective. The urgency of marriage is then manifested in various efforts and expressions, traditions, and regulations related to marriage. This urgency also cannot be separated from the function of marriage. Functions that do not only concern individual or individual issues but also the functioning of marriage in the context of social life.

In general, the factors that cause the occurrence of marriages of pregnant women due to adultery in Bandung Regency can be divided into two, namely:

a. Internal Factors The internal factors in question are factors that exist in the subject or perpetrator. In several cases of marriages where women become pregnant due to adultery, several internal factors cause the marriage to occur. These factors are: (1) Low awareness of education. In several cases of marriage, pregnant women due to adultery occurred to perpetrators who were still nine years of compulsory school age or perpetrators whose educational level did not reach high school level. In other words, teenagers with such an educational history are very vulnerable to experiencing this kind of marriage. (2) Lack of religious awareness. The lack of formal education among the perpetrators and the neglect of religious education certainly greatly influence the basis of a person's behavior.
Adolescence, with its various problems and psychological immaturity, makes it very possible to fall into negative things such as promiscuity (adultery).

b. External Factors The external factors in question are related to external influences on the perpetrator, in this case, it can be viewed from two factors, namely: (1) Family Factors The family, as the smallest unit of society, is a place that plays a very important role in the formation of a person's character. Interaction between individuals is certainly a factor that inevitably causes incidents of marriage between women who become pregnant due to adultery. (2) Environmental Factors The development of a person's personality cannot be separated from their environment. These environmental factors also play a role in the marriage of women who become pregnant due to adultery.

3. Implications of the Marriage Event of a Pregnant Woman Due to Adultery in the Socio-Cultural Perspective of Bandung Regency Society

The marriage of a pregnant woman due to adultery is a marriage that is preceded by an act that contains an element of violation of norms, whether religious norms or moral norms, and even under certain conditions it can also be considered a form of legal violation. This preliminary act is a form of sexual intercourse carried out outside of legal ties, which in religious terminology is called zina. The act of adultery as a form of violation in the provisions of Islamic law has legal consequences in the form of quite severe sanctions, including being beaten up to stoning. Such sanctions certainly sociologically have implications for society's perspective towards the perpetrator. This kind of action is not only considered a violation of social norms but also a violation of legal norms because it has elements of disturbing public order

Regarding the legal impact of the marriage of a pregnant woman due to adultery, according to the fiqhiyah rule "Whoever hastens something before the time, then he bears the consequences of not getting that something." The existence of a pregnant marriage is a loss of rights that should be obtained for the perpetrator, namely the loss of the birthright of the child conceived to its biological father. This is the legal implication that is directly accepted by those involved in marriage who become pregnant due to adultery

The incidents of marriages of pregnant women due to adultery in Bandung Regency are not recorded in quantity in official documents from any party either at the KUA or in the sub-district. However, it cannot be denied, or is even no longer a public secret that cases of such marriages are something that happens a lot.

Formal legal provisions clearly and unequivocally provide that pregnant marriages are valid and there is no need for remarriage after the unborn baby is born, as stipulated in article 53 KHI paragraph (3). Therefore, for KUA officers, procedurally there is no standard examination regarding this matter. Even if there are direct or indirect indications that the marriage case of a pregnant woman due to adultery was discovered during registration at the KUA.

These indications include the presence of an element of urgency or suddenness in the marriage registration process. Information about cases of marriages of pregnant women due to adultery is also obtained from confessions from people who register marriages, who are generally religious figures or heads of RT and RW who are asked to help take care of the things needed for the marriage process.

The discussion related to the issue of marrying pregnant women due to adultery in this case is not limited to the quantity of cases that occur, but also to the various implications, both related to legal and social issues. The reality of cases of marriages of pregnant women due to adultery which occur repeatedly or continue to occur in Bandung Regency shows that this marriage problem has an impact on the life of the community. These implications are as follows:

a. The marriage of a pregnant woman due to adultery is an obstacle in efforts to foster Islamic law in society - Bandung Regency. Community development is part of the state's obligation to its citizens. However, it should not be understood that this obligation is only the domain of the state or government, the development of the people is also a collective
obligation, including the obligation of every family. Community development certainly
cannot be separated from the law as the controller and guarantor of public order.
Community conduciveness is an important element in creating a prosperous society.
b. The issue of marriage of pregnant women due to adultery that occurs, degrades cultural
values and traditions that have lived and developed in society - Bandung Regency. Marriage from the cultural perspective of Javanese society is a very important phase
because the main meaning of the marriage ceremony is the formation of a new family.
Apart from this meaning, marriage is also interpreted as a way to expand ties of
brotherhood.
c. There is a shift in society's paradigm regarding the issue of marriage to women who
become pregnant due to adultery. Cases of repeated marriages of pregnant women due to
adultery without serious attention from society indicate the socio-cultural perspective of
society towards pregnant marriages as something commonplace. The reality that there are
cases that are related to the subject or perpetrator either by kinship, proximity of domicile
(place of residence), or social interaction correlation, in several cases of marriage of
pregnant women due to adultery shows that the domino effect in these cases occurs
because of the presence of role models in a case. with new cases emerging.
d. The marriage of pregnant women due to adultery is a social problem and reality that is
counterproductive to improving the quality of human resources. A pregnant marriage with
a background that is termed the result of an "accident" provides a picture of an
unintentional event. Therefore, the mental and material readiness of the parties, especially
the bride and groom, is certainly an important issue that has a direct impact on the
formation of the household. Likewise, from a family perspective, a marriage resulting
from an "accident" certainly causes problems, especially psychologically.

4. Bandung Regency Community Perceptions of the Legal Provisions for Marriage for
Pregnant Women Due to Adultery

The law of marrying a pregnant woman due to adultery from a fiqh perspective has different
views among the jurists. The implication of this is that the understanding of law in society varies.
Therefore, in a formal legal manner, the state as the holder of legal authority in Indonesia adopted
a policy through the provisions of the Compilation of Islamic Law, article 53 concerning the
permissibility of marrying a woman who is pregnant due to adultery with a man who impregnated
her without having to carry out a remarriage after the baby she is carrying. was born. This
provision, apart from referring to the views of Shafi'i jurisprudence, also aims to guarantee the
protection of the rights of children in the womb. Apart from this, sociologically, the permissibility
of pregnant marriage is a form of rehabilitation (if there is curative action) for perpetrators of
pregnant marriages due to adultery so that they can socialize with society with the status and spirit
of self-improvement through the marriage.

This perception of legal reasoning is interesting if it is related to religious knowledge that is
understood by the majority of society. Recognition and practice of religious communities
(represented by religious figures) with the Syafi'i school of thought believe more in carrying out
remarriages. And this is what many people in Bandung Regency do in responding to the marriage
of pregnant women due to adultery.

Viewed from a legal sociological point of view, as stated by the head of the KUA - Bandung
Regency, the marriage event of a pregnant woman due to adultery should not be carried out until
the birth of the pregnancy. This is a form of sanction so it becomes a lesson for others. However,
legally there is no prohibition on marriage and the KUA cannot refuse to marry in cases like this
as long as the legal requirements are met. A practice that often occurs in society is marrying off a
partner (adultery) in the marriage of a pregnant woman because zina is cirri (not officially reported)
and after giving birth they are officially married off to the KUA.

This is done in cases of pregnancies that are considered old enough or there are other reasons
that the family believes should not be officially married first. This reason is like the woman's parental blessing which has not been fully given to the man who impregnated her child so the marriage is just a fulfillment of religious issues. This reality shows that society's perception of the marriage of pregnant women due to adultery empirically takes into account recommendations from religious figures rather than making decisions based on state regulations.

The public's legal understanding and awareness of formal provisions like this shows that the effectiveness of existing laws is considered to be less representative of the needs and conditions of society. Understanding the law of marriage for women who become pregnant due to adultery cannot be separated from the formal provisions of article 100 KHI which confirms that children born outside of marriage only have a lineage relationship with their mother and her mother's family. In this regard, the dictum of article 100 of the KHI is in letter law contradictory to the provisions of Islamic law relating to the determination of this nasal. The contradiction in this case lies in the editorial use of "child born out of wedlock" whereas in the provisions of Islamic law, a child who is assigned to his mother is a child born from sexual intercourse outside of wedlock.

5. Efforts to prevent the marriage of pregnant women due to adultery in Bandung Regency

The discussion is related to efforts to overcome the problem of pregnant marriages because adultery cannot be separated from society's paradigm towards this kind of marriage. The societal paradigm that explains the marriage of a pregnant woman due to adultery, both from the family concerned and society in general, shows that such marriages are not a serious problem.

Therefore, in reality, cases of marriage of pregnant women due to adultery still occur in the community - Bandung Regency. However, there is a paradigmatic announcement by society regarding the marriage of a pregnant woman due to adultery, normatively, in this marriage, there are aspects that conflict with both religious norms and social norms. So there are countermeasures from various elements of society, namely as follows:

a. Preventive Efforts Preventive means preventing something from happening. Preventive measures; namely actions taken before a social deviation occurs so that an act of violation can be suppressed or prevented. Preventive control is generally carried out through guidance, direction, and invitation.

b. Curative efforts or actions are efforts that can help cure diseases and so on and have the power to treat them. Curative action; This action is taken after an act of social deviation occurs. This action is aimed at providing awareness to perpetrators of deviation so that they can realize their mistakes and be willing and able to improve their lives so that in the future they will no longer repeat their mistakes.

c. Repressive Efforts Repressive efforts are efforts that are to suppress, restrain, or restrain. Repressive action is an active action taken by related parties when social deviation occurs so that the deviation that is occurring can be dealt with. Such efforts in the matter of marriage are carried out through raids or catching "red-handed" perpetrators of adultery as actions that cause the marriage. This is generally carried out by the authorities or elements of society such as the Community Police Partnership Forum together with local civil service officials.

D. Conclusion and Suggestions

1. Conclusion

The marriage of a pregnant woman due to adultery is a legal issue as well as a social issue. Based on research on the reality of marriages of pregnant women due to adultery that occurred in Bandung Regency, the following can be concluded:

a. The perception of the people of Bandung Regency towards legal provisions regarding the marriage of pregnant women due to adultery is greatly influenced by the function of social
institutions through religious figures and community leaders, this has implications for the effectiveness and understanding of the community toward formal laws regarding the issue of pregnant marriage.

b. The marriage of pregnant women due to adultery which occurred in Bandung Regency was a social reality that was considered normal and then constructed the sociological paradigm of society - Bandung Regency which empirically describes the society's permissiveness towards cases of women pregnant due to adultery.

c. Efforts to overcome the problem of pregnant women marrying due to adultery have been carried out by various parties in Bandung Regency. These efforts include preventive, curative, and repressive efforts. However, existing efforts are still pragmatic and incidental.

2. Suggestions

Based on the results of the discussion and conclusions, recommendations can be made in the form of suggestions, including the following:

a. Legal certainty which is transformed into statutory regulations is not intended as a restraint on legal functions which are tied to textual aspects. Therefore, for related parties, stakeholders, and stakeholders to prioritize the conditions and needs of society by using alternative legal sources extracted from local wisdom, consensus rooted in tradition which can be used as a legal approach to deal with incidents of pregnant women's marriages because of adultery that occurred.

b. The prediction of a Regency City as an educational city with all regional regulations such as the implementation of study hours and curfews must be strictly implemented down to the RT-RT. These positive policies will be more effective if they can collaborate with existing elements of society such as majlis ta'lim, Karang Taruna, or community protectors as government partners to control these policies.

c. The cooperative attitude of the people of Bandung Regency is an important asset in dealing with the marriage of pregnant women because adultery continues to emerge. Every element in society should be aware that this issue is a social problem that must receive serious attention. This awareness must be manifested in a system that is not only incidental. In short, to address and overcome cases of women becoming pregnant due to adultery in Bandung Regency, goodwill from all parties is required.

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