

ABSTRACT

Mufidul Himam. 07210051. 2014. *Analysis of positive effect (Mashlahah) and negative effect (mafsadah) Against Marriage Provisions in the Compilation of Islamic Law Pregnant.* Thesis. Department of Al-Al-shakhsiyyah ahwal, Sharia Faculty, State Islamic University of Maulana Malik Ibrahim Malang. Supervisor: Dr. Hj. Tutik Hamidah, M.Ag

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This study is based on an increasingly phenomenon of adultery. More concern about this phenomenon, because it is supported by the provision of a pregnant married in compilation of Islamic law, this is due to the Compilation of Islamic Law to give legitimacy to the child of a pregnant mate or child of adultery. Remembering the worsening phenomenon of adultery, the philosophy of the application of a pregnant married in KHI is to aim to save the child's future from premarital sex that has lost its relevance, and also the decision of the constitution court on the protection of civil rights for illegitimate children. So the author will mention formulation of the problem as follows: (1) how mashlahah and mafsadah analysis in mating pregnant provisions in the Compilation of Islamic Law? (2) How relevant provisions pregnant mate for today?

In this study, the authors used the descriptive analytical method, which describes and explains the application of theory in KHI provisions pregnant mate that can produce concrete understanding. It is used the deductive mindset, which put forward the theory of a general nature in this case is the provision mating pregnant, then pulled on the more specific issues about the Mashlahah and Mafsadah so the obtaining of the implementation of the provisions pregnant mate is in KHI.

The study concluded that the application of the provisions of mating pregnant in article 53 in the KHI can provide "facilities" to the doer of adultery. The facility is used by the perpetrator, to the child of adultery for getting the legal implications and the same quality as the child of a valid marriage according to KHI. Therefore the adultery has no law problem with their actions, as well as children who are born in the future will have the same legal status to children born as a result of a legal marriage. From this arises, Mafsadah legitimize adultery, because one of the purposes of marriage is procreation legitimate. Through the provisions of mating pregnant in KHI, the doer of adultery gets the same legitimate or status. Mashlahah of the KHI provision is to save the future of the child of a pregnant mate so they will have valid and legal status of children and their rights as legitimate children. In line with these conclusions, to the practitioners and observers of KHI is suggested, that it is the time to do re-concept the provisions of pregnant mate either by interviewing back to the scholars 'such as the history of the formation of KHI or others to return to the opinions of scholars of Fiqh that is more concerned with adultery and something that matters with it.