

Tajdid Nikah: Legal Analysis, Ulama Perspectives, and Masalahah Mursalah (A Case Study in East Lampung Regency)

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Abstract

This study examines the phenomenon of tajdid nikah (renewal of the marriage contract) among Muslim couples in Giriklopomulyo Village, Sekampung District, East Lampung Regency, with a focus on cases involving pregnancy prior to the official marriage. Although both Islamic law and the Compilation of Islamic Law (KHI) Article 53 confirm that such marriages are valid without requiring re-contracting, tajdid nikah remains prevalent due to societal pressure, cultural norms, and insufficient legal literacy. Using a qualitative case study approach with data from interviews, documentation, and field observations, this research systematically analyzes five key dimensions: the definition of tajdid nikah, local chronology of its practice, its legal interpretation under KHI, contemporary ulama perspectives, and its relevance within the framework of masalah mursalah. The findings show that tajdid nikah is often pursued not for legal necessity but to achieve psychological relief, family acceptance, and perceived social legitimacy. While some scholars tolerate the practice as a form of precaution (ihtiyat), most ulama assert that it is unnecessary if the first marriage contract was valid. In terms of masalah mursalah, tajdid nikah can be viewed as beneficial when it reduces stigma and promotes harmony but may be harmful if it reinforces public misconceptions about Islamic legal norms. Therefore, tajdid nikah should not be institutionalized as a religious obligation, and broader legal education is needed to align community practices with sharia principles and Indonesian legal standards.

Keywords: Tajdid Nikah; Legalization of Marriage; Masalahah Mursalah.



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INTRODUCTION

Marriage is an institution that holds a fundamental role in both social life and Islamic legal tradition (Agustina & Ismah, 2024). Normatively, marriage aims to establish a family characterized by sakinah, mawaddah, and rahmah, while also providing legal certainty for both spouses and their offspring (Sholehudin et al., 2025). However, in practice, various legal and social obstacles often arise, including marriages that fail to meet the essential elements (rukun) and legal requirements (syarat sah) according to Islamic law and prevailing legislation. One solution applied in several communities is the practice of tajdid nikah, a renewal of the marriage contract intended to reaffirm the legal status of a marital union (Hanafi & Safrudin, 2020). Although this practice has a foundation in Islamic jurisprudence, its implementation remains a

subject of debate particularly in cases involving premarital pregnancy, which are frequently associated with the necessity of tajdid nikah after the child's birth (Zein, 2018).

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In line with the present study, the phenomenon of tajdid nikah has become a topic of discussion in Giriklopomulyo Village, Sekampung District, East Lampung Regency. Within the local community, there is a prevailing belief that marriages conducted while the woman is pregnant are religiously invalid, thereby encouraging couples to renew their marriage contract after the child is born. This practice is carried out with the hope of obtaining stronger legal legitimacy for the marital relationship, both from the perspective of religion and the prevailing social norms (Atamy, 2023). This belief raises critical questions concerning the legal validity of tajdid nikah and its implications for the legal status of children born from such marriages.

The case chronology in Giriklopomulyo Village indicates that tajdid nikah was performed by couples who were previously legally married but harbored doubts regarding the validity of their marriage due to a pregnancy that occurred prior to the marriage contract. Several couples, upon the advice of family members or religious leaders, chose to repeat the marriage contract following the birth of the child in order to avoid social stigma and to ensure the legal status of their marriage. Based on preliminary interviews with the local Office of Religious Affairs (Kantor Urusan Agama, KUA), it was found that this practice is largely influenced by the community's limited understanding of both Islamic marriage law and national legal regulations in Indonesia.

The primary issues addressed in this study are: how the practice of tajdid nikah is viewed from the perspective of the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI), and what its legal and social significance is in the context of maslahah mursalah. There are differing opinions within the community regarding whether tajdid nikah is genuinely necessary in cases of premarital pregnancy, or whether it merely serves as a formality to mitigate social pressure. Furthermore, there has been a lack of in-depth scholarly inquiry specifically analyzing the relevance of this practice in relation to the broader objectives of Islamic law in preserving the welfare (maslahah) of spouses and their offspring.

From the perspective of Islamic legal theory, this study employs the concept of maslahah mursalah as its primary analytical framework (Asiyah & Ghofur, 2017). Maslahah mursalah refers to public interest or welfare that is not explicitly addressed in the Qur'an or Hadith but remains consistent with the overarching objectives of Islamic law (Asnawi et al., 2022). This theory posits that a legal action can be deemed valid if it promotes benefit for individuals and society while preventing greater harm (Awaludin et al., 2024). In the context of tajdid nikah, maslahah mursalah serves as a basis for evaluating whether the practice truly yields tangible benefits for the couple and their children, or whether it inadvertently generates new legal complications.

This study holds significant urgency due to the limited public understanding of the legal framework and implications of tajdid nikah. Misconceptions regarding the legal status of

marriage frequently result in uncertainty within household life, particularly concerning the legal status of children. Moreover, this research can serve as a valuable reference for relevant institutions such as the Office of Religious Affairs (KUA) and Islamic legal bodies in formulating policies and providing education to the public on marriage law that aligns with both Islamic principles and the positive legal system in Indonesia.

Several previous studies have examined tajdid nikah from various perspectives. Sahibuddin, (2018) found that tajdid nikah serves as a means to reaffirm a marriage without nullifying the initial contract. In contrast, the study by Awaludin et al., (2024) emphasized the social impact of this practice, particularly in fostering psychological reassurance and reducing familial conflict. However, there is a lack of research specifically addressing tajdid nikah in the context of premarital pregnancy and its relevance to the theory of maslahah mursalah. Therefore, this study offers a novel contribution by exploring tajdid nikah as a legal solution for couples who marry while the woman is already pregnant prior to the marriage contract.

This study aims to analyze the legal aspects of tajdid nikah from the perspective of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) as well as the views of local religious scholars in Giriklopomulyo Village, Sekampung District, East Lampung Regency. This analysis is conducted to assess the extent to which the practice of tajdid nikah can be justified within the framework of Islamic law and to explore how it is implemented within the community. With a deeper understanding, it is expected that society will be able to conduct marriages in accordance with both Islamic principles and national legal provisions, thereby preventing misunderstandings or legal uncertainties that may harm the rights of spouses and the children born from such marriages.

In addition, this study seeks to examine the urgency of implementing tajdid nikah from the perspective of maslahah mursalah. Through this approach, the research will evaluate whether the practice of tajdid nikah genuinely provides benefits to couples who enter into marriage during a pregnancy prior to the official marriage contract, or whether it inadvertently creates new legal issues. By analyzing the element of public interest (maslahah) in this practice, the study aims to contribute academically to the development of Islamic legal scholarship. It also intends to serve as a practical reference for the public, religious leaders, and institutions such as the Office of Religious Affairs (KUA) in formulating policies and delivering education regarding marriage law that aligns with both Islamic teachings and prevailing legal regulations in Indonesia.

The central issue in this study revolves around the practice of tajdid nikah conducted by couples who entered into marriage while the woman was pregnant prior to the marriage contract, specifically in Giriklopomulyo Village, Sekampung District, East Lampung Regency. Although, according to Islamic law and Indonesian legal regulations, marriage in such circumstances is still considered valid without the need for a renewed marriage contract, some members of the local community continue to believe that tajdid nikah is necessary to solidify the legal status of their marriage. This belief raises questions regarding the legal foundation of such a practice and its implications for the legal status of the spouses and the children born from the marriage.

Based on this phenomenon, the study seeks to address two main research questions. First, how is tajdid nikah understood in light of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) and according to the views of religious scholars in Giriklopomulyo Village? Second, what is the urgency of implementing tajdid nikah from the perspective of maslahah mursalah? Through this analysis, the study aims to provide a clearer understanding of the

relevance of tajdid nikah within the framework of Islamic law and its potential benefits in preserving the welfare of the couple and their offspring.

RESEARCH METHODS

This study employs a qualitative approach (Gunawan, 2022) to describe and analyze the phenomenon of tajdid nikah in depth. This approach was chosen as it is well-suited for examining complex social and religious phenomena, such as the practice of tajdid nikah in Giriklopomulyo Village. Through this method, the researcher is able to understand community perspectives and interpret data contextually based on the values of Islamic law.

To explore the phenomenon of tajdid nikah more specifically, this study adopts a case study approach (Tony D. Susanto, 2020). This approach allows the researcher to investigate a single location intensively and in detail, namely Giriklopomulyo Village, Sekampung District, East Lampung Regency, where the practice of tajdid nikah takes place. The case study method provides space to explore the legal, social, cultural, and psychological dimensions of tajdid nikah as it evolves within a local context.

This study is grounded in the theory of maslahah mursalah, an Islamic legal principle that emphasizes the importance of public interest (maslahah) in the application of legal rulings (Surur, 2022). The practice of tajdid nikah is analyzed to assess whether it genuinely provides tangible benefits to couples and the broader community, or whether it reinforces misconceptions. This theoretical approach contributes to formulating practical and solution-oriented recommendations.

The data sources used in this study consist of both primary and secondary data. Primary data were obtained through direct interviews with couples who engaged in tajdid nikah, religious leaders who provided guidance, and officials from the Office of Religious Affairs (KUA). Secondary data were derived from classical Islamic jurisprudence texts (kitab fiqh), Law No. 1 of 1974, the Compilation of Islamic Law (KHI), as well as relevant academic literature and scholarly journals.

Data collection techniques included in-depth interviews, field observation, and document analysis (Bambang, 2009). The interviews were conducted in a structured yet flexible manner to obtain comprehensive information. Observation was used to examine the processes and social responses related to the practice of tajdid nikah. Document analysis involved the study of legal texts and scholarly references relevant to the subject matter.

Data analysis was carried out using an inductive approach, which develops general principles from specific cases (Tersiana, 2018). The specific case examined involves the practice of tajdid nikah among couples who married during pregnancy, often driven by social pressure and doubts regarding the validity of the marriage. The general principle refers to the provisions of Islamic law and Article 53 of the Compilation of Islamic Law (KHI), which states that a marriage conducted during pregnancy remains valid as long as the essential elements (rukun) and legal requirements (syarat) of marriage are fulfilled.

RESULTS AND DISCUSSION Definition of Tajdid Nikah

Tajdid nikah is a term in Islamic law referring to the renewal of a marriage contract by a couple who were previously legally married. The term tajdid originates from Arabic, meaning "renewal" or "repetition," while nikah refers to "marriage" or "marriage contract" (Ananda, 2021). In Muslim communities, tajdid nikah is often practiced for various reasons, including personal, social, and religious motivations. One of the most common reasons is the presence of

doubts concerning the validity of the initial marriage contract, particularly when the marriage occurred under less-than-ideal circumstances such as pregnancy before the marriage contract or a non-registered (unofficial/siri) marriage not recorded at the Office of Religious Affairs (KUA) (Surur, 2022).

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Nevertheless, within certain communities particularly in areas such as Giriklopomulyo Village the practice of tajdid nikah continues to be carried out for psychological and social reasons. As explained by one religious leader, KY, this practice emerges because people feel more at ease when a marriage contract is repeated.

"In reality, if all the essential elements and legal requirements of marriage are fulfilled, there is no reason to repeat the contract. However, the community often remains uneasy if it is not repeated especially if the original marriage occurred while the woman was pregnant," he stated (KY, personal communication, 2025).

This sense of inner peace plays a significant role in the context of married life. For some couples particularly those who entered into marriage while the woman was pregnant—feelings of guilt or doubt about the validity of their marriage may arise. These feelings are often reinforced by pressure from family, the surrounding community, or even local religious figures who recommend tajdid nikah as a precautionary measure. In such cases, tajdid nikah is perceived as a symbolic solution intended to alleviate uncertainty and provide additional legitimacy, despite its lack of necessity from a legal standpoint.

In addition, tajdid nikah is frequently carried out by couples whose initial marriage was conducted informally (siri marriage). In such cases, tajdid nikah is performed in conjunction with the official registration of the marriage at the Office of Religious Affairs (KUA) to obtain legal recognition from the state. This practice serves as a formal legalization of a marriage that was previously valid only according to religious standards. Therefore, in this context, tajdid nikah functions not only as a symbolic renewal but also as an administrative effort to secure legal protection for the couple and their children.

However, the practice of tajdid nikah also presents certain controversies. Some Islamic scholars argue that repeating a marriage contract without a clear legal justification may lead to public misunderstanding (Asnawi & Ismail, 2020). For example, if communities continually engage in tajdid nikah in circumstances that do not invalidate the initial contract, a false perception may emerge that marriage during pregnancy is invalid despite the fact that Islamic law does not impose such a restriction.

This view is supported by AR, a KUA official, who stated:

"If we don't educate the public, they'll keep thinking that getting married during pregnancy is invalid. In reality, the validity depends on fulfilling the pillars and conditions, not the timing of the pregnancy." (AR, personal communication, 2025).

From the perspective of Islamic law, the majority of schools of thought (mazhab) agree that a woman who is pregnant may marry the man responsible for the pregnancy, and there is

no requirement to wait until the child is born. This view is elaborated in various classical fiqh texts, including those of the Shafi'i and Hanafi schools, which permit marriage during pregnancy on the condition that the pregnancy resulted from the man who intends to marry her. This indicates that Islam does not regard pregnancy as a barrier to the validity of a marriage contract, provided that the pregnancy did not result from an act of zina (fornication) in which the perpetrator is unknown (Atamy, 2023).

However, within local community contexts such as East Lampung, legal reasoning is often subordinated to cultural logic and social pressure. Public religious understanding is still heavily influenced by personal interpretations of religious leaders, local traditions, and inherited social values. In this context, tajdid nikah is no longer perceived merely as a legal solution, but rather as a means to obtain social recognition and preserve family honor.

Therefore, it is essential to provide broader legal education to the community so that they can distinguish between fundamental religious rulings and local customs that are situational in nature. Such education can be facilitated by religious leaders, the Office of Religious Affairs (KUA), and Islamic educational institutions through approaches that are both wise and contextually grounded.

Chronology of the Tajdid Nikah Practice in East Lampung Regency

The practice of tajdid nikah in Giriklopomulyo Village, Sekampung District, East Lampung Regency, represents a socio-religious phenomenon that has developed in response to marriage situations perceived by the local community as "non-ideal." This phenomenon most commonly occurs among couples who marry while the woman is pregnant prior to the official marriage contract. Based on interviews with informants, it was revealed that this practice arises not from legal obligations but rather from social pressure, concerns about the child's legal status, and a desire for stronger recognition from both family and community.

One of the most frequently encountered scenarios in the field unfolds as follows: a couple legally marries at the KUA, but at the time of the marriage, the bride is already pregnant. Although KUA officials do not object to the situation, since there is no legal prohibition under Islamic or state law, several months later typically after the birth of the child the extended family of either the bride or groom requests that the marriage contract be repeated. The primary reason behind this request is not the invalidity of the initial contract but a preference for peace of mind, believing that it is more appropriate to solemnize the contract again when the woman is in a "pure" state, that is, no longer pregnant.

As explained by AR, an officer at the Sekampung District Office of Religious Affairs (KUA):

"We often handle marriages where the bride is already pregnant. Legally, it's not an issue. However, it's quite common that after the child is born, family members return and request that the marriage contract be repeated. They say it feels more 'afdol' (appropriate) and brings peace of mind both spiritually and socially." (AR, personal communication, 2025).

Furthermore, the practice of tajdid nikah is not always conducted formally before KUA officials. In some cases, the repeated marriage contract is performed informally at home, led by a local religious leader and witnessed by several family members. The ceremony is typically modest, without a reception, consisting solely of a renewed reading of ijab and qabul (offer and acceptance), sometimes using the same mahr (dowry), and often without any administrative documentation. The purpose is not to re-register the marriage but rather to fulfill emotional and social needs.

This is further supported by KY, a religious leader in the local village, who explained: *"Some people come to me asking for guidance to repeat their marriage contract. They were already lawfully married, even registered at the KUA. But because the wife was pregnant at the time of the marriage, their families requested a second contract after the child was born. I explained that the original marriage was valid, but if they still wanted to repeat it to ease their hearts, I guided them on the condition that they did not consider the first contract null and void."* (KY, personal communication, 2025).

In interviews with couples who had undergone tajdid nikah, deeply personal and emotional reasons were revealed behind the decision to repeat the contract. One informant, HS (the husband), stated:

"I know our marriage was valid. But my wife's parents felt uncomfortable around the neighbors. They said it was necessary to repeat the contract to avoid gossip and to clarify our child's lineage. I accepted it willingly, as the intention was good not to invalidate the first contract." (HS, personal communication, 2025).

The forms of tajdid nikah practiced by the community are quite varied. Some couples carry out the ceremony privately at the home of a religious leader, others involve non-KUA officiants, and there are even instances where the event resembles a mini wedding reception involving extended family members although unofficial. This indicates that the community does not perceive tajdid nikah as a legal obligation, but rather as a means of fulfilling the social and spiritual values embedded within their communal life.

Nevertheless, this practice also presents several consequences, particularly in shaping public perceptions of marriage law. Field observations indicate a growing tendency among community members to believe that marriages conducted during pregnancy are "invalid" or "incomplete" unless followed by tajdid nikah. Such beliefs clearly contradict both Islamic law and the legal system of the state. If left unaddressed, this misperception could lead to legal distortion and foster unnecessary stigma toward women who marry while pregnant.

From an institutional standpoint, the Office of Religious Affairs (KUA) in Sekampung does not promote tajdid nikah in cases of pregnancy. In fact, KUA officials strive to educate couples and their families about the legal validity of marriages conducted during pregnancy (Ismail & Ja'far, 2024). However, these educational efforts do not always succeed in changing community views, particularly when extended family members exert pressure based on a sense of discomfort if the marriage contract is not repeated.

As reaffirmed by AR, an official from the Office of Religious Affairs:

"We have informed the public that marriages conducted during pregnancy are still valid. But due to social pressure and feelings of discomfort, families sometimes insist on repeating the marriage contract. We cannot prohibit it, as they are not violating any law. However, we always emphasize that the original contract remains valid and is not nullified simply because it was conducted during pregnancy." (AR, personal communication, 2025).

The chronology of tajdid nikah practices also illustrates a gap between the formal legal regulations of Islamic law and the prevailing social norms within the community. In rural contexts such as Giriklopomulyo, social norms often take precedence in family decisionmaking, even surpassing the authority of established formal law.

Tajdid Nikah in the Context of the Compilation of Islamic Law (KHI)

In Indonesia's positive legal system governing Muslim marriages, the Compilation of Islamic Law (Kompilasi Hukum Islam or KHI) serves as the primary legal reference, adopted through Presidential Instruction No. 1 of 1991 (Idris Ramulyo, 1999). In the context of *tajdid nikah*, the KHI provides a clear legal foundation regarding the validity of marriages conducted under specific circumstances, including cases where the bride is pregnant at the time of the marriage. This is explicitly addressed in Article 53 of the KHI, which states that a man who impregnates a woman may marry her, and the marriage does not need to be delayed until after the child is born. Such a marriage is considered valid as long as the essential elements and legal requirements of marriage are fulfilled (M. Sahibuddin, 2020).

This article normatively addresses the legal question concerning the validity of marriages performed during pregnancy. Thus, if a marriage is conducted in accordance with the *rukun nikah* (the essential elements of marriage) namely the prospective groom, the prospective bride, a legal guardian (*wali*), two just witnesses, and the *ijab* and *qabul* (offer and acceptance) then the marriage is deemed valid, and there is no requirement to repeat the contract. In this case, *tajdid nikah* is not a legal necessity but rather a voluntary practice based on social, cultural, or spiritual considerations.

However, in practice as seen in Giriklopomulyo Village members of the community still frequently question the validity of marriages conducted during pregnancy. This doubt arises due to the uneven distribution of public understanding regarding the legal provisions outlined in the Compilation of Islamic Law (KHI). Many individuals remain unaware that state law, through the KHI, has explicitly clarified that pregnancy does not invalidate the legality of a marriage. As a result, people tend to rely more on the interpretations of religious or customary leaders passed down through generations, which may not align with formal legal principles.

As noted by AR, an official at the Sekampung Office of Religious Affairs (KUA): *"Article 53 of the KHI is already very clear. If a man marries a pregnant woman, and the pregnancy is the result of their relationship, then the marriage is valid. But in practice, many people are still unaware especially those who have never attended legal counseling sessions."* (AR, personal communication, 2025).

From the perspective of classical Islamic jurisprudence, the majority of scholars agree that a man is permitted to marry a woman he has impregnated, and pregnancy is not an impediment to the validity of a marriage contract as long as the relationship did not involve unrepented major sin. Even within the Shafi'i and Hanafi schools of thought, marriage during pregnancy is neither prohibited nor invalidated (Arifin et al., 2025). Therefore, if classical Islamic law itself allows for such marriages, then *tajdid nikah* lacks a strong basis in sharia when the initial contract is already deemed valid.

Nevertheless, within society, there is often a prevailing perception that marriages conducted during pregnancy must be renewed in order to obtain spiritual or moral legitimacy. This reflects a shift from legal norms to social norms. Unfortunately, this condition is exacerbated by the lack of legal education from institutions such as the Office of Religious Affairs (KUA) or religious organizations, leading communities to place greater trust in local interpretations that may not align with the provisions of the Compilation of Islamic Law (KHI). As noted by KY, a local religious leader:

"I am often asked by residents whether they must repeat the marriage contract if the marriage occurred during pregnancy. I explain that it is not necessary. But if they wish to

do it for peace of mind, I do not prohibit it provided that the first contract is not considered void.” (KY, personal communication, 2025).

Tajdid nikah may indeed be justified in certain situations where a legal defect is found in the initial contract. For example, if the original contract was performed without a legitimate wali nasab (guardian by lineage), or without two just male witnesses, or if it was carried out under coercion. In such cases, the original contract must be repeated. However, if all the required elements of marriage are fulfilled and there are no invalidating factors, then the marriage contract is legally valid and binding, both according to the KHI and Islamic jurisprudence.

For example, if a woman is married off by her biological father (wali nasab), witnessed by two qualified witnesses, and the ijab and qabul (offer and acceptance) are clearly stated, then the marriage contract fulfills all legal requirements (Apriliani & Tjempaka, 2025). If, at the time of the marriage, the woman is pregnant by her prospective husband, this does not invalidate the marriage. Therefore, repeating the contract is neither necessary nor recommended, unless there are other legally justifiable reasons (Anggraini et al., 2025).

In practice, tajdid nikah is often performed by members of the community without any legal basis as described above. It is more commonly driven by fear of societal judgment or pressure from family members. This constitutes a legal concern that must be addressed through outreach and education, so that the public understands that both Islamic law and state law affirm the validity of such marriages. As such, the repetition of the marriage contract is unnecessary and may, in fact, contribute to legal misunderstanding.

As reaffirmed by AR, an official from the Office of Religious Affairs:

“If the community continues to repeat marriage contracts without any legal basis, a new and incorrect assumption may emerge that the original contract was void, when in fact it was valid. This could disrupt the proper understanding of marriage law.” (AR, personal communication, 2025).

Furthermore, if tajdid nikah is carried out without proper legal understanding, it may result in negative administrative consequences. For example, if a couple already possesses a valid marriage certificate and proceeds to repeat the contract without official registration, it could create confusion in civil documentation or even lead to new legal conflicts concerning inheritance rights, lineage, or the distribution of marital assets.

Ulama's Views on Marriage Tajdid

The views of Islamic scholars regarding tajdid nikah the renewal of the marriage contract by a couple already legally married are not monolithic. Various opinions have been expressed by both classical and contemporary scholars, depending on the legal, social, and contextual motivations underlying the practice. However, in general, contemporary scholars agree that tajdid nikah is not a legal obligation as long as the initial marriage contract fulfills the essential elements and conditions for a valid marriage in Islam (Hanafi & Safrudin, 2020).

According to the consensus (ijma') of the majority of scholars (jumhur ulama), the pillars (arkan) of marriage in Islam consist of five core components: the groom, the bride, a legal guardian (wali), two just witnesses, and the verbal exchange of offer and acceptance (ijab and qabul). If these five components are fulfilled, and there are no legal impediments such as a consanguineous relationship (mahram) or a waiting period (iddah) then the marriage contract is considered valid under Islamic law. In this context, once a marriage contract is deemed valid, there is no shar‘i obligation to repeat the contract or perform tajdid nikah.

Contemporary scholars such as Prof. Wahbah Az-Zuhaili, in his seminal work *Al-Fiqh al-Islami wa Adillatuh*, assert that a marriage contract that is valid and fulfills its essential elements and conditions does not require renewal, even if there are doubts regarding its implementation so long as there is no compelling evidence to invalidate the contract. He emphasizes that the original legal status of a marriage is presumed to be valid, based on the *fiqh maxim*:

“Al-ashlu fi al-‘uqud ash-shihhah hatta yadzhhara khilafuhu”

(The default ruling for contracts is validity unless proven otherwise.)

This view aligns with the positions of *fuqahā’* from the Shāfi‘ī and Ḥanafī schools, who allow a man to marry a woman he has impregnated, provided the pregnancy resulted from their mutual relationship. Such a marriage remains valid and does not require the contract to be renewed after the birth of the child. Even in cases where the pregnancy occurred outside of wedlock, the marriage may still be deemed valid provided that it does not violate other shar‘ī prohibitions and that the essential elements and conditions of marriage are fulfilled (Ananda, 2021).

Some contemporary scholars who adopt a socio-cultural approach such as Dr. M. Quraish Shihab argue that *tajdid nikah* is not a legal obligation. However, he acknowledges that in societies where social norms and traditions remain deeply embedded, *tajdid nikah* may be seen as a form of compromise. Nevertheless, he emphasizes the importance of educating the public to avoid legitimizing practices that lack a sound shar‘ī basis.

In the implementation of *tajdid nikah*, which has become increasingly common in various regions of Indonesia, the underlying motives often relate to psychological reassurance or familial expectations. Prominent Indonesian scholars such as KH. Ma'ruf Amin prior to his tenure as Vice President and during his leadership of the Indonesian Ulema Council (MUI) has clearly stated that there is no shar‘ī evidence requiring the repetition of a marriage contract in cases where a valid marriage occurred during pregnancy. He stressed that the validity of a marriage in Islam is not determined by whether the woman is pregnant, but by the fulfillment of the essential elements and conditions of the marriage contract.

On the other hand, there are also scholars who tend to permit or even recommend *tajdid nikah* in specific contexts as a precautionary measure (*iḥtiyāt*). For instance, in situations where there are administrative deficiencies or doubts concerning the legitimacy of the wali (guardian) or witnesses in the initial contract. In such cases, *tajdid nikah* is seen as a solution to reinforce the legal status of the marriage, both from the perspective of shar‘ī law and administrative requirements. However, it is consistently emphasized that this remains a matter of personal choice rather than legal obligation.

Scholars such as Prof. H.M. Quraish Shihab have also warned of the potential dangers when society begins to perceive *tajdid nikah* as a legal obligation. According to him, this could result in a distortion of Islamic law and lead to the erroneous perception among the public that marriages conducted under certain conditions are invalid unless repeated. This misunderstanding poses significant risks, including psychological pressure on couples particularly women who are pregnant prior to marriage and unnecessary social stigma.

An insightful study on *tajdid nikah* was conducted by Sahibuddin (2018), who examined the phenomenon of repeated marriage contracts in Madura. He found that the practice was often carried out for social reasons, such as preserving family honor and avoiding public gossip. However, from an Islamic legal standpoint, he argued that the practice has no real urgency

unless there is clear evidence of a legal flaw in the original contract. This indicates that the emergence of *tajdid nikah* is driven more by social and cultural needs than by *shar'ī* imperatives (Sahibuddin, 2018).

Another prominent scholar, Sheikh Yusuf al-Qaradawi, in his book *Fiqh al-Awlawiyyat* (The Jurisprudence of Priorities), emphasizes the importance of prioritizing what is most essential in the application of Islamic law. According to him, if a practice such as *tajdid nikah* does not yield tangible benefits and instead contributes to misconceptions about Islamic legal norms, then it is preferable to abandon the practice altogether. He advocates for greater efforts by scholars and religious leaders to educate the public on accurate legal rulings rather than allowing symbolic yet misleading practices to persist (Sahibuddin, 2018).

Based on a review of contemporary scholarly perspectives, it can be concluded that *tajdid nikah* does not have a binding foundation in Islamic law. Scholars generally consider it to be *mubah* (permissible) under certain circumstances, but it is not recommended unless there is a clear legal necessity. The practice may be accepted if its purpose is to strengthen legal certainty in cases of doubt or procedural flaws in the initial contract. However, if it is carried out merely due to social pressure or misinformed perceptions, it should be discouraged through comprehensive educational efforts.

Contemporary Islamic legal approaches emphasize the principles of simplicity, legal certainty, and education grounded in the objectives of Islamic law (*maqāṣid al-sharī'ah*). While *tajdid nikah*, as a symbolic act, may bring psychological comfort to certain individuals, it should not become a normalized practice especially when viewed through the lens of legal rationality and public interest (*maṣlaḥah*). In this regard, repetitive or unnecessary renewal of marriage contracts risks undermining public confidence in Islamic legal principles themselves (M. Sahibuddin, 2020).

The Urgency of Tajdid Nikah from the Perspective of Maṣlaḥah Mursalah

In Islamic law, one of the essential principles used to assess the legitimacy of an action is the concept of *maṣlaḥah mursalah* a form of public interest that is not explicitly supported by specific textual evidence in the Qur'an or Hadith but is consistent with the general objectives of Islamic law. *Maṣlaḥah mursalah* serves as a legal foundation when there is no explicit textual ruling on a particular matter, provided that the action brings benefit to the community and does not contradict the *maqāṣid al-sharī'ah* (the overarching goals of Islamic law).

In the context of *tajdid nikah*, the application of *maṣlaḥah mursalah* becomes relevant, as the practice lacks direct textual justification yet is often carried out by certain segments of society as a precautionary measure or as a means to attain spiritual and psychological comfort. The core question, therefore, is: Can *tajdid nikah* particularly in cases where marriage is prompted by a pregnancy prior to the formal contract be considered a legitimate expression of *maṣlaḥah mursalah*? Or, conversely, does this practice create legal confusion and impose unnecessary burdens on couples by introducing requirements not mandated by Islamic law?

To address this question, it is necessary to examine both sides of the issue: the tangible benefits (*maṣlaḥah*) derived from the practice and the potential harm (*mafsadah*) it may produce.

a. The Maṣlaḥah (Benefits) Provided by Tajdid Nikah

Tajdid nikah can be viewed as a form of *maṣlaḥah* within social and psychological contexts. In many regions such as East Lampung, this practice offers a sense of peace and comfort to the couple especially to their extended families by perceiving the renewed marriage contract as a means to strengthen the legitimacy of the union. It is commonly believed that

marriages conducted during pregnancy are less ideal or even incomplete in their validity; thus, by repeating the marriage contract after the birth of the child, the marital relationship becomes more socially acceptable and less susceptible to public scrutiny or gossip.

From a psychological standpoint, *tajdid nikah* may alleviate feelings of guilt or shame experienced by the couple, particularly by the woman. In communities that place a high value on family honor, pregnancy prior to marriage is still considered a source of disgrace. Accordingly, repeating the marriage contract is perceived as a way to "atone for the mistake" and to begin their married life on a cleaner, more dignified footing. In such cases, *tajdid nikah* serves a *maṣlaḥah* function as a means of social and spiritual reconciliation.

Furthermore, *tajdid nikah* can be seen as a means of preserving lineage (*ḥifẓ al-nasab*), ensuring that children born from the union are not subjected to legal or social doubts regarding their legitimacy. Although Islamic law recognizes the validity of marriage during pregnancy, for laypersons and the broader public, a repeated marriage ceremony provides reassurance that the child is indeed born from a legitimate relationship both religiously and socially.

From this perspective, *tajdid nikah* can be categorized as a form of *maṣlaḥah mursalah*, as its purpose is to provide emotional reassurance to the couple, maintain social harmony, and protect the child from negative stigma. Within the framework of *maqāṣid al-sharī'ah* (the objectives of Islamic law), the efforts to preserve lineage (*ḥifẓ al-nasl*) and protect personal dignity (*ḥifẓ al-'ird*) are among the fundamental aims of Islamic legal principles. Therefore, if *tajdid nikah* is conducted to fulfill these objectives, it may be justified under the doctrine of *maṣlaḥah mursalah*.

b. The Harm (*Maḍarrah*) Arising from *Tajdīd Nikāḥ*

On the other hand, *tajdīd nikāḥ* may lead to adverse consequences if practiced without proper understanding. One significant negative impact is the emergence of a mistaken perception that marriage during pregnancy is invalid unless the marriage contract is repeated. If this perception becomes widespread, society may view marriage during pregnancy as a "mistake" that must be rectified through *tajdīd nikāḥ*, whereas, according to Islamic law, such marriages are valid and do not require a second contract.

This misunderstanding has the potential to shift the community's orientation from the authoritative teachings of Islamic law to unfounded local interpretations. Such a shift can set a detrimental precedent in the formation of social legal norms, wherein the universal principles of Islamic jurisprudence are overshadowed by local customs that are inconsistent with established *fiqh* rulings.

Furthermore, if *tajdīd nikāḥ* is carried out solely due to family or societal pressure, without a proper understanding of Islamic legal principles, such action can create new psychological burdens for the couple. For women in particular, this practice may function as a form of symbolic coercion, implying that she must "atone for a sin" merely for marrying while pregnant, despite the fact that Islamic law does not prescribe such a concept as long as the essential conditions of marriage are fulfilled.

Repeated instances of *tajdīd nikāḥ* or its elevation into a new social norm may also result in administrative complications such as confusion in civil registration, doubts regarding the legitimacy of official marriage documentation, and difficulties in legal processes involving inheritance, divorce, or child registration.

In this context, the practice of *tajdīd nikāḥ* constitutes a form of *mafsadah* (harm) by fostering misunderstanding, reinforcing stigma, and undermining an established legal system.

Thus, when assessed through the lens of *maṣlaḥah mursalah*, which requires demonstrable benefit and the avoidance of harm, the practice of *tajdīd nikāḥ* without a clear legal necessity may be deemed to lack genuine legal or social utility. c. A Proportional Approach to *Tajdīd Nikāḥ*

Contemporary Islamic legal scholars such as Muhammad Abu Zahrah and Abdullah bin Bayyah emphasize the importance of applying the principle of *maṣlaḥah* with caution. They argue that not all actions perceived by society as beneficial can be immediately classified as *maṣlaḥah mursalah*. Certain criteria must be met, including:

- 1) The benefit must be genuine and urgent;
- 2) It must not contradict the general principles of the Sharia;
- 3) It must not lead to harm greater than the benefit achieved.

Thus, in the context of *tajdīd nikāḥ*, this practice should not become a societal norm or obligation. If it is carried out due to defects in the initial marriage contract or to correct administrative errors, then it may be justified as a legitimate form of *maṣlaḥah*. However, if it is performed merely due to social pressure or misinformed customary practices, it should be discouraged and rectified through educational and awareness-based approaches.

Public education plays a crucial role in harmonizing the understanding of Islamic legal principles with social values. Through a wise and contextualized approach, institutions such as the Office of Religious Affairs (KUA), the Indonesian Ulama Council (MUI), and local religious leaders can guide communities to move beyond relying on symbolic practices like *tajdīd nikāḥ* for the validity of marriage. Instead, they should be encouraged to understand Islamic law based on sound and authoritative foundations.

CONCLUSION

The practice of *tajdīd nikāḥ* in Desa Giriklopomulyo is a social response to marriages conducted during pregnancy prior to the marriage contract (*akad*), which although valid according to Islamic law and Article 53 of the Compilation of Islamic Law (KHI) continues to be questioned by the community due to prevailing cultural pressures and incomplete religious understanding. *Tajdīd nikāḥ* is carried out not for legal reasons, but to achieve inner peace, social acceptance, and family recognition, despite the fact that most contemporary scholars affirm that a valid first marriage contract does not require repetition. From the perspective of *maṣlaḥah mursalah*, *tajdīd nikāḥ* may offer benefits when aimed at preserving honor and avoiding social stigma, yet it can also lead to *mafsadah* (harm) if it reinforces misconceptions about Islamic law and imposes new psychological burdens. Therefore, continuous legal education is necessary so that society does not remain trapped in symbolic formalities that lack actual legal necessity, and is instead able to understand marriage through a more rational and benefit-oriented interpretation of Islamic law.

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- 110 Nur Isti Fadah, Hud Leo Perkasa Maki, Hendra Irawan, Nawa Angkasa, Husain Fadhil Arrasyid:
Tajdid Nikah: Legal Analysis, Ulama Perspectives, and Maslahah Mursalah (A Case Study in East
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