

## **MARRIAGE FOR COVERING DISGRACE**

### **The Practice of *Kawi' Pura* Tradition in the East Kolaka Muslim Society**

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#### **Abstract**

According to the Indonesian Compilation of Islamic Law (KHI), unmarried pregnant women may only be married to the men who impregnated them. However, this rule is frequently disregarded by the Kolaka Muslim society. They typically opt for *kawi' pura* tradition to tackle the case, which is to marry the pregnant woman to another man. This marriage is followed by a contract stipulating an immediate divorce. Its purpose is to conceal shame or disgrace. This article seeks to investigate the rationale behind the practice of *kawi' pura*. Data were collected through observation and interviews and then analyzed qualitatively. This article finds that the implementation of the tradition is driven by four factors: the pressure to cover up family disgrace, adherence to ancestral traditions, lack of awareness of marriage law, and low levels of public education. Normatively, this practice is not justified by Islamic law. In state law, this practice is not clearly regulated or prohibited; however, it contradicts the principle of the Marriage Law either according to the Compilation or Islamic marriage law in general.

[Menurut Kompilasi Hukum Islam Indonesia (KHI), wanita hamil yang belum menikah hanya boleh dinikahkan dengan pria yang menghamilinya. Namun, aturan ini sering diabaikan oleh sebagian orang Kolaka. Mereka biasanya memilih tradisi *kawi' pura* untuk menangani kasus ini, yaitu mengawinkan wanita hamil dengan pria lain. Perkawinan ini diikuti dengan perjanjian perkawinan yang menetapkan perceraian langsung, karena tujuan utamanya adalah untuk menutupi aib. Artikel ini berusaha menyelidiki alasan di balik praktik *kawi' pura*. Data dikumpulkan melalui observasi dan wawancara, kemudian diinterpretasikan secara kualitatif. Setelah melakukan penelitian lapangan, artikel ini menemukan bahwa pelaksanaan tradisi ini didorong oleh empat faktor: tekanan untuk

menutupi aib, kepatuhan terhadap tradisi leluhur, kurangnya kesadaran tentang hukum perkawinan nasional, dan rendahnya tingkat pendidikan masyarakat. Secara normatif, praktik ini tidak dibenarkan oleh hukum Islam. Dalam hukum negara, praktik ini juga tidak diatur atau dilarang secara tegas, tetapi praktik ini kontras dengan asas perkawinan baik menurut Kompilasi Hukum Islam maupun Hukum Perkawinan Islam secara umum.]

### Keywords

Pregnant women out of wedlock, *kawi' pura* tradition, *passampo siri'* marriage

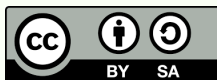
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### Introduction

*Kawi' pura* is a marriage that takes place because of an unplanned pregnancy from an unmarried couple. This marriage is followed by a divorce agreement between the bride and groom immediately after the marriage is conducted. *Passampo siri'* consists of two syllables in the Bugis language, namely "passampo" and "siri'". The word *passampo* is defined as a cover. Koentjaraningrat quoted Matthes' opinion that *siri'* means a shame.<sup>1</sup> Basjah and

<sup>1</sup> Asnidar Sriyuli, "Hukum Menikahi Wanita Hamil Sebagai Passampo Siri Dalam Syariat Islam," *SANGAJI: Jurnal Pemikiran Syariah Dan Hukum* 2, no. 2 (2018): 342–59,

Mustaring state three definitions of *siri'*, namely: shame, desire to destroy the person who offends anyone's honor, and maximum possible effort to resolve certain cases.<sup>2</sup> The focus of the author in this study is the phenomenon of marrying pregnant women out of wedlock with men who impregnate them or other men who do not impregnate them to cover up a grace. This has become one of the traditions of the Bugis community in East Kolaka Regency which is commonly called the *kawi' pura* tradition. This tradition is used as a *passampo siri'* (shame cover) marriage for the woman's family. This tradition occurs generally due to three causes, namely: (1) the man who impregnated the woman is not responsible for the fetus she was carrying;<sup>3</sup> (2) the man who got her pregnant wants to be responsible, but the woman or her family do not agree because of *adat* (custom) and the men's economic condition;<sup>4</sup> (3) it is not clear that it was the man who impregnated the woman because before her pregnancy the woman had sexual relations with several men.<sup>5</sup>

Based on the reasons above, the woman's family feels ashamed and considers it a family disgrace. Departing from this incident, the family looked for another man who declared himself ready to marry her, and at the same time, after the marriage is carried out the couple has to divorce immediately. Hasan stated that this type of marriage is a type of forced marriage because it is conducted only to cover shame, such as a woman having sex with a man, and then the man is not responsible for his cause.<sup>6</sup> The family of the woman looks for another man who is willing to volunteer or be given a certain reward to marry the

<https://doi.org/10.52266/sangaji.v2i2.414>; Andi Mattulada, "Manusia Dan Kebudayaan Bugis-Makassar Dan Kaili Di Sulawesi," *Antropologi Indonesia*, 2014.

<sup>2</sup> CH Salam Basjah and Sappena Mustaring, *The Mixed Spirit of the Bugis-Makassar Tribe* (Surabaya: Tifa Sirik Ekasila Foundation, 1966), p. 5.

<sup>3</sup> Abdul Hamid and Muhammad Akbal, "Kahi'pura Sebagai Perkawinan Passampo Siri'di Desa Biji Nangka Kecamatan Sinjai Borong Kabupaten Sinjai," *Jurnal Tomalebbi*, no. 1 (n.d.): 11–29. Dwi Rifiani, "Pernikahan Dini Dalam Perspektif Hukum Islam," *Journal de Jure* 3, no. 2 (2011), <https://doi.org/10.18860/j-fsh.v3i2.2144>

<sup>4</sup> Wahyu Wibisana, "Perkawinan Wanita Hamil Diluar Nikah Serta Akibat Hukumnya: Perspektif Fikih Dan Hukum Positif," *Jurnal Pendidikan Agama Islam-Ta'lim* 15, no. 1 (2017): 29–35. Rifiani, "Pernikahan Dini Dalam Perspektif Hukum Islam."

<sup>5</sup> Hamid and Akbal, "Kahi'pura Sebagai Perkawinan Passampo Siri'di Desa Biji Nangka Kecamatan Sinjai Borong Kabupaten Sinjai."

<sup>6</sup> Ariane J Utomo, "Women as Secondary Earners: Gendered Preferences on Marriage and Employment of University Students in Modern Indonesia," *Asian Population Studies* 8, no. 1 (2012): 65–85, <https://doi.org/10.1080/17441730.2012.646841>.

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woman.<sup>7</sup> Based on this, the author aims to examine the factors and causes of the East Kolaka Muslim to do the *kawi' pura* tradition as an instant solution to the marriage of pregnant women out of wedlock.

The author realizes that there have been some studies that discuss the marriage traditions of pregnant women out of wedlock in Indonesia. Therefore, at least there are four groups of works related to this research. The first group is works that explore the procession of the *kawi' tradition*, such as the work of Ilmi<sup>8</sup> and Hamid.<sup>9</sup> The second group studied the marriage of pregnant women out of wedlock from an Islamic perspective, for example, the work of Salim<sup>10</sup> and Hanum.<sup>11</sup> The third group discusses the marriage

<sup>7</sup> M Ali Hasan, "Masail Fiqhiyah Al-Haditsah Pada Masalah-Masalah Kontemporer" (Jakarta: Raja Grafindo, 1995).

<sup>8</sup> This work briefly describes the embarrassing events (*mapakasiri'-siri'*) for the Bugis people. Pregnant women out of wedlock are shameful things, so the Bugis people try to eliminate this shameful thing through the *kawi' pura tradition*. The concept of the *kawi' pura* tradition in this journal is not explained in detail, but only as an example of an embarrassing case for the Bugis community. See Nurul Ilmi Idrus, "Siri', Gender, and Sexuality among the Bugis in South Sulawesi," *Antropologi Indonesia* 29, no. 1 (2014); Nurul Ilmi Idrus, "Problematizing the Minimum Age of Marriage: The State and Local Perspective on Marriage Dispensation in South Sulawesi," *Humaniora* 34, no. 2 (2022): 159–71, <https://doi.org/10.22146/jh.73661>; Nurul Ilmi Idrus, *Gender Relations in an Indonesian Society: Bugis Practices of Sexuality and Marriage* (Brill, 2016); Nurul Ilmi Idrus, "Behind the Notion of Siala: Marriage, Adat and Islam among the Bugis in South Sulawesi," *Intersections: Gender, History and Culture in the Asian Context* 10 (2004): 1–15.

<sup>9</sup> According to Hamid, the implementation of the *kawi' pura* tradition (*kabi' pura* in Bugis Sinjai terms) is carried out based on the agreement of the two parties concerned, where the woman's family asks the man to be responsible, but the man does not want it so that *kawi'* occurs. The factors and causes of the implementation of the *kawi'pura* tradition in this study were not disclosed, so that it became a fundamental difference with the research that the author did. See Hamid and Akbal, "Kahi'pura Sebagai Perkawinan Passampo Siri'di Desa Biji Nangka Kecamatan Sinjai Borong Kabupaten Sinjai."

<sup>10</sup> Salim specializes in his discussion on the law of marrying a pregnant woman because of adultery and its consequences. This study concludes that pregnant women out of wedlock can be married to men who impregnate them, on the other hand pregnant women out of wedlock can also be married to other men, but do not have intercourse with her until she gives birth. The consequences are the loss of rights and responsibilities between children and fathers, such as kinship rights, inheritance, and guardianship. See Agus Salim Nst, "Menikahi Wanita Hamil Karena Zina Ditinjau Dari Hukum Islam," *Jurnal Ushuluddin* 17, no. 2 (2011): 131–44, <https://doi.org/10.24014/jush.v17i2.687>.

<sup>11</sup> Hanum explained the review of the Compilation of Islamic Law and Law Number 1 of 1974 concerning Marriage on the status of children born of adultery. Hanum concluded that a pregnant woman out of wedlock is legally married to a man who impregnates her, because in accordance with the provisions of the Compilation of Islamic Law Article 53 " *A woman who is pregnant out of wedlock can be married to a man who impregnates her* ". Thus, the implementation of the marriage of pregnant women outside of marriage based on Article 53 of the KHI makes the status of the child born legal. See Farida Hanum, "Status Anak Yang Dilahirkan Dari Perkawinan Wanita Hamil Karena Zina Menurut Kompilasi Hukum Islam Dan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Premise Law Jurnal* 8 (2015)..

traditions of the Bugis people, such as the works of Sesse<sup>12</sup> and Rusli.<sup>13</sup> And the fourth group is research that focuses on the principle of *siri'* in East Kolaka, for example, by Mattulada<sup>14</sup> and Pelras.<sup>15</sup>

Based on the literature review above, it can be concluded that there are no previous studies that specifically discuss the *kawi' pura* tradition as a *passampo siri'* marriage. In general, previous studies have focused more on the legal status of marrying pregnant women out of wedlock from various perspectives. This research is field research. The data was collected by observation and interviews. The observation was carried out by recording, and listening to the habits of the Bugis people in East Kolaka Regency in dealing with cases of pregnant women out of wedlock, while the interview method was carried out by conducting dialogue with religious leaders, community leaders, traditional leaders, and perpetrators of the *kawi' pura* tradition in East Kolaka.

- <sup>12</sup> See Sesse and Rafsanjani discussed about *doi menre'*. In this study, it is explained that *doi menre'* in Bugis marriage is the main requirement, because the Bugis community's response to *doi menre'* is high, so that it becomes a burden for the men who will carry out the marriage. See Muh Sudirman Sesse and Rafsanjani Rafsanjani, "Dui Menre Dalam Tradisi Perkawinan Bugis Dalam Perspektif Hukum Islam," *DIKTUM: Jurnal Syariah Dan Hukum* 9, no. 1 (2011): 43–55, <https://doi.org/10.35905/diktum.v9i1.278>; Reski Ulul Amri, "Kududukan Doi Menre Dalam Perkawinan Suku Bugis Di Bone Sulawesi Selatan," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 54, no. 1 (2020): 83–103, <https://doi.org/10.14421/ajish.2020.54.1.83-103>.
- <sup>13</sup> Rusli argued about the reinterpretation of Bugis marriage customs. This study aims to emphasize the philosophical meaning of every Bugis marriage and also to stem the slanted accusations against accusations of marriage which seem burdensome, because there are many processes that must be passed so that it requires a large amount of money. The conclusion of this study is that marriage is sacred and sacred, as it is sacred to maintain the honor of the child until he sits on the aisle, so that the celebration of the wedding must be carried out as much as possible in order to leave a sweet impression. See Muh Rusli, "Reinterpretasi Adat Pernikahan Suku Bugis Sidrap Sulawesi Selatan," *KARSA: Journal of Social and Islamic Culture*, 2012, 242–56, <https://doi.org/10.19105/karsa.v20i2.45>.
- <sup>14</sup> This study discusses various kinds of Bugis culture, such as the culture of building houses, the culture of caring for heirlooms, including the culture of maintaining the *siri' principle*. However, this study does not discuss the relationship between the *siri' principle and the kawi' pura* tradition. See Mattulada, "Bugis-Makassar Culture", in K Koentjaraningrat, "Humans and Culture in Indonesia," *Djambatan, Jakarta*, 2010.
- <sup>15</sup> This research writes about the early history of the existence of the Bugis society, the cultures of the Bugis people, and the marriage relationship with the principle of *siri'* of the Bugis people. Pelras said that marriage is the most frequently involved issue of *siri'*. If a man's proposal is rejected, then the suitor can feel *mate siri'* (lost honor) so he is forced to take elopement (*silariang*) to revive the honor of the man. In this case, Pelras did not write about the disgrace caused by the case of pregnant women out of wedlock as a result of the implementation of the *kawi' pura tradition*. See Christian Pelras, *The Bugis* (John Wiley & Sons, 1997); Christian Pelras, "Patron-Client Ties among the Bugis and Makassar of South Sulawesi," in *Authority and Enterprise* (Brill, 2000), 15–54, [https://doi.org/10.1163/9789004486409\\_003](https://doi.org/10.1163/9789004486409_003).

### **The Practice of the *Kawi' Pura* Tradition: a *Passampo Siri'* Marriage**

The nature of marriage in East Kolaka customs is in line with the concept of Islamic law, namely as a strong bond, both in the structure of family formation and in building social interactions. But a different portrait is shown if there are cases of pregnant women out of marriage. They tend to use the *kawi' pura* tradition in solving these cases. In the following, the author describes the practice of the *kawi' pura* tradition as a way to tackle the shame of being pregnant before marriage in the East Kolaka society.

The first case is obtained when the author's interview with Muliyadi.<sup>16</sup> He said that in 2016 there was a couple named NL and AC who committed adultery, which resulted in NL's pregnancy. AC has asked NL for marriage. However, because the *doi menre'* (amount of money that has to be paid by the man to the woman's family before the marriage process) given by AC was deemed insufficient by the woman's family. His proposal was rejected. The refusal occurred not only because the spending money was insufficient, but previously NL's parents did not know that their daughter was pregnant out of wedlock. After knowing about NL's pregnancy, NL's parents met AC to discuss the marriage, but at the time AC had married another woman in Wande Village. The incident spread and became a byword among the surrounding community, which of course caused disgrace to NL's family. In the end, NL's family asked AC's family to be responsible.

In this case, to maintain the honor of NL's family, NL must be married to *massampo siri'* (covering the disgrace of her family). NL then was married to AC's cousin (KH) with an agreement after the marriage that NL would have to divorce AC's cousin.<sup>17</sup> NL and KH's wedding procession was held at the house of NL's uncle named Petta Side' in a closed-house ceremony, without the presence of the surrounding community. The dowry that KH gave was a set of prayer equipment. NL's uncle became the guardian of the marriage. After the *ijab qabul* (words of consent) was pronounced, about five minutes, KH immediately divorced NL.<sup>18</sup> Based on the observation, the author finds that the marriage

<sup>16</sup> Muliyadi, Community Leader of Lembah Subur Village, Dangia District, East Kolaka Regency, Southeast Sulawesi. Interview on December 17, 2018.

<sup>17</sup> In describing cases of the *kawi' pura* tradition as a *passampo siri'* marriage for the Bugis people, the author uses a pseudonym to name the parties involved in the marriage. This is because they (perpetrators, marriage guardians, and other related parties) do not want to be named, because this case is a disgrace.

<sup>18</sup> AC, Perpetrator of *kawi' pura* in Lembah Subur Village, Dangia District, East Kolaka Regency, Southeast Sulawesi, interview at December 18, 2018.

was held in Petta Side's house (uncle of NL) because he has been a traditional leader in the village. The marriage was not carried out at the residence of NL or KH in order to avoid conflicts between the two families. According to the custom of East Kolaka people, if there is a dispute regarding customs in the community, the mediation for the parties is held in the local traditional leader's house.

In the second case, a woman from Tinete Village named SM was pregnant out of wedlock in 2017. The woman was labeled to be a naughty girl among the villagers because she often changed partners and dated many men before her pregnancy. She was accustomed to participating in music concerts, and night markets, and often went out of town for a staycation for several days with different men. When she became pregnant, she did not know which man owned the baby. The news of her pregnancy had spread and become the subject of discussion among the local community. This makes the woman's family members *masiri'* (embarrassed). Finally, the woman was prohibited from communicating with the surrounding community. However, as time passing, the pregnant woman became clear (about the condition of her pregnancy). Therefore the family looked for a man who would be ready to marry her. This marriage was followed by an agreement of divorce soon after the marriage. However, no man was ready to marry her. The head of the village suggested that the pregnant woman should be married to a mosque *marbut* (a Muslim who maintains/organizes a mosque) named NP, considering that SM's condition was about to give birth. Finally, the woman's family agreed in order to cover up the disgrace.<sup>19</sup>

SM and NP's marriage took place at the residence of the head of Tinete Village. The dowry that NP gave to SM was a set of prayer equipment prepared by the woman's parents. The marriage was only attended by the woman's father, the village head, and the head of the mosque. Simply, the marriage was held in private. The purpose of the marriage is to cover shame (*passampo siri'*) and the child born to the pregnant woman has a father, because

<sup>19</sup> Burhanuddin, Religious Leader of Tinete Village, Aere District, East Kolaka Regency, Southeast Sulawesi, interview at December 23, 2018.

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before the child was born, the mother had married even though not with the real (biological) father of the child.<sup>20</sup>

In the third case, a woman named RK was pregnant out of wedlock as a result of her adultery with a man named AS. The man came to RK's house to propose and marry RK, but RK's family did not agree because they knew that AS was an alcoholic and *pejudi sambung ayam* (cockfighting gambler). As a result of the refusal of RK's family, AS no longer wanted to deal with RK's pregnancy, but on the other hand, RK's family continued to demand responsibility from AS. RK's family demanded AS to pay for RK until she gave birth and until her child grows up. However, AS refused and felt the demands were unreasonable because he was not allowed to marry RK. Based on this, RK's family offered to settle the case through *kawi' pura*, with an agreement that after they got married, AS had to divorce RK. Furthermore, RK was also not allowed to marry another man before she gave birth.<sup>21</sup>

RK and AS's marriage was held at the house of the head of Atulano Village to avoid conflict in the family. Their marriage was conducted in secret, considering the incident was a disgrace to the people of Atulano Village. The one who acted as the marriage guardian at that time was a village leader named La Gising. The wedding procession was only attended by AS, the village leader, and RK's brother. The dowry handed over to RK's family was Rp150000. In this case, the purpose of carrying the *kawi' pura* tradition is to cover up the disgrace of the families. It is also to maintain the dignity of the people of Atulano Village, because news of RK's pregnancy had spread to neighboring villages. The next goal was to force AS to pay for RK during pregnancy and to pay for the child that would be born.<sup>22</sup>

In the fourth case, a community leader named Supriyanto<sup>23</sup> explained that in 2014 there was a woman who got pregnant out of wedlock named MD. The man who impregnated her was known as ZS. The case started with MD who realized that she was

<sup>20</sup> Rusni Rusni and Saleh Ridwan, "Kahi'Pura Sebagai Pernikahan Passampo Siri?Studi Kasus Di Sinjai; Analisis Perbandingan Imam Mazhab Dan Hukum Adat," *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab Dan Hukum* 2, no. 2 (2021): 340–47, <https://doi.org/10.24252/shautuna.v2i2.19446>.

<sup>21</sup> La Gising, Traditional Leader of Atulano Village, Lambandia District, East Kolaka Regency, Southeast Sulawesi, interview at December 26, 2018.

<sup>22</sup> Ahmad Juraije', Religious Leader of Atulano Village, Lambandia District, East Kolaka Regency, Southeast Sulawesi, interview at December 26, 2018.

<sup>23</sup> Supriyanto, Community Leader of Atula Village, Ladongi District, East Kolaka Regency, Southeast Sulawesi, interview at December 14, 2018.



pregnant out of wedlock due to her adultery with ZS. But when MD and his family searched for ZS's, they did not obtain any information about his domicile. According to information from the local community, ZS has returned to West Kalimantan Province. Knowing this information, the woman's family tried to find out ZS, but the search had no result.

MD's family felt very ashamed because MD was pregnant without a legal marriage. Finally, MD's family decided to settle this case through the *kawi' pura* tradition. The name of the man who was ready to marry her then was not known, because according to the information, the man did not want to reveal his name. MD's family is also very secretive about the man's identity. The point is that according to the local people, men who are ready to marry MD are from outside of Kolaka Regency and he is paid to marry MD by an agreement to divorce immediately. Thus, the man is used as a cover of shame (*passampo siri'*). Based on the four cases described above, it can be concluded that the traditional practice of *kawi' pura* as a *passampo siri'* marriage in East Kolaka Regency shares the same motives and the same pattern, namely: divorce after the marriage took place. The marriage is conducted under normal procedure, except for the divorce agreement.

There are four factors that drive the *kawi' pura* tradition. First, the *kawi' pura* tradition is considered a way to cover the family disgrace (*massmpo siri'*) due to the pregnancy of women out of wedlock.<sup>24</sup> Second, the *kawi' pura* tradition is thought to be the ancestors' legacy in which an emergency situation could be followed. This tradition is claimed by the ancestors of the Bugis community in East Kolaka in resolving cases of pregnant women out of wedlock. The ancestors of the Bugis people in ancient times tended to resolve marital problems in a familial way or often termed *tudang sipulung* (sitting together to solve a problem), in the sense that they present the disputing parties and then the parties are asked for information about the causes of the dispute. If there is no way out of the *tudang sipulung*, then the ancestors of the Bugis society proposed the *kawi' pura* tradition as an ultimate solution to the problem.<sup>25</sup>

<sup>24</sup> Burhanuddin, Religious Leader of Tinete Village, Aere District, East Kolaka Regency, Southeast Sulawesi, interview at December 21, 2018.

<sup>25</sup> H. Mukhlis, Traditional Leader of Atula Village, Ladongi District, East Kolaka Regency, Southeast Sulawesi, interview at December 14, 2018.

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Malaing said that the previous Bugis people in East Kolaka always involved *tomatoa kampong* (traditional leaders) to avoid disputes between disputing families. The *kawi' pura* tradition is carried out at the *tomatoa kampong* residence to avoid further disputes after the procession.<sup>26</sup> This second factor is evident when the majority of the East Kolakan who will get married always comes to the house of *tomatoa kampong* for blessings, and advice, including asking for a good time in conducting the marriages. In a sense, the East Kolaka Muslims always *mappetabe'* (ask for opinion) to traditional leaders regarding their marriage day, including the marriage of pregnant women out of marriage.<sup>27</sup>

Third, the lack of legal awareness of the East Kolaka Muslims regarding the applicable marriage law drives the *kawi' pura* tradition. The result of the author's interview with the informant reveals that in resolving cases of pregnant women out of wedlock, the East Kolaka Muslims use the *kawi' pura* tradition because of their lack of awareness about marriage law in Indonesia. Actually, some of them know how the marriage regulations in Indonesia regarding the marriage of pregnant women out of wedlock are. However, the social pressure makes them immediately resolve the case, rather than resolving the case through the court which takes a long time while the woman's pregnancy will be spread more widely. The East Kolaka Muslims know the rules of marriage for pregnant women out of wedlock, but in practice, they prefer the *kawi' pura* tradition as a way out of the deadlock. This is because society is aware that the settlement of cases in court takes months, thus making the family feels too long to bear the shame.

Fourth, the “low level” of education of the East Kolaka Muslims who practice the *kawi' pura* tradition seems to contribute to this tradition. Our interviews with Muharram and Ilyas stated that the majority of the East Kolaka Muslims who carry out the *kawi' pura* tradition are mostly those who do not continue their education at high school. This is due to the reasons: many parents are afraid of their children's promiscuity after graduating from high school, considering that high school graduates are in their puberty period;<sup>28</sup> the

<sup>26</sup> H. Malaing, Religious Leader of Lembah Subur Village, Dangia District, East Kolaka Regency, Southeast Sulawesi, interview at December 10, 2018.

<sup>27</sup> Carol J Pierce Colfer et al., “The Balance of Power in Household Decision-Making: Encouraging News on Gender in Southern Sulawesi,” *World Development* 76 (2015): 147–64, <https://doi.org/10.1016/j.worlddev.2015.06.008>.

<sup>28</sup> Ilyas, Religious Leader of Atula Village, Ladongi District, East Kolaka Regency, interview at December 11, 2018.

majority of the East Kolaka Muslims work as farmers. They rarely think of continuing their education at a higher level. Since there are no universities in East Kolaka Regency, many parents do not let their children go to college outside the city.<sup>29</sup>

### **The Intersection of the Principle of *Kawi' Pura* Tradition and the Principle of Islamic Marriage Law**

The presence of Islam in East Kolaka makes the application of Islamic law to undergo every procession of worship and *muamalah* (private) in the society. The existence of customary law in East Kolaka in the cases of pregnant women out of wedlock has not been separated from Islamic Law. It is unquestioned that Islamic law is applied by every Muslim community according to the level of their ability. According to al-Sha'rani, the level of Muslim ability is measured by the level of obedience to religion, social status, and environment.<sup>30</sup> The obedience of the East Kolaka people is reflected by their activities in implementing the pillars of Islam. According to Mulyadi, in general, East Kolaka Muslim people are obedient to Islam. If there are individuals who try to vilify the image of Islam, they are used to being expelled from the East Kolaka region. Furthermore, like leisure Muslims in general, East Kolaka people are also obedient to praying, although this is only at certain times such as *jum'at* (Friday worship) and the month of Ramadan (month of fasting). They also pay *zakat fitrah* (one of Islamic philanthropies) in the month of Ramadan. Many East Kolaka Muslim people have performed *hajji* (the pilgrimage to Mekkah), even though their economic conditions are middle-income.<sup>31</sup>

Likewise in the implementation of other worship, the implementation of marriage normally follows the guidance of Islamic law. In Bugis marriages, many processions are carried out, starting from applications, discussing the amount of dowry, determining guardians and witnesses, including entertaining guests during the wedding ceremony.<sup>32</sup> In normal conditions, the East Kolaka Muslims have practiced the teachings of Islam,

<sup>29</sup> Muharram, Community Leader of Dangia Village, Dangia District, East Kolaka Regency, Southeast Sulawesi, interview at December 22, 2018.

<sup>30</sup> Abdul Wasik, "Korelasi Interaksi Sosial Dalam Perkembangan Hukum Islam Di Indonesia," *Jurnal Hukum Islam*, 2016, 31–48, <https://doi.org/10.28918/jhi.v0i0.674>.

<sup>31</sup> Monique Baumont et al., "Understanding Childhood Adversity in West Sulawesi, Indonesia," *Child Abuse & Neglect* 107 (2020): 104533, <https://doi.org/10.1016/j.chiabu.2020.104533>.

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including in matters of marriage. However, there are different views if they are faced with an embarrassing condition, such as the case of pregnant women out of wedlock. In “emergency” circumstances, they opt to return to the customary law to resolve the case in an effort to cover up the disgrace. In conducting marriages, in general, the East Kolaka Muslims combine Islamic marriage law with customary law at the stage of the procession. My interview with Hj. Erni reveals that if the marriage is normal or if there is no problem before the marriage, then East Kolaka Muslims carry out the marriage in an Islamic way, although there are several processions originating from customs such as *mammanu'-manu'* (investigating the status of the bride), *mappasiarekeng* (conveying the news of the marriage and reaffirming the agreement of both parties), *mappacci* (ceremony to purify the prospective couple from the misbehavior of the past and future). But these processions do not conflict with the provisions of Islamic law, because each procession is conducted for the good of the bride and groom.<sup>33</sup>

The practice of Bugis marriages in East Kolaka Regency is not contrary to the provisions of Islamic marriage law. It becomes distorted when comes to *siri'* (disgrace), in the sense that honor is injured. They are willing to do anything to eliminate that disgrace. This is their main goal while maintaining the tradition of *kawi' pura* to eliminate the disgrace caused by the case of pregnant women out of wedlock. It is true that maintaining self-respect and family honor in Islam is highly recommended, as in At-Taḥrim 66:6.<sup>34</sup> However, this honor should be maintained in the right manner or in accordance with Islamic guidelines. As in the case of pregnant women out of wedlock, the settlement process must rely on the rules of the Islamic law that have been applied in Indonesia. In this case, is the Compilation of Islamic Law and Marriage Law that regulates the marriage of pregnant women out of wedlock. It is clear that the East Kolaka Muslims are aware of Islamic Law, but they wittingly fail to practice the norm of The Compilation.<sup>35</sup>

<sup>32</sup> Mulyadi, Community Leader of Lembah Subur Village, Dangia District, East Kolaka Regency, interview at December 17, 2018.

<sup>33</sup> Erni, Community Leader of Tinete Village, Aere District, East Kolaka Regency, Southeast Sulawesi, interview at December 5, 2018.

<sup>34</sup> At-Taḥrim [66] : 6.

<sup>35</sup> Heribertus Rinto Wibowo et al., “One Household, Two Worlds: Differences of Perception towards Child Marriage among Adolescent Children and Adults in Indonesia,” *The Lancet Regional Health-Western Pacific* 8 (2021): 100103, <https://doi.org/10.1016/j.lanwpc.2021.100103>.

Burhanuddin revealed that the East Kolaka Muslims can be said to be people who are quite respected by other communities because they are classified as economically capable. Even some of them became civil servants in the district office. However, the majority who practice the *kawi' pura* tradition are those whose social status is good.<sup>36</sup> It seems that the pressure of shame is sensed more strongly by people with high social status than by people with middle social status. It is this pressure of shame that drives people of higher social status to use the *kawi' pura* tradition as a way to cover the disgrace due to the pregnancy out of wedlock that befell their families.

The social environment of the East Kolaka people is influenced by their principle of upholding their honor. This principle is frequently misinterpreted in handling embarrassing cases, such as the case of pregnant women out of wedlock. The main doctrine of the principle is more or less "something that is shameful must be removed by any means because it becomes a disgrace to oneself, one's family, and the surrounding community".<sup>37</sup> This means that the integration of the *siri'* principle in dealing with cases of pregnant women out of wedlock shows that customary law norms are prioritized over Islamic marriage law. This is because the *kawi' pura* tradition mentioned above is merely carried out to cover a disgrace without any intention of building a real family as the principle of Islamic Family Law.

In Article 2 of the Compilation, it is stated that marriage is a strong bond between a man and a woman and their families in submission to Allah and carrying it out as a form of worship. The purpose of marrying a pregnant woman to the man who impregnates her is to protect the rights of the woman and the child. It is stated in Article 53 paragraph 2 of the Compilation. The purpose of marriage of pregnant women out of wedlock in the *kawi' pura* tradition is contrary to the provisions of Islamic law.<sup>38</sup> The marriage is carried out not to protect the rights of women and the child, but to remove the shame of the woman and her family. As-Şabuni and Ibn Rushd believe that adulterous women cannot be married to

<sup>36</sup> Burhanuddin, Religious Leader of Tinete Village, Aere District, East Kolaka Regency, Southeast Sulawesi, interview at December 21, 2018.

<sup>37</sup> Ambo Enre', Community Leader of Atulano Village, Lambandia District, East Kolaka Regency, interview at December 26, 2018.

<sup>38</sup> Ella S Prihatini, "Women Who Win in Indonesia: The Impact of Age, Experience, and List Position," in *Women's Studies International Forum*, vol. 72 (Elsevier, 2019), 40–46, <https://doi.org/10.1016/j.wsif.2018.10.003>.

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other than adulterers, in the sense that women who are pregnant out of wedlock can only be married to men who impregnate them, because their status is the same as adulterers. This is in accordance with An-Nūr 24:3.<sup>39</sup>

Departing from the above facts, the practice of the *kawi' pura* tradition for the East Kolaka Muslim is contrary to Islamic marriage law principle, both Islamic marriage law in the Compilation and the *ijtihad* (*rechtwinding*) of some Islamic law scholars. Some other Islamic law scholars recognize the marriage of pregnant women out of wedlock to other men who do not impregnate them. It is As-Syaibani, Shafi'i and Zuhaili.<sup>40</sup> The opinion argued by the latter Islamic law scholars comes because women who are pregnant due to adultery do not make it illegitimate to marry, or pregnant women out of wedlock are not related to women who are forbidden to marry in An-Nisā 4:23-24.<sup>41</sup>

According to H. Tajang, it is unknown when the early East Kolaka Muslims started to implement the *kawi' pura* tradition.<sup>42</sup> This tradition has been practiced in resolving cases of pregnant women out of wedlock since before the East Kolaka embraced Islam, later being East Kolaka Muslims.<sup>43</sup> The practice of *kawi' pura* in East Kolaka has a little changed since the coming of Islam. H. Tajang stated that there are fundamental differences with marriage now (after Islam). For example, in the *ijab kabul* pronounce *upasialako baco'* (a word for men), *sibawa becce'* (a word for women), *mamuarei mutarimai laleng temaa becce'*, and *mutuo riakuasangenna dewatae* (accept your partner with all his shortcomings and live in the pleasure of Allah). But after the arrival of Islam, they used the Islamic method in the process of marriage. Even though Islam is the religion of the majority of East Kolaka, the

<sup>39</sup> Ibn Rushd, 'Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid. Translated by Mad Ali, Volume II (Bandung: Trigenda Karya, 1996), p. 118.

<sup>40</sup> Wahbah Zuhaili, *Fiqh Imam Syafi'i Mengupas Masalah Fiqhīyah Berdasarkan Al-Qur'an Dan Hadits (Jilid 2) Ter, Muhammad Arifin Dan Abdul Hafiz Cet. Ke-2. Jakarta: Almahira, 2012. See also Abi Abdullah Muhammad Idris Asy-Syafi'i, Al-Umm (The Master Book), translated by Ismail Yakub, Volume 7 (Kuala Lumpur, Victory Agency, 2006), p. 145.*

<sup>41</sup> Ministry of Religion of the Republic of Indonesia, *Al-Qur'an Translation*, p. 82.

<sup>42</sup> H. Tajang, Traditional Leader of Dangia Village, Dangia District, East Kolaka Regency, interview at December 27, 2018.

<sup>43</sup> H. Malaing, Religious Leader of Lembah Subur Village, Dangia District, East Kolaka Regency, Southeast Sulawesi, interview at December 27, 2018.

procedures for this tradition have not changed much, only the dowry and the marriage contract have changed.<sup>44</sup>

The previous Bugis people in East Kolaka maintain the *kawi' pura* tradition until the time when Islam is embraced by the majority. The provisions of Islamic marriage law adapted to this tradition are provisions for the existence of dowry and marriage consent. However, when it comes to problem settlement, they tend to avoid using the state laws and as well as the *ijtihad* of Islamic law scholars as used to. The author's interview with Ambo' Enre' shows that the East Kolaka Muslims quite misinterpreted the *siri'* principle inherited from their ancestors. According to Enre', the East Kolaka Muslims uphold the *kawi' pura* tradition fails to reconcile the *siri'* principle with changing times. In the past, the *kawi' pura* tradition was used to cover it up, because it might have been legal because there were no provisions from other legal sources (Islamic law or state law), but only from custom. Nowadays, pregnant women out of wedlock in the *kawi' pura* tradition brings a disgrace to women and their families, because they have committed two shameful acts at once: committing adultery before marriage and then getting pregnant after they violate the principle of Marriage in Islamic law and current state law.<sup>45</sup>

Ilyas stated that the Islamic marriage law in Act No. 1 of 1974 regarding Marriage and the Compilation of Islamic Law is in accordance with the current conditions of society because the two marriage laws were set based on the community's needs.<sup>46</sup> This is in line with the opinion of Jureje' who stated that knowledge about marriage law in Islam has reached the community, both in the form of statutory regulations and Islamic law in the form of *ijtihad* of Islamic law scholars.<sup>47</sup> The East Kolaka Muslims have different responses to the *kawi' pura* tradition. Some remain to preserve it and some want to return the settlement of their cases to state law. The majority of the East Kolaka Muslims intend to maintain the *kawi' pura* tradition and share two reasons: (1) the family has no option to uncover its shame in order to preserve the honor in the surrounding community. The

<sup>44</sup> H. Tajang, Traditional Leader of Dangia Village, Dangia District, East Kolaka Regency, interview at December 27, 2018.

<sup>45</sup> Ambo Enre', Community Leader of Atulano Village, Lambandia District, East Kolaka Regency, interview at December 26, 2018.

<sup>46</sup> Ilyas, Religious Leader of Atula Village, Ladongi District, East Kolaka Regency, interview at December 11, 2018.

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families who are afflicted with cases of pregnant women out of wedlock tend to be closed-door and do not want to socialize with the surrounding community.<sup>48</sup> (2) The tradition of *kawi' pura* is maintained because the East Kolaka Muslims are used to practicing this tradition.<sup>49</sup> The support from several religious leaders, traditional leaders, and community leaders for the implementation of this tradition fosters the living assumption that the *kawi' pura* tradition is legal to do.

The East Kolaka people who want to return to the provisions of the law argue that pregnant women out of wedlock should have their cases resolved through the courts rely on two reasons: (1) the case of pregnant women out of wedlock is a disgrace to the public in a village. Therefore, the process of resolving the case is better handled by the authorities. Therefore, disputes between communities do not arise in the future, considering that every village community in East Kolaka has a different family clump.<sup>50</sup> (2) The *kawi' pura* tradition does not reflect a good state and religious attitude because the tradition shows an attitude against state and religious laws.<sup>51</sup> The educational background of the author's informants who want to restore the settlement of cases of pregnant women to the provisions of the state law in Indonesia is higher education. This proves that education contributes to the younger generation of Muslims in East Kolaka Regency reducing marriage practices that are contrary to Islamic marriage law.

Based on the studies above, before embracing Islam, the East Kolaka people had their customary law in conducting marriages. However, with the adoption of Islam as their religion, the norms of customary law and Islamic marriage law are integrated with carrying out marriages, including carrying out marriages of pregnant women outside of marriage (the *kawi' pura* tradition). The problem with the *kawi' pura* tradition is in the dowry which comes from the woman. After the consent was pronounced, the two married couples immediately divorced. The incompatibility of the traditional practice of *kawi' pura* with the provisions of Islamic marriage law sparks new problems, namely the rights of the children

<sup>47</sup> Ahmad Jureje', Religious Leader of Atulano Village, Lambandia District, East Kolaka Regency, interview at December 26, 2018.

<sup>48</sup> Abdul Hamid and Muharram, interview at December 11, 2018.

<sup>49</sup> La Gising, Traditional Leader of Atulano Village, Lambandia District, East Kolaka Regency, interview at December 26, 2018.

<sup>50</sup> Mulyadi and Hj. Erni, interview in December.



born from pregnant women outside of marriage are not completely guaranteed by the Islamic law. This is in contrast with the current Indonesian positive Law, particularly when it refers to the Constitutional Court of Republic Indonesia decision 46/PUU-VIII/2010. According to this decision, a child born outside of the valid marriage has a private right with the biological father and his father's family. It means even marriage in *kawi' pura* tradition provides no solution for the child. The practice of the *kawi' pura* tradition as customary law in East Kolaka does not create order and justice in society. The validity of this tradition is not confirmed by Islamic law or state law.

## Conclusion

The *kawi' pura* tradition in East Kolaka happens due to the pressure to cover up family disgrace. It has been practiced by the ancestors of the East Kolaka Muslims. This tradition is consistently practiced when East Kolaka has a problem. In the real case, this tradition is initiated by a certain condition, such as the man who impregnates the woman does not want to be responsible due to his unknown domicile or the rejection of the woman's family. The process of *kawi' pura* tradition partially accommodates customary law and Islamic marriage law. The procedure of marriage in this tradition follows the elements of Islamic Law. However, it considerably contradicts the principle of state marriage law and Islamic marriage law, particularly in immediate divorce conditions. Some Islamic law scholars recognize a pregnant woman out of wedlock can be married to another man who does not impregnate her, but the agreement of immediate divorce is not clearly discussed. This immediate divorce is not appropriate to the definition of marriage in Indonesian marriage law.

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<sup>51</sup> Ilyas, Religious Leader of Atula Village, Ladongi District, East Kolaka Regency, interview at December 11, 2018.

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