

The Shortest and Longest Pregnancy According to Islamic Jurisprudence and Legislation of Muslim Countries

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Abstract: *The Shortest and Longest Pregnancy According to Islamic Jurisprudence and Legislation of Muslim Countries.* This study examines how long a woman's pregnancy takes according to fiqh *Islamic Jurisprudence* and legal provisions in several Muslim countries. This research is purely a literature study using a normative approach that refers to the provisions of family law in several Muslim countries. The legal analysis used is an authentic and doctrinal interpretation method. The fiqh scholars state that the shortest gestation period is six months, while the fiqh scholars differ in their opinion regarding the longest gestation period. Generally, they agree that the longest gestational age is six months. Although legal provisions in various Muslim countries often do not refer to the opinion of fiqh scholars who argue that the longest gestation period is more than one year. This research finds the fact that legislators in various Muslim countries do not use the classical scholar's opinion about pregnancy because it is considered unscientific and does not support social reality. Muslim countries generally define six months as the shortest period of pregnancy and one year as the longest, except for Brunei Darussalam which defines four years.

Keywords: gestation period, Muslim countries, *Qanûn al-Ahwâl al-Syakhsiyyah*

Abstrak: *Masa Kehamilan Tersingkat dan Terlama Menurut Fikih dan Legislasi Negeri-Negeri Muslim.* Penelitian ini mengkaji berapa lama usia kehamilan seorang wanita menurut fikih dan ketentuan hukum di beberapa negara muslim. Penelitian ini murni studi kepustakaan dengan menggunakan pendekatan normatif yang mengacu pada ketentuan hukum keluarga di sejumlah negara muslim. Analisis hukum yang digunakan adalah metode penafsiran yang otentik dan doktrinal. Ulama fikih menyatakan masa kehamilan yang paling pendek adalah enam bulan, sementara untuk masa kehamilan terlama, para ulama fikih berbeda pandangan. Umumnya mereka sepakat bahwa usia terlama kehamilan adalah enam bulan. Meskipun ketentuan hukum di berbagai negara muslim seringkali tidak merujuk ke pendapat para ulama fikih yang berpendapat bahwa masa kehamilan paling lama adalah lebih dari satu tahun. Penelitian ini menemukan fakta bahwa para legislator di berbagai negara muslim tidak menggunakan pendapat ulama klasik tentang masa kehamilan karena dianggap tidak ilmiah dan tidak mendukung realitas sosial. Negara-negara Muslim secara umum menetapkan enam bulan sebagai periode terpendek kehamilan dan satu tahun sebagai yang terlama, dengan pengecualian Brunei Darussalam yang menetapkan empat tahun.

Kata kunci: batasan masa kehamilan, negara Muslim, *Qanûn al-Ahwâl al-Syakhsiyyah*

Introduction

Determining the shortest and longest gestation period for a woman is very important because it is related to several legal issues such as determining the validity of the genealogical line, guardianship,¹ inheritance rights, *hadhânah* (maintenance), heirs, *muharramat al-nikâh* (forbidden marriage), and other legal issues.²

Regarding the shortest gestation period, Islamic jurists have agreed on this time, which is 6 months or around 180 days.³ But in determining the longest limit for a woman to have children after a divorce or the death of her husband, scholars have a different opinion. As explained by Wahbah al-Zuhaili, the Hanâfiyah group argues that the longest period of pregnancy is two years. While the Shâfi'iyah and Hanâbilah argue for four years. The Mâlikiyah group argues for five years, and this opinion is also held by Imâm Laits bin Sa'ad and Abbad bin al-Awwâm. Muhammad bin Abdul Hakam, one of the Mâlikiyah scholars, thinks that it is one Qamariyah year (lunar calendar). The last opinion of Dawud and Ibn Hazm and Caliph 'Umar bin Khattâb is 9 months of Qamariyah.⁴ Another opinion states that there is no maximum limit for a woman's pregnancy. This is as stated by Abû Ubaid and favored by Muhammad Amin al-Syanqithi. According to this group, the Shâri'a does not set a definite time, so the fatwa that determines the longest period of pregnancy will be automatically invalidated.⁵

Furthermore, although there are not many, the facts on the ground show that there are still some Marriage Registrars (PPN) who insist on using the opinion of the Shâfi'iyah scholars in determining the longest

¹ Sakirman, 'Telaah Hukum Islam Terhadap Nasab Anak', *HUNAFa: Jurnal Studia Islamika*, 12.2 (2015), 357–75.

² Moh Dliya'ul Chaq, 'Nasab Anak dalam Hukum Islam; Membaca Peluang Sains dan Teknologi dalam Penetapan Nasab', *Tafâqqub: Jurnal Penelitian dan Kajian Keislaman*, 6.1 (2018), 60–75.

³ Maria Ulfah, 'Wanita Hamil di Luar Nikah (Status Anak)', *Jurnal Pembaharuan Hukum*, 2.3 (2015), 329–34.

⁴ Wahbah al-Zuhaili, *al-Fiqh al-Islami Wa Adillatuhu*, 10 (Jakarta: Gema Insani Press, 2011), p. x.

⁵ Umar Ali, 'Aqallu Muddat al-Haml Wa Aktsaruha Min Manzbur al-Fiqhiy Wa at-Thibbiy; Dirasah Muqaranah', *Majallat al-Fiqh Wa al-Qanûn*, 170 (2014), 1–45.

period of pregnancy. As told by Mahfudz Chafizi, a headman at the KUA Wonokerto, Pekalongan Regency, Central Java Province. That she once witnessed a friend of hers refusing to register the marriage of a divorced widow with the excuse of waiting 4 years to anticipate the possibility of becoming pregnant with her first husband.⁶ Cases like this can also be found in Malaysia where some local scholars still adhere to the opinion of the Shâfi'iyyah jurists who stipulate that the longest period of pregnancy is 4 years.

On the other hand, especially among medical experts and legislators in the contemporary era, the fatwa of the majority of classical scholars which stipulates the longest gestation period is over one year and even up to seven years is rejected because it is difficult for common sense to accept.⁷ The author of the book *Ahwâl al-Syakhsbiyyah* from Egypt Muhammad al-Dasûqi straightforwardly criticized the opinions of past scholars who argued that the longest gestation period was more than one year. According to him, taking into account the opinions of medical experts, the longest period of pregnancy that is more rational is one Qamariyah year.⁸ Meanwhile, the opinions of Ibn Hazm and Muḥammad bin Abdul Hakam, which were considered *syad* (strange) in the past, are now widely used and applied in legislation in Muslim countries, bearing in mind that these opinions are closer to factual reality and experience in the world of health.⁹

The topic of pregnancy has attracted the attention of many scientists. One of them is Isa Abdur-Razaq Sarumi who discusses the longest period of pregnancy with legal and medical reviews concerning the legal status of children according to Islamic law. While Abdul Aziz bin Ali al-Ghamidi discussed the shortest and longest gestation periods in terms

⁶ As it was told to the author in a class discussion at the Postgraduate Islamic Family Law Masters Program at IAIN Pekalongan on Sunday, May 12, 2019.

⁷ Obrowski Stephanie, Obrowski Michael, and Starski Karolina, 'Normal Pregnancy: A Clinical Review', *Academic Journal of Pediatrics and Neonatology*, 1.1 (2016), 1–19.

⁸ Muhammad al-Dasuqi, *al-Ahwâl al-Syakhsbiyyah Fi al-Madzhab al-Shâfi'i* (Kairo: Dâr al-Salam, 2011), p. 250.

⁹ More information and discussion about the human gestation period can be read in the writings of Anne Marie Jukic and others, 'Length of Human Pregnancy and Contributors to Its Natural Variation', *Human Reproduction*, 28.10 (2013), 2848–55.

of fiqh and medicine which were then linked to inheritance issues.¹⁰ Another researcher, namely Aisyah Sulthan Marzuki when discussing the law on pregnant women due to adultery according to fiqh, also alluded to the longest period and the shortest pregnancy of a woman from the fiqh perspective.¹¹

The same topic of study was also discussed by Raouane Azziz and his friends, who concluded that the jurists' version of the longest pregnancy limit of over 43 weeks is an opinion that is not supported by strong medical facts. According to the world of medicine, the shortest period of pregnancy is 22 weeks and the maximum is 43 weeks.¹² Apart from that, Abû Bakar Umar Ali also conducted a study on the shortest and longest periods of pregnancy by comparing the opinions of jurists and doctors.

In contrast to previous studies, this paper, although discussing the same topic, will analyze various statutory provisions in various Muslim countries by paying attention to the dominant school of thought in that country, then comparing it with the provisions in the legislation. The association of research topics with juridical facts in many Muslim countries was not carried out by previous researchers. This is where the difference between this study and the previous one lies, as well as the novelty of this conducted study.¹³

Provisions Regarding the Period of Pregnancy in Several Muslim Countries

A. Countries with a Majority of the Hanâfi School

1. Syria

The Syrian Arab Republic has its capital city in Damascus. The population, in 2015 is estimated to be 23,423,062 people. A country

¹⁰ al-Ghamidi, 'Aqallu Muddat al-Haml Baina al-Fiqh Wa al-Thib Wa Atsar Dzalika Fi Miratsihi', *Majalah Al-Adl*, 43.2 (1430), 201-224.

¹¹ Marzuki, 'Ahkam al-Mar'at al-Hamil Min al-Zina Fi al-Fiqh al-Islami', *MDAK*, 10.63, 313-68.

¹² Raouane Azziz and others, 'Mirats al-Haml Wifqa al-Ma'lumat at-Thibbiyah al-Mu'ashirah', *USIM*, (2020), 200-218.

¹³ Isa Abdur-Razaq Sarumi, 'The Maximum Period of Gestation', *Journal of Islamic Thought and Civilization*, 8.1 (2018), 72-83.

that has territorial boundaries with Turkey in the north, Iraq in the east, the Mediterranean Sea in the west, and Jordan in the south.¹⁴ In the practice of fiqh, the majority of the population in this country follows the Hanafi school of thought which is widely known to prioritize ratio considerations in deciding a legal case.¹⁵

Based on Law of the Republic of Syria Number 4 of 2019 which was passed on February 7, 2019, article 128 stipulates that the earliest pregnancy is 180 days and the maximum is 365 days.

المادة ١٢٨/٣

أقل مدة الحمل مئة وثمانون يوماً وأكثرها ثلاثمئة وخمسة وستون يوماً¹⁶

Article 128, Paragraph 3. *The fastest period of pregnancy is 180 days and the longest is 365 days.*

Determination of the longest period of 365 days, in the non-Hijriyah Christian calendar. hinted that Syria, the majority of which follows the Hanafi school of thought, does not use the school's opinion which determines the longest period of pregnancy is 2 years.

2. Egypt

The Arab Republic of Egypt is a country located mostly in Northeast Africa. Cairo was chosen to be the capital of his government. based on the 2017 census, Egypt has a population of approximately 94,798, 827 million; about 90% of them are Sunni Muslims and some adhere to local Sufi teachings. The remainder (10%) is thought to belong to religion within the Coptic denomination (Coptic Orthodox, Coptic Catholic,

¹⁴ About Suriah, see Oyosoro, Felix Idongesit. "Syria in a Torment: Key Actors and Geopolitical Intrigues." (2021).

¹⁵ See Berger, Maurits S. "The Legal System of Family Law in Syria." *Bulletin d'études orientales* (1997): 115-127. Maktabi, Rania. "Gender, Family Law and Citizenship in Syria." *Citizenship Studies* 14, no. 5 (2010): 557-572.

¹⁶ 'سفارة الجمهورية العربية السورية' <<http://syreembassy.ru/ahwal-madania.html>> [accessed 29 May 2022].

and Coptic Protestant).¹⁷ The Egyptian constitution guarantees that all legislation complies with Islamic law and makes the Hanafi school of thought the legal reference.

Through Law number 25 of 1929 article 15, Egypt stipulates that the shortest gestational age is 6 months and the longest gestation period is one year. Lineage claims will not be recognized if there are children from a wife whom she and her husband have never met since the contract, also children from a wife born one year after the husband's departure, or children born to a wife whose husband has died after more than one year from divorce or the death of her husband.¹⁸ This is as stipulated in the Egyptian State Law as follows:

ما دة ١٥ لا تسمع عند الإنكار دعوى النسب لولد زوجة ثبت عدم التلاقي بينها وبين زوجها من حين العقد، ولا لولد زوجة اتت به بعد سنة من غيبة الزوج عنها، ولا لولد المطلقة والمتوفى عنها زوجها إذا اتت به لأكثر من سنة من وقت الطلاق او الوفاة.¹⁹

B. Countries with the Majority of the Maliki School

1. Kuwait

Kuwait is a monarchy country that is rich in oil. In 2014 this country is inhabited by no less than 4.2 million people. Indigenous non-Kuwait residents are more in this country. About 1.3 million people are native Kuwaiti citizens, and 2.9 million people are immigrants from

¹⁷ See Cassing, James, Saad Nassar, Gamal Siam, and Hoda Moussa. "Arab Republic of Egypt." *DISTORTIONS* (2009): 71. Verme, Paolo, Branko Milanovic, Sherine Al-Shawarby, Sahar El Tawila, May Gadallah, and Enas Ali A. El-Majeed. "Inside Inequality in the Arab Republic of Egypt: Facts and Perceptions Across People, Time, and Space." (2014).

¹⁸ Abdul Wahhab Khallaf himself favored the opinion that the longest period was two years according to the ruling in the Hanafi school but also admitted that based on research and habits, the average gestation period is around 9 months. See Abdul Wahhab Khallaf, *Abkâm al-Ahwâl al-Syakhsbiyyah Fi al-Shâri'ah al-Islâmiyyah* (Kuwait: Dâr al-Qalam, 1990), p. 177.

¹⁹ <<https://manshurat.org/node/12369>> قانون الأحوال الشخصية رقم ٥٢ لسنة ١٩٢٩، منشورات قانونية، ٢٠١٦ [accessed 26 May 2022]. See Abdul Wahhab Khallâf, *Abkâm al-Ahwâl al-Syakhsbiyyah F al-Syari'ah al-Islâmiyyah* (Kuwait: Dâr al-Qalam, 1990), p. 180-181.

various countries around the world. It is estimated that 85% of Kuwait's population adheres to Islam. In this country, the Shia community is quite large with a percentage between 30% -40% of the total population of Kuwait. Most Shia communities follow the Ja'fari or Shia Imâmiyah schools of thought. While the majority of Sunni Muslims follow the Maliki school of thought in matters of jurisprudence.²⁰

Kuwait stipulates the shortest and longest limits of pregnancy as stated in Law Number 51 of 1984 Article 166 which reads:

أقل مدة الحمل ستة أشهر قمرية، و أكثرها خمسة و ستون
وثلاثمائة يوم²¹

The fastest period of pregnancy is 6 months Qamariyah and the longest period is 365 days.

From the formulation of the article, the Kuwaiti lawmakers did not use the opinion of the Maliki school of thought which stipulates the longest gestation period is 4 or 5 years. The law is more inclined towards the Shia Imami school which has a sizeable community in Kuwait. In Shia Imamiyah fiqh, according to Shia scholars, the longest gestation period is generally 9 months, some 10 months, and some even 1 year. But all Shia scholars agree that there is no more than one year, even if it's only one hour.²² This determination is somewhat strange because the shortest period strictly refers to 6 Qamariyah months while the longest period is 365 days which refers to the Gregorian calendar.

²⁰ See Maktabi, Rania. "Female Citizenship and Family Law in Kuwait and Qatar: Globalization and Pressures for Reform in Two Rentier States." *Nidaba* 1, no. 1 (2016): 20-34. Shams Aldeen, Alzaina. "“There Shall Be Made No Differentiation:” The Maintenance of Stratification in the State of Kuwait through the 1959 Nationality and Aliens Residence Laws." (2021).

²¹ نقده كتاب أكثر مدة الحمل؛ شبكة فلسطين للحوار <<https://www.paldf.net/forum/showthread.php?t=1228574>> [accessed 26 May 2022].

²² Muhammad Jawad Mughniyah, *Fiqh Lima Mazhab* (Jakarta: Lentera, 2013), p. 388.

2. Algeria

Algiers was chosen as the capital of the People's Democratic Republic of Algeria. The official languages spoken are Arabic, Berber, and French. Its population in 2015 is estimated at 39,500,000 people. The country's borders are with Tunisia to the Northeast; to the east by Libya; on the West with Morocco; in the South-West, it is bordered by Western Sahara, Mauritania, and Mali; Niger in the Southeast; and in the north by the Mediterranean Sea.²³

The Algerian government through Qanun al-Usrah of 2007 article 42 stipulates that the shortest period of pregnancy is six months while the longest period is ten months. These provisions are stated in the above regulations which read:

أقل مدة الحمل ستة أشهر وأقصاها عشر (١٠) أشهر²⁴

Algeria is somewhat unique in setting the longest limit of pregnancy by setting ten months, shorter than other countries which set an average of one year. Algeria does not adhere to the provisions of the Maliki school of thought, the school generally adhered to by the Algerian population.

3. Sudan

Sudan is the third largest country in Africa and the sixteenth largest in the world. The country shares borders with Egypt to the north, the Red Sea to the northeast, Eritrea to the east, Ethiopia to the southeast, Central Africa to the southwest, Chad to the west, and Libya to the northwest. The capital of Sudan is Khartoum, with Arabic and English being the official languages. The total population of Sudan in 2015 is estimated at 38, 435, 252 people. Most of the population of Sudan follows the Maliki school, a school that is widely followed by the African population.²⁵

²³ Ahmad Tholabi Kharlie dkk, *Kodifikasi Hukum Keluarga Islam Kontemporer* (Jakarta: Kencana, 2020), p. 151-152.

²⁴ Muhammad al-Shâfi'i, *Qanûn al-Usrah Fi Duwal al-Maghrib al-'Arabi* (Marakech: Maktabah al-Waraqah al-Wathaniyah., 2009), p. 247.

²⁵ See Adesina, M. A. "The Health Status and Demographics of a Conflicting Country:

Sudan, as can be observed from the Qanun al-Ahwal ash-Syakhshiyah issued in 1991, article 100 determines the fastest period of pregnancy for a minimum of 6 months and a maximum of one year. These provisions are stated in the Qanun above which reads:

100 - أقل مدة الحمل هي ستة أشهر وأكثرها سنة²⁶

4. United Arab Emirates

The United Arab Emirates is a country that is known to be prosperous because of its petroleum resources. The country is made up of seven emirates which include Abu Dhabi, Ajman, Ras al-Khaimah, Sharjah, Umm al-Qaiwain, Dubai, and Fujairah. No less than 9.3 million people live in the United Arab Emirates. The capital city of this country is Abu Dhabi. The indigenous people of this country are fewer than migrants who mostly come from South Asia such as Bangladesh and Pakistan. The official language used in everyday life is Arabic. Residents of the United Arab Emirates generally adhere to the Maliki school of thought.²⁷

The court system in the United Arab Emirates follows several legal systems such as the British system, and the civil law system which is influenced by Islamic law, French, Roman, and Egyptian law.²⁸ The United Arab Emirates is a country that is relatively late in drafting family law laws. The codification of family law was carried out by the United Arab Emirates in 2005, which was then followed by its neighboring countries, namely Qatar, in 2006, and Bahrain, in 2009, only Saudi Arabia has not yet codified family law because it feels that the current

the Sudan Experience." *Eur J Environ Public Health* 4, no. 1 (2020): em0032. Zaelani, Qodir Zaelani Qodir. "Pembaruan Hukum Keluarga: Kajian Atas Sudan–Indonesia." *Al-Adalah* 10, no. 1 (2012): 331-342.

²⁶ 'قانون الأحوال الشخصية للمسلمين - لسنة ١٩٩١', HUDO CENTRE <<https://arabic.hudocentre.org/1991-لجنة-للسنة-للمسلمين-لشخصية-الأحوال>> [accessed 26 May 2022].

²⁷ See Ahmad Tholabi Kharli dkk., *Kodifikasi Hukum Keluarga Islam Kontemporer* (Jakarta: Kencana, 2020), p. 133-134.

²⁸ See Al Tamimi, Essam. "The Legal System in the United Arab Emirates." In *Practical Guide to Litigation and Arbitration in the United Arab Emirates*, pp. 1-8. Brill, 2003; Laubach, Charles, and Abu Dhabi. "United Arab Emirates." *Anti-corruption Regulation* (2016): 200-206.

Hanbali fiqh is sufficient for judges to exercise ijtihad when handling cases.²⁹

The United Arab Emirates stipulates that the shortest period of pregnancy is 180 days, while the longest period is 365 days for Syamsiyah.³⁰ This is as stated in the provisions of the Ahwâl Syakhshiyah Law Number 28 of 2005 article 91, as follows:

المادة ١٩ أقل مدة الحمل مائة وثمانون يوماً, وأكثره ثلاثمائة و
خمسة وستون يوماً ما لم تقرر لجنة طبية مشكلة لهذا الغرض

The United Arab Emirates mentions the number of days and not months as in most other countries; This has the advantage that days are more concrete and detailed than months. It seems that the calendar referred to in the law is the Gregorian calendar because it mentions a year of 365 days while the number of days in a year according to the Qamariyah calendar is approximately 354 days.

C. Countries with the Majority of the Shafi'i School

1. Yemen

The capital of the Republic of Yemen is San'a. Arabic is used as the official language of the country. The population reached 29, 825, 968 people. Uniquely, Sunni and Shia followers here are close to a balance where Sunni is around 55% and Shia is 45%. Sunni followers mostly adhere to the Shafi'i school of thought, and Shiites mostly adhere to the Zaidiyah sect. Zaidiyah Shiites are moderate Shia and their fiqh thinking is closer to Sunni compared to other Shia sects.³¹

²⁹ Möller, Lena-Maria, 'Custody Regulations in the United Arab Emirates: Legal Reforms and Social Realities', *Hawwa*, 11.1 (2013), 41–57.

³⁰ 'UAE Federal Law (28) of 2005 On Personal Status', *Legal Advice Middle East*, 2005 <<https://legaladvice.com/legislation/140/uae-federal-law-28-of-2005-on-personal-status>> [accessed 26 May 2022].

³¹ See Netton, Ian Richard. *Encyclopedia of Islamic Civilization and Religion*. (Routledge, 2013); Colburn, Marta. *The Republic of Yemen: Development Challenges in the 21st Century*. CIIR, 2002.

In Yemen, the shortest and longest pregnancy period is regulated in Law Number 20 of 1992 article 128. The minimum gestation period is six months, and generally nine months. Meanwhile, the country's longest limit is that it doesn't give, it's only up to evidence and determination from specialist doctors.³² These provisions are stated in the following formula:

مادة (١٢٨) : أقل مدة الحمل ستة أشهر وأغلبها تسعة أشهر ولا حد لأكثرها مع ظهور القرائن الدالة عليه وإستمرارها وتقرير الطبيب المختص.

Thus, Yemen is the only country stating that there is no longest pregnancy limit. What Yemen has decided agrees with Abu Ubaid's opinion and favors Muhammad Amin asy-Syinqithi, a contemporary Mauritanian-born scholar who died in Medina.

2. Brunei

Located in Southeast Asia, Brunei is known for its strong Syafi'iyyah orientation.³³ This country stipulates the shortest limit for gestational age is 6 months and the longest period is 4 years, exactly as stipulated in the Shafi'i school of law. This stipulation is unique, considering that while other countries have abandoned opinions for more than one year, Brunei still uses opinions that have been criticized, especially by the medical community, as something odd.

Article 113 of the Laws Of Brunei Chapter 217 Islamic Family Law explains:

A person deemed to be the father.

113. *Where a woman who is married to a man gives birth to a child more than 6 qamariah months from the date of the marriage or within 4 qamariah years after the dissolution of the marriage either because of the*

³² <https://yemen-nic.info/db/laws_ye/detail.php?ID=11351> [accessed 23 May 2022].

³³ Fabian Fadhly, 'Pemahaman Keagamaan Islam di Asia Tenggara Abad XIII-XX', *Millah: Jurnal Studi Agama*, 18.1 (2018), 51-78, <<https://doi.org/10.20885/millah.vol18.iss1.art4>>.

death of the man or divorce, and the woman has not been remarried, the man shall be deemed to be the father of the child, but the man may, by way of li'an, disclaim the child as his child before the Court. Birth is more than 4 years after the dissolution of marriage.

114. *Where the child is born more than 4 qamariah years after the dissolution of the marriage either because of the death of the man or by divorce, the man shall not be deemed to be the father of the child unless he or any of his heirs acknowledges that the child is his.* ³⁴

D. Countries with the Majority of the Hanbali School

The majority country of the Hanbali school is Qatar. This country is known as a country with the highest per capita income in the world, the official language is Arabic, with the central government or capital city is Doha. This country has a population of around 2, 120, 129 in 2015. Qatar is classified as a country that has a very high human development index and is the best among other Arab countries thanks to the prosperity this country has achieved.³⁵

In terms of determining the shortest and longest limits of pregnancy, Qatar stipulates this problem in Law Number 22 of 2006 article 87 which states:

أقل مدة الحمل ستة أشهر وأكثرها سنة³⁶

The shortest gestation period is 6 months and the longest is one year.

Qatar does not refer to the fatwa of the Hanbali school which stipulates that the longest limit of pregnancy is up to 4 years. Precisely the determination of the longest period of pregnancy in this country is closer to the view of the Shia school of one year.

³⁴ 'Laws of Brunei Chapter 217 Islamic Family Law - ... / Laws-of-Brunei-Chapter-217-Islamic-Family-Law.Pdf / PDF4PRO', PDF4PRO, 2018 <<https://pdf4pro.com/view/laws-of-brunei-chapter-217-islamic-family-law-4e9293.html>> [accessed 26 May 2022].

³⁵ See McCoy, Lisa. *Qatar* (Simon and Schuster, 2014); Emon, Anver M. "Qatar." In *Parental Care and the Best Interests of the Child in Muslim Countries*, (TMC Asser Press, The Hague, 2017), pp. 205-217.

³⁶ 'قانون رقم (٢٢) لسنة ٢٠٠٢ بإصدار قانون الأسر' <<https://almeezan.qa/LawPage.aspx?ID=2558>> [accessed 25 March 2022].

E. Countries with the Majority of the Shia School

1. Iran

Iran has a capital city in Tehran. The charismatic and legendary figure of Iran Ayatollah Khomeini 1979, through the Iranian revolution, succeeded in establishing the theocratic Islamic Republic. Iran's current full name is the Islamic Republic of Iran. Iran itself is a multi-cultural country that has many ethnic groups as well as languages. The Persian tribe is recorded as the largest ethnic group in Iran with a percentage of no less than 61%, followed by Azerbaijanis at 16%, Kurds at 10%, and Lorestan at 6%.³⁷

Rules regarding the limitation of pregnancy can be found in the Iranian Civil Code, article 1158 which reads:

Article 1158 - Any child born during married life belongs to the husband provided that the interval between intercourse and the birth of the child is not less than 6 months and not more than 10 months.

*Article 1158 - Any child born during the marriage period is assigned to the husband provided that the interval between sexual relations and the birth of a child is not less than 6 months and not more than 10 months.*³⁸

Such a determination is more realistic, bearing in mind that this provision is closest to the findings of the medical world and course easy to find in the real world, that the normal human pregnancy span will range from 6 to 10 months, and of course it is rare for more than 10 months. Muhammad Jawad Mughniyah, one of the contemporary Shia scholars, in his book stated that among the Shia scholars there is an agreement on the minimum limit for pregnancy, which is 6 months, but in determining the longest limit for pregnancy, they differ slightly. Some set 9 months, some 10 months and some even set 1 year. However, among Shia scholars, there is a uniformity of opinion, that the longest gestation period may not be more than one year, even if it is just over one hour.³⁹

³⁷ See Curtis, Glenn E., and Eric Hooglund. *Iran: A Country Study: A Country Study* (Government Printing Office, 2008); Fischer, Michael MJ. *Iran: From Religious Dispute to Revolution* (Univ of Wisconsin Press, 2003).

³⁸ United Nations High Commissioner for Refugees, 'Refworld | Civil Code of the Islamic Republic of Iran', *Refworld* <<https://www.refworld.org/docid/49997adb27.html>> [accessed 23 May 2022].

³⁹ Muhammad Jawad Mughniyah, *Fikih Lima Mazhab* (Jakarta: Lentera, 2013), p. 388.

2. Bahrain

Bahrain is the third smallest country in Asia after Maldives and Singapore. The area of this country reaches 780 km². The capital of Bahrain is Manama, which is the official language of Arabic.⁴⁰ According to the CIA World Factbook, the 2001 country census showed that 81.2% of Bahrain's population is Muslim (Shi'a and Sunni), 5% are Christian, and 14% are of other faiths including Hindus. Among Muslims, Shiites make up around 55% of Bahrain's total Muslim population. The majority of Shiites are Shia Imamiyah, while the Sunni community generally follows the Hanafi school of thought. In smaller numbers, some Muslims follow the Ibadi sect and the Maliki school of thought available in Bahrain.⁴¹

Regarding the rules for the shortest and longest pregnancies, Bahrain stipulates that the shortest period of pregnancy that can be used as a basis for determining lineage is 6 months of Qamariyah, while the longest limit is one full Qamariyah year. This is as regulated in article 71 of Law Number 19 of 2017 which was promulgated on July 20 2017 as follows:

أقل مدة الحمل ستة أشهر قمرية. وأكثرها سنة واحدة قمرية.
مادة (١٧)⁴²

The description above can be briefly described in the table as follows

Country	Schools of Law	Shortest Period	Longest Period	Legal basis
Syria	Hanafi	180 days	1 year	Law Number 4 of 2019 article 128
Egypt	Hanafi	6 months	1 year	Law number 25 of 1929 article 15
Kuwait	Maliki-Shia	6 months	365 days	Law Number 51 of 1984 Article 166
Algeria	Maliki	6 months	10 months	<i>Qanûn al-Ushrah</i> of 2007 article 42

⁴⁰ See Manama, I. N. "Bahrain." *Change* 62 (2011): 7-4; Jones, Sandy Russell. "The Battle over Family Law in Bahrain." *Middle East Report* 242 (2007): 33-39.

⁴¹ See Blanchard, Christopher M. "Islam: Sunnis and Shiites." *Focus on Islamic Issues* (2006): 11-21; Qubain, Fahim I. "Social Classes and Tensions in Bahrain." *The Middle East Journal* (1955): 269-280.

⁴² 'قانون رقم (١٩) لسنة ٢٠١٧ بإصدار قانون الأسرة' <<https://lloc.gov.bh/HTM/K1917.htm>> [accessed 25 March 2022].

Country	Schools of Law	Shortest Period	Longest Period	Legal basis
Sudan	Maliki	6 months	1 year	<i>Qanùn al-Ahwâl al-Syakhsbiyyah</i> of 1991 article 100.
United Arab Emirates	Maliki	180 days	365 days	<i>Ahwâl Syakhsbiyyah</i> Number 28 of 2005 article 91
Yemen	Syafi'i	6 months usually 9 months	no limit	Law Number 20 of 1992 article 128
Brunei	Syafi'i	6 months	4 years	Laws of Brunei Islamic Family Law Chapter 217
Qatar	Hanbali	6 months	1 year	Law Number 22 of 2006 article 87
Iran	Shia	6 months	10 months	Iranian Civil Code, article 1158
Bahrain	Shia	6 months	1-year Lunar calendar	Law Number 19 of 2017 article 71

The table above shows that there are similarities in views regarding the shortest gestation period because there is an underlying text, but in terms of the longest gestation period, each country has different views. This happened, Muhammad Mustafa Syibli explained, due to the absence of texts, both the Koran and hadith, which set limits. So that it is only based on the general reality that exists among the community, or on the atsar of friends, such as the atsar of Ummul Mukminin Aisyah RA, or information on some women in rare events, such as held by a small number of contemporary scholars.⁴³ Specifically for this latter matter, Ahmad Muhammad Kan'an in *al-Mausû'ah ath-Thibbiyah al-Fiqhiyyah*, stated that the determination of the longest period of pregnancy should not be based solely on weak and dubious history but rather based on facts and experience, and observations.⁴⁴

According to the author's opinion, the rules set by Algeria and Iran are the most realistic and follow factual events in society, namely, the

⁴³ Musthafa Syibli, *Abkâm al-Ushrah Fi al-Islâm Dirâsah Muqâranah Baina Fiqh al-Mazâhib al-Sunniyah Wa al-Mazhab al-Ja'fari Wa al-Qanun* (Beirut: Dâr al-Jam'iyyah, 1983), p. 698.

⁴⁴ Ahmad Muhammad Kan'an, *al-Mausû'ah al-Thibbiyah al-Fiqhiyyah* (Beirut: Dâr al-Nafa'is, 2000), p. 377.

maximum gestation period is 10 months. Countries that set the longest period of 1 year also have the advantage in terms of prudence, this is still quite reasonable. But what Brunei has set for 4 years certainly raises big questions and tends to harm society, besides being able to cause ridicule among scientists because it is not supported by facts and scientific evidence.

In the context of Indonesia, this country does not implicitly or explicitly set limits on the shortest and longest period of pregnancy, like other countries. Supposedly this needs to be determined as has been done by other countries. The recommended limit is a minimum of 6 months and a maximum of 10 months as set by Algeria and Iran. This is because in general, the average fetus in the mother's womb is in the range of 6 to 10 months, it is very rare to find a baby in the womb for more than 10 months.

Conclusion

Fiqh scholars and legislators in Muslim countries agree that the shortest time limit for pregnancy is 6 months after the marriage contract. However, the application of laws and regulations in several Muslim countries differs, for example, in Syria and the United Arab Emirates it is 180 days, while in other countries it is 6 months. The writing of the month in the laws and regulations in several countries does not clearly explain whether the calculation refers to the *Qomariyah* (lunar calendar) or *Shamsiyah* (Gregorian calendar).

Furthermore, differences of opinion also occur in determining the longest period of pregnancy since a divorce or the husband's death. Most Muslim countries set 1 year as the longest limit for pregnancy, while Algeria and Iran set 10 months as the longest limit. Yemen stipulates no longest limit. The United Arab Emirates, Kuwait, and Syria use the *Shamsiyah* calendar. Meanwhile, Brunei still maintains the opinion of the Shafi'i school of thought which stipulates the longest period of pregnancy is for 4 years.

The opinions of the four Imams of the Madhhab which stipulate the longest period of pregnancy for two years according to Hanafi, 4 years

according to Shâfi'i and Hanbali, and 5 years according to Mâliki have been abandoned by Muslim countries, with a few exceptions, namely Brunei. However, the opinion of fiqh scholars who stipulate that there is no longest limit is used in the law in Yemen.

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