

Perbandingan Pertimbangan Hakim dalam Permohonan Dispensasi Kawin Akibat Kehamilan: Perspektif Kawin Hamil dan Tanggung Jawab Laki-Laki terhadap Anak Biologisnya (Studi Kasus Penetapan Pengadilan Agama) = Comparison of Judges' Considerations in Application for Dispensation of Marriage Due to Pregnancy: Perspective of Pregnant Marriages and Men's Responsibilities towards their Biological Children (Case Study of Religious Court Determinations)

Inasa El Syavira, author

Deskripsi Lengkap: <https://lib.ui.ac.id/detail?id=9999920548149&lokasi=lokal>

Abstrak

Tesis ini meneliti perbandingan pertimbangan hakim dalam pengajuan permohonan dispensasi kawin akibat hamil perspektif Kompilasi Hukum Islam dan Hukum Islam (Studi Penetapan Pengadilan Agama). Pokok permasalahan dalam tesis ini adalah perbandingan pertimbangan hakim dalam mengabulkan dan menolak permohonan dispensasi kawin karena kehamilan dan bagaimana bentuk tanggung jawab yang timbul bentuk akibat dari dilakukannya kawin hamil serta tanggung jawab ayah terhadap anak biologisnya. Penelitian tesis ini ditulis dan disusun dengan metode penelitian Yuridis-Doktrinal dan tipologi penelitian Preskriptif-Analisis. Hasil penelitian dalam tesis ini menunjuk pada pertimbangan hakim dalam permohonan dispensasi kawin karena kehamilan, mencakup dua sudut pertimbangan penetapan hakim yakni dapat kabul atau tolak. Pertimbangan hakim itu juga berdampak pada masa depan pihak bersangkutan dan status hukum bagi kedua pihak serta kejelasan nasab anak, mewaris dan status perwalian. Majelis Hakim dalam pertimbangan dispensasi kawin karena hamil menjadi konsentrasi penting karena mementingkan akibatnya. Dispensasi kawin karena hamil merujuk terjadi Kawin hamil diatur oleh KHI dan masih menjadi pertanyaan mengenai pembatasannya. Para ulama dan fiqh yang memiliki perbedaan pendapat tentu menghasilkan makna dan penafsiran yang berbeda, serta konsekuensi dari perbedaan dan pikiran logis dari para ulama juga mempengaruhi aturan kawin hamil. Hukum Islam, Undang-Undang Perkawinan No.16 Tahun 2019, Undang-Undang Perlindungan Anak No.35 Tahun 2014, Peraturan Mahkamah Agung No.5 Tahun 2019 dan Kompilasi Hukum Islam menjadi landasan Majelis Hakim dalam membuat pertimbangan guna membuat keputusan yang ditujukan tidak adanya hal lain terlanggar dan tidak membawa mudharat yang lebih besar.This thesis examines the comparison of judges' considerations in submitting applications for dispensation of marriage due to pregnancy from the perspective of the Compilation of Islamic Law and Islamic Law (Study of Religious Court Determinations). The subject matter of this thesis is the comparison of judges' considerations in granting and rejecting applications for dispensation of marriage due to pregnancy and how the form of responsibility arising as a result of pregnant marriages and the father's responsibility for his biological children. This thesis research was written and compiled using the Juridical-Doktrinal research method and Prescriptive-Analytical research typology. The results of the research in this thesis point to the judge's consideration in the application for dispensation of marriage due to pregnancy, including two angles of consideration for the judge's decision, namely that it can be accepted or rejected. The judge's consideration also has an impact on the future of the party concerned and the legal status for both parties as well as the clarity of the child's lineage, inheritance and guardianship status. The Panel of

Judges in considering dispensation of marriage due to pregnancy is an important concentration because it is concerned with the consequences. Dispensation for marriage due to pregnancy refers to pregnant marriages regulated by KHI and is still a question regarding its restrictions. The scholars and fiqh who have different opinions certainly produce different meanings and interpretations, and the consequences of differences and logical thoughts from the scholars also affect the rules of pregnant marriage. Islamic law, Marriage Law No.16 of 2019, Child Protection Law No.35 of 2014, Supreme Court Regulation No.5 of 2019 and the Compilation of Islamic Law are the basis for the Panel of Judges in making considerations in order to make decisions aimed at not violating other things and not bringing greater harm.