

ABSTRAK

Pekawinan hamil merupakan *accident* (kecelakaan) yang tidak dikehendaki. Oleh karenanya, permasalahan ini merupakan permasalahan yang dipertanyakan maksud dan tujuan dari perkawinan hamil tersebut, dan juga merupakan permasalahan yang diperselisihkan oleh Ulama, baik tentang hukum, pelaksanaan dan implikasinya. Menurut penulis, perbedaan pendapat ini berdampak pada pelaksanaan kawin hamil dan pencatatannya di Kantor Urusan Agama. Untuk dapat mengupas permasalahan ini secara mendalam dan mengetahui praktek pelaksanaannya secara kongkrit di lapangan, penulis tertarik melakukan penelitian di Kabupaten Demak dengan mengadakan penelitian di 5 (lima) KUA sebagai sample dan selanjutnya menuliskan hasil penelitian tersebut dengan judul **”Pelaksanaan Kawin Hamil dan Implikasinya terhadap Penentuan Anak Sah menurut Empat Mazhab (Hanafi, Maliki, Syafi’i dan Hambali) dan Kompilasi Hukum Islam (Studi di KUA di Kabupaten Demak).”** Rumusan masalah pada penelitian ini adalah 1. Bagaimana ketentuan kawin hamil dan implikasinya terhadap penentuan anak sah menurut empat mazhab (Hanafi, Maliki, Syafi’i dan Hambali) dan Kompilasi Hukum Islam? 2. Bagaimana pelaksanaan kawin hamil di KUA di Kabupaten Demak? 3. Bagaimana analisis menurut empat mazhab (Hanafi, Maliki, Syafi’i dan Hambali) dan Kompilasi Hukum Islam terhadap pelaksanaan kawin hamil di KUA di Kabupaten Demak dan implikasinya terhadap penentuan anak sah?. Penelitian ini bertujuan untuk mengetahui ketentuan dan pelaksanaan kawin hamil dan implikasinya terhadap penentuan anak sah menurut empat mazhab (Hanafi, Maliki, Syafi’i dan Hambali) dan Kompilasi Hukum Islam. di KUA di Kabupaten Demak. Metode penelitian yang digunakan meliputi fokus penelitian berupa kajian terhadap pelaksanaan kawin hamil dan implikasinya terhadap penentuan anak sah menurut empat mazhab dan Kompilasi Hukum Islam dengan pendekatan kualitatif dan tipe *deskriptik-analitik*. Sumber data primer diperoleh dari objek penelitian, data sekunder diperoleh melalui kepustakaan dan sumber data tersier diperoleh dari bahan yang memberikan petunjuk maupun penjelasan terhadap data primer dan sekunder. Teknik pengumpulan data menggunakan metode observasi, wawancara, dokumentasi, penelitian kepustakaan dan penelitian komparatif. Teknik analisis data menggunakan analisis komparatif, dengan cara membandingkan empat mazhab dan Kompilasi Hukum Islam dengan pelaksanaan kawin hamil dan implikasinya terhadap penentuan anak sah. Hasil penelitian menunjukkan bahwa dalam menyikapi kawin hamil, KUA di Kabupaten Demak terbagi menjadi 2, yaitu membolehkan kawin hamil dengan hanya laki-laki yang menghamilinya saja dengan berpedoman pada KHI dan membolehkan kawin hamil dengan laki-laki manapun secara mutlak baik yang menghamilinya maupun bukan, dengan berpedoman pada Mazhab Hanafi dan Syafi’i. Implikasinya terhadap penentuan anak sah, menurut Mazhab Hanafi dan KHI anak dinasabkan pada ayahnya dengan tanpa menghitung jarak kelahirannya dengan perkawinan orang tuanya, sedangkan menurut Mazhab Syafi’i anak dinasabkan pada ayahnya jika jarak kelahirannya dengan perkawinan orang tuanya minimal 6 bulan. Adapun Mazhab Maliki dan Hambali melarang kawin hamil dan anak hanya bisa dinasabkan pada ibunya saja.

Kata kunci : kawin hamil, implikasi, anak sah

ABSTRACT

Pregnant marriage is an undesirable accident (accident), this problem is a problem that is questioned the intent and purpose of the pregnant marriage, and also is a problem disputed by the Ulama, both about the law, implementation and implications. According to the author, this difference of opinion had an impact on the implementation of pregnant marriages and their registration at the Office of Religious Affairs. To be able to explore this problem in depth and know the concrete implementation practices in the field, the authors are interested in conducting research in Demak Regency by conducting research in 5 (five) KUA as a sample and then writing the results of the study entitled "Implementation of Pregnant Marriage and Its Implications for Determination Legitimate Children according to the Four Schools (Hanafi, Maliki, Syafi'i and Hambali) and Compilation of Islamic Law (Study at KUA in Demak Regency)". "The problem formulation in this study is 1. What are the provisions of pregnant marriage and the implications for determining legitimate children according to four schools of thought (Hanafi, Maliki, Shafi'i and Hambali) and Compilation of Islamic Law? 2. How is the implementation of a pregnant marriage at the KUA in Demak Regency? 3. How is the analysis according to the four schools of thought (Hanafi, Maliki, Syafi'i and Hambali) and Compilation of Islamic Law on the implementation of pregnant marriages in KUA in Demak Regency and its implications for the determination of legitimate children? This study aims to determine the provisions and implementation of pregnant marriages and their implications for the determination of legitimate children according to four schools (Hanafi, Maliki, Syafi'i and Hambali) and Compilation of Islamic Law. in KUA in Demak Regency. The research method used includes the focus of the study in the form of a study of the implementation of pregnant marriage and its implications for the determination of legitimate children according to four schools and Compilation of Islamic Law with a qualitative approach and descriptive-analytic type. The primary data source is obtained from the object of research, secondary data obtained through literature and tertiary data sources obtained from materials that provide instructions and explanations for primary and secondary data. Data collection techniques using the method of observation, interviews, documentation, library research and comparative research. The data analysis technique uses comparative analysis, by comparing the four schools and Compilation of Islamic Law with the implementation of pregnant marriage and its implications for the determination of legitimate children. The results showed that in addressing pregnant marriages, the KUA in Demak Regency was divided into 2, namely allowing pregnant marriages with only men who impregnated them by referring to KHI and allowing pregnant marriages with any male who absolutely impregnated or not, by referring to the Hanafi and Shafi'i Schools. The implication for determining legitimate children, according to Hanafi and KHI schools, is that children are given to their father without calculating the distance of their birth with their parents' marriage, whereas according to the Shafi'i school the child is given to his father if the birth is at least 6 months. The Maliki and Hambali schools forbid pregnant marriages and children can only be given to their mothers.

Keywords: pregnant marriage, implications, legitimate child