

ABSTRAK

PERKAWINAN WANITA HAMIL DALAM PERSPEKTIF HUKUM ISLAM

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Perkawinan adalah ikatan lahir batin antara seorang pria dan seorang wanita sebagai suami isteri dengan tujuan membentuk keluarga (rumah tangga) yang bahagia dan kekal berdasarkan KeTuhanan Yang Maha Esa. Peraktek kesehariannya, masih ditemukan sebuah perkawinan yang dilaksanakan oleh calon pasangan suami-isteri nyatanya tidak sesuai dengan ketentuan Hukum Islam. Permasalahan penelitian ini, yaitu: Bagaimana perspektif hukum Islam mengenai perkawinan bagi wanita hamil, Bagaimana akibat Hukum Bagi Perkawinan Wanita Hamil

Jenis penelitian dalam penelitian ini adalah normatif, dengan tipe pendekatan pendekatan normatif analitis substansi hukum dengan tipe analisis hukum. Menggunakan data sekunder dengan bahan hukum primer, bahan hukum skunder, dan bahan hukum tersier.. Menganalisis data dengan cara analisis kualitatif.

Menurut substansi Undang-Undang Nomor 1 Tahun 74 tentang Perkawinan dan Kompilasi Hukum Islam. Hukum positif di Indonesia memperbolehkan adanya perkawinan wanita hamil dan menganggap sah perkawinannya. Sebaliknya pendapat Imam Maliki dan Hambali menganggap bahwa tidak sahnya suatu Perkawinan Wanita Hamil walaupun di nikahkan dengan lawan zinanya, karna menurut mereka wanita hamil masuk kedalam kategori masa iddah, boleh dinikahkan asal menunggu calon istri yang hamil tersebut melahirkan bayi yang ada di kandungannya. Pada Perkawinan Wanita Hamil, terdapat tiga akibat hukum, yaitu bagi pasangan suami-isteri, bagi anak, dan bagi harta di dalam perkawinan. Dalam Hukum Islam, anak yang ada di kandungan sebelum di lakukannya akad nikah tidak dapat di nasabkan kepada bapak kandungnya. Hal ini yang menyebabkan terputusnya hubungan perdata antara anak dan bapaknya.

Kata Kunci: Hukum Islam, Hukum Perkawinan, Wanita Hamil.

ABSTRACT

THE STATUS OF MARRIAGE FOR PREGNANT WOMEN IN ISLAMIC LAW PERSPECTIVE

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Marriage is a spiritual bond between a man and a woman as husband and wife which aims to create a happy and eternal family life (household) based on the principle of God Oneness. Unfortunately in fact, there are marriage practices carried out by prospective married couples which are not in accordance with the provisions of Islamic Law. The problem of this research were formulated as follows: What is the Islamic law perspective regarding marriage for pregnant women? And what are the legal consequences regarding the marriage of pregnant women?

This is a normative research type, it applied normative analytical approach of legal substance with the legal analysis type. The data sources were collected using secondary data with primary legal materials, secondary legal materials, and tertiary legal materials. The data were analyzed by means of qualitative analysis.

According to the substance of Law Number 1 Year 74 concerning Marriage and Compilation of Islamic Law, the Positive law in Indonesia allows the marriage for pregnant women and considers their marriage as legal. On the contrary, the opinion of Imam Maliki and Hambali considers it as illegal even if the marriage is done with her adultery opponent because according to them such pregnant women fall into the category of iddah period, which means she can be married as long as the expectant woman waits until she gives birth to a baby in her womb. In the practice of marriage for Pregnant women, there are three legal consequences, namely for married couples, for the children, and for the property in marriage. In Islamic Law, a child who is in the womb before the mother is married, cannot be advised to his biological father. This has led to the termination of civil relations between the child and his fathers.

Keywords: Islamic Law, Marriage Law, Pregnant Women.