

ABSTRAK

Penelitian ini mengkaji mengenai alasan para pihak dalam mengajukan dispensasi kawin dan pemberian dispensasi kawin di Pengadilan Agama Lamongan ditinjau dari Hukum Islam, Undang-undang Perkawinan, Undang-undang Perlindungan Anak. Penelitian ini menggunakan metode penelitian empiris, dengan kualitatif dan kuantitatif. Hasil penelitian menunjukkan bahwa alasan-alasan pengajuan dispensasi kawin rata-rata ditujukan para pemohon untuk menghindari kemudhorotan namun, alasan para pemohon selama ini tidak diatur dalam Undang-undang Perkawinan. Oleh karena itu, para pemohon dalam mengajukan dispensasi kawin dapat dengan bebas membuat dalil sendiri. Oleh karena itu, seharusnya Undang-undang Perkawinan mengatur mengenai alasan-alasan pengajuan dispensasi kawin agar dapat menjadi tolak ukur bagi hakim dalam menetapkan dispensasi kawin. Kenyataannya, hakim Pengadilan Agama Lamongan memberikan dispensasi kawin lebih pada pertimbangan normatif dalam pasal 7 ayat (2) Undang-undang Perkawinan dan berdasarkan subjektifitas hakim. Dengan demikian, kemudahan pemberian dispensasi kawin tidak tepat karena hal tersebut justru merupakan suatu pelanggaran terhadap pasal 7 ayat (1) Undang-undang Perkawinan. Hal ini diperkuat dengan alasan para pemohon yang tidak memenuhi unsur darurat dalam Hukum Islam. Selain itu, pertimbangan hakim yang berdasarkan subjektifitasnya tidak sepenuhnya tepat karena kenyataannya hakim dalam mempertimbangkan dalil-dalil dalam **posita** para pihak tidak diperkuat dengan bukti otentik. Penetapan hakim yang dengan mudah mengabulkan dispensasi kawin merupakan pelanggaran ketentuan batas usia minimum kawin dalam Undang-undang Perkawinan, hak anak dalam undang-undang Perlindungan, Undang-undang Kesehatan dan kaidah Hukum Acara Perdata. Sebaiknya, Hakim tidak mudah mengabulkan dispensasi kawin jika tidak memenuhi unsur darurat.

Kata Kunci : Dispensasi, Kawin, Batas Usia, Kemudhorotan, Darurat.

ABSTRACT

This research focused on the applicants' reason on marriage dispensation and its practice in Shariah Court of Lamongan based on the perspective of Islamic Law, Indonesia Marriage Law and Indonesian Law of Children Protection. This study applied non-doctrinal research by using qualitative and quantitative approaches. The research finding showed that the applicants' reasons on marriage dispensation were aimed to avoid mudhorot (worst). Unfortunately, Indonesian Marriage Law does not regulate the reasons which are allowed to receive dispensation. As the result, the applicants make their own proposing. Therefore, the Indonesian Marriage Law should regulate the reasons for marriage dispensation in order to become a legal reasoning for the Judges to decide the marriage dispensation applications. In fact, the judges approves the marriage dispensation in Shariah Court of Lamongan entirely based on normative consideration on in section 7 sub section (2) Indonesian Marriage Law as well as the judges' subjectivity. Thus, it does not deserve for the judges to apply the ease of the approval of marriage dispensation application because it basically breaks the rule stated on the section 7 sub section (1) of the Indonesian Marriage Law. Moreover, the reasons' applicants do not category the emergency condition in Islamic Law. In addition, the subjectivity of the judges' considerations is inappropriate because in fact, the judges decide the applications only based on the applicants' postulates without brought about the authentic evidences. The judges who easily approves marriage dispensation break the rule on the minimum age limit of marriage arranged in Indonesian Marriage Law as well as children rights in Indonesia Children Protection Law, Indonesian Law of Health and Civil procedural Law. This research suggests that the judges do not easily approve marriage dispensation if it does not fulfill the category of emergency condition.

Keywords: *Dispensation, Marriage, Age Limits, Mudhorot, Emergency.*