

ABSTRAK

Skripsi dengan judul “Pengabulan Izin Poligami Dengan Alasan Telah Menghamili Calon Istri Kedua (Analisis Putusan Pengadilan Agama Tulungagung Nomor Perkara 1467/Pdt.G/2024/PA.TA)” ini ditulis oleh Ahmad Zahid Bakhrurridho, NIM 126102211008, dengan dosen pembimbing Arifah Millati Agustina, M.H.I.

Kata Kunci: Poligami, Kawin Hamil, *Legal Reasoning*, *Istihṣān*, *Contra Legem*

Penelitian ini dilatarbelakangi fenomena meningkatnya permohonan izin poligami di Indonesia yang kerap tidak disertai pemahaman syarat syariat, khususnya praktik “kawin hamil” sebagai alasan mendasar. Putusan Pengadilan Agama Tulungagung Nomor 1467/Pdt.G/2024/PA.TA yang mengabulkan permohonan semacam itu menimbulkan pertanyaan tentang konsistensi penerapan Pasal 4 ayat (2) huruf c dan mekanisme keseimbangan syariat keadilan bagi istri sekaligus perlindungan nasab anak.

Rumusan masalah dalam penelitian ini meliputi: 1) Bagaimana *legal reasoning* putusan hakim Pengadilan Agama Tulungagung dalam mengabulkan izin poligami (Putusan Nomor 1467/Pdt.G/2024/PA.TA)? 2) Bagaimana Analisis Teori penemuan hukum, *istihṣān* dan *contra legem* terhadap putusan hakim Pengadilan Agama Tulungagung (Putusan Nomor 1467/Pdt.G/2024/PA.TA)? Adapun tujuan penelitian ini adalah (1) menganalisis *legal reasoning* Majelis Hakim PA Tulungagung dalam mengabulkan izin poligami atas dasar calon istri kedua telah hamil, dan (2) mengkaji penerapan teori penemuan hukum, *istihṣān*, dan *contra legem* dalam pertimbangan putusan tersebut.

Metode penelitian yang digunakan adalah hukum normatif dengan pendekatan yuridis-normatif. Bahan primer diperoleh dari UU No. 1/1974 tentang Perkawinan, PP No. 9/1975, Kompilasi Hukum Islam, serta Putusan PA Tulungagung 1467/Pdt.G/2024/PA.TA. Teknik pengumpulan data melalui dokumentasi putusan, literatur, dan dokumen hukum; analisis bersifat deskriptif, kondensasi data, dan penarikan simpulan.

Hasil penelitian menunjukkan bahwa: (1) Majelis Hakim mengacu pada syarat alternatif dan kumulatif sebagaimana yang disebutkan dalam UU Perkawinan dan KHI; (2) hakim menerapkan penemuan hukum (*judge-made law*) dengan metode interpretasi sosiologis-terologis (pemikiran, nilai-nilai individu dari masyarakat), dan sistematis-logis (bertindak secara teratur) untuk memasukkan kehamilan calon istri kedua sebagai alasan darurat; serta (3) penggunaan *istihṣān* dan *contra legem* menegaskan prioritas kemaslahatan dan penghindaran mafsadah, meski menimbulkan perdebatan kontroversial.

ABSTRACT

The thesis entitled “Granting Polygamy Permits On The Reason Of Pregnancy Of The Second Wife (Analysis of the Decision of the Tulungagung Religious Court Case Number 1467/Pdt.G/2024/PA.TA)” was written by Ahmad Zahid Bakhurridho, NIM 126102211008, with the supervisor Arifah Millati Agustina, M.H.I.

Keywords: Polygamy, Pregnant Marriage, Legal Reasoning, Istihsān, Contra Legem

This research is motivated by the phenomenon of increasing requests for polygamy permits in Indonesia which are often not accompanied by an understanding of sharia requirements, especially the practice of “pregnant marriage” as a fundamental reason. The Tulungagung Religious Court Decision Number 1467/Pdt.G/2024/PA.TA which granted such a request raises questions about the consistency of the application of Article 4 paragraph (2) letter c and the mechanism of sharia balance justice for wives as well as protection of children's lineage.

The formulation of the problems in this research include: 1) How is the legal reasoning of the Tulungagung Religious Court judge's decision in granting a polygamy permit (Decision Number 1467/Pdt.G/2024/PA.TA)? 2) How is the analysis of the theory of legal discovery, istihsān and contra legem on the decision of the Tulungagung Religious Court judge (Decision Number 1467/Pdt.G/2024/PA.TA)? The objectives of this study are (1) to analyze the legal reasoning of the Tulungagung Religious Court Panel of Judges in granting permission for polygamy on the basis that the second prospective wife is pregnant, and (2) to examine the application of the theory of legal discovery (jurisprudence), istihsān, and contra legem in the consideration of the decision.

The research method used is normative law with a juridical-normative approach. Primary materials were obtained from Law No. 1/1974 concerning Marriage, PP No. 9/1975, Compilation of Islamic Law, and Tulungagung Religious Court Decision 1467/Pdt.G/2024/PA.TA. Data collection techniques through decision documentation, literature, and legal documents; descriptive analysis, data condensation, and drawing conclusions.

The results of the study show that: (1) the Panel of Judges refers to the alternative and cumulative requirements as stated in the Marriage Law and the KHI; (2) the judge applies legal discovery (judge-made law) with the sociological-terological interpretation method (thoughts, individual values from society), and systematic-logical (acting regularly) to include the pregnancy of the prospective second wife as an emergency reason; and (3) the use of istihsān and contra legem emphasizes the priority of benefit and avoidance of harm, even though it gives rise to controversial debate.