

**TINJAUAN MASLAHAH AL-MURSALAH TERHADAP PENOLAKAN
PERMOHONAN DISPENSASI KAWIN AKIBAT HAMIL DI LUAR
NIKAH
(Studi Kasus Penetapan Hakim Pengadilan Agama Selong
Nomor 561/Pdt.P/2021/PA.Sel)**

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INTISARI

Penulisan hukum ini bertujuan untuk mengetahui alasan hakim dalam menolak permohonan dispensasi kawin akibat hamil di luar nikah pada penetapan Pengadilan Agama Selong Nomor 561/Pdt.P/2021/PA.Sel, serta untuk mengetahui akibat hukum yang ditimbulkan terhadap status anak yang dikandung akibat ditolaknya permohonan dispensasi kawin pada perkara *a quo* menurut tinjauan *maslahah al-mursalah*.

Penulisan hukum ini bersifat normatif empiris. Data primer diperoleh melalui wawancara dengan hakim Pengadilan Agama Selong yang menetapkan perkara yang menjadi objek dalam penelitian ini. Adapun data sekunder diperoleh melalui telaah sumber pustaka terhadap peraturan perundang-undangan, buku-buku, maupun jurnal yang relevan dengan permasalahan yang diteliti. Data-data yang telah terhimpun selanjutnya dianalisa secara kualitatif.

Hasil penelitian menunjukkan bahwa hakim menolak permohonan dispensasi kawin yang diajukan oleh pemohon dengan alasan yaitu pertama, apabila dispensasi diberikan anak pemohon akan kehilangan hak-haknya sebagaimana yang dijamin dalam Undang-Undang Perlindungan Anak karena dianggap telah dewasa akibat menikah. Kedua, apabila permohonan tersebut dikabulkan, di kemudian hari orang-orang akan terus berdatangan meminta dispensasi dengan alasan serupa. Ketiga, untuk mewujudkan fungsi hukum sebagai alat rekayasa sosial. Dari segi kemaslahatannya, penolakan tersebut dapat mencegah perkawinan anak, menjamin terpenuhinya hak-hak anak, serta menimbulkan keteraturan dalam masyarakat. Adapun mudaratnya antara lain: pertama, anak pemohon akan terbebani fisik dan mentalnya karena membesarkan anak di usia belia, sementara pihak laki-laki terbebas dari tanggung jawab; kedua, bayi yang dikandung oleh anak pemohon tidak mendapat haknya secara sempurna karena terlahir di luar nikah. Penggunaan *maslahah al-mursalah* pada perkara ini merupakan bentuk *ijtihad* yang dilakukan oleh hakim dalam rangka melakukan penemuan hukum terhadap suatu perkara yang belum terdapat pengaturannya dalam peraturan hukum tertulis.

Kata kunci: dispensasi kawin, kawin hamil, *maslahah al-mursalah*

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**MASLAHAH AL-MURSALAH REVIEW ON THE REJECTION OF
MARRIAGE DISPENSATION APPLICATIONS DUE TO PREGNANCY
OUT OF WEDLOCK
(Case Study of the Determination of the Selong Religious Court Judge
Number 561/Pdt.P/2021/PA.Sel)**

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ABSTRACT

This legal research aims to find out the reasons of the rejection of a marriage dispensation application due to pregnancy out of wedlock in the determination of the Selong Religious Court judge Number 561/Pdt.P/2021/PA.Sel, as well as to find out the legal consequences arising from the status of the child conceived due to the rejection of the marriage dispensation application in the case a quo based on maslahah al-mursalah perspective.

This legal research is a normative-empirical research. The primary data was obtained through interview with Selong Religious Court's judge who was responsible for determining the case of this research. Secondary data is obtained through a literature review of laws and regulations, books, and journals that were relevant. The data that has been collected is then analysed qualitatively.

The results of the research show that there are several reasons why the judge rejected the marriage dispensation. Firstly, if the dispensation was granted the applicant's child would lose her rights as guaranteed in the Child Protection Law because she would be considered as adult as a result of marriage. Second, if the request is granted, in the future people will continue to come asking for dispensation for similar reasons. Third, to realize the function of law as a tool of social engineering. From a maslahat perspective, this rejection can prevent child marriage, guarantee the fulfillment of children's rights, and create order in society. While the consequences of the rejection of the application include: first, the applicant's child will be burdened physically and mentally due to raising children at a young age, while the man is free from responsibility; secondly, the baby conceived by the applicant's child did not receive its full rights because it was born out of wedlock. The use of maslahah al-mursalah in this case is a form of ijtihad carried out by the judge in order to make legal discoveries regarding a case that is not regulated by written laws.

Keywords: marriage dispensation, pregnant marriage, maslahah al-mursalah

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