

**PERMOHONAN DISPENSASI YANG DITOLAK (Tinjauan Yuridis
Penetapan Pengadilan Agama Pangkajene Nomor
0228/Pdt.P/2020/PA.Pkj)**

Oleh :

ALLDINO MAULDY PRAMUDYA

E1A018175

ABSTRAK

Batas usia perkawinan diatur dalam Pasal 7 ayat (1) Undang-Undang Nomor 16 Tahun 2019 yaitu baik bagi pria maupun wanita adalah 19 tahun. Namun apabila terdapat keadaan mendesak yang menyebabkan seseorang harus melangsungkan perkawinan di bawah umur, maka sesuai Pasal 7 ayat (2) orang tua pihak pria dan/atau orang tua pihak wanita dapat meminta dispensasi kepada Pengadilan dengan alasan sangat mendesak disertai bukti-bukti pendukung yang cukup.

Rumusan masalah dalam penelitian ini adalah bagaimana dasar pertimbangan hakim dalam menolak Permohonan Dispensasi Kawin Putusan Pengadilan Agama Pangkajene Nomor 0228/Pdt.P/2020/PA.Pkj. Metode yang digunakan adalah yuridis normatif, spesifikasi penelitian yaitu penelitian perspektif analisis, sumber data yang digunakan adalah sumber data sekunder, metode pengumpulan data dengan studi kepustakaan dengan inventarisasi data yang terkumpul kemudian disajikan dalam bentuk teks naratif dan metode analisis dengan menggunakan normatif kualitatif.

Berdasarkan hasil penelitian, disimpulkan bahwa Hakim Pengadilan Agama Pangkajene berwenang mengadili perkara dengan Nomor 0228/Pdt.P/2020/PA.Pangkajene berdasarkan Pasal 49 Undang-Undang Nomor 3 Tahun 2006 jo Undang-Undang No. 50 Tahun 2009 Tentang Peradilan Agama. Selanjutnya Hakim dalam menolak permohonan dispensasi kawin berdasarkan syarat yang mewajibkan perkawinan hanya diizinkan apabila calon mempelai pria dan wanita sudah mencapai umur 19 tahun dan alasan yang diajukan oleh pemohon dinilai tidak bersifat 'alasan mendesak' (Pasal 7 ayat (1) dan ayat (2) Undang-Undang Nomor 1 Tahun 1974 mengenai syarat batas minimal umur untuk melakukan perkawinan jo Pasal 6 ayat (1) Peraturan Mahkamah Agung Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin). Pasal 26 ayat (1) angka (3) Undang-Undang Nomor 23 Tahun 2002 sebagaimana telah diubah dengan Undang-Undang Nomor 35 Tahun 2014 dan perubahan kedua Undang-Undang Nomor 17 Tahun 2016 Tentang Perlindungan Anak mengatur bahwa orang tua berkewajiban dan bertanggung-jawab untuk mengurus, memelihara, mendidik dan melindungi anak sesuai dengan kemampuan, minat dan bakatnya serta mencegah perkawinan di usia anak-anak, Hakim dalam menolak permohonan dispensasi kawin juga berdasarkan dengan Kaidah Hukum Islam serta memperhatikan Kesehatan Reproduksi yang termuat dalam Pemerintah Republik Indonesia Nomor 61 Tahun 2014 Tentang Kesehatan Reproduksi. Menurut peneliti apabila hakim dalam menolak dispensasi kawin menggunakan kerangka berpikir Islam, maka hakim seharusnya mengabulkan permohonan dispensasi kawin dari Pemohon, apabila tidak dikabulkan akan sangat dikhawatirkan kedepannya akan timbul kemudharatan bahkan hal yang sangat buruk bisa terjadi yaitu hamil diluar nikah.

Kata Kunci : *Dispensasi Kawin, Penolakan, Pernikahan Dini.*

**REJECTED DISPENSATION APPLICATION (Juridical Review of the
Pangkajene Religious Court Number 0228/Pdt.P/2020/PA.Pkj)**

By :

ALLDINO MAULDY PRAMUDYA

E1A018175

ABSTRACT

The age limit for marriage is regulated in Article 7 paragraph (1) of Law Number 16 of 2019 which is 19 years for both men and women. However, if there is an urgent situation that causes a person to have an underage marriage, then in accordance with Article 7 paragraph (2) the parents of the male and/or female parents may request a dispensation from the Court for reasons of extreme urgency accompanied by sufficient supporting evidence.

The formulation of the problem in this study is how the judge's basic considerations in rejecting the Application for Marriage Dispensation for the Decision of the Pangkajene Religious Court Number 0228/Pdt.P/2020/PA.Pkj. The method used is normative juridical, research specifications are analytical perspective research, data sources used are secondary data sources, data collection methods are literature studies with an inventory of data collected and then presented in the form of narrative texts and analytical methods using qualitative normative.

Based on the results of the study, it was concluded that the Judges of the Pangkajene Religious Court were authorized to adjudicate cases with Number 0228/Pdt.P/2020/PA.Pangkajene based on Article 49 of Law Number 3 of 2006 in conjunction with Law no. 50 of 2009 concerning Religious Courts. Furthermore, the Judge in rejecting the application for a marriage dispensation based on conditions that require marriage is only permitted if the prospective bride and groom have reached the age of 19 years and the reasons submitted by the applicant are considered not to be 'urgent reasons' (Article 7 paragraph (1) and paragraph (2) Law Number 1 of 1974 concerning the minimum age requirement for marriage in conjunction with Article 6 paragraph (1) of the Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation). Article 26 paragraph (1) number (3) of Law Number 23 of 2002 as amended by Law Number 35 of 2014 and the second amendment to Law Number 17 of 2016 concerning Child Protection stipulates that parents are obliged and responsible for take care, maintain, educate and protect children according to their abilities, interests and talents and prevent marriage at the age of children, the Judge in rejecting the application for marriage dispensation is also based on the Islamic Law and pays attention to Reproductive Health as contained in the Government of the Republic of Indonesia Number 61 of 2014 About Reproductive Health. According to the researcher, if the judge in rejecting the marriage dispensation uses an Islamic framework, then the judge should grant the request for a marriage dispensation from the Petitioner, if it is not granted it will be very worrying that in the future there will be harm and even very bad things can happen, namely pregnancy out of wedlock.

Keywords : *Marriage Dispensation, Rejected, Early-age Marriage*