

PERMOHONAN DISPENSASI KAWIN DIBAWAH UMUR

**(Tinjauan Yuridis Penetapan Pengadilan Agama Purwokerto Nomor
223/Pdt.P/2023/PA.Pwt)**

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ABSTRAK

Permohonan dispensasi kawin dibawah umur menjadi paradigma yang hidup dimasyarakat. Fenomena ini terjadi akibat adanya pengecualian batas usia kawin dalam Pasal 7 ayat (2) Undang-Undang Nomor 16 Tahun 2019 Atas Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan yang memperbaharui aturan sebelumnya yang menyatakan bahwa batas usia perkawinan dapat dilangsungkan apabila Pria berusia 19 tahun dan Wanita berusia 16 tahun. Perubahan batas minimal usia perkawinan ini diuji melalui permohonan uji materiil Pasal 7 ayat (1) di Mahkamah Konstitusi melalui putusan Nomor 22/PUU/XV/2017 sebagai Upaya pencegahan perkawinan usia dini di Indonesia.

Permasalahan dalam penelitian ini adalah bagaimana pertimbangan hukum hakim dalam mengabulkan permohonan dispensasi kawin dibawah umur serta akibat hukum perkawinan di bawah umur yakni anak yang sudah menikah maka sudah dianggap dewasa dan cakap melakukan perbuatan hukum. Tipe penelitian adalah yuridis normatif. Spesifikasi penelitian preskriptif analitis. Data yang digunakan adalah data sekunder. Data yang diperoleh kemudian diolah dan dianalisis dengan metode normatif kualitatif.

Hasil penelitian dan pembahasan menunjukkan bahwa Hakim dalam pertimbangannya mendasarkan pada Pasal 7 ayat (2) Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan, Pendekatan *Maslahah Mursalah* serta berpedoman dengan Peraturan Mahkamah Agung Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Nikah. Menurut penulis Hakim dalam penetapannya mengabulkan permohonan dispensasi kawin karena memperhatikan kemaslahatan yang hendak dicapai serta hakim dapat mempertimbangkan secara komprehensif pada Pasal 10 ayat (4), Pasal 12 dan Pasal 16 PERMA Nomor 5 Tahun 2019.

Kata Kunci: *Perkawinan, Dispensasi kawin, Dibawah Umur.*

APPLICATION FOR DISPENSATION OF UNDERAGE MARRIAGE

(Juridical Review of the Determination of the Purwokerto Religious

Court Number 223/Pdt.P/2023/PA.Pwt)

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ABSTRACT

Application for dispensation for underage marriage is a paradigm that lives in the community. This phenomenon occurs due to the exception of the marriage age limit in Article 7 paragraph (2) of Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 concerning Marriage which updates the previous regulation which states that the age limit for marriage can be held if the man is 19 years old and the woman is 16 years old. This change in the minimum age of marriage was tested through an application for a judicial review of Article 7 paragraph (1) in the Constitutional Court through decision Number 22/PUU/XV/2017 as an effort to prevent early marriage in Indonesia.

The problem in this study is how the legal considerations of judges in granting applications for dispensation of underage marriage and the legal consequences of underage marriage, namely children who have married, are considered adults and capable of carrying out legal acts. The type of research is normative juridical. Analytical prescriptive research specifications. The data used is secondary data. The data obtained is then processed and analyzed using qualitative normative methods.

The results of the research and discussion show that the Judge in his consideration is based on Article 7 paragraph (2) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, the Maslahah Mursalah Approach and is guided by Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications. According to the author, the judge in his decision granted the application for dispensation of marriage because he took into account the benefits to be achieved and the judge could comprehensively consider Article 10 paragraph (4), Article 12 and Article 16 of PERMA Number 5 of 2019.

Keywords : *Marriage, Dispensation marriage, Under Age*