

**DIKABULKANNYA PERMOHONAN DISPENSASI KAWIN
KARENA ALASAN HAMIL
(Tinjauan Yuridis Terhadap Penetapan Pengadilan Agama Sragen Nomor:
207/Pdt.P/2023/PA.Sr)**

Oleh:

Indah Mustika Wati

E1A020026

ABSTRAK

Batas usia perkawinan diatur dalam Pasal 7 ayat (1) Undang-Undang Nomor 16 Tahun 2019 baik pria maupun wanita adalah 19 (sembilan belas) tahun. Terdapat pengecualian apabila seseorang belum memenuhi syarat batas usia perkawinan yaitu dapat mengajukan permohonan dispensasi kawin kepada Pengadilan yang berwenang.

Pada Putusan Nomor 207/Pdt.P/2023/PA.Sr anak pemohon masih berusia 16 tahun 5 bulan, tetapi permohonan ijin perkawinan yang diajukan orang tuanya dikabulkan hakim. Tujuan penelitian ini adalah untuk mengetahui dasar pertimbangan hukum hakim dalam mengabulkan permohonan dispensasi kawin terhadap Penetapan Pengadilan Agama Sragen Nomor 207/Pdt.P/2023/PA.Sr, dan bagaimana akibat hukum dikabulkannya perkawinan di bawah umur. 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 dapat disimpulkan bahwa pertimbangan hukum hakim pada Penetapan Nomor 207/Pdt.P/2023/PA.Sr, Hakim mempunyai dua pertimbangan. Pertimbangan pertama mendasarkan pada Pasal 8 dan 9 Undang-Undang Nomor 1 Tahun 1974 jo Pasal 39 dan 40 Kompilasi Hukum Islam, keduanya ingin menikah atas kehendak sendiri dan mendapat izin dari orang tua mereka sesuai ketentuan Pasal 6 ayat (1) dan (2) Undang-Undang Nomor 1 Tahun 1974 jo Pasal 15 ayat (2) dan Pasal 16 ayat (1) Kompilasi Hukum Islam. Pertimbangan kedua mendasarkan pada Pasal 16 PERMA Nomor 5 Tahun 2019 yang pada intinya Hakim harus memperhatikan kepentingan terbaik bagi anak. Akibat hukum dari dikabulkannya perkawinan di bawah umur yaitu Pemohon berhak melangsungkan pernikahan anak yang masih di bawah umur, akibat hukum yang timbul dari hubungan suami isteri diatur dalam Pasal 30 sampai Pasal 40 Undang-Undang Perkawinan, akibat yang timbul terhadap harta mereka diatur dalam Pasal 35 sampai 37 Undang-Undang Perkawinan, dan akibat hukum yang timbul dari perkawinan mengenai kekuasaan orang tua terhadap anak yang masih dalam kandungannya. Menurut penulis, Hakim dalam penetapannya dapat mempertimbangkan kaedah fiqh bahwa “Menghilangkan kemudharatan itu lebih didahulukan daripada mengambil sebuah kemashlahatan” dan menambahkan Pasal 53 Kompilasi Hukum Islam tentang diperbolehkan pernikahan wanita hamil dengan laki-laki yang menghamilinya tanpa menunggu lebih dahulu kelahiran anaknya.

Kata kunci: *Dispensasi Kawin, Hamil*

**THE GRANTING OF AN APPLICATION FOR DISPENSATION TO
MARRY ON THE GROUNDS OF PREGNANCY
(Juridical Review of the Determination of the Sragen Religious Court
Number: 207/Pdt.P/2023/PA.Sr)**

By:
Indah Mustika Wati
E1A020026

ABSTRACT

The age limit for marriage is regulated in Article 7 paragraph (1) of Law Number 16 of 2019, both men and women are 19 (nineteen) years old. There are exceptions if a person has not met the age limit for marriage, namely being able to apply for marriage dispensation to the authorized Court.

In Decision Number 207/Pdt.P/2023/PA.Sr the applicant child is still 16 years and 5 months old, but the application for marriage license submitted by his parents was granted by the judge. The purpose of this study is to determine the basis of the judge's legal reasoning in granting the application for marriage dispensation against the Sragen Religious Court Determination Number 207/Pdt.P/2023/PA.Sr, and what are the legal consequences of granting underage marriage. The type of research is normative juridical. The research specification is prescriptive analytical. The data used is secondary data. The data obtained is then processed and analyzed using qualitative normative methods.

The results of the study can be concluded that the judge's legal consideration in Determination Number 207/Pdt.P/2023/PA.Sr, the judge has two considerations. The first consideration is based on Articles 8 and 9 of Law Number 1 of 1974 jo Articles 39 and 40 of the Compilation of Islamic Law, both of them want to get married of their own free will and get permission from their parents in accordance with the provisions of Article 6 paragraph (1) and (2) of Law Number 1 of 1974 jo Article 15 paragraph (2) and Article 16 paragraph (1) of the Compilation of Islamic Law. The second consideration is based on Article 16 of PERMA Number 5 of 2019, which basically states that the judge must pay attention to the best interests of the child. The legal consequences of granting underage marriage are that the Applicant has the right to marry a minor child, the legal consequences arising from the relationship between husband and wife are regulated in Articles 30 to 40 of the Marriage Law, the consequences arising from their property are regulated in Articles 35 to 37 of the Marriage Law, and the legal consequences arising from marriage regarding parental authority over children who are still in the womb. According to the author, the judge in his decision can consider the fiqh principle that "Eliminating harm takes precedence over taking a benefit" and add Article 53 of the Compilation of Islamic Law regarding the permissibility of marrying a pregnant woman with a man who impregnates her without waiting first for the birth of her child.

Keywords: *Mariage Dispensation, Pregnant*