

ABSTRAK

Dispensasi kawin diatur dalam Pasal 7 Undang-Undang Perkawinan sebagaimana telah diubah dengan lahirnya Undang-Undang Nomor 16 Tahun 2019, baik pria maupun wanita belum mencapai usia 19 tahun dapat mengajukan permohonan dispensasi kawin pada Pengadilan Agama dengan alasan sangat mendesak dan disertai bukti yang mendukung. Faktanya ada beberapa permohonan yang memiliki amar penetapan beda, padahal kasusnya sama. Inilah yang disebut dengan disparitas. Seperti pada Penetapan Nomor 78/Pdt.P/2021/PA.Tas yang dikabulkan dan Penetapan Nomor 201/Pdt.P/2023/PA.SJJ yang ditolak. Dua penetapan ini diteliti untuk mengetahui apa yang menjadi dasar pertimbangan hakim dalam penyelesaian permohonan dispensasi kawin yang dikabulkan dan ditolak Pengadilan Agama. Jenis penelitian ini adalah yuridis normatif dengan metode pendekatan perundang-undangan, pendekatan konseptual dan pendekatan kasus. Dari hasil penelitian ini terjawab bahwa yang menjadi pertimbangan hakim mengabulkan permohonan dispensasi kawin dalam Penetapan Nomor 78/Pdt.P/2021/PA.Tas yaitu alat bukti yang sah, alasan mendesak terpenuhi, tidak ada larangan perkawinan, calon mempelai siap fisik dan mental, serta kaidah fiqh yang digunakan hakim. Sementara yang menjadi pertimbangan hakim menolak permohonan dispensasi kawin dalam Penetapan Nomor 201/Pdt.P/2023/PA.SJJ yaitu alasan mendesak tidak terpenuhi, belum ada kesiapan fisik dan mental calon mempelai, alat bukti tidak sah, serta didukung beberapa penggunaan kaidah fiqh oleh hakim.

Kata Kunci: *Disparitas, Penetapan, Dispensasi Kawin.*

ABSTRACT

Marriage dispensation is regulated in Article 7 of the Marriage Law as amended by Law Number 16 of 2019, both men and women who have not reached the age of 19 can apply for marriage dispensation to the Religious Court on the grounds of urgency and accompanied by supporting evidence. In fact, there are several applications that have different stipulations, even though the cases are the same. This is what is called disparity. Such as in Stipulation Number 78/Pdt.P/2021/PA.Tas which was granted and Stipulation Number 201/Pdt.P/2023/PA.SJJ which was rejected. These two stipulations were studied to determine what was the basis for the judge's considerations in resolving marriage dispensation applications that were granted and rejected by the Religious Court. This type of research is normative juridical with a statutory approach method, a conceptual approach and a case approach. From the results of this study, it is answered that the judge's considerations in granting a marriage dispensation request in Stipulation Number 78/Pdt.P/2021/PA.Tas are valid evidence, urgent reasons are met, there is no prohibition on marriage, the prospective bride and groom are physically and mentally ready, and the fiqh rules used by the judge. Meanwhile, the judge's considerations in rejecting a marriage dispensation request in Stipulation Number 201/Pdt.P/2023/PA.SJJ are that the urgent reasons are not met, the prospective bride and groom are not physically and mentally ready, the evidence is invalid, and is supported by several uses of fiqh rules by the judge.

Keywords: *Disparity, Determination, Marriage Dispensation.*