



Judge's consideration in giving Marriage dispensation

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Abstract

Judges' considerations in the Religious Court in completing marriage dispensation cases. Law Number 16 of 2019 Article 7 paragraph 1 concerning the minimum age limit for marriage -19 years for men and 19 years for women-and verses 2 and 3 regarding the provision of marriage dispensation for very urgent reasons. Application for Religious Marriage Dispensation, Procedures for Implementing Marriage Dispensation in Religious Courts, and Factors Consideration of Judges in Resolving Marriage Dispensation Problems in Religious Courts. Research conducted in the form of normative-empirical research. Through literature studies, documentation, observation, and interviews, data is collected. Qualitative data analysis is used to provide an overview of the data that has been processed through a description. Based on the findings, the reason for the request for marriage dispensation from the Religious Courts is due to religious, economic, educational, and pregnant factors outside of marriage or marriage due to accidents. The judge considers, in addition to family legal compliance, the necessity of rejecting losses or benefits, and the principle of benefit. Based on the findings, it is recommended that researchers have the responsibility to provide social changes directly to contribute to teaching and learning about the dangers of minors marriage, laws governing requests for marriage dispensation, and underage marriages.

Keywords : *Judge's Consideration, Dispensation, Marriage*

I INTRODUCTION

Marriage is one of the most important parts of family life and society that is blessed by God. In order for a life partner to have a praiseworthy character and there is no imbalance of beliefs, religion strongly advocates to base everything in choosing a life partner in accordance with religious rules. This is done so that when they are adults and family, both can live happily forever, prosperous forever, work together, and support each other so as to create happy family life in accordance with ideals. Marriage that it lasts forever and not just a moment. (Fuadi & Jumaidi, 2022).

In the provisions of Article 7 paragraph (1) this government has suppressed the number of marriages between people under the age of 18 in Indonesia. About the definition of "minor marriage" in Law No. Women are not yet 19 years old, and men are not yet 19 years old, according to article 7 paragraph 1 of the 2019 Constitution. Both male and female parents use the term "designated court" which means that Muslims must submit dispensation to the Religious Court, While Christians must submit to the District Court. Although minors can be given a marriage dispensation, article 7 paragraph 2 is not firmly or detailed the reason for this. (Marilang, 2018).

Revision of Law on Marriage No. 1 of 1974 became Law No. 16 of 2019 in the plenary meeting. Amendment to Article 7 paragraph 1 in the Law on Marriage related to the provisions of the age limit of marriage men and women with the age limit of marriage to 19 years. In Indonesia as many as 38% younger than 18 seems to be married.

While men who married under age were only 3.7%, there were several reasons that encouraged them to get married early. This shows the strong culture and point of view of the community, especially in rural areas, is still the main thrust for other young women ... (Mubasyaroh, 2016)

Decision of the Constitutional Court that gives a deadline for the legal age limit stipulated in Article 7 paragraph (1) of the Marriage Law is the basis for the revision of the Marriage Law. The above is of course affecting the law of marriage in Indonesia. If a woman has not received a marriage dispensation decision from the local Religious Court, then she is no longer allowed to get married at the age of 16-19 years.

In dealing with the problem of marriage dispensation, the Religious Court as an extension of the Supreme Court that receives, examines, and decides certain cases still refers to the applicable legal procedures and procedures. As a result of the changes in society that occur every year, more and more teenagers want to get married young and apply for a rewarding of marriage to the Religious Court. As a result, in the context of law enforcement, the issue of marriage dispensation requires special attention so that things do not occur undesirable. Marriage dispensation trees in the city of Lubuklinggau are still at high numbers. The total submission of marriage dispensation requests in the Religious Court in 2020 was 490 cases, and in 2021 was 648 cases.

I. RESEARCH METHODOLOGY

Researchers are focused on the study of the normative-empirical approach, the approach used in normative-empirical legal research is a modification of the approach used in normative legal research with empirical law. In normative-empirical legal research which is the focus of the study of legal norms and the application of law in society. Approaches in Normative Legal Research include: Legal History Approaches, Legal Comparison Approaches, Case Approaches remain used in accordance with research problems. In accordance with the titles and problems that will be discussed in this study and in order to provide useful results, this research was conducted with normative-empirical research (normative-empirical legal research methods). By using primary data that directly plunged in the field and secondary data obtained from the literature study. Data collection techniques include literature studies, documentation studies, observations and interviews. After that, a qualitative analysis of the data collected, which is then processed using a description to provide an overview. This helps the data systematic and provide answers to the problems that have been formulated. (Muhaimin, 2020).

II. RESULTS AND DISCUSSION

Factors causing marriage dispensation in the Religious Court

The number of marriage dispensation cases received at the Religious Courts from 2020-2021 is:

Table

No	Type of Case Description	Uraian	
		2020	2021
1.	Marriage Dispensation	490	648

Religious Court Data

According to data obtained at the Religious Court, the number of marriage dispensation cases received by the Religious Court in the last three years, from 2020 to 2021, was quite high, with 1,138 cases that ended. This can show that the religious court can be accepted by the community and show the level of public awareness, on the possibility of settlement of cases through legal channels, especially religious courts.

Based on marriage dispensation data at the Religious Court (2020-2021) and the results of interviews with the speakers of the Head of the Religious Court as a Judge of the Religious Court stated the factor of increasing requests for marriage dispensation in the Religious Court: "set that the cause of marriage dispensation in the Religious Court there are 2 factors that cause them to submit Marriage Dispensation:

First and also the most submitting, namely pregnancy out of marriage (married by accident), the second factor of education because the child who submitted a marriage dispensation has not been in school for a long time and also because it has worked and has his own income. So there are 2 factors that often submit marriage dispensation, in addition to these two factors there are also other factors such as lack of understanding of religion and economic factors".

That the reasons underlying the Petitioner submitted a marriage dispensation, namely in their declaration in religious Affairs office, for example they wanted to get married and they filled in the office of religious affairs to be able to get married, but the office of religious affairs rejected them because the ages that wanted to get married were not enough, where it has been set in the Marriage Law Number 16 of 2019. The explanation is as follows:

a. Religious factors

In the Religious Court, many requests for marriage dispensation based on religion. This is because parents have a mindset that they prefer their children to get married when they are young rather than committing adultery that will embarrass the family.

b. Economic factors

The Religious Court sees an increase in the number of young marriages every year and requests for marriage dispensation. This is due to the low economic ability of the community so as to prevent parents to send their children to a higher level. Parents believe that marrying their children is one way to ease the burden on the family, then the last choice for parents is to marry their children, even though it is contrary to the law. In this case, the Petitioners (parents) submit a request for a marriage dispensation to the court.

c. Educational factor

Socio-economic activities for generations are often carried out without accountability among those who are low in educated. As a result, its productivity in the workplace is very low, so it is not possible to meet their needs adequately. So the applicant has an incentive to marry his child.

d. Factors of Pregnancy Outside Marriage (Married By Accident)

Married by accident or what we are familiar with pregnancy out of wedlock is often the cause that encourages a person to get married at a minor. Although in reality the child or his parents did not want the marriage, but because of the 'accident' that was obtained to his child, inevitably had to be married at a minor.

What is the procedure for implementing marriage dispensation in the Religious Court

According to Article 7 of Law No. 16 of 2019, marriage is only allowed if men and women are 19 years old. You have the right to ask for exceptions from the court or other officials appointed by both parents of male and female in the event of a deviation from paragraph (1) of this article Law No.1/1974 Article 7 (2).

The results of the interviews conducted were found that the process of implementing marriage dispensation at the Religious Court was the same as the case examination process at other religious courts.

According to the interviewee, as a judge in the Religious Court: "states that yes the same, so the process is the same based on Perma No. 5 of 2019 has been explained the process but there are other policies, if for general requirements for parents' marriage books, the last diploma, the birth certificate of his child, recommendations from the Health Office, Recondation from the Protection of Women and Children Office. Only later will be submitted a marriage dispensation in the Religious Court. And for judges in deciding this marriage dispensation case, namely a single judge".

Determined based on the explanation of the speakers that the process of implementing marriage dispensation in the Religious Court as a whole includes registration, payment of case fees, waiting for a court call, making announcements of marriage dispensation, attending trials, and then waiting for the decision of the court judge. following:

1. The parties submit a marriage first to the local religious Affairs office.
2. KUA will provide a form to be filled in which is then submitted to the Religious Court, in the form of a rejection of the implementation of marriage from the religious Affairs office.
3. Furthermore, submitting a dispensation application to the Religious Court.

Consideration of judges of the Religious Court in providing marriage dispensation

Marriage dispensation occurs when the guardian of one of the parties, men or women who are not old enough to get married in accordance with Law Number 16 of 2019 concerning Marriage, ask permission from the Religious Court for men who are at least 19 years old and women at least 19 year.

Based on the results of the researcher's interview on "How is the consideration of the Judge of the Religious Court in giving a marriage dispensation with the resource person as a judge at the Religious Court which states that the main judge's consideration if it is not granted is benefit, it is granted that it is still the main benefit. granted the benefit that can be taken from this child's marriage. The judge sees from the aspects of the girls first because later the judge asked that he was ready to become a mother, if as long as he had had a relationship but had not been pregnant, it was urgent, when the judge examined and gave direction to the parents of the child who wanted to get married so that in this marriage do not Pregnant first might not be good for reproduction "

Therefore the judge's consideration regarding marriage dispensation is based on the fact that the judge is not bound by positive law and put the benefit of the child. The judge was given the opportunity to carry out legal discoveries because it was assumed that if the law decides certain matters regarding certain events, then the regulation only applies to those events. The Marriage Law does not specifically prohibit minors marriage. Although the age requirement for marriage has been determined, its practical application is flexible. That is, the bride and groom must be married immediately if it is very urgent or emergency to avoid damage or maintain goodness.

In terms of upholding order and order in society, the emphasis on the principle of legal certainty is more nuanced. Because of its emphasis on the concept of justice, the judge is required to pay attention to social law consisting of customs and legal provisions are not written. In this case, individuals, groups, and society must be distinguished by a sense of justice. In addition, the sense of justice adopted by one community may not always be in accordance with the sense of justice adopted by other communities.

When the judge chose, for example, the principle of justice as a basis for decision making, the judge must describe all of that when considering the decision. In economics, the emphasis on the principle of benefits is more nuanced, with the premise that human law exists. Therefore, many people must benefit from legal goals. The judge prioritizes the legal use of the marriage dispensation application. From the perspective of legal sociology, the benefits of legal goals are emphasized. Legal use emphasizes the importance of humans and non-human beings for the rule of law. The judge gave a dispensation to the parents who submitted an application to the Religious Court because it was considered more profitable than not granted.

Likewise the Petitioner in this case is the 16 -year -old girl's parents. The Petitioner intends to get married at the Office of Religious Affairs, but religious Affairs office rejects it because he is not yet 19 years old as required by Law Number 16 of 2019 concerning Marriage. Princess applicants dated a man who had long been known and loved. Both of them want to get married soon because their two children have had sexual relations that harm the family and the community. Marriage equipment has also been made, and the government and local traditional stakeholders know. The Panel of Judges decided that the Petitioner's son was considered worthy to be married to his future wife to avoid things that were not desirable because both of them had liked and loved each other, based on the testimony of witnesses related to the applicant's argument.

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IV. CONCLUSION

Factors for Submitting Marriage Dispensation to the Lubuklinggau Court namely (1) Religious Factors, (2) Economic Factors, (3) Educational Factors, and (4) Pregnancy Factors Outside Marriage (Married By Accident). One of the religious considerations is the main reason to ask for marriage dispensation from the Lubuklinggau District Court. In addition, it is hoped that the community will get convenience and solutions to all problems that may arise due to the marriage dispensation. In the Lubuklinggau Religious Court, the procedure for implementing marriage dispensation is the same as the procedure for general engagement. Both male and female parents submit a request for marriage dispensation to the Religious Court in their territory. After that, the panel of judges examined the case file. The chairman of the panel began the examination by asking questions to each applicant, their children, and prospective children. After that, the trial was postponed while the Chairperson of the Assembly continued to examine the evidence of the letter. The determination was read out after the deliberation was completed, the applicant was called back to the courtroom, and the suspension was revoked. Judges' considerations regarding marriage dispensation are not only based on the law but also in the judge's *ijtihad* which is required to determine something based on benefit. The judge needs to pay attention to the consequences that will be caused by something that has been decided.

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