

IMPLEMENTATION OF MINOR MARRIAGE DISPENSATION IN THE SIDOARJO RELIGIOUS COURT

Diterima:

06 Juni 2024

Revisi:

24 Juli 2024

Terbit:

01 September 2024

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Abstract— Religion and the State have regulated legal provisions regarding marriage, because marriage is a sacred act for every man and woman who wants to build a household with the aim of perfecting their religion and achieving a Sakinah, Mawaddah, Warrahmah family. Carrying out a marriage cannot be done haphazardly because marriage for humans has methods and rules determined by law, both in Islamic law and positive law. Underage marriage is a complicated problem and not a new phenomenon, underage marriage occurs not only in rural areas but in urban areas there are also similar cases, caused by many economic problems, low education, lack of understanding of certain cultures and religious values. , it can also be caused by promiscuity resulting in pregnancy outside of marriage. Underage marriages are a sensitive matter among society, underage marriages are carried out because promiscuity is still rampant which results in out-of-wedlock pregnancies and underage marriages are carried out to cover up disgrace and the child being conceived has a clear status. This research aims to focus more on the process of implementing the underage marriage dispensation in the Religious Courts. Empirical research methods. This research shows that underage marriages still exist and the number is still large in relation to applications for dispensation for underage marriages at the local Religious Court.

Keywords— *Dispensation, Underage Marriage, Religious Courts*

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I. INTRODUCTION

Allah SWT created humans in different social backgrounds, and in pairs so that they could interact with each other to form a harmonious and balanced life system according to the will of Allah SWT. Islam is the perfect religion created by Allah SWT for humans as his people. And it has been explained that the purpose of marriage is to provide peace within humans. Therefore, in the hadith of the Al-Quran, there are four criteria for men to choose a future wife, first looking at their appearance, lineage, wealth and faith, so that later they will live their lives without regretting each other's marriages. According to Subekti, marriage is a relationship between a man and a woman for a long time. However, carrying out a marriage cannot be done haphazardly because marriage for humans has methods and rules determined by law, both in Islamic law and positive law. Marriage itself is regulated in Law Number 1 of 1974 concerning Marriage and Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage, the implementation of which is carried out according to the laws of each religion and belief. There are six religions recognized in Indonesia, namely Islam, Catholicism, Protestantism, Hinduism, Buddhism and Confucianism [1].

The definition of marriage according to Law Number 1 of 1974 concerning Marriage is: "The physical and spiritual bond between a man and a woman as husband and wife aims to form a happy family (household) based on God Almighty." In article 2 of Law Number 1 of 1974 concerning marriage, it is explained that: 1. Marriage is valid if it is carried out according to the laws of each religion and belief, 2. Each marriage is recorded according to the applicable laws and regulations. Marriages that are considered valid and recognized by the Indonesian state are those that are held according to religion and the marriage is registered according to applicable regulations. Marriage is very important, which means that life with a legal marriage between men and women is more honorable. The marriage process usually takes place in a person from adolescence to adulthood. Marriage itself begins with a relationship and the emergence of a feeling of falling in love and the desire to tie or commit.

Islamic law itself does not clearly regulate the age limit for marriage, but Islamic law explains that when a man and a woman reach maturity, they are considered adults and are considered capable of marriage. As for Law Number 16 of 2019 article 7 concerning Marriage, it states that marriage is only permitted if the man and woman have reached the age of 19 years. Marriage is an attempt by a pair of men and women to form a harmonious family. However, every society bound by marriage often experiences problems in the household that

lead to divorce. Divorce is an undesirable situation for all married couples. Divorce is usually due to economic problems, loss of trust in each other which leads to infidelity, and domestic violence (KDRT).

Regarding the registration of marriages specifically for Muslims, it is regulated in Law Number 22 of 1946 in conjunction with Law Number 32 of 1954 concerning the registration of marriages, divorce and reconciliation. Registration of marriages at the civil registry office is based on Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the implementation of Marriage Law Number 1 of 1974 [2]. In article 2 paragraph 1, the registration of marriages according to the Islamic religion is carried out by Registry Employees as intended in Law Number 32 1954 concerning marriage registration, divorce and reconciliation. Then, article 2 paragraph 2 states that "The registration of marriages of those who enter into marriages according to their religion and beliefs other than Islam, is carried out by Marriage Registrar Employees at the Civil Registry Office as intended in various laws regarding marriage registration."

Marriage of minors is not something new in Indonesia. It often happens in big cities and in villages, the reasons vary due to economic problems, low education, understanding of certain cultures and religious values, it could also be due to pregnancy first or what is commonly known in more modern language, namely (married by accident) and other things. - Other things. This often happens because society's views are wrong in interpreting marriage problems, for example:

The view of a person's "maturity" according to an economic perspective, is considered to be able to make money or have done productive work and is considered an adult and can enter into marriage, even though he is still a minor.

b) A person's maturity is seen from physical changes, for example menstruation for girls and wet dreams for boys, followed by changes to the reproductive organs

c) Pregnancy out of wedlock, marriage is a solution often taken by families to cover up the shame and save the status of the child after birth

In fact, the government's policy in determining the minimum age limit for marriage is of course through process and consideration. This is intended so that both parties are ready and mature from a physical, psychological and mental perspective. If marriage is not regulated by the state, injustice will arise for certain parties, especially for women and children who are born. Child marriage is a complicated and sensitive issue, often occurring due to pregnancy before marriage due to promiscuity. Marriages are carried out to cover

disgrace and the child conceived has a clear status. Regarding underage marriage, in Indonesia itself, things like this still happen a lot among local communities. In practice, there are still many underage marriages due to several factors, namely religion, arranged marriages, education, the child's own wishes, economic or cultural factors.

Therefore, it is necessary to analyze the legal consequences if the application for marriage dispensation is rejected or accepted by the Religious Court. So the public needs education about Law Number 16 of 2019 and other supporting regulations clearly. The formulation of the problem is, How is the dispensation for underage marriages implemented at the Sidoarjo Religious Court and what are the obstacles in implementing the marriage dispensation at the Sidoarjo Religious Court [3]. The aim is to find out the implementation process and regulations governing the dispensation for underage marriage.

The following are the numbers related to the dispensation for underage marriage at the Sidoarjo Religious Court:

Years	Entry Matters	Breaking Up Matter
2019	96	86
2020	331	324
2021	297	274
2022	246	240

Table: data from the Sidoarjo Religious Court

Basically, many underage marriages occur due to pregnancy before marriage. Marriages are carried out to cover disgrace and the child being conceived has a clear status. Apart from that, society is narrow-minded.

II. METHODS

This research uses empirical research, prioritizing studying phenomena that occur in the field as the main data source, such as the results of interviews and observations. This empirical research is used to analyze law as community behavior for social life which is always interacting and connected. The method used is:

1. Interview

Interview method, data collection is carried out by the researcher by means of direct questions and answers to the relevant parties, but the researcher chooses unstructured

interviews which aim to give the resource person freedom so that later the researcher obtains as much information as possible [4].

2. Observation

Observations are carried out directly at the research site, so that you can review things that happen in society directly and on target. This research uses a qualitative approach, a research procedure that produces descriptive data in the form of written or spoken words from people and observed behavior [5]. Legal materials use primary legal materials which examine laws and regulations that are still in effect today, secondary legal materials namely reviewing documents or books and legal journals relating to the discussion of underage marriage dispensations.

III. RESULT AND DISCUSSION

3.1 Implementation of the Dispensation for Underage Marriage at the Sidoarjo Religious Court

For the first time, before the marriage takes place, the interested parties register themselves at the local Religious Affairs Office (KUA). The requirements are as follows:

- a) Letter of introduction to marriage from the RT/RW domicile of the parties
- b) Marriage certificate (model N1)
- c) Certificate containing the origins of the bride and groom (model N2)
- d) Statement of consent between the two bride and groom (model N3)
- e) Statement letter regarding parents (model N4)
- f) Pay the marriage registration fee of IDR 30,000
- g) 5 passport size 3 x 2 photos
- h) Permission letter from respective superiors for TNI/POLRI members
- i) Dispensation from the court if you are under 19 years of age

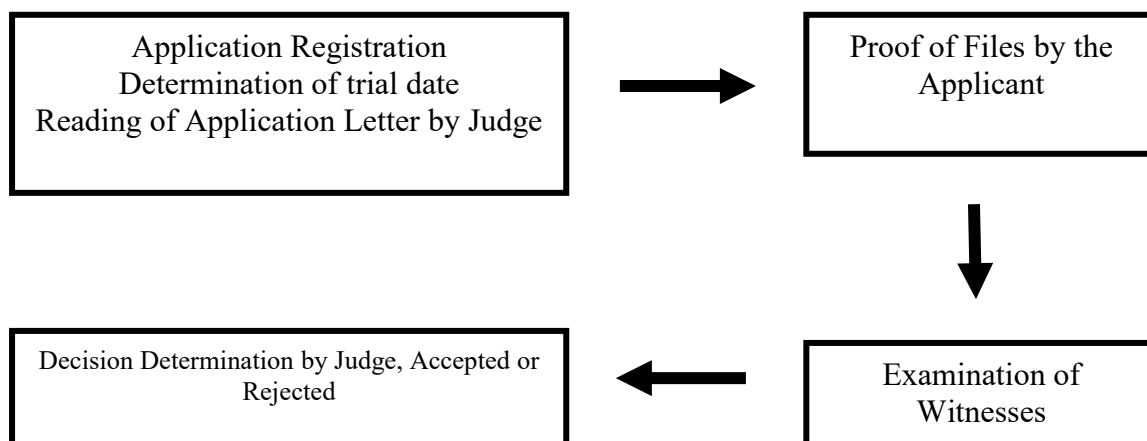
For prospective brides and grooms who apply for marriage but have not yet reached the age of 19, they can apply for a marriage dispensation to the religious court. Marriage dispensation is basic for prospective brides and grooms to legally obtain permission in Indonesia to enter into a marriage even though the applicant has not reached the age of 19 in accordance with the provisions of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage [6]. Every prospective bride and groom who wishes to apply for a marriage dispensation to the Religious Court must prepare the following supporting requirements:

- a) Letter of application for marriage dispensation
- b) Photocopy of KTP of the applicant or parents
- c) Photocopy of the child's last educational certificate
- d) Rejection letter from the KUA because they have not reached the age according to the applicable regulations
- e) Photocopy of pregnancy certificate (for applicants who are pregnant out of wedlock)
- f) Pay downpayment of case fees

Guided by the Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, the procedure is as follows:

- 1) Application for dispensation is submitted to the local Religious Court
- 2) The Registrar checks the files as an administrative requirement
- 3) If a marriage dispensation application does not meet the requirements, the clerk is obliged to return the application to be further completed
- 4) If the application for marriage dispensation meets the requirements, the application for marriage dispensation is registered and verified, after paying the legal fee deposit.

Once the requirements and documents are complete, they are handed over to the judge handling the case. In this case the judge is given the authority in the case to provide protection to the applicant. This was further explained by the judge at the Sidoarjo Religious Court, namely Drs. Imam Shofwan,.M.Sy, said that in the trial process what must be done is::



The following are the procedures for hearing applications for marriage dispensation at the Sidoarjo Religious Court:

- 1) Applicants must appear 1 hour before the trial begins
- 2) The trial schedule has been determined by the court, the applicants are obliged to attend
- 3) The trial opens with the prospective bride and groom sitting on the right of the judge and the applicant on the left of the judge, while the witnesses sit in the back and wait to be called by the judge.
- 4) On the first day of the trial, the applicant is required to present the children or prospective bride and groom, future husband and wife, parents or guardians of both prospective bride and groom. When one of the parties is not present, the judge can postpone the trial and legally summon the applicant again. On the second day of the trial but the party concerned is still not present, the application for dispensation from marriage is considered invalid and is not accepted.
- 5) During the trial, the judge is obliged to use language and methods that are easily understood by children. The judge is obliged to provide direction and advice to the parties regarding the risks and impacts of early marriage. The judge is also obliged to ask for recommendations from experts regarding child psychology, listen to all statements from the parties without exception and ask about the capabilities of the prospective bride and groom in particular. If the judge does not do all of these things then the decision is null and void.
- 6) Reading the application letter and if there are changes in the application, they can be immediately submitted to the judge during the trial.
- 7) Next is the evidentiary stage where the applicant is required to present the child who is applying for the marriage dispensation, the prospective husband and wife and be accompanied by each parent, then the witnesses must be 2 people as well as the documents that have passed register verification and been legalized by the registrar and then checked with the original file
- 8) After that the judge asks the child for whom marriage dispensation is requested, the prospective husband and wife and the parents of the prospective bride and groom. After the judge asked and heard the answers from the parties, the judge then gave advice to the prospective bride and groom, for example, "you will become husband and wife. If a problem occurs, you must solve it together, especially if you marry of your own free will without coercion from other people, you must be physically and mentally ready to enter into a household"

9) Next, the witnesses are examined and an oath is read to provide true information without being fabricated, led by the judge and followed by the witnesses.

10) If everything has been done according to the procedural procedures in the trial, the judge can decide whether the application is accepted or rejected. And judges in making decisions must consider the best interests of the child based on written and unwritten rules that exist in society.

3.2 Obstacles or Obstacles and Efforts to Overcome Obstacles to Marriage Dispensation at the Sidoarjo Religious Court

Implementing the marriage dispensation is not easy, because even a lack of requirements can invalidate the application. And of the many cases requesting marriage dispensation received by the Sidoarjo Religious Court, starting from 2019, there were 96 cases, in 2020 there were 331 cases, in 2021 there were 297 cases, in 2022 there were 246 cases. With applications for marriage dispensation being accepted and rejected by local courts, there are bound to be obstacles that occur during the implementation of the case [7]. The obstacles that still occur at the Sidoarjo Religious Court are as follows:

a) Obstacles in the trial process

A marriage dispensation is applied for by a person who does not have this authority, what is meant is not the biological parent or guardian of the applicant but another person who is not related by blood. If this happens, the judge can reject the application. In PERMA No. 5 of 2019 Article 6, those who have the right to apply for marriage dispensation are the biological parents [8]. The applicants cannot show evidence during the trial, the clerk during the trial will check the requirements for applying for a marriage dispensation, if there is evidence that does not meet the requirements then the judge can reject the application.

b) Obstacles from judges in marriage dispensation cases

1. Lack of communication or conveying the judge's opinion in language that is not understandable
2. For applicants who have disabilities, for example hearing impairments, the judge finds it quite difficult to express his opinion
3. The applicant is less than honest in admitting reasons or conveys information that is not true

a) Kendala yang dihadapi para pemohon

1. Pemohon kurang paham dengan persyaratan yang diajukan untuk permohonan dispensasi kawin
2. Terdapat salah satu pihak pemohon ada yang tidak setuju dengan perkawinan, tetapi keadaan memaksa atau anak perempuannya hamil duluan akhirnya harus menyetujui adanya perkawinan tersebut.

Berikut ialah penjelasan mengenai upaya yang dilakukan untuk mengatasi kendala dalam pelaksanaan dispensasi perkawinan [9] :

A. Upaya dalam kendala persidangan dapat dilakukan dengan cara sebagai berikut :

1. Dalam pengajuan permohonan para pemohon wajib dan harus orang tua asli anak tersebut, jika orang tua telah bercerai maka permohonannya tetap diajukan oleh kedua orang tua atau salah satu orang tua yang memiliki hak asuh anak tersebut, dan jika apabila orang tua telah meninggal maka dapat diajukan oleh wali anak atau kuasa dari orang tua yang sesuai peraturan yang berlaku.
2. Kurangnya syarat yang belum terpenuhi setelah panitera memeriksanya biasanya hakim memberi tenggat waktu kepada pemohon untuk melengkapi berkas tersebut oleh karena itu pemohon harus menyiapkan berkas yang benar pada waktu sidang berlangsung.
3. Dalam sidang dispensasi kawin saksi minimal dua orang, apabila hanya terdapat satu orang saksi saja maka hakim meminta untuk mendatangkan saksi satu lagi kepada pemohon.

a) Obstacles faced by applicants

1. The applicant does not understand the requirements for the marriage dispensation application
 2. There is one of the applicant parties who does not agree to the marriage, but circumstances force him or his daughter becomes pregnant before finally having to agree to the marriage.
- The following is an explanation of the efforts made to overcome obstacles in the implementation of the marriage dispensation:

A. Efforts to overcome trial obstacles can be done in the following ways:

1. When submitting a petition, the applicant must be the child's real parents. If the parents are divorced, the petition is still submitted by both parents or one of the parents who has custody of the child, and if the parents have died then they can submitted by the child's guardian or the parent's attorney in accordance with applicable regulations [10].

2. If there are no requirements that have not been met after the clerk has checked them, the judge usually gives the applicant a deadline to complete the documents, therefore the applicant must prepare the correct files at the time of the trial.
3. In the marriage dispensation hearing, there are a minimum of two witnesses, if there is only one witness, the judge asks the applicant to bring in another witness.

B. The judge's efforts in dealing with marriage dispensation cases

1. Ask the applicant to use Indonesian and convey it clearly
2. The judge can bring in a translator who usually communicates with children to get a clear explanation
3. The judge explores the applicant's background information, studies the applicant's application carefully and carefully, and considers the child's psychological, educational, economic and health conditions and ensures the parents' commitment to share responsibility for problems that arise after the marriage.

C. The applicant's efforts in the marriage dispensation case

1. Applicants are required to ask what the requirements are when applying for marriage dispensation at the PTSP (One Stop Integrated Services) section at the local Religious Court
2. Both parents or applicants must agree to this dispensation for marriage. If one of the parties does not agree with this dispensation for marriage, it is feared that problems will arise in the future in their child's household relationship.

IV. CONCLUSION

Based on the explanation above, marriage is a form of worship to create a life full of happiness for those who are able, in order to avoid actions that are prohibited by the Koran and religion. Dispensation is a deviation from the minimum age limit for marriage which has been determined by the latest law, namely Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage, so the minimum age limit for marriage is 19 years old for both men. – male or female. This research discusses the implementation of marriage dispensations and legal remedies at the Sidoarjo Religious Court.

The factors that encourage the submission of applications for marriage dispensation at the Sidoarjo Religious Court are mostly because the woman has become pregnant out of wedlock, then economic factors and low education which encourage parents to relinquish responsibility for caring for their children by marrying them off, to prevent violations of

norms in society in the form of Promiscuity then leads to intimate relations or free sex. Furthermore, this was because the KUA refused to carry out marriages for prospective brides under the age of 19 because it was not in accordance with Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning marriage.

Judges when deciding on a request have considerations which are based on the Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, the impact if the request is granted by the judge can be viewed from various aspects including legal, social, psychological and biological. There are two reasons for the request for marriage dispensation submitted by the parents, namely that they are not old enough and the bride is pregnant out of wedlock. Meanwhile, the legal considerations for granting the marriage dispensation request by the Sidoarjo religious court judge were based on juridical considerations.

The suggestion from this article is that the marriage of minors through the marriage dispensation process according to Law Number 16 of 2019 concerning changes to the regulations of Law Number 1 of 1974 concerning Marriage, it is necessary to establish basic criteria as requirements for applications for marriage dispensation and certain age restrictions on applications. dispensation for marriage by minors.

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