

DISPENSATION FOR MARRIAGE AT KEPAHANG RELIGIOUS COURT AFTER THE REVISION OF MARRIAGE LAW NUMBER 1 OF 1974 WITH LAW NUMBER 16 OF 2019

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ABSTRACT

This study raised the issue of the factors causing the increase in marriage dispensation cases at Kepahiang Religious Court after the revision of Marriage Law Number 1 of 1974 with Law Number 16 of 2019. It investigated how the process of examining cases of marriage dispensation applications and the consequences of what laws resulted in the changes of Law Number 16 of 2019 concerning marriage at the Kepahiang Religious Court. To answer this problem, empirical juridical research was used with data obtained through in-depth interviews with the chairman, judges, and court clerks as informants and supporting data in the form of literature books, and laws and regulations, all of which are related to the problem. After the data can then be analyzed based on qualitative juridical analysis. There were several results in this research. First, the factors causing the increase in marriage dispensation cases at the Kepahiang Religious Court were due to promiscuity, parental concerns for their children, and low education factors. Second, the process of examining marriage dispensation cases was carried out by a single judge. The applicants were obliged to present the child, the prospective husband/wife, and the parents/guardian of the prospective husband/wife. Moreover, it was also the language method of the judge that was easy to understand by the child, the time when the judge and clerks did not wear trial attributes when the examination happened, and the availability of advice and the child's statement. Third, the legal consequences resulting from the amendment to Law Number 16 of 2019 are based on some aspects namely, the increase in marriage dispensation cases, the complexity of the process of handling marriage dispensation cases because many requirements had to be fulfilled and many people carried out the underhand marriages.

Keywords: *Marriage Dispensation and Law Number 16 of 2019*

A. INTRODUCTION

1. Background

Marriage is not a small and trivial issue, but an important and big issue. It is a human nature, therefore Islam recommends getting married, because it is a human will, spiritual and physical needs.¹ It is prescribed so that humans have legitimate offspring and families towards a happy life in this world and the hereafter, under the auspices of divine love and pleasure.²

Considering how big the responsibility is, both husband and wife need to have mature readiness, both physically and psychologically. The principle of maturity of the prospective bride and groom is also intended because marriage contains a

noble, holy and sacred purpose.³

It is appropriate that marriage must be carried out by a man and a woman who are both mature in terms of age and emotional maturity. However, Islam does not mention the provisions regarding the age limit for marriage.

The fiqh books provide less explanation about the appropriate age for marriage, even the fiqh books allow marriage between men and women who are still small, whether this ability is stated clearly or indirectly, as every fiqh book mentions the authority of islamic legal guardian to marry off the young children or virgins.⁴

This permissibility is because there is no verse in the Qur'an that clearly mentions the age limit for marriage and there

¹ Arso Sosroatmodjo and A. Wasit Aulawi, *Hukum Perkawinan di Indonesia*, Bulan Bintang, Jakarta, 2004, p. 24

² Sirman Dahwal. *Hukum Perkawinan Beda Agama Dalam Teori dan Praktiknya Di Indonesia*, Mandar Maju, Bandung, 2016, p. 87

³ Andi Tahir Hamid, *Peradilan Agama dan Bidangnyanya*, Sinar Grafika, Jakarta, 2005, p. 16

⁴ Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia, Antara Fiqh Munakahat dan Undang-undang Perkawinan*, Kencana, Jakarta, 2006, p. 66

is also no hadith of the Prophet which directly mentions the age limit for getting married. Therefore, in determining the age of marriage it is related to social affairs.

In response to this, the government issued Law Number 16 of 2019 on amendments to Law No. 1 of 1974 concerning marriage. The Article 7 paragraph (1) states that marriage is only permitted if the male and female have reached the age of 19 years. However, Article 7 paragraph (2) states that if there is a deviation from the age provision, the parents of both men and women are allowed to apply for a marriage dispensation to the court for urgent reasons and accompanied by supporting evidence.

The marriage law has a main purpose to reduce the number of child marriages. However, the reality is not, this is like the case of marriage dispensation at the Kepahiang Religious Court after the

issuance of Marriage Law Number 16 of 2019 instead of decreasing, on the contrary it increased quite significantly. For more details, let us see the table below.

Table I
Marriage Dispensation Cases at the Kepahiang Religious Court

Number	Year	Number of Cases
1	2019	44 cases
2	2020	123 cases
3	2021 to May	53 cases

Source: Documentation of the Kepahiang Religious Court⁵

The table above shows an increase in cases of marriage dispensation. This means that the marriage law no. 16 of 2019 did not run optimally in society. Whereas the purpose of the marriage law is to reduce the number of child marriages, the latest Marriage Law is a nightmare for underage marriages that seem to be

⁵ Documentation of the Kepahiang Religious Court

legalized through the judiciary. Eventually, this results in legal uncertainty.

2. Identification of the Problem

Based on the background explained above, the formulation of the problems is as follows:

1. What were the factors causing the increase in marriage dispensation cases at the Kepahiang Religious Court after the revision of the Marriage Law Number 1 of 1974 with Law Number 16 of 2019?
2. What was the process for examining a case for a marriage dispensation at the Kepahiang Religious Court?

B. RESEARCH METHOD

This study used empirical juridical research, with data obtained through in-depth interviews with the chairs, judges and clerks as informants. This study also supported the data in the form of literature and laws and regulations regarding the problem. After obtaining, editing, and reconstructing the

data, the researcher selected and refined the data with the consideration of reliability (honesty) and validity (validity). Finally, the data were analyzed qualitatively by using deductive and inductive methods.

C. RESULTS AND DISCUSSION

1. Factors causing the increase in marriage dispensation cases at the Kepahiang Religious Court after the revision of the Marriage Law Number 1 of 1974 with Law Number 16 of 2019

The increase of marriage dispensation cases was due to the changes in the Marriage Law in the provisions of Article 7 which states:

- a. Marriage is only allowed when a man and a woman reach the age of 19 years old.
- b. In the event of deviation from the age determination as referred to in paragraph (1), parents from both parties

may apply for dispensation to the court for urgent reasons, by providing sufficient evidence.

- c. The granting of an exception by the court as referred to in paragraph (2) must listen to the opinions of both parties of the prospective bride and groom who will carry out the marriage.
- d. The provisions regarding the condition of one or both parents of the prospective bride and groom as referred to in Article 6 paragraph (3) and paragraph (4) shall apply to the provision regarding the request for dispensation as referred to in paragraph (2) without prejudice to the provisions as referred to in Article 6 paragraph (6).⁶

In the application for dispensation for marriage which was submitted at the Kepahiang Religious Court, several factors were motivated. For more details, the results of the author's interviews with informants can be described as follows:

- a. Pregnancy

The advance of technology leads to free access to social media and promiscuity among teenagers outside, leading to pregnancies before marriage. As a result, whether they like it or not, their parents have to marry them off. In this case, it was clear that the Kepahiang Religious Court refused a marriage because of the age. However, the dispensation application was still filed. This was confirmed by the Head of

⁶ Mardi Candra, *Pembaharuan Hukum Dispensasi Kawin Dalam sistem*

Hukum di Indonesia, Kencana, Jakarta, 2021, pp, 47-48

Kepahiang Religious Court saying:

The number of applications for dispensation for marriage at the Kepahiang Religious Court is actually based on the fact that they are pregnant out of wedlock. This is because teenagers are now more free and not dependent on parental responsibility and supervision, so that teenagers ask for marriage because there has been a pregnancy first.⁷

The occurrence of pregnancy out of wedlock is the result of parental negligence regarding promiscuity, especially in matters of religious education. Parents do not pay attention to the association of their

children. Pregnancy before marriage is unacceptable. This is because religious teachings forbid to unmarried couples have sex. If someone had known of this prohibition in religion, then they should not have done it.

b. Concerns from Parents

Technological advances can cross over countries and even cause them to lose their Islamic identity. Electronic media and print media play an important role in shaping the personality of children in Indonesia. This was as expressed by the judge of the Kepahiang Religious Court who said:

The reason why parents are worried about the application for dispensation for marriage in this case is because their child's love

⁷ M. Yuzar, *Head of the Kepahiang Religious Court*, interviewed on January 3rd, 2022

relationship is very close. The child's relationship is too intimate, so parents are afraid that something unwanted will happen, such as a woman who is pregnant first before marriage. Parents prefer to be safe by marrying them before what they fear happens⁸

The application for dispensation from marriage, in this case, can be submitted on the grounds that the parents are worried that a pregnancy will occur before the marriage. Thus, to avoid further negative consequences, parents apply for a marriage dispensation to the Religious Court.

c. Education

In terms of education, the low level of education and

knowledge of parents, children and the community can cause a tendency to marry off their underage children. Based on the results of interviews with the Kepahiang Religious Court Judges, he said: Based on cases from people who applied for dispensation under the age of marriage, both men and women, there were only junior high school graduates who got married immediately. Parents thought that it was enough for girls to go to junior high school, apart from the reason they were not used to letting their daughters go away from their parents, parents also thought that in the end their daughters

⁸ Rusdi Rizki Lubis, *Religious Court Judge Kepahiang*, interviewed on January 4th, 2022

would still be housewives.⁹

The level of education of both parents and children greatly affects the mindset. They assume that marriage at an early age can be a solution because there is no work and there is an assumption that a woman will still be a housewife after marriage.

2. The examination process of the applications for the marriage dispensation at the Religious Court of Kepahiang

a. Submission of Applications for Marriage Dispensation

The parties who are entitled (having *legal standing*) to apply for marriage dispensation are the parents of the prospective bride and

groom. In the event that the parents are divorced, the application is still submitted by both parents, or one of the parents who has been appointed by the court as the holder of the custody based on a court decision that has permanent legal force. In the event that one of the parents has died, the one who applies for a marriage dispensation is the parent who is still alive.¹⁰

When referring to PERMA No. 5 of 2019 can be submitted by:

- 1) Parents;
- 2) If the parents are divorced, it is still by both parents or one of the parents who has custody of the child based on a court decision;

⁹ Endah Tiara Furi, *Judge of the Religious Court of Kepahiang*, interviewed on January 4th, 2022

¹⁰ Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning *Guidelines for Adjudicating Applications for Marriage Dispensation*.

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| <ul style="list-style-type: none"> 3) If one of the parents dies or the address is unknown, a marriage dispensation is filed by one of the parents; 4) Guardian of the child if both parents died or their powers can be revoked or their whereabouts are unknown; 5) Authorization of parent/guardian if the parent/guardian is absent;¹¹ | <ul style="list-style-type: none"> 3) Photocopy of Family Card; 4) Photocopy of KTP or Child Identity Card and/or child's birth certificate; 5) Photocopy of KTP or Child Identity Card and/or birth certificate of the prospective husband/wife; and ; 6) Photocopy of the child's latest education certificate and/or certificate of still schooling from the child's school;¹² |
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Based on the results of the interview with the court clerks of the Kepahiang Religious Court that the administrative requirements for the dispensation of marriage that must be met are:

- 1) A letter of application;
- 2) Photocopy of ID cards of both parents/guardians;

- b. Examination process of marriage dispensation cases

The examination of marriage dispensation cases was carried out by a single judge at the Religious Courts. The classification of judges who heard cases of marriage dispensation are judges who already had a Decision Letter from the

¹¹ Endah Tiara Furi, *Kepahiang Religious Court Judge*, interviewed on January 4th, 2022

¹² Saibu, *Kepahiang Religious Court Clerk*, interviewed on January 4th, 2022

Chief Justice of the Supreme Court as child judges, attend training and/or technical guidance on women dealing with the law or were certified by the Child Criminal Justice System (SPPA), or had experience adjudicating applications for marriage dispensation. If in a court, there was no judge with these qualifications, then each judge could hear the application for dispensation from marriage.

On the day of the first trial, the Petitioner was obliged to present: a) the child for whom a marriage dispensation was requested; b) Prospective husband/wife; c) Parents/guardians of the prospective husband/wife. If the Petitioner was not

present, the Judge postponed the trial and recalled the Petitioner legally and appropriately. However, if on the second trial day the Petitioner was not present, then the application for Dispensation for Marriage was declared "failed".

If on the first day of trial and on the second day of trial, the Petitioner could not present the parties mentioned above, then the judge postponed the trial and ordered the Petitioner to present the parties. The presence of these parties did not have to be on the same day of trial. However, if on the third day of trial, the Petitioner was unable to present the parties, then the application for Dispensation for

Marriage was declared "**unacceptable**".

Judges in using method language that were easy for children to understand, as well as judges and court clerks in examining children did not wear trial attributes (such as the judge's gown and court clerk's coat). This is in line with the Juvenile Justice Act.

In the trial, the Judge had to provide advice to the Petitioner, the child, the prospective husband/wife and the parents/guardian of the prospective husband/wife. The advice was given to ensure that the applicant, child, prospective husband/wife and parents/guardian of the prospective husband/wife understand the risks of marriage, related to the possibility of cessation of education

for children, the continuation of the child's 12-year compulsory education, the unpreparedness of the child's reproductive organs and impacts, economic, social and psychological for children.

The purpose of the judge being required to hear the child's statement was to identify the child who was applying for a marriage dispensation, knowing and approving the marriage, the child's psychological condition, health, and readiness to marry and build a household life, and psychological, physical, sexual or economic coercion on the child and/or or families to marry or give in children.

- c. Basic legal considerations by judges

Judges in giving a determination are obliged to explore the values of justice that live in society, as well as judges in determining the application of someone who wants to apply for a marriage dispensation as stated in the Marriage Law Article 7 paragraph (2) with the sound " In case of deviation from paragraph 1 of this Article, you can request a dispensation from the Court and other officials, who are appointed by the parents of the male or female parties.

The application for dispensation for marriage was a case of application, because in this case it did not contain a dispute and the judge accepted and decided by making a determination that grants or rejects the application. In order to determine

whether to grant or reject the application for a marriage dispensation, the judge, with his independence, will conduct legal exploration of the reasons for the application as well as carry out translation, interpretation, sorting and selecting the most appropriate and relevant rules for the marriage dispensation at hand.

The judge before deciding the case that went to the Kepahiang Religious Court was obliged to explore, follow and understand the legal values and sense of justice that live in society, especially the facts that occurred and were related to the application for a marriage dispensation.

From the results of interviews conducted by the author with the Judges of the Kepahiang

Religious Court, the following explanation was obtained:

That the judges of the Religious Courts in carrying out their duties are always guided by Law Number 48 of 2009 concerning Judicial Power. Including in determining the stipulation of a marriage dispensation, the judge before determining is obliged to explore, follow and understand the legal values and sense of justice that live in society. This can be seen in Article 5 of Law Number 48 of 2009 concerning Judicial Power. So that there is no inequality, because the acceptance or rejection of a determination will affect their lives in the future.¹³

¹³ Law Number 48 Year 2009 concerning *Judicial Power*

In a judge's determination, the judge always has a legal basis that is used as a guide in considering whether to grant or reject a case that has been submitted in court. The legal basis used in the Religious Courts is the applicable regulations and regulations governing the problems that are being resolved.

In the judicial environment, the judge must accept all cases or cases even though there is no law and here the judge must play a role in filling the legal vacuum. The judge will then try to interpret a legal provision or statutory rule that does not exist or is unclear. He or she must try to find the law when making decisions and must be able to expand the meaning of a provision of

the law. In reality, legislators only stipulate general rules, and consideration of concrete matters has to be left to the judge.

As conveyed by one of the judges of the Kepahiang Religious Court, the issue of marriage dispensation can be said to be a legal discovery. Not because there are no rules, but Article 7 paragraph (2) of the Marriage Law does not explain what is meant in terms of what kind of deviation is, so in this case the judge must interpret for himself what is meant by deviation. Juridically, the judge is not allowed to reject a case or case on the grounds that there is no law and the following explanation:

This dispensation for marriage can be said to be

a legal discovery by the judge, not because the rules do not exist or the legislation does not regulate it. The dispensation is regulated in Article 7 paragraph (2) of the Marriage Law, but in that Article it is not explained what is meant by what kind of deviation is, so that in this case the judge must interpret for himself what is meant by deviation. The judge must try to find the law if the legislation is not clear, and the judge in making a decision must be able to expand the meaning of a provision of the law.¹⁴

The judge before deciding will definitely consider several things related to the acceptance or rejection of the application for dispensation for marriage.

¹⁴ Endah Tiara Furi, *Kepahiang Religious Court Judge*, interviewed on January 4th, 2022

The petitioners must have strong legal reasons for the petition to be granted by the panel of judges.

Thus, legal considerations or known as *ratio decidendi*, are legal reasons or rationale used by a judge in making a decision or determination of a case. These legal considerations are contained in the consideration of the main points of the case, which are based on opinions, evidence, and jurisprudence which must be arranged systematically, logically and interconnected, and complement each other. Concrete legal considerations must be stated as analysis, arguments, opinions and conclusions of judges.¹⁵

D. CLOSING

1. Conclusion

- a. The factors causing the increase in marriage dispensation cases at Kepahiang Religious Court after the revision of the Marriage Law Number 1 of 1974 with Law Number 16 of 2019 were due to several factors such as being pregnant first as a result of promiscuity, people's worries parents to their children and the education factor is still low.
- b. The process of examining the case for a marriage dispensation at the Kepahiang Religious Court, namely:
 1. Filing a dispensation application based on PERMA No. 5 of 2019, namely:
 - a. Parents;
 - b. If the parents are divorced, it is still by

¹⁵ Lilik Mulyadi, *Pergeseran Perspektif dan Praktek Dari Mahkamah*

Agung mengenai Putusan, Citra Aditya Bakti, Bandung, 2009, p.164.

- both parents or one parent who has custody of the child based on a court decision;
- c. If one of the parents dies or the address is unknown, a marriage dispensation is filed by one of the parents;
- d. Guardian of the child if both parents died or their powers are revoked or their whereabouts are not known;
- e. Authorization of the parent/guardian in the absence of the parent/guardian;
2. Process for Examination of Marriage Dispensation Cases
- a) Examination of marriage dispensation cases is carried out by a single judge
- b) On the day of the first trial, the Petitioner is obliged to present:
- a) The child for whom a marriage dispensation is requested;
- b) Prospective husband/wife;
- c) Parents/guardians of the prospective husband/wife. If the Petitioner is not present, the Judge postpones the trial and recalls the Petitioner legally and appropriately.
- However, if on the second trial day the Petitioner is not present, then the application for Dispensation for Marriage is declared **"failed"**
- c) The presence of the parties does not have to be on the same day of trial. However, if on the third day of trial, the Petitioner is

unable to present the parties, then the application for Dispensation for Marriage is declared **“unacceptable.**

- d) Judges in using method language that are easy for children to understand, as well as judges and court clerks in examining children do not wear trial attributes (such as the Judge's gown and court clerk's coat)
- e) . Parents/Guardians of Prospective Husband/Wife.
- f) The judge is required to hear the child's statement is to identify the child who is applying for a marriage dispensation, knowing and approving the marriage, the child's

psychological condition, health, and readiness to marry and build a household life, and psychological, physical, sexual or economic coercion on the child and/or family to marry or give in children.

- 3. Basis for Judge's Legal Considerations:
 - a) Law no. 7 of 1989 as amended by Law no. 3 of 2006 and amended again by Law no. 50 of 2009 concerning the Religious Courts
 - b) Law 1 of 1974 as amended by Law no. 16 of 2019 regarding marriage
 - c) Islamic Law Compilation
 - d) PERMA5 of 2019 concerning Guidelines for

Adjudicating
 Applications for
 Dispensation for
 Marriage
 e) with Fiqhiyah
 Rules as

They should be able to understand and socialize the Marriage Law, especially regarding the age limit for marriage. It is because this has been carried out thoroughly and systematically from the city or regency level to the lowest level, namely the village, both through formal and non-formal activities.

2. Suggestions

- a. Kepahiang Religious Court
 They do not only look at a case from the perspective of legality, but also to consider the moral aspect related to the dispensation of marriage. Although there are benefits to be achieved, when the parties want to get married but are constrained by age problems, it is as if they have to do an act that is prohibited by the *shari'ah* first (called *zina*).
- b. The community, especially parents.
 They should pay more attention to their children so that things that are prohibited by religion do not happen.
- c. Related parties

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