

The Impact of Law No. 16 of 2019 on Judicial Considerations in Granting Child Marriage Dispensations: A Case Study of the Wonosobo Class IA Religious Court

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ABSTRACT: The phenomenon of child marriage in Indonesia is still quite high, indicating that marriage at the age of a child is considered normal by the community. In 2019, the age limit for marriage was changed to 19 years. Child marriages that do not meet the age limit requirements are carried out with the Marriage Dispensation procedure. The number of applications for Dispensation for Marriage at the Religious Courts of Wonosobo is still high. Judges are faced with a dialectic of considerations between the benefits and harms of the decisions issued, so the considerations and determinations between one application and another cannot be generalized. This study uses the juridical empirical method with descriptive research specifications. The factors behind the dispensation of marriage were low education, pregnancy out of wedlock due to promiscuity, economy and human resources, customs, and parents' ignorance about changes in the age limit for marriage. The basic difference in the determination of the judge is in the consideration of whether or not there is an urgent reason in the application for a marriage dispensation. The judge's consideration puts forward the principle of children's basic rights, which are accommodated concerning child protection.

KEYWORDS: Underage Marriage; Marriage dispensation; Change of age limit for marriage; Judge's Consideration

I. INTRODUCTION

Philosophically, marriage is a legal relationship between male and female partners. Article 26 of the Civil Code only views marriage as a civil relationship. Law Number 1 of 1974 concerning marriage (hereinafter referred to as UUP) explains that marriage is an inner and outer bond of a man and a woman as husband and wife to form a happy and eternal family (household) based on God Almighty. Marriage in Indonesia has been regulated by the state; in this case, the government pays attention and has responsibility in terms of control and direction regarding marriage. Not all male and female couples can get married. Only those who meet the requirements according to the law can carry out the marriage. One of the conditions that must be met is the permission of both parents for the party who will marry but has not yet reached the age of 21 (twenty-one years). Law Number 1 of 1974 explains that the age limit for marriage is when a man is 19 (nineteen) years old and a woman is 16 (sixteen) years old. However, there has been a change regarding the age limit for marriage as regulated in Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 (hereinafter referred to as the Amendment to the UUP) concerning the minimum age for marriage, men and women are allowed to marry if they have reached the age of marriage, 19 years old. Based on data from the National Socio-Economic Survey (Susenas), ten thousand Indonesian children marry underage every year. This number continues to increase from year to year. Data shows that more than 25 percent of Indonesian women aged 20-24 years have been married before the age of 18. This data shows that 1,348,886 girls are married before the age of 18, equivalent to 3,695 girls per day in Indonesia. Of the total 292,663 girls married before the age of 16 years, 110,198 were married before the age of 15 years (Badan Pusat Statistik, 2015).

Indonesia is the 2nd highest country in ASEAN in the prevalence of child marriage after Cambodia and ranks 7th highest in the world for the absolute number of child brides (Hilmi, 2018). The phenomenon of the prevalence of child marriage shows that child marriage is not something new and taboo in Indonesia. Based on data presented by UNICEF, Indonesia has the eighth highest "absolute number" of child brides in the world, which is 1,459,000 (one million four hundred fifty-nine thousand) child brides. Nationally, the prevalence in Indonesia is 11.2 percent of girls married before the age of 18, and 0.5 percent of these girls were married by the time they were 15 years old (UNICEF, 2018). Based on data submitted by the Office of Women's Empowerment, Child Protection, Population Control and Family Planning (DP3AP2KB), the number of child marriages in Central Java Province from 2019 to early 2021 experienced a significant increase. There were 11,301 cases of child marriage under the

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age of girls and 1,671 boys. According to data released by the PPKBPPPA Office of Wonosobo Regency, the number of underage marriages in 2019 was 2018 cases, in 2020 there were 968 cases, and in 2021 there were 479 cases (Dinas PPKBPPPA, 2022).

From 2019 to 2021 itself, the number of marriage dispensation cases filed at the Wonosobo Religious Court is still quite high. The rise of child marriage in various regions in Indonesia is something that must be corrected by the government. Sociologically, since the change, the number of applications for dispensation for marriage in the religious courts is still quite high. Although it is regulated in the law, it cannot be denied that the practice of underage marriage is still widely practiced. The marriage of someone who is not old enough can still be carried out on the condition that the guardian and the religious court have given permission. The application for permission to marry underage submitted to the Religious Court is called the Marriage Dispensation (Munadhiroh, 2016).

In building a good marriage, responsibility and mature thinking are needed between the two parties, therefore mental and physical readiness and maturity are the most important and main things in a marriage so that a happy family can be created (Sudarsono, 2016). In communicating, it is expected that couples can think maturely considering that the maturity of a partner in building a household is important. The maturity of the prospective husband and wife means that the couple has been physically and mentally able to carry out marriage to be able to realize the purpose of the marriage.

Physical readiness is one of the mature preparations for marriage to create a peaceful and happy family, with a healthy body, capable of being mature, and able to provide living expenses in the household, so that is a sign that husband and wife have built the initial foundation to create a happy household in the future (Syarifuddin, 2007). In issuing the determination, the judge needs to consider various aspects ranging from syar'i to juridical, health, and sociological. In determining the dispensation of marriage, whether it is granted, rejected, or not accepted, the judge will be faced with a dialectic of consideration between two possible harms. In this case, the judge must consider various aspects of the consideration carefully so that the decision issued by the judge between one application and another cannot be generalized.

Based on the background described above, the authors feel that research on the differences in judges' considerations in determining the dispensation of marriage after the change in the age limit in the UUP needs to be done so that people do not think that approval of the dispensation of marriage for minors is easy to get, and judges can be more careful and thorough in providing legal considerations so that the decisions taken can fulfill justice, certainty and benefit for the parties. So it is necessary to conduct a study of (1) the factors behind the submission of the application for the Dispensation of Marriage for Minors at the Wonosobo Regency Religious Court (2) The Implementation of the Dispensation for Marriage for Minors at the Wonosobo Regency Religious Court after the enactment of Law Number 16 of 2019 concerning Marriage (3) differences in the considerations of the judges of the Religious Courts of Wonosobo Regency in handling and deciding cases of Dispensation for marriage under the age of minors after the enactment of Law Number 16 of 2019 concerning Marriage, from the problems above, the author conducted research on the Differences in Judges' Considerations in Applications for Dispensation for Child Marriage Minors after the enactment of Law Number 16 of 2019 concerning Marriage (Study of Determination of Judges of the Wonosobo Religious Court Class IA 2019-2021).

Referring to the problems above, this research uses the Maslahah theory which is used as the basis for solving a legal problem related to Islam. Another theory used is the Legal Purpose Theory by Gustav Radbruch, law must contain three values (identity), namely legal justice (*gerechtigheit*) which is related to a philosophical angle where justice is equal rights of all people before the court, legal certainty (*rechmatigheid*) which considers the juridical point of view and legal expediency (*zwachmatigheid*).

One form of improving the quality of judicial decisions and the professionalism of the judiciary can be seen when judges can make decisions by taking into account the three values (identity) (Manan, 2012). This research also focuses on the principles of children's basic rights which are accommodated by the Convention on the Rights of the Child, which consists of the principle of non-discrimination; the best interests of the child; the Right to life, survival, and development; and Appreciation for the opinion of children.

In giving the determination of the dispensation for marriage, the judge must consider the principle of the child's basic rights, especially the best interests of the child. The stipulation of a marriage dispensation is not solely due to the urgent factors stated in the application for a marriage dispensation, but the judge must consider in detail the readiness of the child to build a household both in terms of physical, psychological, and economic (Adila, 2020). Based on the research that has been done regarding the marriage of minors and marriage dispensation, most of them are caused by pregnancy outside of marriage and adolescent promiscuity behavior (Ahyani, 2016). In 2016 a study was conducted to determine the impact of underage marriage on the risk of pregnancy, from the study it was concluded that there was a significant relationship between early marriage and the risk of anemia in the mother and the development of the fetus in the womb (Sangal, & Patil, 2017). The practice of underage marriages tends

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not to pay attention to the psychological and physical readiness of children who are about to get married. Underage marriages are dominated by factors such as low education and poverty (Roy, & Sarker, 2016). Another study explained that the factors behind the dispensation of marriage were the Married by Accident Factor, Weak Economy, Low Education, Religious Doctrine Prevention, and Socio-Cultural Hegemony. There is also a discussion based on judges' considerations in issuing marriage dispensation decisions based on juridical and sociological aspects (Salam, 2017).

Marriage dispensation provides permission for someone who is not able to get married, if implemented wisely, marriage dispensation can be a solution to the problem of a moral error that can hinder the child's future (Bachroni, 2016). What distinguishes this research from previous research is that the author focuses on examining differences in judges' considerations in granting or refusing a marriage dispensation application so that the determination between one application and another cannot be generalized. In addition, this study also focuses on the effect of changing the age limit stated in Law Number 16 of 2019 concerning Marriage on the submission of a marriage dispensation application at the Wonosobo Religious Court. So that this research is expected to be able to explore the views of judges and the author's views on the practice of marriage dispensation at the Wonosobo Religious Court so that in the future public awareness about the impact of underage marriages will increase and judges can be more careful and thorough in providing legal considerations so that the decisions taken can fulfill justice, certainty, and benefit for both parties.

II. RESEARCH METHOD

The approach method used in this research is the juridical empirical method. The empirical juridical approach is carried out by field research aimed at implementing marriage dispensation for minors at the Wonosobo Regency Religious Court. Empirical juridical research is carried out by examining the principles, concepts, and views of the community and practitioners; legal doctrines obtained from secondary legal materials; and applicable laws and regulations relating to the issues discussed.

The data used in this study is primary data obtained or collected directly in the field by the person conducting the research (Amiruddin, 2006). Primary data can be obtained from informants, namely individuals or individuals in the form of interviews conducted by researchers regarding the judge's considerations in determining marriage dispensation at the Wonosobo Regency Religious Court, and secondary data obtained through library materials. The secondary data collected consisted of primary legal materials, secondary legal materials, and tertiary legal materials.

The research specifications used in this study are descriptive. Descriptive research is research that aims to describe a problem in a certain area or at a certain time. Researchers try to reveal the facts as completely as possible and as they are (Suteki & Taufani, 2020). The steps taken in the data analysis activities of this research are data and information that have been collected from research results and both interviews with related agencies, analyzed descriptively and qualitatively.

III. DISCUSSION

A. Background on the Application for Marriage Dispensation at the Wonosobo Religious Court

The age limit for marriage is related to the normative requirements of marriage. If at the time of registration of marriage, the age of the prospective bride and groom is below the specified age limit, the KUA (Office of Religious Affairs) will refuse to register the marriage. Underage marriages can occur because of the will of the parties who want to carry out underage marriages or because of coercion. Underage marriages are carried out because the age of one or both of the prospective brides do not meet the minimum threshold for marriage (Prabawati & Rusdiana, 2019). From the research that has been carried out, there are several main factors behind filing a Marriage Dispensation case:

a. Low Education Factor

Education in children has an important role in determining the future of children. Most parents still do not understand the importance of education for their children's future (Candra, 2021). Especially for the people of Wonosobo Regency whose geographical conditions are in mountainous areas, where most of the people make a living as farmers. Parents who do not understand the importance of education tend to direct their children to get married immediately after graduating from elementary school (SD) and junior high school (SMP). Based on data collected from the Recapitulation of Socio-Economic Conditions by the Central Java Provincial Statistics Agency, in Wonosobo Regency it was recorded that there were 24,673 (twenty-four thousand six hundred and seventy-three) school-age residents of Wonosobo Regency who were not in school (BAPPEDA Wonosobo Regency, 2019). In the example of the determination in the application that was submitted to the Wonosobo Religious Court with Case Number 103/Pdt.P/2019/PA.Wsb it was stated that the prospective bride was not in school, then in Case 110/Pdt.P/2020/PA.Wsb it was stated that Education The last two prospective brides were Junior High

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School (SMP). In application Number 103/Pdt.P/2021/PA.Wsb it is stated that the last education of the prospective bride is Junior High School (SMP).

b. Factors of Pregnancy Out of Wedlock Due to Promiscuity

Social shifts and promiscuity that develops among teenagers have resulted in an increase in the phenomenon of getting pregnant out of wedlock. The phenomenon of pregnancy out of wedlock is one of the factors that dominates the submission of the Marriage Dispensation. Based on the UUUP, these reasons can be classified as very urgent reasons. In the case of the application for dispensation for marriage due to pregnancy out of wedlock, the Judge considered the maqashid shari'ah factor to the impact that could arise as a result of the pregnancy (Nugraheni, 2020). Especially on the status of the child in the womb to maintain the benefits and benefits. For example, in Application Number 103/Pdt.P/2019/PA.Wsb and Application Number 280/Pdt.P/2019/PA.Wsb it is explained that the marriage is very urgent to take place because the applicant's child is already in a condition of more than 10 pregnancies (ten) weeks, according to the local health center examination.

Based on Article 53 paragraph (2) KHI states that the marriage of a pregnant woman really takes place when the woman is pregnant. There is no need to wait for the birth of a baby in her womb. According to KHI, marriages of pregnant women due to adultery do not recognize iddah. However, the marriage of a pregnant woman as stated in Article 53 paragraph (1), may only be married to a man who impregnates her. The issue of underage marriage should be regulated in more detail. So that it can be a guide for judges in considering this case, and can be a legal education for the community. The act of adultery should not be considered a trivial act and become commonplace because of the dispensation of early marriage (Agung, 2013).

c. Economic Factors and Human Resources

As an area that has a geographical location in a mountainous area, the land area in Wonosobo Regency is classified as fertile so that the livelihoods of Wonosobo Regency residents, especially in rural areas as farmers (Wonosobo Regency Government, 2014). With the economic condition of the people who tend to be weak, parents choose to direct their children to continue their parents' agricultural business. In fact, to lighten the burden on the family, marrying off their children is the solution that many parents in Wonosobo Regency choose. But in practice, sometimes they marry off their children to people whose economic status is not much different, giving rise to a new phenomenon of poverty.

d. Customs Factor

The stigma of society in several regions in Indonesia assumes that if a girl who has reached the age of puberty is not immediately married, she will become an old virgin. Although the reasons are not directly explained in the lawsuit, the stigma is one of the backgrounds for filing the Marriage Dispensation. Marriage dispensation filed at the Wonosobo Regency Religious Court, often the prospective bride and groom submit an application when they are engaged and have already determined the wedding date. The determination of the wedding date according to the prospective bride and groom cannot be contested because it is in accordance with the primbon calculations or related to certain traditional calendars. For example, in the determination of Number 110/Pdt.P/2020/PA.Wsb the two prospective brides have determined the date of marriage and cannot be changed.

e. Parental Ignorance Factors About Changes in the Age Limit for Marriage

One of the factors for the increase in the number of applications for Marriage Dispensation at the Religious Courts of Wonosobo Regency is the change in the age limit for marriage after the revision of the UUP which took effect on October 15, 2019. In the context of maturity, the government made efforts to increase the marriage age for prospective brides from the age of 16 to 19 years. The change in age limit is actually a response to Law Number 23 of 2002 concerning Child Protection. The ignorance of parents regarding the age limit requirements for the prospective bride and groom is one of the factors found in the Court. Because many parents only know that if their child is 16 years old, they can get married. Without thorough socialization with the community about these changes, it causes parents are ignorant of the new rules that apply so the application for Marriage Dispensation increases.

B. Implementation of the Marriage Dispensation for Minors at the Wonosobo Religious Court after the enactment of Law Number 16 of 2019 concerning Marriage

Marriage dispensation is the authority of the Religious Courts, in the form of legal products of determination to the two prospective brides who are not old enough to hold a marriage (Ashila, 2020). After the enactment of Law Number 16 of 2019 concerning Marriage, the Marriage Dispensation applies to men and women who have not reached the age of 19 (Nineteen) years. The dispensation is submitted to the religious court, then processed in accordance with the applicable laws and regulations until the purpose of marriage is realized (Candra, 2021). access to education, emotional maturity in the household, minimizing violence against children, and reducing the high divorce rate (Bachroni, 2016).

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The number of applications for Marriage Dispensation at the Wonosobo Regency Religious Court after the change in the age limit for marriage in 2019 continues to increase every year. In 2019, the number of applications received by the Wonosobo Regency Religious Court was 257 (Two hundred fifty-seven) applications while the number of applications that were dismissed was 213 (Two hundred and thirteen applications). In 2020, the number of applications for Dispensation for Marriage increased by 66.15% from the previous year, namely 427 (Four hundred and twenty-seven) applications received, and 469 (Four hundred and sixty-nine applications that were terminated. Then in 2021, Re-entry of Marriage Dispensation applications increased by 20.14% compared to the previous year, namely as many as 513 (five hundred thirteen) applications received and 517 (five hundred and seventeen) which were dismissed (Registrar of the Wonosobo Regency Religious Court, 2021).

C. Differences in the Consideration of the Wonosobo Regency Religious Court Judges in Handling and Deciding the Application for Dispensation for Marriage after the Enactment of Law Number 16 of 2019 concerning Marriage

Law enforcement the application for a marriage dispensation aims to tighten the procedure for applying for a dispensation to minimize the number of early marriages (Judiasih, Dajaan & Nugroho, 2020). The aim is that the marriage dispensation is not misused by interested parties to legalize the marriage of minors without any urgent reason. In the law, there are no specific reasons that allow the existence of a marriage dispensation, so the decision to allow a marriage dispensation is only based on the judge's consideration (legal reasoning) against existing legal facts (Ilma, 2020).

The determination of the judge will become a legal certainty and have a legal force that binds the litigants, because the judge's determination is a statement from the judge that has been stated in written form and pronounced by the judge in the trial, as a result of the examination of the case. The judge's consideration in issuing a determination is an important aspect in determining the value of justice (*ex aequo et Bono*) and contains legal certainty in every decision. The judge's consideration is a fundamental aspect in realizing the judge's decision that contains justice and benefits for the parties concerned.

Therefore, the judge's considerations must be addressed carefully, well, and carefully. If the judge's consideration is not carried out carefully, well, and carefully, the judge's decision derived from the judge's consideration can be canceled by the High Court or the Supreme Court (Arto, 2011). Procedures regarding examinations that must be carried out by judges about dispensations have been regulated in Supreme Court Regulation Number 5 of 2019 (Ashila, 2020)

Judges have the freedom to give rights to disputing parties or decide an event based on their beliefs. Judges' considerations in issuing a stipulation of a marriage dispensation application are generally regulated in Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Dispensation Applications by considering several aspects. prospective husband/wife, evidence of letters, and statements of witnesses that are mutually compatible with one another. Legal considerations regarding the benefits and harms as well as the provisions of Islamic law or *fiqh* regarding the regulation of marriage age and dispensation for marriage (Kamarusdiana & Sofia, 2020).

In this study, the writer compares the two decisions issued by the judges, namely the decisions that are granted and those that cannot be accepted with the following description:

Table 1. Different Consideration of Judges

	<i>Accepted Marriage Dispensation Determination</i>	<i>Unacceptable Marriage Dispensation</i>
<i>Legal Considerations</i>	1. Considerations related to very urgent reasons in submitting a marriage dispensation application; 2. Consideration of the facts in the trial relating to: a. There is no marriage prohibition, namely between the two prospective brides there is no blood or breast-feeding relationship; b. There are no prohibitions according to religion or applicable laws and regulations for the bride and groom; c. Physically and mentally the two prospective brides can carry out the marriage;	1. Considerations after the Judge studied carefully the reasons put forward by the Petitioners, it turns out that the age of the prospective bride and groom is still very young and is still far from the age limit for marriage; 2. The judge considers that the age of the prospective bride and groom is not yet mature enough to carry out the marriage, considering that at that age children can still spend their teenage years continuing their education or developing themselves for their future in future; 3. The judge considers that the prospective bride and groom are not ready physically, mentally, and in the ability to carry out the marriage;

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d. The applicant can prove the argument of his application and has fulfilled the norms of Islamic law contained in the holy book Al-Qur'an (Q.S An - Nur verse 32);
e. Considerations by the intent of the Fiqh Rules, namely avoiding evil must take precedence over hoping for a benefit;
f. The legal facts in the trial have complied with Article 7 paragraph 2 of the Marriage Law;
g. The legal facts have complied with the provisions of Law Number 17 of 2016 concerning Child Protection;
h. The procedure for adjudicating applications for dispensation for marriage is by PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Dispensation for Marriage

4. After examining the application letter submitted in the *posita*, it does not explain the act of concern (urgent reasons) as stated in PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation so according to the Judge the reason for the Petitioner is obscure (obscure libel);
5. The judge thinks that the Petitioner's Application does not meet the requirements as mandated by PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation.

There are differences in the judge's considerations in determining the dispensation of marriage, whether it is granted or not. The basic difference between the two stipulations lies in the consideration of whether or not there is an urgent reason for the application for a marriage dispensation in accordance with PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Applications for a Marriage Dispensation. The judge also considered the information from the petitioner, the two prospective brides, and the parents of the prospective bride and groom by prioritizing the Principles of Basic Rights of the Child in accordance with Law Number 17 of 2019 concerning Child Protection.

Marriage dispensation can only be granted if it is based on legal facts that are proven at trial after being considered through various aspects, both *syar'i*, juridical, sociological, psychological, and also health. The marriage is urgent to take place to fulfill Islamic law, maintain the safety of the offspring without disturbing the safety of the soul of the child to whom the marriage dispensation is being applied, and the continuity of education for the child. If the marriage is not immediately held based on legal facts at the trial, it is feared that it will lead to madness.

PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensations exists to regulate the granting of marriage dispensations, which should not be arbitrary. The determination of the dispensation for marriage must follow the Principles of the Basic Rights of the Child, which are accommodated in the Convention on the Rights of the Child and the Law on Child Protection (Al Hasan & Yusup, 2021). Judges must consider the principle of the child's basic rights, especially the best interests of the child. The stipulation of a marriage dispensation is not solely due to the urgent factors stated in the application for a marriage dispensation, but the judge must consider in detail the readiness of the child to build a household in terms of physical, psychological, and economic factors.

IV. CONCLUSIONS

The background of the application for marriage dispensation at the Wonosobo Regency Religious Court based on the above research due to several factors, including the low education factor, the factor of pregnancy out of wedlock due to promiscuity, economic factors and human resources, customary factors, and the ignorance of parents about changes in boundaries. Marriage Age. Applications for marriage dispensation at the Wonosobo Religious Court after the enactment of Law Number 16 of 2019 concerning Marriage continue to increase. After the change in the age limit for marriage in the UUP, the application for Dispensation for Marriage has increased significantly. The number of applications for marriage dispensation at the Wonosobo Regency Religious Court after the change in the age limit for marriage in 2019 continues to increase every year.

From 2019 to 2020, the number of applications for Dispensation for Marriage increased by 66.15%. In 2021, applications for Dispensation for Marriage have increased by 20.14%. There are differences in the judge's considerations in determining the dispensation of marriage, whether it is granted or not. The basic difference between the two stipulations lies in the consideration of whether or not there is an urgent reason for the application for a marriage dispensation following PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Applications for a Marriage Dispensation. The judge also considered the statements from the petitioner, the two prospective brides, and the parents of the prospective bride and groom by prioritizing the principle of the

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best interests of the child following Law Number 17 of 2019 concerning Child Protection. The judge must consider the mental and physical readiness of the two prospective brides before issuing the stipulation of the Marriage Dispensation.

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