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The Age Dispensation for Marriage in Sidoarjo Religious Court: Research on 2022

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ABSTRACT

Underage marriage is still prevalent in society. According to the Central Bureau of Statistics in 2017, 25.71% of women aged 20-24 were married when they were less than 18 years old. It means that about 1 out of 4 Indonesian women married at a child's age. The Marriage Law restricts the minimum age for citizens to marry from 21 years old, for both men and women. However, the Marriage Law allows men under 19 years old and women under 16 years old to marry, as long as they receive dispensation from the Religious Court. Therefore, this research is conducted to find out the legal regulation of marriage age dispensation according to Law No. 1/1974 and Law No. 16/2019; and to analyse the actual amount of research on marriage age dispensation at the Sidoarjo Religious Court in 2022. The type of research used is empirical combined with a sociological legal approach which legal sources are obtained from data observation and interviews at the Sidoarjo Religious Court. The amendment in Law No. 16/2019 on the amendment of Law No. 1/1974 on marriage does not provide any change to overcome the surge in marriage dispensation for underage children as happened in the Sidoarjo Religious Court. There are many factors that cause them to apply for marriage dispensation, such as being pregnant out of wedlock with an old womb, the economy, tradition, and a lack of religious understanding.

Keywords: *Marriage Dispensation, Religious Court, Underage Children*

INTRODUCTION

According to Article 7 Paragraph (1) of Law No. 1/1974 as amended by Law No. 16/2019 on marriage, it is stated that marriage is only permitted if the male is aged at least 19 years and the female at least 16 years. The Supreme Court of the Republic of Indonesia has issued Supreme Court Regulation No. 5/2019 on guidelines for adjudicating marriage dispensation cases. The purpose of establishing guidelines for adjudicating applications for marriage dispensation such following below:

1. Implementing the principles referred to in Article 2, which are the principle of best interests for the child, the principle of life and growth of the child, the principle of respect for the child's opinion, the principle of respect for human dignity, the principle of non-discrimination, gender equality, the principle of equality before the law, the principle of justice, the principle of benefits and the principle of legal certainty;
2. Ensure the implementation of a justice system that protects children's rights;
3. Increase parental responsibility in order to prevent child marriage;
4. Identifying the presence or absence of coercion behind the filing of a marriage dispensation petition;
5. Standardising the process of adjudicating marriage dispensation cases in court.¹

Determining the age limit for marriage is very important because it determines biological and psychological maturity. Therefore, the policies and considerations of judges from the Religious Courts have an important role in providing decisions related to marriage dispensation applications submitted by their clients.² Marriage dispensation is the granting of marriage licences by the court to prospective husbands or wives who are not yet 19 years old to marry. Marriage dispensation is a voluntary case, which is a petition case in which there is no dispute, so it has no opponent and the product is in the form of a determination. A petition cannot be accepted by the court unless the interests of the law require it. The recap of marriage dispensation data in 2022 states that there were 246 people who applied for marriage dispensation at the Sidoarjo Religious Court. The Australia Indonesia Partnership for Justice (AIPJ2) states that 35% of marriage dispensation applications are filed by parents for their daughters, and 65% are filed by parents for their sons. The Regulation of Religious Affairs Minister No. 3/1975 on the Obligations of Marriage Officers and the Working Procedures of Religious

¹ Bestha Inatsan Ashila, Kharisanty Soufi Aulia, and Arsa Ilmi Budiarti, *Buku Saku Pedoman Mengadili Permohonan Dispensasi Kawin* (Jakarta: Mahkamah Agung Republik Indonesia, 2020).

² Imam Syafi'i and Freede Intang Chaosa, "Penetapan Dispensasi Nikah Oleh Hakim (Studi Komparatif Hukum Islam Dan Hukum Positif)," *Mabahits: Jurnal Hukum Keluarga* 1, no. 2 (2020): 13–31.

Courts in Implementing the Marriage Law for Muslims, Article 1 Paragraph (2) Point (g) states that, “Dispensation of Religious Courts is a decision issued by a religious court in the form of dispensation for prospective husbands and prospective wives who have not reached the age specified in the marriage law.” In Article 13 paragraphs (1) and (2) defines “if a prospective husband and prospective wife have not reached the age specified in the marriage law, they must obtain dispensation from the court. An application for marriage dispensation for those referred to in Paragraph (1) of this Article shall be submitted by the parents of both the man and the woman to the religious court at their domicile.”³

The regulation of underage marriage according to Article 35 of the Civil Code concerning underage marriage, must have permission from the parents or legal guardianship of the child, if permission is granted to the parents or legal guardianship of the child. The local Religious Court has the right to grant permission for a child to marry underage. However, it is important to recognise that the decision to grant or deny the marriage dispensation petition will have an impact on their future life. The lack of effectiveness of amendments to the law within the community, particularly in Sidoarjo, is caused by a lack of education. Despite the amendments that were made to the current marriage law, the Sidoarjo Religious Court receives hundreds of applications each year concerning age dispensation for marriage, particularly in 2020. In Indonesia, the minimum age required for a woman to marry is 19 (nineteen) years old. There are typically many applications presented to the court each month for marriages between people who are younger than 17 years old, and most of the applicants are women who are under 19 (nineteen) years old. Based on previous background, this research is conducted to find out the legal regulation of marriage age dispensation according to Law No. 1/1974 and Law No. 16/2019; and to analyse the actual amount of research on marriage age dispensation at the Sidoarjo Religious Court in 2022.

LITERATURE REVIEW

Underage Marriage

Law No. 16/2019 on the Amendment to Law No. 1/1974 on marriage stipulated in Article 7 Paragraph (1) is a reference regulation in determining the age limit for a child to marry. Underage marriage has a significant impact on children’s lives. The impact is not only suffered by the child who is married, but also has an impact on the children they are born with due to the lack of mental and financial readiness they faced.⁴ The implementation of this amendment to the minimum marriage age needs to be ensured, in addition to the Law, good implementation is also needed for the Child Protection Law which in Article 26 regulates that parents

³ Ibid.

⁴ Ahmad Muqaffi, Rusdiyah, and Diana Rahmi, “Menilik Problematika Dispensasi Nikah Dalam Upaya Pencegahan Pernikahan Anak Pasca Revisi UU Perkawinan,” *Journal of Islamic and Law Studies* 5, no. 2 (2021): 361–377.

are obliged to prevent child marriage. The regulation also explains that male/female parents can request dispensation to the Court for compelling reasons and with sufficient supporting evidence.⁵ The amended law stipulates that all marriage dispensations must be able to accommodate both parties to the marriage. The role of the government is needed to further strengthen the regulations of the marriage law in Indonesia. The government's indecisiveness will make people in Indonesia easily ignore the Marriage Law.⁶

Theory of Legal Effectiveness

Legal effectiveness theory describes the ability of law to effectively accomplish certain goals, such as justice, human rights protection, social engagement, or economic regulation. The characteristics of legal effectiveness theory include compliance, application, influence, satisfaction, and efficiency. Legal effectiveness can be interpreted as a legal system for its purpose of preserving social order, maintaining justice, and resolving conflicts of interest.⁷ There are several factors that may affect legal effectiveness such following below:

1. Compliance
Laws are only effective if people comply with them; if people do not, the law will not have the desired effect.
2. Law enforcement
To create a sense of justice in society, law must be enforced consistently and fairly. If the law is only enforced selectively or unfairly, its effectiveness will be compromised.
3. Sanctions
Laws must have adequate sanctions to deter people from violating the law. Sanctions that are severe enough may have a deterrent impact on those who violate the law.
4. Accountability
Legal certainty and transparency in the decision-making process should be provided by laws. As a result, more people will have faith in the law and the administration of it. According to the legal effectiveness theory, a law will be considered effective if it is capable of bringing along the desired social change and raise society's standard of welfare as a whole.⁸

⁵ Gaib Hakiki, *Pencegahan Perkawinan Anak Percepatan Yang Tidak Bisa Di Tunda* (Jakarta: Badan Pusat Statistik, 2020).

⁶ Ana Latifatul Muntamah, Dian Latifiani, and Ridwan Arifin, "Pernikahan Dini Di Indonesia: Faktor Dan Peran Pemerintah (Perspektif Penegakan Dan Perlindungan Hukum Bagi Anak)," *Widya Yuridika Jurnal Hukum* 2, no. 1 (2019).

⁷ Winarno Yudho and Heri Tjandrasari, "Efektivitas Hukum Dalam Masyarakat," *Jurnal Hukum & Pembangunan* 17, no. 1 (2017).

⁸ Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Cetakan ke. (Jakarta: Rajawali Pers, 2014).

Legal Sociology Theories

Legal sociology theory is a concept of how legal phenomena occur that are socially related to society. Legal sociology theory sees law not only as a set of rules enforced by the state, but also as a product of social and cultural interactions in society. In the context of legal sociology, law is not only seen as a set of rules that must be followed by individuals or groups. More than that, the law is seen as part of broader social dynamics. Therefore, the sociology of law examines how law is produced, applied, and interpreted in a broader social context.⁹

RESEARCH METHODOLOGY

The type of research used is empirical combined with a sociological legal approach which legal sources are obtained from data observation and interviews at the Sidoarjo Religious Court. Sociological or field legal research are two approaches that can be used. The data for this research was obtained directly from related parties through field research, which was conducted through observation and interviews. The purpose of this research is to explain the analysis of data relating to the research subject. In addition, interviews and observations of data on age dispensation of marriage at the Sidoarjo Religious Court were also conducted to gain an understanding of the issue in this research.

RESULT AND DISCUSSION

Dispensation is the act of granting a policy or exemption from the rules and regulations that govern an organization, religion, or country. According to Islamic law, there are many different aspects of marriage, including inheritance, the rights and obligations of the husband and wife, and other things.¹⁰ The process of being married by two people who love each other and wish to start a family together is also referred to by the term marriage. Marriage is a legally established and governed bond between a husband and wife. Marriage, as defined by Law No. 1/1974 (Article 1 paragraph 1 of the Marriage Law), is a physical and mental bond between a man and a woman as husband and wife with the purpose of starting a family.

In Article 330 of the Indonesian Civil Code explains that a person is considered an adult if they have reached the age of 21 (twenty-one). Meanwhile, in Article 29 of the Indonesian Civil Code, explains that men who have not reached the age of 18 (eighteen) and women who have not reached the age of 15 (fifteen), cannot or are not allowed to get married. The legal principle regarding marriage

⁹ Dr. Drs Amran Suadi, *Sosiologi Hukum : Penegakan, Realitas Dan Nilai Moralitas Hukum* (Jakarta: Prenada Media, 2018).

¹⁰ Dede Muhammad Gufron, "Unregistered Marriage and the Legal Impact, A Book Review 'Kepastian Hukum Perkawinan Siri Dan Permasalahannya' Zainuddin SH MH & Afwan Zainuddin SH MH, Deepublish Yogyakarta, 95 Pages, ISBN: 978-602-435-120-1," *Indonesian Journal of Advocacy and Legal Services* 3, no. 2 (September 30, 2021): 257–262, <https://journal.unnes.ac.id/sju/index.php/ijals/article/view/34776>.

dispensation has been regulated in a number of laws regarding marriage in Indonesia, such as in Law No.16/2019 amending Law No.1/2019.

Table 1. The Description of Law No.16/2019 Amending Law No.1/2019

Description	1974 Marriage Law	2019 Marriage Law
Minimum Age	Groom: 19 years old; Bride: 16 years old	Both bride and groom must be at least 19 years old
Dispensation	Possible	Possible, subject to conditions
Authority	The court or an official appointed by both parents of the applicant	Religious Courts for those who are Muslims, District Courts for those who are non-Muslims
Parents of the Bride and Groom	Applying for dispensation	Besides applying for dispensation, the court is obligated to hear testimony from both parents of the bride and groom.

Source: Law No.16/2019 amending Law No.1/2019

Age Dispensation for Marriage in Sidoarjo Religious Court

Data on Marriage Dispensation Applications

After conducting interviews with judges of the Sidoarjo Religious Court, research data regarding applications on age dispensation for marriage in the Sidoarjo Religious Court during 2021-2022 per month is presented in the following table:

Table 2. Research Data on The Total of Applications in 2021

Month	Number of Applications
January	30
February	23
March	22
April	24
May	19
June	41
July	23
August	16
September	16
October	32
November	22
December	19
Total	287

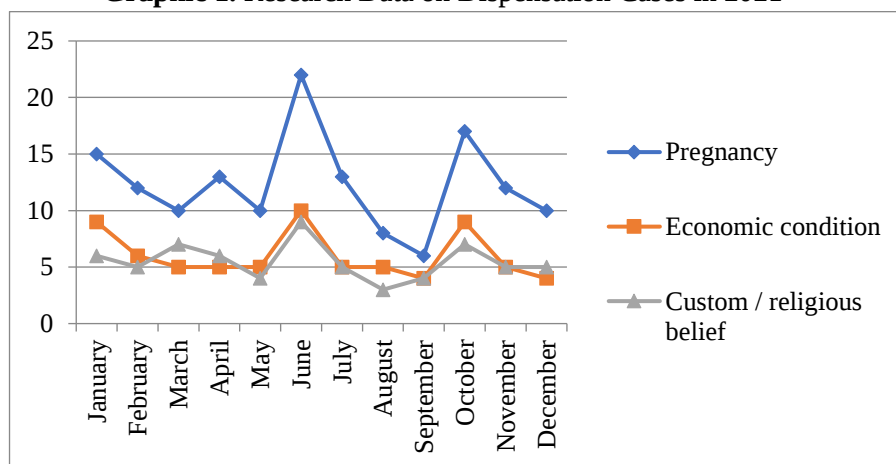
Source: Researchers Data (2021)

Table 3. Research Data on The Total of Applications in 2022

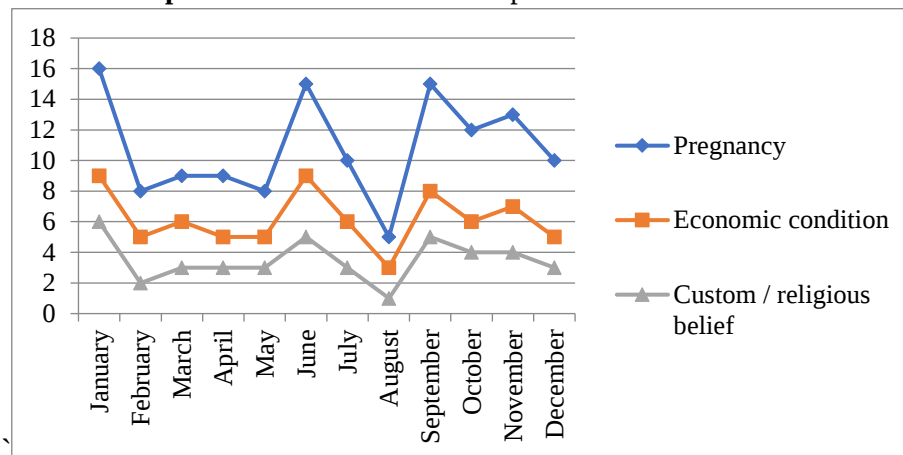
Month	Number of Applications
January	31
February	15
March	18
April	17
May	16
June	29
July	19
August	9
September	28
October	22
November	24
December	18
Total	246

Source: Researchers Data (2022)

Based on the data in the table above, there was a slight increase at the beginning of the month in 2021 to 2022, despite the fact that in 2022 the number of applications had begun to decrease compared to 2021. The number above is the number of dispensation applications approved at the Sidoarjo Religious Court. Several cases of marriage dispensation have been filed at the Sidoarjo Religious Court by parents who have daughters who are pregnant before the marriage. These underage applicants mostly only possess the latest education of elementary and junior high school, indicating that the prospective bride and groom can be considered mentally and physically unprepared.

Graphic 1. Research Data on Dispensation Cases in 2021

Source: Researchers Data (2021)

Graphic 2. Research Data on Dispensation Cases in 2022

Source: Researchers Data (2022)

Based on the analysis of the graphic above, it is evident that pregnancy cases are increasing every month and are the most common cases filed by applicants for marriage dispensation at the Sidoarjo Religious Court. Based on the interview with Mr. Shohih as the Judge of the Sidoarjo Religious Court, it is also found that the application for dispensation of marriage filed by the applicant every month always increases in the number of all existing cases, with a number of factors as follows:

1. Pregnancy
The pregnancy cases became the first and most common case, with a percentage rate of around 50% as detailed in the graph above.
2. Economic condition
Economic factors are the second most common case following pregnancy factors, economic factors are the most common cases every month around 30% to 35%.
3. Custom / religious belief
The factor of custom / religious belief is the lowest number of cases in each month, and the percentage is between 10% and 20%.

Most Common Reasons for Dispensation Applications

Based on the results of interviews with judges of the Sidoarjo Religious Court, it is found that pregnancy is the dominant reason for more than 50% of dispensation applications. It is also obvious that the applicant is the party of the bride, due to a sense of wishing to secure the rights of the child to be legally acknowledged in front of the law.

Many of the applicants for marriage dispensation are children under the age of 19. The majority of these children only possess the latest educational background from elementary school to junior high school. The decision to drop out of school due to economic problems, lack of education, knowledge and insight has a huge impact on the growth and development of children and the way children think. It is

important to educate children by providing knowledge about religion and also providing supervision so that children do not fall into promiscuity.

Reasons for Granting Dispensation

The dispensation application was granted by the judge due to the following factors and considerations:

1. The judge granted the application for dispensation on the grounds of pregnancy and wanted to save the rights of the mother and also the unborn child so that the rights of the child are guaranteed and valid in front of the law.
2. The judge grants the request for dispensation because the bride and groom are in love with each other, or because the parents consider their children should be married off and do not want anything bad to happen such as sexual immorality or adultery.¹¹

In addition, judges can also accept marriage dispensation applications if there are reasons that can be accounted for and in accordance with applicable legal provisions. Some of the reasons that can be considered by the judge to accept a marriage dispensation application include:

1. There is an urgent interest, for instance when the prospective bride is pregnant out of wedlock and wishes to marry immediately to protect the honor and future of the unborn child.
2. There are problems that cannot be overcome, for instance when the groom is too closely related to someone else (e.g., cousins) and therefore do not meet the requirements for a legal marriage according to Islamic law.
3. There are considerations of interests, for instance when couples have different religions, yet wish to marry because they share a love for each other and a desire to build a harmonious family.

Judges should ideally still make their judgements on factors that are in line with the Marriage Law when deciding whether they approve child marriage. Judges must carefully assess marriage dispensation applications as an institution that seeks to give justice while also making sure that decisions are made with no regard to a person's gender, race, or religion.

¹¹ Pratiwi Setiawan and Wahyu Tris Haryadi, "The Child Custody Status from Unregistered Marriage: An Islamic Law on The Basis of Constitutional Court Decision," *YURIS (Journal of Court and Justice)* 1, no. 3 (2022): 1–9, <https://journal.jfpublisher.com/index.php/jcj/article/view/124>.

CONCLUSION AND SUGGESTION

Conclusion

Based on those result and discussion of this research, the researchers can be conclude several conclusions, such as (1) after the amendment of the Marriage Law No. 1/1974 to Law No. 16/2019, the Sidoarjo Religious Court received a very high number of cases applying for marriage dispensation. Even up until 2023, the cases of marriage dispensation applications continue to increase almost every year. Amendments to the law on marriage are considered ineffective because of the increasing number of cases involving marriage dispensation applications at the Sidoarjo Religious Court; and (2) data pertaining to marriage dispensation at the Sidoarjo Religious Court increased in the early months of 2022. The Sidoarjo Religious Court handled the most cases between 2021 and 2022, with applications for dispensation due pregnancy, economic difficulties, and custom or a lack of religious belief coming in last.

Suggestion

Based on those result and discussion of this research, the researchers can be suggest several suggestions, such as (1) due to the amendment of marriage laws that have been legalised, we expect the government to be more concerned about children and parents who really need education about marriage, and the importance of education for underage children's lives in the future; (2) the increase in the marriage age should be tested for feasibility because it leads to a very high surge in requests for marriage dispensation that occur in the Sidoarjo Religious Court, especially in pregnancy cases, and it is expected that the government will be more concerned with the revision of the current Marriage Law.

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