

Judge's Considerations When Handing Down Marriage Dispensation Decisions in Aceh Singkil Regency for the 2019-2023 Period

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Abstract

This study aims to comprehensively examine the reality of the dynamics of marriage dispensation application cases at the Singkil Sharia Court, Aceh Singkil Regency, the judge's considerations in accepting or rejecting marriage dispensation applications, and the legal basis used by the judge in deciding marriage dispensation cases at the Singkil Sharia Court, Aceh Singkil Regency. This study uses a naturalistic qualitative approach with a field research method. Data collection techniques are carried out through observation, interviews, and documentation. This study is descriptive naturalistic, which aims to clearly and in detail describe the social reality at the Singkil Sharia Court, Aceh Singkil Regency. The results of the study indicate that the process of submitting a marriage dispensation application at the Singkil Sharia Court reflects the same requirements as the Supreme Court Regulation (Perma) No. 5 of 2019. The findings indicate that the main reasons for the application include parental concerns about indecent behavior, customary considerations and scheduling of wedding receptions, and premarital sexual relations. The judge's basis for deciding on a marriage dispensation application involves considerations such as the absence of parents in mediation, family pressure, and document inconsistencies. The judge's considerations in deciding on a marriage dispensation include the child's readiness to live in a household, psychological and financial capabilities, and approval from the extended family. This study emphasizes the importance of adjusting decisions to existing regulations to ensure fairness.

Keywords: *Judge's Considerations, Marriage Dispensation.*



A. INTRODUCTION

Humans are equipped from birth with the potential for lust towards the opposite sex, so they need a means to channel this potential. If this potential is not channeled in a directed manner, it will give rise to various vulnerabilities or disadvantages. Marriage is not only carried out based on lust alone, but to obtain peace, tranquility and mutual nurturing between husband and wife based on love and affection and to spread the wings of brotherhood between the families of both parties based on *ukhrawah islamiyah* (Asnawi, 2004:49). All man want exists life having a family, pThis has been the nature of human nature since the first humans, Prophet A and Dan His wife Hawa was created by Allah SWT. Can't imagine what life would be like man in advance earth this is if no applies terms of life starting a family (Mahmud, 2012:1).

In ancient Indonesian culture, parents thought that marrying off their children when they were still young was the right thing. Because for girls aged in over 20 years old is considered old, and if the daughter has not married after that age, then it is considered a disgrace to the family and a failure of the parents. But

nowadays, marriage at an early age is really full of consideration, even feared, because by marrying child in lower age R is said to have potential shake social harmony, and it is feared that violence will occur against children who are married off, because this is considered deprivation of children's rights, child trafficking, and also the crime of pedophilia. Pedophilia (*paediatrics love*) is disturbed mentally Which influence on people mature or teenager, started person Which mature (personal with age 16 or older) and is usually dominant in children who have not yet experienced puberty (around 13 years of age or younger). Children at least five years younger or older, in these cases, teenagers (age 16 or older) can only be cited as pedophiles. (Maulidi, 2010: 80)

Meanwhile, the results of Salsabilah's research and Sulistiyantoro, (2021: 105), the implications of underage marriage have a negative impact and give rise to new problems, including; *First*, husbands and wives who marry underage are prone to divorce. Before getting married, prospective husband and wife need to be mentally prepared physically and mentally, including age maturity. *Second*, from a reproductive health perspective, there is a risk of death in children and mothers. In health it is said that for women under 21 years of age, all of their reproductive organs are not ready to be used to conceive and give birth to children. *Third*, poverty will emerge, usually underage marriages are very vulnerable to poverty because economically they are not ready to work. *Fourth*, there is exploitation of children who, because they are married, end up having to work and care for their children.

Salam (2017), explained in his journal that the Indonesian Ulema Council defines underage marriage as a marriage that is subject to the terms of the contract, but one of the two partners has not reached the minimum age limit for marriage or sometimes Both of them are still categorized as teenagers, and are not psychologically ready to carry out household responsibilities. According to this institution, the limit is *puberty*. Meanwhile, the criteria *for puberty* are very relevant for everyone. The 1945 Constitution states that every child has the right to survival, growth and development and is entitled to protection from violence and discrimination. Meanwhile, Law No. 23 of 2002 concerning Child Protection defines a child as someone who is not yet 18 years old. Regarding child marriage, Law No. 35 of 2014 (Article 28 B paragraph (2)), states the obligations of parents to prevent child marriage from occurring.

Nurcholis (2017), citing 2016 UNICEF data, stated that Indonesia is ranked 7th among countries in the world and 2nd in ASEAN after Cambodia, which has the highest rate of early marriage. This fact is of course very worrying for the younger generation, especially for their growth and development, as well as eliminating basic rights that they should obtain, such as the right to education, the right to health, civil rights, the right to be free from discrimination and violence and other rights. In Indonesia, in 2018, 1 in 9 girls were married (married). Women before the age of 18 in 2018 are estimated to reach around 1,220,900 people, and the figure This places Indonesia in the 10 countries with the highest absolute number of child marriages in the world. A total of 16 analyzes of marriage data of children who married before

the ages of 15 and 18, and also marriages of boys. Data for boys cannot yet show a trend because the data available is only four years from 2015 to 2018. This is in accordance with the indicators of the Sustainable Development Goals (Central Statistics Agency, 2020).

The problem of marriage under the age limit in Indonesia is certainly contrary to the provisions of Law No. 16 of 2019 concerning Marriage and Child Protection Law No. 23 of 2002, in chapter II articles 6 and 7 of Law No. 1 regarding marriage are the terms and conditions of marriage in Indonesia. In articles the explain a marriage that must be approved if the bride and groom are of sufficient age to carry out the marriage marriage. As for age for second candidate bride Good both men and women are 19 years old. This is the basis that must be used for all citizens who wish to marry. If it is not in accordance with the law then it violates the marriage law (Yunanto, 2018: 15). In the article above, it does not explicitly state that there is a prohibition on underage marriages with the exception of permission from a court or authorized official, which is called a marriage dispensation.

The provisions on the marriage age limit have been revised with the ratification of Republic of Indonesia Law Number 16 of 2019 concerning Amendments to Republic of Indonesia Law Number 1 of 1974 concerning Marriage. Article 7 paragraph (1) states that: "Marriage is only permitted if the man and woman have reached 19 (Nineteen) years of age", Article 7 paragraph (2) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage explains that: "In deviations from the age provisions as intended in paragraph (1) the parents of the woman/or the parents of the woman can ask the court for dispensation for very urgent reasons accompanied by sufficient supporting evidence." Restrictions on the minimum age for marriage by law are intended to create benefits for the family and household so that they can realize the goal of a good marriage without ending in divorce and to have healthy and quality offspring.

Fathony (2016: 38), that in cases that fall under the authority of the Religious Courts, there are several cases that are closely related to children's rights, including cases regarding applications for marriage dispensation. An application for dispensation from marriage is an application filed by the applicant for the court to give permission to the person requesting the dispensation to be able to enter into a marriage, because there are conditions that the prospective bride and groom do not fulfill, namely meeting the age limit for marriage. Ilma explained, (2020: 137), that the increasing rate of cases requesting marriage dispensations must be handled wisely by judges by considering all the reasons put forward along with the impacts that might occur if dispensation is granted. Judges must be proactive in exploring various legal facts and social realities in the cases being handled. As stated in Law no. 4 of 2004 concerning Judicial Power Article 28 paragraph (1) which reads: "Judges are obliged to explore, follow and understand the legal values and sense of justice that exist in society"

Judges certainly experience a dilemma in adjudicating cases of requests for marriage dispensation in considering two harms, the harm that occurs as a result of

underage marriage and the harm that will occur if the marriage dispensation is rejected. The dilemma that causes this disadvantage, of course, rests with the judges in deciding dispensation cases. This is because there is a contrast between child protection regulations and marriage regulations. The provisions of article 26 paragraph 1 letter (c) of Law Number 23 of 2002 on Child Protection by preventing marriages among children, as well as article 7 paragraph (1) of Law Number 16 of 2019 concerning Amendments to the Law -Law No. 1 of 1974 concerning Marriage, but with the same thing, paragraph (2) allows someone to apply for a marriage dispensation. Therefore, there is a contradiction between the Child Protection Law and the Marriage Law regarding underage marriage (Faisal, 2022)

The majority of legal facts read out by judges often accept requests for marriage dispensation because they consider that the harm that will occur if the marriage dispensation is rejected is greater, compared to the harm that occurs as a result of underage marriage, using article 7 paragraph 2, regarding marriages that stated, "In deviations from the age provisions as intended in paragraph (1) the parents of the woman/or the parents of the woman can request dispensation from the court for very urgent reasons accompanied by sufficient supporting evidence" (Law Number 16 of 2019 concerning Marriage).

While the facts on the ground, In the majority of courts in Indonesia there has been a surge in marriage dispensation cases. Among these facts from research by Lestari (2022), at the Purworejo Religious Court. The number of applications for marriage dispensation at the Purworejo Religious Court increased by more than 200% after the adoption of the revision of the Marriage Law, which previously from January to December 2019 received 137 applications for Marriage Dispensation, with the final decision being none were rejected. Meanwhile, from January to December 2020 it received 360 applications for marriage dispensation, with the final decision being that 350 cases were granted and 10 cases were rejected. The rejection was not because of the judge's decision to refuse trial, but because 1 case was dismissed, 7 cases were withdrawn, 1 case was not accepted and 1 case was removed from the register. At the Purworejo Religious Court, the reasons for applying for marriage dispensation from 2019-2020 were mostly pregnancies out of wedlock, reaching 60%. However, there are still many who apply for marriage dispensation for reasons other than pregnancy. Other reasons include parents' concerns because their children have been in a relationship for a long time as much as 22%, economic factors where parents think that if their child gets married they are no longer responsible as much as 12% and the factor of low education of parents and children where children do not have the will to continue. school as much as 6%.

Meanwhile the Syar'iyah Court Aceh Singkil also always accepts marriage dispensation cases, with various styles and colors in the complaint, in the period 2019 to 2022, except in 2023 there are no dispensation cases (ruling 3.mahkamahagung.ms-singkil, 2020-2022). Presentation from 2019-2023, as in the following table:

Table 1 Total Marriage Dispensation Matters, Year 2019-2023

No	Year	Number of Cases	
		Civil Religion	Marriage Dispensation
1	2019	233	16
2	2020	217	35
3	2021	257	16
4	2022	221	2
5	2023	0	0
Total			69

The table above shows that requests for marriage dispensation at the Aceh Singkil Syar'iyah Court from 2019-2023 saw a decrease in cases accepted and dismissed. With the reality that has occurred based on the facts above, both from the results of previous research, as well as directly from legal facts that have been reversed, especially at the Syar'iyah Court in Aceh Singkil Regency, in reality in regulations, there has actually been a contrast and tug-of-war between protection regulations. children by marriage, even though in legal fact the judges prefer to grant marriage dispensations.

B. METHOD

The study uses a naturalistic qualitative approach through field research. Data collection techniques through observation, interviews and documentation. While the nature of the research is descriptive naturalistic, which is a form of research that describes through clear and detailed explanations, and by representing social realities that are complete, complex and concrete, (Sugiono, 2007) at the research location, namely the Aceh Singkil Sharia Court.

This study uses a qualitative research method with a normative juridical approach, namely legal research from an internal perspective with the main object of research being legal norms (Diantha, 2006). Ali & Haryani explained (205: 5), normative legal research in the world is *dass sollen* (what should be) and examines Law in books so that it can also be called library legal research which includes: research on legal principles, research on legal systematics, research on the level of vertical and horizontal synchronization, comparative law, and legal history (Soekamto & Mamujid, 2010). As normative legal research, this research is based on the analysis of legal norms both written in laws and religious books (Law as it is written in the book) and law as court decisions (Law as it is decided by judge through judicial process). The theory used by the author is legal reasoning or legal argumentation (Legal Reasoning) (Shidarta, 2013). This theory is used to see how the judge's legal considerations are in deciding marriage dispensation cases. This theory explains in a general sense how judges should act in seeking the appropriate legal rules to answer or decide a case (Juanda, 2017).

C. RESULTS AND DISCUSSION

People who apply for marriage dispensation cases at the Singkil Syar'iyah Court, of course have a procedure in submitting the application process, as explained in the interview that the Singkil Syar'iyah Court office has made a brochure regarding the requirements for submitting an application, including the requirements for apply for marriage dispensation, including;

- a. 5 copies of the application letter along with softcopy
- b. Legalized photocopy of the applicant's National Identity Card
- c. Photocopy of the applicant's Family Card legalized
- d. Photocopy of the applicant's marriage certificate
- e. Death certificate (death certificate), if one of the applicants dies, postal certificate, with a stamp of 10,000
- f. Original letter of rejection from the Religious Affairs Office, stamped 10,000
- g. Health center/hospital health certificate certificate of health by post, with a stamp of 10,000
- h. Photocopies of birth certificates and National Identity Cards of both postal candidates, with 10,000 stamps, 1 sheet each and also photocopies of National Identity Cards, Family Cards of the prospective in-laws
- i. Postal copies of the diplomas of both the bride and groom, with a stamp of 10,000, 1 sheet each
- j. Pay court fees and taxes as determined

The researcher's observations are that each marriage case submitted by the community has different requirements, so the Singkil Syar'iyah Court office has issued this brochure to facilitate access to services for the community.

Among the research findings, it shows the irrelevance between the applicant's offenses when filing a marriage dispensation case and the judge's considerations in deciding the case, among the applicant's offenses:

- a. The status of parents who are worried about children whose partners are doing indecent work because they have been in a relationship for too long plus the child's journey is difficult to control
- b. Factors considering customs in the local kampong (village). This factor was caused by rushing to schedule a wedding reception, then registering at the Religious Affairs Office, the registration was rejected, because the bride and groom were less than 19 years old.
- c. The majority of the offenses applied are to maintain the dignity of the extended family, because the prospective child bride has already had sexual intercourse

Of the three factors in the petition above, according to the judge's statement, he never handed down a verdict based on the offense of the petition, but for the sake of and in the name of law and justice, the judges decided the case based on statutory regulations.

The findings of researchers at the Singkil Syar'iyah Court between 2019-2023, marriage dispensation cases that have been accepted and a copy of the decision has

been issued, vary every year. In 2019 there were 16, in 2020 there were 35, in 2021 there were 16, and in 2022 only 2, while in 2023, 0 (no cases). Meanwhile, there are also cases that are rejected, because;

- a. The judge has not had time to mediate, giving a good and bad picture of underage marriage. This lack of opportunity is sometimes due to administrative factors not being met, for example the applicant's signature is incomplete, or the information on the replacement letter is not fulfilled
- b. The applicant's absence from the mediation process. Because before the trial there must be mediation, with the aim of finding a common ground for the case to be dismissed or continued to trial

Regarding the basis for the judge's considerations in deciding marriage dispensation cases, referring to the Supreme Court Regulations, that's enough. However, the researchers' findings based on the considerations of the Syar'iyah Court judges underlie the decisions, including;

- a. The suitability of the prospective bride and groom physically and psychologically
- b. The seriousness of the intention of the bride and groom to enter into marriage, after the judge explains the consequences of marrying underage
- c. The willingness of the extended family from both parties to continue the marriage, with the consideration that they will be ready to help the prospective bride and groom both financially and with other needs in the vulnerable age group who are still under the age of marriage.

Based on the steps and considerations of these three points, the judges at the Singkil Syar'iyah Court granted the marriage dispensation request. After of course getting agreement between the extended families of both parties.

D. CONCLUSION

The process of submitting a marriage dispensation application at the Singkil Syar'iyah Court reflects the same requirements as the Supreme Court Regulation (Perma) No. 5 of 2019. The findings show that the main reasons for the application include parental concerns about indecent behavior, customary considerations and wedding reception scheduling, and premarital sexual relations. The basis for the judge in deciding the marriage dispensation application involves considerations such as the absence of parents in mediation, family pressure, and document inconsistencies. The judge's considerations in the marriage dispensation decision include the child's readiness to live in a household, psychological and financial capabilities, and approval from the extended family. This study emphasizes the importance of adjusting decisions to existing regulations to ensure justice.

REFERENCES

1. Ali, A. & Haryani, W. (2013). *Menjelajahi Kajian Empiris terhadap Hukum*. Jakarta: Prenadamedia Group.

2. Amin, A. F. (2022). *Pertimbangan Hakim Dalam Memutus Perkara Dispensasi Nikah Pasca Berlakunya Undang-Undang No. 16 Tahun 2019, Tentang Perubahan Atas Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan (Studi Atas Putusan Pengadilan Agama Slawi Kelas 1A Kab. Tegal)*. (Program Pascasarjana IAIN Syekh Nurjati Cirebon).
3. Asnawi, M. (2004). *Nikah Dalam Perbincangan dan Perbedaan*. Yogyakarta: Darussalam.
4. BPS & Kemen PPM/ Bappenas. (2020). *Pencegahan Perkawinan Anak Percepatan yang Tidak Bisa Ditunda*. Depok: Puskapa Center on Child Protection & WellBeing.
5. Diantha, I. D. P. (2017). *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Jakarta: Prenadamedia Froup.
6. Direktori Putusan Mahkamah Agung Republik Indonesia. (nd). *MS Singkil*. Retrieved from: <https://putusan3.mahkamahagung.go.id/pengadilan/profil/pengadilan/ms-singkil>
7. Direktori Putusan Mahkamah Agung Republik Indonesia. (nd). *Putusan MS Singkil Dispensasi Nikah Upload Tahun 2022*. Retrieved from: <https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/ms-singkil/kategori/dispensasi-nikah-1/tahunjenis/upload/tahun/2022.html>
8. Fathony, A. F. (2016). *Perlindungan Hak-hak Anak di Pengadilan Agama*. Jakarta: Direktorat Jendral Badan Peradilan Mahkamah Agung RI.
9. Halim, A. R. (2005). *Pengantar Ilmu Hukum dan Tanya Jawab*. Bogor: Ghalia Indonesia.
10. Ibrahim, J. (2006). *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing.
11. Ilma, M. (2020). Regulasi Dispensasi Dalam Penguatan Aturan Batas Usia Kawin Bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019. *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam*, 2(2).
12. Juanda, E. (2017). Penalaran Hukum (Legal Reasoning). *Jurnal Ilmiah Galuh Justisi*, 5(1), 157-167.
13. Lestari, P. (2022). *Kawin Selain Alasan Hamil di Pengadilan Agama Purworejo Tahun 2019-2020*. (Program Studi Hukum Keluarga Islam, Fakultas Syari'ah, Institut Agama Islam Negeri (IAIN) Salatiga).
14. Mahmud, A. (2012). *Kelurga Sakinah Menurut Pandangan Islam*. Makassar: Alauddin University Press.
15. Maulida, R. (2010). *Dinamika Hukum Perdata Islam di Indonesia*. Ponorogo: STAIN po Press.
16. Nurcholis, M. (2019). Penyamaan Batas Usia perkawinan pria dan wanita perspektif Maqasid al-Usrah (Analisis Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017). *Jurnal Mahakim*, 3(1).
17. Peraturan Menteri Agama Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin

18. Salam, S. (2017). Dispensasi Perkawinan Anak di Bawah Umur: Perspektif Hukum Adat, Hukum Negara & Hukum Islam. *Pagaruyuang Law Journal*, 1(1), 110-124.
19. Salsabilah, N., & Sulistiyantoro, H. (2021). Dispensasi Kawin Di Bawah Umur Menurut Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Di Pengadilan Agama Surabaya. *Jurnal Syntax Admiration*, 2(6), 1103-1119.
20. Shidarta. (2013). *Hukum Penalaran dan Penalaran Hukum: Akar Filosofis*. Yogyakarta: Genta Publishing.
21. Soekamto, S., & Mamujid, S. (2010). *Penelitian Hukum Normatif*. Jakarta: Raja Grafindo Perkasa.
22. Sugiyono. (2007). *Metode Penelitian Kuantitatif Kualitatif dan R&D*. Bandung: Alfabeta.
23. Yunanto, C. (2018). *Pernikahan Dini Dalam Perspektif Hukum Perkawinan*. Bandung: Nusa Media.
24. Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 tahun 1974 tentang Perkawinan.
25. Yunanto, C. (2018). *Pernikahan Dini Dalam Perspektif Hukum Perkawinan*. Bandung: Nusa Media.