



Judge's Reasoning Against the Dispensation of Marriage of Minors Due to Pregnancy After the Enactment of Law No. 16 of 2019 (Study of the Pandan Religious Court)

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Abstract – Marriage Dispensation from the Court is a decision in the form of determining a dispensation for prospective male or female brides who have law number 16 of 2019 states that you must not have married before you turn 19 years old. Even if there is a legislation that restricts the minimum age at which one can be married, refer to this potential anomaly as underage marriage. Consequently, if a man and a woman get married before turning 19, it's referred to as underage marriage. The research methodology employed is normative juridical, which involves examining theoretical frameworks, concepts, pertinent statutory rules, and legislative procedures. Judges of the Pandan Religious Court were directly interviewed as part of the data collection process. According to research, the judge will allow the request for marriage dispensation under the legal rationale. Marriage dispensation is the term used to describe when a court permits a prospective husband and wife who are under the age of 19 to get married. To aid in the effective administration of justice, the Chief Justice of the Republic of Indonesia established Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation. Marriage dispensation applications are not clearly and thoroughly governed by statute. This regulation was drafted on November 20, 2019, and it was formally published on November 21 to ensure that everyone in society may read it and abide by it.

Keywords: Marriage Dispensation, Minors, Judge's Legal Reasoning

I. INTRODUCTION

Legal reasoning is the application of the principle of righteous thinking (logic) in understanding legal principles, rules, data, facts, and propositions. In studying legal reasoning, logic is understood more narrowly, namely as the science of drawing valid conclusions from various data, facts, problems, and legal propositions. Thus, the meaning of legal reasoning does not indicate other forms of reasoning outside of logic, but the application of the principle of thinking from logic in the field of law itself. In other words, there is no legal reasoning outside of logic, and there is no legal reasoning without logic. (Aditya Yuli Sulistyawan, 2021) approving the marriage dispensation application, due to special considerations. Marriage dispensation is an attempt to loosen the legislation for individuals who wish to marry but have not reached the government-imposed marriageable age; as a result, parents of children who are not yet sufficiently old petition seeking a religious court marriage dispensation via the trial procedure. (HM. Dihan, 2022)

The most important thing in human life is marriage. Through this, the relationship between two people fosters each other and carries out good social life and in accordance with religious norms. From the relationship between two people, offspring will be produced as the nation's successors. All people who enter a household are called family. In a nation, the family

is the smallest unit. A prosperous and happy family that always receives the blessing of Allah SWT is a family that is aspired to in a marriage bond. Marriage has the goal of making a happy and prosperous household by establishing an atmosphere of harmony and peace in the household that always receives taufik and guidance from Almighty God.

The maturity of the prospective bride and groom is strongly anticipated in order for this to occur. When we talk about maturity in this context, we mean thinking and acting maturely at the age of marriage in order to effectively carry out the objectives of the union. According to the Marriage Law, only men and women who are at least 19 years old are eligible to get married (AbdRahman, 2018). In compliance with Law Number 16 of 2019, a court's dispensation for marriage is a ruling that permits prospective grooms or women who have not yet turned 19 to consummate their marriage. This aberration may be referred to as underage marriage given the existence of a law that sets a minimum age for marriage. Consequently, when a man and a woman get married before turning 19 (nineteen years old), it's known as underage marriage. The tone of paragraph 1 of Article 7 has changed, which increases the likelihood of underage marriages.

Section 2 of Article 7 of Law Number 16 of 2019: "In the event of a deviation from the age provisions as referred to in paragraph 1, the male parent and/or the female parent may request a dispensation to the court on very urgent grounds accompanied by sufficient supporting evidence. As phrase seems to run counter to the optimistic expectations regarding the changes to Article 7 paragraph (1).(Republic of Indonesia, Ministry of State Secretariat, 2019). According to article 49 of Law No. 3, the Pandan Religious Court, a Court of First Instance, is charged with reviewing, deciding, and resolving initial Muslim disputes pertaining to matrimony, bequests, donations, waqf, zakat, infaq, shadaqah, and sharia economics religious Court is as follows:

Table 1 Types of Cases at the Pandan Religious Court in 2021-2023

NO	Types of Things	2021	2022	2023	Jumlah
1	Talak divorce	75	55	59	189
2	Divorce Lawsuit	221	182	178	581
3	Joint Property Lawsuit	1	6	3	10
4	Parenting	1	1	5	7
5	Inheritance	0	3	3	6
6	Permission Polygamy	0	0	0	0
7	Annulment of Marriage	1	1	0	2
9	Sharia Economics	0	0	0	0
10	Istbat Nikah	65	62	51	178
11	Marriage Dispensation	39	37	28	104
12	Wali Adhol	3	2	2	7
13	Trust	0	1	4	5
14	Appointment of Others as Guardians	0	0	0	0
15	Child Verification	0	3	0	3
16	Determination of Heirs	0	2	0	2
17	The Origin of Children	11	9	16	36

Source: Annual Report of the Pandan Court

In 2021, there were 427 (four hundred and twenty-seven) cases accepted in the pandan court. Furthermore, in 2022 consecutively, 370 (three hundred and seventy) cases were accepted at the Pandan Religious Court and in 2023 there were 356 (three hundred and fifty-six) cases received at the Pandan Religious Court.

From table 1 above, it is known that there are instances of dispensing with marriage accepted at the pandan religious court. In 2021, there were 39 (thirty-nine) cases accepted at the Pandan Religious Court Furthermore, in 2022 there were 37 (thirty-seven) cases accepted

at the Pandan Religious Court and in 2023 there were 28 (twenty-eight) cases accepted at the Pandan Religious Court. The percentage of marriage dispensation cases from the total cases received at the Pandan Religious Court can be seen as follows:

Table 2 The Pandan Religious Court will hear cases pertaining to marriage dispensation in 2021–2023.

No	Year	Overall Accepted	Marriage Dispensation Case	Presentation of Marriage Dispensation Cases
1	2021	427	39	9,1 %
2	2022	370	37	10 %
3	2023	356	28	7,8 %
	Sum	1.153	104	9 %

Source: Annual Report of the Religious Court of Pandan

From the table above (table 2), we can see that in a period of 3 consecutive years, namely from 2021, 2022 and 2023, the quantity of cases at the Pandan Religious Court involving marriage dispensation has decreased relatively even if you look at all the cases entered at the Pandan Religious Court. All cases have been granted and until now there have been no cases of marriage dispensation that have been rejected or not granted. (<https://www.pa-pandan.go.id/index.php/informasi-umum/laporan-tahunan>, n.d.)

II. METHOD

The research methodology employed is normative juridical, which is a technique that looks at theoretical frameworks, concepts, and statutory frameworks or rules that are relevant to the topic. Normative juridical research is a branch of legal science that views the law as a normative framework. The system of norms in question consists of agreements, doctrines (teachings), rules of laws and regulations, and principles. The primary goal of this normative research, which is on legal systematics, is to pinpoint the meanings or foundations of the law. The data collection technique used was a direct interview with the Pandan Religious Court Judge. The researcher asked questions directly to parties related to the research. Interviews can be carried out systematically and in an organized manner, using a tool called an interview guide. Interviews can be used to conduct preliminary studies to find problems that need to be researched, or to find out things from respondents in more depth. Interviews can provide in-depth understanding of an individual's experiences, views, or knowledge regarding a research topic. (Efendi, 2022)

III. RESULTS AND DISCUSSION

1. Legal Provisions for Marriage Dispensation through the Determination of the Pandan Religious Court.

When a judge grants a marriage license to potential spouses who are under the legal age of 19 to consummate their marriage, this is known as marriage dispensation. To make it easier for the effective, Chief Justice of the Indonesian Republic's Supreme Court created the Republic of Indonesia's Supreme Court, Number 5 of 2019 Regulation on Guidelines for Judging Marriage Dispensation Applications in order to carry out the duties of the court. Applications for marriage dispensation are not expressly and completely governed by laws and regulations. This Perma was created on November 20, 2019, and it was formally declared on November 21 to make it known and binding on all social classes.

The administrative requirements for marriage dispensation are:

1. the required documents include an application letter,
2. photocopy of the child's ID card,
3. copy of the family card,
4. a photocopy of the child's ID card or birth certificate,
5. a photocopy of the prospective spouse's ID card or birth certificate,

6. as well as a duplicate of the kid's most recent education certificate of continued attendance by way of the kid's school.

Following receipt of the letter requesting a divorce decree, the Religious Court looked into the matter as follows:

- a. Summoning the parties to the case.
- b. Checking the correctness of the applicant's reasons for application.
- c. Examining evidence.
- d. Listen to the testimony of witnesses or close family.
- e. Consider the benefits or mudharat.
- f. Adjudicating and deciding the case

Among the causes why the court of religion granted the dispensation of marriage for minors is in line with 2019 Supreme Court Regulation No. 5 of regarding the process for reviewing an application for a requested marriage dispensation. In the examination system of marriage dispensation, the court must:

- a) Prioritize the principle of the best interests of children, the principle of the right to life and growth and development of children, the principle of respect for children's opinions, 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 expediency and the principle of legal certainty . Differences in interpretation between judges regarding this point are yes, there are differences in interpretation between judges in applying these principles. Factors such as educational background, professional experience, personal views, and legal interpretations can influence how these principles are applied in practice. Judges may have different approaches to how these principles should be prioritized, especially in the context of complex and diverse cases such as marriage dispensations. Ultimately, although there are general principles to guide, their implementation often requires judgment and specific interpretation based on the context of the case faced by each judge.
- b) Making certain that a legal framework that protects children's rights is put into place
- c) Taking on more parental responsibilities in order to avoid child marriage
- d) Determining whether or not a marriage dispensation application was submitted under duress.
- e) Acknowledge the standardization of the courtroom procedure used to decide marriage dispensation applications.

Additionally, the judge takes the best interests of the child into account when the examination by:

1. Examine the applicant's application with great care and attention.
2. Examining the Applicant's legal standing
3. Examining the history and causes of child marriage
4. Researching the existence or non-existence of barriers to marriage
5. Look up facts about the child's mprehension and approval of the marriage
6. Take note of the age gap between the prospective spouse and the child.
7. Receiving information from the applicant, their kids, their future spouses, and their parents or guardians
8. The child's best interests are considered by the judge when and economic conditions of children and parents, based on the recommendations of social welfare workers, psychologists, physicians, and midwives, the Indonesia/Regional Child Protection Commission (KPAI/KPAD) or integrated service centers for the protection of women and children (P2TP2A).
9. Keep an eye out for aspects of coercion that may be psychological, physical, sexual, or financial.
10. Ensuring parents' resolve to assume accountability for matters pertaining to the economy, society, health, and education of their children.

The judge is directed by Law No. 48 concerning Judicial Power while making decisions

in every case that comes in, especially when it comes to the marriage dispensation application and the administration of justice. Making decisions about the administration of marital dispensations is one of the duties assigned to judges under the Judicial Power legislation. Judges have an obligation to learn about, respect, and explore the socially important legal and justice ideas. since approving or rejecting the marriage dispensation application affects the applicant's future life, in order to ensure impartiality. Article 7 paragraph (1) of Law No. 1 of 1974 Jo. Law No. 16 of 2019 concerning Marriage, Supreme Court Regulation No. 5 of 2019 concerning Marriage Dispensation, and Regulation No. 11 of 2007 by the Minister of Religion about Article 15 of the Compilation of Islamic Law and Marriage Registration are the legal bases that the judge referred to when deciding the marriage dispensation application. Judges apply the principles of Fiqhiyah in addition to the marriage legislation and the Compilation of Islamic legislation when making decisions regarding applications for marriage dispensation. In this instance, the judge observes and makes a decision based on the rule, which states that avoiding harm is more significant than gaining notoriety.(Herviani et al., 2022)

2. The judge's reasoning when figuring out the dispensation for marriage through the Pandan Religious Court.

Judge's reasoning is something that law enforcement urgently needs in resolving a case in court. Reasoning also assists judges in making legal discoveries, where legal discovery is part of a judge's legal reasoning. The form of reasoning in the practice of the court itself, to find or seek the law is not just the law to be applied to the event being tried but to find the law the concrete event is required to be directed to the existing regulations so that it can be applied to concrete events, while the law itself must be adjusted to the event so that it covers each other between the regulation and the event that occurs. For this reason, a good understanding is needed, because it will facilitate law enforcement's work, especially judges, to make a decision that provides a sense of justice, usefulness and legal certainty that can be accepted rationally for the parties and the community, so that it can be concluded that this legal reasoning plays a very important role in every decision making by judges.(Dr. Mardi Candra, 2021)

The applicant, children, prospective spouse, and prospective spouse's parents or guardians must all get guidance from the judge. In order to make sure that the candidate, kids, prospective spouse, and the potential guardians/parents spouse are aware of the dangers associated with marriage, related to:

- a. Possible children's schooling being discontinued
- b. Sustainability of children in compulsory education at 12 years
- c. The child's reproductive system isn't developed enough.
- d. The reproductive system of the child is underdeveloped.
- e. The potential for violence against women and disagreements.

The biological child of the petitioner was given permission by the court to wed her future spouse, on the grounds that her second marriage had been rejected by the Tapan Nauli Religious Affairs Office, because the Petitioner's child is currently 17 (seventeen) years old, because she is not married at the required age as stipulated in the laws and regulations. Meanwhile, given how close the two are— It is crucial that the petitioner's child and her future husband be married right away since they are so close that the petitioner's child is pregnant. Otherwise, it is feared that more things may happen that are against Islamic law and other rules and regulations. The Judge acknowledges that the Petitioner's application is in violation of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, specifically Article 26 Paragraph (1) letter (c), which outlines the responsibility and obligation of parents to "avoid the occurrence of marriage at the age of children, but efforts to prevent such efforts have been taken by the Petitioner by providing advice to the Petitioners' children, but the children of the Petitioners still insisted on getting married immediately.

As stated by the Pandan Religious Court Judge, basically every person is not allowed to hold a madharatan, either heavy or light against himself or others. In principle, the dharma must be eliminated, but in eliminating the dharma, it should not cause other dharma, whether

it is lighter or heavier, if not married, it will increase the sin.(Zaldaki Lutfi Zulfikar, 2024). That the Judge argued that the Petitioner's obligation to prevent the occurrence of child marriage in conflicts arose between the petitioner's child and her prospective spouse, who had been dating and in love for a considerable amount of time before deciding to proceed to marriage (maintaining a household), even the two had had a relationship like husband and wife and the condition of the Petitioner's child was pregnant so that it was feared that he would do things that were further prohibited by religious norms and legislation, in order to avoid the occurrence of greater mafsadat in both, therefore must obtain legal protection.

In addition, between the Applicant's child and Islamic law states that there are no restrictions on marriage for her future spouse, between the two there is no blood, contemporaneous and similar relationship as specified in Law Number 1 of 1974's Article 8 on Marriage whose articles and contents are not amended by Law Number 16 of 2019 jo. Articles 39 to 44 of the Compilation of Islamic Law. The judge argued that the granting of a marriage dispensation for the Applicant's child is one of the efforts to realize *hifdzun nasli* (safeguarding offspring) which is one of the *dharûriyyâtul-khams* that must be maintained and maintained in the sharia, the marriage plan meets with the notion of interest in the relationship between the petitioner's kid and her future spouse, and this effort is perceived as a means of preventing the Petitioner's child from breaking any more applicable norms and rules. The child's best interests.(Decision Number 31/Pdt.P/2024/PA. Pdn, Pandan Religious Court, July 1, 2024, n.d.)

Therefore, to avoid these things, judges as part of the enforcement apparatus and legal practitioners must consider more legal benefits when making decisions about the dispensation of marriage age. Basically, the fact that the judge is not constrained by affirmative law was taken into account when awarding the marital age compensation. The judge has the authority to make legal decisions while keeping in mind that if the law specifies one thing for a specific event, it implies that the regulation is restricted to that specific event. The Marriage Act does not specifically forbid marriage between minors. Even if the minimum age to be eligible for marriage has been set. there is some leeway in how it is actually implemented. In other words, dispensation must be granted and marriage must occur right away if it is casuistic, meaning that it is truly an emergency or a pressing matter to prevent mafsadah.(Hidayatulloh, 2020)

IV. CONCLUSION

Marriage dispensation through the Religious Courts, including the Pandan Religious Court, is a legal mechanism that allows marriages to take place even if one or both of the prospective bride and groom do not meet the minimum age requirements set by law. The conclusion of the legal provisions and the judge's reasoning in determining a marriage dispensation generally includes several important points. Article 7 of the Marriage Law states that a marriage can be carried out with a dispensation if there are certain reasons deemed urgent by the religious court. Judges consider various factors when deciding whether to grant dispensation or not. These factors include the basic reasons submitted by the applicant, socio-economic conditions, health, and the mental and emotional readiness of the prospective bride and groom. The judge also evaluates whether the dispensation given will have a positive impact on the prospective bride and groom and society. The decision on marriage dispensation is based on careful legal considerations and an assessment of the applicant's individual needs and situation. This decision aims to ensure that the marriage carried out is legally valid and meets the best interests of all parties involved.

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