

The Legal Annalysis of Married Dispensation in The Perspective of Law Number 35 of 2014 Concerning Childhood Protection

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Abstract

The research method used in this research is Normative Empirical research, Empirical Normative research type. The purpose of this research is to know the determination of the marriage dispensation seen from the child protection law and to know the judges' considerations in determining the marriage dispensation what is seen from the child protection law The results of this study indicate that the determination of the dispensation of marriage, seen from the Child Protection Law, can be seen from two things, namely, first, the application for dispensation is in accordance with recommendations and benefits for children in applying for dispensation so that judges in deciding applications always pay attention to benefits. Second is the Factor Causing Marriage Dispensation Which, when viewed from the Child Protection Law, is the factor of children who really want to get married due to sexual misconduct and pregnancy outside of marriage and the factor of concern about religious law where religion is a reference for enjoying even underage children.

Keywords: Dispensation, Marriage, Protection and Children

1. Introduction

Marriage dispensation is the granting of exemptions, granting freedom of marriage which is regulated according to law for purposes that are considered emergency in order to carry out a marriage, so that the process is allowed to be carried out (Salam, 2017). On Law Number 1 of 1974 concerning Marriage, Article 7 paragraphs 1 and 2 Based on the excerpt from article 7 above, it has shown that there is a gap in the application of the law, dispensation as referred to in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, which means deviation from the minimum age limit of marriage that has been determined by The law is a minimum of 19 years for men and 19 years for women

Table 1: Dispensation of Child Marriage (Source: Gorontalo Religious Court)

No	Decision Date Statemen
1	111 / Pdt.P2020 / PA.Gtlo 01 Apr 2020 Dispensation of marriage
2	103 / Pdt.P2020 / PA.Gtlo 31 mar 2020 Dispensation of marriage
3	104 / Pdt.P2020 / PA.Gtlo 31 mar 2020 Dispensation of marriage
4	105 / Pdt.P2020 / PA.Gtlo 31 mar 2020 Dispensation of marriage
5	107 / Pdt.P2020 / PA.Gtlo 31 mar 2020 Dispensation of marriage
6	108 / Pdt.P2020 / PA.Gtlo 31 mar 2020 Dispensation of marriage
7	109 / Pdt.P2020 / PA.Gtlo 31 mar 2020 Dispensation of marriage

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The provision of marriage dispensation based on the table above is clearly not allowed to marry minors based on the conditions for marriage according to Article 6 and Article 7 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, if viewed from Law Number 35 of 2014 concerning Child Protection, for the author the dispensation is not based on the age and physical and spiritual readiness of the child and the principle of ensuring the noble ideals of marriage, namely the principle of voluntary, family participation and the maturity of the prospective bride and groom.

Law No.35 of 2014 concerning Child Protection regulates the obligations of parents, namely:

Article 26

(1) Parents are obliged and responsible to:

- a. Nurturing, Educating, and Protecting Children
- b. Developing Children According to Their Abilities, Talents and Interests
- c. Preventing Marriage at Age

The legal age limit for marriage is set forth in the terms of marriage according to Articles 6 and 7 of Law No. 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage which states that marriage can only be carried out if it meets the requirements stipulated by statute, namely age limits for men and women but at present there are still many marriages that are carried out underage even on the recommendation of law enforcement agencies regardless of the aspects, integrity and strength of marriage and the implications of the development of children who will be born in the future. Marriage prevention has been regulated in Law Number 35 of 2014, namely article 26 paragraph (1 point (c) concerning the obligations of parents to prevent the age limit of children from marrying, the problem that arises now is that there are rules that allow and there are also rules that prohibit (marriage) is still a minor.

2. Methodology

The type of research used by Juridical Empirical according to Waluyo (2002) Juridis Empirical is a type of sociological legal research also called field research, which examines legal provisions that apply in society and examines the expectations and realities that occur in the community. Empirical research is used to analyze laws that are seen as patterned community behaviors in people's lives that are always interacting and relating in aspects of society, this study uses a qualitatid approach by analyzing the results of research that produces descriptive analytical data

3. Result and Discussion

3.1 What is the Form of Marriage Dispensation in terms of Law Number 35 of 2014 concerning Child Protection?

Normatively, if we look at the age limit in marriage, there is a certainty about the age limit of a person being categorized as a child or adult so that they can carry out the marriage properly, the uncertainty in question is a difference in the age limit of a person as interpreted by the Marriage Law No.1 of 1974 With the Child Protection Law, as stated in the child protection law, the age limit is 18 (eighteen) years old to be

considered competent or mature.

Article 1 number 1: "Child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb"

The child protection law defines children that a person who has not reached 18 years of age while in the marriage law it is stated that children for women are those who have not reached the age of 16 years, of course this becomes an irony in the interpretation of children in their institution as someone who is considered can carry out the marriage and is considered an adult (Hardani, 2015).

Therefore, based on the research results obtained by the author regarding marriage dispensation are as follows:

a. Application for Dispensation

Talking about marriage dispensation means that we will talk and discuss the regulations that regulate underage marriage giving an idea that the provision of dispensation for underage marriage can be done if it is based on the agreement and permission of the parents of the prospective bride, this concept is stated in the rules that the article 6 paragraph says. 2 Law Number 16 Year 2019 Amendment to Law Number 1 Year 1974 Concerning Marriage affirms:

- 1) Article 6 Paragraph 2: "To get married, someone who has not reached the age of 21 must obtain permission from both parents." It is very clear that it has been emphasized that a person who has not reached the age of twenty-one must get permission from both parents if he wants to carry out the marriage, and this is recognized and given space by the marriage law regarding underage marriage, but if both parents do not provide permission to marry for the child who is not yet 21 years old, the court can grant permission through an application made by the bride and groom, as stated in the law
- 2) Article 7 Paragraph (2) of Law Number 16 Year 2019 Amendment to Law Number 1 Year 1974 Concerning Marriage "In case of deviation from paragraph (1) of this article, dispensation may be requested from the court or other official appointed by both parents of the male and female parties" Article 7 paragraph 2 clearly provides space and space for persons who are still minors according to the marriage law to carry out marriage in a manner determined by law in accordance with the mandate of the law. And if it is related to the child protection law in general, Marriage Law No.1 of 1974 With the Child Protection Act as the child protection law, the age limit is 18 (eighteen) years to be considered competent or mature.
- 3) Article 1 number 1 "Child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb". Here the two laws have antinomies or contradictions in interpreting children so that protection in terms of children's lives will give birth to ambiguous readiness such as;
- 4) Child protection law Article 1 point 1: "Child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb" In the explanation of this article, children are considered adults who are not yet 18 years old

Based on the results of the research conducted by the author, data has been obtained that during the period January - April 2020 there were approximately (80) eighty marriage dispensation applications submitted and had permanent legal force

following the excerpt of the application for marriage dispensation that was quoted through the SIPP website. Gorontalo Religious Court Case

No	Decision	Date	Statemen
1	111 / Pdt.P2020 / PA.Gtlo	01 Apr 2020	Dispensation of marriage
2	103 / Pdt.P2020 / PA.Gtlo	31 mar 2020	Dispensation of marriage
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Based on the research results above, one of the cases taken through the decision regarding legal considerations given by the religious court judge was also quoted as follows

Considering, that the juridical standard of marriage dispensation is Article 7 paragraph 1 to paragraph 3 of Law Number 1 of 1974 concerning Marriage, as follows:

- 1) Marriage is only permitted if the male has reached the age of 19 (nineteen) years and the female has reached the age of 16 (sixteen) years.
- 2) In case of deviations from paragraph (1) of this article, dispensation may be requested from the Court or other official appointed by both parents of the male and female parties.
- 3) The provisions regarding the condition of one or both parents mentioned in Article 6 paragraph (3) and (4) of this Law, shall also apply in the case of requests for dispensation in paragraph (2) of this article without prejudice to what is meant in article 6 paragraph (6)

Considering, that the benchmark does not clearly provide the conditions that must be met for granting marriage dispensation, this means that the law gives the court the authority to interpret the text of the article or the panel of judges can make law (made in law) through a legal approach to close to a sense of justice

Considering, that in this case the panel of judges analyzed through sociological interpretation, namely interpretation based on the condition of society at the time the incident took place

Considering, that the petitioner as a parent is very concerned about the condition of his child who has known his future wife for a long time if he is not married off immediately, even though this is not a legal fact but only a legal event, this is a sociological symptom that deserves to be analyzed as a legal approach.

Considering, that the normative value at the age of marriage as stipulated by law is 16 (sixteen) years old and the age of the applicant's child is not much different, which is about 2 months, so that if a marriage is carried out it will deviate from the normative value, but so that it is more concerned with the value of humanity towards the community symptoms faced by the applicant, then choosing the value of benefit will take precedence over the value of harm even though in fact it is prone to psychological risks for both (Pratama, Roni, & Rizka, 2020).

Considering, that as for the value of benefit, it will be prioritized if human

interests are more measured and controlled if consent and qabul are made by the applicant's child;

Considering, that based on the above considerations, the panel of judges concluded that the petition has legal grounds and deserves to be granted and has met the requirements as referred to in article 6 of Law number 1 of 1974 concerning Marriage.

And when examined in terms of the child protection law that "In Article 26 paragraph (1) of Law 35/2014 it is explained that parents are obliged and responsible for:

According to the author's opinion. Based on the basis for the provision of dispensation above, applications regarding underage marriage are legal but must pay attention to circumstances that are applicable legal rules. Apart from that, actually the most basic reason for granting marriage dispensation is the existence of a situation where it is considered an emergency and a marriage must be carried out, however in particular the request for dispensation of marriage must be filed through both the parents of the prospective bride, both male and female, according to the provisions of Article 7 paragraph 2 law number 1 of 1974 on marriage.

b. Both Parents' Permission

If we look at parental consent in proposing marriage, especially underage marriage, in terms of the marriage law it has been confirmed in Article 6 paragraph 2 of Law Number 16 of 2019 Amendment to Law Number 1 of 1974 concerning Marriage affirms: And as for the responsibility of parents to prevent underage marriage, it is stated in the article

Article 26 paragraph (1) of Law 35/2014 explains that parents are obliged and responsible for:

- a. Caring for, nurturing, educating and protecting children;
- b. Developing children according to their abilities, talents and interests;
- c. Prevent child marriage; and
- d. Provide character education and inculcate character values in children "

This should be considered by the judge in every application for marriage dispensation not only to see the factor of parents 'permission to give permission to marry their children but also to see how the parents' efforts to keep their children from marrying underage unless something is really considered. the last way to do this, because children actually have several rights which are not realized by the child but the parents should be aware

One of the cases or children who have married underage is when a 14 year old woman and a 17 year old man get married because they are drunk in love, but marriage only lasts for 3 years because of several factors of maturity thinking this is of course a reference for all of us to think critically about the future of the child

3.2 What are the factors that cause Marriage Dispensation in terms of Law Number 35 of 2014 concerning Child Protection?

a. Child Factor

If we look at the understanding of children expressed by Koesnan (2005) that children are people who are still young and immature and still need guidance so that they are not easily distracted by their environment, children here are defined as people who are physically and emotionally weak because they are considered unable to defend

themselves. self and easily carried away by perverted associations.

When we talk about the concept of underage marriage. Long beforehand, the description of the dispensation of marriage has been given by the above sub-chapter, but specifically regarding the legal basis for giving dispensation of marriage we can see it in a regulation that has been prepared

1) Law Number 16 Year 2019 Amendment to Law Number 1 Year 1974 Concerning Marriage

Article 7 verse 1

"Marriage is only permitted if the male has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years."

Article 7 paragraph 2

"In the case of deviations in paragraph (1) of this article, dispensation may be requested from the Court or other official requested by the parents of the male or female party"

2. Compilation of Islamic law

Article 15 paragraph 1

"For the benefit of the family and household, marriage can only be performed by the prospective bride and groom who has reached the age stipulated in Article 7 paragraph (1) of Law No.1 of 1974, namely that the prospective husband is at least 19 years old and the prospective wife is at least 16 years old. at least 16 years old "

3. Child protection law no 24 of 2014

If we look at the article in Article 26 paragraph (1) Parents are obliged and responsible to prevent marriage at the age of children and this is of course contrary to the interpretation of the Marriage Law article 6 paragraph (1) Marriage is based on the consent of the two prospective brides. And paragraph (2) In order to marry a person who has not reached the age of 21 (twenty one) years, the consent of the parents must be obtained.

Based on the results of the author's research, it was found that basically children are one of the main factors in a marriage that is still considered young, an incident as revealed by one of the respondents who married under Abdul Hanafi said that Marriage that has occurred so far, we usually only see other people getting married and living life as if without a plan, even though there are actually so many ideas and forms of thought that are considered ripe for, to deal with, but what the power has already been married underage and finally separated halfway.

This is of course the same as expressed by the opinion given by Sugiri and Hilman Adikusuma have a different view because the view of Sugiri is more inclined towards the age of the child who is not considered an adult so it is still said to be a child, while the view of Hilman Adikusuma prioritizes children's behavior not in terms of hilman age provide an explanation that a person who can carry out legal activities or events even though he is not yet an adult can be categorized as competent and able to carry out legal actions (Mawardi, 2012).

Therefore, according to the author, the existence of children's own thoughts towards early marriage, of course, cannot be separated from the participation of both

parents and how the government provides proper education to all people, both children and parents as parents as the backbone of character building children to look forward to their lives as best they can

b. Factors of Pregnancy Outside Marriage

One of the easiest factors to be granted in submitting a request for dispensation of marriage in a religious court is one of the consequences of a child getting pregnant out of wedlock, this factor is a common factor and definitely gets approval from the judge. Marriage dispensation is given because like it or not you want to get pregnant outside of wedlock, and indeed basically this incident is a form of child neglect so that pregnancy outside of marriage may be caused because of lack of supervision from all circles (Qibtiyah, 2014).

Therefore, according to the author, there is no marathon education carried out by local governments to limit underage marriages, which will have an impact on the high divorce rate because children are not ready to navigate domestic life as they should.

Therefore, in fact, there are several solutions that can be carried out, as stated by an employee of the religious affairs office that;

- a. The local government incessantly voices so that the number of underage marriages does not occur
- b. Conducting marathon socialization, this can be seen from the high divorce rates that exist
- c. Making a regulation that does regulate explicitly for special marriages in the region

c. The Factor of Concern over Religious Law

If we look at the basis of a marriage, the basis of a marriage can be declared valid if it fulfills several elements that have been stipulated by the marriage law and conditions recognized by each religion, as stated in the following provisions:

Article 2 Paragraph 1 of Law Number 16 Year 2019 Amendment to Law Number 1 Year 1974 Concerning Marriage: "Marriage is valid if it is carried out according to the law of each religion and belief". Meanwhile, if we look at the conditions recommended in Islamic law as in the compilation of Islamic law which states that:

Article 2 KHI: "Marriage is legal, if it is carried out according to Islamic law in accordance with Article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage ". In actual marriage law, when we look at the two articles above, it shows that marriage can be categorized as legal if it is carried out in accordance with the conditions stipulated by law in the sense of constitutional law other than that marriage can also be said to be valid if it is carried out based on the provisions of religious law which applies in accordance with their respective religious beliefs and beliefs.

Apart from requiring the provisions of the legal conditions of marriage. Marriage is also the hope that the law must be registered in the registration of marriage as for the purposes of marriage registration purposes, by law, marriage considers that a marriage that is not registered is considered an invalid marriage in the eyes of the state so important is the registration of marriage.

Therefore, according to the author, the fear factor as a violation of religious law, in the end children who are still under the age of being given the leeway to marry underage are a very profound mistake, this is because the role of parents in providing

guidance and direction is always studying. adab in life so that children avoid negative effects, eventually falling into early marriage (Gultom, 2010).

4. Conclusion

Determination of Marriage Dispensation in terms of the Child Protection Law, it can be seen from two things, namely Application for Dispensation as recommended and benefits for children in applying for dispensation so that the judge in deciding the application will always pay attention to the benefits of giving the dispensation as well as the permission of both parents in this matter. Of course the parents play a role in giving permission in simple terms parents are also kept in the child protection law to prevent child marriage and on the one hand, the marriage law can also give permission, this is proof of awareness in interpreting the law as a benefit and its use for children

The factors that cause Marriage Dispensation when viewed from the Child Protection Law are the factors of children who really want to get married as a result of wrong associations and factors of pregnancy outside marriage and factors of concern over religious law where religion is a reference for marrying children who are still under age

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