

DISPENSATION FOR EARLY MARRIAGE AFTER THE ENACTMENT OF LAW NUMBER 16 OF 2019

Resia Monika^{1*}, Benny Djaja²

Tarumanagara University, West Jakarta, Indonesia

Email: resia.217221003@stu.untar.ac.id^{1*}, Bennydjaja@fh.Untar.ac.id²

ABSTRACT

Abstract: Underage marriage is an event that is often considered normal by some people in Indonesia, but underage marriage can be an interesting legal issue, as in Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 in Article 7 paragraph (1) it is stated that boys and girls can marry if they have reached the age of 19 and in paragraph 2 it is stated that if a man and a woman have not reached the age specified by law, namely 19 years. statutory requirements, parents must submit a Dispensation to the Religious Court. Therefore, the formulation of the problem is used to better understand and explore underage marriages and also how to apply Article 7 paragraph (1) of Law Number 16 of 2019 concerning granting dispensation to children who are married underage. This research also uses the Normative Law Method and library research method, data analysis uses a Qualitative Method. Based on the Analysis it can be concluded in the decision of case Number 157/Pst.p/2020/PA.Sbr the judge still grants the request for dispensation because the parents or child have agreed to the granting of the dispensation, so in In his opinion, the judge will grant the dispensation of the minor, even though it is not in accordance with the applicable age provisions in Law Number 16 of 2019 contained in Article 7 paragraph (1).

Keywords: Dispensation; Marriage

Introduction

In this article, we will look at a few of the ways in which we can improve the quality of our products and services, as well as how we can improve the quality of our products and services. underage marriage is an event that is considered normal by some Indonesians and other countries, but underage marriage can be an issue that attracts public attention and can continue to be a legal case in Indonesia, in Indonesia itself underage marriage cases are no longer new because. this practice has been going on for a long time with perpetrators who are not only from the interior but also include big cities (Fatihudin & Firmansyah, 2019)

In the child protection law, law No. 35 of 2014 amending Law 23 of 2002, on the one hand, mandates parents to have full responsibility for the occurrence of marriage at the age of a minor, but in the practice of marriage that occurs allows parents to request

marriage at the age of a child, which they allow parents of men and women to request a dispensation from the court or authorized officials even though the child who will enter into marriage has not met the age adequacy standard, This is as determined from the Marriage Law from the amendment to law No. 1 of 1974 which has changed to law 16 of 2019 on October 14, 2019, regarding a marriage stated in Article 7 paragraph 1, it is said "Changes in norms in Law Number 1 of 1974 concerning Marriage reach the age limit for marriage, the improvement of norms reaches out by raising the minimum age limit for marriage for women. The minimum age of marriage for women is equalized with the minimum age of marriage for men, namely 19 (nineteen) years" (Ilma, 2020)

In Article 7 Paragraphs (1) and (2) if there is a "deviation" in a situation that forces underage marriage to be allowed as in the marriage law it is allowed after obtaining dispensation, and in Law No. 1 of 1974 Paragraph (2) deviations that occur can get a dispensation from the court at the request of the parents. The emergence of various problems in society such as some teenagers wanting to get married at a young age so that they avoid committing sins, such as having sex before marriage, could also be due to pregnancy before entering into a marriage, as seen from the current sociological factors, the increasing promiscuity (Slamet, 2022) in minors causes the risk of children getting pregnant outside of marriage. This is also due to an internal factor such as the lack of supervision from parents or it could be an external factor such as falling into promiscuity. And also, underage marriage is influenced by rural areas, inappropriate housing conditions, and households with low economic levels all of these categories are closely related to poverty, and underage marriage in rural areas is 1.5 times greater than in urban areas which are only 27.1 in rural areas and 17.1 in urban areas (Tirang, 2019).

However, in the event that underage marriage is forced to be carried out, Law No. 16 of 2019 on the amendment to Law No. 1 of 1974 concerning marriage tightens the age limit in order to reduce the number of underage marriages which continues to increase graphically and also reduce cases of divorce for young couples and also domestic violence in the household, the issue of underage marriage is very important to pay attention to.

In practice, underage marriage in Indonesia continues to increase throughout the year, and Indonesia itself has a percentage of underage marriage that can be considered high in the world with a ranking of 37, while in ASEAN itself it is the second highest after Cambodia (Catur Yuniarto, 2018). but in that case, many judges' decisions always accept applications for the dispensation of minors to marry. The marriage dispensation itself is a relief for prospective brides and grooms who are underage and are not yet allowed to enter into marriage in accordance with applicable laws (Hidayatulloh & Janah, 2020).

With Dispensation, the religious court can grant permission for underage marriage for certain reasons, namely by considering that if the marriage of the prospective bride and groom is not immediately carried out, it will be very feared that acts that violate religious

norms and applicable regulations will occur. The positive aspects of underage marriage dispensation are expected to help the prospective bride and groom avoid acts that are prohibited by religion and applicable law.

Dispensation in the Religious Courts can grant permission to marry minors for a certain reason, namely by considering that if they are not married off, bad things will happen so that they violate religious norms and applicable laws, and the positivity obtained from granting marriage dispensation is expected to help both partners stay away from actions that are prohibited by religion and existing laws.

Besides that, there are also other factors of underage marriage and dispensation given by parents, in traditional parts of various provinces in Indonesia there are still some understandings about arranged marriage, where sometimes the girl has been arranged by her parents since she was a child and will be married when the child has her first menstruation. And in general, girls get their first menstruation at the age of 12 years. It is therefore certain that the marriage of a 12-year-old child is far below the minimum age of marriage mandated by law ([Kasiyati Et Al., 2021](#)).

In adolescent girls who marry underage, their reproductive organs are still not ready to accept pregnancy so it can cause various kinds of complications such as bleeding, infection, and the labor process that takes a long time and is difficult. maternal deaths that occur in pregnant women who give birth at the age of under 20 years are 2-5 times higher than maternal deaths that occur at the age of 20-29 years and above (Romauli and Vindari, 2012). With the enactment of changes in Law No. 1 of 1974 changing to Law No. 16 of 2019, it is very much in the spotlight at this time is the age limit at which a person can enter into marriage, changes from this law are of course motivated by the continued increase in underage marriage and the number of divorce cases at a young age.

In decision No.157/Pst.p/2020/PA.sbr that applicant I and applicant II (parents of the female party) want to marry off their biological daughter named Suneti Binti Darkim, female, born on August 12, 2004 (15 years old), religion Islam, education MTS Negeri 1 Cirebon, not working, virgin status. and will be married to a prospective husband named Aura Lia Althaf Ziandra Bin Kasdullah, a male who lives in Cirebon, was born on September 29, 2004, is (15 years old), religion Islam, elementary school education, employee occupation, and virgin status. and it can be seen that the two couples are still under the age of 20 or still underage to enter into marriage. if seen in law 16 of 2019 amending law No. 1 of 1974 article 7 paragraph (1) the two prospective spouses must be at least 19 years old, both the man and the woman, to carry out a marriage. if it does not reach the limit of 19 years for both the man and the woman then according to Article 7 paragraph (2) then the parents of the man and the woman must apply for dispensation to the court which must be accompanied by urgent reasons and also sufficient evidence so that the two prospective couples who want to get married can carry out their marriage.

Therefore, based on the above background, I would like to try to examine "How is the application of article 7 of law Number 1 of 1974 which has changed to law Number 16 of 2019 to the granting of dispensation for the age of marriage in case decision Number 157/Pst.p/2020/PA.Sbr regarding the marriage of minors who get dispensation in the religious court". with Legal Writing entitled "**GIVING DISPENSATION TO CHILDREN WHO MARRY UNDER AGE AFTER THE APPLICATION OF THE LAW NUMBER 16 OF 2019**".

Research Method

The research was conducted using normative juridical methods, namely legal research conducted by examining library materials or secondary data. In normative legal research, library materials constitute basic data which in research is classified as secondary data. Thus the type of data obtained is secondary data. This happens because the nature of the research being conducted is in the form of normative research, so the library method is the most suitable for the nature of this research.

Result And Discussion

Law number 1 of 1974 which discusses marriage has been implemented by the people in Indonesia calmly, especially among Muslims, because most Muslims are in the Unitary State of the Republic of Indonesia, and also government regulation number 9 of 1975 is in line with the law and in no way contradicts the teachings of Islam in Indonesia.

In this provision, it is very possible for a marriage to occur at the age of a child who is still underage for the female party, because Article 1 number 1 of Law Number 23 of 2002, concerning Child Protection, defines "child" as someone who is not yet 18 (eighteen) years old. then the changes in Law Number 1 of 1974 concerning marriage reached the age limit for children to marry where the improvements in the law reach by increasing the minimum age limit for children,

Underage marriage cannot be prevented, because underage marriage will continue to occur even if the law has been changed, but Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 has tightened up for children who will enter into an underage marriage, which is in Article 7 paragraph (1) that the minimum age limit in marriage has been equalized for both men and women, which originally men had to reach the age of 19 years and women had to reach the age of 16 years in law number 16 of 2019 to men must be 19 years old and women must be 19 years old.

Article 7 paragraph (2) states the solution for prospective brides who will marry if they are not 19 years old / still declared underage, then the parents of the boy or girl can request dispensation to the religious court with very urgent reasons and must also be accompanied by strong supporting evidence. article 7 paragraph (2) of Law Number 16

of 2019 states that dispensation is given for urgent reasons or where there is no other choice and is forced to carry out a marriage (Christian & Edenela, 2019).

As in the Court Decision with **case number 157/Pst.p/2020/PA.Sbr** which occurred on March 10, 2020, was registered at the Registrar of the Sumber Religious Court on March 10, 2020, and has submitted the following,

1. That Applicant I and Applicant II have entered into a marriage based on the statement of the Gebangdik Village, Gebang District Number: 4700/187-pel/2020 explaining that Applicant I and Applicant II were married on April 15, 1992 but were not registered at the Office of Religious Affairs, Gebang District, Cirebon Regency and from this marriage they have been blessed with 3 children named Nalarati Binti Darkim (26 years old), Rasju Bin Darkim (March 6, 1999), Sunenti Binti Darkim (15 years old).
2. Applicant I and Applicant II wanted to marry off their biological daughter Sunenti Binti Darkim, a girl born on August 12, 2004 (15 years old) with her prospective husband Aura Lia Althaf Ziandra Bin Kasdullah who was also 15 years old.
3. That between the child of Applicant I and Applicant II and her prospective husband there was no prohibition on marriage such as siblings, brothers and sisters.
4. That the child of Applicant I and Applicant II is a virgin and has reached puberty as well as her prospective husband is a *jejaka* and is also ready to become a husband or to the family and has worked as a trader with a daily income of 300,000, - (three hundred thousand rupiah).
5. That the families of Applicant I and Applicant II and the parents of the prospective husband had approved of the marriage plan and no other third parties had objected to the marriage plan.
6. That Applicant I and Applicant II have registered with the KUA of Gebang District, Cirebon Regency, but it turns out that the age of the child of Applicant I and Applicant II has not reached the age at which marriage is permitted under the Law, therefore to carry out the marriage of the child of Applicant I and Applicant II was refused by the KUA as stated in the refusal letter numbered B151/Kua.10.09.30/PW.01/II/2020 on February 28, 2020, and must obtain dispensation from the Religious Court.
7. That the conditions for carrying out the marriage both according to the provisions of Islamic law and the applicable laws and regulations have been fulfilled except for the age requirement for the Applicant's child I and Applicant II has not reached the age of 19 years as stated in Article 7 paragraph (1) of Law Number 16 of 2019 Concerning Amendments to Law Number 1 of 1974 Concerning Marriage, but the marriage is very urgent to still take place because the Applicant's child I and Applicant II with her prospective husband have been in love since 2 years, the prospective husband of the Applicant's child often stays at the residence of Applicant I and Applicant II, worried that if they are not married immediately there will be many continuing misfortunes and sins.

In Law No. 16 of 2019 on the amendment of Law No. 1 of 1974 concerning marriage, it does not specify the factors or reasons that can be used by judges in granting marriage dispensation to minors but only on urgent grounds, while according to civil law, age or age has an important role because it is associated with the ability to act and the birth of certain rights, and in case No. 157/Pst.p/2020/PA.Sbr the child who requested a marriage application to the court judge was a child who was still 15 years old, which was born on August 12, 2004. But as the mother and father of the female party, namely Darkim bin Rawal the first applicant, and Darsiti Binti Watmah, the second applicant, want to marry off their biological daughter named Sunenti binti Darkim who is still 15 years old with her prospective husband named Aura Lia Althaf Ziandra Bin Kasdullah who is also both still 15 years old, on the grounds that the applicants had presented before the court their daughter Sunenti Binti Darkim who from her testimony was still 15 years old, but she said she was ready to settle down and was ready to become a wife or housewife if she married Aura Lia Althaf Ziandra bin Kasdullah. Aura Lia Althaf Ziandra bin Kasdullah, aged 15, was also presented before the court as the prospective husband of the applicant's daughter, who testified that she was in a relationship with the applicant's daughter, Sunenti binti Darkim and that she was physically and mentally ready to become the husband of the applicant's daughter, Sunenti binti Darkim.

When based on Law No. 1 of 1974 concerning marriage, this is not achieved for the realization of legal protection for children, even though the position of child protection norms in Marriage Dispensation is very important, because the marriage of minors through marriage dispensation will change the status of a child immediately and minors who have entered into marriage will be considered adults and are considered capable of performing a legal act. Basically, the law itself prohibits the marriage of minors, which is based on the consideration that minors are not yet stable, and for marriage it is necessary to make an agreement, it has the condition that a person must meet legal capacity based on a person's age of adulthood ([Nomor, 1 C.E.](#)) with the provisions in Article 7 Paragraph (2) of Law No.16 2019 on the amendment of Law No. 1 of 1974 concerning marriage that can provide dispensation and in the absence of written law that can state who can get marriage dispensation, there are many cases of forced marriage in children, threatening girls' reproduction, threatening children's rights to an education and discriminating against the fulfillment of the rights of boys and girls. in Article 6 paragraph (6) of the Marriage Law says that a request for dispensation can be requested to the court or other officials on the grounds that the law of each religion and belief of the person concerned allows it ([Candra, 2021](#)).

Child marriage itself occurs a lot because the parents of the dispensation applicants have a low level of education, so parents cannot control their children to give them sex education lessons, where both parents are worried that the relationship between Sunenti binti Darkim (15 years old) and Aura Lia Althaf Ziandra bin Kasdullah (15 years old) is already very intimate or close so it is feared that there will be actions / will continue to commit acts prohibited by religion. In addition, the child's low level of education where

Sunenti binti Darkim was educated at MTS Negeri 1 Cirebon and Aura Lia Althaf Ziandra bin Kasdullah with education up to elementary school level made the child uncontrollable by their parents.

In the case of decision number **157/Pst.p/2020/PA.Sbr** it is very clear that in the biodata when the Sumber Religious Court which examines and hears civil cases at the first level in the trial the single judge has handed down the following decision in the case between Darkim bin Rawal aged 46 years, Muslim religion, elementary school education, fisherman's work as applicant I and Darsiti binti Watmah aged 42 years, elementary school education and work as a housewife as applicant II. Parents should provide supervision and control of their children as in Article 14 paragraph (1) of Law 35 of 2014 on the amendment of Law No. 23 of 2002 concerning child protection, where the role of parents is to care for and look after their own children and should be in accordance with Law No. 16 of 2019 on the amendment of Law No. 1 of 1974 contained in Article 7 paragraph (1) that a child may enter into a marriage if the woman and the man have reached the age of 19 years.

With the loopholes in the common law that make a thing that can be realized in child marriage, all the reasons and actions taken by the applicant's parents should have been prevented by the judge who gave the decision. And this is where the nature of a Judge who should be more thorough in seeing a case, making a decision, and giving advice so that a minor marriage does not occur and waiting for the time in accordance with Law Number 16 of 2019 on the amendment of Law Number 1 of 1974 concerning marriage where in article 7 paragraph (1) it is stated that a man and woman can marry if they are 19 years old and as in the case of Case Decision Number **157/Pst.p/2020/PA.Sbr** where the applicant's child is still too young to enter into a marriage, where the age of the girl is still 15 years old and the age of the groom is 15 years old and in the case decision there are no reasons and facts that the applicant's child has become pregnant outside of marriage (Married by accident). there should be no reason that can make the judge issue a marriage dispensation provision to the two prospective brides who are still underage. Based on the views of various parties, the low age of marriage will lead to the ineffectiveness of the purpose and mission of marriage, namely to create peace in the household with love. this goal will not be achieved if there is no readiness of the prospective bride and groom to get married (Rahayu, 2018). where everyone who has entered or has married a household will surely sooner or later have problems in their household caused by several factors, especially economic factors which will lead to domestic violence (KDRT) and certainly women who will become victims in the marriage so that it will have an impact on divorce at a very young age.

After entering into a marriage, the marriage of a minor has changed the status of the child to an adult, so that it is considered capable of carrying out a legal act, and is no longer under the responsibility of the parents, or guardians, or other people where in principle, as long as the maturity of his soul and body has matured and is also fulfilled,

and also the attitude and mentality of the child in question is sufficiently independent to assume all responsibilities in fostering and building a household with all its obligations, even though the marriage is at the child's wish and even if the age is still under the age of 15 years, it should not be allowed by adults and in this case the child's parents, witnesses or relatives, as well as the judge who decides the case. Because for the risk itself in the future is too great for the prospective bride and groom, namely Sunenti binti Darkim (15 years) with Aura Lia Althaf Ziandra bin Kasdullah (15 years) and this is where the role of adults where obliged to protect children from things that will harm them in the future to come.

In the decision of case number **157/Pst.p/2020/PA.Sbr** at the Sumber Religious Court, there is also a consideration by the judge of the Sumber Religious Court to grant dispensation to marry a child who is still under the age of 15 years from both the male and female parties. Underage marriage can indeed be done by applying for dispensation, as stated in Article 7 paragraph (2) of Law No. 16 of 2019 on the amendment of Law No. 1 of 1974 concerning marriage, which states that in the event of a deviation from Article 7 Paragraph (1) which says the male and female parties must be 19 years old to enter into marriage, from this article, they can request dispensation from the court or other officials appointed by both male and female parents ([Kurniawati, 2021](#)).

In the Marriage Law there are regulations regarding the age of marriage as contained in Law Number 16 of 2019 on the amendment of Law Number 1 of 1974 contained in Article 7 paragraph (1) but in another article, namely Article 7 paragraph (2) there is an exception, namely marriage can be carried out if the applicant gets dispensation from the Religious Court. dispensation itself is a permit for the Office of Religious Affairs (KUA) or civil registry to marry a prospective bride who is still underage. in the case of case decision Number **157/Pst.p/2020/PA.Sbr** the KUA of Gebang District, Cirebon Regency refused because the child of Applicant I and Applicant II had not reached the age permitted to marry according to the Law contained in Article 7 paragraph (1) of law Number 16 of 2019. So that the KUA will direct the parent's request for marriage dispensation to the Religious Court. and dispensation is submitted in the form of an application ([Hidayati et al., 2022](#)).

So in accordance with all the considerations of the court judge to grant the application for dispensation in case **157/Pst.p/2020/PA.Sbr**, the judge in considering all the legal basis that will be used to apply a case must not conflict with the law and Islamic Law and in daily practice Judges when submitting cases of the dispensation of marriage applications always face problems that make judges a dilemma. On the one hand, as a judicial institution, judges must enforce the law but on the other hand, collide with the fact that "inevitably they must be married even though they are not old enough" Judges will tend to be guided by prioritizing benefit and avoiding harm ([Halilah, 2022](#)).

In the case of decision number **157/Pst.p/2020/PA.Sbr** means that there is a role of parents who fail to carry out their duties and responsibilities to prevent the marriage of their children and parents participate in supporting child marriage where marriage ties sometimes tend to deprive children of their rights to obtain the education they should carry out for their future. If this has happened, the court is the last resort that can be taken to prevent the marriage of minors, where a judge will surely be well aware that child marriage will have a very bad impact on the child in all aspects, especially after the revision of Law Number 1 of 1974 in article 7 paragraph (1) of Law Number 16 of 2019 concerning age limits for a person to marry (Candra, 2018).

In case of decision Number **157/Pst.p/2020/PA.Sbr**, the application of Article 7 Paragraph (1) of Law Number 16 of 2019 to the case in the case of the decision of the case in the source religious court, it is clear that the judge overruled Article 7 Paragraph (1) of Law Number 16 of 2019 regarding the age limit of a person who can marry and the judge only relied on the reason for the fear that the two partners would do or have done acts prohibited by religion and law. and in taking legal consideration, finally, Sunenti bin Darkim and his prospective partner Aura Lia Althaf binti Kasdullah obtained marriage dispensation, which means that Law Number 16 of 2019 in Article 7 paragraph (1) has not been properly implemented, namely that both female and male partners must be 19 years old, which in the law is appropriate and declared legal to carry out a child marriage which even contains many disadvantages. in the end, case number **157/Pst.p/2020/PA.Sbr** can be explained that the judge has tried to prevent child marriage by providing advice and advice to children and parents who apply for marriage dispensation, where the judge explains the various problems and effects arising from the marriage of children who are still underage. and the judge has also weighed before making a decision on the granting of dispensation where the judge also sees that if the child is not married off, it will create concerns that he will commit acts prohibited by religion and also the applicable law in Indonesia.

Conclusion

The age limit referred to in the law is a ready age limit, which allows a marriage to occur so that the purpose of the marriage itself can be realized properly and does not end in divorce, and it is hoped that the age limit given in the latest Law, namely Law Number 16 of 2019 where women and men must be 19 (Nineteen) Years old in order to get healthy and quality offspring. Marriage in minors cannot be prevented, because marriage in minors will still occur even though the legislation has been changed, but in Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 it has tightened and tightened for children who will enter into marriage underage, which is contained in Article 7 paragraph (1) that the minimum age limit in marriage has been equalized to 19 years for both men and women. the conditions for carrying out marriage both under the provisions of Islamic law or the regulations of the Law have been fulfilled except for the age of their children who are still 15 years old.

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