



Analysis of the Judge's Considerations Regarding the Rejection of the Wonosari Religious Court's Marriage Dispensation Application

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Abstract: This article examines the problem, firstly how the judge considers the rejection of the marriage dispensation application. Second, what is the judge's interpretation regarding the urgent reasons for rejecting the application for marriage dispensation. This research is normative-empirical research with qualitative methods. The types of primary and secondary data are direct field data and literature studies. The research results show that the judge decides whether to reject or grant a request for marriage dispensation based on whether or not the reasons are urgent. Currently there is no concrete explanation regarding the urgent reasons, causing legal uncertainty and disparities in judges' decisions. Hopefully there is certainty regarding the urgent reasons in marriage dispensation cases so that judges in examining, adjudicating and deciding on marriage dispensation cases do not experience disparity in judges' decisions.

Keywords: Marriage Dispensation, Urgent Reasons, Religious Courts

1. Introduction

Humans are social creatures who live and develop in a community environment and it is their nature to live together and try to have offspring, namely by marriage. The meaning of marriage is contained in Article 1 of Law Number 1 of 1974 on Marriage, which states "marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God".

Marriage is more than just a legal act that produces one-sided law, but has consequences for both parties in the form of rights and obligations. Marriage is not just a fulfillment of biological needs and human desires, but marriage is more than that, namely the physical and spiritual relationship between a man and a woman is very important (Djoko Prasodjo, 1987). Every couple who is getting married must consider various things that can build a harmonious household, full of happiness, love and affection in accordance with the principles of marriage such as democracy, deliberation, creating a sense of security and peace in family life, preventing violence and fostering relationships between husband and wife. wife as a partner and based on the principle of justice (Khoirudin Nasutioan, 2005).

The legal basis for marriage is regulated in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law for Muslim communities. Marriage law has regulated the minimum age limit for marriage, but in practice there are still many underage marriages occurring in society, according to data from the Religious Courts Agency (Badilag), in 2022 there will be 50,673 cases of marriage dispensation requests that have been decided by the Religious Courts and in 2021 there will be around 61,449 cases of marriage dispensation requests. In 2020, requests for dispensation soared along with the growth of Covid-19 in Indonesia, namely 63,382 cases. The age for marriage is regulated in article 7 paragraph (1) of Law Number 16 of 2019 which states "Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years."

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However, these rules may change according to the situation. In the case of people who are not yet adults and want to get married, the Marriage Law provides tolerance by dispensing marriages that have been regulated in article 7 paragraph (2) of Law Number 16 of 2019 which reads "in the event of a deviation from paragraph (1) of this article, you can request dispensation from the Court or another official appointed by both the parents of the man and the woman."

Marriage dispensation means reducing the age limit for marrying as husband and wife and forming a family (Vanya Akbar Mayfario, 2019). There are several legal regulations that regulate the age limit for adulthood, namely, in the Civil Code Article 330 which reads "A person is considered an adult if he is 21 years old and has (ever) been married", apart from that, it is also found in the Compilation of Islamic Law Article 9 paragraph (1) reads "The age limit for a child who is able to stand alone or be an adult is twenty-one years, as long as the child is not physically or mentally disabled...",

The minimum age limit for marriage is 18 years, that is, according to article 7 of Law Number 1 of 1974, both parties must reach the minimum age for marriage, namely at least 16 years for women and 19 years for men. There was an increase in the minimum age for marriage from 18 years to 19 years in 2019, this change was made in Law Number 16 of 2019 concerning amendments to Law Number 1 concerning Marriage. Child marriage cannot be separated from social, economic, cultural and religious developments in society. Marriage is usually carried out as a solution to escape the stigma associated with women's sexual experiences outside of marriage and including the consequences of sexual harassment and teenage pregnancy. Child marriage is considered a dangerous socio-cultural practice, because it triggers and results in human rights violations (Mardi Candra, 2021).

In terms of children's rights, "it is stated in Article 26 paragraph (1) letter c of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection" which states that parents have obligations and responsibilities in To prevent underage marriages, parents must pay attention to the inclusion of this sentence. If children marry at a young age, they will lose their rights, such as the right to play, get a proper education, and enjoy growth and development as they get older (Vanya Akbar Mayfario, n.d.). Setting the marriage age limit is not without reason because there are many aspects that need to be looked at, one of which is the psychological condition and readiness to build a family, because the purpose of marriage is not just for momentary purposes but to form a lasting and happy family based on the purpose of marriage in the Law. Law Number 16 of 2019 (Mardi Candra, n.d.).

Several factors driving child marriage according to the "Pocket Guide to Adjudicating Applications for Marriage Dispensation" are: children from households with low levels of expenditure are almost 3 times more likely to marry before the age of 18 than children from households with high levels of expenditure ; children in rural areas are almost 2 times more likely to marry before the age of 18 than children in urban areas; children who have a low level of education are almost 4 times more likely; the development of technology that simplifies many aspects of life with negative effects on children's growth and development if parents do not pay enough attention, lack understanding of religion, and the child's friendship environment; so that they can have sexual relations freely, which results in pregnancy before marriage (Supreme Court, 2020).

As is the case in Gunungkidul Regency, Public Relations of Religious Courts Gunungkidul said that the main factor in the marriage dispensation was based on the incident of pregnancy outside of marriage (Andreas Yuda Pramono, 2024). Based on initial interview data, in 2020 there were around 240 applications at the Wonosari Religious Court, in 2021 there were 218 applications, in 2022 there were 171 applications, and in 2023 there were 149 applications. From this data it can be concluded that many of the applications received regarding applications for marriage dispensation were caused by various reasons. The problem that arises is that the many applications related to marriage dispensation show various kinds of decisions, both the application being rejected and the application being granted. This research attempts to dissect a decision in a case regarding

an application for dispensation from marriage which the judge declared rejected based on the judge's considerations so that the decision confirms that a child is not worthy of being given dispensation from marriage. Researchers will also compare the decisions that the judge rejected with the decisions that were granted as a comparison of why the judge was able to decide or grant the marriage dispensation request.

2. Materials and Methods

This research uses a type of normative-empirical legal research. Normative-empirical legal research is a type of legal research that examines the implementation of applicable legal provisions (laws) in each specific legal event that occurs in society (Abdulkadir Muhammad, 2004). So the author uses research materials derived from literature studies and uses sources from field research materials, namely by conducting interviews with the Judges of the Wonosari Religious Court. This research approach uses a case approach, which is a cases related to legal events that are being faced and have been decided by the court and have permanent legal force (Peter Marzuki Mahmud, 2010)

In this research there are two types of data required, namely primary data and secondary data. Primary data is data that comes from empirical research, namely data taken directly from the community (Mukti Fajar & Yulianto Achmad, 2010). The researcher's primary data source was conducting direct interviews with the Wonosari Religious Court Judge. Secondary data supports and complements primary data, namely official documents, books and also research results (Soerjono Soekanto, 2007). The data analysis method applied in this research is qualitative, namely a descriptive analysis approach that connects certain problems with literature, legal expert opinions, and applicable laws and regulations (Soerjono Soekanto & Sri Mamudji, 1990)

3. Results and Discussion

3.1 Judge's Considerations in Requests for Marriage Dispensation

According to Sudikno Mertokusumo, a judge's decision is a statement made in a trial which aims to end or resolve a case by the judge. Meanwhile, the determination is the decision of the judge at the first instance court which is final and cannot be appealed. The similarities between a decision and a determination are: (a) Both are products of the first instance judiciary (b) Both were announced in a session open to the public in accordance with Article 60 of law Number 7 of 1989. (c) Both provide an opportunity for the objecting party to submit legal action.

The differences between a decision and a determination are: (a) A verdict is a court decision on a lawsuit case based on a dispute, while a determination is a court decision on a petition case. (b) The Legal remedy against the decision is an appeal, while the legal remedy against the decision goes directly to cassation (Mahjudi, 2013).

In a decision or determination that determines whether it is granted or rejected, it is in the dictum which contains the judge's decision. These decisions in civil cases generally contain decisions to be granted or rejected or cannot be accepted. The explanation for the decision is as follows: (a) The accepted decision is the final decision where the lawsuit is granted by the judge. In this case, the judge decides that the arguments or evidence presented by the plaintiff or applicant are strong enough, so they win the case. This decision means that the party who filed the case received the rights or compensation they proposed in their lawsuit. (b) The decision is rejected, that is, if the claims cannot be proven, then the lawsuit will be rejected. In this case, the judge decides that the arguments or evidence presented by the plaintiff or applicant are not strong enough or do not meet the necessary legal requirements. As a result, the party who filed the case did not get the rights or compensation they asked for, and they lost the case. (c) The decision is not accepted, namely that there is a formal defect in the lawsuit so that the lawsuit cannot be accepted. In this case, the judge decided that there were errors or deficiencies in the procedure for filing the case, such as a lack of required documents, the lawsuit had no legal basis, an error in persona, the lawsuit had defects or obscur libel, the lawsuit vio-

lated absolute or relative jurisdiction or other incompleteness. As a result, the case cannot proceed to the trial stage, and the party filing the case must correct or repeat their submission if they want the case to be processed (Willy Wahyuni, 2022)

In connection with this research, the author will examine the judge's decision in formulating the judge's considerations in cases of applications for marriage dispensation. The data that researchers obtained was from the Wonosari Religious Court, Gunung Kidul Regency, Yogyakarta Special Region, with detailed data as follows:

Table 1. Marriage Dispensation Application Cases

No	Case Number	Decision
1	243/Pdt.P/2022/PA.Wno	Rejected
2	233/Pdt.P/2017/PA.Wno	Granted ¹

Source: Wonosari Religious Court, 2024

Based on the sample data above, it can be concluded that not all requests for marriage dispensation are granted. There are several decisions stating that the request for marriage dispensation was also rejected by the panel of judges. Therefore, researchers will discuss and compare the content of the judge's considerations in deciding on requests, both those that are granted and those that are rejected.

The first application, Number 243/Pdt.P/2022/PA.Wno, is a request which the judge did not grant or rejected. The application is submitted by both parents or in the application the position of Petitioner. That in this petition the applicant intends to request that the applicant's biological child, who is still 13 years and 10 months old, marry her prospective husband who is already 23 years old. The following is an excerpt from the case of Application Number 243/Pdt.P/2022/PA.Wno: (a) Whereas the Petitioners have registered the marriage of the Petitioners' children and their future husbands at the XX District Religious Affairs Office, Gunungkidul Regency. All requirements for carrying out the marriage, both according to Islamic law and applicable statutory regulations, have been fulfilled except for the age requirements for the Petitioner's child who has not yet reached the age of 19, as stated in the letter of rejection of the will to marry issued by the Office of Religious Affairs, District XX, Regency. Gunungkidul, Number: 08 July 2022. However, it is very urgent for the marriage to take place because the Petitioners' child and her future husband have been engaged since 26 June 2022, and the relationship between the two is very close, so the Petitioners are very worried that prohibited acts will occur. by Islamic law if they are not immediately married. (b) That there is no prohibition on the applicant's children and their future husbands from getting married (c) hat the Petitioners' children had been proposed to by their prospective husbands and at the time of the proposal the applicant's children were not being proposed or proposed to by someone else. (d) That the applicant's child is a virgin, has reached puberty, and is ready to become a wife and housewife. The applicant's child's prospective husband is ready to become a husband or head of household because he has worked as a casual daily worker in Gunungkidul Regency, with an income of Rp. 2,000,000,- (two million rupiah) every month. (e) Whereas on Friday, July 15 2022, the Petitioners, the Petitioners' children named ANAK and their future husband named CALON SUAMI, have attended counseling and have consulted with a clinical psychologist named Desti Fatmasari, S.Psi, M. Psi , Psychologist at the Social Service, Women's Empowerment and Child Protection, UPT Women and Children Protection, regarding readiness to marry based on counseling form Number: 463/087/VII/CT.2022 dated 22 July 2022.

In this application, the judge during the trial process has also given advice which in essence provides the worst possible outcomes if the marriage continues. That the judge provides advice to the applicant and the applicant's children regarding the risks associated with marriage including: (a) Possible interruption of children's education (b) The child's inability to complete 12 years of compulsory education. (c) Insufficient readiness of the child's reproductive organs. (d) Potential for disputes and domestic violence

Apart from these advices, the judge in case decision Number 243/Pdt.P/2022/PA.Wno also gave considerations according to Article 7 paragraphs (1)

and (2) of Law Number 16 of 2019 concerning Amendments to the Law. Law Number 1 of 1974 concerning Marriage, marriage is only permitted if the man and woman have reached the age of 19 years. However, if there is a deviation from these provisions, the party concerned can request dispensation from the court with urgent reasons accompanied by supporting evidence. This is also supported by Gunungkidul Regent Regulation Number 36 of 2015 Article 2 number (2) concerning Prevention of Child Marriage, this prevention aims to ensure the protection of children and guarantee the fulfillment of children's rights so that they can live, grow, develop and participate optimally in accordance with human dignity. The goals also include creating children who are of good quality, have noble character, and are prosperous; preventing violence against children; preventing domestic violence; improve the quality of maternal and child health; preventing school dropouts; as well as reducing the poverty rate. The results of counseling and examination results at the trial also showed that the applicant's child in the petition case was psychologically unprepared and had no views about life after marriage, and was not used to doing housework. Therefore, it is recommended that the Petitioner's children wait until they are old enough to marry so that they are better prepared psychologically, spiritually, mentally, reproductively and economically.

Therefore, providing dispensation to minors who are not yet psychologically ready and have minimal basic household knowledge to marry and build a household can have a major negative impact and is clearly contrary to the principle of the best interests of the child, as regulated in Article 16 Supreme Court Regulation Number 05 of 2019. In addition, the legal facts that have been described do not meet the criteria set out in Article 7 paragraphs (1) and (2) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. Therefore, the petitioners' petition is considered unreasonable and deserves to be rejected.

Furthermore, petition Number 233/Pdt.P/2017/PA.Wno is a petition which the Judge granted. Researchers in this case compared applications that were rejected and applications that were granted, one of the applications that was granted was application Number 233/Pdt.P/2017/PA.Wno. The application is submitted by both parents or in the application the position of Petitioner. Whereas in this petition the applicant intends to request that the applicant's biological child, who is still 18 years and 4 months old, marry him with his future wife, who is 21 years and 7 months old. The following is an excerpt from the case of Application Number 233/Pdt.P/2017/PA.Wno: (a) That the conditions for carrying out the marriage, both according to Islamic law and applicable statutory regulations, have been fulfilled except for the age requirement for the applicant's child who has not reached 19 years. However, it was very urgent for the wedding to take place because the two of them had been engaged since a month ago and their relationship was very close, in fact the two of them had a relationship like husband and wife. (c) That between the applicant's child and his future wife there is no prohibition on getting married. (d) Whereas the Petitioner had proposed/proposed a future wife for the Petitioner's child and the proposal was accepted by the parents of the Petitioner's child's future wife, when the applicant's child's future wife was proposed to him, he was not being proposed/proposed by someone else. (e) That the Petitioner's child is a virgin, has reached puberty, and is ready to become a husband and head of the household. His future wife is also ready to become a wife and housewife. The Petitioner's child works as a private employee with a fixed income of around IDR 1,500,000 per month (one million five hundred thousand Rupiah). (f) That the Petitioner and the parents of the Petitioner's child's future wife have given their blessing to the marriage plan, and there are no other parties who object to this marriage plan.

The judge in deciding case Number 233/Pdt.P/2017/PA.Wno gave the consideration that based on Article 7 paragraph (1) of Law Number 1 of 1974 in conjunction with Article 15 paragraph (1) of the Compilation of Islamic Law where it was proven that the prospective bridegroom - men are not old enough, that the minimum age limit for marriage is determined by law with the aim that the prospective bride and groom are able to lead a domestic life with a mature soul, but for the sake of broader benefits, the Assembly has

considered matters that are based on the legal facts of the candidates. The bride and groom have such a close relationship and both of them have had sexual relations as befits husband and wife, so that if they are not married immediately they will fall deeper into long-lasting sin, therefore relying on the rules of *fiqhiyah* which state that rejecting damage takes precedence over attracting benefit. Based on the considerations above, the Panel of Judges examining this case is of the opinion that there are sufficient reasons to override the provisions on the minimum age limit for marriage as intended by Article 7 paragraph (1) of Law Number 1 of 1974 in conjunction with Article 15 paragraph (1) of the Compilation of Islamic Law and Furthermore, the prospective groom will be given dispensation and legally declared competent to take legal action, to marry the prospective bride who has met the minimum marriage age limit. Therefore, based on the considerations mentioned above and relying on legal facts, that between the two prospective bride and groom there is no obstacle to getting married except for the age limit as contained in the evidence that has been considered by the Tribunal, there is sufficient reason to be set aside, the Petitioner's request to grant dispensation to the Petitioner's child so that they can marry can be granted.

3.2 The Meaning Of Urgent Reasons in Application for Marriage Dispensation

According to Article 7 paragraph (2) of the Marriage Law, very urgent reasons refer to situations where there is no other choice and the marriage must be carried out immediately. The lack of a clear explanation of the phrase "urgent reasons accompanied by supporting evidence" in Article 7 paragraph (2) of the Marriage Law gives rise to legal uncertainty and various interpretations. Therefore, certain criteria need to be provided for the concretization of the type of "extremely urgent reasons." Some criteria for very urgent reasons include (M. Beni Kurniawan & Dinora Refiasari, 2022): (a) The minimum age that children can be accepted for marriage dispensation is 15 years. The request can be granted if the child is between 15 years and 19 years old. If the child is under 15 years old, the application will be rejected. (b) The child is pregnant and/or the child's uterus is ready for pregnancy, as proven by a letter of examination of the uterus by a health worker. If these conditions are not met, then the application must be rejected. It is understood that in trials related to applications for dispensation of marriage, it is necessary to collect data and facts regarding the conditions, desires, consent as well as whether or not there is coercion for the child in marriage and the readiness of the child (Hasan Ashari, 2024). (c) If the age difference between the couple is more than ten years, the marriage dispensation application must be rejected. This is because the age difference is too large between partners, communication problems can arise due to differences in perspectives and experiences. Many people who are over 17 years old act childishly, while there are teenagers who are still in their teens but are able to act like adults. This shows that maturity is not a matter of age, but rather how you think and behave. Marriages with a large age difference tend to reduce family harmony due to unstable emotions between husband and wife, which can lead to a loss of control in resolving family problems (Mia Hadiati & Olivia Brilianci, 2023).

In petition case Number 243/Pdt.P/2022/PA.Wno, the single judge did not see any urgent reasons. The facts of the trial showed that the child, who was only 13 years old, was still very young, with a limited understanding of marriage. The condition of the child is not yet mature physically or emotionally, while the prospective husband is 23 years old, where the age gap is too large, he is afraid there are indications of child grooming, and the child is currently not pregnant. The impact on underage marriage as stated by the judge is the interruption of children's education, the child's failure to complete 12 years of compulsory education, the child's reproductive organs not being ready, the economic, sociological and psychological impact on children, the potential for disputes and domestic violence. Apart from that, based on the results of the counseling that had been carried out, it was concluded that the Petitioner's child was not psychologically ready and did not have a clear view of life after marriage. Children are also not used to doing housework. Therefore, it is recommended that the Petitioner's

children wait until they are old enough to marry so that they are better prepared psychologically, spiritually, mentally, reproductively and economically. Therefore, researchers also believe that it is appropriate to reject the case.

Meanwhile, in case number 233/Pdt.P/2017/PA.Wno, a single judge granted the request for marriage dispensation. The judge found the fact that the applicant's son had had sexual relations with his wife's prospective bride, so this could be said to be an urgent reason because he was feared that he would further fall into the sin of adultery. Apart from that, the applicant's child already has a steady income so there is no fear that financial factors will become a problem.

In the first case, a child who is 13 years old is still far below the minimum marriageable age set by law. At this age, a child is still at a stage of physical and mental development that requires adequate protection and education. On the other hand, in the second case, the child has reached the age of 18 years and 4 months, which is only 6 months away from the minimum marriageable age. At this age, they are usually more mature physically and emotionally, and have a better understanding of responsibilities and commitment in marriage. This significant age difference caused the first case to be rejected by the judge and the second case to be granted.

4 Conclusions

Based on the explanation above, the considerations in the application for marriage dispensation show the considerations of 2 judges in 2 different cases and show different decisions. In the case of application Number 243/Pdt.P/2022/PA.Wno, the application was rejected by the judge because the child was still too far from the minimum limit for marriage. Apart from that, counseling guidance also shows that if the child is not ready for marriage, if the marriage continues then there will be many negative impacts such as lack of education, the child's reproductive organs not being ready, the potential for disputes and domestic violence. Then the judge granted the second case Number 233/Pdt.P/2017/PA.Wno because the child had already had sexual relations with his future wife and was feared that he would fall further into the sin of adultery if the marriage was not carried out.

The urgent reason which is an important point in the application for dispensation from marriage means that there is no other choice except marriage, in fact there is no limit in determining this phrase. Therefore, based on the literature, the researchers obtained at least criteria to help determine the meaning of this phrase, namely the minimum age for receiving a marriage dispensation, the child being pregnant, and the age difference not being too large.

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