

Impact of Marriage Dispensation on Children Under The Age Review from Sociological Perspective

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Abstract. This article describes and examines the problem, of how to apply for a marriage dispensation to a religious court, so that it has an impact on when the dispensation is granted or not. This research is descriptive empirical or sociological legal research. Types of primary and secondary data covering primary, secondary, and tertiary legal materials. Data collection techniques used are field studies and literature studies, then the technical analysis used is qualitative methods. The results show that the practice of applying for a marriage dispensation cannot be granted to all, sometimes it is rejected with various considerations so that the impact of determining a marriage dispensation on minors if granted will be able to carry out marriages at the Office of Religious Affairs, Bojong District, on the contrary, if the application for dispensation is rejected then as a result, the marriage cannot be held at the Bojong Religious Affairs Office, Tegal Regency.

Keywords: Determination of Marriage, Dispensation, Minors

1. Introduction

Marriage is a form of nature that has been given by God Almighty to every creature of His creation. Especially humans who are the best creatures in this world, because they have several advantages compared to other creatures[1–3]. Some of these advantages, among others, are humans have a mind that can distinguish between right and wrong actions[2,4]. Therefore, the provisions contained in the law of human marriage are different from other creatures. Marriage is not only a relationship between husband and wife but also aims to get offspring to continue their generation. Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, explains that the minimum age for marriage for women is the same as the minimum age for marriage for men, which is 19 (nineteen) years (Article 7 paragraph (1) Law Number 16 of 2019 concerning marriage).

If the child is less than 19 years old, whether male or female, the parents and/or guardians of the child are required to apply for a marriage dispensation to the religious court. When the religious court has decided, there will be an impact from the determination of the marriage dispensation on minors. Thus, we will discuss what are the factors that influence the community to implement a marriage dispensation for minors and how the impact of the determination of the marriage dispensation on minors.

2. Method

This research was conducted in Bojong District, Tegal Regency. The location selection was based on the number of underage marriages at the Office of Religious Affairs, Bojong District, Tegal Regency[5]. This research is a descriptive empirical or sociological legal research. Types

of primary and secondary data covering primary, secondary, and tertiary legal materials. Data collection techniques used are field studies and literature studies, then the technical analysis used is qualitative methods.

3. Result & Discussion

3.1 Practice of Marriage Dispensation for Minors

Based on article 6 point (1) of the Supreme Court Regulation Number 5 of 2019, the party who is placed as the Petitioner in the application for a marriage dispensation or the party entitled to apply for a marriage dispensation is the parent of the child who is being applied for a marriage dispensation. The parents referred to here are the biological mother and father. If the parents are divorced, the application for dispensation for marriage is still filed by both parents, or by one of the parents who has custody of the child based on a court decision. If one of the parents has died or the place of residence is unknown, the application is submitted by one of the parents. If both of them have died, then the application is submitted by the person appointed as the guardian of the child. Parents or guardians of children who are unable to attend can be represented by a power of attorney based on a power of attorney (Article 6 numbers 2 to 5 of Perma 5/2019).

There are a number of administrative requirements in the application for a marriage dispensation as referred to in Article 5 of Perma Number 5 of 2019 and the provisions of Article 7 paragraph (2) of Law Number 16 of 2019 as follows:

1. Application Letter. If the identity of the parties, the posita and the petitum of the application do not meet the qualifications for a good and correct dispensation application as explained above, then based on article 119 HIR/143 RBG the court gives instructions to the applicant to make improvements to comply with the formal and material requirements of a good application. and right;
2. Photocopy of the identity cards of both parents/guardians;
3. Photocopy of family card;
4. Photocopy of the child's identity card or identity card and/or child's birth certificate;
5. Photocopy of identity card or child identity card and/or birth certificate of the prospective husband or wife; and
6. Photocopy of the child's latest education certificate and/or certificate of still schooling from the child's school;
7. A certificate from a health worker (doctor or midwife) that supports the parents' statement that the marriage is very urgent to be carried out.

The Clerk of the Court has the obligation to ensure that all administrative requirements must be completed before the application is registered in the register, after paying the down-payment of court fees. If it is not complete, the Registrar returns the application for a marriage dispensation to the applicant to be completed (Article 9 of Perma 5/2019). When the application for a marriage dispensation has been determined and is granted, then the stipulation can be submitted to the Bojong Religious Affairs Office along with other requirements that have been met for a valid marriage to be carried out.

3.2 The Impact of Determining Marriage Dispensation on Minors From a Sociological Perspective

Regarding the application for marriage dispensation submitted by the applicant to the Religious Court, not all applications will be granted, but there are also applications that will be

rejected by the Religious Court Judges. With the approval or rejection of the application for a marriage dispensation by the Panel of Judges, it will have an impact on the determination of the dispensation. As for the impact of being granted or refused a marriage dispensation application, among others:

1. The impact of the granting of a marriage dispensation application.
 - a) Obtaining a determination from the Religious Courts in the form of granting the application for a marriage dispensation. If the application for dispensation of marriage submitted by the applicant to the Religious Court is granted by the Panel of Judges, a decision will be issued by the Religious Court, that the marriage can be carried out. Then the stipulation is brought to the local Religious Affairs Office (KUA) which is used as the basis by the KUA to be able to carry out the marriage of minors.
 - b) Can Hold Marriages at KUA, When the application for a marriage dispensation submitted to the Religious Court has been examined and a decision has been made in the form of a Decision which contains the approval of the application for a marriage dispensation by the court, then a copy of the new Dispensation Determination is submitted back to the Office of Religious Affairs for registration of the marriage. With the issuance of the dispensation determination, the Office of Religious Affairs has the authority to serve the marriage, so that the party who has received the determination of the dispensation can carry out the marriage at the local Office of Religious Affairs;
 - c) Legal marriage: The judge of the Religious Court stated that, if a marriage dispensation has been stipulated from the Religious Court, then the marriage which is carried out based on the dispensation is considered a marriage as usual. The position of husband, wife, and children born on the basis of the stipulation of marriage dispensation by the court is legal according to law.
2. The impact of the rejection of a marriage dispensation application
 - a) Obtaining a determination in the form of rejection of the application for a marriage dispensation If the application for dispensation The marriage proposed by the applicant has been examined by the Panel of Judges of the Religious Courts in the trial, but if the evidence submitted is incomplete, submitted by an unauthorized person, there is a relationship that causes the marriage to be prohibited, or the prospective groom does not have income to To guarantee married life, the Panel of Judges will issue a determination in the form of refusing the application for a marriage dispensation to the applicant.
 - b) Unable to carry out the marriage When the application for dispensation for marriage is rejected by the Panel of Judges of the Religious Courts, then there is no right to marry. The child of the applicant must wait until the minimum age is met as regulated by statutory regulations Article 7 paragraph (1) of the UUP, namely the minimum limit for being able to enter into marriage for women 16 (sixteen) years and men 19 (nineteen) years. Even if the child of the applicant is already pregnant, he must wait for the minimum age limit that has been determined.

The minors whose marriages are carried out and legally become husband and wife have several impacts, including:

1. Vulnerable to economic problems;

Financially, the young couple is practically unstable. Especially if they do not have the ability to support a career, because education is hampered and even stops because of marriage.

2. Vulnerable to reproductive problems;
3. Vulnerable to domestic violence
Couples who marry underage can be mentally immature, especially when faced with various household problems. Violence can occur due to psychological instability.
4. Psychological problems that may occur because they are not stable

4. Conclusion

Based on the discussion that the author has described, it can be concluded that the process of applying for a marriage dispensation is not immediately granted, if it is rejected it cannot carry out the marriage, on the contrary if the application for a marriage dispensation is granted then the marriage can be carried out and registered at the KUA / Office of Religious Affairs. Likewise, minors who marry based on the determination of the marriage dispensation have several impacts, including being vulnerable to economic problems, and vulnerable to reproductive problems.

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