

Overview of the Granting of Marriage Dispensation for Minors (Study on the Determination of the Rantauprapat Religious Court Number 62/Pdt.P/2017/Pa.Rap)

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Abstract

Marriage is something that is commanded by Allah SWT and the Messenger, in which there is wisdom, including being able to bring inner peace and prevent people from committing immorality. Underage marriages require a dispensation application submitted by the applicant/parents for a legal marriage requirement and supported by evidence of a rational application to convince the judge in giving consideration to the decision of the Religious Court. This research is based on case study normative law research by examining the Rantauprapat Religious Court Decision Number 62/Pdt.P/2017/PA.Rap. Types of Qualitative research. The results of the discussion on the dispensation of minors have the basis that they are allowed to marry in accordance with Article 7 paragraph (1) of Law no. 1 of 1974 states "Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years. However, in the provisions of paragraph (2) of Law No.1 of 1974 states "In the case of deviations from paragraph (1) of this article, you can request a dispensation from the Court or other official appointed by both male and female parents. Dispensation for minors can be applied to the Religious Courts on the basis of strong arguments solely to make marriage a harmonious relationship in the survival of a household. In his judgment, the judge is right and correct in giving the decision on the determination of the dispensation of minors, in accordance with the guidelines of the applicable laws and regulations.

Keywords

dispensation; underage marriage; verdict



I. Introduction

Marriage dispensation is the granting of the right to a person to marry even though he has not reached the age that has been set. In principle a man and a woman are allowed to marry if they have reached the age of 19 years (Anita, Ahmad Subekti, 2020). If the circumstances so desire, the marriage can be carried out even though one or both of them have not reached the intended age. In Article 7 paragraph (2) of the new Marriage Law, it is stated that a marriage dispensation can be granted for urgent reasons. Accompanying sufficient supporting evidence, namely certificates stating that the marriage is very urgent to be carried out.

Marriage is bonda legal relationship between a man and a woman for a long time. A marriage is something that is commanded by Allah SWT and the Messenger, in which there

is wisdom, among others, can bring inner peace and prevent people from committing immorality.

Marriage is a common thing that happens even a very important thing to do to form a happy and eternal family based on God Almighty. Marriage is the process by which two people make their relationship public, official, and Permanent (Jamaluddin, 2018). The purpose of marriage is to make a *sakinah, mawaddah* and *warahmah* family.(Sonny Dewi Judiasih, 2020). Getting married is one phase of life that is commonly done by every adult human, ready physically and mentally, and has a sense of responsibility in building a household (Surya, 2019). But in reality, the marriage guardian who has the right to marry sometimes loses his guardianship due to certain matters, which requires his guardianship to move to another guardian of marriage in the hierarchy that is in the ring further than that (Imran, 2019). But a successful marriage cannot be expected for those who are still immature physically and mentally.

The age limit for marriage raises a lot of debate and its own problems in its application, ranging from mental readiness to material ability which is considered a separate problem why someone who marries underage tends to fail in building a household. On that basis, the state needs to establish a rule that regulates the age limit for marriage, so that these problems can be resolved (Hamzah et al., 2020). Marriage must be done with careful preparation and children need to get ample opportunity to grow and develop according to their age.(Awaloei, 2019). In order for a marriage to be legal, certain conditions must be met, both concerning the two parties who want to carry out the marriage and those relating to the implementation of the marriage itself. It is stated in Article 7 paragraph (1) of Law No.1 of 1974 that marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years.

Marriage can also take place if the prospective bride and groom have received permission from their parents to hold a marriage which is still considered underage. Where the parents of the prospective groom and parents of the prospective bride to ask for a marriage dispensation to the Religious Court. Then the request for his son to have a relationship was close enough and for years he had been afraid of things that smelled like adultery. In the case of the prospective husband providing information to the Panel of Judges that the prospective husband wants to marry not by coercion but on the basis of affection and is ready to carry out his duties as a husband later and already has his own income.

That the researcher is interested in the title because he wants to know the legal considerations of the Panel of Judges in granting a marriage dispensation for minors, considering the many applications for dispensation for minors at the Rantau Prapat Religious Court, from the background above, the researcher only focuses on Determination Number 62/Pdt.P/ 2017/PA.Rap, which reviews the stipulations given by the Panel of Judges.

Furthermore, with the basis for consideration of the Decree of the Chief Justice of the Supreme Court Number KMA/032/SK/IV/2006. Regarding the implementation of book II of the revised 2014 edition of the guidelines for the implementation of court duties and administration, page 138. In the case, the problem is the desire of the Petitioner's parents, a male named X, aged 18 who wants to marry his son with the female Respondent named X. Y, 18 years old. This problem is the basis that the requirements for a marriage should be the age of the man: 19 years, while the woman's age: 19 years. In accordance with Article 7 Paragraph 1 of Law Number 1 of 1974 in conjunction with Article 15 paragraph 1 of Complications of Islamic Law because the person concerned is only 18 years old. Factors that increase the risk of children being married are geographical factors, lack of access to reproductive health information, education factors, economic factors, residence factors, tradition and religion factors. While the impact of marriage on children is the impact of child

marriage on education, health, psychology.(Nafisah, 2021). In fact, underage marriage in ancient times until today is still a lot to be experienced. However, in the case that underage marriages are forced to be carried out, Law Number 1 of 1974 still provides for the possibility of deviations. This is regulated in Article 7 paragraph (2) of Law Number 1 of 1974, namely by the existence of a dispensation from the Court for those who have not reached the minimum age limit. And this is given to avoid unwanted things in children such as adultery and others (Zulfani, 2017).

II. Research Methods

This research is based on normative law research while qualitative research approach. The research was conducted by examining the Decision of the Rantau Prapat Religious Court Number. 62/Pdt.P/2017/PA.Rap. While the supporting data for secondary research uses journals, books and legislation by analyzing and describing in detail, clearly and systematically about the main problems of the researcher. (Soekanto Soejono, 1986). That descriptive research is to provide data that is as accurate as possible about humans, circumstances or other symptoms with the aim of confirming hypotheses, so that they can assist in strengthening old theories, or in the framework of developing new theories.

III. Discussion

Judge's Consideration in Giving Marriage Dispensation to Minors Judging by Decision Number 62/Pdt.P/2017/PA.Rap:

That the researcher conducted the object of research, namely the Rantau Prapat Religious Court by examining the legal considerations carried out by the Religious Court judges regarding the Decision Number 62/Pdt.P/2017/PA.Rap In the case that occurred in Rantau Prapat, Jl. Initials X (18 years old) and Initial Y (18 years old) submitted a marriage application to the Office of Religious Affairs, North Rantau District, but the application was rejected because the two applicants do not meet the requirements for marriage. After receiving a rejection from the Office of Religious Affairs. The parents of the couple then submitted to the Rantau Prapat Religious Court to get a dispensation by the judge of the Rantau Prapat Religious Court in accordance with the application dated 22 August 2017 which was registered with register Number 62/Pdt.P/2017/PA.Rap. As for the arguments of the applicant in his application for a marriage to be held because he has been in a relationship for a long time (dating) and then due to a rejection from the Office of Religious Affairs regarding the administration who is not old enough, for conditions to be allowed to marry so that the basis for the refusal becomes the basis for the application at the Rantau Prapat Religious Court.

While in the Judge's Consideration in the application submitted by the applicant, the Judge then gives consideration according to Law Number 1 of 1974 concerning marriage. The application submitted by the applicant of the Rantau Prapat Religious Court is appropriate because the Rantau Prapat Religious Court has absolute and relative authority to examine, hear, a quo cases. In the judge's consideration, the applicant's biological father, X, asked for a marriage dispensation for his biological child who was not yet 19 years old. Based on Article 7 paragraph 2 of Law number 1, the applicant has the legal standing to file the application in the a quo.

Whereas in the conclusion of the legal facts, the Judge's Consideration can be concluded in the Decision Number 62/Pdt.P/2017/PA that it is in accordance with normative legal considerations in providing dispensation for child marriage. In accordance with the rule

of law in Article 15 paragraph (1) of the Compilation of Islamic Law which explains "For the benefit of the family and household, marriage may only be carried out by the prospective bride and groom who have reached the age stipulated in Article 7 of Law No. 1 of 1974, namely the prospective husband at least 19 years old and the prospective wife 16 years. Furthermore, Article 7 paragraph (2) of Law Number 1 of 1974 concerning marriage explains "In the case of deviations from paragraph (1) of this article, you can request a dispensation from the Court or other official, appointed by both parents, both male and female". Determination of Decision No.0253/Pdt.P/2016/PA.Pbg, is interesting to study, because it explains the arguments and considerations of the judge in granting the petitioner's request for a marriage dispensation. Because the dispensation will be granted by the judge, if the application is accompanied by urgent reasons, namely a situation where there is no other choice and it is very forced that requires the marriage to take place. The urgent reason is not just a claim, but there must be sufficient supporting evidence (Mutakin, 2022).

So from the chronology above in connection with the fulfillment of the rules of the Compilation of Islamic Law and Law No. 1 of 1974 amended by Law No. 16 of 2019 Regarding Marriage, it is proven that there is a legally valid application with the approval of the bride and groom (Blessing/permission) from both parents and there is no dispute, so that it has fulfilled the purpose of Article 6 paragraph (1) "Marriage must be based on the approval of the two candidates bride". Paragraph (2) "To carry out a marriage, a person who has not reached the age of 21 years must obtain the permission of both parents". The basis for the judge's consideration regarding a living for the wife is Article 34 paragraph (1) "Husband is obliged to protect his wife and provide everything he needs in his household according to his ability" Law Number 1 of 1974 concerning Marriage in conjunction with the Compilation of Islamic Law Article 80 paragraph (4) "According to his income, the husband bears: a living, *kiswah* and a place to live for his wife, household expenses, maintenance and medical expenses for his wife and children, and education costs for children. Judging Based on the case of determination of Number. 0049/Pdt.p/2017/PA.JP, namely on the basis of certainty that the woman is pregnant out of wedlock and urges her to get married immediately to avoid a bigger evil. (The Wisdom of Mi'raj Muttaqina, 2018). Based on the results of the judge's consideration of the Bireuen Syar'iyah Court in Decision Number 0005/Pdt.P/2015/MS-Bir that she married a man with the argument and reason that her child had been engaged for approximately one year from which the act would take place prohibited by the provisions of Islamic law (Rabia, 2020).

(Ernawati, 2020) However, in the provisions of paragraph (2) of Law No.1 of 1974 it is stated that in the case of deviations from paragraph (1) of this article, you can request a dispensation from the court or other official appointed by both male and female parents.

In consideration based on the Decree of the Chief Justice of the Supreme Court Number KMA/032/SK/IV/2006 concerning the Enforcement of Book II Guidelines for the Implementation of Duties and Administration of Courts Revised Edition 2014 page 138, the Religious Courts may grant a marriage dispensation after hearing the statements of parents, close family or guardian of the requested marriage dispensation and to fulfill this purpose.

Considering that all articles and statutory regulations have been fulfilled normatively by law, the judge gives a decision by stipulating:

1. Granting the Petitioner's Application
2. Give dispensation to the applicant's child with the initial X to marry a woman with the initial Y.
3. Charges the Petitioner to pay all costs incurred in this case in the amount of Rp. 161,000.00 (one hundred and sixty one thousand rupiah).

Whereas regarding a marriage of minors, the judge has the authority, both absolute and relative, to examine, hear and decide aquo cases. So that in his consideration he was quite careful in providing the concept of justice, and legal certainty for justice seekers.

IV. Conclusion

From the results of the research, the author concludes that the granting of dispensation for minors by the Rantau Prapat Religious Court as contained in the Decision Number 62/Pdt.P/2017/PA.Rapt, regarding the application of a couple who are still underage named Inisial X (18 years) and Initials Y (18 years old) submitted an application for marriage to the Office of Religious Affairs, Rantau Utara District, but the application was rejected because he did not meet the requirements of a marriage to get married. In connection with the refusal, both parents agreed to apply for a marriage dispensation at the Rantau Prapat Religious Court. Judges in legal considerations have provided the concept of justice and legal certainty in accordance with the laws and regulations in Article 15 paragraph (1) of the Compilation of Islamic Law which explains "For the benefit of the family and household, marriage may only be carried out by the prospective bride and groom who has reached the age set in the law. Article 7 of Law No. 1 of 1974 stipulates that the prospective husband is at least 19 years old and the prospective wife is 16 years old. The affirmation of Article 7 paragraph (2) of Law Number 1 of 1974 changed to Law Number 16 of 2019 concerning marriage explains "In the case of deviations from paragraph (1) of this article, you can ask for dispensation from the Court or other Officials, appointed by both parties.

References

- Anita, Ahmad Subekti, D. A. K. (2020). Pandangan Hakim Terhadap Dispensasi Pernikahan Anak Di Bawah Umur (Studi Kasus di Pengadilan Agama Kota Malang). *Jurnal Ilmiah Hukum Keluarga Islam*, 2 (1).
- Awaloei, C. A. (2019). Analisis Putusan Pengadilan Agama Bantaeng Tentang Pemberian Dispensasi Perkawinan Anak dibawah Umur (Studi Putusan: Putusan Pengadilan Agama Bantaeng Nomor 42/Pdt.P/2018/Pa.Batg Atas Pemberian Dispensasi Perkawinan Anak Dibawah Umur). *Hukum Adigama*, 02 (2).
- Ernawati. (2020). Dispensasi Nikah Di Bawah Umur Di Pengadilan Agama Giri Menang. *Jurnal Muhakkamah*, 5 (2).
- Hamzah, Y. A., Mangarengi, A. A., & Prawira, A. (2020). Analisis Yuridis Perkawinan Dibawah Umur Melalui Kewenangan Kantor Urusan Agama. *Jurnal.Dikti9.d/Plenojure*, 9(2).
- Hikmah Mi'raj Muttaqina, S. (2018). Dispensasi Pernikahan Anak Di Bawah Umur Dalam Penetapan Perkara Nomor 0049/Pdt.P/2017/Pa.Jp Di Pengadilan Agama Jakarta Pusat. *Jurnal of Islamic Law*, 2(2).
- Imran, et.al. (2019). Tawkil Traditions in the Implementation of Marriage Contract in Aceh, Indonesia. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* Vol 2 (3): 210-218.
- Jamaludidin. (2018). AL Ghazali's View Regarding to the Witness in Islamic Wedding Ceremony. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* Vol (I): 01-10.
- Mutakin, A. Dan L. M. (2022). Analisis Pertimbangan Hakim Dalam Putusan No.0253/Pdt.P/2016/Pa.Pbg Tentang Dispensasi Pernikahan. *Jurnal of Islamic Law*, 1(1).

- Nafisah, I. Z. (2021). Analisis Yuridis Putusan Mahkamah Konstitusi Nomor : 22/Puu-Xv/2017 Tentang Batas Usia Perkawinan Untuk Mencegah Perkawinan Anak Di Indonesia. *Jurnal Ilmiah Ilmu Hukum*, 27(11), 1677.
- Rabiah, M. I. (2020). Penafsiran Dispensasi Perkawinan Bagi Anak Di Bawah Umur. *Jurnal Hukum Keluarga*, 3(1).
- Sonny Dewi Judiasih. (2020). Kontradiksi Antara Dispensasi Kawin Dengan Upaya Meminimalisir Perkawinan Bawah Umur Di Indonesia. *Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum Unpad* ISSN: 3(2).
- Surya, H., et.al. (2019). Improving Factors of Divorce Rate in Sabang City. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* Vol 2 (3): 104-114.
- Zulfani. (2017). Perkawinan Anak Di Bawah Umur Menurut Undang-Undang Nomor 1 Tahun 1974. *Jurnal Hukum: Samudra Keadilan*, 12(2), 211–222.
- Undang-undang Nomor 1 Tahun 1974 Diubah Undang-Undang Nomor. 16 Tahun 2019 tentang Perkawian Kompilasi Hukum Islam.