

Judge Consideration of Marriage Dispensation at Sidenreng Rappang Religious Court: Socio Juridic Analysis

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Abstract

This study explains that applications for marriage dispensation at the Sidenreng Rappang Religious Court have increased from year to year, and in 2019 there were 222 cases. The purpose of this study is to describe the development of the marriage dispensation, analyze the reasons behind the application for a marriage dispensation, and reveal the judges' considerations regarding the intent of the Marriage Law in Article 7 paragraph 2 of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning marriage. This type of research is descriptive qualitative, the research location is at the Sidenreng Rappang Religious Court, for primary data sources, namely copies of decisions, marriage laws, judges, clerks and justice seeking societies and secondary data sources. The results of this study indicate that 1) Marriage dispensation at the Sidenreng Rappang Religious Court, from year to year always increases and in 2019 experienced a very sharp increase; 2) Based on cultural, educational, economic, environmental factors and pregnancy outside of marriage, and 3) Juridical analysis of the legal considerations of the Sidenreng Rappang Religious Court judge regarding the marriage dispensation Law Number 16 of 2019 and based on the rules of fiqhi and maqashid al-Syariah, the reality ignores several administrative requirements that can support judges' considerations to realize and guarantee the best interests of children.

Keywords: Judges' Considerations, Marriage Dispensation, Religious Courts

1. Introduction

The state through the government makes a minimum age limit for a person to be able to marry because it has the interest and obligation to guard and direct marriage as a social institution that protects, elevates the dignity of women in Indonesia (Hermanto & Ismail, 2020). The dispensation aims to provide protection and keep the marriage running well, healthy and maintained for its eternity. Marriage law in Indonesia is regulated in Law Number 1 of 1974 concerning Marriage, article 7 paragraphs 1 and 2 are "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) year (Nuraeni, Kamal, & Nurmila, 2020)." And "In the case of deviations from paragraph (1) of this article, you can request a dispensation from the Court or other officials appointed by both the parents of the male and female parties."

Law Number 1 of 1974 in article 7 contains several principles, to maintain the health of husband and wife and offspring, to guarantee the noble ideals of marriage, namely the voluntary principle, family participation and maturity of the prospective bride and groom (physical and mental maturity of the bride and groom), (Mufidah, 2010).

This provision was later reaffirmed in the Compilation of Islamic Law in Article 15 paragraph 1. The issuance of Law Number 16 of 2019 concerning Amendments to Indonesian Law Number 1 of 1974 concerning Marriage has given a new direction to marriage law in Indonesia. This age limit for marriage was later changed, where the marriageable age that may be allowed to marry is 19 years for both the prospective groom and the prospective bride. This change is considered phenomenal, because in addition to having a major impact on the marriage regulations, this change also occurs in a family law regulation that has been in effect in Indonesia since 44 years ago, namely since the birth of the Republic of Indonesia Law Number 1 of 1974.

The application for a marriage dispensation at the Sidenreng Rappang Religious Court throughout 2019 granted 220 applications for a marriage dispensation and rejected 2, apparently often drawing criticism from various circles. The Religious Courts are considered insensitive to the Family Planning program, the Religious Courts are agents of early marriage, and a number of other similar scorns. In such a condition, the judge's consideration must be to maintain the intent of the Act, namely to prevent early marriage with all the bad consequences it can cause. Judges must consider and ensure that their decisions are in the best interests of the child.

On the other hand, the Judge also considers the cultural factors of the Bugis society in general and in particular the Sidenreng Rappang community, some of which are still there, marrying off their children at an early age is a form of gratitude because their responsibilities will end soon, because their children can quickly get a mate and invitations have circulated so that the siri culture is one of the judges' considerations in making decisions, and others (for example), but also from legal certainty, sense of justice and expediency (Ahyani, 2016). The change in the age of marriage in the Marriage Law Number 16 of 2019, has further increased the number of applications for marriage dispensation at the Sidenreng Rappang Religious Court.

The problem is, how is the development of the application for a marriage dispensation at the Sidenreng Rappang Religious Court? and, what is the judge's

considerations and legal basis in the case of a marriage dispensation application at the Sidenreng Rappang Religious Court?

2. Methods

This type of study is conducting field research, taking primary data in the field which is studied intensively. This study focuses on the naturalistic paradigm. That is, it assumes that empirical facts occur in a socio-cultural context that are interrelated with one another. Therefore, every social phenomenon is expressed holistically. This naturalistic paradigm illustrates that the behavior and meaning adopted by the Sidenreng Rappang community can only be understood through an analysis of the natural environment (natural setting). This paradigm gave birth to a study of the Sidenreng Rappang community as a non-human instrument that is difficult to use flexibly to capture these various realities and interactions.

3. Results and Discussion

3.1. Marriage Dispensation at the Religious Court of Sidenreng Rappang

The Development of Application for Marriage Dispensation at the Religious Court of Sidenreng Rappang. Throughout 2019, the Sidenreng Rappang Religious Court has granted 222 requests for dispensation from marriage and rejected 2 cases as of December 31, 2019. From the results of the meeting of the Religious Courts with the Sidenreng Rappang Regency Government, according to the invitation number: 094/3117/DPMDPPA, on June 24, 2019 regarding the meeting in order to reduce the number of child marriages. And the result of the meeting was that the marriage dispensation in Sidenreng Rappang Regency was included in the top five in South Sulawesi. So that the Religious Courts often receive criticism from various circles.

According to data recorded at the Sidenreng Rappang Religious Court for a period of a year, in 2016, 91 cases of marriage dispensation were applied, in 2017 there were 93 cases of marriage dispensation applications, or an increase of 2.1%, in 2018 there were 100 cases. or increased by 7.5% and in 2019 as many as 224 cases. The increase in cases reached 124%. Applications for dispensation for marriage from year to year have increased. The increase in the number of marriage dispensations, is also due to the revision of the Marriage Law number 16 of 2019, namely the minimum age limit for marriage for men and women is 19 years.

3.2. Factors for applying for Marriage Dispensation at the Religious Court of Sidenreng Rappang

From the data obtained by researchers in their research at the Sidenreng Rappang Religious Court, regarding the marriage dispensation submitted at the Sidenreng Rappang Religious Court there are several factors behind the filing of the marriage dispensation application at the Sidenreng Rappang Religious Court in 2019, namely:

1. Cultural Factor

The community will be proud of their child getting a match quickly, because there is always a sense of anxiety and fear if their daughter is late for marriage. Likewise with the case of the application for a marriage dispensation Number: 184/Pdt.P/2019/PA.Sidrapan. Cica Ibrahim binti Ibrahim, the results of the interview provide the following information: In the case of the application for dispensation for marriage with Number: 184/Pdt.P/2019/PA. Sidrap, is an applicant with a rejection decision, because in the trial process Herlina gave a statement that basically she was not willing to carry out the marriage and from a mental point of view she was not able to because she was too young, but because the parents' wishes were fulfilled, the child of the applicant complied.

2. Economic Factors and Educational Factors

The increasing number of young marriages and requests for dispensation at the Sidenreng Rappang Religious Court is increasing from year to year, this is triggered by the low economic capacity of the community, the weak economic condition of the community causes parents to be unable to send their children to a higher level, parents assume that marrying their child is one solution to ease the burden of family life.

3. Environmental Factors

In the case of a marriage dispensation application submitted at the Sidenreng Rappang Religious Court, one of the factors is that parents always feel worried about their children because of an unhealthy social environment. Dating is not something that is foreign to young people, including children. As a result of the association in the environment of children, it affects the mindset and life of children, this is as in the case of the application for a marriage dispensation Number: 322/Pdt.P/2019/PA. Sidrap, because of environmental influences, was willing to sacrifice his schooling and asked for a marriage dispensation, according to the interview result of the applicant, Mr. Salahuddin Rahman.

“Actually, I don't want to marry my child yet, but because I have been in a relationship with her boyfriend for a long time, it's been two years and she often visits the

woman's house, so the parents of the woman feel worried and ashamed of their neighbors for being the subject of gossip. So that the parents of women consulted and asked the willingness of the parents of the men to immediately marry off their children, to avoid slander. And the children strongly agree, even though the age of the male is still under the provisions of the Act, and while still in high school/vocational school and willing to drop out of school in the hope that he will continue his parents' business. Actually, both of them are not mentally ready to start a household. However, it is the decision of both the parents of the girl and the boy to get married as soon as possible."

4. Factors Pregnant Outside Marriage

The factor of pregnancy outside of marriage that occurs and is the cause of the Sidenreng Rappang community to apply for a marriage dispensation even though the number is small, it cannot be denied that this factor is one of the causes of the application for a marriage dispensation at the Sidenreng Rappang Religious Court. As the results of the interview with the judge, Mrs. Sitti Musyayyadah, stated:

"Marriage dispensation cases that occurred at the Sidenreng Rappang Religious Court, because the number of pregnancies outside of marriage was very low, compared to the Kendari, Barru, Parepare Religious Courts. Almost all applications for dispensation for marriage are submitted due to pregnancy, while in Sidenreng Rappang, there is a strong cultural influence, due to the desire of parents who want to see their children marry quickly, economic and educational factors".

3.3. Judges' Considerations in Determining Marriage Dispensation Decisions at the Religious Court

Concrete legal considerations must be stated as the analysis, arguments, opinions, and conclusions of judges (Mulyadi, 2006). Legal considerations are one of the most important aspects in determining the realization of the value of a judge's decision that contains justice, legal certainty, and benefits for applicants or justice seekers. To achieve or realize the legal objectives, judges in legal considerations should include the main issue of the argument that marriage dispensation cases are civil cases submitted voluntarily (applications), voluntary cases have characteristics that make them different from *contentiosa* cases (lawsuits). The characteristic of the petition case is that the problem is of a one-sided nature. This means that the problem that the applicant is asking to solve is purely related to the interests of the applicant alone and is not related to the rights and interests of others. There are no disputes with other parties. One-sided or *ex-parte*. No other person or third party is drawn as an opponent.

In considering the law on the determination of the marriage dispensation, the main points of legal considerations as stipulated in the PERMA of the Supreme Court of the Republic of Indonesia Number 5 of 2019 are considered, that the consideration of the judge's advice to the applicant, child, prospective husband or wife and parents or guardian of the prospective husband or wife in order to understand the risk of marriage, related to the possibility of cessation of education for children, continuation of children in taking 12 years of compulsory education, unprepared reproductive organs of children, economic, social and psychological impacts on children, and potential for disputes and domestic violence. The judge's considerations have heard the statements of the child who is being asked for a marriage dispensation, the prospective husband or wife, the parent or guardian of the child who is being asked for a marriage dispensation.

Consideration of the child proposed in the application to know and approve the marriage plan; consideration of the child's psychological condition, health, and readiness to marry and build a household life; and consideration of whether or not there is psychological, physical, sexual, or economic coercion on children and or families to marry or give in children in marriage (Munir, 2011).

Considerations regarding the protection and best interests of children as regulated in statutory regulations and unwritten laws in the form of legal values, local wisdom, and a sense of justice that live in society, and international conventions and/or agreements related to child protection (Hidayatulloh & Janah, 2020).

Consideration of the very urgent reason, namely the situation there is no choice and it is absolutely necessary to have a marriage and consideration of this reason is accompanied by sufficient evidence, namely a certificate proving that the age of the bride and groom is still under the provisions of the law and a certificate from a health worker that supports the parents' statement that the marriage is very urgent to be carried out. Considerations regarding the marriage of the applicant's child with a prospective husband or wife, there is no relationship that prevents marriage, both blood, and breastfeeding relationships, and not in the proposal of another person (Setiasih, 2017).

Considerations regarding the analysis of the applicant's evidence and the strength of evidence and considerations regarding the formulation of legal facts based on the statements of the applicant, the applicant's children, prospective husband or wife and parents or guardians of the prospective husband and wife, documentary evidence and statements of witnesses which are mutually exclusive. the others are compatible. The rules that must also be used as material for judges' analysis in considering the

determination of a marriage dispensation application are Law Number 35 of 2014 concerning Child Protection, Law Number 23 of 2004 concerning Elimination of Domestic Violence.

All parts of the plaintiff's petition that must be considered or tried one by one so that the judge can draw conclusions about the evidence in the trial, whether it can be granted. An example of a petition for a marriage dispensation at the Religious Court Number 184/Pdt.P/2019/PA. The Sidrap petitioned for by the applicant Cica Ibrahim bint Ibrahim, Cica Ibrahim acted alone as the applicant because the husband or biological father of the child for whom a marriage dispensation was requested had died, so that as the biological mother of Herlina bint Yaris who requested her child for a marriage dispensation at the Sidenreng Rappang Religious Court, it was after clearly describes the issue of the application for a marriage dispensation, then the applicant requests that the Chairperson of the Sidenreng Rappang Religious Court immediately examine and try this case, to subsequently pass a ruling which reads as granting the petitioner's request, stipulating to grant a marriage dispensation to the applicant's child, Herlina binti Yaris, ordered the head of the Religious Affairs Office of the Panca Rijang sub-district to carry out the marriage, charging the court fees according to law.

After reading the petition of the petitioner and hearing the statements of the petitioner at the trial, the main problem in the petition of the petitioner is that the petitioner requests that a marriage dispensation be granted from the Religious Courts to the child of the petitioner named Herlina binti Yaris to be able to marry a man named Saharuddin bin Sennang. with the argument and reason that the Petitioner's child has been in a loving relationship for a long time and will marry but the age of the Petitioner's child (prospective bride) has not yet reached the age limit justified by law, namely not yet 16 (sixteen years). So that the Office of Religious Affairs, Panca Rijang Sub-district, Sidenreng Rappang Regency refused to marry the two of them with a rejection letter.

Considering, that based on the above facts, the Court is of the opinion that the refusal of the Panca Rijang Office of Religious Affairs, Sidenreng Rappang Regency is reasonable in accordance with the provisions of article 7 paragraph (1) of the Marriage Law Number 1 of 1974 article 15 paragraph (1) of the Compilation of Islamic Law. However, the Petitioner may submit an application for dispensation to

the Religious Court against the above deviation as further regulated in the articles mentioned above in paragraph (2).

Considering, whereas based on the Elucidation of Article 49 letter a number 3 of Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning the Religious Courts in absolute competence, the Religious Courts have the authority to examine and decide on this case.

Considering, that based on information from the Petitioner's child (the prospective bride) who stated that they are not mentally ready to build a household, the Panel of Judges is of the opinion that although the applicant has submitted a marriage rejection letter from the Office of Religious Affairs, Panca Rijang District, which should be followed up with a marriage dispensation. However, because the child of the applicant does not wish to carry out a marriage under the age of 16 years in accordance with the provisions of Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage, the court does not need to issue a marriage dispensation and thus the applicant's application must be declared rejected.

Based on the determination of the application for a marriage dispensation, it is described how the panel of judges in examining and adjudicating a case, has considered all the petitions one by one, carefully examined the evidence and legal facts in the trial, in the event that the judge decides whether to grant or reject, the judge is obliged to consider all things that can strengthen the determination to be issued. Because a decision and a court decision must contain three things, namely legal certainty, justice, and benefit for the community.

However, after the promulgation of PERMA Number 5 of 2019, the marriage dispensation trial was only heard by a single judge. With the condition of the Sidenreng Rappang Religious Court which handles cases of marriage dispensation applications which are quite high, judges in examining and determining marriage dispensation decisions sometimes ignore several administrative requirements of the application, such as the applicant not including information from health workers, the absence of assistance or information from the medical team regarding the situation. psychological aspects of children, does not include a statement of parental commitment to take responsibility for economic, educational, social, and child health issues. And the judge does not require to attach it to the lawsuit, which should be taken into consideration. It turned out that the reason why the Sidenreng Rappang Religious Court did not require to attach a medical statement to the child

who was asked for a marriage dispensation and a statement of parental responsibility (the applicant), because during the socialization of PERMA Number 5 of 2019, as in the invitation letter W20-A9/675/OT. 01.2/VII/2019 dated October 21, 2019, the leadership gave directions that there is no need to attach a medical certificate to the child and a statement of parental responsibility, because in the trial it will be further examined, and to reduce the burden on the applicant in managing medical statements, which is feared the more difficult it will be for applicants.

The impact in determining the dispensation for marriage is concerning, as can be seen in the case of application number 184/Pdt.P/2019, where the judge's decision is not able to give the child the power to convince his parents of the desire to stay in school, the judge should not only decide but be able to give a determination which can be executed by requiring parents' commitment to their responsibilities to their children so that they pay more attention to and prioritize the interests of their children, for a better future.

Marriage dispensation is a waiver or waiver granted by the Court to prospective husband and wife who have not reached the lowest marriage age limit, namely 19 years for men and 16 years for women to be able to get married. In determining whether to grant or reject the judge must consider all things that can strengthen the decision to be issued. Because a decision and a court decision must contain three things, namely legal certainty, justice, and benefit for the community.

From several negative impacts regarding the marriage dispensation, it turns out that the judges sometimes pay less attention so that they do not take it into consideration in determining an application for a marriage dispensation. The judge in deciding only considers several things, namely regarding procedural reasons which are related. First, the judge in the trial will examine whether the person filing the case for the application for dispensation for marriage is his parents or not. Because the Petitioner in this case is the parent of a male or female. The second is regarding the reasons for submitting a marriage dispensation application, the reasons for a marriage dispensation are indeed not regulated in the law, but the judge needs to ask the reasons for submitting a marriage dispensation to children and parents whether the reasons for the child and parents are the same or not with the existing evidence. . The third judge must consider whether there is a marriage ban or not, this consideration is always applied before carrying out a marriage.

In granting the application for dispensation for marriage, the judge in determining is also based on *fiqhiyāh* rules. As for what judges usually use in marriage dispensation cases, the *fiqhiyah* rules is “Rejecting harm must take precedence over attracting benefit.”

According to this rule, if in a case or benefit the benefits and benefits are seen, then the *mafsadat* must be removed because it can spread everywhere and lead to a larger benefit. In this marriage dispensation case, the meaning is that a child has violated the provisions of the law governing the minimum limit for the implementation of marriage, namely Article 7 paragraph 1 of Law Number 1 of 1974 concerning Marriage, Article 8 of Regulation of the Minister of Religion Number 11 of 2007 concerning Marriage Registration, and Article 15 of the Compilation of Islamic Law. And the benefit is by issuing or granting a marriage dispensation request. So that there is no damage to the mother and child when a mother has given birth.

4. Conclusion

Based on the findings, it turns out that the case of Application for Marriage Dispensation at the Sidenreng Rappang Religious Court has increased from year to year and even has a very sharp increase, from 2016 to 2017 it has increased by 2.1%, increasing again in 2018 by 7.5% and in 2019 the increase was even sharper reaching 124%. Sidenreng Rappang is in the top five in South Sulawesi, the number of marriage dispensations. And there is a revision of the Marriage Law number 16 of 2019.

The increase in requests for dispensation for marriage that occurred at the Sidenreng Rappang Religious Court was the main cause of cultural, educational, economic factors, environmental influences, and pregnancy before marriage. The existence of a culture of the society that holds the principle that the sooner the better the child is married is a common thing, the low level of education and the economy of parents also affects the child's mindset, about the influence of education which is not too important by looking at the experiences of their parents, The existence of fear and respect, the dedication of a child to parents is very high, so that the child will follow the wishes of the parents to be married quickly even though they are still young.

The judge of the Religious Court of Sidenreng Rappang in determining the application for a marriage dispensation, taking into account the philosophical

aspects of the minimum age limit for marriage, norms and legal practice of the marriage dispensation, especially the new provisions contained in the Marriage Law Number 16 of 2019 concerning amendments to the Marriage Law Number 1 of 1974 and Regulations The Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning guidelines for adjudicating applications for marriage dispensation so that case examinations and judges' determinations truly provide protection for the best interests and basic rights of children, taking into account moral, religious, customary and cultural considerations, psychological aspects, health aspects, and impacts. resulting from child marriage. However, in reality, the judge of the Religious Court of Sidenreng Rappang in determining the application for a marriage dispensation only paid attention to the formal aspect. Information from health workers regarding the child's psychology and parental commitment is not taken into consideration in taking or dropping the stipulation of a marriage dispensation. So that the purpose of the dispensation of marriage to protect and pay attention to the best interests of the child has not been maximized, the interests of the child must be the main factor in the judge's consideration, so that the judge's determination can truly fulfill the legal principle, namely the judge can provide legal certainty, justice, and benefits for the community.

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