

Marriage Dispensation of Minors by Religious Courts in Relation to Women's Reproductive Health Rights

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ABSTRACT

The high number of child marriage dispensation applications is still a social problem in Indonesia, especially in the context of reproductive health and child welfare. This study aims to analyze the factors influencing the submission and decision of marriage dispensation and its implications for children's health and social life. The method used in this research is the Normative Juridical method, with analytical descriptive research specifications. Data were collected through literature studies and interviews using secondary data. Of the 190 dispensation applications, 147 were granted, 18 were rejected, 14 were revoked, 2 were annulled, and 6 are still in the trial process. The main reasons for dispensation applications included pregnancy before marriage, dropping out of school, parental concerns, and sexual relations outside marriage. The results showed that in deciding dispensations, judges considered aspects of mental health, social life, Islamic law, and reproductive health. Although the reproductive health aspect is considered important, in cases of pregnancy outside marriage, this consideration is often not a top priority because the child's reproductive organs are already functioning despite the health risks. The implication of this research is the importance of strategic steps from the government to handle child marriage dispensation through education, strengthening regulations, and cooperation between ministries and community organizations in protecting children's reproductive health rights. In addition, religious courts are expected to consider health, mental, social, and economic aspects thoroughly and provide guidance related to reproductive health risks. Courts are also expected to improve documentation of decision publications to support further research.

Keywords: Child Marriage, Dispensation of Child Marriage, Reproductive Health, Reproductive Health Rights.

INTRODUCTION

Marriage is an official agreement between a man and a woman in living together as a husband and wife, with the aim of creating happiness, tranquility, peace, and love in a framework that is in harmony with the will of Allah SWT (Mukhlis, 2019).

In terms of word origins, marriage is a noun derived from the verb kawin. This word comes from the old Javanese language, namely Ka-awin or Ka-ahwin, which means carried, carried, and carried (Wikipedia, 2024).

Through Article 7 Paragraph (1) of Law No. 16 of 2019 Concerning the Amendment to Law No. 1 of 1974 concerning marriage (hereinafter referred to as the Marriage Law) it is stated that "Marriage is only permitted if the man and woman have reached the age of 19 years, however, in very compelling circumstances (emergency), marriage below the minimum age limit as specified in the Law, it is possible to obtain dispensation from the Religious Court at the request of the parents".

People who have certain conditions and needs of life can force marriage even though they are under age. For example, a woman aged 12 years who marries a man aged 20 years, such conditions are often found in remote villages and cities. The woman basically does not meet the requirements for marriage in accordance with the Marriage Law, so that it can be stated that underage marriage will be very vulnerable to causing various problems that lead to divorce. arises because she is mentally unprepared for the household because she is still 12 years old. Various factors that contribute to the implementation of underage marriage include, self-factors who have loved each other and are afraid that they will cause things that are not in accordance with religion and norms, then the lack of education factor results in a narrow mind, economic factors, namely so that the life of the parents is lighter because the daughter will be borne by her prospective husband, as well as the urgent factor to quickly hold a marriage to anticipate bad opportunities because the marriage is not held quickly.

This increasingly widespread child marriage is very worrying, because it has a negative impact on the future of the nation. These negative impacts include shortening the educational age of the younger generation, because many children drop out of school. This situation can lead to a decrease in their quality of life as a young generation, due to lack of ability and knowledge. This condition is directly proportional to the increase in poor people both in cities and villages. This marriage will also lead to high health risks on the part of women, including the risk of infant and maternal mortality. In addition, it also results in high divorce rates due to domestic violence (domestic violence) due to lack of physical and psychological readiness, as well as lack of maturity in terms of sociological knowledge to face the institution of marriage (Canda, 2021).

Underage marriage has a negative impact on women's reproductive health, including during pregnancy and childbirth, namely the risk of anemia, hypertension, bleeding, miscarriage, besides the impact on babies who are born can be low birth weight, disabled babies, and provide a 5-30 times higher chance of causing infant mortality (Sari et al., 2020).

Underage marriage will result in underage pregnancy and childbirth with high risks to the health and safety of mothers and babies. Women aged 10-14 years have up to five times higher risk of death during pregnancy and childbirth than women aged 20-24 years.

Referring to UNPFA data in 2003, it was stated that 15-30% of childbirth at child age, there is a risk of chronic complications in the form of Obstetric Fistula, which is damage to the female organs which results in leakage of urine or feces into the vagina.

Underage marriage will be prone to problems due to unstable emotional control. Because marriage has a variety of problems that require mature handling which makes a marriage not only material readiness, but also requires maturity and mental readiness in living it (Mai, 2019).

The psychological impact that may arise is the frequent occurrence of domestic quarrels due to immaturity of thought and psychology making it vulnerable to domestic violence and divorce, low quality of life resulting from low education due to dropping out of school. This results in regret and lack of self-confidence.

Underage marriage has been widely recognized as a socio-cultural practice that can cause harm, be the cause and impact of human rights violations. It also deprives girls of the right to live their lives free from coercion and violence, reproductive health, and education.

Complex mix of factors makes it slow to address the elimination of child marriage (Lemmon & El Harake, 2014). Economic considerations are fundamental to the practice of child marriage (Vogelstein, 2013). Other factors include lack of education, customs, and religious beliefs (Hosseini, 2021).

According to the Ministry of Women's Empowerment and Child Protection in 2018, 1 in 9 women in Indonesia aged 20-24 years old had entered into marriage before the age of 18. Referring to the data provided by the Central Statistics Agency, it was found that 10.35% of the number of child marriages in 2020. Meanwhile, the province with the highest child marriage is West Nusa Tenggara with 16.23% of cases of underage marriage during 2022.

According to data from the Bandung Regency Soreang Religious Court, in 2021 there were at least 362 requests for child marriage, and 301 of them were granted, while for 2022, out of 217 applications for dispensation of child marriage, 182 were granted. The Chairperson of the Bandung Regency Religious Court said that the majority of the reasons for applying for marriage dispensation were because they were already pregnant before marriage, and 90% of them had dropped out of school. The spokesperson for the Soreang Religious Court in Bandung Regency also said that there were children of junior high school age who applied for dispensation to marry. There are even children who used to marry, and now when they are 21 years old, they have been divorced 3 times.

Article 64 of Law No.39 of 1999 on Human Rights states: "Every child has the right to obtain protection from economic exploitation and any work that endangers him/her, so that it can interfere with his/her education, physical health, morals, social life, and spiritual mentality".

Through all of these rights, it is necessary to pay attention to the rights of women for their reproductive health, especially if they are still underage with physical conditions that are still very vulnerable and do not have the readiness to carry out sexual activities, let alone reproduce and run a household (Dewi et al., 2022).

Article 2 paragraph (3) of Government Regulation No. 61/2014 on reproductive health states: "reproductive health is a state of physical, mental, and social health as a whole, not merely free from disease or disability related to the reproductive system, functions, and processes".

Approximately 15 million of adolescents aged 15-19 years become pregnant outside of marriage, about 10 million of whom contract treatable sexually transmitted diseases, and 4 million of whom have abortions. Nearly 40% of all HIV infection cases globally are found in the 15-24 age group. Recent estimates show that every day around 7000 adolescents are infected with HIV/AIDS (Purwoastuti & Walyani, 2015).

The neglect of women's fundamental rights due to underage marriage can lead to a higher potential for infant mortality (32 per 1000 births), maternal mortality (359 per 100000 births), childbirth with malnutrition (4.5 million per year), and malnutrition (4.5 million per year) (Inayati, 2015).

Dispensation according to the Big Indonesian Dictionary means an exception from the general rule for a special situation. Dispensation is a deviation or exception from an order, so it can be interpreted that dispensation of underage marriage is an exception to the marriage of minors due to a special situation, and accompanied by acceptable reasons in accordance with the policy given by a judge through a religious court.

The applicant may apply for marriage dispensation to the local Religious Court for the judge's consideration and decision as to whether or not the marriage should be permitted. And the judge will consider various specific factors in giving the dispensation decision.

This factor of the judge's consideration determines whether or not an application for marriage dispensation is granted, which of course will greatly affect the continuity of the lives of children who marry underage, especially in terms of reproductive health which is the absolute right of children.

Therefore, it is important to conduct this research because underage marriage can lead to many adverse risks, including reproductive health problems. The neglect of women's fundamental rights due to underage marriage can result in a higher potential for infant mortality, maternal mortality, childbirth with malnutrition, and the loss of a quality generation for the future of the nation. Thus, the purpose of this study is to determine and analyze the marriage of minors by religious courts in relation to women's reproductive health rights. The purpose of this research is to provide a deeper insight into how religious court decisions in granting dispensation for child marriage can affect women's reproductive health rights. This research is expected to serve as a reference for policy makers in formulating better policies related to the protection of

children's rights, especially women's reproductive health rights that are vulnerable to neglect in underage marriage.

RESEARCH METHOD

This research basically aims to analyze a phenomenon and is associated with legislation, so the most appropriate approach method is the Juridical Normative approach. The specifications applied are in the form of analytical descriptive research, namely to describe various phenomena that exist (Irwansyah, 2020). The researcher will collect data from data sources in the form of secondary data, namely literature review and interviews. After data collection, researchers will analyze the data. The data analysis process uses narrative analysis techniques, namely examining stories and narratives to understand individual experiences and perspectives. The research will be conducted in the area of the Soreang Religious Court, Bandung Regency.

RESULT AND DISCUSSION

Dispensation for marriage of minors at the Soreang Religious Court, Bandung Regency

According to Islamic Law, there is no minimum age limit for marriage in Islam, which is considered a blessing that provides *ijtihad* opportunities regarding the minimum age at which a person can marry (Sofia, 2020). According to Umar Said as quoted by Ali Wafa, the age limit of maturity for marriage is a matter of *ijtihad*. In Islam, age or maturity is not one of the conditions and pillars of marriage. Marriage is considered valid if it fulfills the conditions and pillars. Scholars differ in opinion about the age limit of maturity. Although Islamic law does not provide concrete limits on the minimum age of marriage, it does not mean that Islam allows underage marriage (Wafa, 2017).

According to article 2 of the Compilation of Islamic Law explains that marriage according to Islamic law is a very strong contract or *mitsaqan ghalidzan* to obey Allah's commands and carrying it out is an act of worship where the purpose is explained in article 3 of the Compilation of Islamic Law, namely to create a *sakinah, mawaddah, and rahmah* household life. The minimum age limit for marriage and marriage dispensation is regulated in the Compilation of Islamic Law in article 15 (1): "For the benefit of the family and household, marriage may only be entered into by the prospective bride and groom who have reached the age stipulated in the Marriage Law, namely the prospective husband is at least 19 years old and the prospective wife is at least 19 years old (2) For prospective brides who have not reached the age of 21 years, they must obtain permission as stipulated in article 6 paragraph (2), (3), (4) and (5) of the Marriage Law." One of the principles of marriage in marriage law is the principle of maturity of the prospective bride and groom. This implies that every prospective bride who wants to get married must be physically and psychologically mature.

Most of the factors requesting dispensation of underage marriage at the Soreang Religious Court, Bandung Regency, one of which is pregnant outside of marriage. According to Imam Hanafi, although the marriage of a pregnant woman can take place, she may not be sodomized, until the baby in the womb is born (Firdaus & Lubis, 2022). According to Imam Syafi'i, the marriage of a pregnant woman can take place, and intercourse with her can also be carried out. Taking into account the opinion of Imam Syafi'i, a woman who becomes pregnant as a result of having sex outside of marriage if she marries a man, then her pregnancy does not affect her marriage.

According to the Compilation of Islamic Law (KHI). The marital status of pregnant women in KHI in Indonesia is mentioned in Chapter VIII Article 53 paragraphs (1, 2 and 3), namely:

1. A woman who becomes pregnant out of wedlock may marry the man who impregnated her.
2. the marriage of a pregnant woman referred to in paragraph (1) may take place without waiting for the birth of her child.
3. Article 53 paragraph (2) KHI states that the marriage of a pregnant woman is actually held when the woman is pregnant. The birth of the baby in her womb does not need to be waited for.

According to KHI, the marriage of a pregnant woman resulting from adultery does not recognize iddah. However, the marriage of a pregnant woman, according to Article 53 paragraph (1), may only be married to the man who impregnates her.

Meanwhile, according to Article 7 Paragraph (1) of the Marriage Law, it is stated that "Marriage is only permitted if the man and woman have reached the age of 19 years, however, in very compelling circumstances (emergency), marriage below the minimum age limit as specified in the Law, it is possible to obtain dispensation from the Religious Court at the request of the parents".

Data from the Soreang Religious Court in Bandung Regency showed that in 2022 there were at least 362 requests for child marriage, 301 of which were granted, while in 2022, out of 217 requests for dispensation of child marriage, 182 were granted. The Chairperson of the Bandung Regency Religious Court said that the majority of the reasons for applying for marriage dispensation were because they had already become pregnant before marriage, and 90% of them had dropped out of school.

The minimum age limit for marriage in the Marriage Law is a requirement that must be met when entering into a marriage, namely:

1. That marriage has the intention that husband and wife can form a family that is eternal, happy, and in accordance with human rights. In entering into marriage, there must be no element of coercion, either physically or psychologically for the prospective husband and prospective wife. Article 6 paragraph (1) of the Marriage Law requires that "Marriage must be based on the consent of the prospective bride and groom".

2. The first minimum age of marriage provision can be clearly understood in Article 6 paragraph (2) which reads, "To enter into marriage a person who has not reached the age of 21 (twenty-one) years must obtain parental permission".
3. The second minimum age limit for marriage is Article 7 paragraph (1) which reads, "Marriage is only permitted if the man and woman have reached the age of 19 (Nineteen) years". The formulation of Article 7 paragraph (1) of Law No. 1 of 1974 is intended to maintain the health of husband and wife and offspring, it is necessary to set age limits for marriage.

After the decision of the Constitutional Court Number. 22/PUU-XV/2017 read out on December 13, 2018, can be the basis for making changes to the marriage age limit in the Marriage Law. Then after going through various processes, on September 16, 2019 by the DPR and the Government, the Bill on amendments to Law Number 1 of 1974 concerning marriage has knocked on the hammer of approval to be passed into law.

So that Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage was passed by President Joko Widodo on October 14, 2019 in Jakarta. Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage shall come into force upon the promulgation of Acting. Minister of Law and Human Rights Tjahjo Kumolo on October 15, 2019 in Jakarta. The results of the law that was passed on October 14, 2019, namely in the form of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage According to Article 7 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage states that:

- "(1) Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years.
- (2) In the event of a deviation from the age provision as referred to in paragraph (1), the parents of the male party and/or the parents of the female party may request dispensation from the Court on the grounds of extreme urgency accompanied by sufficient supporting evidence.
- (3) The granting of dispensation by the Court as referred to in paragraph (2) shall be obliged to listen to the opinions of both parties to the marriage.
- (4) The provisions concerning the situation of one or both parents of the prospective bride and groom as referred to in Article 6 paragraphs (3) and (41) shall also apply to the request for dispensation as referred to in paragraph (2) without prejudice to the provisions as stated in Article 6 paragraph (6)."

So based on this Law, which is contained in Article 7 paragraph (1) of Law Number 16 of 2019, it is clear that there has been a change in the age limit for marriage in Indonesia from the previously regulated age of marriage for women is 16 years and men 19 years. So that now the age of marriage between men and women is 19 years old. The age limit for marriage contained in the Marriage Law, that in fact the determination of the age limit for marriage has no definite provisions in Islamic Law, because it cannot be found in the Qur'an or sunnah specifically

regulating the issue of marriage age limits. So that in this case there is indeed a legal vacuum that needs to be followed up by the government to produce clear rules regarding the age limit of marriage. In Indonesia itself, efforts have been made that are very solutive in regulating the issue of marriage. As evidence of this is the birth of the Marriage Law, which was first passed and promulgated on January 2, 1974, after going through a very long process from before independence to independence. And the concept of the marriage law is inseparable from various parties.

After the birth of the Marriage Law, it seemed to provide a breath of fresh air for the community because they already had a strong grip in carrying out every marriage. And this lasted for a long time, the community had absolutely no objections to the rules contained in the Marriage Law. But in the end, in recent years, the age limit for marriage has been considered a problem due to the large number of young marriage practices and the prevalence of divorce for young couples. This is indeed a natural phenomenon in the midst of the current development of the times, because the changing times certainly have their own impact on every law that has long existed. And this is in accordance with what was stated by Ahmad Mustafa al-Mara-ghibah that in fact the laws were promulgated for the benefit of humans and the interests of humans are not the same as one another because there are differences in time and place. If a law that is promulgated at the time it is made is seen as a necessity, then at another time the need for the law no longer exists, then it is a wise act to abolish the law and replace it with a new law that is more in accordance with the demands of the times.

Child marriage is a complete form of violence, physically, sexually, mentally and socially. Child rights advocates even refer to child marriage as a form of legalization of rape against children in the name of marriage, because in fact all forms of sexual relations with children are rape. Therefore, the change in the minimum age of marriage to 19 years for both women and men is expected to stop the occurrence of child marriage. Coupled with the tightening of rules related to the granting of dispensation, it is hoped that it can reduce the number of child marriages. Before the amendment, parents could apply for dispensation (in the event that the age of the prospective bride and groom was below the minimum limit set by the law) to the court or other officials; under the newly enacted amendment, dispensation can only be submitted to the court on very urgent grounds with sufficient supporting evidence. In addition, the granting of dispensation by the Court as referred to in the paragraph is also obliged to listen to the opinions of both prospective brides and grooms who will enter into marriage. The addition of the last paragraph is to avoid forced marriages where children are married without being asked for their consent.

In the development of legal science regarding marriage, age is an important factor in the formation of a lasting and happy family. Adults have the maturity to take on the responsibilities of husband and wife, both from a biological perspective to produce offspring and from a psycho-social perspective to lead household relationships and social life. However, there is still a lack of

clarity regarding the definition of adulthood that is able to represent various indicators of individual characteristics needed to live a family life. Biologically, a person is considered an adult if they have experienced wet dreams for men and menstruation for women (Rosdiana & Suprihadin, 2022). However, these biological signs do not guarantee that a person has the ability to think and behave maturely.

The open space for dispensation, especially without strict regulations, is still considered to be counterproductive to efforts to stop child marriage. Dispensation for marriage for minors aims to allow them to continue to marry, even though they have not reached the age limit set by the Marriage Law. Marriage at a young age carries a high risk in the course of domestic life, as unstable emotional levels in adolescence can cause damage to the marital relationship. Emotional maturity and personal maturity are important factors for the purpose of marriage to form a happy family.

The lack of a description of what constitutes "urgent reasons" and "sufficient evidence" may again be the root of the problem with dispensation as it currently exists. In terms of sufficient evidence, it should be spelled out more clearly that in the case of granting dispensation by the court, the judge must consider the readiness of all aspects of the dispensation subject. This phrase must also be proven in court with scientific evidence, including aspects of both physical and psychological health.

The high number of underage marriages in Bandung Regency is a concern for the government because of its impact which can increase the divorce rate (Nasaleh, 2023). In addressing this problem, the KUA Soreang of Bandung Regency plays an important role in preventing underage marriage. The KUA is a place of consultation for the community about marriage preparation and problems that arise afterward. The KUA Soreang of Bandung Regency can overcome the high rate of underage marriage by conducting socialization about the age limit of marriage regulated by legislation and its negative impact on the community.

Underage marriage also has a negative impact, one of which is in terms of reproductive health, which is prone to death in children and mothers. In health it is said that women under 21 years of age, all reproductive organs are not ready to be used to conceive and give birth to children.

Legal considerations of the judges of the Soreang Religious Court of Bandung Regency in granting dispensation for underage marriage in relation to women's reproductive health rights.

Marriage is a bond between a man and a woman's guardian or who represents them and makes it permissible for men and women to have fun in accordance with the path that has been prescribed. Indonesian society is heterogeneous in all aspects. In the aspect of religion, it is clear that there are several religions recognized in Indonesia (Idris, 2002).

All of these religions have their own rules, including marriage procedures. The Marriage Law that applies to each of these religions is different from one another, but does not contradict each other. Underage marriage among minors tends to be due to the association of children and

opinions that develop in the community, the effect of environmental influences or the influence of customary law that forces the mindset of underage marriage to form, of course this is even worse for the future of the child in question. Nevertheless, underage marriage can be legalized and legally valid through the institution of underage marriage dispensation. Dispensation of underage marriage is one of the absolute authorities granted by law to the Religious Courts to examine, decide and resolve cases of applications for permission to marry for people who have obstacles to marriage.

Dispensation is an exception to the rule due to special considerations, or an exception to the law which states that a statutory regulation does not apply to a particular case. A marriage dispensation case is a voluntary case in the nature of a petition, and there is no dispute in it, so there is no opponent. Basically, petition cases cannot be accepted, unless the interests of the law so require. In filing a voluntary case, it begins with filing a petition, namely a petition containing a claim of rights by one of the interested parties to a matter that does not contain an element of dispute, so that the adjudicating court body can be regarded as a judicial process that is not actual (Candra, 2018).

The process of adjudicating applications for dispensation to marry underage is expressly regulated in detail in the laws and regulations and for the smooth administration of justice, the Supreme Court of the Republic of Indonesia stipulates the Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning Application to Adjudicate Marriage Dispensation Applications. The purpose of establishing the application to adjudicate marriage dispensation is seen from the principles and objectives:

Article 2

Judges adjudicate marriage dispensation applications based on the principle:

- a. Best interests of the child;
- b. The right to life and development of children;
- c. Respect for the child's opinion;
- d. Respect for human dignity;
- e. Non-discrimination;
- f. Gender health;
- g. Equality before the law;
- h. Justice;
- i. Expediency; and
- j. Legal certainty.

One aspect of marriage that falls under the jurisdiction of the Religious Courts is marriage dispensation cases. The underlying principle of the Marriage Law is the maturity of age for marriage, which means that the prospective husband or prospective wife must have the mental and physical maturity to carry out the marriage. In order for marriage to be conducted by mature individuals, experts set the age limit for marriage through Article 7 paragraph (1) of the Marriage

Law, which stipulates that the age limit for marriage for men and women is 19 years. Judge is one of the positions attached to a person who works specifically in the field of law and justice, often involved in issues of freedom and justice in law, as well as in the context of making decisions on cases submitted (Kamil, 2012). In this case the judge is considered to know the law (*juris curia novit*). The matter of finding the law is the judge's business, so the judge in considering his decision is obliged because of his duty to complete the legal reasons that are not found by the parties (Iriani, 2015).

A decision that includes the judge's deliberation and resolution of the petition is expressed in the form of a determination, This form distinguishes the settlement provided by the court in a dispute. In civil disputes involving parties, the resolution usually takes the form of a judgment or verdict. Determination refers to the court's decision in petition cases, such as marriage dispensation, wali adhal, polygamy, guardianship, marriage validation, and so on. Determination is a voluntary jurisdiction, as it only involves a request without any opposing party. In a determination, the judge does not use the term adjudicate, but only determines.

In addition, the judge's consideration in Article 12 of Supreme Court Regulation Number 5 of 2019 is:

- (1) The judge in the trial shall give advice to the child applicant, the prospective spouse and the parents/guardians of the prospective spouse.
- (2) Advice delivered by the judge, to ensure that parents, children, prospective husband/wife and parents/guardians of prospective husband/wife understand the risks of marriage, related to:
 - a. Possible interruption of the child's education,
 - b. Sustainability of children in pursuing 12 years of compulsory education,
 - c. The child's reproductive organs are not yet ready,
 - d. Economic, social and psychological impacts on children, and,
 - e. Potential for domestic disputes and violence.
- (3) The advice given by the judge shall be considered in the judgment.
- (4) In the event that the judge does not provide advice as referred to in paragraph 1 and paragraph (2), the determination shall be null and void.

As stated in paragraph (2) letter c, Marriage at an immature age has negative implications and triggers new problems, one of which is in terms of reproductive health, early marriage can increase the risk of death in mothers and children. Women's reproductive organs that are not fully mature can face the risk of complications during pregnancy and childbirth.

In this case the judge attempted to provide advice and opinions to the applicant, the applicant's child for whom dispensation was sought, the prospective husband/wife, and the prospective husband/wife's parents, regarding the risks of the marriage to be solemnized and its impact on children during the period of health education including the readiness of reproductive organs, psychology, social psychology, culture, economy and the possibility of disputes and

domestic violence, so that the applicant was advised to postpone the marriage of his child until the child reached the minimum age of marriage. As stipulated in the Marriage Law, which is 19 years of age, the applicant can still enter into marriage based on the families of both parties having committed to be responsible for the economic, social, health and educational problems of the prospective bride and groom.

The judge in determining the application of a person who wants to apply for dispensation to marry as stated in Article 7 paragraph (2)" The Marriage Law in cases that deviate from paragraph (1) of this article may request dispensation from the Court and other officials, appointed by the parents of the male or female party ".

As a case, the request in this marriage dispensation case does not involve a dispute, and the judge accepts and provides a decision that includes a determination to approve or reject the marriage dispensation application. With the freedom at his or her disposal, the judge will scrutinize the reasons for the request as well as interpret, filter, and select the rules that are most appropriate and relevant to the marriage dispensation case at hand as the legal basis for deciding the case. Because the Religious Court is an Islamic judicial institution, the legal basis for its decisions is all laws and regulations that apply in the country and are relevant to the case at hand.

According to the Judge of the Soreang Religious Court, the main factor in the request for dispensation of marriage is that the child is pregnant outside of marriage, the judge's consideration in granting dispensation for underage marriage does not always mean that if pregnant it is immediately granted because the judge will identify whether there is coercion in the marriage or not, if there are indications of coercion, it means that it does not have to be granted even though it is pregnant. Because even though the person concerned is pregnant, there will still be a mechanism for the origin of the child. So the consideration is not solely because they are pregnant. But if they are pregnant, then both of them are ready and responsible for their own desires, then they can provide for the household, the family is also committed to helping because they are still not old enough and need the assistance of parents/family, then that will also be taken into consideration.

In fact, when minors marry, when viewed from the aspect of health, especially weak reproduction, they are prone to death both in children and mothers. In health, women aged twenty-one (21) years and under have reproductive organs that are not ready to experience pregnancy and give birth to children.

Dr. Akhmad Khof Albar, SpOG explained that the age of marriage stipulated in the marriage law is not in accordance with the reproductive health of a woman, where under the age of twenty years women are still in the process of maturation of the reproductive organs. When the age of twenty years experiences pregnancy, it is possible that there will be a struggle for nutrition between the mother and her child. Other possibilities that occur include the problem of Maternal Mortality Rate (MMR) and Child Mortality Rate (AKA), because the risk of pregnancy and childbirth for women at that age is greater than pregnancy and childbirth at an older age.

According to him, the ideal age of marriage is adjusted to the reproductive health of women, mental readiness for him and the safety of the mother and prospective children, namely the age of twenty years and above (Kholilah, 2015).

The judge has several things to consider in granting dispensation for underage marriage, of course, urgent reasons. All things must be considered, including how long the couple has known each other, whether or not they have had sexual intercourse, whether or not a pregnancy has occurred, even when there is an acknowledgment that a pregnancy has occurred, it will be explored again, with whom the relationship occurred until the pregnancy occurred, because it could not be with the current husband-to-be, or there was coercion and intimidation from other parties, or for example he had sex with many people. This will also be taken into consideration by the judge in deciding whether or not to grant the request. Because most of the reasons for applying are pregnancy outside of marriage, the reproductive health aspects are not really considered because they are already pregnant. So the basis for the judge's consideration of granting dispensation is more about the psychological, social, and Islamic values risks that the couple will bear if they do not get married.

Kemashlahatan is the goal that should be achieved. In the context of underage marriage, this kemashlahatan is clearly seen in considering the good and bad of the action. Underage marriage should not be done because the benefits generated are not worth the harm. The harm of underage marriage is caused by the unpreparedness of children physically, psychologically, socially and economically. This is important to note because the purpose of marriage is to form a family that is eternal, sakinah, mawaddah, and rahmah. However, in the case of pregnancy outside of marriage, the judge considers other benefits and harms if you are pregnant outside of marriage but not married. Such as the nasab status of children who are born, their rights and legal status are neglected, and they are worried about marrying a marriage that is not registered at the religious affairs office or marrying siri. So that the effort to grant marriage dispensations in cases of pregnancy outside of marriage is preferable to delaying marriage.

CONCLUSION

The implementation of dispensation of marriage of minors in the religious court of afternoonang bandung district starts from the acceptance of applications for marriage dispensation, then from these applications some are granted and some are rejected. Throughout 2023 there were 190 applications for dispensation, 187 were accepted, 3 were not accepted, 147 were granted, 18 were rejected, 14 were revoked, 2 were dropped, and 6 remained to be heard in January 2024. The most common reason for applying for dispensation of child marriage is that the child is already pregnant before marriage. In addition, there were 4 reasons for the acceptance of applications for dispensation of marriage of minors, namely pregnancy outside of marriage, dropping out of school, parental concerns, and already having sex outside of

marriage. Meanwhile, the reason for not accepting the application was that the administrative requirements for applying for marriage dispensation were not fulfilled.

The legal considerations made by judges in the religious court of afternoonang bandung regency in granting marriage dispensation to minors consider several aspects, namely first mental health, for example children become inferior and depressed, second aspects of social life, for example ostracized from society, third aspects of law in Islam related to the legal impact of children born outside marriage, for example guardianship and inheritance issues. However, in certain cases, in this case pregnancy outside of marriage, reproductive health considerations are not the main thing in granting marriage dispensation, because the child is already pregnant, which indicates that their reproductive organs are functioning even though they are at risk.

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