
Juridical Analysis Of The Refusal Of Marriage Dispensation In The Case Of Siri Marriage (Determination of The Case of The Kasongan National Court No. 20/rev.p/2021/pa.Ksn)

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ABSTRACT

The Judges while giving provisions in case 20/Pdt.P/2021/PA.Ksn with the type of Marriage Dispensation case decided the petitioner's application to be legally inadmissible based on the facts obtained before the trial court. To obtain a solution, it is important to conduct a study by juridically analyzing the rejection of the marriage dispensation in the case of Siri marriage. The author details it in the sub-study, namely the Dispensation of Marriage; Denial of the Marriage Dispensation due to Siri's Marriage. Using a qualitative approach to the type of research library research. It is carried out by looking for references related to the Marriage Dispensation from journal articles, books, and legislation in printed and electronic form and analyzed based on the theory of justice, certainty, and the expediency of law and sharia maqasid. The findings of this study are that Marriage Dispensation is an initiative for those who wish to marry but do not meet the minimum age of marriage set by the Government, and parents with children of insufficient age may first apply for marriage in the Religious Courts. Denial of case number 20/Pdt.P/2021/PA.Ksn because Siri marriage negatively affects the spouse and offspring because the marriage cannot be defective according to state law.

Keywords: *Marriage Dispensation; Refusal; and Siri Marriage*

INTRODUCTION

Marriage ties established between a man and a woman are allowed in domestic life according to Islamic law with provisions according to what is entered according to the provisions of the Religion.¹

Allah Almighty established marriage to create a harmonious relationship and the boundaries of that relationship. It is impossible for women despite having high status, abundant wealth, or high intellectual status, not to respect the man who legally accompanies them. Similarly, it is impossible for a man to feel that he does not need to accompany a woman.²

¹ Musfir Aj-Jahrani, *Poligami dari Berbagai Persepsi* (Jakarta: Gema Insani Press, 2002), 5.

² *Ibid.*, 13.

The existence of Marriage is based on the birth of a person on earth according to the nature of humanity, given by Allah Almighty God to His servant, among the verses of Allah in QS.an-Nur [24]: 32.

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ ۖ إِن يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ ۗ وَاللَّهُ وَاسِعٌ عَلِيمٌ

That is to say: Then marry a bachelor and one who has the right to marry your husband and wife (who are married). If they are poor, God will make it possible for them through His generosity. And the gift of God is great and knows everything.³

However, if the marriage is a marriage between two young people (early marriage), namely as stipulated in Law Number 16 of 2019 concerning Amendments to Law No. 1 of 1974, men and women are still not 19 years old. As a Guideline for Holding Marriages for Indonesian Muslims.

Looking at the rules of family law that prevailed in the Islamic world in the 20th century, the main issue that became the focus to support the continuity of marriage in the atmosphere of Sakina, Mawada, and Warama was the age limit of marriage.

Article 15 (1) of Islamic Law states that marriage is only allowed for men who have reached the age of 19 years and women who have reached the age of 16 years.⁴ And Section 16-17 (1) of the Marriage Act 2019 states that marriage can be allowed when the husband and wife reach the age of 19.⁵

Although Indonesia's age limit is relatively low, it is often not fully respected in practice. To encourage married persons above the minimum age limit, Article 1 Paragraph 6 (2) of the Marriage Act of 197 provides as follows: "To carry out a marriage a person who has not reached the age of 21 (twenty-one) years must obtain the permission of both parents".

One of the ideal marriages is one in which both partners reach a certain age. To the extent that the young Prophet could benefit, for example, when the Prophet married Aisyah Binti Abu Bakr at the age of 6 and was mixed at the age of 9. Marriage is not forbidden in Islam to preserve honor and family integrity.

The hadith about the age of marriage Aisyah r.a is a hadith that is mandated by Muslims, namely:

³ an-Nur, 24: 32.

⁴ Annisa Ulya, *Usia Ideal Pernikahan Perspektif Komplkasi Hukum Islam*, 54.

⁵ Undang-Undang Pernikahan No. 16 Tahun 2019.

وَحَدَّثَنَا يَحْيَى بْنُ يَحْيَى أَجْبَرَنَا أَبُو مُعَاوِيَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ ح وَحَدَّثَنَا ابْنُ نُمَيْرٍ وَاللَّفْظُ لَهُ حَدَّثَنَا عَبْدُ هُوَيْرِ بْنِ سُلَيْمَانَ عَنْ هِشَامِ عَنْ أَبِيهِ عَنْ عَائِشَةَ قَالَتْ تَرَ وَجَنِي النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَنَا بِنْتُ سِتِّ سِنِينَ وَبَنَى بِي وَأَنَا بِنْتُ تِسْعِ سِنِينَ

That is to say: And he said Yahya ibn Yahya taught him Abu Mu'awiyah in Hisham bin 'Urwah. And it was told from another source, Ibn Numair told us, his words that came from him, but he told us. "Prophet, may Allah bless him and give him peace. I got married when I was six years old and lived together when I was nine years old (in the main house with the Prophet).⁶

From the above hadiths it can be known that in Islam, young marriage is basi prohibited if the marriage is harmonious and the conditions of marriage are met. However, in this case, marriage at a young age is another obstacle, because marriage is not legally registered by the state as stipulated in the Marriage Law to overcome this problem, so a solution is given with the enactment of a marriage dispensation.

If one or both spouses have not reached the age of marriage, then they can apply for marriage permits to the local Religious Court.

But lately, the phenomenon of young marriage seems to be a recurring "epidemic". In the past, young marriages were taken for granted. Year after year has passed many people refuse marriage at a young age. This phenomenon reappears in the present when parents want their children to marry young for various reasons. Nowadays, many teenagers want to get married at a young age.

In addition, some young people consider early marriage as an option to avoid toxic acts such as premarital sex. In fason's maturity depends largely on the development of emotions, educational background, and, social environment.

The Supreme Court, as an extension of the Supreme Court responsible for accepting, investigating, and mediating certain cases, refers to the current legal process and procedures in dealing with the issue of marriage bans. This phenomenon appears in society from year to year, with more and more teenagers getting married at a young age and wanting to apply for a marriage certificate in court. Data from the Religious Justice Agency (BADILAG) from 2019 as many as 23,126 to 2020 as m as 64,211 cases of marriage

⁶ Yahya bin Syaraf al-Nawawi, *Al-Minhaj fi Syarh Sahih Muslim bin Hajjaj*, Juz. 9 (Beirut: Dar al-Fikr, 1981), 208.

dispensation. During the midst of the Covid-19 Pandemic, 176 children/day entered marriage, an estimated 90% of them were girls.⁷

In the jurisdiction of the Kasongan Religious Court itself, which consists of 13 sub-districts, 15 villages, and 7, sub-districts, in 2021 there were 25 cases, 20 were granted and 5 were rejected.⁸

So not all incoming Marriage Dispensation cases were accepted, but some were rejected as was the case of case No. 20/Rev.P/2021/PA Ksn, Taking into account the judgment, i.e. the purpose and purpose of the petitioner's application is as outlined above.

Given that this is a case of application for Marriage Dispensation which is *ex parte* (unilateral interest) or is a *Volunta*Volunteer which can only be a case in court if there is a statutory basis that justifies it to be a case in court. And based on the provisions of Article 7 (2) of Law Number 1 of 1977 concerning Marriage. Article 9 (1) of Law No. 7 of 1989 was amended by Law No. 3 of 2006 and Article 2 on Religious Justice by Law No. 50 of 2009, an Application for Marriage Dispensation can become a case in a court case based on that provision, this case is the absolute authority of the Religious Court.

Considering that the Examining Judge of the Case has submitted to summon the petitioner to be present at trial in accordance stated in the expressed summons, and the Summons to him has been made formally and appropriately within the intent of Sections 145, 146, and 718 Subsection (1) of the R.Bg, the investigation of the matter may proceed.

The judge examining the case will consider the parties including, the biological parents of the petitioner's child, the future husband, and the parties including the petitioner's biological parents filed by the plaintiff before. Permabefore5 before Consideration of this case may proceed to evaluate the application marriage apple applicationriage the case expressed his views on the urgency of reaching the age of marriage topics intertorticlinterparticleh (1) of the Criminal Procedure Code) and fulfill the obligations of parents as follows: Pay attention to the explanation. Child protection law and advice to all of the above parties. a. Possible withdrawal from education for the child; b. Disruption of the continuity of the child to complete the 12-year compulsory education. c. The reproductive organs of the child are not ready. That is, the economic, social ad for the child and d. The possibility of, confconflictonflictnd domestic violence, all partiendate thaparticipaterstand the matter, and the applicant remains at his request.

⁷ Prof Alimatul Qibtiyah, Ph.D., *Upaya Pencegahan Pernikahan Anak*.

⁸ Azim Izzul Islami, *Observasi*, (Pengadilan Agama Kasongan, 25 Januari 2021).

Moreover, the Petitioner himself stated that the relationship between the future wife and the future husband is very close. With the permission of the applicant and the parents of the applicant's future husband, the applicant's child and her future husband, Rika Pusupita Sari Binti Dagot KM, with Baihaqi bin Rachmadi had held a serial marriage on July 22, 2021 before there was a determination, of the Kasongan Religious Court.

The Examining Judge held that the case *a quo* could not proceed again for the reason that the plea application was unfounded, i.e. since the discovery of evidence that the child had been married on July 22, 2021, with the permission of the parents of both parties before there was permission from the Court, this fact at the same time omitted the reason for the Petitioner's application for marriage permit to the Kasongan Religious Court.

Considering the grounds for investigating the Justice of the Peace, he concluded that the petitioner's request was not admissible or should be declared NO (*Niet Ontvankelijk Verklaard*).

This fact is an interesting thing for researchers to conduct this research. Because based on these considerations, the petitioner her future named Rika Pusupita Sari Binti Dagot KM with Baihaqi Binti Rachmad had entered into a series marriage before applying for marriage dispensation of the Marriage Dispensation to the Kasongan Court.

Based on the background of the above problems, the author felt the need to conduct a study with the title "JURIDICAL ANALYSIS OF THE REFUSAL OF MARRIAGE DISPENSATION IN THE CASE OF SIRE MARRIAGE (DETERMINATION OF THE CASE OF THE KASONGAN NATIONAL COURT NO. 20/Rev.P/2021/PA.Ksn)".

METODE

This type of research is in the form of qualitative research because the data needed in this study is not in the form of statistics or figures. In this study, a normative juridical approach was used, where this study dissected the determination of a panel of judges by referring to statutory regulations or legal principles.

DISCUSSION OR RESEARCH RESULTS

Marriage, called "Marriage" a religious term, is binding between a man and a woman, voluntarily legalizing sexual relations between the parties and allowing the joy of both parties to make family life happy. Including love and peace in the way that Allah Almighty has chosen.⁹

⁹ Ahmad Azhar Basyir, *Hukum Pernikahan Islam*, (Yogyakarta: Fakultas Hukum UII 1977), 10.

Marriage or marriage is expressed in Arabic-Islamic jurisprudence with the two words marriage and zawaji. According to Fiqh, marriage is one of the most important basic principles of life in a unified or whole society. Opinions about the meaning of marriage. According to Hanabilah, marriage is a contract that uses the word nikah, meaning tajwith, and is intended to be enjoyed for its use.¹⁰ According to Sajuti Talib, marriage is a strong and steadfast agreement between a man and a woman to live together legally and form a family that is polite, compassionate, loving, peaceful and eternal,ly happy.¹¹

According to the Marriage Law Number 1 of 1974, Marriage is the union of a man and a woman as husband and wife, with the aito formto formon the One True Godheadform onddition to the above legal understanding, the collection of Islamic law also contains other formulations that complement it without reducing the meaning of law. Marriage according to the Islamic law is a very strong contract or mitsaqang harizhan, a worship that must be carried out in accordance with Allah's commands.¹²

Pillars and Conditions for Carrying Out Marriage

The pillars and conditions for carrying out the marriage state that the legal act, in particular the deed, is valid. Both words have the same meaning because they contain the same meaning. At the wedding should not neglect the harmony and conditions.

The pillars and conditions determine the occurrence of a legal act, especially related to the validity or not of an act in terms of legal views. Both words have the same meaning in terms of that they are something that must be implemented. At a wedding get along well and the conditions should not be abandoned. Marriage is invalid if both are not fulfilled. The two have different intentions regarding getting along well and important conditions in marriage. Although the conditions are external, it is not a condition. There are provisions related to the column in terms of the conditions that apply to each term that is a column. There is also an independent condition in the sense that they do not get along well for the conditions in marriage.¹³

a. Marriage Association

The pillars of marriage are:

1. The existence of the groom

¹⁰ Abdurrahman Al-Jaziri, *Kitab 'ala Mazahib al-Arba'ah* (Beirut Libanon: Dar Ihya al-Turas al-Arabi, 1986), 3.

¹¹ Moh. Idris Ramulyo, *Hukum Pernikahan Islam*. (Jakarta: Bumi Aksara, 1996). 2.

¹² Departemen Agama RI, *Instruksi Presiden R.I Nomor 1 tahun 1991 Kompilasi Hukum Islam di Indonesia* (Jakarta: Direktorat Jendral Pembinaan Kelembagaan Agama Islam, 2000), 14.

¹³ Amir Syarifuddin, *Hukum Pernikahan di Indonesia: Antara Fiqih Munakahat dan Undang-Undang Pernikahan*, (Jakarta: Kencana, 2009), 59.

2. The existence of the bride
3. The bride's guardian
4. Witnesses attended by two people
5. Ijab is performed by the guardian of the bride-to-be, and qabul is performed by the groom-to-be.¹⁴

b. Marriage Requirements

The condition is something that determines whether or not a job (worship) is valid, but is not related to the network of work. The legal conditions of marriage are:¹⁵

1. The Bridegroom

A man who is going to marry a woman must meet several conditions, as follows:

- a) Not one nasab
- b) Not in coercion
- c) Pure male
- d) Not in a state of ihram

2. Bride

The future wife to be married must meet several conditions, as follows:

- a) Single
- b) Not tied to blood relationships that are forbidden to marry
- c) Has finished the iddah period
- d) Not forced
- e) Pure women
- f) Not in a state of being ihram

3. Guardian

The conditions for making a guardian in a marriage, must meet the following conditions:

- a) Men
- b) Have Turned Back
- c) Not crazy
- d) Of your own accord
- e) Not one-sided

¹⁴ Departemen Agama RI, *Instruksi Presiden R.I Nomor 1 tahun 1991 Kompilasi Hukum Islam di Indonesia, Pasal 14*, 18.

¹⁵ Al Hamdani, *Risalah Nikah Hukum Pernikahan Islam Cet. 2*, (Jakarta: Pustaka Amani, 2002), 67-68.

f) Not in a state of being ihram

4. Ijab Qabul

Ijab is a surrender uttered by the guardian, while Qabul is something that the bridegroom or his deputy utters witnessed before two witnesses.

5. Maskawin

Maskawin is a gift from the bridegroom's side to the bride's side.¹⁶ In line with the opinion of the Fuqahas that the dowry is a condition for the validity of the marriage and that no consent should be made to eliminate it.

Article 30 of the KHI explains that: "the prospective groom is obliged to pay a dowry to the prospective bride whose amount, form and type are agreed upon by both parties".¹⁷ That is to realize the Sakinah family, mawaddah and warrahmah.

A sakinah family is a family that creates a sense of peace and tranquility. A family that is introverted is a family of no prejudice against their partner (Overthinking). Meanwhile, a warrahmah family is a family that has an abundance of love and affection felt by the married couple.¹⁸

Legal Basis for Entering into a Marriage

The Legal Basis for performing a Marriage is a law that regulates the relationship between people and refers to the distribution of biological relationships between a man and a woman that are closely related to the duties and imperatives resulting from the existence of marriage.

The Quran shows that all living things, including humans, are created in pairs and reconciliation. The order of man in married life arises from the level of marriage, in which its provisions are formulated into its own rules. As God said. SWT. Qs. An-Nisâ' [4]: 1

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً ۚ وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ ۚ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا

That is to say: O Man, you are devoted to your God, who created you from yourself (Adam) and created his partner (Eve) from him (himself). Between these two, God multiplies the lives of men and women. Being faithful to God, He seeks one

¹⁶ Abdurrahman, *Kompilasi Hukum Islam, Edisi I*, (Jakarta: AkademikaPressindo, 1992), 113.

¹⁷ Abdurrahman, *Kompilasi Hukum Islam*, 120.

¹⁸ Elie Mulyadi, *Buku Pintar Membina Rumah Tangga: Yang Sakinah, Mawaddah, Warahmah* (Jakarta: PT Gramedia Pustaka Utama, 2013), 79.

another in His name and maintains (maintains) family relationships (silaturahmi). In fact, God is always watching over you.¹⁹

It is also explained in the Quran Surah Ar-Rūm [30]: 21

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

That is to say: The proof of his greatness is that God created to you women of your own form, so that your heart is inclined and at peace with her and gives her affection and love between the two. Indeed, such a matter has a real sign (of the greatness of God) for those who think.²⁰

The legal basis for carrying out this marriage is summarized based on the sources of Islamic law, namely:

a. The source of the law is according to the Qur'an

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ ۗ وَاللَّهُ وَاسِعٌ عَلِيمٌ

That is to say: And marry those who are single and earn from your male Sahia slaves and Sahaya's servants are a woman. If they are in trouble, God makes them capable based on His gifts. Allah is once again the gracious (His gift) again the All-Knowing.²¹

وَاللَّهُ جَعَلَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا وَجَعَلَ لَكُمْ مِنْ أَزْوَاجِكُمْ بَنِينَ وَحَفَدَةً وَرَزَقَكُمْ مِنَ الطَّيِّبَاتِ أَفَبِالْبَاطِلِ يُؤْمِنُونَ وَبِنِعْمَتِ اللَّهِ هُمْ يَكْفُرُونَ

That is to say: God makes a spouse for you (a married couple) of your own form and makes for you of your wives, children and grandchildren, and gives you the blessings of the good. Why, then, do they have faith in the baṭil and deny god's favor?²²

b. Hadith Sources

Referring to the hadith of the Messenger of Allah S.A.W, narrated by Bukhari:

¹⁹ An-Nisa, 4:1.

²⁰ Ar-Rum, 30:21

²¹ An-Nur, 6:32

²² An-Nahl, 16:72

حَدَّثَنَا عَبْدَانُ عَنْ أَبِي حَمْزَةَ عَنْ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ عَنْ عَلْقَمَةَ قَالَ بَيْنَا أَنَا وَمُثَيِّبٌ مَعَ عَبْدِ اللَّهِ رَضِيَ اللَّهُ عَنْهُ فَقَالَ كُنَّا مَعَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ مَنْ اسْتَطَاعَ عِ الْبَاءَةَ فَلْيَتَزَوَّجْ فَإِنَّهُ أَغْضُ لِلْبَصْرِ وَأَحْسَنُ لِلْفَرْجِ وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ وَجَاءُ

That is to say: It is told from Abdah and Abu Hamzah > A'masy > Ibrahim > Alqalamah said; when I was walking with 'Abdullah r.a he spoke;: we were with the Apostle S.A.W at the time saying : "whoever is able (to provide for his family) let him marry (marry) because marrying is more able to look down and take care of the public more. Whoever cannot afford (to marry) then let him fast because the fast will be a stronghold for him". (HR. Imam Bukhârî)²³

From some of the above nash, it can be interpreted that based on Islamic law, that marriage has been described in detail in the Koran and Hadith.

Minimum Age of Marriage

Based on the teachings of the Islamic religion, the age to hold a marriage is not specifically regulated, but the teachings of the Islamic religion only provide clues to a person's readiness to hold a marriage. Regarding the question of providing instructions on the provisions of a person's readiness to hold a marriage, Islamic scientists do not agree with the instructions. Basically, in the Quran itself, it is not clearly explained regarding the establishment of a minimum age for a woman. Restrictions are given only based on the characteristics of the marriage, such as QS messages. an- Nisa [4]: 6.

وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ ۖ وَلَا تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَن يَكْبُرُوا ۗ وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعْفِفْ ۖ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ ۗ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهَدُوا عَلَيْهِمْ ۗ وَكَفَىٰ بِاللَّهِ حَسِيبًا

That is to say: And test orphans until they are old enough to marry. Then, if you think they are intelligent (good at storing treasures), then leave it to them the treasure. And thou shalt not eat it (the treasures of the orphans) beyond the bounds of decency and (thou shalt not) hastily (give it up) before they grow up. Whoever (among the saints) is able, then let him refrain from eating the orphan's property) and whoever is poor, then whoever eats the treasure properly. If you then hand over

²³ Imam Abdullah, Muhammad bin Ismail Al-Bukhari, *Terjemah Sahih Bukhari* Jilid VII (Semarang: CV. Asy.Syifa', 1993), 6.

the treasure to them, you must have witnesses. And God had enough as the overseer of the orphans until they were old enough to marry.²⁴

The Indonesian Ulema Council (MUI) believes that the age of eligibility to perform a marriage is the age of proficiency in doing (ahliyatul ada') and the ability to receive rights (ahliyatul wujub). The ability to do (the master of ada') is the ability to act legally which is considered perfect to account for all his deeds. Meanwhile, the ability to receive rights (ahliyatul wujub) is a person's readiness to receive rights that are rights that are burdened to a person.²⁵

On the other hand, based on the Indonesian Marriage Law which has undergone renewal which refers to Law No. 16 of 2019 contains the minimum age for carrying out marriages contained in Article 7 Paragraph (1) that to carry out marriages the couples have reached the age of 19 years. In addition, related to the age limit for allowing marriages to be allowed to be held is also regulated in the Compilation of Islamic Law.

In the Compilation of Islamic Law, the age limit for allowing marriage to be carried out is regulated in Article 15 Paragraph (1), this matter is based on giving consideration to the interests of the household, husband and wife, and family. This is in line with the principle to be achieved in the Marriage Act that couples who marry when in the future are socially and biologically prepared to achieve the purpose of marriage properly without divorce or having the best offspring. Therefore, the marriage of couples who are still underage must be prevented.²⁶

Marriage Dispensation

The minimum age has been set for those who are married, but it can deviate from the specified minimum age. For example, men and women who want to get married and or have been associated by someone who is under the age of 19 and caused an extramarital pregnancy. Therefore, if this happens, Law No.16 of 2019 Article 7 Paragraph (1) explains that which includes the minimum age in the marriage process, it can be excluded through a marriage action that allows minors to marry. This is also explained in Article 7 Paragraph (2) of Law No. 16 of 2019 which reads that in the event of a deviation from paragraph 1 of this Article, compensation can be requested from the court or other officers appointed by the male and female parties.

²⁴ An-Nisa, 4:6.

²⁵ Mardi Candra, *Pembaharuan Hukum Dispensasi Kawin dalam Sistem Hukum Di Indonesia* (Jakarta: Kencana, 2021), 17.

²⁶ Ahmad Rafiq, *Hukum Islam di Indonesia*, (Jakarta: Rajawali Press, 1998), 76.

Negligence or deviating something from a rule is Dispensation. Raising the age to carry out marriage means a certain reduction (age limit) in order to realize the relationship between a man and a woman as a husband and wife couple with the aim of forming a harmonious and forever family based on God Almighty.²⁷

Dispensation or deviating the age limit of permissibility of marriage is an exception granted by religious courts to spouses or one of the spouses who are under the age of 19.

Dispensation or deviating the age rules for allowing marriages to be carried out is regulated by Article 7 Paragraphs (1) and (2) of Law No. 16 of 2019. The exception as referred to in Law No. 16 of 2019 implies a deviation from the age at which they are allowed to marry, which is at least 19 years for couples who want to get married. Therefore, if the spouses have not reached the age of marriage but intend to enter into a marriage, the court chosen by the spouses may grant permission to enter into the marriage if the conditions set out in have met the requirements and have carried out some predetermined stage, but, on the contrary, if the specified conditions are not met, in this regard, the religious court may reject the application for dispensation which filed by the parties.²⁸

There is an interesting point of an injunction in the Case of Marriage Dispensation in case number 20/ Rev. P/ 2021/ PA. Ksn that the case was dismissed by the judge on the grounds that as quoted in his determination Considering, that further the Petitioner himself stated that the relationship between the two was very close. So that with the permission of the two parents of the child, the two children, namely Rika Puspita Sari binti Dagot KM and Baihaqi bin Rachmadi, had entered into a series marriage on July 22, 2021 before there was a determination issued by the Kasongan Religious Court.

Based on these facts the Examining Judge held that the case a quo could not proceed again on the grounds that the application for the petition was unfounded, i.e. since the discovery of the facts relating to the Petitioner's child having performed a marriage with her future husband on July 22, 2021 with the permission of the parents of both parties before there was permission from the Court, this fact at the same time omitted the grounds of the Petitioner's request to obtain permission for the Marriage Dispensation from the Kasongan Religious Court.

Considering, on these grounds the Examining Judge concluded the case could not proceed or NO (Niet Ontvankelijk Verklaard).

²⁷ R. Subekti dan R. Tjitrosoedibio, *Kamus Hukum*, (Jakarta: PT PradnyaParamitha, 1996), 36.

²⁸ Taufik Hamami, *Peradilan Agama dalam Reformasi Hakim di Indonesia*, (Jakarta: PT Tata Nusa, 2013), 31.

Based on the legal considerations in the said case, the rejection of this case was solely because the Petitioner's child and her future husband were married before applying for marriage dispensation not for any other reason. If that is the sole reason whether justice has been fulfilled for the Petitioner while justice is the purpose of the law. the judge must pay attention to three things, namely relating to justice, relating to certainty, and relating to expediency in each of his decisions.

Finding harmony in the law is not difficult or easy. The difficulty of achieving an ideal law is that the parties to the dispute must deal with the law or accept the consequences of the outcome of the award with open arms. In addition, this bill is expected to develop rapidly with the current evolution, regulating any potentially controversial, small or large acts and deeds. Independent implementation of theory and practice without integration affects the performance of the law itself. It is not important that the law is left behind at a time when the tide of change continues to follow the growth rate of society, which affects the existence of the law and the public's trust in the law.

As a rule, laws are made to give confidence to society (people) in various interests. It was expected that in the law of man (the subject of the law) would be achieved, and Gustav Radborch said that the law of his achievement should not be separate from justice, certainty and comfort. The existence of the law in question is a negative law (legislature) and a valid law (judges in court).

Given the importance of the principles relating to justice, legal certainty, and expediency contained in the judge's decision as the presiding judge of the court, the author felt the need to clarify how the ruling covers these three aspects so that the people seeking justice do not feel that their interests are ignored.

As a general rule, all decisions issued or decrees from the court must certainly reflect the hearts of the parties who want to get justice. The decision of the judge is urgently needed to review, solve, and decide a case filed by the parties in the Court. A decision must not give an ambiguous nature that would lead to misinterpretations or intentions made by the general public or other legal practitioners. The judge's decision that is ambiguous will later cause controversy in the judge's decision. A judge at the time of giving a verdict or decree has become a necessity to have knowledge of various disciplines that are currently constantly evolving along with the changing times and are sufficient for judges to handle the case.

The decision or provision of the panel of judges must meet several factors, namely:

1. A judge's ruling or decree is an explanation of the processes related to social life as a form of social control.
2. The judge's decision or decree is a form of legal embodiment that is applied and beneficial to all.
3. The judge's decision or decree is an alignment between the provisions of the law and the circumstances at the scene.
4. The judge's decision or decree is an appropriate form of awareness between the renewal of the law and society.
5. The decision or decree of the judge shall give a sense of justice, a sense of certainty, and a sense of expediency to all parties involved in the process.
6. The judge's decision or decree is not justified if it will cause a new conflict between the parties to the conflict with the rest of the community.

Indeed, a judgment or decree issued by a court reflecting fairness is not a criterion that is easily found by the parties to the dispute. Doing justice to one party is not necessarily fair in the view of the other party. The duty of a judge is to establish an appropriate justice based on the instructions given in the title of the judgment or determination, "For Justice Under the Lordship of Almighty." The justice referred to in the judge's decision is a decision or a provision that is impartial to one of the parties in the case, upholding a sense of equality of rights and obligations of the litigants. When making decisions, judges certainly follow the existing rules in order to make decisions in line with the justice that the community wants to feel. The winner can claim or acquire that right and the loser must fulfill his obligations. In order for a sense of justice to grow, the judgment or the decree of the judge in the court must be in harmony with the real purpose of providing equal opportunities in court to the parties to the trial. Delaying the settlement of a case is also an unreasonable form, so that the value of justice can be achieved even though the process of resolving cases is fast, easy, and cheap.

The judge's decision or decree that describes the sense of legal certainty certainly plays a role in the process of resolving cases in the court to find the right law. Judges do not rely solely on the law in making decisions, because the law may not be clear. Therefore, judges need to explore all aspects of law such as common law and unwritten law whose existence is recognized in society. In this regard, the judge must consider this and conclude it in the judgment or decree. The judge's decision or decree is part of the criminal prosecution process and has one goal, namely the achievement of truth or legal certainty from the law. Legal certainty is a product of criminal prosecution based on legally

appropriate procedural realities based on the procedure for resolving disputes at the time of the process, which is set forth in a court decision. Applying a rule of law must be in accordance with an urgent matter, so that judges must continue to be able to interpret the meaning of various laws and various other regulations on which the decision is based. The application of a rule of law must provide something concisely and precisely according to the case at hand so that the judge can wisely and objectively construct the case to be treated as a whole. Judicial decisions, including elements of legal certainty, contribute to legal development. In fact, the final decision of the judge is no longer an argument that comes from the judge himself, but an argument based on the judicial institution that is the benchmark of society.

A judge's ruling or decree describing utility is when the judge can not only carry out the law literally, but can actually take decisions that benefit the parties to the trial and society as a whole. The judge's decision or decree is a form of the rule of law that must maintain balance in the community so that the community can regain full confidence in all law enforcement officials. A judge who reasoned well can decide a case by making a decision when it is close to justice and legal certainty. Basically the principle of ease lies between fairness and legal certainty, which allows judges to attach more importance to the purpose or interests of the law for the benefit of the general public. Emphasis on the principle of comfort is quite rare. The rationale is that the purpose of life must be beneficial to man, as the law is for society.

Therefore, in an ideal civil court, a judge's ruling should adhere to all three principles. However, any judge's ruling can place special emphasis on one of the dominant aspects. This does not mean that the decision ignores other relevant principles. It is clear that these three principles are interrelated and cause the law to be a form for rules of conduct for all acts relating to the law. However, when all three principles are in real life, the sense of justice often clashes with the sense of providing legal certainty or legal reality and ease. Analysis of the judge's consideration explanation.

Analysis of the Qawaidul Fikiah Rules as a Reason for the Refusal of the Panel of Judges to Apply for Marriage Exemption in the Siri Marriage Case (Kasongan Religious Court Case Decision No. 20/ Rev. P/ 2021/ PA.Ksn).

In addition to the various considerations of the judge's arguments above, there is a fundamental statement for the judge to settle a case. What did the petitioner's children do by performing siri marriage on July 22, 2021 before there was a determination from the Kasongan Religious Court. That against that fact the examining Judge held that the case a

you could not proceed again on the grounds that the petitioner was unfounded, the fact at the same time omitting the petitioner's reason for seeking permission of the Marriage Dispensation from the Kasongan Religious Court. It was on these grounds that the Examining Judge concluded that the application was inadmissible or NO (Niet Ontvankelijk Verklaard). And the Judge only used that consideration in deciding this case.

According to the author the judge should look at the benefit. The impact of the inadmissibility of the Petitioner's application will create new problems for the petitioner and his children. If by marriage siri then according to Islam they have Shah as husband and wife but have not been said to be shah and recorded according to the laws of our country. Closely related to their shah status according to the state if they later have given birth to offspring, it will have an impact on the status of their children according to State law. Meanwhile, the Religious Court is a state institution to provide legal certainty for all its citizens.

Thus according to the author by granting the request through the judgment of the Kasongan Religious Court, it would provide greater benefit to the Petitioner than to reject the petitioner's application because they were married. One of the benefits obtained is that the descendants will get a birth certificate and inheritance rights in government law.

In harmony with the rule: The emergency must be eliminated

الضَّرُّ يُزَالُ

This rule conveys the understanding that people should be kept away from harmful actions both from their own desires and from others. Later, this rule became apparent in various cases, including limiting authority and restricting human freedom in exercising the right to use anything that endangers others. The second rule allows you to use emergency rules and allows you to do what is prohibited in an emergency (المحظورات).
الضرورات

With the granting of the determination of the marriage dispensation on the grounds of emergency according to the author the judge's consideration in the determination of the refusal of marriage in the application has not considered the benefit of the petitioner because they have been married and their deeds do not violate religious norms or societal norms but their actions do not comply with the laws and regulations. By granting the application for marriage dispensation, the state law will be recorded in the State Law which will have a maslahat impact on the bride and groom and their offspring in the future. The

sense of justice, certainty and expediency of a judge's ruling was immediately felt for them compared to when their application was rejected.

CONCLUSION

The application of the "State of Emergency" rule can be used as a basis for judges as a basis for allowing marriage applications because they are married in unregistered marriages. And, according to the author, judges do not necessarily have to adhere to one principle in considering, deciding, and deciding a case. On a case-by-case basis, judges may deviate from one principle to another, which is considered relevant to legal considerations. In legal considerations, this must be done with good reason. This is why judges put certain principles first without neglecting other principles. Therefore, the level of position of the judge's decision can be seen from the quality of the argument in providing the reasons used in resolving cases and legal considerations.

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