

## Juridical Review Of Minor Marriage Dispensation (Religious Court Determination Study Number 138/Pdt.P/2022/PA.Kdr)

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**Abstract.** Law Number 16 of 2019 which amends the old Marriage Law changes the marriage age limit for women and men to 19 years. So if you are less than 19 years old you are required to go through the marriage dispensation stage at the court. It is known that the marriage dispensation issued by the religious court plays a very important role in carrying out the legal process for underage marriages. In the decision of case number 138/Pdt.P/2022/PA.Kdr, the judge granted the request for a marriage dispensation letter due to the urgent situation that the prospective wife was 4 months pregnant. The research method used in this writing is a qualitative research method with descriptive analysis methods and accompanied by a normative juridical approach. The results of this research explain the conditions that must be fulfilled by the parties to obtain dispensation and analysis of determination number 138/Pdt.P/2022/PA.Kdr.

**Keywords:** Dispensation, Marriage, Religious Court

### INTRODUCTION

Marriage is a life transition from a single person to a family life. Apart from that, marriage is also said to be something that regulates behavior in cultural and social life, with an example of its manifestation being the existence of a good relationship between groups of relatives which then becomes one of the reasons for a marriage. Marriage also has a function in fulfilling human needs, namely intimate relationships and the need for a life partner to fulfill the needs for wealth, prestige and class level in society. So it can be seen that marriage has a functionalistic nature, where humans can fulfill everything they need in their lives so that humans can position themselves towards the functions and roles that exist in marriage (Oktarina, *et al.*, 2015).

In marriage or marriage there is an age limit for carrying out marriage. Previously, the age limit for marriage was regulated in Law Number 1 of 1974 concerning Marriage, where the minimum age limit for men was 19 years and the minimum age limit for women was 16 years. Then the rule was changed in Law Number 16 of 2019 which states that the minimum age for marriage for women and men is 19 years.

Regarding this minimum age limit for marriage, a stage and various considerations are needed which are called dispensations. The existence of this dispensation has the aim and purpose of ensuring that the parties who are getting married are considered very ready and mature physically, psychologically and mentally. This is because marriage is something that

supports population programs and is also something that is sacred and will last together until the end of life (Zulfiani, 2017)

A person can submit a request for dispensation to a religious court based on the applicant's domicile or legal area. This is explained in Law Number 3 of 2006 regarding amendments to Law Number 7 of 1989 concerning Religious Courts. The existence of the authority of the Religious Courts in granting marriage dispensations is aimed at providing an effort to legalize marriages for minors (Chandre, 2018).

The authority possessed by the Religious Court to grant, examine or reject dispensations must be based on careful legal considerations accompanied by philosophical, historical and sociological considerations, to carry out its role, namely providing protection to children (Chandre, 2018).

At this time, more and more cases or requests for dispensation for underage marriages are occurring in the Religious Courts because there are already regulations governing this marriage dispensation (Ma'shum & Pangestu, 2021). So based on these problems, the author is interested in further research regarding the considerations given by Religious Court judges, especially at the Kediri Religious Court, by conducting research entitled "Judicial Review of Applications for Marriage Dispensation for Minors (Religious Court Determination Study Number 138/Pdt.P /2022/PA.Kdr)"

### **Problem Formulation**

Based on the background above, the author can draw a problem formulation which is as follows:

1. What are the conditions that must be fulfilled by parties who wish to apply for a marriage dispensation at the Religious Court?
2. What factors influence the judge's consideration in issuing a letter of dispensation in decision number 138/Pdt.P/2022/PA.Kdr?

### **RESEARCH METHODS**

This research uses a type of qualitative research research with a descriptive analysis method which is a method of analyzing the data contained in the research object, namely what happens in the field in relation to the applicable laws and regulations, in this case the Marriage Law.

This research uses a normative juridical approach, which is research that is based on library research by collecting data related to reviewing literature, studying expert theories, namely scientific books.

## **RESULTS AND DISCUSSION**

### **Conditions that must be fulfilled by the parties when submitting a marriage dispensation letter to the religious court**

In submitting a request for marriage dispensation to the Religious Court, parents or guardians whose children are going to get married but are still minors must submit the application based on the legal area where the applicant lives. After applying for a dispensation, the Religious Court will examine and accept the dispensation and then continue with the trial process by providing evidence and facts to convince the judge to grant the dispensation with a decision. Then a copy of this determination becomes a basis for the applicant to continue the marriage process (Jumriati & Rumlatur, 2022).

This marriage dispensation is defined as a method for people who want to get married but do not yet meet the minimum age limit for marriage. So the parent or guardian of the child who is going to get married must apply for a dispensation by bringing the requirements to the Religious Court, which are as follows (Renggat, 2023):

1. Letter of application for marriage dispensation with the aim of going to the chairman of the Religious Court;
2. Bring a copy or photocopy of the applicant's identity;
3. Bring a copy or photocopy of the applicant's marriage book;
4. Bring a marriage rejection letter from the KUA;
5. Bring a copy or photocopy of the applicant's Family Card;
6. Bring a copy or photocopy of the birth certificate;
7. Bring a copy or photocopy of a child's diploma that does not meet the minimum age requirements;
8. Pay the costs of the matter;
9. As well as attaching proof of letters and documents to the court using A4 paper format.

After all the requirements have been fulfilled, the applicant will be summoned to carry out the trial by presenting the prospective bride and groom along with evidence and witnesses. Then the judge will examine the case and decide regarding the determination of this marriage dispensation.

It can be seen that the stages of filing a petition at the Religious Court are the same as filing a case at the Civil Court in general, namely as follows (Jumriati & Rumlatur, 2022).

1. Barges

The first stage, before making a request, is that the applicant comes to the desk with the aim of getting an explanation of the matters in the case, knowing how to make a request letter, and at the desk or clerk the request letter can also be made.

2. Table I

Then, the application letter that has been made will be signed and then submitted to the clerk of the Religious Court. And accompanied by the amount of fees that will be charged to the applicant. The range of costs must cover all stages of costs until the completion of the case based on Article 193 RBg or Article 182 paragraph (1) HIR or also Article 90 paragraph (1) UUPA, including stamp and clerk fees, examination fees, expert witness and interpreter fees. language, as well as oath fees, local examination fees and other judge actions, as well as costs for summons, notifications and other things based on orders. Court relating to the case.

For people who are deemed unable to pay, they will still be allowed to continue their case for free *orprodeo* by attaching a certificate of incapacity from the sub-district or village which is legalized by the sub-district head.

3. Cashier

Once the amount of the fee is known, the applicant will pay the fee through the cashier by submitting the application letter and SKUM, then the cashier will receive the money and record it in the case fee book. Which is then signed and proof of payment on the SKUM is given to the applicant.

4. Table II

After paying and obtaining proof of full payment, the applicant will appear before Table II by submitting the application letter and SKUM that has been paid, which will later receive the settlement file for the dispensation application case by the Chief Judge.

5. The panel of judges will study the case files and will determine the time the case will be heard. Then the applicant, the prospective bride and groom and witnesses come to the specified trial.

**Factors that influence the judge's consideration of issuing a marriage dispensation letter in case number 138/Pdt.P/2022/PA.Kdr**

Regarding cases that occurred in the field regarding marriage dispensations in the Religious Courts, there were various arguments presented by the applicant, namely as follows (Amalia & Dewi, 2019):

1. State firmly the agreement that has been agreed upon by all parties to establish a family or married relationship and accept all future consequences;
2. Feeling that there is no obstacle to carrying out the marriage for each of the prospective bride and groom;
3. The reason is that you are mentally or psychologically ready and have been deemed to have reached puberty;
4. There is a posita which states that the prospective bride and groom have a close relationship and are worried about violating a religious norm;
5. There is a reason that the prospective bride and groom have sufficient income and have been approved by their parents or guardians;
6. There is a reason that the bride-to-be is already pregnant;
7. There is a reason that parents take part in helping materially and immaterially.

The Panel of Judges, in taking considerations to determine the request for marriage dispensation, includes aspects including (Hidayati, 2017):

1. Reasons or arguments that are considered to strengthen the applicant's application;
2. There is proof that the letter is stated to be correct;
3. Witness testimony in strengthening the application;
4. Legal facts discovered during the trial.

### **The judge's considerations in determining the request for marriage dispensation in case number 138/Pdt.P/2022/PA.Kdr**

#### **1. Determination**

In the case with Determination Number 138/Pdt.P/2022/PA.Kdr, it is known that there is a case that is being considered by the panel of judges in resolving the case regarding the application for marriage dispensation with applicant I, aged 41 years with NIK 3571012008810000, residence in Kediri Regency, and applicant II, 39 years old, NIK 3571014212820007, resides in Kediri Regency.

Whereas the Petitioners are husband and wife who were married on 23 September 2000 as recorded by the Registrar and then divorced on 04 July 2019. They have 5 children, one of whom is 17 years and 7 months old. Whereas the Petitioners' child has been in a relationship with the Petitioners' child's future husband for 1 year, it is known that the two of them cannot be separated because they love each other and have mutually agreed to get married, where the marriage plan has also been approved by the families of both parties.

It is known that the petitioners had planned to marry the petitioner's child to her future husband, namely Moch Khoirul Mei, who is 26 years old, arguing that the marriage

of the petitioner's child could not be postponed and avoided because she was already pregnant with a fetus that was 4 months old.

Previously, the applicants had registered their marriage with the Kandat Religious Affairs Office in Kediri Regency, but it was rejected by the KUA on the grounds that the applicant's children did not meet the minimum age requirements for continuing the marriage.

Even though the applicant's child has just turned 17 years and 7 months and has not yet reached the minimum legal age for marriage, the applicant's child is already able to take care of the household and on the grounds that the prospective husband is able to provide for it because he already works as a fruit seller with a good income. considered sufficient, namely around IDR 2,000,000 (Two Million Rupiah).

Therefore, the applicant asked the Panel of Judges to issue a marriage dispensation to the applicant and the applicant's child so that they could get married.

On the appointed trial day, the applicants were present and the judge advised the applicants to postpone their child's marriage because they were still under the minimum age for marriage. Apart from that, if it continues, it will result in the cessation of the child's education and will also have psychological, social and economic impacts that the child will feel when they get married. However, the petitioners still insisted on asking the panel of judges to issue a marriage dispensation decree.

Next, the examination at trial begins with the reading of the applicant's petition, which essentially maintains the applicant's petition. It is also known that the panel of judges had listened to all the statements from the applicant's child and the applicant's child's future husband, where in their statements it was discovered that they had been in a relationship for 1 year and there were no obstacles between the two. The prospective husband of the applicant's child has also applied and was well accepted without any coercion or pressure on any party, so it can be concluded that both families agreed to marry their child.

The continuation of this marriage is based on one's own will without any coercion and has been agreed upon by both families. Apart from that, the applicant's child is 4 months pregnant and the prospective husband cannot postpone the marriage because the two of them really love and love each other, which is feared that they will again commit acts that are prohibited by religion and violate Islamic law and add shame to the family.

So based on this information, the panel of judges found facts at trial that the applicant's child and her future husband were inseparable and loved each other. There is also concern that there will be gossip or negative talk in the local community because the

applicant's child is pregnant. Apart from that, the panel of judges was aware of the fact that the applicant's child and her future husband had no obstacles to getting married, whether from Islamic law or applicable legislation. And finally, the panel of judges knew that the applicant's child's future husband was already working and had an income. This was a matter for consideration by the panel of judges in order to grant the applicant's request for a marriage dispensation.

So it can be concluded that the panel of judges is of the opinion that the applicant's children have fulfilled the marriage requirements based on Article 6 and Article 7 paragraph (2) of Law Number 1 of 1974 which was amended to Law Number 16 of 2019 concerning Marriage.

## **2. Body of Judge's Determination Number**

The body is defined as an important thing in a decision because it contains the judge's considerations which contain the main things in the case decision. In relation to case number 138/Pdt.P/2022/PA.Kdr, the Panel of Judges at the Kediri Religious Court determined the dispensation for marriage considering urgent matters and the marriage must be carried out quickly because the prospective wife is already pregnant, taking into account the benefit.

## **3. Judge's considerations**

In considering the determination in this marriage dispensation case, the judge did not only consider the legal side but there were several elements that were taken into consideration, namely (Sony, *et al.*, 2017):

1. The element of justice where the judge weighs the determination according to the rights that are treated to individuals or other parties;
2. The element of legal certainty, in this case has the aim of creating generally applicable rules and norms in order to create a safe and peaceful condition in a society;
3. The element of benefit means that the law must have benefits for society.

## **4. Determination Number 138/Pdt.P/2022/PA.Kdr**

The judge's considerations in determining the application for marriage dispensation in this case include, among others, the following:

1. The Kediri Religious Court has the authority to determine the application for marriage dispensation by considering that "this case is a marriage dispensation, therefore based on the explanation of Article 49 letter a number 3 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 which was later amended again with Law Number 50 of 2008, the Religious Courts have the duty and authority to examine,

decide and resolve these cases, therefore the Religious Courts have absolute authority to try this case";

2. The documentary evidence and witnesses presented by the party submitting the application for marriage dispensation are complete and meet the formal and material requirements, as well as the suitability of the existing witnesses;
3. Between each prospective bride and groom, there are no obstacles to marriage, either according to statutory regulations or Islamic law.

#### 4. **Judge's ruling**

The following is the decision issued by the Kediri Religious Court judge in Decision No. 138/Rev. P/2022/PA.Kdr as follows:

The decision issued by the Panel of Judges at the Kediri Religious Court in Case Number 138/Pdt.p/2022/PA.Kdr includes the following:

1. Grant the application for the issuance of marriage dispensation letters to the applicants;
2. Issuing dispensation to the applicant's children so they can marry their future husband;
3. Charge all the costs of the case to the applicants in the amount of Rp. 345,000 (three hundred and forty five thousand rupiah).

In determining the marriage dispensation in this case, the judge in his decision was not only based on the minimum age limit for the prospective bride and groom, but in determining that the judge had a professional nature, which means that the judge prioritized human interests rather than interpreting the law from the perspective of logic and applicable regulations. In this case it is called voluntary jurisdiction or a determination (*order*) which is decided based on an application (Judiasih, *et al.*, 2017).

## **CONCLUSION**

The minimum age limit for marriage based on Law Number 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage changes the minimum age limit for marriage to 19 years for both women and men. To submit a request for dispensation to the Religious Court, the requirements must be met, namely a copy or photocopy of the applicant's identity, a copy or photocopy of the birth certificate in the name of the applicant's child, bring a rejection letter from the KUA, and bring a letter of request for dispensation addressed to the Head of the Religious Court and pay downpayment of court costs.

Whereas the Panel of Judges' considerations in determining the application for marriage dispensation in case number 138/Pdt.P/2022/PA.Kdr granted the applicant's request with the



consideration that the applicant's child was already 4 months pregnant and the prospective husband of the applicant's child already had an income that was considered sufficient.

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