



Form of Judge's Consideration Against Dispensation Early Marriage

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Abstract:

The study aims to analyze the judgment of judges in granting early marriage dispensation at the Gorontalo Religious Court. This research belongs to the type of normative legal research with a statutory approach and a case approach. The data analysis technique used in this research is using qualitative data analysis. The results of this study show that the considerations of judges are classified into two, namely legal considerations and considerations of community justice. The negative impact arising from marriage under the age of marriage dispensation is: Husband and wife who marry under the age of age are prone to divorce; In terms of reproductive health prone to death in children and mothers; There will be a to poor; There is child exploitation. Positive Impact on the establishment of early marriage dispensation is: Useful to continue the chain of offspring; Can maintain and maintain the genitals; It can make Muslims more responsible; The achievement of peace and tranquility between husband and wife; Marriage plays a role in helping to maintain people's lifestyle.

Keywords: Judge's Consideration; Dispensation; marriage

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Introduction

Early-age marriage (early marriage) is a phenomenon that often occurs in Developing countries such as in South Asia, Southeast Asia, Africa and Latin America. Choe, Thapa and Achmad's research (Early Marriage and Childbearing in Indonesia and Nepal, 1999) in terms of demographics shows that marriage before the age of 18 years generally occurs in women in Indonesia, especially



in rural areas. This is because the level economy and low education in rural areas in Indonesia as well as inadequate access to information. (Zuraidah 2016)

United Nations Development Economic and Social Affairs (UNDESA, 2010) Indonesia is the 37th country with the highest number of early marriages in the world world in 2007. For the ASEAN level, the rate of early marriage in Indonesia is in second place after Cambodia. The 2010 Population Census data provides a general description that 18% of adolescents in the 10-14 age group years married, 1% have given birth to live children, 1% are divorced life. The incidence of young marriage in the group of adolescents aged 15-19 years who live 3.53% in rural areas compared to 2.81% in urban youth. (Zuraidah 2016)

The formulation of Article 1 of Law Number 16 of 2019 regarding marriage at least it means that marriage is the union of inner and outer ties both a man and a woman who bears the status of husband and wife with the hope of forming an eternal, happy family based on God Almighty.

Based on this, according to the author, human needs are:

Social beings certainly give birth to a sense of connectedness and an urge for each other relate to each other. Loving and being loved is something you can't is denied so that this attachment is also intertwined in the form of a small family tied with the ropes of marriage.

Law Number 1 of 1974, marriage is a bond between a man with a woman. Means marriage is the same as an engagement (*verbintenis*) as stated in Article 26 of the Civil Code, namely the law The law views the matter of marriage only in civil relations.

Remembering the purpose of marriage is to live happily and eternally without ending in divorce and getting good and healthy offspring. Therefore



marriages between prospective husbands and wives who are still underage must be prevented. The provisions of Article 15 of the Compilation of Islamic Law (KHI) which emphasizes that:

1. For the benefit of the family and household, marriage is only allowed carried out by the prospective bride and groom who have reached the age stipulated in Article 7 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, namely the prospective husband at least 19 years old and the prospective wife at least 16 years old;
2. For the prospective bride and groom who have not reached the age of 21 years, they must find permit as regulated in Article 6 paragraph (2), (3), (4) and (5) of the Law

Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.

Construction Article 7 Paragraph (1) of Law Number 16 of 2019 concerning Amendment to Law Number 1 of 1974 concerning Marriage as well implies that:

“Marriage is only permitted if the man reaches the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years.

In paragraph (2) it is explained that:

"In the case of deviations in paragraph (1) of this Article, a dispensation may be requested." to the Court or other officials requested by both parties' parents men or women."

In the general explanation, this law adheres to the principle: prospective husbands the wife must have matured her body and soul to marry so that she can realizing a good marriage without ending in divorce and getting good and healthy offspring. (Syahuri 2015)

Law Number 16 of 2019 concerning Marriage limits the age of marriage based on the purpose of marriage itself, namely to form a a happy and eternal household based on God Almighty.

Meanwhile, the factors that encourage the occurrence of underage marriages are related to economic factors, education, the will of children, parents and other factors have had a biological relationship so that they got pregnant before marriage. (Djau 2018)

Based on the author's search regarding the age limit for marriage entered at the Gorontalo Religious Court. The following are cases of marriage dispensation that are included in Gorontalo Religious Procurement as shown in the table below:

Table 1
Marriage Dispensation
Gorontalo Religious Court 2018 to 2020

No	Year	Remaining Case	Enter	Amount
1.	2018	6	65	71
2.	2019	1	99	100
3.	2020	-	104	104

Source of Empirical Data for the Gorontalo Religious Court, 2021

If you pay attention to the case of a marriage dispensation that has entered the The Gorontalo Religious Court, as explained in table 1 above, can explained that the implementation of Article 15 of the Compilation of Islamic Law (KHI) in particular in Gorontalo City has not been running effectively or not running optimally. This can proven by the case of dispensation of marriage where every year always experienced a



significant increase. In 2018 there were 65 cases of marriage dispensation, while in 2019 there were 99 cases. And finally in 2020, there were 104 marriage dispensations that were heard by the Gorontalo Religious Court.

Nikan dispensation itself is the granting of the right to a person to married even though they have not reached the minimum age for marriage. In the latest Marriage Law, "deviation" can be done through filing application for dispensation by the parents of one or both parties of the candidate the bride and groom to the religious court.

The urgent reason cannot be just a claim. There must be evidence sufficient support and become part of the judge's consideration in accept or reject the application for dispensation of marriage.

Problem Statement

A judge's decision is a statement by a judge, as a state official who is authorized to do so, pronounced in court and aims to end or resolve a case or dispute between the parties. Decisions are the essence of justice, the essence and purpose of all activities or processes the judiciary, contains the settlement of cases which since the start of the process have been burden the parties.

The focus in this research is on legal studies on the implementation of marriage dispensation at the Gorontalo Religious Court through the judge's consideration in determining the dispensation for early marriage. So what are the legal considerations by the judge in granting a dispensation for early marriage at the Gorontalo Religious Court and 2. What are the implications for the judge's decision in providing a marriage dispensation for the application of early marriage in the Religious Courts Gorontalo.



Method

This type of research is normative. normative legal research is a the process of finding a rule of law, legal principles, and legal doctrines in order to answer the legal issues at hand. (Marzuki 2010)

As well as the research approach carried out is the statutory approach and the case approach. Legal approach taken in this study, namely by analyzing the provisions of the regulations legislation that applies as positive law that has a correlation with the title study. (Naipospos 2018)

Sources of legal materials are obtained from primary legal materials and legal materials secondary, primary legal materials are original sources containing data information In other words, sources that directly provide data to data collector. (Sugiyono 2015) Secondary legal materials are legal materials which is usually in the form of data documentation and official archives. (Azwar 2012) Technique The data analysis used is qualitative data analysis. Qualitative data analysis is data collected naturalistically consisting of words that do not processed into numbers but in the form of words or sentences. (Sutopo 2006)

Discussion

1. Legal Considerations by Judges in Giving Determination of Dispensation for Early Marriage at the Gorontalo Religious Court

a. Procedure for Filing Dispensation for Marriage at the Religious Court of Gorontalo

Marriage is one thing that is taken seriously resulting in a person will be bound for life with his partner. Therefore, marriage requires careful preparation, namely maturity physical and mental maturity. Basically it is



the maturity of the soul that is very meaningful to enter the household gate. Marriage at a young age in when a person is not physically or mentally ready it often causes problems in later on, not even a bit of a mess halfway through. (Muhdlor 2013)

Indonesian marriage is regulated in Law Number 1 of 1974 about marriage. The law is one of the unification law in Indonesia that accommodates the aspirations of the people who are source of material law of marriage.

Based on Article 1 of Law No. 16 of 2019 as Amendment to Law Number 1 of 1974 concerning Marriage explained that:

"Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead".

The meaning of marriage in the teachings of Islam has the value of worship, so Article 2 of the Compilation of Islamic Law (KHI) formulates it as: following:

"Marriage according to Islamic law is a marriage that is a very strong contract or mitsaqan ghalan ghalizan to obey Allah's commands and carry it out is worship".

The purpose of marriage is clearly spelled out in the Qur'an and hadith Prophet, namely in the letter Al-Rum verse 21 as follows: *أَأَزْوَٰا تَسْكُنُوْنَ آِا اِنَّ فِيْ لَقَوْمٍ*

Translation:

"And among His signs is that He has created for you wives of your own kind, so that you may be inclined and have peace of mind. him, and He created between you compassion and mercy. Verily in that there are indeed signs for thinking people".



Marriage dispensation is an effort of leniency given by court to prospective husband and wife who have not reached the lowest age limit in order to get married. Application for dispensation for marriage is volunteer product in the form of determination. The so-called determination is the court's decision on the application case. And the goal is just to determine a certain condition or status for the applicant. In examine and adjudicate cases of marriage dispensation, the judge must really own and consider cases from various aspects, be it justice, benefits and benefits for children far into the future.

Marriage dispensation is required for prospective grooms who are not yet old 19 years old and the bride-to-be is not yet 16 years old. As specified in the Marriage law is only permitted if the male party reaches the age of 19 years and the woman has reached the age of 16 years as mandated by Article 7 paragraph (1) of Law No. 16 of 2019 as Amendment to Law Number 1 of 1974 concerning Marriage. Mechanism of filing an application case at the Religious Court Gorontalo as the results of interviews with the Registrar of the Religious Courts of Gorontalo City are as follows:

1. Table 1, receives a letter of application containing the identity of the parties, the fundamentum of the petition/posita, the petitum, estimating the down-payment of court fees and write it on the Power of Attorney to Pay (SKUM). For those who cannot afford it, it can be allowed for free (free).
2. The cashier, the applicant submits the application letter and SKUM. The cashier then; receive the money and record the case journal, sign and give the case number as well as a settlement on the SKUM, return the application letter and SKUM to the applicant.



3. Table 2, register the application in the register, give the case number with the SKUM number, hand it back to the plaintiff or the applicant one sheet of the lawsuit or application that has been registered, arrange case files and submit them to the deputy clerk for submitted to the Head of the Religious Courts through the Registrar.
4. Head of the Religious Courts, studying files and Forming PMH (Decision of the Panel of Judges).
5. *Registrar*, appoints the court clerk and submits the file application/complaint to the court.
6. PMH (Stipulation of the Panel of Judges), makes PHS (Determination of Session Day), summons the parties through the bailiff and hears the case.
7. Table 3, receiving files from the panel of judges, notifying the contents of the decision to the parties through the bailiff, notifying table II and the cashier relating to their duties, determine the powers of judges, submit a copy of the decision to the applicant and related agencies, submit the file to the young clerk.
8. Junior Registrar of Applications, registers cases, reports and archive. (Arto 2018)

After the trial was opened and declared open to the public by Chairman of the Assembly, the parties in the case are summoned to the courtroom.

Then the chairman of the assembly reads the application letter of the applicant who has registered with the Registrar of the Religious Courts. Furthermore, the chairman of the assembly began the examination with questions posed to Mr



the applicant, the applicant's child and the applicant's prospective child alternately. Then The Chairperson of the Assembly continued to examine the evidence of the letter, and the applicant submitted documentary evidence in the form of:

- a. Photocopy of birth certificate in the name of the applicant's child issued by village or ward head.
- b. Notice of refusal to marry Model N-9 which issued by the Office of Religious Affairs.

Furthermore, the Chairperson of the Assembly stated that the session was suspended for discussion. The applicant, the applicant's child and the applicant's prospective child are ordered out of the courtroom. After the deliberation is over, the suspension is lifted and

the applicant is called back into the courtroom, then the verdict is read out as follows:

1. Granting the applicant's application.
2. Determine to give dispensation to the applicant to marry off his son named xx with xxx.
3. Charge the applicant a fee

After reading the stipulation, the Chairperson of the Assembly declared the session closed. If the applicant is not satisfied with the judge's decision, the applicant can an immediate appeal, not an appeal. (RI 2012)

b. Factors in the Dispensation of Marriage at the Gorontalo Religious Court

If you look at some of the decisions at the Gorontalo Religious Court, where is it?

marriage dispensation application is caused by 2 factors, namely: preventive and curative. Preventive (prevention efforts) is the prevention of adultery which done by their children because of the development of social media, lifestyle and adolescent association, so that their tendency to associate freely is more high, then hastening the marriage is an attempt to overcome the danger for teenagers from promiscuity. Although not quite old enough. Most of the parents who apply for a marriage dispensation, most of them have reasons, they are afraid their children commit adultery or get pregnant before marriage. Because, They have been dating for a long time and are hard to separate. They choose to marry his son as a solution and apply for Dispensation of Marriage in religious courts.

Curative (efforts or healing efforts) healing efforts for people old man who has no other choice but to give the child a choice to marry to cover the disgrace and save the child's status, as well as to guard against slander resulting from extramarital relations. Factors pregnant out of wedlock are become the dominant factor in the dispensation of marriage in the Gorontalo Religious Court.

c. Legal Considerations by Judges in Giving Determination of Dispensation for Early Marriage at the Gorontalo Religious Court

Judges' considerations are classified into two, namely:

1. legal considerations. Legal considerations here mean that when a judge makes a decision, it must be in accordance with the arguments and evidence proposed law. The evidence usually required by law is: a) documentary evidence, including: 1) photocopy of the birth certificate of the name of the applicant's child issued by the Village/Kelurahan Head; 2) letter



Notice of Refusal to Consummate Marriage (Model N-9) issued by the Office of Religious Affairs; b) witness evidence. As for witness evidence The judges usually present in court are two people.

2. Consideration of community justice. Marriage is often considered as a alternative solutions for solving social problems that will occur are: marry a child who is already pregnant first to cover the shame.

The judge always grants the request for dispensation from marriage because of the relationship out of wedlock, with the consideration that women who are pregnant without a husband will humiliated and ostracized by society.

The judge in giving a determination is obliged to explore the values of justice that lives in society, as well as judges in determining against the application of someone who wants to apply for a marriage dispensation as stated in Article 7 paragraph (2) of the marriage law, which reads:

"In case of deviation from paragraph 1 of this Article, you can request a dispensation from the Court and other officials, appointed by the parents." male or female."

A decision in which the consideration is the part that starting with "About the Legal Considerations or About the Law" which includes: (Blessed 2016)

1. An overview of how judges qualify, namely looking for and find the law that must be applied to a fact and event submitted.
2. Judge's assessment of the facts presented
3. Judge's consideration in chronological and detailed manner for each item, both from the applicant and the respondent.



4. The legal basis used by judges in assessing facts and making decisions case, written law and unwritten law.

Gorontalo Religious Court Judge in determining marriage dispensation must dig based on information from evidence and information from the witnesses and then the statements of the witnesses are matched with the information from the applicant, the witnesses that can be presented at trial are: two persons. And the judge's consideration in the case of the Assembly's marriage dispensation The judge will prioritize or consider the benefit and avoid adultery and deeper sins. The judge was of the opinion that

Avoiding greater harm must take precedence over attracting benefit.

Before the Court decides on the a quo petition, the judge first needs to consider the facts at trial. After obtaining the the facts in the trial if the facts are left with excuses has not met the minimum age for marriage, it is feared that it will cause negative impacts or serious harm is bigger, therefore in considering this case the Panel of Judges

interpreting the formulation of Article 15 paragraph (1) of the Legal Compilation Islam which emphasizes that for the benefit of the family and household, Marriage can only be done if the prospective husband is at least 19 years old and the prospective wife must be at least 16 years old, but in this case the Assembly The judge was of the opinion that avoiding greater harm should take precedence over attracting benefit.

Based on several statements from the Judges in the Religious Courts Gorontalo, it can be concluded that the factors behind

There are two kinds of marriage dispensation, namely as follows:

a. Unwed pregnancy

One of the factors behind the submission of a marriage dispensation application at the Gorontalo Religious Court is pregnancy out of wedlock, this was stated by one of the Gorontalo Religious Court Judges as follows:

"In the case of a marriage dispensation application, there is an application for a marriage dispensation and the cause is due to pregnancy outside of marriage and avoiding slander. Pregnancy out of wedlock is a factor that dominates the occurrence of marriage dispensations in 2018 to 2020, because marriage dispensations are used as a bridge to cover family shame and also to prevent further damage if not married. It is influenced due to the development of the era, the easier it is for someone to establish a relationship and the easier it is to have a relationship between the opposite sex without any restrictions, resulting in promiscuity and then pregnancy outside of marriage"

Then the panel of judges stated their considerations in granting a marriage dispensation request are:

"The judge in his acceptance also considered that there had been a pregnancy out of wedlock, with the consideration that women who were pregnant outside of marriage would be humiliated and ostracized by the community. And this will have an impact on the woman and the child she will give birth to."

The Compilation of Islamic Law does not implicitly prohibit marrying someone who has an extramarital relationship, let alone causing it to happen pregnancy. This is contained in Article 53 which reads. (Islam 2001)

- 1) A pregnant woman out of wedlock, can be married to a man who impregnate her.
- 2) Marriage with a pregnant woman referred to in paragraph (1) can be carried out without waiting for the birth of her child.
- 3) With the marriage taking place when the woman is pregnant, no Re-marriage is required after the child is conceived.



b. Worried about Slander

The implementation of the marriage dispensation at the Gorontalo Religious Court is wrong one is due to worrying about slander, parents are worried towards their children who have been dating for quite a while and they often gather together so that it is feared that things will not happen desired. This causes negative thoughts to appear if there are any

a pair of boy and girl in one location. The view of society that does not allow someone who is not yet married to be close and travel all the time with the opposite sex. So that people's perceptions of avoiding slander are so that they can always be close and not do anything adultery is to marry her. Even though that carried out on children under the age of 19 years for boys and 16 years for girls. But because of the fear of the parents who saw the child always travels with the opposite sex, so for maintaining the good name of the family, namely avoiding slander marry them off by applying for a marriage dispensation at Gorontalo Religious Court.

This is because today's children are close to the opposite sex does not really pay attention to the restrictions that are prohibited from religion, they follow the existing passions. So that parents worried about what their children are doing and chooses to get married

their children, because if they are not married, they are afraid that they will increase their sins. Thing

This was explained by a member of the Gorontalo Religious Court panel of judges who said:

“In terms of applying for a marriage dispensation, parents always feel worried about their children. Because if the children have been dating for a long time and they often gather together, it is feared that unwanted things will happen. Moreover, there are some parents who do not prohibit or even



allow a child to stay at their partner's house so that it will cause negative things to happen. If this has happened, it is possible that it will cause slander everywhere both from the family environment, friends and society".

2. Women's and Children's Rights in Positive Law

1. Negative implications for the determination of dispensation for early marriage in the Gorontalo Religious Court

Negative impacts arising from underage marriage, marriage dispensation

that is:

a. Husbands and wives who marry under age are prone to divorce.

Before getting married, the prospective husband and wife need mental readiness from the side physically and mentally, including age maturity.

b. In terms of reproductive health, children and mothers are prone to death. In health it is said that women under 21 years old, all of their reproductive organs are not ready to be used to contain and giving birth. (Arka 2021)

c. Poverty will arise, usually underage marriages are very vulnerable to poverty because economically they are not ready to work.

d. There is exploitation of children who because of marriage they finally have to work and take care of children. (B1 2014)

The purpose of the marriage dispensation is to legalize something relationship so that things do not happen that cause harm in a relationship, but the reality that occurs in practice This marriage dispensation has an impact on the the sanctity of a marriage. Until there are so many divorces carried out by those who carry out early marriages where the relationship their marriage is still in the term of marriage which is still very short.



2. Positive Implications for the determination of dispensation for early marriage at the Gorontalo Religious Court

Marriage in Islam is not merely a civil relationship or contract, but has the value of worship, and bring great benefit or good, among other things as follows.

- a. Useful for continuing the human lineage on earth, increase the number of Muslims
- b. Can maintain and protect the genitals, and do not enjoy things that are forbidden by the Shari'a, which can damage the structure of life public.
- c. Can make Muslims more responsible for protecting and trying to provide for his wife
- d. The achievement of calm and tranquility between husband and wife and the realization of peace of mind.
- e. Marriage plays a very important role in helping to maintain a pattern of life society from abominations that can destroy human morals and keep it away from the genitals.
- f. Able to maintain and preserve offspring, and strengthen the rope kinship and brotherhood with one another.
- g. Marriage will lift people from life like animals to a very noble degree of humanity. (Novitasari 2015)

3. Legal Implications Regarding Rights and Obligations between Children, Mothers who Giving birth to her and her biological father (her genetics)

Some of the legal consequences concerning the rights and obligations between children, the mother who gave birth to them and their biological (genetic) father, namely: (Sударsono 2015)



a. Connection lineage. Article 100 Compilation of Islamic Law as previously taught. In fact, the biological (genetic) father is a man who impregnates the woman who gave birth to him.

b. Living Because the child's status according to law only has relationship lineage with his mother and his mother's family only, then what is obligatory The only source of income for the child is his mother and his mother's family. As for the biological father (genetic), even though the child is biologically is a child that comes from his sperm, but in a formal juridical manner, he has no legal obligation to provide a living for the child.

c. Inheritance Rights

As a further consequence of the kinship relationship as stated, then the child only has an inheritance-inherited relationship with his mother and his mother's family

d. Trust Rights

If in a case that the child born as a result of adultery (out of wedlock) turns out to be a woman, and after growing up the child will marry, then the biological (genetic) father has no right or is illegitimate to marry her off (to become a marriage guardian).

Conclusion

Judges' considerations are classified into two, namely legal considerations and community justice considerations. Legal considerations here means that when the judge makes his decision, it must be in accordance with the arguments and legal evidence submitted, while the consideration of community justice because marriage is often considered as an alternative solution for the settlement social problems.



That according to Imam Malik and Ahmad bin Hanbal as well as who are married in the form of adultery ordoubtfulor marryimperfect, then he must purify oneself at the same time as the iddah. Imam Hanafi's opinion:

"A woman who is pregnant because of adultery has no iddah, it is even permissible to marry her. but can't have sex until she gives birth content".

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