

Case Studies on Marriage for Children Who Have Not Reached the Age Limit

Zefanya Angellin Chen¹ Vanessa² Felicia Amanda Sulistio³

Department of Law, Faculty of Law, Universitas Tarumanagara, West Jakarta City, Province of
DKI Jakarta, Indonesia^{1,2,3}

Email: zefanya.205220067@stu.untar.ac.id¹ vanessa.205220089@stu.untar.ac.id²
felicia.205220282@stu.untar.ac.id³

Abstrak

Marriage is a living union for the legalization of sexual relations and to obtain offspring or children, which is regulated by the rule of law. Article 1 of the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage states that "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in the One Supreme God." Indonesia is rife with cases of underage child marriage, which means that they have not reached the age of 19 (nineteen) years. Cases of child marriage do not only occur in remote areas, but also occur in big cities. Law Number 16 of 2019 states that "Marriage can only be permitted if a man and a woman have reached the age of 19 (nineteen) years". This case occurred because of many factors, namely, socio-cultural factors, economic problems, low education, religion, unemployment, social media, thoughts and beliefs, and orders from parents. Young marriages have a negative effect because teenage husband and wife are not mentally and physically ready to build a family. Good and maximum handling is needed from the state, government and the surrounding environment to prevent an increase in cases of underage marriages. If treatment is given or carried out properly, it will produce positive impacts such as reducing infant and maternal mortality rates and reducing divorce rates.

Keywords: Child Marriage, Article 1 of Law Number 1 of 1974, Law Number 16 of 2019, Factors of Child Marriage, How to Prevent Child Marriage.



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INTRODUCTION

Humans are essentially social beings who cannot live alone. Throughout his life humans always live together in social interaction. Living together can be connoted in a marriage relationship. Marriage is a living association for the sake of legalizing sexual relations and obtaining offspring. In Islamic Law, marriage has the meaning of marriage, which is a binding bond between a man and a woman to build a household relationship that is legal and recognized in the eyes of law and society. Marriage can be declared valid if it complies with the terms and conditions in the Civil Code, in accordance with Article 26 of the Civil Code, namely that marriage is only seen from the civil law.

With one condition that is not in accordance with the Civil Code, the marriage cannot be legalized, apart from these conditions there are also obligations such as having to notify the civil registrar about the intention of the marriage so that the employee gives an announcement about the event that the marriage will take place. In addition to fulfilling the marriage requirements in accordance with the Civil Code before marriage, both parties can also enter into a marriage agreement to make an agreement to separate assets and manage each property if desired, which will be inherited by their children in the future.

Article 1 of Law No. 1 of 1974 states that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in One Supreme God. According to Wirjono Prodjodikoro, marriage is the living together of a man and a woman who fulfill certain conditions. Meanwhile, according

to Subekti, marriage is a legal relationship between a man and a woman for a long time. Based on the above understanding, it can be concluded that marriage is a bond between a man and a woman who fulfills certain conditions for a long time.

One of the conditions for being able to enter into a marriage is when both parties have reached a predetermined age limit, namely the man who has reached the age of 19 and the woman who has reached the age of 16. The age limit for marriage is stated in Article 7 paragraph 1 of Law Number 1 of 1974 concerning Marriage. The reason for determining the minimum age limit for marriage is that this age is considered mature and ready both mentally and physically to build a household relationship. Law No.16 of 2019 concerning Amendments to Article 7 paragraph 1 of Law Number 1 of 1974. Law No.16 of 2019 states that "Marriage can only be permitted if the man and woman have reached the age of 19 (nineteen) years. There was an amendment to Article 7 paragraph 1 of Law Number 1 of 1974 due to an increase in the number of cases of abnormal and deviant marriages, such as early marriage or marriage at a young age, polygamy, domestic violence (KDRT), and ending in divorce.

In addition to preparing couples to be able to build a good household, the imposition of a marriage age limit is to prevent domestic violence (domestic violence) and divorce. Factors that trigger domestic violence (domestic violence) and divorce include early marriage or marriage at a young age because the average young age does not have strong physical and mental readiness, there is still a lack of knowledge about emotional management and problem solving. . Even though the State has regulated the age limit for marriage, in society there are still underage marriages that are carried out. Underage marriage is a marriage that takes place with one of the bride and groom who is underage or both brides (male and female) who are underage or have not reached the age limit that has been set. Juridically, underage marriage is an illegal marriage because it is contrary to the provisions of the law. Underage marriages cannot be registered at the Office of Religious Affairs (KUA) for Muslims and the Civil Registry Office for non-Muslims.

Underage marriage is a practice that has often occurred and is not uncommon to be found in Indonesia. Underage marriage occurs because it is influenced by several factors, namely; because of the belief in the ancient matchmaking system, economic problems, cultural factors and strong beliefs, and low levels of education. To prevent more cases of underage marriage or early marriage, various methods are needed, namely by providing proper formal education, providing socialization of sex education or sex education, providing empowerment to the community so that they better understand the negative impacts of underage marriage, encouraging the government's role to increase the minimum age of marriage to reduce pregnancy complications, as well as encourage the creation of gender equality, meaning that women and men have the same right to make their own choices in marriage. Problem Formulation: What is the analysis of the judge's decision in determining number 150/Pdt.P/2023/PA.Bdw concerning Requests for Marriage Dispensation? What are the consequences of giving the marriage dispensation in this millennial era?

RESEARCH METHODS

The research method used is normative and empirical research, namely to examine data and observe the behavior patterns of people in the environment. The type of research used by researchers is normative and empirical research. Normative research is research that examines existing data to find a rule of law, legal principles, or legal doctrines to answer the legal issues at hand. This type of research study is oriented to social behavior that occurs in society. Empirical research is research that looks at patterns of behavior and problems that occur in society. The type of data used by the author is secondary data. Secondary data is data obtained based on books or encyclopedias, legal literature and opinions of legal experts. Secondary data

is obtained by analyzing and studying legal materials. Secondary data in this study are grouped into 2, namely:

1. Primary legal materials. Laws and regulations that are closely related to the problems studied in order to strengthen and obtain a theoretical basis for compiling research. The regulations used are: Law Number 16 of 2019 regarding changes to Law Number 1 of 1974 concerning Marriage, Law Number 1 of 1974 article 7 paragraphs 1 and 2, Article 1 paragraph (1) Law Number 35 Year 2014.
2. Secondary legal materials. Journals or papers made by experts or papers made by legal scholars relating to primary legal materials. Journals or scientific papers and opinions of legal experts.

The data collection technique used in this research is library research and interviews. Literature study is a technique for obtaining secondary data based on existing data related to the problem being studied. The data analysis technique used by the author is a qualitative data analysis technique, namely to produce descriptive data obtained orally from the person or behavior observed or written.

RESEARCH RESULTS AND DISCUSSION

In Law Number 1 of 1974, article 7 paragraph 1 states that marriage is only permitted if the man has reached the age of 19 and the woman has reached the age of 16. On October 14, 2019, Law Number 1 of 1974 was revised to Law Number 16 of 2019, which changed the minimum marriage age for women to 19 years. The age limit for women's marriage is the same as that for men, which is 19 years. Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage came into force on October 15 2019. In marriage, age is a very important object. With a lack of human psychological maturity at a young age, many cause severe shocks in marriages resulting in quarrels, lack of communication, problems in the economy caused by many married couples at a young age, both of whom are unemployed. These things are one of the reasons for the increase in the divorce rate in 2017-2019 in Indonesia, namely in 2017 there were 374,516 cases, then in 2018 there were 408,202 cases, and then it increased again in 2019 to 439,002 cases. With the change in Law Number 1 of 1974 to Law Number 16 of 2019, in 2020 the number of divorces has decreased to 291,677 cases, which is almost down by 34% of cases from last year.

Changes in the age limit in the law are also made to reduce the birth rate and reduce the risk of maternal and child mortality. The potential for a sex recession from the birth rate in Indonesia in 2021 will grow by 2.1 percent. The potential for a growing sex recession means that the average age of women who give birth to two children is during their reproductive years, that is, in the age range of 15-49 years. Maturity and maturity in building a household must be owned by a couple who wants to build a household. Mental and physical readiness must also be considered before starting a household relationship. When building a household relationship is not just to carry out the nature of being like a social being who cannot live alone, but in building a household it takes great responsibility and readiness to build and foster a household, so that unwanted things don't happen.

But in practice in society it is not directly proportional to the values changed by Law Number 16 of 2019. Even though the age limit for marriage has been set, in society there is still something called underage marriage. Increasing requests from parents to apply for a marriage dispensation for their children. Article 7 paragraph 2 states that in the case of deviations from Article 1, you can ask for a dispensation from the court appointed by both the male and female parents. Dispensation to the court or dispensation for marriage is an effort made for those who

want it but have not reached the specified limit. Or in other words, marriage dispensation is a legal leniency for those who do not meet the legal requirements of a positive legal marriage. One of the cases of application for marriage dispensation occurred in the Bondowoso area on March 13 2023 and was registered at the Registrar's Office of the Bondowoso Religious Court with the following arguments:

Chronology of Cases of Determination of Marriage Dispensation in Decision Number No. 150/Pdt.P/2023/PA.Bdw

BONDOWOSO RELIGIOUS COURT DETERMINATION No. 150/Pdt.P/2023/PA.Bdw

Application for Marriage Dispensation filed by:

KURNIATI BINTI KARDI, place and date of birth Bondowoso, 17 August 1969, NIK 3511061708760011, religion Islam, elementary school education, work not working place of residence in RT. 05RW. 02 Pekauman Village, Grujugan District, Bondowoso Regency as **Petitioner:**

SITTING THE CASE

1. Whereas the Petitioner has a biological child named DWI DANIATI BINTI DAMANHURI, the place and date of birth of Bondowoso. 03 December 2005 (17 years 2 months), Islam, Middle School Education;
2. That in the shortest possible time the applicant wants to marry off her biological child named DWI DANIATI BINTI DAMANHURI with her future husband named ASMAD EFENDI BIN ABD. RAZEK, place and date of birth Bondowoso 20 November 2002 (20 years 3 months), Islam, driver's occupation;
3. That her biological child named DWI DANIATI BINTI DAMANHURI and her future husband have been engaged for 7 months and their relationship is very close;
4. That her biological child named DWI DANIATI BINTI DAMANHURI is ready to become a wife and/or housewife because she is already very much in love with her future husband named ASMAD EFENDI BIN ABD. RAZEK;
5. That between her biological child named DWI DANIATI BINTI DAMANHURI and her future husband there is no prohibition against marrying according to law;
6. That her future husband works as a driver with an income of IDR 100,000 (one hundred thousand rupiah) every day
7. Whereas because the relationship between the two is already so close that the Petitioner is very worried that if he does not get married soon there will be an act that is prohibited by religion or laws and regulations,
8. That the biological child named DWI DANIATI BINTI DAMANHURI and her future husband are not married to other people;
9. Whereas the Petitioner has taken care of the marriage process of the Petitioner's child with her future husband at the Grujugan Religious Affairs Office of Bondowoso Regency, but the Religious Affairs Office refused because the Petitioner's child has not yet reached the age of 19;

CONSIDER

1. Considering, that based on Article 7 paragraph (1) and (2) of Law no. 7 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage states that marriage is only permitted if the male and female parties have reached the age of 19 (nineteen) years, if not yet reached the said age may request dispensation from the Court with very urgent reasons;

2. Considering whereas, because the relationship of her biological child named DWI DANIATI BINTI DAMANHURI with her future husband is already close and it is feared that the applicant's child and her future husband will commit an act that is prohibited by religion, but the Petitioner's child has not yet reached the age of 19 so that the KUA will refuse it;
3. Considering, that the evidence meets the formal and material requirements;
4. Considering, that based on evidence P.1 the Petitioner resides in the Bondowoso Regency area;
5. Considering, whereas based on evidence P.2, the applicant and DWI DANIATI BINTI DAMANHURI are united in one family, and the Petitioner is a parent/guardian;
6. Considering, whereas based on evidence P.3, the Petitioner's child named DWI DANIATI BINTI DAMANHURI is not yet 19 years old;
7. Considering, that evidence P.4 is an authentic deed and in accordance with the provisions of Article 8 of the Regulation of the Minister of Education and Culture Number 6 of 2015,
8. Considering, that evidence P.5 has fulfilled the formal and material requirements;
9. Considering, whereas based on evidence P.6, the Petitioner's child marriage was rejected by the KUA because he was not yet 19 years old;
10. Considering, whereas the majority of the Bondowoso people are Muslim, they have the habit of marrying off their children if their children do not go to school and have a close relationship with the prospective husband even though they are not yet 19 years old, they can even carry out unregistered marriage before carrying out a legal marriage according to the state;

DECIDE

1. Granted the Petitioner's request;
2. Giving a dispensation to the Petitioner's child named DWI DANIATI BINTI DAMANHURI to marry ASMAD EFENDI BIN ABD. RAZEK;
3. Charged the Petitioner to pay court fees in the amount of Rp. 260,000.00 (two hundred and sixty thousand rupiah);

In this case, the Judge is of the opinion that if the applicant's child is not immediately married to her future husband, she will commit an act that violates the law. Therefore, the Judge is of the opinion that if this reason is an urgent reason, then it has complied with the provisions of Article 7 paragraph (1) and (2) and Article 8 of Law Number 1 of 1974. In Article 7 paragraph (2), states that in in case of deviations from Article 1, you can ask for dispensation from the court appointed by both the male and female parents. Based on Article 7 paragraph (2) the reason for filing a marriage dispensation is an urgent reason and sufficient evidence which is used as the basis for a judge deciding whether to accept or reject a marriage dispensation application. Urgent reasons are important points to be considered by judges in deciding marriage dispensation cases. According to Muji Hendra, the reason for urgency is a situation where the bride and groom cannot postpone the wedding any longer on the grounds that the minimum age of marriage is not enough and given the negative impact that is greater for both of them.

Case Analysis of Determination of Marriage Dispensation in Decision Number No. 150/Pdt.P/2023/PA.Bdw

Based on the above case with Decision number 150/Pdt.P/2023/PA.Bdw, **KURNIANTI BINTI KARDI** submitted a request for marriage dispensation to the Bondowoso Religious Court to request that his biological child named DWI DANIATI BINTI DAMANHURI be married to ASMAD EFENDI BIN ABD. RAZEK on the grounds that the Petitioner's biological child or DWI

DANIATI BINTI DAMANHURI "is very much in love" with her future husband. And the Petitioner is worried that if he does not get married immediately, the two parties will commit acts that are prohibited by law and religion. The judge who decided on the Marriage Dispensation case filed by **KURNIANTI BINTI KARDI** also agreed with the urgent reasons put forward in the Petition.

The reasons put forward "Already so in love" are not urgent reasons and are clichéd and irrelevant reasons. The factor of "already in love" is not regulated in the Marriage Law and the fear of committing acts that are violated by law and religion can be resolved using other channels, namely children are given understanding and protection from parents regarding this matter, and the option to marry both parties for 2 reasons these reasons are not appropriate. Article 1 paragraph (1) Law Number 35 of 2014 concerning Child Protection which states that a child is someone who is not yet 18 years old, including children who are still in the womb.

In Decree No.150/Pdt.P/2023/PA.Bdw, the custom of the Bondowoso community to marry off their children when they are no longer in school, is also included in one of the applicant's reasons for applying for a marriage dispensation. When the Bondowoso people see that their children already have a close relationship with their partner, they don't even hesitate to carry out a religious unregistered marriage first, then carry out a marriage that is legal according to state law. With the traditions of the Bondowoso people which have been passed down from generation to generation, many other Bondowoso people have also applied for marriage dispensation.

In Decree No.150/Pdt.P/2023/PA.Bdw, the judge did not decide on the dispensation of a marriage not bound by positive law. The case regarding dispensation is only to obtain rights from the applicant so that what is needed is only witness statements from parties who know and know the applicant's condition. In deciding the request for dispensation from marriage, the judge is progressive, in which the judge prioritizes individual or individual interests from the existing point of view and culture.

In Indonesia, based on data from the Religious Courts, requests for dispensation of marriage in 2021 recorded 65 thousand cases and in 2022 there were 55 thousand filings. The application for a marriage dispensation is caused by the factor that the woman is already pregnant beforehand and the factor of encouragement from parents who want their child immediately because they already have a boyfriend. When you hear that their child already has a girlfriend, of course it makes parents worry, if their child will commit acts that are prohibited by religion and law or free sex.

In terms of association, there are often pregnancies outside of marriage that occur because of free sex or promiscuity that makes a person have to get married even though they are not old enough. According to some existing parents, if their child and his girlfriend already love each other, really care for each other, marrying off their child at an early age is the right choice to avoid unwanted things from happening. As was done by **KURNIANTI BINTI KARDI** who chose to apply for a marriage dispensation to the Religious Court so that his biological child named DWI DANIATI BINTI DAMANHURI could marry ASMAD EFENDI BIN ABD. RAZEK.

Although based on Article 7 paragraph (2) it allows minors to apply for a Marriage Dispensation which is legalized by the Court, the Judge in charge of adjudicating and making a decision must consider the reasons put forward when the Applicant submits a Marriage Dispensation. And does not grant the application for Marriage Dispensation if the reasons put forward are not strong enough. This consideration is done, to prevent the increasing number of early marriages that occur.

The purpose of passing Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage is the government's effort to prevent children from marrying too soon. In addition to preventing the increasing age of children for early marriage, this is done

by considering the consequences and rights that children should still get. Early marriages in Indonesia must be stopped immediately and their number reduced. The high number of marriages is also a threat of not fulfilling the basic rights of children, impacting them psychologically and physically, and increasing poverty rates, dropping out of school.

Because the age of the mother is immature and the mother's body is not ready to reproduce, it brings certain consequences to the prospective child. The consequences of granting dispensations are numerous, such as a higher risk of infant mortality, babies born on time or prematurely, malnutrition, and children at risk of growth retardation or stunting. In addition to the consequences for the mother and the child-to-be, the country is also affected by consequences such as the increasing number of divorces in Indonesia, namely in 2021 there have been 447,743 cases, increasing by 53.50% compared to 2020. The divorce is mostly due to quarrels that occur within the couple the husband and wife. Then, the views of the general public towards married minors are negative views. Because according to the general public, marrying underage is very much against the social norms and values that apply in this millennial era. Underage marriage is considered a violation of the right to freedom of the child, because underage marriage is not seen as the right values and norms in millennial society.

CONCLUSION

The result of the judge's decision in determining number 150/Pdt.P/2023/PA.Bdw concerning the Application for Marriage Dispensation is that it is granted, because the judge agrees with the urgent reason put forward in the application, namely the reason "Already love very much", and fear of committing an act that is violated by law, in our opinion the reasons put forward are cliché and irrelevant. The judge in charge of adjudicating and making decisions must consider sufficiently strong reasons and if the reasons put forward are not strong enough, the judge does not grant the dispensation of the marriage. This is done in order to prevent the increase in the number of marriages at an early age. Marriage at an early age has many consequences that must be borne, such as economic problems, the health of the mother and prospective children, the mental health of husband and wife due to the many bad views of millennial society towards early marriage. It is hoped that in the future judges will be more selective in considering requests for marriage dispensation so that fewer children will suffer the consequences of granting the marriage dispensation.

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