

COMPARATIVE ANALYSIS OF MARRIAGE DISPENSATION ARRANGEMENTS IN LEGISLATION IN INDONESIA

Muhammad Rinaldy Bima
Faculty of Law, Indonesian Muslim University
Email : muhrinaldy.bima@umi.ac.id

Received 20 Jun 2023 • Revised 5 Oct 2023 • Accepted 10 Nov 2023

Abstract

This thesis aims to determine the age limit for marriage as regulated in Law No. 16 of 2019. The law regulates the minimum age for marriage, which is 19 (nineteen) years for both men and women. In addition, this thesis also examines how the implementation of the new Marriage Law in the city of Makassar and the factors that cause underage marriages in the city of Makassar. This research uses empirical legal research (non-doctrinal legal research), which is a legal research method that focuses attention on the legal reality in society. The conclusion is that the number of underage marriages in the city of Makassar is still relatively high both before and after the enactment of Law No. 16 of 2019 concerning marriage in October 2019. The percentage of underage marriages in the Makassar City Religious Court obtained the following data: there were 70 cases of underage marriages in 2017, 82 cases in 2018, 57 cases in 2020, and there were 44 cases in 2021. In addition, based on the results of research that several factors cause underage marriages in Makassar city, including education factors, accidental marriage (pregnant out of wedlock), low level of education, and economic factors. The recommendation of this research is for the community because many requests for dispensation from marriage are motivated by the social environment, one of which is because of association, therefore it is necessary to give religious understanding from an early age to minimize the occurrence of things that are not good .

Keywords : Marriage Age Limit, Marriage Act, Underage Marriage

INTRODUCTION

In essence, everything in this world is created by God in pairs, and so do humans. God created humans in pairs so that humans could have offspring through marriage. Because nikah (marriage) according to its original meaning is sexual relations, but according to the magazine (metaphoric) or legal meaning, it is a contract (agreement) which makes sexual relations halal as a husband and wife or a man and a woman ¹.

Marriage is a bond that is not just an ordinary agreement and cannot only be carried out playfully, but is a heavy agreement, a strong bond (*mitsaqan ghalidzan*) that is difficult to separate for a long time and this requires mental readiness, the body and soul are mature (have matured) psychologically to be able to face the problems that are always present in the household ².

Article 6, paragraph (2) of the Marriage Law No. 1 of 1974 states that to enter into a marriage, a person who has not reached the age of 21 must obtain permission from both parents. In terms of the benefit of the family and household, marriage can only be carried out by prospective brides and grooms who have reached the age specified in Article 7 of the Marriage Law No. 1 of 1974, namely the prospective husband must be at least 19 years old and the prospective wife must be at least 16 years old. . Article 6 paragraph (2) states that prospective brides and grooms who have not reached the age of 21 must obtain permission as regulated in Article 6 paragraphs (2), (3), (4), and (5) of the Marriage Law No. 1 of 1974.³

In Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage which reads as follows: Article 7 paragraph (1) which explains that marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years.

¹Fauziatu Shufiyah, " *Early Marriage According to Hadith and its Impact* ", Living Hadith Journal, Volume 3, No. 1, 2018, Pg. 49

²Ekasari, E., Fatima, E., & Gibtiah, G. (2021). Comparative Analysis of Judge's Determination of Marriage Dispensation Due to Pregnancy Out of Wedlock. *Muqaranah* , 5 (2), 115-124.

³Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage

According to Rifka Julianty, analysis is a breakdown of the main parts and the study itself, as well as the relationship between the parts to get the right understanding and understand the meaning of the whole.

According to Sjachran Basah, comparison is a method of study or investigation by comparing two or more study objects to increase and deepen knowledge about the object being studied.

A dispensation is a state administrative decision that frees an act from the power of regulations that reject the act.

Marriage is an *aqad* (agreement) between a man and a woman in fulfilling his physical and spiritual needs as a human being. It is also a recommendation from religion so that it is channeled in a halal and holy way to produce good provisions in addition to having a respected place in the world society based on sharia provisions .

The purpose of marriage in Islam is not only to meet the physical and spiritual needs of humans, but also to form a family and maintain and continue offspring in living life in this world, as well as preventing adultery so that there is peace and tranquility of soul for those concerned.

Marriage dispensation is a marriage between a man and a woman whose age has not yet reached the age limit for marriage, where the age limit for marriage has been regulated in law. The age for marriage according to Law Number 16 of 2019 Article 7 paragraph (1), marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years. The age limit for marriage is very important, which needs to be taken into account when entering into a marriage, because an age that is too young when a person enters a marriage can affect the running of their household.

Marriage dispensation, according to the Marriage Law, gives someone the right to marry even though they have not reached the minimum age limit for marriage. This means that a person may marry outside of these provisions if and only if the situation is urgent or a situation where there is no other choice. The marriage must continue. In other words, a marriage can only take place after receiving dispensation from the court⁴

The impact of young marriage still has pros and cons in society. Some people view underage marriage as having more harm than good. They argue that underage marriage will have negative consequences and impacts, namely psychological disorders, pregnancy complications, economic problems, domestic violence and divorce.

The reality of marriages in Indonesia which experience marital breakdown, even leading to divorce, is relatively dominant. This is caused by various factors such as moral crisis, forced marriage, jealousy and so on. Mental readiness in facing aspects of economic difficulties, religious appreciation, and the nature of marriage is a result of the couple not being mature in physical and psychological terms.

Marriage age is the main aspect in building a household, the psychological maturity factor will eliminate the tendency to conflict (broken home). The minimum age limit for marriage is necessary because marriage is a legal event that will change a person's position, rights and obligations. These changes include changes to the rights and obligations of a child becoming a husband or wife. This is why marriage requires truly thorough preparation, both biologically and psychologically. Including economic readiness to be able to live a domestic life.

Apart from preventing underage marriages, Law No. 1 of 1974 concerning marriage itself has provided several provisions to prevent divorce. This can be seen in Article 38, which stipulates that a marriage is dissolved because:

- a. Death
- b. Divorce
- c. Based on the court's decision

To emphasize the provisions of the Law above, in Article 19 of the Republic of Indonesia Government Regulation No. 9 of 1975 concerning the implementation of Law No. 1 of 1974 concerning Marriage, the reasons for divorce are stated, namely:

- a. One of the parties commits adultery or becomes a drunkard, addict, gambler, etc. which is difficult to cure
- b. One party leaves the other party for 2 (two) consecutive years without the other party's permission and a valid reason or for other reasons beyond their ability
- c. One of the parties receives a prison sentence of 5 (five) years or a heavier sentence after the marriage takes place

⁴ Chanso, SE, Sugianto, S., Rojabiyah, L., & Robby, RR (2023). Comparison of Chen and Markov Chain Methods to Predict the Number of Marriage Dispensation Cases upon the Enactment of Law no. 16 of 2019. *Brilliant: Research and Conceptual Journal*, 8 (1), 170-179.

- d. One party commits cruelty or serious abuse that endangers the other party
- e. One of the parties suffers from a physical disability or illness as a result of being unable to carry out their obligations as husband/wife
- f. There are constant disputes and quarrels between husband and wife, and there is no hope that they will live in harmony again in the household.

Based on the explanation above, it can be understood that a husband and wife who apply for divorce before a court hearing must fulfill the reasons contained in Government Regulation Number 9 of 1975 and the Compilation of Islamic Law (for those who are Muslim). This is, of course, important so that husbands or wives do not easily think about not getting a divorce, especially if, in fact, when the intention to divorce arises, there is not yet sufficient reason for it. Divorce is not the best way to resolve disputes in a household, but in the Al-Quran and As-Sunnah already regulates the procedures for divorce. Which means divorce is not a thing prohibited as long as it is done with a goal that is more beneficial for life both parties.⁵

Based on the background above, it encourages the author to analyze and study more deeply the application of the provisions on marriage age limits in the jurisdiction of the Makassar City Religious Court. Problems are a reality faced and must be resolved by researchers in research. By formulating the problem, the scope of the research can be maximally analyzed so that it does not lead to things outside the problem raised in this research, namely how the marriage rate compares due to the marriage dispensation and the enactment of Law no. 1 of 1974 concerning marriage and Law no. 16 of 2019 concerning marriage in the Makassar City Religious Court, and also what factors influence the dispensation for marriage in the Makassar City Religious Court?

RESEARCH METHOD [Arial 10 bold font]

Research Type The type of research used in this research is legal research empirical or socio-legal research which is another approach to research law as the object of research, in this case law based on socio-legal development research.⁶ The research location is the Makassar City Religious Court. The primary data in this research is data obtained directly in the field, namely from judges and clerks at the Makassar Religious Court. Secondary data in this research was obtained through documents or written data at the Makassar Religious Court, such as data on requests for marriage dispensation from 2017-2018 and 2020-2021. Data collection techniques in this research are interviews and documentation. The data analysis used is descriptive quantitative data analysis techniques

RESULTS AND DISCUSSION [Arial 10 bold font]

Comparison of Underage Marriage Rates in Makassar City Religious Courts

According to the Etymology of Marriage Dispensation, it consists of two syllables, namely, dispensation means exception or consideration in which there is an element of exemption from obligations and prohibitions. Candidates who have not yet reached the minimum age limit for marriage are called Marriage Dispensation.⁷ The following are the results of research regarding marriage rates in underage marriage cases based on data from marriage dispensation at the Makassar City Religious Court which can be seen in the following table:

Table 1 Summary of cases of termination of marriage dispensation in Makassar city religious courts from 2017 to 2018 when Law No. 1 of 1974 concerning marriage was implemented.

| Month | 2017 | 2018 |
|--------------|-------------|-------------|
| January | 3 | 7 |
| February | 2 | 11 |
| March | 3 | 6 |
| April | 6 | 10 |
| May | 8 | 7 |
| June | 2 | 3 |

⁵ Hasan, M. (2011). *MAG, Introduction to Family Law, CV. Faithful Library, Bandung*.

⁶ Saputra, IE, & Hasbi, H. (2021). Effectiveness of Supervision by the Makassar City Ombudsman on the Delivery of Public Services in Makassar City. *Kalabbarang Law Journal*, 3 (2), 107-120. <https://doi.org/10.35877/454RI.klj697>

⁷ Najib, A., & Hofi, M.A. (2022). SOCIOLOGICAL ANALYSIS OF THE HIGH RATE OF DIVORCE DUE TO GRANTING MARRIAGE DISPENSATIONS (CASE STUDY OF CLASS IA SITUBONDO RELIGIOUS COURT). *HUKMY: Journal of Law*, 2 (2), 177-185.

| | | |
|---------------------------|-----------|-----------|
| July | 7 | 2 |
| August | 3 | 11 |
| September | 8 | 8 |
| October | 9 | 8 |
| November | 10 | 4 |
| December | 9 | 5 |
| Number of Verdicts | 70 | 82 |

Data source: Makassar Religious Court, 2022

From the results of marriage dispensation data that the author obtained at the Makassar City Religious Court, the data shows that the number of underage marriages in Makassar city has increased very significantly. This increase can be seen based on data on marriage dispensations at the Makassar City Religious Court, which experienced an increase from the previous year. It can be seen from the marriage dispensation in the last year, namely in 2017 there were 70 couples who applied for marriage dispensation, up to 2018 until December there were 82 couples who applied for marriage dispensation. Based on this data, it can be concluded that the rate of underage marriage in the city of Makassar has increased from 2017 to 2018. However, the opposite happened after the enactment of Law Number 16 of 2019 concerning marriage, which regulates the minimum age limit for marriage, namely 19 (nineteen).) years for both men and women. This also shows that the provisions on the minimum age limit for marriage contained in Law No. 16 of 2019 concerning marriage are still not working well and have not had a significant impact in reducing the number of underage marriages in the city of Makassar. Table 2. Summary of cases of termination of marriage dispensation in Makassar city religious courts from 2020 to 2021 when Law No. 16 of 2019 concerning marriage was implemented.

| Month | 2020 | 2021 |
|---------------------------|-------------|-------------|
| January | 5 | 3 |
| February | 6 | 4 |
| March | 10 | 6 |
| April | 5 | 5 |
| May | - | 3 |
| June | 5 | 3 |
| July | 6 | 6 |
| August | 8 | 4 |
| September | 1 | 5 |
| October | 3 | 3 |
| November | 4 | 1 |
| December | 4 | 1 |
| Number of Verdicts | 57 | 44 |

Data source: Makassar Religious Court, 2022

Based on sources that the author obtained from the Makassar City Religious Court, the rate of underage marriage in Makassar City is still quite high. Although the percentage decreased by 50% compared to 2018 when Law No. 1 of 1974 concerning marriage was still in effect. This decrease was not so significant after implementing the new marriage age limit provisions contained in Law Number 16 of 2019 concerning marriage.

This phenomenon indicates that the minimum age limit for marriage in the new law is still not as expected and does not have a significant impact on reducing the number of underage marriages in Indonesia, especially in the city of Makassar, where cases of underage marriage are still quite high. This means that Law Number 16 of 2019 concerning marriage, which regulates the minimum age limit for marriage, is still not practical and is still not working as well as expected by the government to reduce the number of underage marriages. So, further evaluation is needed regarding the socialization of Law Number 16 of 2019 concerning marriage in society.

It is not wrong if Indonesia is called one of the ten countries with the highest number of underage marriages in the world, which is in seventh place in absolute numbers and the second highest in ASEAN

after Cambodia,¹¹ and by looking at the current condition data, Indonesia is heading towards a child marriage emergency.⁸

Regarding the issue of marriage dispensation, there are no specific rules or standards that can be used by judges in accepting or rejecting marriage dispensation cases. The rules are still very general, giving rise to multiple interpretations. This can be seen in Article 7 paragraph (2) of Law Number 1 of 1974 concerning Marriage, that in the event of a request for dispensation to the Court or another official appointed by both the parents of the man and the woman." This provision was then amended through Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. Article 7, paragraph (2) emphasizes that if certain things or deviations occur, men and women are allowed to marry before the age of 19 using a marriage dispensation mechanism—court accompanied by very urgent reasons and sufficient supporting evidence (Article 7 paragraph 2).⁹

Factors Causing Marriage Dispensation at the Makassar City Religious Court

1. Educational Factors

Apart from the poor economy, low parental education will create a narrow mindset, which will influence parents to marry off their daughters immediately. One of these factors is the background to the implementation of underage marriages.

In the perspective of child protection, granting marriage permits to children is based on the basic principles of implementing child protection, which are based on Pancasila and the 1945 Constitution of the Republic of Indonesia as well as the basic principles of the Convention on the Rights of the Child which include: Non-discrimination, Interests the best for children, the right to life, survival and development, and respect for children's opinions¹⁰

2. Self-Will Factor

Apart from the promiscuity factor, underage marriage in the city of Makassar is caused by the partner's own will. This is because both of them already feel that they love each other, so there is a desire to get married immediately regardless of age and the knowledge of children obtained from films or other media so that those who already have a partner or lover are influenced to marry underage.

3. Factors of getting pregnant out of wedlock

This is caused by various things such as promiscuity, low levels of religious education, lack of supervision from parents, as well as the moral crisis that occurs among teenagers. Because of this, parents are forced to marry off their children even though they are not yet old enough; this is done so that the person who has impregnated their child is responsible and avoids more significant harm. One of the reasons behind the application for marriage dispensation is that promiscuity and free sex are increasingly mushrooming among teenagers. As a result, couples who should still be in school are forced to settle down before meeting the minimum age limit for marriage.¹¹

4. Economic factors

For people whose jobs are temporary, supporting their families is not easy. This is different from people who have a permanent position and a steady income, so all their daily needs will be met.

5. Parental factors

Apart from economic and educational factors, there are also parental factors because the parents' low education means their mindset is resigned and accepting.

CONCLUSION

⁸Judiasih, SD, Dajaan, SS, & Nugroho, BD (2020). The contradiction between marriage dispensation and efforts to minimize child marriage in Indonesia. *ACTA DIURNAL Journal of Notarial Law*, 3 (2), 203-222.

⁹Mesraini, M., Rahmatullah, I., & Mahmud, AA (2020). Feminism Legal Theory and Jurisprudence Principles as Judges' Considerations in Marriage Dispensation Cases (Study of Judge's Determination Number. 10/PDT. P/2017 in the Bojonegoro Religious Court). *PALASTREN: Journal of Gender Studies*, 13 (1), 139-162.

¹⁰Al Hasan, FA, & Yusup, DK (2021). Marriage Dispensation in the Indonesian Legal System: Guaranteeing the Best Interests of Children Through Judge's Decisions. *Al-Ahwal: Journal of Islamic Family Law*, 14 (1), 86-98.

¹¹Syafi'i, A., & Astuti, F. (2023). Dispensation for Teenage Marriage in Islamic Law and Positive Law: (A Review of Case Decisions No. 0505/Pdt. P/2020/PA. Pbg and NO. 102/Pdt. P/2021/PA. PB). *El'Aailah: Journal of Family Law Studies*, 2 (2), 69-85.

Based on the description/discussion above, the author can conclude the Legal Analysis of Underage Marriage about the Divorce Rate According to Law No. 16 of 2019 as an Amendment to Law No. 1 of 1974 concerning marriage in Makassar City Religious Courts as follows: Age limit for marriage as contained in Law no. 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, article 7 paragraph (1) which states "Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years". Implementing this Law in the city of Makassar at the level of the Makassar City Religious Court is quite good. In 2020, the percentage decreased by 50% compared to 2018; this decrease was insignificant after implementing the new marriage age limit provisions contained in Law Number 16 of 2019 concerning marriage. According to researchers, Law Number 16 of 2019 concerning marriage, which regulates the minimum age limit for marriage, still needs to be effective. It is still not running as well as expected by the government to reduce the number of underage marriages. So, further evaluation is needed regarding the socialization of Law Number 16 of 2019 concerning marriage in society. For society, many requests for marriage dispensation are motivated by the social environment, one of which is social relations. Therefore, it is necessary to provide an understanding of religion from an early age to minimize the occurrence of nasty things.

REFERENCES

- Fauziatu Shufiyah, "Pernikahan Dini Menurut Hadits dan Dampaknya", *Jurnal Living Hadits*, Volume 3, No. 1, 2018, Hal. 49
- Ekasari, E., Fathimah, E., & Gibtiah, G. (2021). Analisis Perbandingan Penetapan Hakim Terhadap Dispensasi Perkawinan Akibat Hamil Diluar Nikah. *Muqaranah*, 5(2), 115-124.
- Chanso, S. E., Sugianto, S., Rojabiyah, L., & Robby, R. R. (2023). Perbandingan Metode Chen dan Markov Chain untuk Meramalkan Jumlah Kasus Dispensasi Kawin atas Berlakunya UU No. 16 Tahun 2019. *Briliant: Jurnal Riset dan Konseptual*, 8(1), 170-179.
- Hasan, M. (2011). MAg, Pengantar Hukum Keluarga, CV. *Pustaka Setia, Bandung*.
- Saputra, I. E., & Hasbi, H. (2021). Eektivitas Pengawasan Ombudsman Kota Makassar Terhadap Penyelenggaraan Pelayanan Publik Di Kota Makassar. *Kalabbirang Law Journal*, 3(2), 107-120. <https://doi.org/10.35877/454RI.klj697>
- Najib, A., & Hofi, M. A. (2022). ANALISIS SOSIOLOGIS TERHADAP TINGGINYA PERCERAIAN AKIBAT PEMBERIAN DISPENSASI NIKAH (STUDI KASUS PENGADILAN AGAMA SITUBONDO KELAS IA). *HUKMY: Jurnal Hukum*, 2(2), 177-185.
- Judiasih, S. D., Dajaan, S. S., & Nugroho, B. D. (2020). Kontradiksi antara dispensasi kawin dengan upaya meminimalisir perkawinan bawah umur di Indonesia. *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan*, 3(2), 203-222.
- Mesraini, M., Rahmatullah, I., & Mahmud, A. A. (2020). Teori Hukum Feminisme dan Kaidah Fikih Sebagai Pertimbangan Hakim dalam Perkara Dispensasi Kawin (Studi Penetapan Hakim Nomor. 10/PDT. P/2017 di Pengadilan Agama Bojonegoro). *PALASTREN: Jurnal Studi Gender*, 13(1), 139-162.
- Al Hasan, F. A., & Yusup, D. K. (2021). Dispensasi Kawin Dalam Sistem Hukum Indonesia: Menjamin Kepentingan Terbaik Anak Melalui Putusan Hakim. *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 14(1), 86-98.

Syafi'i, A., & Astuti, F. (2023). Dispensasi Pernikahan Remaja dalam Hukum Islam dan Hukum Positif:(Satu Tinjauan Putusan Perkara No. 0505/Pdt. P/2020/PA. Pbg dan NO. 102/Pdt. P/2021/PA. PB). *El'Aailah: Jurnal Kajian Hukum Keluarga*, 2(2), 69-85.