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JURIDICAL ANALYSIS OF JUDGES' CONSIDERATIONS IN DECIDING CASES FOR REQUESTS FOR DISPENSATION OF MARRIAGE IN THE LEGAL AREA OF THE BANTAENG RELIGIOUS COURT

Abstract

This study aims to find out and analyze the implementation of requests for marriage dispensation at the Bantaeng Religious Court. To find out and analyze the factors that influence judges' considerations in deciding cases of marriage dispensation applications in the legal area of the Bantaeng religious court, research, in general, can be classified into two types, namely sociological empirical research (field), namely research conducted with an approach to legal reality in society. This research is based on symptoms in the form of a gap between expectations (das solen) and reality (das sein) in law. Normative research, namely research conducted using an approach to legal norms or substances, legal principles, legal theory, legal arguments, and comparative law. In this study, the authors examined using a qualitative approach as mentioned above in a study. The results showed that the implementation of the application for marriage dispensation at the Bantaeng Religious Court was the Compilation of Islamic Law in Article 53, considering the benefit of the reasons put forward by the applicants and to protect children from early marriage. It is also hoped that the dispensation of the marriage age will benefit the community by providing convenience and solutions for problems. The factors that influence judges' considerations in deciding cases of applications for marriage dispensation in the jurisdiction of the Bantaeng religious court are social conditions, cultural factors, customs, and facts of the trial.

Keywords: *Judge's Consideration, Marriage Dispensation Application, Religious courts.*

Abstrak

Penelitian ini bertujuan untuk mengetahui dan menganalisis pelaksanaan permohonan dispensasi nikah di Pengadilan Agama Bantaeng. Untuk mengetahui dan menganalisis faktor-faktor yang mempengaruhi pertimbangan hakim dalam memutus perkara permohonan dispensasi nikah di wilayah hukum pengadilan agama Bantaeng, penelitian secara umum dapat digolongkan menjadi dua jenis, yaitu penelitian sosiologi empiris (lapangan) yaitu penelitian yang dilakukan dengan pendekatan terhadap realitas hukum di masyarakat. Penelitian ini dilatarbelakangi oleh gejala berupa kesenjangan antara harapan (das solen) dan kenyataan (das sein) dalam hukum. Penelitian normatif, yaitu penelitian yang dilakukan dengan pendekatan norma atau substansi hukum, asas hukum, teori hukum, argumentasi hukum, dan perbandingan hukum. Dalam

penelitian ini, penulis mengkaji dengan menggunakan pendekatan kualitatif seperti yang telah disebutkan di atas dalam sebuah penelitian. Hasil penelitian menunjukkan bahwa pelaksanaan permohonan dispensasi nikah di Pengadilan Agama Bantaeng merupakan Kompilasi Hukum Islam pada Pasal 53, dengan mempertimbangkan kemaslahatan alasan yang diajukan para pemohon dan untuk melindungi anak dari pernikahan dini. Dispensasi usia pernikahan juga diharapkan dapat bermanfaat bagi masyarakat dalam memberikan kemudahan dan solusi permasalahan. Faktor-faktor yang mempengaruhi pertimbangan hakim dalam memutus perkara permohonan dispensasi nikah di wilayah hukum pengadilan agama Bantaeng adalah kondisi sosial, faktor budaya, adat istiadat, dan fakta persidangan.

Kata Kunci: Pertimbangan Hakim, Permohonan Dispensasi Pernikahan; Pengadilan Agama

INTRODUCTION

Marriage in positive law is regulated in Law No. 1 of 1974. In this law, 2 (two) conditions must be met, namely formal and material requirements. Formal requirements contain administrative procedures for marriage, either before or after marriage. Material requirements are conditions attached to a marriage pillar, realizing the marriage consists of an agreement between the two parties regulated in Article 28 of the Civil Code. As in the Marriage Law No. 1 of 1974, Article 7 requires the minimum age for men to be at least 19 (nineteen) years and for women to be at least 16 (sixteen) years. But along with the existence of a government program to form a family that is *sakinah wamawaddah warohmah*. So, in order to realize the purpose of the marriage, one of the efforts made by the government is to update the Marriage Law No. 1 of 1974 to Law No. 16 of 2019. Amendments to Law No. 16 of 2019 over Law No. 1 of 1974 are in the age limit provisions for couples entering into marriage. There is a significant difference in the minimum age limit for marriage, which was previously at least 16 (sixteen) years old for women and 19 (nine years) years for men. As contained in Article 7 Paragraph (1), which reads: Marriage can only be permitted if a woman and a man have reached the age of 19 (nineteen) years. Marriage is an inner and outer bond between a man and a woman. Getting married is a new phase of life that many people have been waiting for. Getting married seems to be a necessity for everyone. But do you know what makes getting married so important? In accordance with their nature, humans developing to continue their kind need a life partner who can give offspring according to their wants. Marriage is a way to create a happy and eternal family or household based on Belief in the One and Only God. This means that the marriage should last a lifetime and not just end.

According to Javaid Rehman in his journal, the concept of the Islamic family must be in accordance with the shari'ah context in terms of marriage in particular. In addition to the provisions of Islamic law, positive law in a country must also pay attention to its aspects so that they are balanced. Marriage is not only based on the biological need between a man and a woman who is recognized as legitimate but as an implementer of the natural process of human life. 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 or household based on Belief in

the One and Only God (Article 1 of Law Number 1 of 1974 concerning Marriage). Article 7, paragraph (1) of Law Number 1 of 1974 concerning Marriage has determined the age limit for entering into a marriage for a man or a woman. For men, they are 19 (nineteen) years old, and women are 16 (sixteen) years old. Regarding the age limit for entering into marriage, it is also regulated in the compilation of Islamic law Article 15 paragraph (1) to achieve the benefit of a good family and household. Marriage may only be performed by the bride and groom who have reached the age according to Law Number 1 of 1974 concerning Marriage Article 7 paragraph (1). This is in line with the principle of Law Number 1 of 1974 concerning marriage, namely the maturity of the prospective bride and groom so that they can properly realize the purpose of marriage without ending in divorce. Very clearly stated in Article 26, paragraph 1 point c of Law no. 23 of 2002 concerning child protection stipulates that parents are obliged and responsible for preventing marriage at a young age. Including this sentence is a must that must be a common concern.

This is because children who are forced to marry at an age that is still classified as a child, seen from the aspect of children's rights, will be deprived of their rights, such as the right to play, the right to education, the right to grow and develop according to their age, and in the end, there is a compulsion to become a human being. Mature. With the current rampant promiscuity among children that has an impact on pregnancies outside of marriage, parents are in very compelling circumstances proposing underage marriages. In other words, if the prospective bride and groom do not meet the age limit criteria specified in the Marriage Law, marriages can be carried out by submitting a dispensation to the court, as stated in Article 7 paragraph (2) of Law Number 1 of 1974 concerning Marriage. If the court has issued a marriage dispensation permit stipulation, the bride and groom can enter a marriage. Even though age restrictions have been set, in society, it is often found that couples who have not reached the minimum age limit for marriage wish to marry. Various reasons were put forward to justify the will of the marriage, such as the candidate being so close or pregnant out of wedlock. Such a social reality seems to have been anticipated by legislators by granting marriage dispensation. Marriage dispensation provisions do not only concern age limits. In Book 1 of the Compilation of Islamic Law Article 53, paragraph 1, a woman who is pregnant out of wedlock can be married to a man who impregnated her to obtain legal certainty. Something that usually becomes an obstacle is that if the perpetrator becomes pregnant out of wedlock and is not old enough, then in this case, a marriage dispensation must be submitted to the religious court in order to obtain legal certainty.

The Religious Court is an institution authorized to determine the dispensation of marriage. The Religious Courts are trials for Muslim people (Law Number 50 of 2009 concerning the Second Amendment to Law Number 3 of 2006 concerning Religious Courts). The Religious Court is a special court. This specificity is indicated by three things, namely: (1) Authority includes Islamic family law, which originates from the Qur'an, Sunnah, and Ijtihad; (2) This authority only applies to some Indonesian people, namely those who embrace Islam; and (3) technical personnel in the religious courts are required to be Muslim. The Bantaeng Religious Court is one institution with the authority to grant marriage dispensation permits. At the Bantaeng Religious Court, it was recorded that in 2017, there were 50 cases; in 2018, there were 32 cases; in 2019, there were 21 cases; in 2020, there were 64 cases; in 2021, there were 23 cases; in 2023, there were 9 cases of Dispensation of Marriages, of which 48 cases were granted.

Table of Marriage Dispensation Case Report

No.	Year	Amount
1.	2017	50
2.	2018	32
3.	2019	21
4.	2020	64
5.	2021	23
6.	2022	9

From 2017 to March, 12 cases, and 8 cases were granted decisions, while data from the Ministry of Religion of Bantaeng Regency in November 2017 recorded marriages with ages less than 19 years. There were 12 men aged less than 16 and 64 women. Of some dispensation cases, the majority were motivated by prospective brides who were already pregnant outside of marriage or had not reached the age according to law. From the problems above, the law does not detail what must be the basis for a judge's consideration in granting or rejecting a marriage dispensation application. So, with his independence, the judge has certain considerations so that he can decide the case in the fairest way. Based on the background of the problems above, the authors are interested in studying this matter through research in order to compile a thesis with the title "Juridical Analysis of Judge Considerations in Deciding Cases for Requests for Dispensation of Marriage in the Legal Area of the Bantaeng Religious Court."

RESEARCH METHODS

Research, in general, can be classified into two types, namely sociological (field) and empirical research, namely research conducted with an approach to legal reality in society. This research is based on symptoms in the form of a gap between expectations (*das solen*) and reality (*das sein*) in law. Normative research is conducted using an approach to legal norms or substances, legal principles, legal theory, legal arguments, and comparative law. In this study, the authors combined the two studies; in this type of research, the researcher conducted research by combining the two types of Normative and Empirical research with a Qualitative approach, as mentioned above in a study by (Syahrudin Nawi,2013).

Data types and sources

1. Primary data, namely data obtained directly from data sources through interviews or question and answer with informants. The informants were employees and staff of the Bantaeng Religious Court.
2. Secondary data, namely, data obtained through documents and literature books that are relevant to this research, such as legislation and official documents.

Population and Sample

Population is the whole or set of research objects with the same characteristics. The population can be a collection of people, objects (living or dead), symptoms, behavior, articles of legislation, legal cases, time or place, teaching tools, methods, and so on, with the same characteristics and characteristics. As for the population of this study, namely Judges and staff employees at the Bantaeng Religious Court. Based on the type of data needed, in this study, the participants who were used as participants by the researcher were a group of objects that

were used as data sources in research whose forms could be humans, objects, documents, and so on. Thus, based on the problems in this research, the sources of data are:

1. Bantaeng Religious Court staff of 10 people.
2. Judges PA Bantaeng 4 people
3. Petitioners for Marriage Dispensation in Bantaeng, PA 6 0 people

The sample is part of the population (part or representative of the population being studied). The research sample is part of the population that is taken as a data source and can represent the entire population. The concept of the sample in research is a small part of the population taken according to a certain procedure so that it can represent the population in a representative manner. So, based on the description above, the researcher decided to use a sample collection technique by means of non-probability sampling. A non-probability sampling technique is a sampling technique that does not provide an opportunity or opportunity for each member of the population to be used as a research sample. The non-probability sampling technique used is purposive sampling. Purposive sampling is the sampling technique used by researchers if the researcher has certain considerations in taking the sample or determining the sample for a particular purpose. Samples/objects that become data sources are:

1. Bantaeng Religious Court staff of 10 people.
2. Judges PA Bantaeng 4 people.
3. Petitioners for Marriage Dispensation in Bantaeng, PA 6 0 people

RESULTS AND DISCUSSION

Implementation of Marriage Dispensation Requests at the Bantaeng Religious Court

Article 7, paragraph (1) of Law Number 1 of 1974, as amended by Law Number 16 of 2019 concerning marriage, states that marriage is only permitted if the man is at least 19 years old and the woman is at least 19 years old. For those who do not meet the age requirement, the marriage can be carried out if the court has granted a dispensation to marry. During 2022, the Bantaeng Religious Court examined and decided nine marriage dispensation cases, and until August 2023, there were a total of 4 marriage dispensation cases that had been examined and decided by the Bantaeng Religious Court. The implementation of the Marriage Dispensation at the Bantaeng Religious Court begins with the applicant completing the requirements stipulated by Law Number 16 of 2019 regarding changes to Law Number 1 of 1974 concerning marriage by fulfilling the requirements for the application for a marriage dispensation as follows:

1. Application letter
2. Rejection from KUA/Form N9
3. Photocopy of KTP of both parents/guardians
4. Photocopy of Family Card
5. Photocopy of KTP or Child Identity Card/or Child's Birth Certificate
6. Photocopy of KTP or Child Identity Card or Birth Certificate of prospective husband or wife
7. Photocopy of the child's last educational diploma and/or a certificate of still going to school from the child's school

8. Recommendation letter issued by the Office of Community and Village Empowerment, Women's Empowerment and Child Protection of Bantaeng Regency.
9. If you are pregnant, attach a Certificate of Pregnancy Examination issued by the Bantaeng Hospital and/or Health Center.

The applicant, in this case, is as required in Article 6, paragraph 1 to paragraph 5 of Perma number 5 of 2019 concerning Guidelines for adjudicating applications for marriage dispensation. In fact, at the Bantaeng Religious Court, the petitioners were the biological parents of the groom and/or bride-to-be. After the requirements are met, the Petitioner goes to the Information Desk to obtain an explanation regarding the procedure for the case, which will then be directed to make an application for dispensation, which will be assisted by a court Posyankum officer. In this case, the applicant's parents and the bride and groom are expected to be present to be asked for information for the preparation of a marriage dispensation application. After the application is made, the applicant goes to Table I to estimate the amount of down payment of court fees and prepares a SKUM for the applicant. Then, the Petitioner faced the cashier to deposit the case fee through the Bank Account of the Bantaen Religious Court that had been determined. In the next step, the Applicant to Table II submits the application letter and the SKUM that has been paid to be processed by the Desk II officer by providing the number on the application letter according to what has been given by the cashier and the Desk II clerk gives a copy of the SKUM to the applicant. After this process, the Chairperson of the Assembly receives the case files and determines the Trial Day. The Registrar appoints a Substitute Registrar who meets in session and appoints a Bailiff who will summon the parties to appear before them on the appointed day, date, and time. Since 3 August 2021, for the smooth running of the trial, the Bantaeng Religious Court was given permission to sit with a single judge based on the Letter of the Chief Justice of the Supreme Court Number W20-A19/582/HK.05/VII/2021 concerning an application for permission to have a trial with a single judge. On the appointed trial day, the applicant is present with the prospective groom or bride to be heard. The Petitioner prepares at least two witnesses and proof of letters that have been legalized at the post office supporting the proof of the marriage dispensation case.

In considering a request for dispensation from marriage, the judge adheres to the principles for the best interests of the child, the right to life and development of the child, respect for the opinion of the child, respect for human dignity and worth, non-discrimination, gender equality, equality before the law, justice, benefit, legal certainty, as stipulated in Article 2 of the Republic of Indonesia Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Trialing Applications for Dispensation of Marriage; after the examination was carried out, the applicant conveyed his conclusions and the trial was suspended. Furthermore, the Chairperson of the Assembly stated that the session was suspended and closed to the public for assembly deliberations. The Petitioner was ordered to leave the courtroom. After the deliberations of the Assembly are completed, the Chairman of the Assembly declares that the suspension is repealed and the hearing is open to the public, the Petitioner is summoned to appear before the trial, and the Chairperson of the Assembly issues a decision, which is likely to grant and/or reject the application for dispensation from marriage submitted by the Petitioner. If what is meant in this case is the implementation of the Religious Courts in accepting marriage dispensation cases widely, of course, this cannot be separated from the mandate of Article 7 Law No. 1 of 1974 concerning marriage if the legal subject is Muslim, the

Religious Courts have absolute authority to accept, examine and decide on the case and more specifically it becomes the relative authority of the Bantaeng Religious Court.

In some circles, there is a lot of debate about the problem of underage marriage with dispensation from the court, which, in my opinion, should not need to be debated any longer because it is clear in the law that it provides legal permission through this authority, coupled with the principle *Ius Curi Novit* which is contained in the Judicial Powers Act, so which thing, in my opinion, needs to be distressing is not the court examining the marriage dispensation case which then gives permission but what factors encourage children and parents nowadays to marry or marry their child is still underage. This question will develop into various aspects. Moreover, looking at the diverse socio-cultural in Indonesia, of course, will be a big homework for the Indonesian government to find out the root of the problem and the solution to this problem. As well as the research conducted by the author as of now also greatly contributes ideas to the government in dealing with the problem of underage marriage. Looking at the last three years, from 2020 to 2022, with data on applications for marriage dispensation that have been received by the Bantaeng Religious Court, namely, in 2020, there were 32 requests; in 2021, there were 23 requests, and in 2022, there were nine requests. Then, from the data, it can be seen that in the last three years, the application for marriage dispensation at the Bantaeng Religious Court has decreased. This shows that people's encouragement to carry out underage marriages is not influenced by the attitude of the court in receiving, examining, and deciding cases or internal factors of the court, but the biggest driving factor is external factors. Amendments to Article 7 in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage have had a significant impact in reducing the number of underage marriages, especially in the Bantaeng region.

Interview Results I

1. Implementation of a marriage dispensation request at the Bantaeng Religious Court.

It has been running in accordance with Perma No. 5 of 2019 concerning guidelines for adjudicating cases of the dispensation of marriage, where the dispensation will be given by the Religious Courts to prospective husbands/prospective wives who are not yet 19 years old to enter into marriages in order to pay attention to the best interests of the child. For example, in the decision on case no. 59/Pdt.P/2023/PA.Batg which, in its decision, the judge adheres to the following principles:

1. Best Interests of the child;
2. Right to Life and Development of children
3. Appreciation for the child's opinion;
4. Appreciation for human dignity;
5. Non Discrimination;
6. Gender equality;
7. Equality of rights before the law;
8. Justice;
9. Benefits;
10. Legal certainty

(Article 2 of Perma No. 5 of 2019)

2. Implementation of a marriage dispensation request at the Bantaeng Religious Court.

The Bantaeng Religious Court has now implemented the application for a marriage dispensation in accordance with the procedure. Submitting an application for marriage dispensation, which will then be registered and tried according to Perma No. 5 of 2019, must meet the requirements, including photocopies of ID cards of both parents/guardians, photocopies of Family Cards, Birth Certificates, and other documents.

3. Implementation: Not Massive / Rarely accepted

Factors: Factors that have been required by applicable laws/regulations that have been determined. Suppose you meet the conditions that require you to marry underage.

Interview Results II

Whereas the Bantaeng Religious Court, as part or extension of the Supreme Court, which is in charge of receiving, examining, and adjudicating certain cases in handling the issue of marriage dispensation, still refers to the applicable statutory process and procedure as stipulated in Law Number 16 of 2019 Regarding Amendments to Law Number 7 of 1974 which discusses the age of marriage, previously the age of marriage for women was 16 years and then changed to 19 years. Then, of course, the permission of the parents or guardians to get married, especially for prospective women, must exist as a condition determined by the legal rules regarding marriage conditions.

Factors Influencing Judges' Considerations in Deciding Dispensation Requests for Marriage in the Legal Area of the Bantaeng Religious Court.

Interview Results III

The position of judge is often said to be a quiet position; attitudes and behavior, and even the environment, are closely monitored both internally and externally. This is not something that is not fundamental because the attitude and environment of the judge can influence him in making a decision so that the decision handed down fulfills a sense of justice and or benefits and or certainty for the community. If asked more specifically about examining and deciding on marriage dispensation, which has become a social and legal problem, of course, judges see it from a variety of perspectives. This is similar to the mandate of Article 5 (1) of Law No. 48 of 2009 concerning judicial power: "Judges and constitutional judges are obliged to explore, follow, and understand legal values and a sense of justice that lives in society." So, in order to fulfill the legal objectives of the judge examining the marriage dispensation case, there are various factors that can influence it, such as the social conditions of the community, culture, and customs where the child lives. In the trial process, the judge will explore these factors or what is commonly called the constant, which the judge will then consider in a legal forum or qualifications. So, in my opinion, the factors that influence judges in the process of examining and deciding cases of marriage dispensation are several factors, namely:

1. Community social conditions;
2. Culture;
3. Customs and traditions;
4. Trial facts;

Legal basis

In deciding a case for a marriage dispensation application, the judge must, of course, pay attention and make every effort to make the decision he or she imposes, not give rise to new cases. This can be based on Article 184 HIR, 195 Rbg, Article 23 Law No. 14 of 1979 that every

judge's decision (in this case also includes judges at the Bantaeng Religious Court) must contain a clear summary of the demands and answers, the basic reasons for the decision. , subject matter, case fees, case fees, and whether or not the parties were present at the time the decision was pronounced by the judge, which, of course, must also be in accordance with Islamic law.

1. Factor affecting:
 - a. Pemohon prepares the basis of the request to be given;
 - b. Evidence
 - c. Raw input (Factors related to ethnicity, religion, etc.)
 - d. Instrumental Input (Factors related to work and formal education)
 - e. Environment Input (Social environmental factors)

Interview Results III

Whereas the dispensation of marriage occurs if there is a request from the guardian of one of the parties, a man and a woman who are not old enough to marry in Law Number 1 of 1974 concerning marriage for men and women aged 19 years, request permission from the Religious Court. The factors that influence the basis for the judge's consideration in granting the marriage dispensation are that the judge is not bound by positive law. Judges are given the opportunity to make legal discoveries with the consideration that if the law determines certain matters for certain events, it means that the regulations are limited to certain events. There is no explicit prohibition against underage marriages in the Marriage Law. Even though the age limit for marriage requirements has been regulated, at the practical level, the application is flexible. That is, if casuistically it is very urgent or an emergency in order to avoid damage/mafsadah must be prioritized to maintain goodness/maslahah, then the two prospective bride and groom must be married immediately.

The judge put forward the concept of *maslahat mursalah*, namely considering goodness and rejecting damage in society as well as efforts to prevent harm. *Maslahat mursalah* is an essential and general *maslahah* in the sense that by granting a marriage dispensation to children who are not yet old enough to marry, it can be accepted by common sense that it really benefits both the bride and groom and the families of each bride and avoids harm from sinful acts committed by young couples outside of marriage. What common sense considers an essential *maslahah* is really in line with the aims and objectives of share. *Maslahah mursalah* is practiced in conditions that require it; in this case, the judge grants a dispensation for marriage, which, if the benefits are not resolved in this way, then the people will be in a narrow life, meaning that it must be taken to prevent the people from having difficulties in channeling biological desires so that they avoid the trap immoral acts outside the fence of marriage.

Other factors look at the prospective bride and groom's physical and mental/psychological conditions and whether they are ready to be responsible for their future household. The requirement of being an adult or a minimum age of 19 years for the bride and groom is intended so that every husband and wife are able to take responsibility physically and mentally, physically and psychologically in building a household so as to create a *sakinah mawaddah warmth family* and avoid potential household disharmony; Marriage dispensation cases always cause concern for the parents of both parties based on the close relationship between the Petitioner's child and the prospective husband or wife. Dispensation case that is granted both physically and mentally when examined in court and judged to have

reached puberty or maturity by the Panel of Judges, and the prospective bride and groom state their readiness to build a household even if they have not yet reached the age of marriage according to law.

Theory Relevance with Research Results

1. Legal Protection Theory

According to Locke, rights are not handed over to the authorities when a social contract is made. Therefore, the ruler's power given through a social contract by itself cannot be absolute. If so, the existence of this power is precisely to protect natural rights in the sense of dangers that may threaten, both from within and from outside. That's how the law made in the country is also tasked with protecting these basic rights. Basic rights, which are commonly referred to as human rights, without distinction between one another. With these human rights, humans can develop themselves personally, their roles, and contributions to the welfare of human life. The basic rights inherent in human beings naturally, universally, and eternally as a gift from God Almighty, include the right to life, the right to have a family, the right to self-development, the right to justice, the right to freedom, the right to communicate, the right to security, and the right to welfare. , which, therefore, should not be neglected or seized by anyone. Alluding to the right to security for every individual, Article 7 of the UDHR explains that every human being before the law has the right to get protection from the same law without discrimination.

All are entitled to equal protection against any form of discrimination contrary to this Declaration and against any incitement to such discrimination. The beginning of the emergence of this theory of legal protection stems from the theory of natural law or the school of natural law. This flow was pioneered by Plato, Aristotle (a student of Plato), and Zeno (founder of the Stoic school). According to the flow of natural law, the law originates from God, who is universal and eternal, and between law and morals cannot be separated. The adherents of this school view that law and morals are a reflection and regulation internally and externally of human life, which is manifested through law and morals. The existence and concept of natural law so far have been much contested and rejected by most legal philosophers, but in reality, the writings of experts who reject it use a lot of natural law ideas that they may not be aware of. One of the reasons that underlies the rejection of a number of legal philosophers against natural law is that they still consider the search for something absolute from natural law to be an act that is useless and not useful. According to Von Thomas Aquinas, natural law is a reflection of eternal law (*lex naturalis*).

Long before the birth of the legal history school, it turns out that the natural law school was not only presented as a science but also accepted as the basic principle in legislation. The seriousness of mankind in longing for justice is the essence of hoping for a higher law than positive law. Natural law has shown that, in fact, the essence of truth and justice is a concept that includes many theories. Various assumptions and opinions of legal philosophers have emerged from time to time. In the 17th century, the substance of natural law placed a universal principle that can be called human rights, which guarantees the ability to provide legal protection for everyone. Immanuel Kant put forward a more explicit view of law as a protector of the human rights and freedoms of its citizens. For Kant, humans are rational and free-willed beings. The state is tasked with upholding the rights and freedoms of its citizens. Prosperity and happiness of the people is the goal of the state and law. Therefore, these basic rights

cannot be hindered by the state. According to Fitzgerald, explaining Salmond's theory of legal protection that the law aims to integrate and coordinate various interests in society in a traffic of interests, the protection of certain interests can only be done by limiting various interests on other parties. The interest of law is to deal with human rights and interests so that the law has the highest authority to determine human interests that need to be regulated and protected.

2. Legal Compliance Theory

Law is one of the instruments to regulate people's behavior in regulating social life. Sociologically, the law contains various elements, including plans of action or behavior, certain conditions, and situations. The definition of law, in general, has been put forward by many experts with their respective opinions. According to Abdul Manan: "Law is a series of rules that govern certain behaviors and actions of humans in social life. The law itself has a permanent characteristic, namely that law is an organ of abstract regulations, law to regulate human interests, anyone who violates the law will be subject to sanctions in accordance with what has been determined" S. M. Amin, a legal expert also expressed his opinion as follows: "Law is a collection of regulations consisting of norms and sanctions called law and the purpose of the law is to establish order in human association, so that security and order are maintained" According to J. C. T. Simorangkir and Woerjono Sastropranoto as follows: "The law are coercive regulations, which regulate human behavior in a social environment that are made by authorized official bodies, which violations of these regulations result in action being taken, namely with certain penalties" The law is also defined by M. H. Tirtaamidjaja as follows following: "The law is all the rules (norms) that must be followed in the behavior of actions in social life with the threat of having to compensate for losses, if you violate the rules it will endanger yourself or your property, for example people will lose their independence, be fined and so on ." The various definitions of the experts mentioned above have resulted in the conclusion that, basically, the law is all regulations that contain regulations that must be obeyed by everyone, and there are strict sanctions for those who violate them. Obedience is an attitude of obedience to the rules that apply. Not caused by the presence of strict sanctions or the presence of state apparatus, such as the police. Compliance is an attitude that arises from the encouragement of your responsibility as a good citizen. Legal compliance is an awareness of the benefits of the law that creates a form of community "loyalty" to the legal values that are applied in living together, which is manifested in the form of behavior that is actually obedient to the legal values themselves that can be seen and felt by fellow members of the community. Legal awareness is actually an awareness or values contained within humans about existing laws or laws that are expected to exist. Actually, what is emphasized is the values regarding the function of law and not a legal assessment of concrete events in the community concerned. According to Soerjono, Salman, the nature of legal compliance has 3 (three) factors that cause citizens to comply with the law, including a. Compliance, b. Identification, c internalization.

a. Compliance

"An overt acceptance induced by an expectation of rewards and an attempt to avoid possible punishment-not by any conviction in the desirability of the enforced value. The power of the influencing agent is based on "means-control" and, as a consequence, the influenced person conforms only under surveillance." Obedience is based on the hope of a reward and an effort to avoid punishment or sanctions that may be imposed if someone

violates the provisions of the law. This compliance is not at all based on a belief in the purpose of the rule of law in question and is based more on control from those in power.

b. Identification

"An acceptance of a rule not because of its intrinsic value and appeal but because of a person's desire to maintain membership in a group or relationship with the agent. The source of power is the attractiveness of the relation which the persons enjoy with the group or agent, and his conformity with the rule will be dependent upon the salience of these relationships." It occurs when compliance with the rule of law exists not because of its intrinsic value but so that group membership is maintained and there is a good relationship with those who are authorized to apply the rule of law. The attraction to comply is the benefit derived from these relationships. Thus, obedience depends on the merits of interaction.

c. Internalization:

"The acceptance by an individual of a rule or behavior because he finds its intrinsically rewarding content... the content is congruent with a person's values either because his values changed and adapted to the inevitable". At this stage, a person obeys the rule of law because, intrinsically, obedience has a reward. The contents of these rules are in accordance with the values of the person concerned or because he changed the values he originally adhered to. The result of this process is conformity, which is based on intrinsic motivation. The central point of the strength of this process is the person's belief in the purpose of the rules in question, regardless of their influence or values on the group or power holder or oversight. This stage is the highest degree of compliance, where obedience arises because of the applicable law in accordance with the values adopted. Soekanto, Soerjono. (1986). With this, it can be concluded that the nature of legal compliance is essentially as follows:

- d. compliance, a form of community legal compliance caused by sanctions for violators of these rules, so that the purpose of compliance is only to avoid existing legal sanctions, such as if the police as law enforcers carry out operations aimed at checking the completeness of driving the violators will choose another way to avoid from the operation.
- e. Identification is a form of legal compliance in society that is caused due to maintaining pleasant relationships with other people or groups, such as a minor who has the desire to drive but because one of the two child's parents is a law enforcer, the minor prefer not to use motorized vehicles.
- f. Internalization, a form of community legal compliance because the community knows the purpose and function of the rule of law, thus causing the community to comply with these regulations, such as parents of minors who prohibit their children from using motorized vehicles because underage children are usually still underprivileged controlling emotions, thinking maturity is lacking, awareness of low responsibility and in addition to a lack of understanding of the importance of safety. By knowing these three types of obedience, we can identify how effective a statutory regulation is. The more citizens who comply with a law only with obedience, that is, compliance or identification, it means that the quality of the effectiveness of the law is still low; the more citizens who comply with a statutory rule with obedience, that is, internalization, the more the high quality of the effectiveness of the rule or law.

3. Legal Function Theory

The theory about the function of law in society can be seen from two sides, namely first, where the progress of society in various fields requires legal rules to regulate it so that the

legal sector is also attracted by the development of the community. And the second side is where good law can develop society or direct the development of society. In every society, the law functions more to guarantee security in society and guarantee the achievement of the social structure expected by society. However, in an advanced society, the law becomes more general, abstract, and more distant from its context. The legal function can be divided into two parts, namely, internal function and external function. The internal function is the function of statutory regulations, while the external function is to function as a legal sub-system to the legal system in general, pseudo-justification by the courts where the judges are puppets of the state authorities. Based on this, the function of the law can be distinguished as follows (Syahran Basah,1992):

a. Law Creation Function

The creation of laws that give birth to a system of generally accepted legal rules is carried out or occurs in several ways, namely through judge decisions (jurisprudence), habits that grow as practices in the life of society or the state, or legislation as written decisions by officials and authorized positions. Applies in general. Indirectly, law can also be formed through legal teachings (doctrines) that are accepted and used in the formation of law.

b. Legal Renewal Function.

Legislation is an effective instrument or tool/facility in legal reform (law reform) compared to the use of customary law or jurisprudential law; the formation of legislation can be planned so that legal reforms can be planned. The legislation does not only carry out the function of updating existing regulations but on the other hand, legislation can also be used as a means of updating jurisprudence, customary law or customary law, in the field of customary law or customary law, statutory regulations function to replace customary law or customary laws that are not in accordance with reality while living and developing in the midst of society.

c. Legal System Pluralism Integration Function

Legal pluralism must be distinguished between legal system pluralism and legal rule pluralism. This is possible in implementation. Because in the application of law, there is a Western legal system, customary law system, and so on. The pluralism of the current legal system is one of the colonial legacies that must be reorganized. This rearrangement of a legal system should be intended to eliminate various legal systems, especially legal systems that live as a reality that is maintained in people's lives. The development of the legal system is in the framework of integrating various legal systems so that they are arranged in a harmonious order.

CONCLUSION

The factors used as urgent reasons in applying for a Marriage Dispensation by litigants from 2017 to 2022 at the Mamuju Religious Court are almost the same, namely because of the pregnancy of the prospective bride and the very close relationship between the two prospective brides. The process of examining the Marriage Dispensation case carried out by the Judges at the Mamuju Religious Court was in accordance with the provisions of the laws and regulations, including complying with the contents of Perma Number 5 of 2019 concerning Guidelines for Trialing Dispensation of Marriage Cases. There is consistency in the considerations of the Mamuju Religious Court Judges who examined the Dispensation of Marriage case from 2017 to 2022 by making the factors/variables of the pregnancy of the

prospective bride and avoiding acts of sin and harm as reasons for granting the application for Dispensation of Marriage; this shows the application of the principle of certainty law related to the urgent reason variable that must be fulfilled in granting the marriage age deviation at the Mamuju Religious Court. The stipulation of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning marriage, which changed the age of marriage for prospective brides from 16 years to 19 years, was the main trigger for the increase in the frequency of applications for marriage dispensation at the Mamuju Religious Court.

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