

IMPLICATIONS OF THE DETERMINATION OF MARRIAGE DISPENSATION ON DIVORCE CASE

(CASE STUDY AT SENGKANG RELIGIOUS COURT)

Takdir, Muhammad Tahmid Nur and Muhammad Farhan Abdullah

1 Doctoral Program, Hasanuddin University, Makassar City, Indonesia

2 Doctoral Program, Alauddin State Islamic University, Makassar City, Indonesia

3 Master of Law, State Islamic Institute, Palopo City, Indonesia

Abstract—This thesis discusses the implications of stipulating a marriage dispensation for divorce cases (a case study at the Sengkang Religious Court). This type of research is a qualitative field research with a normative juridical approach. The results of this study indicate that the relationship between marriage dispensation and divorce is interrelated with each other because it is included in a case in the Religious Courts, but the factor behind the application for marriage dispensation is the culture that the people of Wajo Regency always maintain to marry off their children even though they are still minors. The background of parents' concern for their children who do not get married soon is the fear of their children becoming old virgins. Low education so there is no study and work activity due to the weak economy, Only about 10% of divorce cases are caused by marital dispensation, the rest of the factors causing divorce are dominated by economic problems, constant bickering (conflict), lack of compatibility. The strategic solution to minimize marital dispensation is to provide education to children that underage marriage has a high risk, including when giving birth to the child later, the Regional Government must also play an active role by issuing rules in the form of a law regarding the prohibition of underage marriage. The implication of dispensation for underage marriage is the cause of conflict in the household that leads to divorce, besides that the cause of death for mothers or babies born is due to the absence of physical maturity on the part of women. Local governments must also play an active role by issuing regulations in the form of a law regarding the prohibition of underage marriage. The implication of dispensation for underage marriage is the cause of conflict in the household that leads to divorce, besides that the cause of death for mothers or babies born is due to the absence of physical maturity on the part of women. Local governments must also play an active role by issuing regulations in the form of a law regarding the prohibition of underage marriage. The implication of dispensation for underage marriage is the cause of conflict in the household that leads to divorce, besides that the cause of death for mothers or babies born is due to the absence of physical maturity on the part of women.

Keywords: *Keywords: Dispensation., Underage Marriage., Law No. 16 of 2019., Law No. 1 of 1974., Divorce.*

1. Section heading

Marriage is one of the most important aspects of human life. It even becomes a basic need for every normal human being. Without marriage, a person's life will be imperfect and more than that, violates his nature. Because Allah swt., has created his creatures in pairs as in the QS. al-Rum'/30:21 as follows:

آيَةٌ لَّكُمْ أَنْ تَسْكُنُوا لِيَهْلَ لَكُمْ لَايَةٌ لِّقَوْمٍ

The translation:

"And among the signs of His power is that He created for you wives of your own kind, so that you may tend and find peace in them, and He created between you love and compassion. Verily in that there are indeed signs for a people who think."¹

The Prophet Muhammad also reminded that marriage is his sunnah, as in the Hadith of the Prophet Muhammad, which was narrated by Ibn Majah, as follows:

عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهُ قَالَتْ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: "التَّكَاحُ مِنْ سُنَّتِي فَمَنْ لَمْ يَعْمَلْ بِسُنَّتِي فَلَيْسَ

بِمِنِّي وَتَزَوَّجُوا فَإِنِّي مُكَاتِّرٌ بِكُمْ الْأُمَمَ وَمَنْ كَانَ ذَا طَوْلٍ فَلْيَنْكِحْ وَمَنْ لَمْ يَجِدْ فَعَلَيْهِ بِالصَّيَامِ فَإِنَّ الصَّوْمَ لَهُ وَجَاءٌ"

(رواه ابن اجه)

It means:

From Aisha ra, she said, Rasulullah saw. said, "Marriage is part of my sunnah, whoever does not practice my sunnah, then he does not follow my path. Get married, because I really make you proud of the rest of the people, whoever has wealth, then get married, and whoever can't afford it, let him fast, because fasting is a shield for him." (Narrated by Ibn Majah.)²

From the above Hadith we can conclude that those who carry out marriages are following his sunnah and those who do not want to marry are not the Ummah of the Prophet Muhammad.³

In order to convey protection and keep marriages running well and maintaining their longevity, Law no. 16 of 2019 Amendments to Law No. 1 of 1974 concerning marriage, there is an age limit for a person to be able to marry so that an ideal marriage can be realized with a mature age. The age limit in

¹Ministry of Religion of the Republic of Indonesia, Al-Qur'an and its Translation, (Jakarta: Kathoda, 2018), p. 644

²Sunan Ibn Majah, Al-Maktabah al-Syamilah Juz 5, No. Hadith: 1836

³Andi Syamsu Alam, Ideal Age for Marriage (Jakarta: Kencana Mas Publishing House, 2005), p. 18

question is 19 years for men and women.⁴

The minimum age limit for marriage as stipulated in Law Number 16 of 2019 is in reality still less effective. There are still brides and grooms who have not met the age limit of 19 years when they want to get married.⁵

The reality of marriage in Indonesia, which is experiencing household fractures, even to the point of divorce, is relatively very dominant. This is due to various factors such as a moral crisis, forced marriage, jealousy and so on. Mental readiness in facing aspects of economic difficulties, religious appreciation of the nature of marriage is the result of the couple being immature in physical and psychological terms. The age of marriage is the main aspect in building a household, the psychological maturity factor will be able to eliminate the tendency of conflict (broken home).

Seeing this phenomenon, it can be concluded that actually those who are generally immature are not quite ready to enter the world of marriage. They generally marry at a relatively young age and their minds are still difficult to think more maturely.

As an illustration, the author has found a fact regarding the case of dispensation of marriage and divorce at the Sengkang Religious Court, the data can be seen in the following table:

Table. 1.1

NO	YEAR	MARRIAGE DISPENSATION	DIVORCE
1	2018	233 Case	1.185 Cases
2	2019	399 Cases	1,244 Cases
3	2020	634 Case	1,147 Cases
4	2021	760 Case	1,095 Cases

Source: Religious Court Class 1 A Sengkang

From the table data above, we can see that cases of dispensation from year to year have increased, especially after the revision of Law Number 16 of 2019 Amendments to Law Number 1 of 1974 concerning Marriage, which used to be the age for marriage for men. 19 years, while for women 16 years, the average is 19 years, triggering a surge in cases of marriage dispensation from 2019 to 2021.

Because underage marriage is a complex issue, as the author described above, the court as an institution given the authority by law to assess the urgency or not of the marriage to take place, must consider based on legal facts extracted from various aspects of consideration, Moreover, currently based on the Revised UUUP, the marriage age for men and women has been equalized to 19 (nineteen) years.

⁴See Law Number 16 of 2019 Amendments to Law Number 1 of 1974 concerning Marriage Article 7

⁵Khairillah, Ibnu Jazari, Ach Faisol "Early Child Marriage in the Perspective of Islamic Law and Civil Law (Case Study of the Sasak Community in Labuan Tereng Village, Lombok Baarat", HIKMATINA: Scientific Journal of Islamic Family Law, Vol, 1, No. 2, (2019), p.132,<http://riset.unisma.ac.id/index.php/jh/article/download/3355/3080>

Subsection heading

1.1.1 Relationship between Marriage Dispensation and Divorce at the Sengkang Religious Court

We must be able to see an issue in a broad and complete perspective, not half-assed. In this issue of dispensation for marriage and divorce, the broad perspective meant is that marriage is a right. And divorce is also a right. As a right, it should be fulfilled, protected, and respected.

The author has conducted research at the Sengkang Religious Court and collected data on the number of marriage dispensation cases and divorce cases from 2017 to 2021. The data can be seen in the following table:

Table. 1.2 Marriage Dispensation Data for 2017 to 2021

NO	Marriage Dispensation	granted	Rejected	Year
1	205 Cases	176	29	2017
2	223 Case	205	18	2018
3	399 Cases	371	28	2019
4	634 Case	627	7	2020
5	760 Case	703	57	2021

Source: Sengkang Class 1A Religious Court

The data above shows that applications for marriage dispensation have increased every year and the most is in 2021, namely 760 applications for marriage dispensation with 703 cases that were granted and 57 cases that were not granted or rejected.

Table 1.3 Data for Divorce Lawsuits for 2017 to 2021

NO	Divorce	granted	Rejected	Year
1	746 Case	726	20	2017
2	935 Case	825	10	2018
3	963 Case	941	21	2019
4	903 Case	812	30	2020

5	845 Case	812	33	2021
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Source: Sengkang Class 1A Religious Court

Table 1.4 Data on Divorce Divorce for 2017 to 2021

NO	Divorce TALAK	granted	Rejected	Year
1	227 Case	213	14	2017
2	250 Cases	217	33	2018
3	281 Case	258	23	2019
4	244 Cases	231	13	2020
5	250 Cases	227	23	2021

Source: Sengkang Class 1A Religious Court

Based on the divorce data table above, it can be concluded that most of those who file for divorce are from the women or wives through a lawsuit.

Underage marriage seems to have become a culture among the people of Wajo Regency which has resulted in high cases of marriage dispensation in the Sengkang Religious Court. This could trigger the divorce rate at the Sengkang Religious Court.

The researcher conducted an interview with the Judge of the Sengkang Religious Court, namely Munawar, SH, MH regarding the relationship between marriage and divorce dispensation at the Sengkang Religious Court, he said:⁶

“When it comes to the relationship between marital dispensation and divorce, of course it is related to each other, but if it is presented as a percentage, less than 10% of people divorced at the Sengkang Religious Court who used to do marriage dispensation. Because there are many other factors that cause divorce, not only because of underage marriage.

From the interview above, the researcher can analyze that in fact the relationship between dispensation and divorce is quite close but what needs to be underlined is that not all divorce cases handled at the Sengkang Religious Court are due to underage marriages through marriage dispensations but there are several other factors.

1.1.2 Factors Related to Marriage and Divorce Dispensation at the Sengkang Religious Court

Factors causing marital dispensation are as follows:

- a. Cultural Factor
- b. Economic Factor
- c. Education Factor.

⁶Munawar, SH MH., Personal Interview, Judge of the Sengkang Religious Court, 20 January 2022, 10:23 WITA

d. Parental Encouragement

e. Promiscuity

The factor that dominates the high marriage dispensation in the Sengkang Religious Court is the culture that is maintained by the people of Wajo Regency.

Factors causing divorce are as follows:

a. Economic Factor

b. Domestic Violence (KDRT)

c. Continuous Fighting (Conflict)

d. Psychological (Mental)

The main factor causing divorce at the Sengkang Religious Court is economic and based on the results of research that it is not up to 10% if on average divorce cases that previously registered applications for marriage dispensation cases

1.1.3 Strategic Solution to Minimize Marriage Dispensation at the Sengkang Religious Court

The author conducted further interviews with the Deputy Chairperson of the Sengkang Religious Court, namely H. Abdul Muhadi, S.Ag.,MH regarding strategic solutions to minimize underage marriages at the Sengkang Religious Court, he said:⁷

"The Sengkang Religious Court as a law enforcement agency does not have the power to prevent the entry of cases because our duties, principals and functions are clear, namely to receive, examine, try and decide on civil cases among Muslims, but cooperation between all parties is needed, both from parents, community and local government."

The author also conducted interviews with the Head of Lamiku Village, Majaleng District, Kab. Wajo, namely Baso Sultan Paenceng, SE regarding strategic solutions to minimize underage marriages are as follows:⁸

a. Parental supervision of children is like religious guidance to prevent children from falling into negative things.

Parental supervision of their children is very decisive for the fate and condition of their children because children who are not supervised are certainly different from children who are under parental supervision. Children who lack attention or supervision from their parents tend to feel less affectionate and eventually choose to seek pleasure outside the home, one of which is hanging out with friends or going out. Therefore, parents must always supervise their children, such as providing religious guidance so that the child does not fall

⁷H. Abdul Muhadi, S.Ag., MH., Personal Interview, Deputy Chairperson of the Sengkang Religious Court, 19 January 2022, 10:30 WITA

⁸Baso Sultan Paenceng, SE., Personal Interview, Head of Lamiku Village, Majauleng District, Wajo Regency, 19 July 2022, 10:30 WITA

into negative things

- b. To stipulate the law, especially the Regional Regulation in Wajo Regency regarding the dangers of underage marriage.

The Sengkang Religious Court, which in this case is a court of first instance, must not reject the incoming case because it is an administrative violation. The Regional Government (PEMDA) should set rules regarding the prohibition of marrying underage children with physical and psychological considerations of immature children and can also threaten the future of children, namely dropping out of school.

- c. Improving education and empowerment of women.

Improving education and empowering women is no less important than parental supervision. This is a shared task both within the family and in the community.

The government can also often educate and empower women through the Women and Children Empowerment Service (DPPA), so that girls are educated to prioritize their future first by learning and pursuing their dreams rather than having to marry underage which has a high risk.

- d. Teach children about religion to get closer to the Creator.

Anyone who is close to the Creator must be protected from all forms of crime and immorality, one of which is promiscuity or sexual desire which is one of the reasons why children engage in underage marriages. Therefore, religious education is very important for children so that they are closer to the Creator.

- e. The government must impose sanctions if it violates the order, namely underage marriage, so that people must think twice before doing it.

This solution is not much different from the solution that the local government must set rules, but this is firm and makes people think twice about doing underage marriages. Because, rules that are only preventive in nature, of course, people still ignore these rules. But if the rules are binding and there is a threat of sanctions, it can certainly minimize underage marriages.

The government certainly implements policies for the benefit of the people, because underage marriage has a very big risk, especially for girls who are not ready to give birth to children. People who are adults have the risk of miscarriage until the lives of the mother and child are lost, especially if the child giving birth is a minor.

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