

Implications of the Determination of Marriage Dispensation on Divorce Case (Case Study at Sengkang Religious Court)

Takdir^{*1}, Muhammad Tahmid Nur², Muhammad Farhan Abdullah³

¹(Universitas Hasanuddin, Jl. Perintis Kemerdekaan No.KM.10, Makassar, Sulawesi Selatan, Indonesia)

²(Universitas Islam Negeri Alauddin Makassar, Jl. Sultan Alauddin No.63, Sulawesi Selatan, Indonesia)

³(Institut Agama Islam Negeri Palopo, Balandai, Sulawesi Selatan, Indonesia)

*dr_takdir@iainpalopo.ac.id

Received: 2022-November-15

Rev. Req: 2022-December-1

Accepted: 2022-December-17



10.5758/ijls.2022.14

How to cite this paper: Takdir, Nur, M. T., & Abdullah, M. F. (2022). Dispensation on Divorce Case (Case Study at Sengkang Religious Court). *International Journal of Law and Society (IJLS)*, 1(3), 203-210.
<https://doi.org/10.5758/ijls.2022.14>

This is an Open Access article distributed under the terms of the Creative Commons Attribution 4.0 International license (<https://creativecommons.org/licenses/by/4.0/>)

ABSTRACT: *The purpose of this study is to discuss the implications of establishing a marriage dispensation for divorce cases at the Sengkang Religious Court. This type of research is qualitative field research with a normative juridical approach. A strategic solution to minimizing marital dispensation is to educate children that underage marriages have a high risk, including when giving birth later, the Regional Government must also play an active role by issuing regulations in the form of laws regarding dispensation of marriage and the prohibition of underage marriages. The implication of dispensation for underage marriage is a cause of conflict in the household which leads to divorce, besides that the cause of death of mothers or babies born is due to the lack of physical maturity on the part of the woman.*

Tujuan studi ini membahas implikasi penetapan dispensasi nikah terhadap kasus perceraian di Pengadilan Agama Sengkang. Jenis penelitian ini adalah penelitian lapangan kualitatif dengan pendekatan yuridis normatif. Solusi strategis untuk meminimalisasi dispensasi perkawinan adalah dengan memberikan edukasi kepada anak bahwa perkawinan di bawah umur memiliki resiko yang tinggi, termasuk ketika melahirkan nanti, Pemerintah Daerah juga harus berperan aktif dengan mengeluarkan peraturan berupa undang-undang tentang dispensasi perkawinan dan pelarangan perkawinan di bawah umur. Implikasi dispensasi perkawinan di bawah umur merupakan penyebab terjadinya konflik dalam rumah tangga yang berujung pada perceraian, selain itu penyebab kematian ibu atau bayi yang dilahirkan adalah karena tidak adanya kedewasaan fisik pada pihak perempuan.

Keywords: *Marriage, Determination of Marriage Dispensation, Divorce Case.*

I. INTRODUCTION

Marriage is one of the most critical aspects of human life. It even becomes a basic need for every normal human being (Ali, 2020). 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 (Aziz, 2012):

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

“And among the signs of His power is that He created for you wives of your kind so that you are inclined to and feel at ease with him, and He made them between you with love and affection. Indeed, in that, there are signs for people who think.” (QS.Ar Ruum 30:21)

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 (Yazid, 1995):

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, Al-Maktabah al-Syamilah Juz 5, No. Hadith: 1836).

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 (Alam, 2005). 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 wedding can be realized with a mature age (Ghozali, 2018). The age limit in question is 19 years for men and women (UU No. 16, 2019).

The minimum age limit for marriage, as stipulated in Law Number 16 of 2019, is, in reality, still less effective. Brides and grooms still need to meet the age limit of 19 years when they want to get married (Nailaufar & Kristiana, 2017);(Khairillah, Jazari, & Faisal, 2019).

The reality of marriage in Indonesia, which is experiencing household fractures, even to the point of divorce, is relatively very dominant (Muhammad, 2020). This is due to various factors such as a moral crisis, forced marriage, jealousy, etc. Mental readiness in facing aspects of economic difficulties and religious appreciation of the nature of marriage results from the couple being immature physically and psychologically (Tantimin, 2022). The age of marriage is the central aspect of building a household, and the psychological maturity factor will be able to eliminate the tendency of conflict (broken home) (Achory & Iriani, 2018).

Seeing this phenomenon, those who are generally immature are not ready to enter the world of marriage (Basyir, 2019). They typically marry at a relatively young age, and their minds still find it difficult to think more maturely. As an illustration, the author has found a fact regarding the case of the dispensation of marriage and divorce at the Sengkang Religious Court, and the data can be seen in the following table:

Table 1. case of dispensation of marriage and divorce at the Sengkang Religious Court

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 (Fathoni, 2017).

II. METHOD (Calibri Light, 12 BOLD)

This type of research is qualitative field research with a normative juridical approach. The collection of data sources is done through field studies. The data were analyzed through the following three activities. First, data condensation refers to selecting, focusing, simplifying, and transforming data from empirical documents and materials. The second is the display of data, namely the organization of information, for example, forming a graph. Finally, drawing and verifying a conclusion, where the researcher makes a decision, then demonstrates the assessment in the form of a brief analysis from the researcher. The place of research used is the Sengkang Religious Court. This research aims to discuss the implications of determining the dispensation of marriage for divorce cases (Ikhwan, 2021).

III. RESULT AND DISCUSSION

Relationship between Marriage Dispensation and Divorce at the Sengkang Religious Court

We must be able to see an issue from a broad and complete perspective, not half-assed. In this issue of dispensing for marriage and divorce, the overall view 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 researched 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 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 yearly. The most are in 2021, namely 760 applications for marriage dispensation, with 703 cases granted and 57 cases not given or rejected.

Table 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

Source: Sengkang Class 1A Religious Court

Table 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 is from the women or wives through a lawsuit. Underage marriage has 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 (Takdir, 2014).

The researcher interviewed 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

“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.” (Munawar, 2022).

From the interview above, the researcher can analyze that the relationship between dispensation and divorce is quite close. However, 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 (Hamzah, 2020).

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, H. Abdul Muhadi, S.Ag.,MH, regarding strategic solutions to minimize underage marriages at the Sengkang Religious Court; he said:

"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." (Muhadi, 2022).

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 (Paenceng, 2022):

1. 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 undoubtedly different from children under parental supervision. Children who lack attention or care 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 they do not fall into negative things (Hanafi, 2011).

2. 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 the first instance, must not reject the incoming claim 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, which can also threaten the future of children, namely dropping out of school.

3. Improving education and empowerment of women

Improving education and empowering women is no less critical 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.

4. Teach children about religion to get closer to the Creator

Anyone 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 essential for children to be closer to the Creator.

5. 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 similar to the key that the local government must set rules, but this is firm and makes people think twice about underage marriages. Because of only preventive laws, people still ignore these rules. But if the rules are binding and there is a threat of sanctions, it can minimize underage marriages.

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

IV. CONCLUSION

The relationship between marriage dispensation and divorce is related to each other because it is included in a case at the Religious Court, but the factor behind the request

for marriage dispensation is the culture that has always been owned by the people of Wajo Regency. maintain to marry off their children even though they are underage. Parents' concern about their children who don't get married soon is motivated by the fear of their children becoming old virgins. A strategic solution to minimizing marital dispensation is to educate children that underage marriages have a high risk, including when giving birth later, the Regional Government must also play an active role by issuing regulations in the form of laws regarding dispensation of marriage and the prohibition of underage marriages. The implication of dispensation for underage marriage is a cause of conflict in the household which leads to divorce, besides that the cause of death of mothers or babies born is due to the lack of physical maturity on the part of the woman.

VI. REFERENCES

- [1] Achory, & Iriani, S. (2018). Fenomena Pernikahan Dini Dalam Perspektif Islam (Studi Kasus di Desa Kalikuning). *Journal of Islamic Research*, 14(2).
- [2] Alam, A. S. (2005). *Usia Ideal untuk Menikah*. Jakarta: Kencana Mas.
- [3] Ali, M. (2020). *Fiqh Munakahat, Edisi Revisi*. Lampung: Laduny Alifatama.
- [4] Aziz, A. (2012). *Tafsir Al Bayanu Ahkam jilid 2*. Jakarta: Maktabah Daru al-Minhaj.
- [5] Basyir, A. A. (2019). *Hukum Perkawinan Islam, Edisi Revisi*. Yogyakarta: UII Press.
- [6] Fathoni, A. (2017). Perkawinan Anak Di Bawah Umur dalam Perspektif Hukum Islam dan Sosiologi Hukum. *JURNAL AT-TURAS*, 4(1).
- [7] Ghozali, A. R. (2018). *Fiqh Munakahat*. Jakarta: Kencana.
- [8] Hamzah, Y. A. (2020). Analisis Yuridis Perkawinan Di Bawah Umur Melalui Kewenangan Kantor Urusan Agama. *Juri Paripurna: Jurnal Ilmu Hukum LL-DIKTI Wilayah Sulawesi*, 9(2).
- [9] Hanafi, Y. (2011). *Kontroversi Perkawinan Anak*. Bandung: Mandar Maju.
- [10] Ikhwan, A. (2021). *Metode Penelitian Dasar (Menenal Model Penelitian dan Sistemikanya)*. Tulungagung: STAI Muhammadiyah Tulungagung.
- [11] Khairillah, Jazari, I., & Faisol, A. (2019). Perkawinan Dini Dalam Perspektif Hukum Islam dan Hukum Perdata (Studi Kasus Masyarakat Sasak Desa Labuan Tereng, Lombok Baarat. *HIKMATINA: Jurnal Ilmiah Hukum Keluarga Islam*, 1(2), 132. <https://doi.org/http://riset.unisma.ac.id/index.php/jh/article/download/3355/3080>
- [12] Muhadi, A. Wawancara Pribadi, Wakil Ketua Pengadilan Agama Sengkang, 19 Januari 2022, 10.30 WITA (2022).
- [13] Muhammad, N. E. (2020). Realitas Perkawinan Beda Agama Perspektif Keluarga Sakinah. *Al-Mizan*, 16(2).
- [14] Munawar. (2022). Wawancara Pribadi, Hakim Pengadilan Agama Sengkang, 20 Januari 2022, 10:23 WITA.
- [15] Nailaufar, U., & Kristiana, I. F. (2017). Pengalaman Menjalani Kehidupan Berkeluarga

Bagi Individu Yang Menikah di Usia Remaja. *Empati*, 6(3).

- [16] Paenceng, B. S. (2022). *Wawancara Pribadi, Kepala Desa Lamiku, Kecamatan Majauleng, Kabupaten Wajo, 19 Juli 2022, 10.30 WITA*.
- [17] Takdir, M. (2014). Analisis Yuridis Terhadap Dispensasi Perkawinan Di Bawah Umur (Studi Kasus Di Pengadilan Agama Barru). *PETITUM*, 1(1).
- [18] Tantimin. (2022). Polemik Meningkatnya Perkawinan Anak: Realitas dan Pencegahannya. *Maleo Law Journal*, 6(1).
- [19] UU No. 16. Undang-Undang Nomor 16 Tahun 2019 Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan Pasal 7 (2019).
- [20] Yazid, A. H. A. A. M. I. (1995). *Sunan Ibnu Majah, Juz 1*. Bairut: Darulfikr Al Nasr.