

The Relevance of Increasing Applications for Dispensas Marriage with Law Number 16 of 2019 in the East Java Religious High Court

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ABSTRACT

The purpose of this study is to find out, analyze and find the nature of the application for marriage dispensation in the religious high court of East Java. To find out, analyze and find what are the factors causing the application for dispensation for marriage in the East Java Religious High Court. To find out and analyze how the judges of the East Java Religious High Court in deciding the application for marriage dispensation. The method used by the researcher here is Research, in general, which can be classified into two types, namely sociological (field) and empirical research. The results obtained are the factors that influence the application of marriage dispensation in the religious high court of East Java are pregnancy factors outside marriage, economic factors, and educational factors. The consideration of the judges of the East Java Religious High Court in granting the marriage dispensation was based on 3 considerations, namely administrative completeness, the principle of benefit and harm in terms of being pregnant before getting married so that the child gets legal recognition, Economic factors because the applicant already has a permanent job, Educational factors because the applicant has completed his schooling.

Keywords: Dispensation; Marry; Children

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Amendment to Law number 1 of 1974 to Law Number 16 of 2019 essentially changes the marriage age of girls from a minimum of 16 years to a minimum of 19 years. Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage was ratified by President Joko Widodo on October 14, 2019, in Jakarta. Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage shall come into force after its promulgation.^[1]

In this Law, the minimum age for marriage for women is equated with the minimum age for marriage for men, which is 19 (nineteen) years as in Article 7 paragraph (1) of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning marriage. The age limit is considered to have matured mentally and physically to be able to carry out marriage to realize the purpose of marriage properly so that it does not end in divorce and obtains healthy and quality offspring.^[2]

Considerations of Law Number 16 of 2019 regarding the increase in the age limit higher than 16 (sixteen) years for women to marry, among others, that marriage at the age of a child hurts children's growth and development and will lead to non-fulfilment of children's basic rights such as the right to protection from violence and discrimination, children's civil rights, health rights, education rights, and children's social rights. It is hoped that this age change will result in a lower birth rate and a lower risk of maternal and child mortality. In addition, it can also fulfil the rights of children to optimize their growth and development of children, including mentoring parents and providing children access to education as high as possible.^[3]

In Article 28B of the 1945 Constitution of the Republic of Indonesia, it is stated that everyone has the right to form a family and continue offspring through legal marriage and the State guarantees the child's right to survival, growth, and development and the right to protection from violence and abuse. discrimination.^[4]

Article 7 paragraph (1) of Law Number 1 of 1974 states that marriage is only permitted if the man reaches the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years. in the age of children in girls, because in Article 1 point (1) Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is defined, that a child is someone who is not yet 18 (eighteen) years old. , including children who are still in the womb.^[5]

The change in the age of girls has exceeded the child's age limit according to the Child Protection Act, so in this case, the reality in society is not directly proportional to the values of the change in question which turns out to be a bit confusing between Law Number 16 of 2019 concerning Marriage and Law Number 35 of 2014 concerning Child Protection in conjunction with Law Number 11 of 2012 concerning SPPA (Child Criminal Justice System).^[6]

Although age restrictions have been set, in society it is often found that couples who have not reached the minimum age for marriage wish to marry. Various reasons were put forward to justify the will of the marriage, such as the candidate was already so close or even had a pregnancy out of wedlock. Such social reality seems to have been anticipated by the legislators, by granting marriage dispensation.

The provisions for the dispensation of marriage are not only about the age limit. in Book 1 of the Compilation of Islamic Law Article 53 paragraph 1 that a woman who is pregnant out of wedlock can be married to a man who impregnates her to obtain legal certainty. Something that usually becomes an obstacle is if the perpetrator of pregnancy outside marriage is not old enough, then in this case a marriage dispensation must be submitted to the Religious Court to obtain legal certainty.^[7]

The Religious Courts are the institutions authorized to issue marriage dispensations. Religious Courts are courts for people who are Muslim (Law Number 50 of 2009 concerning the Second Amendment to Law Number 3 of 2006 concerning Religious Courts). The Religious Courts are special courts. Its specificity is shown by three things, namely: (1) The authority includes Islamic family law which is sourced from the Qur'an, Sunnah and Ijtihad; (2) His authority only applies to some Indonesian people, namely those who embrace Islam; and (3) technical personnel in religious courts are required to be Muslim.^[8]

The Kediri Regency Religious Court is one of the institutions that have the authority to issue marriage dispensation permits. In the Kediri Regency Religious Court, it was recorded that in 2016 there were 69 cases of marriage dispensation, of which 48 cases were decided. For the year 2017 to March, there have been 12 cases and 8 cases were decided which were granted, while the data from the Ministry of Religion of Kediri Regency in November 2017, noted that marriages with the age of fewer than 19 years were 12 men, and aged less than 16 years were 64. woman. From some of the dispensation cases, the majority are motivated by prospective brides who are already pregnant outside of marriage or whose age has not reached according to the law.

From the above problems, the law does not formulate in detail the things that must be the basis for the judge's consideration in granting or rejecting the application for dispensation for marriage. So the judge with his independence has certain considerations so that he can decide the case fairly.

I. Research Methods Research

in general can be classified into two types, namely empirical sociological (field) research, namely research conducted with an approach to the legal reality in society. This research is based on the existence of a symptom in the form of a gap between expectations (*das solen*) and reality (*das Sein*) in the field of law. and normative research, namely research conducted with an approach to legal norms or substance, legal principles, legal theory, legal arguments and legal comparisons.

This research was conducted in the jurisdiction of East Java to be exact:

1. Religious Court of Kediri Regency
2. Treggalek Religious Court.
3. Lumajang Religious
4. Sidoarjo Religious Court

II. Discussion

Nature of Application for Marriage Dispensation at the Religious High Court of East Java

The purpose of changing the minimum age of marriage for women takes into account the readiness of women. Changes in the minimum age of marriage are considered ideal to suppress child marriage. With the addition of the minimum marriage limit to 19 (nineteen) years, it is considered psychologically, biologically, and emotionally mature to achieve the objectives of the Marriage Law, namely to form a *sakinahmawaddah, warohmah* families and can be blessed with pious and pious offspring.

The increase in the first cause of dispensation is due to the increase in the minimum age for marriage. Society has not been able to accept the change. Due to the community's habit of getting married at the age of 16 (sixteen) years for women, therefore the number of dispensations is not controlled after the enactment of the Act. Plus the lack of knowledge from the community makes the number increase even more. Few people know that the minimum change in the age of marriage has made people register their children's marriages with the Office of Religious Affairs (KUA). Therefore, the community has already registered, of course, the KUA refuses the registration because it does not meet the requirements. Because many marriages were rejected by the KUA, the community filed for dispensation to the Court. The increasing factor, apart from changes to the law, is also due to the outbreak of the covid-19 pandemic, coupled with the prolonged period of the covid-19 pandemic,

causing boredom for children. Lack of supervision from parents and uncontrolled activities with lovers can foster an immediate desire to end the single life.

The high application for dispensation for marriage after the amendment to the Marriage Law close to the Covid-19 Pandemic shows that the prevalence of marriage at the age of children has increased compared to the year before the change in the Marriage Law. According to researchers, Law No. 16 of 2019 is less efficient, especially in the people of East Java, especially the people who are the research locations for researchers.

Regarding the procedure for applying for dispensation, the applicant can submit in writing or in oral form with the assistance of the court record it, a certificate that can show the identity of the applicant, and pay the estimated court fees.⁷⁶ Application for marriage dispensation in the Religious Courts after fulfilling the applicable procedures.

Although the applicant can apply orally on the condition that the applicant is illiterate (cannot write). However, there were no applicants at the Kediri Regency Religious Court who applied for a marriage dispensation that was illiterate because it was not contained in the application letter that was submitted orally. And the stages of the procedure for applying for a marriage dispensation are as follows:

a. The Party Submitting the Application for Marriage Dispensation

In the Religious Courts, the application for dispensation involves several parties, firstly some prospective brides and grooms are underage, and the two village heads, while the role of the village head is not included in the litigation party, it is only helpful for registration and concurrently as a witness of both partners if required by the citizens.

In Law No. 16/2019 Article 7 Paragraph (2) it is also stated that only parents/guardians can apply for a dispensation called the applicant. So in this case the researcher believes that parents should be allowed to apply for a marriage dispensation, because if the child is not married then the child is still under the full responsibility of the parents. Therefore, the rule that only parents have the right to apply for a marriage dispensation is in line with Article 6 Paragraph (2) for children who are not yet 21 years old, they need permission from their parents.

b. Rejection letter from the Local Religious Affairs Office

The completeness of the administration of the application for a marriage dispensation has been regulated in Supreme Court Regulation Number 5 of 2019 so the Religious Court, especially the judge handling the application for a marriage dispensation, should first ask the applicant to attach the rejection letter with other identity attachments. So according to the researcher, the judge at the Kediri Religious Court has carried out the procedure as a must to enforce the regulation. This rejection letter is a formal requirement which is included in the administrative completeness in applying for a marriage dispensation. The KUA rejection letter is considered by the judge to examine.

If the applicant does not submit a rejection letter from the KUA, the trial day will be postponed in advance. Because considering the rejection letter is a first and important condition because the rejection letter from the KUA states why the applicant is rejected. Opinion The researcher agrees with the obligation of the Kediri Religious Court for the applicant to submit a rejection letter. Because this rejection letter is not required, the public may make a false statement with the intention that the applicant says he has registered at the KUA even though the fact is that he has not registered, so by registering directly at the Court without being accompanied by a rejection letter, this could be because the administration does not require an acknowledgement. From other institutions (KUA) considers administration to apply for dispensation easy which causes the number of dispensation applications to increase.

c. Paying the Estimated Downpayment for the case

The down payment of the dispensation case at the Kediri Religious Court has complied with the principles of fast, simple and low-cost justice. In simple terms, the researcher means that the dispensation trial is not complicated, convoluted, straightforward, clear, easy to understand and easy to carry out. And fast to resolve the case, not in a relatively fast time. As is the proper procedure and the regulatory process for dispensation is carried out quickly because the applicant has registered at the KUA, and the down-payment of small court fees means that there are no fees unless the costs are needed in real terms in the settlement of cases because there is already a clear tariff when down payment.⁷⁷ And the estimated down-payment costs are issued by the Head of the Court in the form of a Decision Letter (SK). The cost of the case is determined by the distance travelled from the Court to the location where the applicant lives.

Regarding the cost of the case, the researcher thinks that the cost of the case is relatively cheap. Such as the costs that must be incurred by the applicable registration fees, applicant fees, applicant calling fees and stamp duty fees. Of the costs that must be incurred by the applicant, the highest of which is only the applicant's call fee in the range of Rp. 150,000.00. From the applicant himself, he does not bother with the high cost of the call, it can be seen that on average, no one chooses to use predeo, even though the economy of the community is average. This shows that in applying for a dispensation until it is completed, the reading of the determination

can still be reached by the applicant and this can be seen in the copy of the judge's determination in the details of the case, the amount of which is not so high, ranging from under five hundred thousand rupiah.

Furthermore, the researchers found data on applications for marriage dispensation in the East Java High Court area from 6 (six) Religious Courts as follows:

Table 1. *Recapitulation of marriage dispensation cases received at the Trenggalek Religious Court in January 2017 – 2022 (as of 31 May 2022)*

NO.	YEAR	RECEIVED
1	2017	94 cases
2	2018	63 cases
3	2019	171 cases
4	2020	447 cases
5	2021	388 cases
6	2022 (as of 31 May 2022)	89 cases

Source: Trenggalek Religious Court part of the young law clerk 2017-2022.

Table No.1 shows that since the enactment of Law No. 16 of 2019 requests for dispensation cases filed at the Trenggalek Religious Court have increased drastically. The head of the Trenggalek Religious Court (PA), H. A Zahri, SH, M.HI through the Junior Law Registrar Ahmad Faruq Setiawan, SH admitted that the application for marriage dispensation in Trenggalek PA had increased compared to 2019.

In 2019, there were 171 applications for marriage dispensation that went to Trenggalek PA, while 167 applications were granted. Meanwhile, from January to June 2020 applications for marriage dispensation were 224 while those that had been granted were 199 applicants.

Not all marriage dispensation applications were granted. The Terenggalek Religious Court continues to provide input so that the two couples can be patient in getting married when they are 19 years old. After being briefed, someone pulled out the file. However, some insist that they do not want to postpone the marriage so that the application for a marriage dispensation is granted if it fulfils the provisions of the law.

Table 2. *Recapitulation of marriage dispensation cases received at the Lumajang Religious Court in January 2017 – 2022 (as of 31 May 2022)*

NO.	YEAR	RECEIVED
1	2017	180 cases
2	2018	180 cases
3	2019	335 cases
4	2020	1046 cases
5	2021	903 cases
6	2022 (as of 31 May 2022)	341 cases
	TOTAL	2985 cases

Source: Lumajang Religious Court section of young law clerks in 2017-2022.

Table No. 2 shows that since the enactment of Law No. 16 of 2019 requests for dispensation cases entered at the Lumajang Religious Court have increased significantly.

The Lumajang Regency Religious Court granted 902 requests for dispensation for minor marriages in 2021. This figure is the second highest in East Java, after Trenggalek Regency. Read also: Mount Semeru Launches Incandescent Lava, Residents in Lumajang are anxious This was conveyed by the Young Registrar of

the Application for the Lumajang Religious Court SofanAfandi. According to him, this number can be said to have decreased compared to 2020. In 2020, out of 1046 applications that were submitted, there were 1,044 applications were granted. "This figure has decreased from 2020 but is still among the highest in East Java. Rank 2 after Trenggalek," said Sofan. Read also: Police Name 1 Suspect in Persebaya Supporter Beating Case in Lumajang From 2022 to February, there were 173 application files and 146 were granted by the judge. According to Sofan, the reason the judge granted the residents' requests to marry off their children was that most of the applicants had already married in an unregistered manner. Some are even pregnant. Also read 2 Trucks Involved in Accidents in KedungjajangLumajang, No Casualties "Most of them have had unregistered marriages, some are even pregnant and almost giving birth," he added. Furthermore, Sofan said that his party would provide consulting services to applicants who wish to apply for dispensation. However, only a few succeed and extract the files. "Surely we will give enlightenment, but the percentage of success is very minimal, maybe out of 100 cases only 2 are enlightened and withdraw the files," he explained. Most of the requests came from the Lumajang area, which is on the outskirts of Pronojiwo District. Sofan said the trigger factor was that the villagers were more afraid of being embarrassed by their neighbours because their daughters were often visited by men. According to him, apart from economic, mental and health issues, child marriage also has a negative impact. One of them is divorce, even the potential for stunting. "Villagers are still old-fashioned, they can't stand shame more than they take care of their children," explained Sofan. in LumajangLumajang has formed Regional Regulation Number 2 of 2021 concerning Child-friendly Districts. However, its implementation is not optimal. Sofan said, in creating a child-friendly district, cooperation from all elements of government is needed to the lowest level. "Guidance must be from the most basic. Mudin in the village must be able to withstand the desire of Lumajang residents to marry off their underage children. Likewise, the local government with counselling. If the court only accepts it," he concluded.

Table 3. Recapitulation of marriage dispensation cases received at the Sidoarjo Religious Court in 2017 – 2022 (as of 31 May 2022)

NO.	YEAR	RECEIVED
1	2017	79 cases
2	2018	96 cases
3	2019	99 cases
4	2020	331 cases
5	2021	287 cases
6	2022 (as of 31 May 2022)	97 cases

Source: Sidoarjo Religious Court part of young law clerks for 2017-2022.

Table No. 3 shows that since the enactment of Law No. 16 of 2019 requests for dispensation cases entered at the Sidoarjo Religious Court have increased significantly. The high number of cases in the filing of the Marriage Dispensation made the Supreme Court move to involve the Ministry of Health. Marriage dispensation is the filing of a case to grant the right to a marriage permit even though it has not reached the minimum age for marriage. Men and women are allowed to marry when they reach the age of 19.

Following up on a letter from the Supreme Court of the Directorate General of the Religious Courts Number 2449/ DjA/HM.00/4/2022 regarding coordination and cooperation agreements with the local Health Office, PA Sidoarjo represented by Drs. H. Ahmad HusniTamrin, MH accompanied by secretary Aryl Zabarrespati, SE in direct coordination with the Head of the District Health Office. Sidoarjodrg. SyafSatriawarman, Sp. Pros. The coordination is about the formulation of the draft cooperation agreement regarding marriage dispensation. It is hoped that with good cooperation between PA Sidoarjo and the District Health Office. Sidoarjo, the number of applications for Dispensation for Marriage can be reduced.

Table 4. Recapitulation of marriage dispensation cases received at the Religious Courts of Kediri Regency in 2017 – 2022 (as of 31 May 2022)

NO.	YEAR	RECEIVED
1	2017	142 cases

2	2018	148 cases
3	2019	250 cases
4	2020	580 cases
5	2021	620 cases
6	2022 (as of 31 May 2022)	183 cases

Source: The Religious Court of Kediri Regency, part of the young law clerk, 2017-2022.

Table No. 4 shows that since the enactment of Law No. 16 of 2019 requests for dispensation cases entered at the Kediri Regency Religious Court have increased steadily every year. District Religious Court. Kediri is one of the judicial institutions that have the authority to grant marriage dispensation permits. Within one the year 2021, the District Religious Court. Kediri has received 388 cases of marriage dispensation applications.

Table 5. Recapitulation of marriage dispensation cases received at the Lamongan Religious Court from January 2017 to May 31, 2022,

NO.	YEAR	RECEIVED
1	2017	69 cases
2	2018	55 cases
3	2019	116 cases
4	2020	426 cases
5	2021	426 cases
6	31 May 2022	202 cases

Source: Lamongan Religious Court part of the young law clerk in 2017-2022.

Table No. 5 shows that since the enactment of Law No. 16 of 2019 applications for dispensation cases that have entered the Lamongan Religious Court has continued to increase every year. A total of 237 brides and grooms from Lamongan Regency have applied for Marriage Dispensation at the Lamongan Religious Court (PA). covid 19 pandemics which did not allow offline class children and some were pregnant before they both tied the knot this economics. Some parents expect their children to get married quickly because the parents no longer have the money to go to school or college. "Not all of them are pregnant out of wedlock, only some of them, sir. But indeed, pregnant cases dominate when applying for a marriage dispensation," said the Junior Registrar of Laws at the Religious Courts of LamonganMazir

Table 6 Recapitulation of marriage dispensation cases received at the Malang City Religious Court in 2017 – The year 2022 (as of May 31, 2022)

NO.	YEAR	RECEIVED
1	2017	112 cases
2	2018	161 cases
3	2019	349 cases
4	2020	1461 cases
5	2021	1417 cases
6	2022 (as of 31 May 2022)	501 cases

Source: Malang City Religious Courts section of young law clerks 2017-2022

Table No. 6 shows that since the enactment of Law No. 16 of 2019 requests for dispensation cases entered at the Jember Religious Court have increased steadily every year. Throughout 2021, the Malang Class IA Religious Court has given a thought dispensation to 253 underage couples. The Registrar of the Malang Class IA Religious Court, ChafidzSyafiuddin explained that the majority of the reasons the court granted the marriage dispensation were due to pregnancy or out of wedlock. Another reason for the dispensation of this underage couple's marriage is because of the matchmaking factor since childhood. Moreover, according to him, some tribes live in Malang City who match their children when they are considered old enough.

On the other hand, the marriage dispensation application is indeed submitted by both spouses' guardians. For the age of the spouses who are proposed to get a dispensation, the average is 16 to 18 years. Tables Number 1 to Table Number 6 shows that applications for marriage dispensation in the area of the East Java Religious High Court experienced a very significant increase.

The causes are varied, ranging from a low level of education, and socio-cultural customs, to the economy. East Java DP3AK data mentions an increase in the percentage of cases of early marriage. In 2020 there were 9,457 cases or 4.97 per cent of the total 197,068 marriages. This percentage increased compared to 2019 which was only 3.6 per cent or 19,211 cases out of a total of 340,163 marriages. The number is decreasing, but the percentage is increasing. Also read: Early Marriage in Malang Regency is the Highest in East Java.

III. Conclusion

The Nature of the Application for Marriage Dispensation at the Religious High Court of East Java. 16 of 2019 and Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation and also the Compilation of Islamic Law in Article 53, the consideration is to see the benefits of the reasons put forward by the applicants and to protect children from early marriage. The provision of dispensation for the age of marriage is also expected to be useful for the community so that it can provide convenience and a solution for the problems that occur.

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