

# Several Judges' Considerations in Deciding Marriage Dispensation Cases

## (Case Study at the Rembang Religious Court)

**M Nur Kholis**

Ahwal Syakhshiyah Study Program, Sekolah Tinggi Agama Islam Al Kamal Rembang, Indonesia

Email : Kholis\_jee@yahoo.co.id

### Keywords

*Marriage Dispensation, Judge's Considerations, Religious Courts*

### ABSTRACT

*This research discusses the problem of early marriage in Rembang, with a focus on marriage dispensation letters submitted to the Rembang Religious Court. Data shows that there are many cases of marriage dispensation, with 52 cases resolved in 2016, an average of more than 6 cases per month. This early marriage is triggered by various factors, including pregnancy out of wedlock due to uncontrolled relationships. The parents of both parties agreed to submit a request for dispensation to the court to allow marriage at an age that does not meet the provisions of the law. This research uses various techniques and data sources, including interviews, primary, secondary, and tertiary data analysis, as well as a literature study. The collected data was analyzed using empirical methods. The research results show that early marriage in Rembang is influenced by cultural, socio-economic, family environment, social, and psychological factors. Customs also play a role in the phenomenon of early marriage.*

### INTRODUCTION

Marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a sakinah, mawaaddah wa rahmah family that is blessed by Allah Almighty. Inner and outer bond" means that the close relationship between husband and wife is not only the outward physical aspect but also the inner emotional bond. The marriage bond is prescribed by religion not only to justify biological relations (sex) or not only to obtain offspring, but more than that, namely to build a happy family full of love, calm the soul, and end with the attainment of inner and outer happiness. So that the various goals of marriage can be realized, the state has an interest in regulating a regulation regarding marriage. Law Number 1 of 1974 concerning marriage was born, followed by various technical regulations below it (Mk, 2010).

Marriage is also something that applies to every creature and absolutely occurs in the lives of jinn, animals, and plants. As for humans, Allah does not allow them to run wild and indulge in lust, as happens to animals. However, God has laid down rules that provide rules, safeguarding human honor and glory. Namely, a Sharia marriage, which turns the relationship between a man and a woman into a sacred relationship based on willingness, handover, as well as tenderness and affection between the two. So that with such a marriage, sexual desire will be channeled properly and can maintain the continuity of offspring, it can protect the honor of women from inappropriate behavior.

Marriage law is the earliest law known to humans and is marked by the marriage of Adam and Eve (Rahmawati, 2015). Then, by experiencing changes here and there, the marriage law was implemented by the children and grandchildren of Adam and Eve continuously from the past until now. The marriage laws that have developed to date are the preservation (follow-up) and development of the laws that God introduced to previous generations of humans. That is why marriage law is a law that is always actual and necessary for humans (NIM, n.d.).

Rasulullah SAW strongly encouraged his people to get married; even people who were not happy with marriage were considered not to be in his people. And explained in a hadith. Rasulullah SAW said: "Indeed, I fast, break the fast, pray, sleep, and marry women. Whoever hates (does not carry out) marriage means he is not my ummah. This hadith makes it clear that Islam prescribes marriage as a form of worship (Al-Badry, 2011). A marriage is not just to justify a biological relationship or to produce offspring, but more than that, namely to build a happy family full of love, calm the soul, and end with the attainment of inner and outer happiness (Adila, 2020).

Marriages entered into by parties who are not old enough or are still children, known as early marriages, have pros and cons in society (Falakh, 2023). Reality shows that early marriage is still common and often occurs in Indonesian society, especially in rural areas (Adhim, 2002). Various reasons were put forward by perpetrators of early marriage, including economic factors, environmental influences, or local customs; not being able to refuse a proposal from the groom because they were worried that it would not be successful (no one would apply again because they had previously rejected the proposal); the child being considered capable of performing a gawe (carrying out marriages); daily work; fear of children falling into adultery; and so on (Alam, Basri, & Fikri, 2020).

Marriage law opens up opportunities for early marriage through the court's marriage permit process (Nasution, 2007). Whether a marriage permit, or what is better known as a marriage dispensation, is permitted or not really depends on the condition of the applicant, one or both of the prospective bride and groom, and the considerations of the judges who hear the case in the Religious Court (Yustisia, 2015). Munakahat jurisprudence normatively allows early marriage. However, the aspects of benefit and harm must be considered so that early marriage can bear *sakinah* and *mawaddah wa rahmah* fruit (Bisri, Soebahar, & Ulama'i, 2021).

This is in accordance with the words of the Prophet Muhammad SAW from Ibn Mas'ud *radhiyallahu'anhu*, who told a hadith (I once heard the Prophet Muhammad SAW say, "*O young people, whoever among you is able, should marry, because marriage will be more subduing eyesight and will protect your private parts better. And whoever is not yet able should fast, because fasting will actually be a shield for you*" (narrated by Jama'ah). This hadith explains the Prophet's command for young people who are able to get married as soon as possible, and if you can't afford to get married, mom.

## **METHODS**

The research method is to technically explain the methods used in research. With this, the author uses empirical writing methods with a socio-cultural juridical approach, etc. The location of this research was carried out at the Rembang Religious Court by studying documents, interviews, and Decision Number 0047/Pdt.P/2016/PA.Rbg regarding the issue of marriage dispensation.

## **RESULTS AND DISCUSSION**

In this case, the person who applied for marriage dispensation at the Rembang Religious Court was the man's parents. The application for marriage dispensation was submitted because the prospective groom had not yet reached the requirements for marriage, namely 19 years, while the prospective groom had had sexual relations outside of marriage, resulting in pregnancy for the woman he was dating (Yustisia, 2015).

The gestational age has reached 1.5 months or 6 weeks. In order for the baby born in the future to be a legitimate child, both parents of the man and woman agree to marry by applying for a marriage dispensation. In this case, the request for dispensation was made by the child's parents at the Rembang Religious Court (Indonesia, 1990).

Based on the decision of the Rembang Religious Court, the judge granted the petition and decided to give a marriage dispensation permit to the applicant's child to marry the applicant's child's future wife (Sustiono, Marzuki, & Ibrahim, 2022). And also ordered the Religious Affairs Office (KUA) of Rembang District, Rembang District to marry the applicant's child to his future wife.

Several things that were taken into consideration by the Panel of Judges at the Rembang Religious Court in granting the marriage dispensation request include:

1. Future husband and future wife
2. The applicant's son as future husband stated that he really loved his future wife and did not want to be separated
3. There is readiness to become a husband and has worked so he is able to support his wife
4. The future wife loves her and does not want to be separated from her future husband because she is already 1.5 months pregnant
5. The prospective wife will marry on the basis of mutual consent and without coercion

The existence of a marriage dispensation in the Marriage Law, when viewed from the perspective of child protection law, revealed that the issue of marriage dispensations for minors has received widespread public attention and controversy, and this does not seem to touch on the material aspects of marriage (violations in marriage such as violations of age or violation of requirements), but places more emphasis on the aspect of deprivation of human rights, especially children's rights to freedom (Ulwan, 2000).

Marriage at the age of children, seen from the perspective of child protection, is considered an unlawful act because this act is considered a deprivation of the child's rights. In fact, marriage at the age of children will have a criminal impact if it contains elements of discrimination, economic and sexual exploitation, neglect, cruelty, violence and abuse, injustice, and other wrongful treatment, which must be proven in accordance with applicable laws and regulations (Sufri, Said, & Rauf, 2020). In Islamic law and customary law, there are no provisions regarding age limits for marriage (Imron, 2015). As soon as someone enters puberty, he is actually ready to get married. The age of puberty is related to the fulfillment of the biological duties of a husband and wife. Likewise, in customary law, there is no age limit for marriage (Nuruddin Amir, 2004).

This age limit for marriage is reaffirmed by the Compilation of Islamic Law (KHI) in Article 15 paragraph (1), namely, for the benefit of the family and household, marriage may only be carried out by prospective brides and grooms who have reached the age specified in Article 7 of Law Number 1 of 1974, namely that the prospective husband must be at least 19 years old and the prospective wife must be at least 16 years old. Article 7 of Law Number 1 of 1974 concerning Marriage, in paragraph (1), reads "Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years". When there is a deviation from Article 7 paragraph (1), then what is used is Article 7 paragraph (2), which reads: "In the event of a deviation from paragraph (1) of this article, you can ask for dispensation from the court or other official appointed by both the parents of the man and the woman (Sustiono et al., 2022).

Underage marriages can be prevented and annulled. Article 60 of the KHI and also Articles 13 to 28 of the Marriage Law state that prevention of marriage can be carried out if the prospective husband or prospective wife does not fulfill the requirements for carrying out a marriage according to Islamic law and legislation (Sugiarto, 2021). Meanwhile, among the conditions for marriage according to Islamic law is that the prospective bride and groom have reached puberty and are mentally and physically healthy (Mardani, 2011)(Hatari, 2021).

Apart from that, there are six principles or principles of marriage that are implied by Law Number 1 of 1974, including the principle of maturity of the prospective bride and groom. This means that every prospective husband and prospective wife who wish to enter into a marriage contract must be truly physically and psychologically mature. The wisdom of enshrining marriage is to promote offspring, maintain one's lineage (status), save society from moral decadence, as a medium for forming an ideal household and educating children, freeing society from various diseases, and achieving mental and spiritual peace. Marriage is natural and can be achieved at the age where the prospective bride and groom have perfected their minds and are ready to carry out the reproductive process. Underage marriage by a couple who has not met the marriage age limit is essentially a marriage carried out by someone at the age of a child. This is as confirmed in Article 1 paragraph 1 of Law No. 23 of 2002 concerning Child Protection (Nomor, 23AD), which states that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb (Syarifuddin, 2006).

The problem of marriage among underage children is an issue that always surfaces, along with the emergence of various factors behind it. One of the factors is pregnancy out of wedlock, so the path often taken by parents is to apply for a marriage dispensation through the religious court.

These reasons, to some extent, influence the attitude of judges in court or other appointed officials in making decisions to grant marriage dispensations to the parties. Meanwhile, every child who is not yet 18 years old must receive protection for their children's rights and welfare as mandated by the child protection law (Thalib, 2018).

Based on the results of interviews with Mr. Dr. Sutiyo M.H., the factors that led to the granting of requests for marriage dispensation for minors by religious court judges were more due to the condition of the woman being pregnant out of wedlock. Apart from that, Mr. Sutiyo further emphasized that the judge's conscience and kindness can be factors in granting marriage dispensation for children in cases of children being pregnant out of wedlock. In the case of Determination Number 0047/Pdt.P/2016/PA.Rbg, the judge granted the request for a marriage dispensation based on the hadith rule that avoiding harm (damage) takes priority over attracting benefit (goodness). This means that the judge made this decision to avoid further damage that would be caused in the future. According to the author, juridically, the judge was right to grant the marriage dispensation request because the legal basis for making this decision was in accordance with the Marriage Law, which allows a minor to enter into a marriage by applying for a marriage dispensation (Article 7, paragraph 2).

Even though the law determines the age of marriage at 16 years for women and 18 years for men, on the other hand, religious courts are given the authority to dispense marriage as a solution to overcome greater damage. However, here, the religious courts do not make it easy for minors to marry. In the case of marriage dispensation resulting from a woman becoming pregnant out of wedlock, in conditions like this, the author is of the opinion that marriage dispensation is the only way that must be taken as a form of protection and prevention against the greater harm (damage) that it will cause. This also includes the granting of the request in the case of Determination Number 0047/Pdt.P/2016/PA.Rbg, as a protection for the child who will be born as well as the psychological condition of both the bride and groom and the family as a whole.

In this case, the author believes that there is a contradiction between the child protection law and the marriage law regarding the marriage of underage children. For this reason, the existence of contradictions in the articles of the two laws requires deep accuracy for a judge in finding a common ground in resolving marriage dispensations for minors, especially for cases of pregnancy out of wedlock. Seeing this, in essence, the child protection law can still be used as material in deciding cases related to the age of marriage, but Law Number 1 of 1974 concerning marriage is still the main basis and a derivative of it, namely the compilation of Islamic law (Indonesia & Bab, 1974) (Suma, 2004).

And it also cannot rule out the possibility of a marriage dispensation, which also has a juridical basis in legislation. It should also be noted that the marriage dispensation is a special rule, while the child protection law, specifically Article 26 paragraph (1) letter c, which prohibits marriage for a child who has not reached the age of eighteen, is a general rule.

However, this age limit for marriage is reaffirmed by the Compilation of Islamic Law (KHI) in Article 15 paragraph (1), namely, "For the benefit of the family and household, marriage may only be carried out by prospective brides and grooms who have reached the age specified in Article 7 of Law Number 1 in 1974, namely that the prospective husband must be at least 19 years old and the prospective wife must be at least 16 years old." And Article 7 of Law Number 1 of 1974 concerning marriage in paragraph (1) reads "Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years". When there is a deviation from Article 7 paragraph (1), then what is used is Article 7 paragraph (2), which reads: "In the event of a deviation from paragraph (1) of this article, you can ask for dispensation from the court or other official appointed by both the parents of the man and the woman."

## CONCLUSION

Based on the analysis provided above, it can be concluded that according to Law Number 1 of 1974 concerning Marriage, Article 7 paragraph (2) in its wording provides an opportunity for parents to marry their children at an early age and also serves as the basis for judges to decide on marriage dispensation cases. The practice of early marriage in 2016 in Rembang, based on data from the Religious Court of Rembang from January to August, amounted to 52 cases. Among the available data, early pregnancy is the most common reason for early marriages in the Religious Court of Rembang. Dispensation for marriage of underage children in Case Determination Number 0047/Pdt.P/2016/PA.Rbg with the reason of pregnancy granted by the religious court in that case aims to sever the bond of adultery, alleviate pressure or stress, and give legal authority to the child born from such a union. However, behind all this, judges still firmly adhere to the trial facts. Looking at the data from the Religious Court of Rembang from 2012 to 2015, there was only one divorce case due to early marriage. With this, the author believes that both negative and positive effects still exist, but preventive measures should still be taken despite the opportunity for early marriage provided by Article 7 paragraph (2) of the Marriage Law. The government and society continue to work together to neutralize the widespread occurrence of early marriages.

## REFERENCES

- Adhim, M. Fauzil. (2002). *Indahnya pernikahan dini*. Gema Insani.
- Adila, Arina Hukmu. (2020). Sociological Aspects of Judges in Granting Applications for Marriage Dispensation (Study of Determination Number: 0038/Pdt. P/2014/PA. Pt). *Walisongo Law Review (Walrev)*, 2(2), 159–168. <https://doi.org/10.21580/Walrev/2020.2.2.6850>
- Al-Badry, Hamka Haq. (2011). *Pancasila 1 Juni & Syariat Islam*.
- Alam, Nur Alam Nur, Basri, Rusdaya, & Fikri, Fikri. (2020). Dynamics of Judges' Considerations in the Determination of Marriage Dispensation at the Enrekang Religios Court. *Al-Iftah: Journal of Islamic Studies and Society*, 1(2), 1–12.
- Bisri, Kasan, Soebahar, Moh Erfan, & Ulama'i, A. Hassan Asy'ari. (2021). Unsur Lokal Nusantara dalam Syarah Hadis: Studi Kitab Tarjamah Bulughul Maram Karya Ahmad Hassan. *Mutawatir: Jurnal Keilmuan Tafsir Hadith*, 11(2), 253–282. <https://doi.org/10.15642/mutawatir.2021.11.2.253-282>
- Falakh, Berlian Fajrul. (2023). Islamic Law Review of Judge Considerations in Agreeing to Marriage

Dispensation (Case Study in The Klaten Religious Court). *Al-Mada: Jurnal Agama, Sosial, Dan Budaya*, 6(3), 466–482. <https://doi.org/10.31538/almada.v6i3.2809>

Hatari, Sekar Novri. (2021). *Pengaruh Penerapan E-Banking Terhadap Kinerja Keuangan Pada Bank Umum Syariah Di Indonesia (Periode 2016-2020)*. Universitas Islam Negeri Sumatera Utara.

Imron, Ali. (2015). *Hukum Perkawinan Islam di Indonesia, cet. I*, Semarang: CV. *Karya Abadi Jaya*.

Indonesia. (1990). *Undang-undang nomor 7 tahun 1989 tentang peradilan agama*. Pustaka Amani.

Indonesia, Presiden Republik, & Bab, I. (1974). *Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan. Lembaran Negara Republik Indonesia Tahun*.

Mardani. (2011). *Hukum perkawinan Islam di dunia Islam modern*. Graha Ilmu.

Mk, M. Anshary. (2010). *Hukum perkawinan di Indonesia: masalah-masalah krusial*.

Nasution, Khoiruddin. (2007). *Pengantar dan pemikiran hukum keluarga, perdata Islam Indonesia*. Academia & Tazzafa.

Nim, Muhammad Bahrezi. (N.D.). Akibat Hukum Tidak Dilaksanakannya Putusan Pengadilan Negeri (Eksekusi) Oleh Tergugat (Putusan Nomor: 08/Pdt. Gs/2017/Pn Ptk) Pengadilan Negeri Kelas Ia Pontianak. *Jurnal Fatwa Hukum*, 4(2).

Nomor, Undang Undang. (23AD). *tahun 2002 tentang Perlindungan Anak*.

Nuruddin Amir, H. (2004). *Hukum Perdata Islam. Prenada Media. Jakarta*.

Rahmawati, Rahmawati. (2015). *Dinamika pemikiran ulama dalam ranah pembaruan hukum keluarga Islam di Indonesia: Telaah fatwa MUI tentang perkawinan tahun 1975-2010*. Lembaga Ladang Kata.

Sufri, Melda, Said, Zainal, & Rauf, Aris. (2020). Judge Consideration of Marriage Dispensation at Sidenreng Rappang Religious Court. *Al-Iftah: Journal of Islamic Studies and Society*, 1(2), 13–24.

Sugiarto, Umar Said. (2021). *Pengantar Hukum Indonesia*. Sinar Grafika.

Suma, Muhammad Amin. (2004). *Hukum keluarga Islam di dunia Islam*. RajaGrafindo Persada.

Sustiono, N. A., Marzuki, Marzuki, & Ibrahim, Sidik. (2022). Judges' Considerations in Granting Permission to Underage Marriage Applications at the Luwuk Religious Court. *International Journal Of Contemporary Islamic Law And Society*, 4(2), 14–27. <https://doi.org/10.24239/ijcils.Vol4.Iss2.48>

Syarifuddin, Amir. (2006). *Hukum Perkawinan Islam di Indonesia, cet. Ke-1. Jakarta: Penada Media*.

Thalib, Muh Dahlan. (2018). Peranan Lembaga Keagamaan Al-irsyad dalam Pendidikan di Indonesia. *AL-ISHLAH: Jurnal Pendidikan Islam*, 16(1), 1–10.

Ulwan, Abdullah Nasikh. (2000). *Perkawinan Masalah Orang Muda, Orang Tua dan Negara*. Jakarta: Gema Insani Press.

Yustisia, Tim Visi. (2015). *KUH Perdata (Kitab Undang-Undang Hukum Acara Perdata) & KUHA Perdata (Kitab Undang-Undang Hukum Acara Perdata)*. VisiMedia.

---

**Copyright holder:**

(2023)

**First publication right:**

Asian Journal of Engineering, Social and Health (AJESH)

**This article is licensed under:**

