

Problematics of Granting Dispensation for Marriage that Leads to Child Divorce Study at Pasuruan Class 1A Religious Court

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Abstract: The granting of marriage dispensation to minors is an increasingly widespread phenomenon in Indonesia even though the minimum age of marriage has been raised through the revision of the Marriage Law. This study aims to analyse the problematics of granting marriage dispensation and its implications for the high rate of child divorce. Through a qualitative approach with case studies and analysis of data from the Pasuruan Religious Court and related agencies, this study found that many marriage dispensations were granted due to cultural factors, pregnancy outside marriage, and family pressure. However, the emotional, economic and social unpreparedness of young couples proved to be the main factor triggering divorce at a young age. These findings suggest that the process of granting marriage dispensation tends to be a mere formality without considering the psychological readiness of the prospective bride and groom. Therefore, there is a need to evaluate the marriage dispensation policy and strengthen premarital education and child protection to prevent the long-term impact of child divorce.

Keywords: *Dispensation of marriage, child divorce, child marriage, legal policy, child protection*

INTRODUCTION

Marriage is one of the historic moments in a person's life, where the prospective bride and groom commit to living together in a holy bond. Apart from sunatullah, marriage is the basis for creating a harmonious family. According to Law No.1 of 1974, marriage is a physical and mental bond between a man and a woman as husband and wife to form a harmonious and eternal family based on the Almighty God. The main element is that there is an invisible inner bond between husband and wife.

The purpose of a marriage is to create a household life that is *sakinah, mawadah and rahmah*. In addition, the hope of a marriage is that it can last a lifetime until one of the partners dies.¹ Many supporting factors must be fulfilled for the harmony of a marriage such as mental, psychological and economic readiness. In order to obtain psychological and mental maturity, it is necessary to limit the age of marriage.²

The age limit for marriage is regulated by the state in Law Number 16 of 2019 after the amendment of Law Number 1 of 1974 concerning Marriage in Indonesia. Where the minimum age of marriage for men and women is 19 years. If the prospective bride and groom are less than

¹ Asrul Hamid, "Dinamika Dalam Prosedur Perceraian: Sebuah Tinjauan Masalah Pada Hukum Perkawinan Di Indonesia," *Desember* 04, no. 2 (2023): 1–14.

² Syamsul Rijal, "Pengaruh Pemberian Dispensasi Nikah Terhadap Tingkat Anak Di Bawah Umur Pada Pengadilan Agama Kolaka," *Economics and Digital Business Review* 4, no. 1 (2023): 786–96.

19 years old, they must apply for marriage dispensation at the religious court. After the religious court issues a marriage dispensation determination, the bride and groom bring the determination to have their marriage legalised at the Office of Religious Affairs (KUA).

The main purpose of limiting the age of marriage is to reduce the number of underage marriages, but these restrictions are still ineffective and still not as expected.³ Based on the results of interviews with the Pasuruan Religious Court, it cannot be denied that there have been quite a number of requests for marriage dispensation cases in the last five years. This is due to various factors, one of which is the local culture and parents' concerns about the promiscuity of today's children.

According to the data that the author has collected from the Pasuruan Religious Court, in addition to the large number of requests for marriage dispensation cases, the percentage of divorce cases for young couples is also quite large. Based on this data, it is a question for the author whether there is a relationship between the granting of marriage dispensation and the divorce rate in the Pasuruan Religious Court. This is the basis for discussion in this paper.

The results of this discussion are expected to be an illustration and consideration so that judges are more careful and selective in granting marriage dispensation permits to the community. So that it can minimise the impact of the rampant phenomenon of underage marriage.

METHODS

In this study the authors used qualitative research methods. Qualitative research methods are methods that make in-depth observations and describe a phenomenon or event.⁴ This research requires data, reviewing existing theories to support data which will later lead to a conclusion or new theory. This qualitative research has three main elements such as data obtained for research sources, some analyses and interpretations that support the theories discussed, and written reports.⁵

The technique of taking research subjects in this research uses purposive sampling technique. Purposive sampling itself is sampling whose criteria are adjusted by the author's

³ Asman, "Dynamics of Adult Age and Its Relevance to Age Limits of Marriage in Indonesia: A Juridical-Normative Perspective," *Journal of Islamic Law* 2, no. 1 (February 7, 2021): 119–38, <https://doi.org/10.24260/jil.v2i1.66>.

⁴ Dewi Nawang Wulan, Danela Mutia Rahma Handayani, and Dedy Stansyah, "Konsepsi Kebijakan Hukum Dalam Pemberian Dispensasi Nikah Terhadap Meningkatnya Angka Perceraian Rumah Tangga," *MADANI Jurnal Politik Dan Sosial Kemasyarakatan* 16, no. 1 (August 2024): 274–83.

⁵ Abdul Fattah Nasution, *Metode Penelitian Kualitatif* (Bandung: CV. Harfa Creative, 2023).

needs.⁶ The data collection methods used were interviews and non-participatory observation. The author conducted structured interviews with judges and case parties in order to obtain the necessary data. In addition to interviews, the author also made direct observations of case settlements in the Pasuruan Religious Court environment. The author did not forget to test the validity of the data, namely the data credibility test where the data that has been obtained by the author will be revalidated by the party who has been interviewed. Testing the validity of this data aims to make the data submitted valid so that it is hoped that the conclusions presented later will also be valid. Because if the data collected is not valid, the conclusions obtained will harm the next research.

RESULTS AND DISCUSSION

1. Dispensation of Marriage at the Pasuruan Religious Court

Dispensation of Marriage is a marriage performed where the age of the prospective bride and groom does not meet the requirements of the applicable laws and regulations (Nisa', 2022). Therefore, this underage marriage requires permission from a judge in the form of a determination from the Religious Court. In the latest regulation of Law Number 16 of 2019 which regulates the amendment to Law Number 1 of 1974 concerning Marriage, the minimum age of marriage for both men and women is 19 years.

There are several factors driving the application for dispensation of marriage, including, firstly, a low level of education so that when they drop out of school or do not continue their studies, they will be unemployed and decide to get married. Secondly, the lack of knowledge of parents, children and the community about the impact of marriage at a young age.⁷ Thirdly, parental customs fear the social sanction that will say their child is an old maid if they do not get married as soon as possible. Fourth, parents' concerns about current promiscuity. Fifth, the economic difficulties of parents who encourage children to get married immediately in the hope that the child's economy will improve.

It is important to recognise that young marriages can have a negative impact on the health of the female partner.⁸ This is because women who become pregnant at a young age on average lack knowledge about pregnancy and childbirth. In addition, the lack of knowledge about how to

⁶ Abdul Fattah Nasution.

⁷ Dewi Puspito Sari and Fiqi Nurbaya, *Faktor Penyebab Pernikahan Dini Pada Remaja Putri Dan Upaya Pencegahannya* (Cirebon: PT Arr Rad Pratama, 2023), <https://arradpratama.com/>.

⁸ Dewi Puspito Sari and Fiqi Nurbaya, *Faktor Penyebab Pernikahan Dini Pada Remaja Putri Dan Upaya Pencegahannya*.

care for children will also have an impact on the growth of future children. In addition to the impact on health, young marriage also has various other impacts, such as teenagers who are married will lose the opportunity to get a higher level of education.⁹ Where with a low level of education it will be difficult to get a more prosperous job, so that the economic status of the family is low. Domestic violence is also very prone to occur due to the psychology of married couples who are still immature in dealing with household problems.¹⁰

In addition to the impact on the husband and wife, young marriage also affects the children they give birth to. Children will be born underweight and potentially unhealthy at birth. Interrupted parental education will result in low knowledge so that children will lack access to information. In addition to access to information, it is feared that the child's development will be less than optimal and malnourished.¹¹

Limiting the age of marriage by the government is still considered ineffective in efforts to reduce the number of young marriages.¹² The rate of young child marriage in Indonesia is still very high.¹³ This is also the case in the Pasuruan Religious Court where applications for dispensation of marriage are still high, as shown in Table 1 below.

No	Year of Register	Number of Requests	Case Classification
1	2020	802 Requests	Marriage Dispensation
2	2021	736 Requests	Marriage Dispensation
3	2022	708 Requests	Marriage Dispensation
4	2023	874 Requests	Marriage Dispensation
5	2024	897 Requests	Marriage Dispensation

Table 1. Data on marriage dispensation cases at the Pasuruan Religious Court

⁹ Khoirul Abror, *Dispensasi Perkawinan Di Bawah Umur*, Cetakan Pertama (Yogyakarta: Diva Press, 2019), www.blogdivapress.com.

¹⁰ Evi Rochmatuzzuhriyah et al., "Pertimbangan Hakim Pengadilan Agama Dalam Mengabulkan Dispensasi Nikah Di Bawah Umur."

¹¹ Khoirul Abror, *Dispensasi Perkawinan Di Bawah Umur*.

¹² Asman, "Dynamics of Adult Age and Its Relevance to Age Limits of Marriage in Indonesia: A Juridical-Normative Perspective."

¹³ Cecep Sumarna and Neng Hannah, *Pernikahan Usia Anak Problematika Dan Upaya Pencegahannya* (Tangerang Selatan: Media Kalam, 2019).

The data above is taken from the Case Management Information System at the Pasuruan Religious Court, which shows a significant increase. In 2020 there were 802 applications for dispensation of marriage, in 2021 there were 736 applications, in 2022 there were 708 applications, in 2023 there was an increase to 874 applications, and in 2024 there was another increase of 897 applications. If you add up the total number of applications for dispensation of marriage over these five years, it reaches 4017 cases with an average per year of 803 cases. This figure is not a small number, as a comparison that the total average number of cases in the Pasuruan religious court per year is 3000 cases. So marriage dispensation cases account for 26.6% of the total cases each year in the Pasuruan Religious Court. This large number shows that the direction of government policy is still not optimal and this will increase the impact on the incidence of young marriage.

In addition to the above data, based on interviews with judges of the Pasuruan Religious Court, the factors for applying for dispensation of marriage are mostly due to parental concerns about the current rampant promiscuity. The results of interviews with case parties who processed applications for dispensation of marriage also found that most of them applied for dispensation of marriage due to parental concerns about promiscuity which could lead to other negative things such as pregnancy outside of marriage.

In addition, the culture in Pasuruan is that most people marry off their children at a young age because they have not continued their education. In previous research on marriage at a young age in Pasuruan, it was explained that young marriages occur because of socio-cultural behaviour where the teenagers of Pasuruan society adhere to the surrounding customs, namely marrying at a young age is a common thing on that basis, the teenagers follow the custom to marry young.¹⁴

2. Child Divorce in Pasuruan Religious Court

One of the fatal impacts of young marriage is that the percentage of divorce will be greater.¹⁵ This is a phenomenon that is often encountered in society but not noticed by many people. The young age of marriage can increase divorce cases because young couples tend not to be able to control their emotions in the household. Young couples are still very vulnerable to friction problems in the household. Actually, once they decide to get married, young couples

¹⁴ Lailatul Nujulah and Kurnia Dini, "Hubungan Sosial Budaya Dengan Pernikahan Muda Pada Remaja Di Kantor Urusan Agama Lekok Pasuruan," *Jurnal Keperawatan Dan Kebidanan*, 2020, 21–26.

¹⁵ Khoirul Abror, *Dispensasi Perkawinan Di Bawah Umur*.

should be aware that there are many responsibilities that must be fulfilled. That is why maturity is very important to bear this great responsibility.

Divorce is the breakup of a marriage relationship that can no longer be maintained despite attempts to reconcile between husband and wife.¹⁶ Divorce itself can occur because the husband and wife do not fulfil their rights to each other.¹⁷ In essence, every couple wants their marriage to last throughout their lives. However, many couples who have defended their marriage with all their might have to end up in a divorce. So, not always the conditions of marriage will be in accordance with our ideals, there are times when everything goes not as we expected and must end in a separation

There are several reasons for divorce contained in Article 19 of Government Regulation Number 9 of 1975, namely:

- One of the parties likes to get drunk or commit adultery, where this habit is very difficult to cure.
- One of the parties leaves their spouse for more than two years without a clear reason.
- After the marriage has taken place one of the parties commits a criminal offence resulting in a prison sentence of five years or more.
- One of the parties commits an act of violence or torture against their spouse.
- After the marriage one of the parties is physically disabled so that he/she cannot fulfil his/her obligations as husband or wife.
- The spouse continues to have disputes and quarrels that result in the relationship not being able to reconcile.

It should be suspected that the high divorce rate is because they are not ready to get married and are not ready for a change in the culture of life from taking care of themselves to taking care of their families as well. Along with high divorce cases, there are also child divorce cases. This child divorce case is a divorce that occurs as a result of the granting of a marriage dispensation application. An overview of the data on child divorce cases that the author obtained from the Pasuruan Religious Court in the following table :

¹⁶ Khoirul Abror, *Hukum Perkawinan Dan Perceraian* (Yogyakarta: Ladang Kata, 2020).

¹⁷ Agus Hermanto, *Problematika Hukum Keluarga Islam Di Indonesia* (Malang: CV. Literasi Nusantara Abadi, 2021).

No	Year of Register	Number of Requests	Case Classification
1	2020	27 Cases	Child Divorce
2	2021	45 Cases	Child Divorce
3	2022	68 Cases	Child Divorce
4	2023	68 Cases	Child Divorce
5	2024	98 Cases	Child Divorce

Tabel 2. Child Divorce Data at Pasuruan Religious Court

The data above is taken from the Case Management Information System at the Pasuruan Religious Court, which shows an increase each year in child divorce cases. In 2020 there were 27 child divorce cases, while in 2021 there was an almost double increase of 45 cases, in 2022 there was still an increase from the previous year, namely there were 68 divorce cases, in 2023 there were 68 cases the same as the previous year, and in 2024 there was another increase of 98 child divorce cases. If summed up, the total number of child divorces during these five years reached 306 cases with an average of 61 child divorce cases per year.

In addition to the above data, the author also obtained data on the reasons for child divorce in the Pasuruan Religious Court which will be displayed in the following table :

Reason for Divorce	Year					Total
	2020	2021	2022	2023	2024	
Drunk	0	1	1	1	2	5
Gambling	0	0	1	0	2	3
Leaving One of the Parties	0	0	0	3	2	5
Domestic violence	0	0	1	3	31	35
Continuous disputes and quarrels	18	24	40	26	16	124
Forced marriage	0	1	6	4	9	20
Low economy	9	20	20	30	35	114

Tabel 3. Data on Reasons for Child Divorce at Pasuruan Religious Court

From the data above, it is known that the most common reason for child divorce over the past five years is continuous disputes and quarrels with a total of 124 cases, followed by divorce due to economic reasons with 114 cases, further there are reasons for divorce Domestic violence with 35 cases. There were also reasons for divorcing children due to forced marriage in 20 cases, drunkenness and abandonment of one of the parties in 5 cases each and finally divorce due to gambling in 3 cases. While the results of observations and interviews with the parties at the Pasuruan Religious Court found that they filed for divorce on average due to disputes and arguments that occurred continuously regarding household affairs. There is no one who gives in between the two so it is difficult for them to get along again.

Continuous disputes and arguments are the biggest contributors to the child divorce factor, which means that during the household, both husband and wife have not been able to control their emotions stably and the lack of psychological resilience of the couple. In addition, the second biggest reason is economic factors, which illustrates that these young couples do not have strong economic resilience. Continuous economic pressure causes emotional levels to increase and reduces the quality of relationships in households.¹⁸

3. Analysis of the Granting of Dispensation for Marriage that Resulted in Child Divorce at the Pasuruan Religious Court

From the results of interviews with judges of the Pasuruan Religious Court, it was found that the factors for requesting dispensation of marriage were mostly due to parental concerns about promiscuity that is rampant today. The results of interviews with the case parties who processed the application for dispensation of marriage also found that most of them applied for dispensation of marriage due to parental concerns about promiscuity which could lead to other negative things such as pregnancy outside of marriage. In addition, the culture in Pasuruan, where most people marry off their children at a young age because they have not continued their education. That is the main factor in the judges granting the marriage dispensation application at the Pasuruan Religious Court.

Dispensation of marriage and child divorce itself has an interrelated relationship where the applicants and respondents of both cases are both underage. Marriage itself is not necessarily

¹⁸ Yulmitra Handayani et al., "Dispensasi Kawin Dan Perceraian Usia Anak: Antara Realitas Sosial Dan Tekstual Hakim," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 5, no. 1 (June 30, 2023): 67–82, <https://doi.org/10.19105/al-manhaj.v5i1.8188>.

always happy, especially marital relationships whose partners are still young, for couples who feel unhappy and there are continuous disputes, this is a trigger for divorce.¹⁹

The most common reason for child divorce in the last five years is continuous disputes and quarrels, followed by the economic weakness of the young couples. This description of the reasons for divorce shows that young couples are not ready both psychologically and economically. From a psychological and mental perspective, the couples still have very little experience to control their emotions when facing a problem in the household.²⁰ Their way of resolving youth is still immature. This economic welfare is difficult to obtain because children who marry at a young age usually have a low level of education, because after marriage the child must drop out of college. So when children's education is low, it will be difficult to get a decent job.

Divorce itself will definitely have a negative impact on both husband and wife, even the children of the marriage.²¹ One of the impacts is on the wife's psychology, especially when the wife is still young. This psychological disturbance can also have a bearing on the development of children from the marriage. When the mother gets psychological disorders due to divorce, it will result in less than optimal child development. In addition, from the child's side, the child must lack love from one of his parents because of the impact of this divorce.

Therefore, divorce cases must be minimised, especially child divorce. Young couples whose mental psychology is not yet strong will have difficulty dealing with life after divorce. Therefore, the community should consider well if they want to marry off their children at a young age.

CONCLUSIONS

The problem of child divorce over the last five years in the Pasuruan Religious Court is mostly caused by continuous disputes and arguments. These disputes occur because young couples still cannot control their emotions properly. In addition, problem-solving experience in daily life is still lacking.

Economic reasons are the second highest reason for child divorce, low economic strength is due to the fact that they get less decent work. These young couples find it difficult to get a

¹⁹ Dewi Nawang Wulan, Danela Mutia Rahma Handayani, and Dedy Stansyah, "Konsepsi Kebijakan Hukum Dalam Pemberian Dispensasi Nikah Terhadap Meningkatnya Angka Perceraian Rumah Tangga."

²⁰ Khoirul Abror, *Dispensasi Perkawinan Di Bawah Umur*.

²¹ Fitrotun Nisa', Ainun Najib, and Moh. Ali Hofi, "Analisis Sosiologis Terhadap Tingginya Perceraian Akibat Pemberian Dispensasi Nikah (Studi Kasus Pengadilan Agama Situbondo Kelas IA)."

decent job because their education level is also low. Other reasons such as drunkenness, gambling, violence, forced marriage and so on occur because the tendency of these young couples does not yet have a strong responsibility for married life

The granting of marriage dispensation at the Pasuruan Religious Court can be said to have not only a positive impact but also a negative impact. The positive impact of granting dispensation of marriage is that couples are spared from committing adultery because of the danger of promiscuity today. Meanwhile, one of the negative impacts is that when young couples are not ready from all aspects to settle down, this situation will contribute to an increase in the child divorce rate.

To maintain the stability, harmony and justice of a marriage relationship, the granting of a marriage dispensation permit must be wise. The legal policy on dispensation of marriage should be carefully regulated and considered as best as possible in order to minimise the negative impact.

The role of judges and legal institutions is expected to assist the community in providing the best solution to the problem of dispensation of marriage and child divorce. So that judges are more selective in granting marriage dispensation permits. One of the efforts that can be made by the government is to provide massive socialisation to the community about the impact of young child marriage. The Pasuruan Religious Court can work with the local government, the Office of Religious Affairs as well as the Office of Women's Empowerment, Child Protection and Population to create a scheduled and routine socialisation program in order to reduce the number of early marriages.

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