



Limitation of marriage age based on article 7 of law number 16 of 2019 concerning marriage dispensation

Sri Andrian, Bella Dalila, Ade Soraya, Dian Eriani

Universitas Islam Kebangsaan, Indonesia

Abstract

For someone who wants to get married but has not yet reached the marriage age limit by submitting a marriage dispensation application to the Syar'iyah Court with urgent reasons, this provision is contained in Article 7 (2) of Law Number 16 of 2019. This study aims to determine the factors behind the proposal application for dispensation from marrying a minor at the Bireuen Syar'iyah Court. This research uses normative juridical research, or what is called library research, with a statutory research approach. Data analysis in this study was carried out by descriptive analysis. The results showed that, factor behind the submission application for dispensation from child marriage, factor worrying about unwanted things happening, the relationship factor that is too close to love each other, the factor of pregnancy out of wedlock, the factor of change, so that the Marriage Law provides leeway for those who wish to marry under the age of 19 for urgent reasons. The condition is that both parents of the prospective bride and groom request a dispensation from marrying a minor at the Syar'iyah Court.

Keywords: marriage age limit, marriage dispensation, syar'iyah court

Introduction

Marriage is a legal act which must have legal consequences. The legal consequence in question is whether or not a legal act is legal, if a marriage is not valid in the eyes of the law, then the child born from the marriage is considered illegitimate and if there is a divorce then one cannot claim any rights because it has no legal force, for that Legal and religious marriages must be carried out in accordance with applicable regulations. In Indonesia, laws that regulate marriage are contained in Law Number 1 of 1974, including the requirements for marriage, one of which is the minimum age limit for marriage.

Law Number 1 of 1974 Article 7 paragraph (1) that "marriage is only permitted if a man reaches the age of 19 years and a woman reaches the age of 16 years", thus to guarantee women's rights, guarantee children's rights to survival such as children's civil rights, health rights, education rights and children's social rights, as well as the right to protection from violence and discrimination, in 2019 the Constitutional Court made changes to the contents of Article 7 of the Law -Law No. 1 of 1974 concerning the age limit for marriage which was stipulated into Law No. 16 of 2019 stated that marriage is only permitted if a man and a woman reach the age of 19. Law Number 16 of 2019 came into effect on October 15 2019. However, the phenomenon of early marriage is still often found in Acehese people, especially in Bireuen, seen from the large number of applications for dispensation of marriage at the Bireuen Sharia Court.

Early marriage is a social phenomenon that is not new in Indonesia. According to this law, the practice of marriage between men and women who are still underage occurs mostly among the middle and upper middle class and lower middle class, both in urban and rural areas. In some groups of people, phenomena like this have become commonplace and have become a culture. In fact, some groups of people

judge that without early marriage it will bring disgrace to the family.

This regulation change is of course based on very strong considerations and has been carefully thought out by experts, legislators, and also the Constitutional Court which approves changes to the Marriage Law, especially regarding the age limit regulation stated in Article 7. This change is intended so that the bride and groom who want to get married have really matured physically and mentally so that later the goal of the wedding itself is to form a *sakinah, mawaddah and warahmah* family. Then this change also aims to minimize divorce cases caused by families formed from couples who are not ready physically and mentally and are not ready to sail the ship of the household so that the government increases the age for prospective brides, which was initially 16 years for women and 19 years for men. boy becomes 19 years for both.

There is leeway for someone who wants to get married but has not yet reached the marriageable age limit by submitting a marriage dispensation application to the Syar'iyah Court for urgent reasons. This provision is contained in Article 1 amendment to Article 7 (2) of Law Number 16 of 2019 which states that: "In the event of a deviation from the age requirement referred to in paragraph (1) the parents of the man and/or the parents of the woman may request dispensation from the Court with very urgent reasons accompanied by sufficient supporting evidence."

The court that will grant a marriage dispensation must listen to the opinion of the prospective bride and groom who will carry out the marriage. The following reads Article 1 regarding changes to Article 7 paragraph (3) which states that: The granting of dispensation by the court as referred to in paragraph (2) must listen to the opinions of both the bride and groom who will enter into a marriage.

One of the cases regarding the dispensation of marriage, which the judge then did legal thinking about by implementing it through a court decision, so the author

made it into a study. This research examines further the decisions on cases of determining marital dispensation that were once decided by the panel of judges at the Bireuen Syar'iyah Court, such as in Decision Number 111/Pdt.P/2021/MS.BIR, where the case was filed by both parents of Sahwatun (17).

His father that is Adnen Bin M Yacob Place and Date of Birth, Matang Jareung, July 1 1959, NIK 1111010107590026, Islam, Elementary School Education, Farmer Work, Residence in Tgk Hamlet in Kubang, Meulum Village, Samalanga District, Bireuen Regency, hereinafter referred to as Petitioner I, Mother Husniah Binti Idris, Place and date of birth, Meulum, 01 July 1975, NIK 1111014107750054, Religion Islam, Middle School Education, Housekeeping Work, Residence in Tgk Hamlet in Kubang, Meulum Village, Samalanga District, Bireuen Regency, hereinafter referred to as as Petitioner II.

In this case the Petitioners authorize Azhari S.Sy, and Ishak SH, all of whom are Advocates/Legal Advisors/Paralegals with offices at the Legal Aid Institute (LBH) People's Aspiration and Advocacy House (RADAR) having its address at Jalan Banda Aceh-Medan, Blang Village Bladeh, Jeumpa District, Bireuen Regency. Based on the request of the Petitioners in their letter dated July 5, 2021, they have submitted an Application for Dispensation for Marriage for their biological children, and have been registered at the Registrar's Office of the Bireuen Syar'iyah Court Number 111/Pdt.P/2021/MS.BIR dated 06-07-2021.

The Petitioners are biological parents of Sahwatun Islami Binti Adnen, Place of birth Samalanga, October 27 2004, NIK 1111016710040001, Religion Islam, Middle School Education, Student Occupation, Residence in Tgk Hamlet in Kubang, Meulum Village, Samalanga District, Bireuen Regency, with her future husband the name Zaitullah Bin Sulaiman, Place Date of Birth of Panton, March 4 1996, NIK 1111080403960001, Islam, Middle School Education, Sales Jobs, Residence in Cot Kuta Hamlet, Panton Village, Pandrah District, Bireuen Regency, which will be carried out and recorded in the presence of a marriage registration employee at the Religious Affairs Office of Samalanga District, Bireuen Regency.

The Office of Religious Affairs or KUA of Samalanga District, Bireuen Regency refused to marry them because the conditions for carrying out the marriage both according to the provisions of Islamic law and the applicable laws and regulations had been met except for the age requirement for the Petitioners' children who had not yet reached 19 years for the prospective wife as provisions of Article 7 Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage.

The reason the Petitioners wanted to marry off the Petitioners' children was because the husband-to-be often went home and was afraid of being slandered by the neighbors, and because the Petitioners did not want the prospective husband and wife to commit acts that were prohibited by religion or by the state. The families of the Petitioners and the families of the prospective husband and children of the Petitioners have approved and scheduled the marriage so that it is impossible to postpone it and there is no community or third parties or other parties objecting to the marriage taking place. The case filed by the parents of Sahwatun (17) was granted the request by the Panel of Judges and granted permission for a Marriage Dispensation for Sahwatun and husband Zaitullah which was determined

by the Bireuen Syar'iyah Court Judge on Tuesday, July 27 2021.

The hypothesis of a legal problem in this article, in granting a marriage dispensation in this case, the judge is in accordance with the procedure and the judge has also advised according to statutory regulations, but the author disagrees with the determination of this case because of the factors in submitting this application, namely because the prospective husband often come to the house and are afraid of slander, it is better if the bride and groom can just wait until they are old enough to get married.

Based on the description of the background stated above, the problem that will be discussed is how to analyze the considerations of the Bireuen Syar'iyah Court judge in granting the request for dispensation of marriage in case Number 111/Pdt.P/2021/MS.BIR?

Research methods

The method used is normative juridical. The approach method used is statutory approach, concept approach, and case approach. Sources of data and data collection techniques used in this study are data libraries from written materials analyzing data using qualitative, namely data obtained from written materials (laws, documents, books, and so on). For data analysis using qualitative by examining or analyzing these problems in depth to get answers from identifying problems in scientific writing.

Discussion

a. Marriage age limit

1. Marriage age limit in islamic law

In the sources of Islamic teachings, namely the Al-Qur'an and Hadith, there are no verses that clearly define the age limit for marriage and no definite age limit is given when a person is considered an adult. The age limit for marriage is included in the area of ijthad. Scholars have differing opinions regarding the age limit factor for maturity. This is an important factor because underage marriages often occur for girls, while underage marriages for boys are rare. If Islamic law does not provide clear boundaries regarding the minimum age for marriage, then it does not mean that Islam allows marriage before the age of puberty.

Even the Prophet himself married Siti Aisyah when he was only six years old and had sex with her when he was nine years old. Some of the Prophet's companions also married their sons and nephews who were still young, as described in a book including Ali bin Abi Talib who married his daughter named Umme Kulthum to Umar bin Khattab, and at that time Umme Kulthum was still young, Likewise Urwah bin Zubair who married his brother's daughter with another brother's son, both of them were still young.

According to the scholars, the problem of age in marriage is closely related to the ability to act. This can be understood by legal actions that give rise to reciprocal rights and obligations between husband and wife. The existence of rights and obligations for a husband or wife implies that the holder of responsibility for those rights and obligations is an adult. In one of the requirements of the couple who will carry out the marriage, there is a requirement for the consent of both parties to carry out the marriage. Approval and willingness that does not arise from someone who is still small. This means that the partner whose consent is sought must be an adult.

2. Marriage age limit in positive law

The Constitutional Court issued decision Number 22/PUU-XV/2017 which stated "But when the difference in treatment between men and women has an impact on fulfilling citizens' constitutional rights". The Constitutional Court granted the change in the age limit for marriage, especially for women, in line with the values, principles and principles of child protection. So that in order to form a family, mental maturity is needed in order to guarantee women's rights, guarantee children's rights to survival such as children's civil rights, health rights, education rights and children's social rights, as well as the right to protection from violence and discrimination. The government issued a regulation regarding the age limit for marriage in Law Number 16 of 2019 which contains amendments to Law Number 1 of 1974 concerning marriage Article 7 which was stipulated, on 14 October 2019 by President Joko Widodo in the 2019 State Gazette of the Republic of Indonesia.

The considerations in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage are as follows:

- a. Whereas the State guarantees the right of citizens to form a family and continue offspring through legal marriage, guarantees the child's right to survival, growth and development and is entitled to protection from violence and discrimination as mandated in the 1945 Constitution of the Republic of Indonesia;
- b. Whereas marriage at a young age has a negative impact on the child's development and will result in non-fulfillment of the child'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;
- c. That as an implementation of the decision of the Constitutional Court of the Republic of Indonesia Number 22/PUU-XV/2017 it is necessary to amend the provisions of Article 7 of Law Number 1 of 1974 concerning Marriage;
- d. That based on the considerations referred to in letters a, b, and c, it is necessary to stipulate a Law concerning amendments to Law Number 1 of 1974 concerning Marriage.

The law stipulates that the age limit for marriage for prospective brides and grooms is equal, namely 19 years. This provision is contained in Article 1 of the amendment to Article 7 (paragraph 1) of Law Number 16 of 2019 which means: "Marriage is only permitted if the man and woman are 19 years old. The verse explains that it is not permissible to marry before reaching a predetermined age. However, there is a leeway for someone who wants to get married but has not yet reached the marriageable age limit by submitting a marriage dispensation application to the Syar'iyah Court for urgent reasons. This provision is contained in Article 1 amendment to Article 7 (2) of Law Number 16 of 2019 which means:

"In the event of a deviation from the age requirement as referred to in paragraph (1) the parents of the man and/or the parents of the woman may request dispensation from the Court with very urgent reasons accompanied by sufficient supporting evidence."

The verse explains that if a person has not reached the age of 19, the prospective bride and groom represented by their

parents can apply for a marriage dispensation in court. The court that will grant a marriage dispensation must listen to the opinion of the prospective bride and groom who will carry out the marriage. The following reads Article 1 regarding changes to Article 7 paragraph (3) which means: "The dispensation granted by the court as referred to in paragraph (2) is obligatory to listen to the opinions of both bride and groom who will enter into a marriage.

If violations of these two paragraphs are found, then the marriage that has taken place is considered legally flawed. The solution is to refer to chapter IV of the same Law on the Cancellation of Marriage. Article 22 states that a marriage can be annulled if the parties do not meet the requirements to enter into a marriage. Meanwhile, both the minimum age requirement and the dispensation are part of the requirements for marriage.

The purpose of limiting the age of marriage is to provide benefits to the bride and groom, the extended family and the community. In rural and urban communities, underage marriages generally occur due to pregnancies outside of marriage. The dangers of early marriage are not understood by the community, some village communities think that marriage over the age of 19 is considered an old maid for women. In addition, there are also reasons for carrying out underage marriages due to fear or worry that adultery will occur.

b. Dispensation Marriage at the Bireuen Syar'iyah Court

The concept of marriage that is adopted, there is an adult attitude from each husband and wife, therefore one of the requirements for marriage is to comply with the age limit as stipulated in Law Number 16 of 2019 Amendment to Law Number 1 of 1974 Concerning Marriage: " Marriage is only permitted if the male and female parties have reached the age of 19 (nineteen) years. If there is a deviation from the provisions in Article 7 paragraph (1) then it is explained in Article 7 paragraph (2) that:

"In the event of a deviation from the age requirement referred to in paragraph (1), the parents of the man and/or the parents of the woman may request dispensation from the Court with very urgent reasons accompanied by sufficient supporting evidence."

So the dispensation of underage marriages is a leeway to perform marriages to prospective brides who have not reached the marriage age requirement in accordance with the provisions of Article 7 paragraph (1) of Law Number 16 of 2019 Amendment to Law Number 1 of 1974 namely for men and women to reach 19 years old who should not be allowed or not allowed to carry out marriages but for certain reasons the marriage is allowed/permitted.

Proof of "very urgent reasons" is an important point in the examination of marriage dispensation, urgent reasons are a situation where the relationship between the prospective bride and groom cannot be postponed again on the grounds that the minimum age limit for marriage is not sufficient, bearing in mind that the negative impact is greater for both of them. In other words, the application for dispensation can only be granted if the reasons and evidence presented can convince the judge that the reasons are acceptable. Conversely, the judge will reject the request for dispensation if the reasons put forward are incomplete and the evidence presented to the trial is not perfect.

Marriage dispensation is a marriage that occurs in a couple or one of the candidates who will marry whose age is below

the standard determined by the Marriage Law. Submission of a marriage dispensation application is made after a rejection from the Office of Religious Affairs (KUA) to marry off the prospective bride and groom, so the rejection letter from the Office of Religious Affairs (KUA) is used as the basis for submitting a marriage dispensation application. Request for dispensation to the Syar'iyah Court, the first stage that is carried out is that the parents of the prospective bride and groom make an application letter that is submitted to the local Syar'iyah Court, based on the results of interviews conducted by the author with Drs. Syarwandi as clerk, "That those who have the right to apply for dispensation from underage marriages to the Syar'iyah Court are the parents/guardians of the prospective bride and groom".

As for the conditions for applying for a marriage dispensation at the Bireuen Syar'iyah Court, it is as stated by Mr. Fadhilah, M.Ag as the case registration officer at the Bireuen Syar'iyah Court. As for the conditions that must be met to apply for a marriage dispensation are:

1. "Photocopy of ID card of applicant I and applicant II, legalization of POS stamp with 10,000 stamps, 1 sheet.
2. Photocopy of the Petitioner's KK, legalization of the POS stamp with 10,000 stamps, 1 sheet.
3. Original Marriage Rejection Letter from KUA, legalized POS stamp with 10,000 stamps, 1 sheet.
4. Photocopy of Child's Birth Certificate, legalized POS stamp with 10,000 stamps, 1 sheet.
5. Photocopy of KTP of the prospective husband and child, legalization of the POS stamp with 10,000 stamps, 1 sheet.
6. Photocopy of child's last diploma, legalized POS stamp with 10,000 stamps, 1 sheet.
7. Health certificate from doctor, legalization of POS stamp with 10,000 stamps, 1 sheet.
8. Obstetrician and psychology certificate if the child is under 17 years old, legalization of a POS stamp with a stamp of 10,000, 1 sheet.
9. Photocopy of the Petitioner's marriage book, legalization of the POS stamp with a stamp of 10,000, 1 sheet.
10. Application for Marriage Dispensation Addressed to the Chief Justice of the Bireuen Syar'iyah Court, original and photocopied 7 (seven) copies, as well as the soft copy attached (burned) on the CD.
11. Photocopy of death certificate from Disdukcapil if one of the applicants has died, legalization of the POS stamp with a stamp of 10,000, 1 sheet.
12. Down payment according to a certain radius, must go through Skum Bireuen Syar'iyah Court.
13. All documents are made on A4 paper.

Today, requests for dispensation from marriage are very common. The phenomenon of the rise of applications for marriage dispensation is influenced by many things, one of which is because of the wishes of the parents, but not a few also apply for marriage dispensation because of the child's reasons. The reason that is often stated in applications for dispensation of marriage is that the relationship between the prospective groom and the prospective bride is already very close, so that it is no longer possible to postpone the implementation of the marriage, or even both of them have already had a husband and wife relationship outside of marriage. So that parents are worried that their children will fall deeper into actions that are contrary to Islamic law.

The aim is to achieve marriage, and reduce the divorce rate, produce healthy offspring (generations), and to regulate the rate of population growth, the Marriage Law adheres to the principle that when married, the prospective husband and wife are mentally and physically mature, and have reached the age limit. marriage (previously 19 years old boys and 16 years old girls and now it has been revised, boys and girls are both 19 years old). Therefore, underage marriages must be prevented as much as possible by the parties involved in organizing a marriage, especially the family.

c. Factors behind the submission application for dispensation of underage marriage at the bireuen syar'iyah court

Law Number 16 of 2019 Amendment to Law Number 1 of 1974 Concerning Marriage Article 7 paragraph (2) states that deviations from the provisions of paragraph (1) regarding the minimum age limit for marriage, may request dispensation from the Syar'iyah Court/Religious Court or other officials appointed by the parents of the male or female. So, based on Article 7 paragraph (2) of Law Number 16 of 2019 concerning marriage, judges are given the authority to grant the application for dispensation of the age of marriage.

The application for a marriage dispensation at the Bireuen Syar'iyah Court was caused by several factors. The factors underlying the application for marriage dispensation at the Bireuen Syar'iyah Court are as follows from the results of an interview with the Chief Judge of the Bireuen Syar'iyah Court Dr. M. Syauqi, SHI, SH., MH:

"Factors or reasons that are often used by applicants in applying for dispensation of underage marriages at the Bireuen Syar'iyah Court are fears of undesirable things happening, relationships that are too familiar, already in love with each other, some have been engaged before the enactment of law no. 16 of 2019 so that the applicant was not aware of the new rules and when he wanted to get married he was not allowed to get married because the marriage age limit is 16 years according to Law no. 1 of 1974 which has now been changed to 19 years for both men and women so that the applicant must submit a marriage dispensation to the Syar'iyah Court"

Based on the results of the study, the description of the factors behind the application for marriage dispensation at the Class 1B Bireuen Syar'iyah Court, namely:

1. Worried about unwanted things happening. The implementation of the marriage dispensation at the Bireuen Syar'iyah Court was caused by fears of unwanted things happening. The parents were worried about their children who had been dating for a long time, they often gathered together, and the man who often came to the house so that it is feared that unwanted things will happen, this is because children today when they are close to the opposite sex do not pay much attention to the restrictions prohibited by religion, they follow existing desires, so parents choose to marry their children with the aim to avoid slander and avoid unwanted things from happening because if they don't get married fear of adding to sin.

2. The relationship is too familiar

One of the reasons why the marriage dispensation was submitted to the Bireuen Syar'iyah Court was the relationship that was too close and could not be separated anymore between the two on the grounds that

they already loved each other, requiring parents to follow the will of their children who want to get married to avoid bad things that might happen. like getting pregnant out of wedlock.

3. Pregnant out of wedlock Free association and the influences of electronic media are increasingly advanced and increasingly sophisticated so that anyone, including children, can access various things from the electronic media, from positive things that can help in terms of education to things that negative things that greatly affect or have a negative impact on education, psychology and people's lives, especially children. This results in frequent pregnancies before marriage. Pregnancy out of wedlock is one of the factors that dominates the dispensation of underage marriages, because the dispensation of marriage is used as a bridge to cover up the family's disgrace and also to prevent further damage if the marriage is not carried out.
4. Amendments to the law on the age limit for marriage Since there was a change regarding the age limit for marriage contained in Law Number 16 of 2019 changes to Law Number 1 of 1974 concerning marriage which says that "Marriage is only permitted if a man and a woman have reached the age of 19 (nineteen) years". Based on the results of interviews conducted by the author with the case registration officer, namely Mr. Fadhilah, M.Ag, he explained one of the factors in the proposed marriage dispensation at the Syar'iyah Court, namely:
"There were also those who were engaged 2 years ago before 2019, it turned out that when they wanted to get married they couldn't, because the new rules regarding the age limit for marriage were 19 years before, 16 years because they were not aware of the new rules, so they had to apply for a marriage dispensation to the Sharia Court. Yeah because KUA refuses to marry due to age"
Changing the age of marriage for women, the marriage law provides leeway for those who wish to marry under the age of 19 for urgent reasons. The condition is that both parents of the prospective bride and groom request a dispensation from marrying a minor at the Syar'iyah Court.

Closing

and in the case of the future husband often visiting the house, this is where the role of parents is needed in advising their children not to do things that are prohibited and so that unwanted things don't happen. By knowing the factors behind the application for marriage dispensation, teenagers should get more attention from all parties, especially within the family environment in managing their social life so that they are more controlled, equipping children with educational knowledge and preventing children from forming relationships at an early age so that they can avoid slander, and the community should be more aware and understand the law.

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