



Judges' considerations on stipulating marriage dispensation in the Indonesian legal system at the sharia court of Aceh province

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Abstract

Law No. 16 of 2019 on Amendment of Law No. 1 of 1974 on Marriage has revised the marriage age limit found in Article 7, which initially for women was 16 years of age and for men was 19 years of age to become both 19 years of age following the men age limit. If the marriage is conducted below the age of 19 thus the prospective husband and wife along with their families/legal guardians are required to request for a marriage dispensation to Sharia Court. Albeit the regulations regarding marriage age limit can be clearly found in Marriage Law, the case of underage marriage is still high, particularly at Sharia Court of Aceh Province. This research aims to discover the reasons and criteria that fulfill the very urgent reason factors in Article 7(2) Law No. 16 of 2019, to discover the considerations of the Sharia Court's judges on stipulating the marriage dispensation, and henceforth to acknowledge the legal certainty over the stipulation of marriage dispensation. This research was carried out using a qualitative approach with empirical juridical type, which is examining the primary data gathered through interviews and documentation studies.

The results of the research show that Law No. 16 of 2019 does not explain clearly the definitions of very urgent reasons along with supporting evidence in Article 7(2), thus the law provides rooms for the judges in assessing very urgent reasons as representations of Article 7(2). The implementation at Sharia Court of Aceh Province, the very urgent reasons are practically represented in six reasons, which are fear of infringing social norms, fear of getting into promiscuity, fear of infringing religious norms, underaged premarital sex, prospective husband and wife are in love, and bride-to-be is pregnant. The considerations of the Sharia Court's judges on stipulating marriage dispensation refer to juridical and normative reasons. The juridical reasons used refer to Law No. 16/2019, Law No. 35/2014, Law No. 50/2009, Supreme Court Regulation No. 5/2019, and the normative reasons refer to the benefits (*mashlalah*) of the requestor (family and children).

Keywords: judges' considerations, marriage dispensation, sharia court

Introduction

Marriage is the only legally recognized medium used for the purpose of binding spousal relationship, and building a happy family between a man and woman. As one of the aspects of law and legal action, marriage can cause many other legal consequences, such as responsibilities between husband and wife, children's rights, inheritance, joint assets, and several other legal matters as the results of the legal consequences.

The exercise of marriage in Indonesia has been regulated in several legal regulations, such as Law No. 16 of 2019 on Amendment of Law No. 1 of 1974 on Marriage, afterwards the Presidential Instruction (Inpres) Number 1 of 1991 on the Compilation of Islamic Law (KHI) as the additional regulation. one of the legal matters that is regulated in those regulations is marriage dispensation. The marriage dispensation can be defined as a marital exemption from the laws' standard marriage restrictions. This occurs when one or both of the potential spouses are still regarded too young to marry legally.

Article 7 (1) of Law No. 16 of 2019 stipulates that both the male and the woman must be at least 19 years old to be considered legally married. Prior to the revision of the marriage law, the approved marriage age restriction was different, being 19 years for men and 16 years for women.

In order for a minor to perform a marriage, marriage dispensation becomes a viable option. The marriage dispensation granted to minor couples upon request to the Sharia Court serves, in theory, to safeguard the prospective husband and wife from behaviors that violate religious standards and applicable laws. It is anticipated that the granting of marriage dispensation will achieve the marriage goals established by each party. Generally, legal reasons for applying for a marriage dispensation are envisaged so that neither partner commits adultery. In various legal documents, the reasons for requesting a marriage dispensation are not specified in full. Nevertheless, the nature of these marriage dispensation reasons is so diverse that dispensation disparities across couples are highly variable in practice.

From multiple perspectives, granting and receiving a marital dispensation request is detrimental to both parties. Both are judged unprepared from a psychological, reproductive, and social standpoint. The maturity of both

spouses is a factor that must be taken into account for each party. For a marriage to be successfully executed, both age maturity and mental as well as behavioral maturity are required.

Since the implementation of Law No. 16 of 2019, from 2019 to 2021, the number of marriage dispensation cases in Aceh Province continues to increase. Cases of marriage dispensation requests that are granted by the Sharia Court in the province of Aceh are no fewer than twenty every year. Consequently, the purpose of this paper is to identify the reasons and criteria that satisfy the very urgent reason elements in Article 7 (2) of Law No. 16 of 2019, to identify the considerations of the Sharia Court's judges regarding the stipulation of marriage dispensation, and to acknowledge the legal certainty over the stipulation of marriage dispensation.

Research Methods

This research was conducted utilizing a qualitative method of empirical legal type, assessing the primary data collected via interviews and documentation studies. The collected information from original sources is descriptively analytic in character. The data analysis involved collecting, reducing, and showing the data, as well as concluding or validating.

Results and Discussions

Marriage Dispensation Concept

Article 7 (1) and (2) of Law Number 16 of 2019 on Amendment of Law No. 1 of 1974 on Marriage governs marriage dispensation in the Indonesian legal system. Both parts contain both general and specific requirements. The general rule is found in section (1), which grants marriage licenses to individuals over the age of 19, but the special regulation is found in section (2), which allows those under the age of 19 to request a marriage dispensation. Consequently, the two portions of Article 7 have actually formed an implied definition of the marriage dispensation itself, which is a departure from the general regulation in Article 7 (1) because there are specific instances in which Article 7 (2) allows dispensation (2).

This idea of marriage dispensation is therefore firmly governed by Supreme Court Regulation Number 5 of 2019 on Guidelines for Adjudicating Requests for Marriage Dispensations, namely Article 1 Section 5:

“Marriage dispensation is the court's issuance of a marriage license to a prospective husband or wife under the age of 19 to perform marriage.”

In Indonesia, the legal bases for this marriage dispensation are outlined in multiple regulations, including Law No. 16 of 2019 on Amendment of Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law, and Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Requests for Marriage Dispensations. Currently, these three legal grounds are applicable to the legal implementation of marital dispensation.

Definitions of the "Very Urgent Reasons" Phrase and Its Accompanying Supporting Evidence in Article 7 (2) of Law No. 16 of 2019

In this section, two critical assessments will be presented: the first will address the grounds for the modifications in the marriage age limit, and the second will define the phrase "extremely urgent cause" as it appears in Article 7. (2). The two assessments are crucial because the basic basis for the modification of Law No. 1 of 1974 into Law No. 16 of 2019 is their interrelationship. The appearance of the concept of marriage dispensation is owing to the legal age restriction.

As stated earlier, Article 7 (2) of Law No. 16 of 2019 cannot be separated from the age restriction that is regulated in Article 7 (2), as the appearance of the marriage dispensation regulation in Article 7 (2) coincides with the non-fulfillment of the requirement in Article 7 (1). Therefore, the development of Article 7 (2) becomes the focal point of this discussion. Article 7 (2) of the 2019 Law No. 16 states:

“In the event of deviation from the age provisions as referred to in section (1), the parents of the man and/or the parents of the woman may request a dispensation to the Court on the grounds of very urgent reason complemented by sufficient supporting evidence.”

Article 7 (2) does not clarify the definition of urgent reason and evidence supporting the request of marriage dispensation. Law No. 16 of 2019 only explains the definition and meaning of “very urgent reason” and “sufficient supporting evidence” phrases, whereby it does not describe the criteria and types of case. The explanation of Law No. 16 of 2019 states the following:

- a. The definition of "extremely urgent reason" is when there are no other options and the marriage must be performed immediately.
- b. The definition of "adequate supporting evidence" involves the existence of certifications proving that both the bride and groom are still legally minor, as well as a certificate from a health worker confirming the parents' claim that the marriage must be done immediately.

In reference to the preceding explanation, Law No. 16 of 2019 does not specify the criteria and forms that are appropriate and practical with regard to the definition of an extremely urgent reason. In this instance, the legislation allows judges to evaluate only the extremely compelling reason and sufficient supporting evidence to

give the marriage dispensation. Judge Rubaiyah of the Sigli Sharia Court has stated that, as of the present, there are no clear and hard regulations from the Supreme Court that regulate the requirements and special forms of very urgent reason together with the accompanying proof when asking a marriage dispensation. Therefore, it is reasonable to infer that the absence of law that specifies the appropriate types and forms of very urgent cause and this supporting proof contributes to the flexibility of the legal argument for obtaining a marriage dispensation in practice. It only depends on how the judges position and evaluate the grounds presented by the applicant to determine whether or not they qualify as the extremely urgent cause and supporting evidence referred to in Article 7's definition (2).

The writers conducted a number of interviews with judges at the Sharia Court of Aceh Province in order to determine the practical and applicable representations of the very urgent reason or supporting evidences indicated in Article 7 (2). According to the results, there are six very urgent grounds that are casuistic in the situations of marriage dispensation in Aceh Province, as stated by Muhammad Redha Valevi, a Judge and Deputy of Jantho Sharia Court, as shown below: 1) The Prospective Bride Is Pregnant, 2) Underage Premarital Sex, 3) A Minor in Fear of Getting into Promiscuity, 4) The Prospective Husband and Wife Are in Love, 5) Fear of Infringing Religious Norms, and 6) Fear of Infringing Social Norms.

Muhammad Redha Valevi stated that the six extremely urgent reasons listed above apply to all Sharia courts in Aceh Province, including Jantho Sharia Court. However, he stressed that the six extremely urgent reasons are not specific to each jurisdiction, but rather represent a compilation of the cases that have occurred in the Sharia Court Jurisdictions of Aceh Province.

In light of the preceding discussion, it is clear that the laws permit judges to consider and evaluate whether the reasons presented by one or both prospective partners' families (parents or guardians) are urgent or not.

Judges' Considerations on Stipulating Marriage Dispensation

In general, the Sharia Court in Aceh Province accepts marriage dispensation requests with specific conditions. In addition to *maslahah's* (greater good) considerations, the judges at least use legal principles as the basis for determining marital dispensation. Muslim asserts that the marriage dispensation is based on the latest marriage law (Law No. 16 of 2019), namely Article 7 Sections (1) and (2). There must be accompanying documentation naming one or both prospective spouses for whom a marriage dispensation is being obtained. This supporting evidence is in accordance with the article's explanation, consisting of a certificate proving the bride-to-be and groom-to-be are still of legal age, as well as a certificate from a health worker corroborating the parents' or guardians' claim that the marriage must be performed immediately.

According to the facts supplied by Muhammad Ridha Valevi, a judge and deputy of the Jantho Sharia Court, judges must consider the safety of children while considering and stipulating marriage dispensation requests. The judges' guiding principles are stated in at least ten points: 1) The best interest of the child, 2) The right to life and development of the child, 3) Respect for the child's opinion, 4) Respect for human dignity, 5) Non-discrimination, 6) Gender equality, 7) Equality before the law, 8) Justice, 9) Benefit, and 10) Legal certainty. Child Protection Law also becomes one of the most important factors that judges evaluate. The 10 principles may be found in the Child Protection Law, including the principle of the best interests of the child, the right to life, non-discrimination, and justice, among others, all of which are extracted values from the Child Protection Law (Law No. 23 of 2002 has been amended through Law No. 35 of 2014).

Other legal considerations refer to Law No. 7 of 1989, which was revised twice by Law No. 50 of 2009 regarding Religious Courts. Consequently, Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Requests for Marriage Dispensations came into effect (written Perma No. 5 of 2019). The Perma No. 5 of 2019 was issued in accordance with the Law No. 16 of 2019. This reveals that Perma No. 5 of 2019 is an elaboration and component of the legal instrument governing the dispensation of marriage. This is consistent with Yusri's assertion that Perma No. 5 of 2019 is given exclusively to specify how judges in each Religious Court (in Indonesia generally) or Sharia Court (in Aceh in particular) determine marital dispensation cases. Sharia Courts also utilize *maslahat's* reasoning and considerations, or what is known as *maslahah* nomenclature in *fiqh* theory. This is consistent with the claims of Muslim, Yuris, and Fauziati, who are Heads of Sharia Court Banda Aceh, Sharia Court Judge Banda Aceh, and Head of Sharia Court Sigli, respectively. When determining marital dispensation, judges must take into account factors based on benefits. This was also referred to by Widia Fahmi as:

“If the child indeed agrees to marry, has strong willingness to marry, those already fulfill the scope of urgent reason to us, in the sake to avoid things that are more harmful, such as to avoid adultery.”

Mafsadat (rejecting harms) and *maslahat* requirements become the focus of the judges' analysis of the significance of approving marriage dispensation requests. The depiction of *maslahah* values in the marriage dispensation legislation is *mafsadat*, which the child is may receive if the family's plea for an early marriage is denied. The usage of *mashlahah* values has a strong connection to the very urgent reasons and supporting evidence listed in Article 7 (2) of Law No. 16 of 2019, which serves as the basis and criterion for judges to determine marital dispensation.

Review of Legal Certainty on Stipulating Marriage Dispensation at the Sharia Court in Aceh Province 2019-2021

Examining a judge's decision or legal policies established by the government through legislation, legal certainty is one of the most crucial factors. Moreover, this legal certainty is placed in a key position, becoming the objective of each verdict's legal formation and judge's decision. In the context of marriage dispensation, legal certainty becomes the primary purpose in addition to legal advantage and justice.

According to legal experts Sadjipto Raharjdo, Peter Mahmud Marzuki, and Achmad Ali, the government's regulations must address the legal certainty component. Legal certainty must at least satisfy the criterion that the regulations produced in the legal material must be solid, unambiguous, and definite, so that there is no ambiguity in its definition and it is simple to apply. In light of this discussion, Article 7 (2) of Law No. 16 of 2019 has not adequately accommodated the article's clarity and details.

The legal certainty principle is also applicable to the marriage dispensation provision at Sharia Court in Aceh Province, notably between 2019 and 2021. This analysis is distinct from the previous one, and the approach can also be adjusted by sociological considerations. In some earlier judge's pronouncements, it was stated that no marriage dispensation requests were denied (throughout 2019-2021), indicating that all requests were approved and granted.

Obtaining legal certainty is one of the reasons why a judge may grant a dispensation from marriage. In accordance with Muslim's, Fauziati's, and Wilda Fahmi's assertions, all verdicts regarding the granting of marital dispensation are solely intended to offer legal certainty. The legal certainty of Article 7 (2) of Law No. 16 of 2019 must therefore be distinguished from the legal certainty of the judge's verdict. Both are distinct because they possess two distinct indicators. Regarding Article 7 (2), the indication of legal certainty refers to the clarity and specificity of the Sections, which are not confusing or present any uncertain interpretation. Meanwhile, the legal certainty of the judge's ruling is precisely determined by whether or not the requestor is granted legal certainty.

The requester's legal certainty has been satisfied by the marriage dispensation stipulation since the family can perform their child's marriage and the child can marry. In addition, the implementation of Islamic law across the society demonstrates the legal certainty of the Sharia Court of Aceh Province's decisions during 2019-2021. Islamic law does not provide an age limit for marriage; rather, it specifies an age limit for *baligh* (puberty) that reflects the proper functioning of both partners' reproductive systems, *ihtilam* (having a wet dream) for men and menstruation for women. In this case, Islam stipulates the minimum age at which a prospective spouse must be recognized legally competent.

Conclusion

The option of marriage dispensation becomes available to those who are too young to marry. The marriage dispensation established through a request to the Sharia Court for the underage couple serves, in principle, as a goal for both the prospective bride and groom in avoiding activities that violate applicable religious and legal norms.

Article 7 (2) of Law No. 16 of 2019 does not define "extremely urgent reasons" and "supporting evidence," leaving the interpretation of "very urgent reasons" to the discretion of the presiding judge. Fear of breaking societal norms, fear of slipping into promiscuity, fear of infringing religious norms, underaged premarital sex, prospective husband and wife are in love, and bride-to-be is pregnant are the six most urgent grounds cited by the Sharia Court of Aceh Province in its implementation. The Sharia Court of Aceh Province's factors for stipulating the marital dispensation are based on legal and normative grounds, which is *maslahat*. The review of legal certainty about marriage dispensation is divided into two categories. First, Article 7 (2) of Law No. 16 of 2019 does not satisfy the legal certainty criterion because it lacks firmness, clarity, and specificity, which can lead to ambiguity in meaning and judicial interpretation. Second, the marriage dispensation provision at the Sharia Court of Aceh Province has satisfied the requester's need for legal certainty.

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