

The Problematics of Underage Marriage: Juridical Review of Marriage Dispensation in Blitar

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ABSTRACT: The purpose of this study is to reveal how the legal review analyzes the issue of marriage dispensation in Blitar. Next, trying to solve the problem that there is still tolerance of court decisions that grant cases of marriage dispensation in Blitar Regency. The research method in this study began by conducting a preliminary study in the field with the aim of finding data on the phenomenon of marriage dispensation in Blitar, both in the form of primary or secondary data. Both of these data will be processed using a normative-juridical approach, which makes the theory, norms and applicable legal products become a tool for analyzing the problem of marriage dispensation in Blitar Regency. The results of the study show that underage marriage has legal claims both from theoretical sources and legislation. However, this phenomenon is certainly not in line with the spirit in realizing the effectiveness of the law and the ideals of the state that upholds humanity.

Key words: Marriage Dispensation, The Minimum Age for Marriage, Underage Marriage.

1. Introduction

We cannot deny that marriage is one of the most important aspects in life. It is very relevant if we reread references about the purpose of marriage in religious traditions or laws and regulations force in Indonesia. In Islam, for example, it is taught that one of the goals of a marriage is to make a strong bond between a married couple so that it is able to realize the marriage function properly, such as the regeneration function and other family functions [1]. Meanwhile, in order for the community to be lawful, it is strengthened again with regulations made by the state such as Law No.1 of 1974 concerning Marriage (UUP), revised UUP in Law No. 16 in 2019, until the Compilation of Islamic Law (KHI). This juridical aspect reflects why marriage is a serious problem in the order of human life, even though there are always dynamic and problematica that always cover it. The occurrence of cases of marriage dispensation in several places in Indonesia, for example, is part of the problems of marital

practices that are still in the public spotlight. A phenomenon which invites many questions, especially related to the potential and causes. Marriage dispensation is usually called an application for someone who is going to get married because it does not meet one of the conditions in the marriage regulations, namely the minimum age of marriage in Indonesia. In fact, one of the prerequisites for marriage is physical readiness, and what really determines is the age for marriage. Elizabeth B. Hurlock, as quoted in the book published by the National Population and Family Planning Agency (BKKBN), said that,

"... biologically, physical human growth gradually according to age. In men, their reproductive organs are only about 10 percent of their mature size by the age of 14 years. Maturity of the male reproductive organs, medically, occurs at the age of 20 or 21 years. Whereas in women, reproductive organs grow rapidly at the age of 16 years. Medically, the reproductive organs are considered to be quite mature over the age of 18 years. For this reason, in the reproductive period, the age below 20 years is the recommended age for delaying marriage and pregnancy because physically and mentally it is still in the process of growth and development. " [3].

In Blitar, there is increasing indication of the marriage dispensation phenomenon in every year. In the Religious Court data for the period 2008-2010, 147 cases of marriage dispensation were recorded. Whereas in 2017-2018 there were 327 cases were recorded which generally occurred as a result of promiscuity resulting in extra-marital pregnancy events, minimal sex education to excessive parental concerns [4]. Meanwhile, the increase in requests for marriage dispensation in 2019 until the middle of 2020, also increased sharply compared to previous years. This was allegedly the result of the enactment of a new regulation whereby the minimum age of marriage for both men and women must be 19 years old; previously only men were 19 years old, while women were minimally 16 years old.

Starting from the several descriptions above, the research related to the phenomenon of marriage dispensation in Indonesia has indeed been done a lot. However, academic in-depth search related to the high phenomenon in Blitar is certainly still a necessity, because the

importance of the findings of this study as a mediums and recommendations to related parties in anticipating and efforts to suppress the reality of the high incidence. For this reason, how the legal review of several events of marriage dispensation in Blitar will be the main focus in this paper.

1. Method

This research is qualitative research with the type of sociological legal research which the base is empirical data obtained in the field (field research). The aim is to reveal the research findings in depth [6], specifically related to the issue of marriage dispensation in Blitar. Data related to this problem will be divided into primary and secondary data. Primary data will be obtained directly through informants in the field, namely relating to information directly with related parties such as judges to the perpetrators. While secondary data will be obtained through studies or searches of literature or other relevant written documents supporting the preparation of this research.

Data collection methods in this research are divided into three stages, namely document study, observation, and interview. This is needed to solve academic problems that have been formulated in a structured and systematic way so that they are in line with applicable academic guidelines. While the nature of descriptive-analytical research used will be sharpened by the normatuf-juridical approach with a deductive-inductive framework. Qualitative data on the issue of marriage dispensation will be described in general, then conical to the results of the analysis based on legal norms applicable in Indonesia, then lead to conclusions and suggestions for new findings obtained in the field.

2. Result

As mentioned above, marriage is a legal act that demands the rights and obligations of the perpetrators. This is intended to realize the goal of the marriage itself which is to become a sacred and strong bond so as to realize happiness both in the world and the hereafter [7]. In addition, marriage is also a means of fulfilling one of the various kinds of living needs [8].

It also relates to the realization of the principles of marriage until manifested in practice. Mature age is certainly synonymous with the principle of marriage which creates complementary conditions in the family because it will create a sense of security, security and harmony, both

physically and spiritually. This principle will certainly also create a pattern of relations that are partnerships so that a sense of justice is well realized [9]. Especially for women, because it is closely related to the issue of pregnancy, the consideration of physical, physical and spiritual maturity in status will not only be a wife but also a mother of their children, then these three things must be considered carefully [10].

Some of the following data and information meanings can be a sign that the marriage dispensation case is a problem of society which always concern from various points of view.

A. The age limit rules for marriages in Indonesia

In forming a prosperous and happy family, age of marriage is an important factor that should not be ignored by the bride and groom. They must be mature enough, both in biological and psychological terms. This is very important to realize the purpose of marriage itself, also to prevent marriages at an early age that is potentially vulnerable to divorce.

Marriage age issues are regulated in the UUP (marriage law) and its revisions and KHI. Before the revision, the UUP stipulates that marriage cannot take place before the bride and groom reach the age of 16 for women and 19 for men or in Article 7 paragraph (1) of the UUP mention that: *"Marriage is only permitted if the male reaches the age of 19 (nineten) years and the woman has reached the age of 16 (sixteen) years."* Whereas in Article 15 paragraph (1) KHI is also referred to: *"For the benefit of the family, marriage can only be done by prospective brides who have reached the age specified in article 7 of Law Number 1 of 1974, namely the prospective husband is at least 19 years and future wife at least 16 years old."* Now, both of these rules are revised through the provisions of Law Number 16 of 2019 concerning amendments to Article 7 of the UUP where the age of 19 starts to apply both bride and groom candidates

Related to this provision, Indonesia is a country which marital age limit is not too high nor too low. Because among the countries that the majority of the population is Muslim, some of them have made the opinions of the *Imam Mazhab* about the age limit of marriage (baligh) as a reference, in other words a person can still marry at the aminimum age limit

below as long as it appropriate with the criteria of ulema opinions. Furthermore, although age restrictions on marital requirements have been set, at the practical level the application is flexible. That is, if the case is indeed very urgent or an emergency, then the bride and groom with certain conditions can propose marriage dispensations for the benefit of the family and household to be lived.

B. Marriage dispensation in Blitar

In practice, the flexibility in marriage license under the age limit is called marriage dispensation. Other provisions related to marriage age restrictions contained in the marriage law are that prospective brides who have not reached the age of 21 years, must obtain permission from parents. This is explained in our positive law, namely in Article 6 paragraph (2) of the UUP (marriage law). That is, before someone reaches the age of 21 years, he needs parental permission if he wants to get married. And if it hasn't reached 19 years for men and women, then it must get permission from the court too. According to Ahmad Rofiq, the difference is, if it is less than 21 years, what is needed is parental permission, and if it is less than 19 years, it needs court permission. Although marriage has a relationship with population problems, in reality, young marriages have the potential to result in higher birth rates and population growth [12].

In practice, those who want to obtain a marriage dispensation permit from the Court must be able to provide facts about the reasons they want to get married early in the hope that they will be accepted and meet the criteria according to the judges' judgment. The facts show, in Blitar, there are several fundamental reasons that become the priority of the panel of judges in granting a marriage dispensation request. In connection with the effects of promiscuity, for example, the panel of judges felt sorry for the fate of the child conceived by the bride-to-be. With the granting of a dispensation request, when the baby is born can see his parents who already have a legally binding bond. Another reason is the consideration that the prospective

husband and wife must have mature body and soul, so that the purpose of marriage can be realized properly without ending in divorce, and get good and healthy offspring.

Other factors are also dominated by parents' concerns that are also reinforced by economic reasons. The two things that make parents of underage marriages insist to solve the problems faced by their children, who some have been pregnant first, by asking for the granting of marriage dispensation in the Religious Court to create legal certainty and mutual benefit, and avoid prolonged shame [13].

Almost in every community environment has its own potential and reasons related to the existence of this phenomenon. The case of Srengat Blitar District, for example, in addition to the three factors above, in this region is also caused by information technology factors that influence the perpetrators to underage marriage. This is as said by the couple Fiki Zainal Abidin (19 years) and Devi Indrianingsih (16 years), a couple who consciously and without pressure to get married at a young age. This reality is also justified by the views of both parents who try to justify that a long-standing relationship and mutual love both make the desire to get married more unstoppable even though the actual age is not enough [14].

3. Discussion

In the national legal system, as the UUP (marriage law), marriage is referred to as a bond that aims to form a happy and everlasting based on religious beliefs. So, in addition to the happiness that will be achieved, also the everlasting of the household is a priority scale. Another reason, several other main objectives of marriage include justifying the biological function, realizing love, and creating legitimate regeneration [15]. Therefore, the characteristics of the UUP (marriage law) in deciphering marital goals are in accordance with the religious and anticipatory spirit of the Indonesian nation: religious lies in the spirit, and marital age restrictions become a sign that marriage requires readiness for all aspects, from physical, psychological to economic.

Looking at the phenomenon of marriage dispensation in Blitar, it is certainly not directly proportional to the development of existing regulations since 2019, instead of the minimum age limit of marriage differentiated, in fact on the part of women raised equal to men: 19 years each. It means, countries with various considerations increasingly do not provide a gap and do not agree with the practice of underage marriage. In the perspective of child protection, for example, the marriage age limit is most ideal between the age of 22 years for women and 25 for men. This is based on the belief that the age both of them have prepared everything and mentally prepared for marriage such as sufficient education to have a decent job [16].

The same thing is also related to human rights, where underage marriages are considered to be contributors to the increasing maternal mortality rate from time to time. A woman's reproductive rights can be a victim of underage marriages. In fact, underage marriages are very contrary to human values due to the harm potential that will arise [17]. In fact, psychologically and socially, young marriages tend to carry out disharmonious relationship patterns because emotions are still unstable and immature thinking.

In the context of regulation, deviations from the minimum age for marriage through a petition for dispensation to the court are a legal gap in the Indonesian justice system. However, this certainly cannot be separated from the legal paradigm used, where legal marriages are marriages that are carried out according to their respective religions and beliefs: Muslims are based on the Islamic way, while non-Muslims are also based on their belief systems. In Islam, for example, the issue of age is indeed a debate in the accuracy of the minimum age for marriage. However, this is accommodated by the UUP and KHI. Therefore, Indonesian Muslims should submit to this regulation, where the age of 19 applies to brides, both men and women [18].

In Friedman's theory of legal effectiveness, the practice of marriage dispensation can be judged as a form of legal culture that tends to be bad. Yet according to him, to ensure that the law is effective, it must meet the three main conditions, namely the legal structure, legal substance and

legal culture. The first includes the rule of law in the area of the justice system, the second is related to the legal apparatus and the third includes the level of awareness and obedience of the people to the rule of law [19].

Thus, the phenomenon of marriage dispensation can be interpreted that the reality of society in the context of marriage is not necessarily easy to regulate according to existing regulations. The dynamic development of society coupled with the rapid pace of information technology makes the pattern of relationships unpredictable, so that the barriers of religious values and moral values are very easy to break. Underage marriage, as happened in Blitar, is clear proof of this view.

4. Conclusion

Based from several exposures both theoretically at the conceptual level, and empirically at the level of reality, it can be concluded that underage marriage basically has a claim of legality both from theoretical sources and legislation. However, this phenomenon is certainly not in line with the spirit in realizing the effectiveness of the law and the ideals of the state that upholds humanity. Therefore, the role of the government in raising the minimum age equivalent to marriage at 19 years is a form of concern for the dynamic legal culture of society so that in the future the state's ideals in promoting order will be better.

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