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## Analysis of Marriage Dispensation Case Decisions in Bogor Regency: Review of Law and Social Aspects

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### Abstract:

Marriage dispensation is a complex issue that raises questions regarding the legal and social aspects of it. This research explores marriage dispensation decisions in Bogor Regency, by taking a case study from the Cibinong Class 1 A Religious Court. The analytical method includes legal and social approaches to understand the factors that influence marriage dispensation decisions. Through a normative juridical approach, this research identifies the legal basis underlying marriage dispensation decisions, exploring the legal criteria and considerations used by the Cibinong Class 1 A Religious Court. In addition, a sociological approach is used to uncover the social impact of dispensation decisions, including the role of society and norms that influence the judicial process. Results This research provides an in-depth understanding of how the justice system, especially at the Cibinong Religious Court, handles marriage dispensation cases. Findings suggest that marriage dispensation decisions are influenced by a combination of legal factors and social considerations, paying particular attention to the dissatisfaction and stability of the marital relationship. This research has the potential to provide a more holistic view of the problem of marriage dispensation at the local level, especially in Bogor Regency. The implications of the findings can help improve policies at the regional level and provide a basis for a better understanding of the balance between legal and social aspects in handling marriage dispensation cases.

Keywords: Marriage; Dispensation; Marriage; Law; Social

### A. INTRODUCTION

Marriage in society has been governed by the rule of law, both positive law and Islamic law. The positive legal rules regarding marriage, it is regulated in Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 concerning Marriage. Before the enactment of the Marriage Law, provisions regarding marriage had been regulated in the Civil Code (*Burgerlijk Wetboek*), the Indonesian Christian Marriage Ordinance (*Huwelijks Ordonnantie Christen Indonesiers S.1933 No.74*), The Mixed Marriage

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Regulations (*Regeling op de gemengde Hiiwelijks* S. 1898 No. 158), and other regulations that were declared no longer valid. (Undang-Undang (UU) Nomor 1 Tahun 1974, 1974) Law Number 1 of 1974 concerning marriage is a step towards the era of unification of marriage law which means also ending the era of marriage law pluralism in Indonesia. Thus, to perform a marriage all Indonesian citizens must be subject to the same rule of law.

Marriage dispensation in English is dispensation which means exemption or exclusion, while according to scientific dictionaries, a dispensation is exemption from an obligation, time allowance, or relief. Meanwhile, according to W.F. Prins, a dispensation is a government action that causes a law to become invalid for something special/related legis. The marriage dispensation serves as the legality of maturity and the requirement to perform marriage for those who are not legally allowed to marry. Marriage dispensation is a voluntary matter, that is, a petition case in which there is no dispute, so it has no opponent and the legal product is in the form of determination. In some cases, the application cannot be accepted in court proceedings, except when there is a legal interest that requires it. (Al-jauhari et al., 2018)

The marriage age restriction that has been determined by law is less realized by the public about the importance of the marriage age limit. In general, applications for dispensation are made if there are very urgent reasons. This is different from the decision of the Cibinong Religious Court number 176/Pdt.P/2021/PA. Cbn is for urgent reasons. However, with various legal considerations, the judge rejected the application for marriage dispensation because he was too far from 19 years old. If you look at the decision No. 1843/Pdt.P/2023/PA.Cbn., the children of the Petitioners cannot be said to be "urgent circumstances", but the Cibinong Religious Court can grant the application for marriage dispensation.

Preventing or obstructing a marriage (sitting) is an attempt to avoid the existence of a marriage that is contrary to the provisions of the existing Law. Article 13 of Law Number 1 of 1974 concerning marriage specifies that marriage can be prevented if there are parties who are not qualified to hold a marriage. In this prevention, the new parties will still carry out or at the stage of preparation for implementation. So what is meant by prevention is a legal remedy given by certain parties to prevent an unqualified marriage from taking place. (Olivia, 2015)) Because marriage itself has far-reaching legal consequences in the legal relationship between husband and wife that contains religious and moral values and also the existence of marriage will give rise to a bond that contains rights and obligations that must be fulfilled by both husband and wife.

The granting of marriage dispensation is a complex issue. As the author has described above, the Religious Court must be able to assess the urgency or not in granting marriage dispensation. Based on the explanation of the two cases above, the author is interested in researching and analyzing the two cases because in determining the application for marriage dispensation there are similarities and differences, which will later become the main basis for the judge's consideration in granting the application for dispensation marriage. What these two files have in common is that the bride is still not old enough to be under the age limit stipulated by law to be able to perform the marriage.

Marriage dispensation cases include petition cases whose results are determinations. To grant or reject the problem, the judge needs clear and deep consideration so that the decision contains legal certainty, a sense of justice, and benefit for the community.

## **B. METHOD**

This type of research is normative research with the case approach method. This normative research has the aim of studying how the application of rules in law is carried out in legal practice. The pure method of legal science is at the core of legal research. This method is an early form of legal research method that consistently maintains its "normativeness" as the direction and goal of legal research. Data collection in this study was carried out by observation, and interviews with related resource persons. Primary data include. A copy of the determination of the marriage dispensation case was both granted and rejected by the Cibinong Religious Court Number 176/Pdt.P/2021/PA. Cbn and Number 1843/Pdt.P/2023/PA. Cbn and the results of an interview with the Judge of the Cibinong Religious Court. This research will be conducted from October to December 2023 at the Cibinong Religious Court.

Researchers use data analysis methods (content analysis) and descriptive analysis to then analyze the data, namely by conducting a process of selecting data to be used and focusing the direction of research on the legal decision-making process related to marriage dispensation on granted and rejected determinations. Then inference of the data is by checking the correctness of the theoretical foundation with actual data in the field using data triangulation (Sugiyono, 2022).

## **C. RESULTS AND DISCUSSION**

### **1. Marriage Dispensation**

Marriage dispensation is a relief granted by law through the Religious Court to minors to enter into marriage or marriage. Cases of marriage dispensation include petition cases whose result is determination. To grant or reject the problem, the judge needs careful consideration so that the decision contains legal certainty, justice, and benefits for the community. During the trial, the judge must consider the facts. So in the trial, the judge must also explore the facts that happened to the applicants. From the result of the consideration, it will become law. It has binding force as a law because it is stated in the form of a judgment. (Hasyim, 2023, pp. 36–40)

### **2) Legal Consideration Basis of the Cibinong Religious Court Judge regarding the Granting of Marriage Dispensation on Determination Number 1843/Pdt.P/2023/PA. Cbn. and Number 176/Pdt.P/2021/PA. Cbn.**

Judge is a position that exists for everyone who has the skills and can work in the field of law and justice where he is faced directly with various problems of a case related to freedom and justice to decide each case. (Imam & Intang, 2016, p. 25) Judges have the role and obligation to know the law, and then find and determine the law in each case, so for judges who review (*consider*) their application is mandatory.

Before the panel of judges determines the determination, the panel of judges has considerations whether the application can be granted or not. The judges' considerations are as follows: (Zulvayana, 2018, pp. 18)

1. Applicant

The panel of judges in the trial will examine and assess whether the person who applied for marriage dispensation is entitled to file or not.

2. Reasons

At the hearing, the panel of judges will ask the reasons for the applicant's child, then the panel of judges will examine the reasons for the applicant's child and the applicant in their application letter, whether the reasons for the applicant's child and the applicant are similar or not.

3. There is a prohibition on marriage or not

For prospective husbands and prospective wives who will hold a marriage, there are obstacles or not, as stipulated in the marriage law.

4. Proof

Evidence serves to corroborate and prove the arguments in his application. The applicant is required to submit written evidence and witness evidence.

5. Assignment

The granting of marriage dispensation is appropriate and does not contradict the positive law in Indonesia.

One of the cases tried by the Cibinong Religious Court was a request for marriage dispensation. The case of marriage dispensation is quite an interesting matter in society because the average marriage dispensation case according to the author becomes a dilemma in deciding cases related to marriage dispensation. Whether the application must be approved or rejected because on the one hand in the case of rejected application No. 176/Pdt.P/2021/PA.Cbn. that the woman is too far away from the prospective husband and her age has only touched 14 (*fourteen years*). Meanwhile, in the case of the application being granted, the judge considered that with an age gap that was not too far and included proof of women's medical and psychological tests, the application was worthy of being granted. However, among the difficulties, according to the judge, Farid said "That both are granted and rejected is following justice which has been carefully considered by the Magistrate to rule out the adverse effects that will occur". As we already know the purpose of marriage is to obtain offspring so that it can attract the next family and generation and also the marriage must be considered valid in the eyes of state and religious law, with a valid marriage, this legal offspring will be recognized before the law. (Dedy Permono *et al.*, 2021, pp. 188).

In article 49 of Law Number 3 of 2006 concerning Religious Courts, marriage dispensation cases are included in one of the absolute competence (*authority*) of Religious Courts in the field of Marriage, so that the Cibinong Religious Court has the authority to resolve cases of marriage dispensation applications submitted by applicants as in a copy of the Cibinong Religious Court Decree Number 1843/Pdt.P/2023/PA. Cbn. and Number 176/Pdt.P/2021/PA. Cbn.

### **3) Analysis of the granting of marriage dispensation of the Cibinong Religious Court on the granting of Decree Number 1843/Pdt.P/2023/PA.Cbn. and Rejected Number 176/Pdt.P/2021/PA.Cbn.**

In cases that occur at the Cibinong Religious Court, the judge handling the marriage dispensation case will try to find the facts and reasons of both parties applying for marriage dispensation so that the facts and reasons included in the trial can be taken into legal consideration by the judge in granting and rejecting the marriage dispensation application. With the evidence the judge will analyze the facts and ensure the truth of the facts explained by the applicant, from this analysis, the judge can determine the law and the appropriate considerations so that whether granted or rejected the application is still based on the law and can bring justice to the applicants. (Rahmat Farid, Cibinong Religious Court Interview, 2024)

According to Islamic law, the provisions regarding the age limit of marriage can be interpreted flexibly to accommodate changing times, taking into account the context of existing rules so that they remain relevant to the development of society. However, the discrepancies in Law No. 1/1974 on Marriage regarding the age limit of marriage can result in underage marriages. Moreover, Article 7 of the law does not provide specific reasons for granting dispensation, leaving the door open for anyone to obtain it. As a result, the provisions of the law become less binding, as marriages below the minimum age limit can still be legalized by law. Therefore, in the case of marriage dispensation, the judge used the legal basis of Article 7 paragraph 1 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. The main problems in the determination of Accepted Number 1843/Pdt.P/2023/PA. Cbn. and Rejected Number 176/Pdt.P/2021/PA. Cbn. as follows:

#### **a) Determination of the granted application number 1843/Pdt.P/2023/PA. Cbn.**

The subject matter of granted application No. 1843/Pdt.P/2023/PA. Cbn. handled by *Farid Rahmad* (2023) concerning marriage dispensation was that the applicants intended to prevent their children from committing acts prohibited by religion and the judge found that the child's body posture resembled that of an adult, in addition to other signs of maturity, namely being able to do work as a housewife. The applicant testified that he was unable to wait until the marriage of the applicant's child was old enough because he and his wife-to-be had already held a *ta'aruf* and an engagement.

#### **b) Determination of Rejected Application Number 176/Pdt.P/2021/PA. Cbn.**

The subject matter of the rejected application No. 176/Pdt.P/2021/PA.Cbn. handled by Judge *Lukmanul Uu* regarding marriage dispensation is that the applicant's child and her prospective husband have established a very deep relationship and are ready to build a household. Unfortunately, there are legal provisions that have not been fulfilled because the applicant's child is only 14 (*fourteen years old*), but the age of the prospective husband is old enough, and the marriage is urgent to take place.

Marriage dispensation cases have the most dominant reason that causes the application to be submitted, namely because parents are concerned about their children's close romantic relationship and it is an embarrassing act for the applicant's parents. (Gunawan Hadi Purwanto, 2016) In the granted determination Number 1843/Pdt.P/2023/PA.Cbn. and rejected Number 176/Pdt.P/2021/PA.Cbn. which is the basis for the judge's consideration, namely that the applicant's child is still underage. In the granted application, the applicant's child is 17 years and 3 months old (seventeen years and three months), while in the rejected application the applicant's child is 14 (*fourteen*) years and 3 (*three*) months old. And both prospective husbands were old enough to follow the provisions of the law. Therefore, the argument used by the judge was relevant because this marriage dispensation was based on the concerns of the applicants' parents (*parents*) alone.

The judge of the Cibinong Religious Court in granting the application for marriage dispensation in the two granted decisions Number 1843/Pdt.P/2023/PA.Cbn. and Rejected Number 176/Pdt.P/2021/PA.Cbn. considering that to avoid greater harm, it must prioritize the benefit. The *fiqhiyyah* rule is:

درء المفساد مقدم على جلب المصالح

*"Rejecting mafsadah (damage) takes precedence over taking advantage".*

Rahmat (2024) in an interview as a judge at the Cibinong Religious Court.

*"Both the granted and rejected applications avoid harm. In the granted application if the applicant's child is not married immediately, it is feared that the actions of the applicant's child and her prospective husband will increase sin and prevent illegal marriages (underhand marriage) seeing that in the granted application Number 1843/Pdt.P/2023/PA.Cbn both of them have done ta'aruf and proposals, and include strong evidence. Then of course this rule is taken into consideration by the judge. Thus in the rejected application, the judge looked at the maslahat of the applicants where the applicant's child had just reached the age of 14 (fourteen) years and 3 (three) months. In the judge's view, both decisions have justice for the applicants, both granted and rejected".*

Law No. 23/2002 on Child Protection in Article 4, Article 9 paragraph 1, Article 11, and Article 13 regulates the rights of children. This regulation must also be a concern for judges in granting marriage dispensation decisions. Judges must consider and look carefully at the guarantee of children's rights and efforts to protect children and the welfare of children after marriage.

#### **4) Legal Considerations in Marriage Dispensation Cases**

In deciding whether to enter into a marriage based on Law No. 16 of 2019 and PERMA No. 5 of 2019, some important legal considerations must be considered, including:

- a. Consider the judge's advice to the applicant, the child, the prospective husband/wife, and the parents/guardians of the prospective husband/wife to understand the risks of marriage regarding the possibility of disruption of the

child's education, the continuation of 12 years of compulsory education, the unpreparedness of the child's reproductive system, the economic, social and psychological impact on the child, and the possibility of domestic disputes and violence. Article 12 of PERMA Number 5 of 2019. (Mahkamah Agung Republik Indonesia, 2019).

- b. Noting that the Judge will request testimony from the child for whom marriage dispensation is sought, the prospective husband/wife for whom marriage dispensation is sought, the parents/guardians of the child for whom marriage dispensation is sought, and the parents/legal guardians of the prospective spouse. (Article 13 of PERMA Number 5 of 2019).
- c. Observation of the child in the application regarding knowledge and consent to the marriage plan, aspects relating to the child's mental state, health, and willingness to marry and build a household life, and observation of how psychological, physical, sexual, or financial coercion of the child and/or family who marry or have children. (Article 14 of PERMA 5 Year 2019).
- d. Aspects of child protection and welfare are mandated by legislation and unwritten law in the form of legal values, local wisdom and social justice; and international conventions and/or treaties on child protection. (Article 17 of Perma 5 Year 2019).
- e. Considering very urgent reasons, namely the situation that there is no other alternative and the marriage is very forced, and consideration of these reasons is accompanied by sufficient evidence, namely a statement indicating the age of the bride and groom. still under legal requirements and health care must provide a certificate from the worker stating that the marriage is very urgent. (Law No.16 of 2019 Article 7 paragraph 2 and its explanation).
- f. Considering that the marriage of the applicant's child with the prospective husband or wife no relationship prevents the end of the marriage, either sexual or breastfeeding, and there is no other person who proposes it, and there are no other obstacles to the general conditions and provisions. The conditions of marriage or administration, except that the prospective spouse is not yet 19 years old Article 6, 7, and 8 of Law No. 1 Year 1974. (Kementerian Sekretariat Negara RI, 2019)
- g. Consideration of the analysis of the applicant's evidence and the strength of the evidence.

Consideration of the legal facts determined based on the evidence of letters and testimony from the applicant, the applicant's children, the prospective husband/wife, and the parents/guardians of the prospective husband/wife. The legal aspects of *maslahah* and *mursalah* and the provisions of Islamic law or fiqh regarding the regulation of the age of marriage and the granting of marriage.

## **5) The Concept of Maslahah Mursalah in Marriage Dispensation**

Maslahah Mursalah is part of the *maqashid sharia*, which is the determination of laws based on benefits that are supported by detailed (*special*) texts, but supported by several texts. (Nurhayati & Sinaga, 2018) Maqashid Shariah does not appear all at once but goes through successive stages until it reaches the stage that is arranged as it is today. In the process of its development, there are books written by previous scholars in which

they mention Maqashid Shari'ah either directly with the term Maqashid Shari'ah or with other designations. (Hambari & Ayuniyyah, 2022)

The definition of *maslahah mursalah* in Arabic means "actions that encourage the good of man". in a general sense is everything beneficial to humans, either in the sense of attracting or producing such as producing profit or pleasure; or rejecting or avoiding harm or damage? That way *maslahah* contains two meanings, namely bringing a benefit and rejecting or avoiding harm. (Amir Syarifudin, 2014, p. 343)

There are several definitions of *maslahah mursalah* according to the scholars:

1. Al-Ghazali in al-Mustasyfa formulated mashallah mursalah as follows:

مالم معيّن نصّاً بالاعتبار ولا بالبطلان الشرمن له يشهد

*Anything (mashallah) for which there is no evidence from Shara' in the form of a specific text that cancels it and no one pays attention to it.*

2. Al-Syaukani in Irsyad al-Fuhul gives the definition:

اعتبره الغاه الشارع أنّ لا يعلم الذي المنّا سبب

*Maslahah which is not known whether Shar'i rejects it or takes it into account.*

3. Abd al-Wahhab al-Khallaf gave a broader formulation:

بالغاء وإعتبار خاصّ لها يشهد ولا الشارع لمقاصد المأممة المصالح.

*Maslahah is in harmony with the objectives of Islamic law and there is no specific guidance that proves its recognition or rejection.*

Amir Syarifudin, (2014) From some of the above definitions, conclusions can be drawn about the nature of *maslahah mursalah*:

1. It is good according to reason with consideration of being able to realize good or avoid bad for humans.
2. What is good according to that reason, is also in harmony and line with the purpose of Shara' in establishing the law.
3. What is good according to reason and in harmony with the objectives of Shara', there is no specific Shara' guidance that rejects it, nor is there any Shara' guidance that acknowledges it.

So from the various perspectives that have been described above, everything beneficial, whether obtained by seeking benefits (benefits) or by avoiding or withdrawing from damage, can all be categorized as *maslahah*.

## 6) Social Impact on Marriage Dispensation Cases

Baharudin Ahmad said that the minimum age and adequate education were considered *maslahat*. Methodologically, the reason for determining the age of marriage is based on the *maslahat mursalah* method. Unfortunately, some argue that setting an age limit for the bride and groom guarantees more benefits for the family itself. (Sutisna, 2018).

The impact of an underage marriage is:

- a. Loss of educational opportunities. Marriage at a young age can cause children to lose educational opportunities.



- b. Losing the opportunity to develop and express, marriage at a young age will prevent children from expressing and thinking according to their age, because they will be charged with responsibilities in the family as a husband or wife and as a father or mother.
- c. Loss of opportunity to be creative, play, mingle with peers, rest, and utilize leisure time. Marrying at a young age will prevent the child from being creative, he will lose his teenage time, and hang out with his peers, because he has been required to be responsible for the family. In reality, children who marry at a young age cannot take care of their families and children.
- d. Prone to reproductive health problems, such as cervical cancer and other sexually transmitted diseases. Women who marry under the age of 20, 58.5% are more susceptible to cervical cancer. reproductive organs that are not ready or mature to perform reproductive functions are at risk of bleeding and organ damage that can cause death.
- e. Vulnerable to pregnancy and fetal problems. The lack of knowledge of mothers who marry at a young age about nutrition for pregnant women can affect the growth and development of the fetus. Women who conceive, give birth, and take care of children because of their young age or immaturity have a psychological burden that can affect the growth and development of the soul of the child they are carrying.
- f. Prone to domestic violence. Due to their limitations and immaturity for marriage, girls who are forced to become wives at a young age do not have a strong bargaining position with their husbands, so they are very vulnerable to becoming victims and targets of domestic violence. Likewise, boys who marry at a young age, due to their limitations and emotional immaturity for marriage, will tend to become perpetrators of violence.

The marriage of young children invests in more complex social problems in the future. The mental, social, and economic unpreparedness of children for marriage can lead to problems of domestic violence, many neglected and abandoned children, problems with the health status of mothers and children, many children born with health problems, unemployment, and others. (Sutisna, 2018)

#### **D. CONCLUSIONS**

This study presents an in-depth analysis of the granting of marriage dispensation by the Cibirong Religious Court. Based on various legal and social considerations, the judge decides to grant or deny the marriage dispensation application. Taking into account factors such as the age of the bride and groom, their mental and physical readiness, and the benefits that can result from marriage, judges seek a balance between individual and social benefits.

The granting of marriage dispensation by the court is a dilemma because it must consider the individual benefit with the social benefit. The Cibirong Religious Court considers various aspects in deciding marriage dispensation cases, including the age of the bride and groom, their mental and physical readiness, and the social impact of the marriage.

From this analysis, it can be concluded that marriage dispensation decision-making is not easy and must consider many factors. Judges must ensure that the decisions they make will benefit the individual and society as a whole. Therefore, it is important to continuously update the laws and regulations relating to marriage to ensure the protection of children's rights and social benefits. Based on these analyses, several suggestions can be considered:

1. More Comprehensive Assessment: The Cibinong Religious Court should conduct a more comprehensive assessment of each marriage dispensation case. This includes considering not only legal aspects, but also social aspects, children's welfare, and the long-term impact of the decision.
2. Development of assessment guidelines: Courts could develop more detailed assessment guidelines for marriage dispensation cases. These guidelines could include factors to be considered, standards of evidence required, and procedures to be followed in making a decision.
3. Strengthening Child Protection: There needs to be further efforts to ensure child protection in every decision made by the courts. This could be done through increasing judges' awareness of child protection issues, as well as collaboration with relevant agencies to provide the necessary support for children involved in marriage dispensation cases.
4. Education and Counselling: Education and counseling efforts should be increased, especially for prospective brides and grooms who are minors. This aims to provide a better understanding of the consequences of marriage at a young age and the alternatives that may be available.

By implementing these suggestions, it is hoped that the Cibinong Religious Court can improve the quality of its decisions in marriage dispensation cases, and be more effective in protecting the rights and welfare of children.

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