

## JURIDICAL ANALYSIS OF THE SUPREME COURT REGULATION NUMBER 5 YEAR 2019 ARTICLE 8 CONCERNING APPLICATIONS AND CASE EXAMINATION IN MARRIAGE DISPENSATION REVIEWING FROM SIMPLE, QUICK AND LOW COST PRINCIPLES

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<b>Keywords</b>	Abstract. Marriage dispensation is the granting of a marriage permit by the court to a prospective husband or wife who is not yet old enough to marry. The age limit for marriage in Indonesia was originally regulated in Law No. 1 of 1974, namely if the man was 19 years old and the woman was 16 years old. The age limit for marriage in Indonesia is set so that it can regulate and guarantee the interests of the community in accordance with the culture of the community. The formulation of the problem in this paper are: 1) how is the application of the law, the factors constraining the abuse of underage marriage. 2) how to review the principle of fast, simple, and low cost of the Supreme Court Regulation No. 5 of 2019 Article 8 concerning the Application for Marriage Dispensation This legal research method is normative juridical, namely research to be carried out to obtain materials in the form of theories, concepts, legal principles and legal regulations related to the subject matter. men and women must have maturity both physically and mentally and physically if they want to get married so that when they get married they can build a good marriage without divorce. are not old enough, they must apply for a marriage dispensation and must be with the approval of the two prospective brides and also the parents of the bride and groom who are not old enough. This is in line with Law no.1 of 1974 and has been updated to become Law NO.16 of 2019
Marriage Dispensation, Underage Marriage	

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### 1. INTRODUCTION

Marriage dispensation is the granting of a marriage permit by the court to a prospective husband or wife who is not yet old enough to hold a marriage. The age limit for marriage in Indonesia was originally regulated in Law Number 1 of 1974, namely if the man was 19 (nineteen) years old and the woman was 16 (sixteen) years old. In 2019, the marriage age limit changed to 19 years for men and women to marry, which is contained in Law Number 16 of 2019.<sup>2</sup> The age limit for marriage in Indonesia is set in order to regulate and guarantee the interests of the community in accordance with the culture of the community. Laws are made by paying attention to the benefit, looking at the community situation, justice and not burdening law enforcement. Men and women who are about to get married, but are less than 19 years old, then apply for a marriage dispensation at the Religious Court according to the place of residence of the parents of the bride and groom. Marriage dispensation was originally regulated in the Guidelines for the Implementation of Duties and Administration of Religious Courts, book III revision 2013. The guidelines briefly regulated the process of procedurally dispensation for marriage in the Religious Courts. Among them are the provisions concerning prospective husbands and prospective wives who are under the age limit for marriage, which reads.

Now, the marriage dispensation is regulated in Supreme Court Regulation (PERMA) Number 5 of 2019. Changes in the rules of the marriage dispensation occur because the rules for the minimum age for marriage have changed, Presidential Decree Number 3 of 1990 concerning the ratification of the convention on the rights of the child. children's rights), and the marriage dispensation has not been regulated explicitly and in detail regarding the process of adjudicating the marriage dispensation in the

laws and regulations. Therefore, Supreme Court Regulation (PERMA) Number 5 of 2019 was made which contains guidelines for adjudicating applications for marriage dispensation.

Supreme Court Regulation (PERMA) Number 5 of 2019 in chapter four Article 8, there are provisions that leave technical problems. The provisions read:

*"In the event that the prospective husband and wife are under the age limit for marriage, the application for a marriage dispensation for each prospective husband and wife is submitted to the same court in accordance with the domicile of one of the parents or guardians of the prospective husband or wife."*

The article explains that if the prospective husband and prospective wife are both underage, then each of the parents of the prospective husband and wife submits to the same Religious Court. If chapter 8 has been deeper, the meaning of the word "each" is still ambiguous.

In the Religious Courts environment, the application of the application for a marriage dispensation for prospective husbands and wives who have not reached the age limit for marriage varies, there are those who apply it with one case submission, such as decision Number 95/Pdt.P/2017/PA.Mdn marriage dispensation.

Marriage dispensation cases in the Religious Courts, including many cases in Indonesia. In 2020, marriage dispensations reached 64.2 thousand cases. Previously, in 2019 the marriage dispensation was decided by the Religious Courts. This figure has increased by about three times or around 177.7% from 2019 as many as 23.1 thousand marriage dispensations. The number of marriage dispensations in Indonesia is caused by several factors, namely Married by Accident (MBA), education, as well as economic, social, and cultural factors.

Supreme Court Regulation No. 5 of 2019 Article 8 with two submissions of marriage dispensation for prospective husbands and prospective wives who are still underage, when viewed from the principle of justice, namely simple, fast, and low costs, less simple and makes the costs borne by the parties increase a lot. It can be concluded that the problem formulation is

1. How is the application of the law, the factors constraining the abuse of underage marriage?
2. How about a quick, simple, and low-cost review of the Supreme Court Regulation Number 5 of 2019 Article 8 concerning the submission of a marriage dispensation application?

The aim of this research is

1. What is meant by underage marriage?
2. Know the quick, simple, and low-cost review of the Supreme Court Regulation Number 5 of 2019 Article 8 concerning the submission of a marriage dispensation application?
3. To get a law degree at the Muslim Nusantara University Al-Washliyah Medan.

## 2. METHOD

This legal research method is a scientific activity based on certain methods, systematics, and thoughts that aim to study a legal phenomenon by analyzing it. concerned.

This research was conducted in order to obtain materials in the form of: theories, concepts, legal principles and legal regulations related to the subject matter. The scope of normative legal research according to Soerjono Soekanto includes:

1. Research on legal principles.
2. Research on legal systematics.
3. Research on the level of legal synchronization vertically and horizontally.
4. Comparative law.
5. History of law.

In this study, the scope of this research will be research by drawing on legal principles, which are carried out on written and unwritten positive laws. This research can be used to draw out legal principles in interpreting laws and regulations. In addition, this research can also be used to find legal principles that are formulated either implicitly or explicitly.

This research consists of binding library materials which are primary legal materials and secondary legal materials. Primary legal materials are: Law Number 16 of 2019 concerning amendments to Law

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Number 1 of 1974 concerning marriage and Supreme Court Regulation Number 5 of 2019 concerning guidelines for adjudicating applications for marriage dispensation.

The tool used to collect data in this research is through document study by browsing the literature and using internet media.

Analysis techniques to process data obtained from literature searches, document studies, so this study uses qualitative analysis. This qualitative analysis is basically an explanation of the theories put forward, so that from these theories several things can be drawn that can be concluded and discussed in this thesis.

### 3. RESULTS AND DISCUSSION

#### **How is the application of the law, the factors constraining the abuse of underage marriage.**

Marriage in Islam is defined as the gathering or unification of a man and woman through a marriage contract and fulfills the conditions of marriage and the applicable pillars of marriage, including the presence of prospective grooms and brides, marriage guardians and the existence of consent or marriage contracts. Marriage in Islam is regulated in the fiqh of marriage and the marriage is valid if it is in accordance with the Shari'a and does not include prohibited marriages.

Biologically or pedagogically or responsibly. For men, they must be ready to assume responsibility as the head of the family, so that they are obliged to provide a living for family members. For a woman, she must be ready to become a housewife who is in charge of controlling the household, giving birth, educating, and raising children. Marriage is a ceremony of binding marriage vows which is celebrated or carried out by two people with the intention of formalizing the marriage bond according to religious norms, legal norms, and social norms. Wedding ceremonies have many varieties and variations according to ethnic, religious, cultural, and social class traditions. The use of certain customs or rules is sometimes related to certain religious rules or laws as well.

Law Number 1 of 1974 regulates the basis of marriage, the conditions of marriage, prevention of marriage, and others. One of the grounds for marriage regulated in the law is stated in Article 2 paragraph (2), namely that each marriage is recorded according to the applicable laws and regulations. Underage marriages referred to in this paper are all forms of marriage carried out in the community that are not in accordance with the provisions contained in Article 7 paragraph (1) of Law Number 1 of 1974. The formulation of the article is that marriage is only permitted if the man reaches the age of 19. (Nineteen) years and the woman has reached the age of 16 (sixteen) years. Underage marriage that occurs in the community is very much against Article 1 of Law no. 35 of 2014 concerning child protection. The marriages carried out are classified as child marriages because their age at the time of marriage has not yet reached 18 years. Marriages carried out pursuant to Article 7 paragraph (1) of Law no. 1 of 1974 is contrary to the Child Protection Law because the minimum requirements described in Article 7 (girls 16 years, boys 19 years) are categorized as children for women.

#### **Causes of underage marriage.**

Other contributing factors are economy, education, parents, mass media and internet, biology, pregnancy out of wedlock, and customary factors.

#### **Legal efforts to prevent underage marriage.**

With many considerations of risk after the marriage, in Indonesian law or in the marriage law, the minimum age for marriage is regulated for women 16 years and men 19 years, but ideally it is men aged 21 years and women aged 19 years and over. Because at that age someone who wants to get married has entered adulthood, so that he is able to carry out their respective responsibilities and roles. Usually women who marry early are not physically and psychologically ready to assume the duties of being a wife and housewife.

The court applied two applications for dispensation for marriage for prospective husbands and wives who were underage. If the data above is the costs incurred by one marriage dispensation case, then the costs incurred to the two applicants who are not old enough are double the costs from the table above. Therefore, the costs incurred for prospective husbands and wives who are underage, when

viewed from the principle of light costs, increase the cost. In fact, if they are combined into one simpler case, the costs incurred will greatly relieve the parties. From the explanation above, it can be concluded that the submission of PERMA Number 5 of 2019 article 8, for prospective husbands and wives who are both underage, applying for a marriage dispensation with each case is not in accordance with the principle of simple, fast, and low cost. The application of the marriage dispensation is not simple, because the two applications have the same legal subject, object, and legal interest. In addition, filing separately will make the application without legal certainty. Fast application in two submissions is in accordance with the provisions of the Supreme Court Circular Letter (SEMA) Number 2 of 2014, which is a maximum of 5 months, and does not exceed the time for the completion of the marriage dispensation at the Religious Courts which is completed within 715 days on average. On the principle of low cost, two submissions further increase the cost. In fact, if they are combined into one simpler case, the costs incurred will greatly relieve the parties.

#### 4. CONCLUSION

Definition of Marriage according to the Marriage Law no. 1 of 1974, Chapter I Article 1 that marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead. Furthermore, Article 2 paragraph (1) marriage is legal, if it is carried out according to the law of each religion and belief; (2) Each marriage is recorded according to the prevailing laws and regulations.

Marriage dispensation is an effort for those who want to get married but do not meet the age limit for marriage that has been set by the government, so that parents of children who are not old enough can apply for marriage dispensation to the Religious Courts through a trial process in order to obtain a marriage dispensation permit. In short, this marriage dispensation is a legal concession for those who do not meet the legal requirements of a positive legal marriage, therefore the law gives the court the authority to grant a marriage dispensation.

In positive law, the law regulates that both men and women must have maturity both physically, mentally and physically if they want to get married so that when they get married they can build a good marriage without divorce.

The law also regulates underage marriage, which if a man or woman who wants to get married but is not old enough, must apply for a marriage dispensation and must be with the approval of the two prospective brides and also the parents of the bride who are not old enough. This is in line with Law No. 1 of 1974 and has been updated to Law No. 16 of 2019.

#### 5. REFERENCE

- Asmin.status perkawinan antar agama.jakarta: PT Dian rakyat,1986  
Abdul munir,"dampak dispensasi nikah terhadap Eksistensinikah"(undergraduate thesis, universitas islam negeri walisongo Semarang 2011  
Amir, syarifuddin hukum perkawinan islam diindonesia antar fiqh munakahat dan undang" perkawinan jakarta kencana,2006  
Ahmad Al-mursi Husain jauhar,maqasid Al-syariah,jakarta amzah 2009.  
Ali, Zainuddin. Hukum Perdata Islam Di Indonesia. Jakarta: Sinar Grafika, 2007.  
Arto, Mukti. Praktek Perkara Perdata di Pengadilan Agama. Yogyakarta: Pustaka pelajar, 2007.  
Asmin. Status Perkawinan Antar Agama. Jakarta: PT Dian Rakyat, 1986.  
Ali, Zaenuddin, 2009. Kajian Sosiologi Hukum Terhadap Perkawinan Dibawah Umur. Makalah: 28 Nopember 2009.  
Lukman A dan Irfan, Nikah, (Yogyakarta: Pustaka Insan Madani, 2007), hlm. 95  
Mufdlilah, Afriani Riska, Analisis Dampak Pernikahan Dini Pada Remaja Putri Didesa Sidoluhur Kecamatan Godean Yogyakarta, RAKERNAS AIPKEMA, Tahun 2016  
Muhammad Joni, 1999 Aspek Hukum Perlindungan Anak Dalam Perspektif Konvensi Hak Anak, Citra Aditya Bakti, Bandung, hal. 106.  
Pedoman Perlindungan Anak, 2016, Direktorat Bina Kesejahter

- Ramulyo, Idris. Hukum Perkawinan Islam Analisis dari Undang-Undang No.1 Tahun 1974 dan Kompilasi Hukum Islam. Jakarta: PT Bumi Aksara, 2004.
- Surat Edaran Mahkamah Agung Nomor 2 Tahun 2014 Tentang Penyelesaian Perkara Di Pengadilan Tingkat Pertama Dan Tingkat Banding Pada Empat Lingkungan Peradilan.
- Sidik Sunayo, *Kapita selekta sistem peradilan pidana* (malang : UMM,2005),108
- Sumiyati, 2007. Hukum Perkawinan Islam dan Undang Undang Perkawinan No.1 Tahun 1974 tentang Perkawinan. Yogyakarta: Liberty. Cet.VI
- Undang-undang Nomor 16 tahun 2019 tentang perubahan atas undang-undang Nomor 1 tahun 1974 tentang perkawinan
- Peraturan mahkamah Agung Nomor 5 tahun 2019 tentang pedoman mengadaii permohonan dispensasi kawin.
- Pasa 5 ayat 2 undang-undang Nomor 4 tahun 2004 Tentang kekuasaan kehaakiman.
- UUD pernikahan pasal 7 ayat 1 Nomor 1 tahun 1974.
- Indonesia. Undang-Undang No.23 Tahun 2002 Tentang Perlindungan Anak. LN No. 109 Tahun 2002.