

Post-Divorce Determination Of Marriage Dispensation

Inayatul Anisah¹, Ana Laela Fatikhatul Choiriyah², Achmad Walif Rizqy³, Nur Fitriah⁴

State Islamic University (UIN) KH. Achmad Siddiq Jember, Mataram Street,
Number 1, Mangli District, Jember Regency, East Java 68136 |
analaela.fatikhatul99@gmail.com

DOI: <https://doi.org/10.35719/ijlil.v5i1.264>

Abstract: The marriage law in force in Indonesia shows the parameters of maturity when a person is deemed capable of getting married, since the enactment of Law Number 16 of 2019 amendments to Law Number 01 of 1974 concerning registration, applications for dispensation for marriage in religious courts are increasing every year. Likewise in the Bondowoso Religious Court, along with the increase in requests for marital dispensation also accompanied by children who have applied for marital dispensation after some time later filing for divorce, so that in this case the divorce claims experienced a significant increase after the revocation of the marital dispensation was enacted. There are things that the government needs to do in responding to these conditions, namely: massive legal dissemination regarding the impact of early marriage and protection for women after divorce. It is on this basis that the author wishes to review divorce after the determination of marital dispensation using an empirical juridical research methodology.

Keywords: Marriage, Marriage Dispensation, Divorce

Abstrak: Undang-undang Perkawinan yang berlaku di Indonesia menunjukkan parameter kedewasaan ketika seseorang telah dipandang mampu untuk menikah, sejak diberlakukan Undang-Undang Nomor 16 tahun 2019 perubahan atas Undang-undang Nomor 01 tahun 1974 tentang perkawinan, pengajuan dispensasi kawin di pengadilan agama semakin meningkat setiap tahun. Demikian halnya di Pengadilan Agama Bondowoso, seiring dengan meningkatnya permohonan dispensasi kawin juga diiringi anak yang telah mengajukan dispensasi kawin setelah beberapa waktu kemudian mengajukan gugatan perceraian, sehingga dalam hal ini gugatan perceraian mengalami peningkatan yang signifikan pasca penetapan dispensasi kawin diundangkan. Ada hal yang perlu dilakukan oleh pemerintah dalam merespon kondisi tersebut, yakni: sosialisasi hukum secara massif tentang dampak dari pernikahan dini dan perlindungan bagi perempuan pasca perceraian. Atas dasar inilah penulis ingin mengulas mengenai perceraian pasca penetapan dispensasi kawin dengan menggunakan metodologi penelitian Yuridis Empiris.

Kata Kunci : Perkawinan, Dispensasi Kawin, Perceraian

Introduction

Marriage according to Law Number 1 of 1974 is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in One Almighty God. Marriage is valid if it is carried out according to the laws of each religion and belief. Marriage has several conditions that must be met, one of which is the age criterion. In Islamic religious law there is no set age limit for

INDONESIAN JOURNAL OF LAW AND ISLAMIC LAW (IJLIL)

Volume 5 Nomor 1 Januari-Juni 2022;

ISSN 2721-5261 E-ISSN 2775-460X



Indonesian Journal of Law and Islamic Law (IJLIL) is licensed under a [Creative Commons Attribution-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-sa/4.0/)

marriage, but regulates baligh (maturity) with several signs. First, girls are aged 9 years or more and have experienced menstruation (menstruation). Second, a boy or girl aged 9 (nine) years or more and has had a wet dream. Third, a man or woman who has reached 15 years of age without having menstruation and wet dreams. ¹ Unlike article 7 of law number 1 of 1974 Jo. law number 16 of 2019 concerning Marriage, namely: men and women have reached the age of 19 (nineteen) years. If there is a deviation from the age requirement as referred to above, the parents of the prospective bride and groom may request dispensation from the Religious Court with very urgent reasons accompanied by sufficient supporting evidence.

Marriage dispensation is an effort for those who want to get married but have not met the age limit for marriage according to government regulations, so that parents of children who are not yet old enough can apply for marriage dispensation to the Religious Courts through a trial process first in order to obtain permission for marriage dispensation.

Early marriage has become a tradition that is hard to get rid of in some Indonesian societies. This is caused by several factors; internal factors such as education, knowledge and religion while external factors are influenced by the level of education of parents, family economy, culture and promiscuity. Along with the amendments to the marriage law, it showed a significant increase and resulted in a buildup of requests for marital dispensation cases. This can be seen in several Religious Courts; one of them is the Bondowoso Religious Court.

In 2022, starting from January-August, the Bondowoso Religious Court has received 468 requests for dispensation from marriage. The high number of requests for dispensation from marriage results in a high divorce rate as a result of early marriages. By observing this event, the researcher is interested in discussing divorce after the determination of the marriage dispensation at the Bondowoso Religious Court.

Regarding divorces carried out by children who carry out early marriages as data presented by Muhammad Fahrezi in 2020 explains that divorce is occurring in Indonesia and seen from divorce cases from the Religious Courts there has been an increase from year to year and the percentage is quite high. Including West Java Province which has a population of around 46 million, the increase of around 10% is due to the large number of underage marriages. Bogor City is one of the areas where underage marriages are carried out where there are several underage marriages and also pregnancy at the age of 16-19 is quite large.²

Research Methods

The approach used in this study is an empirical juridical approach, which is an approach that examines secondary data first and then proceeds with primary data research in the field.³ Secondary data referred to here is the theoretical basis in the form of opinions or writings of experts or other authorized parties and other information in the form of formal provisions such as laws and regulations, court decisions, etc., while primary data in

¹ Gani, "Perubahan Batas Usia Kawin Dalam Putusan Mahkamah Konstitusi Nomor 22/PUUXV/2017 Di Lihat Dari Penerapan Maqasid Asy-Syari'ah," 21.

² Muhammad Fahrezi dan Nunung Nurwati, "Pengaruh Perkawinan Dibawah Umur Terhadap Tingkat Perceraian", *Prosiding Penelitian & Pengabdian Kepada Masyarakat*, Vol 7, No: 1 April 2020, 88

³ Ronny Hanitijo Sumitro, *Metodologi Penelitian Hukum*, (Jakarta: Ghalia Indonesia, 1994), 3

this study are the results of field research such as interviews. It is clear that the approach method used in this study is an empirical juridical approach.

Result and Discussion

Divorce due to Early Marriage.

Changes to the norms of the Marriage Law which limit the age of marriage aim to eliminate discrimination in the right to form a family and protect children's rights. The age limit of 19 years in Law Number 16 of 2019 is considered the ripe age to enter into an eternal marriage without divorce, in order to have healthy children so as to reduce the risk of maternal and child mortality. It is hoped that Law Number 16 of 2019 can fulfill the basic rights of children to maximize their growth and development, and get the highest possible education with good assistance from both parents. In other words, Law number 16 of 2019 was issued in an effort to prevent a spike in the number of child marriages and the practice of child marriage.

The fact is that requests for dispensation from marriage at the Bondowoso Religious Court continue to increase from year to year. As of 2019, there have been 299 marriage dispensation requests. In 2020 it increased almost four-fold, namely: a total of 1077 cases, then in 2021 there were 802 cases, and in 2022 starting from January-September the registration of applications for marriage dispensation totaled 468. Based on the data above it can be seen that early marriages in Bondowoso Regency still high.

The fact is that requests for dispensation from marriage at the Bondowoso Religious Court continue to increase from year to year. As of 2019, there have been 299 marriage dispensation requests. In 2020 it increased almost fourfold, namely: a total of 1077 cases, then in 2021 there were 802 cases, and in 2022 starting from January-September the registration of applications for marriage dispensation totaled 468. Based on the data above it can be seen that early marriage in Bondowoso Regency is still high.

The high number of applications for dispensation at the Bondowoso Religious Court has resulted in a high divorce rate. Based on field surveys, the authors found 3 (three) cases of marital dispensation that ended in divorce. The table below illustrates the flow of events by mentioning (X = female and Y = male):

Case Number	Reasons for doing Marriage Dispensation	Reasons for filing for divorce
983/Pdt.G/2022/PA.Bdw	Whereas X submitted a marriage dispensation which was registered at the Bondowoso Religious Court clerkship with register Number 0940/Pdt.P/2021/PA.Bdw on 28 October 2021, on the grounds	X on December 7, 2021 married Y, which was recorded by the Marriage Registrar at the Religious Affairs Office of Tlogosari District, Bondowoso Regency with a Marriage Certificate

⁴ <https://www.harianbhirawa.co.id/pandemi-covid-19-permohonan-dispensasi-nikah-meningkat-di-kabupaten-bondowoso/>, di lihat tanggal 27 September 2022, 14:21

	<p>that X and Y had been engaged for 1 year, when X was 16 years old when submitting a marriage dispensation 8 months and Y is 19 years and 9 months old. Regarding this matter, the Bondowoso Religious Court judge granted X's request</p>	<p>Number: 280/13/XII/2021 December 7, 2021, In 2022 X filed for divorce. against Y and registered on July 4 2022, with the reason "Y cannot be responsible as the head of the household and cannot provide a living shopping for X", X and Y have separated since June 2022, so in this case X and Y only been in the household for 5 months.</p>
<p>1234/Pdt.G/2022/PA.Bdw</p>	<p>Whereas X applied for a marriage dispensation which was registered at the Bondowoso Religious Court clerkship with register Number 0645/Pdt.P/2021/PA.Bdw on 29 July 2021, on the grounds that X and Y had been engaged for 6 months. When applying for a marriage dispensation, X was 16 years and 1 month old and Y was 19 years and 10 months. In relation to this, the Bondowoso Religious Court judge granted X's request.</p>	<p>X on November 1, 2021 married Y and was recorded by a Marriage Registrar at the Religious Affairs Office of Grujugan District, Bondowoso Regency with a Quote of Marriage Certificate Number: 174/01/XI/2021 dated November 1, 2021, In 2022 X filed for Divorce against Y and registered on August 18 2022, with the reason "Y cannot be responsible as the head of the household and cannot provide a living for shopping to X", X and Y have separated since March 2022, so in this case X and Y only married for 3 months.</p>
<p>1289/Pdt.G/2022/PA.Bdw</p>	<p>Whereas X applied for a marriage dispensation which was registered with the Bondowoso Religious Court Registrar in register Number 0437/Pdt.P/2020/PA.Bdw, dated June 9 2020, on the grounds that X and Y had been engaged for 1</p>	<p>X on July 21, 2020 married Y and was recorded at Office of Religious Affairs (KUA) of Curahdami District, Bondowoso Regency, as in accordance with the Quote of the</p>

	<p>year. When applying for a marriage dispensation, X was 18 years and 1 month old and Y was 18 years and 4 months old. When applying for a marriage dispensation, both were not yet old enough.</p>	<p>Marriage Certificate Number: 0126/015/VII/2020, dated July 21 2020, In 2022 X filed for Divorce against Y and was registered on August 30 2022, with the reason "Y cannot be responsible as the head of the household and cannot provide a living for shopping to X, apart from that Y is also known to be often rude to X when problems occur between X and Y", X and Y have separated from their homes since June 2022, so that in this case X and Y only had a household for 2 years</p>
--	--	--

Based on cases of divorce caused by early marriage, as the author explained above, Law Number 16 of 2019 has so far not been able to fully prevent the practice of child marriage, even marriage dispensation has actually provided an opportunity to deviate from the minimum age limit for marriage through the provisions for dispensation requests for marriage. at Court. The marriage dispensation was then used as a legal loophole to legalize child marriage. With the discrepancy in the function of the marriage dispensation in the marriage law, it is deemed necessary to conduct a more detailed study, bearing in mind the urgency of preventing the practice of child marriage.

Through the description of events as above, the author wants to see the dispensation of marriage using Lawrence M's legal system theory, namely: seeing the success of a law with the following three components:

First, the legal structure, namely: the legal structure is related to the ranks of institutions or law enforcement agencies belonging to the government, such as the Police, the Attorney General's Office, the Courts. It should be emphasized that in civil law, especially the implementation of Law no. 16 of 2019 an important role rests on the Religious Courts and their judges to handle cases of marriage dispensation, as well as the KUA as a forum for outreach so that people are more aware of the prohibition on underage marriages. The Religious Courts and KUA have the same goals, namely: to reduce the number of early marriages, to equalize the rights of men and women and to eliminate discrimination against women. All of these goals are directed at realizing the best interests of children, and also at efforts to reduce the number of early marriages. At this point, specifically in Bondowoso Regency, it is clear that the government's role is needed in providing understanding to all related communities due to the implementation of early marriage, with the aim of reducing the high rate of early marriage and divorce due to early marriage that occurs in Bondowoso Regency.

Second, the substance of the law, namely: the entire legal principle, legal norms and legal rules written and unwritten, including court decisions, the substantial system in which it determines whether a law works or not, the substance is made by people who are in legal system to support each other in running the legal system.

With regard to the substance of the law regarding marriage, the government has actually emphasized the minimum age limit for marriage to be equal between men and women, namely 19 (nineteen) years. However, in Article 7 Paragraph (2) it is not explained regarding the requirements or matters that can be used as a basis for not accepting the reasons for the application for marriage dispensation, only in the elucidation of Article 7 Paragraph (2) of Law No. 16 of 2019 only states "very urgent reasons", as a situation where there is no other choice and it is very forced to have a marriage, and what is meant by "sufficient supporting evidence" is a KUA cover letter containing information that the age of the bride and groom is still underage to carry out the marriage, as well as a certificate of origin from a health worker supporting the parents' statement that the marriage is very urgent to carry out. Provisions on the minimum age limit for marriage will result in granting or permitting permission for deviations from the age limit in entering into marriages.

Article 7 paragraph 2 also adds the phrase 'with very urgent reasons accompanied by sufficient supporting evidence'. This addition actually has a good intention, namely: limiting requests for dispensation only for certain reasons that are considered urgent and demands to provide supporting evidence.⁵

However, the phrase regarding urgent reasons in Article 7 paragraph 2 still creates multiple interpretations of understanding, because there is no clear explanation of what the urgent reasons mean, so that the subjectivity of judges in deciding all legal considerations will determine whether the application for marriage dispensation is granted or not, becomes difficult because there are no clear regulations. The ambiguity of this phrase makes the parties who will apply for a marriage dispensation be able to provide information for various reasons. Such as PERMA Number 5 of 2019. This provision does not provide clarity and limitations on urgent reasons that can be submitted and descriptions of evidence that is considered to support it. The possibility of a marriage dispensation without strict rules is actually counterproductive to efforts to increase the age limit for marriage whose main goal is to reduce the number of child marriages.

Furthermore, the court's decision here also becomes a substance that greatly influences the success or failure of law no. 16 of 2019, it is hoped that the judge's decision will become firmer and give more consideration with the addition of the phrase "with very urgent reasons". Even though in fact this phrase is interpreted by judges as something that is very global, such as fears of committing adultery, economic problems make children be asked to marry at a young age, until there is a conflict between local customs/culture, only the judge's legal considerations are the only determinant of the permit for dispensation of marriage for children before reaching the age of 19 years of marriage. added in paragraph (3) which states that the Court is obliged to hear the opinions of both male and female prospective brides.

Thus, in terms of legal substance, Law no. 16 of 2019 tends to have confusion in terms of the phrase "very urgent reasons", because this creates multiple interpretations for judges in handling cases of applications for marriage dispensation. Even in Perma No. 5 of 2019, it

⁵ Mughniatul Ilma, "Regulasi Dispensasi Dalam Penguatan Aturan Batas Usia Kawin Bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019", *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam*, Vol. 2 No.2, Juli - Desember 2020, 149-150

also does not explain what is meant by "very urgent reasons", this phrase is not only used for children who are pregnant out of wedlock, but can be used for people who are worried about committing adultery, economic factors and so on can easily be used as a basis for apply for a marriage dispensation, even though it is contrary to Law Number 35 of 2014 Amendments to Law Number 23 of 2002 concerning child protection.

Perma No. 5 of 2019 also explains that in adjudicating applications for marriage dispensation one must pay attention to "the best interests of the child", this phrase is also contained in Law Number 35 of 2014 Amendments to Law Number 23 of 2002, namely: the principle of the best interests of the child, but this became inconsistent when the judge granted all the dispensations that were included, while the phrase in the best interests of children according to Law Number 35 of 2014 was to minimize child marriage.

Third, legal culture, namely: the habits or culture of the people who accompany law enforcement. The legal culture exists in society and in law enforcement officials. In principle, the legal culture of a nation is proportional to the progress achieved by the nation concerned because the law of a nation is actually a reflection of the social life of the nation concerned. Friedman likens the legal system to a factory, where "legal structure" is a machine, "legal substance" is what the machine produces or does, and "legal culture" is whatever or whoever decides to turn on and turn off the machine and decides how the machine is used. In a legal system, aspects of law enforcement are the center of "activity" in legal life.

Legal culture is a social force that determines how the law is executed, avoided or misused. Legal culture is also a part that is closely related to public legal awareness, because the higher public awareness of the law, the easier it will be to create a good legal culture and be able to improve the image of the law which has been seen as unequal in public so far. Thus, the essence of legal culture is in the form of beliefs, opinions, ways of thinking and acting as well as habits, both from law enforcers and society regarding law and all things related to law. and legal culture refers to the behavior of people within the law, both law enforcement officers and the public.

Based on the data the author obtained, it can be revealed that the application for a marriage dispensation at the Bondowoso Religious Court since the Amendment to Law No. 1 of 1974 on Law No. 16 of 2019 (change in the age limit for marriage from 16 years to 19 years) has increased, and 99% of the incoming dispensation requests were accepted by the Bondowoso religious court judges. This is closely related to legal culture factors that are not in accordance with the objectives of the legal structure and legal substance, both from the readiness of the person receiving the law and the process of implementing the law. Usually, the community has not been able to implement new regulations for reasons that they think are already urgent and there is still an opportunity to do so.

Efforts Made to Reduce Early Marriage Rates in Bondowoso Regency

Currently, the state has reacted by issuing several policies, including changing the minimum marriage for women, carrying out a national campaign, making the issue of child marriage a priority in the RPJMN (Medium Term Development Concept). Not only that, the government also provides guidance to several agencies to develop intervention programs such as Community-Based Integrated Child Protection (PATBM), Socialization Campaign on Stop Child Marriage, Child-Friendly Cities, and carry out counseling related to child psychological and reproductive health learning. The Indonesian state's commitment to

reduce the number of early marriages was later realized in the passage of the Marriage Law which changed the minimum age limit for women to marry to 19 years.

tried by the state is not enough to reduce or reduce the value of early marriage, and other breakthroughs are needed to support it, such as:⁶

1. Putting pressure on residents to change their mindset regarding the protection of children in terms of psychological, sexual and reproductive health rights as well as gender equality and the participation of young people.
2. Overcoming poverty which is used as an important reason for carrying out early marriages, providing guidance to families, regarding good guiding patterns for educating children and providing reinforcement to the child welfare system in social protection programs.
3. Strengthening laws that protect children's rights, especially for girls, so that they are free from early marriage, as well as knowing more to ensure that no cases are kept secret from society
4. Dividing opportunities for children to be able to continue learning to a higher level so that they can help improve the family's economy.
5. Share data regarding laws related to early marriage and sanctions for violating the law. also explained what effects would be obtained when continuing to marry underage children.

Not only these efforts, the government can also take some of the following approaches:

1. individual approach, namely by advising those who wish to enter into early marriages. This method can be tried by those who work as marriage registrar employees.
2. The data collection step, namely data collection that was tried by the village head government but the government will not be responsible if there are problems in the marriage.
3. The socialization step, which is to provide socialization to the community through community activities to share information with parents in order to share children's rights entirely, the socialization stage must be carried out massively and must involve several parties including:
 - a. KUA
 - b. Village Equipment
 - c. religious courts
 - d. Local government.
4. Tighten the acceptance of applications for marriage dispensation by clarifying the urgent reasons in Article 7 paragraph 2 of law number 16 of 2019 by raising what factors make the application for marriage dispensation accepted by the panel of judges.

Conclusion

The main objective of the Marriage Law is to limit the age of marriage, namely: to eliminate discrimination in the right to form a family and protect children's rights. besides that in the Marriage Law there are different interpretations regarding

⁶ Fachria Octaviani, *Dampak Pernikahan Usia Dini Terhadap Perceraian Di Indonesia*, diakses melalui <https://www.google.com/search?q=DAMPAK+PERNIKAHAN+USIA+DINI+TERHADAP+PERCERAIAN+DI+INDONESIA&oq=DAMPAK+PERNIKAHAN+USIA+DINI+TERHADAP+PERCERAIAN+DI+INDONESIA&aqs=chrome..69j57.944j0j15&sourceid=chrome&ie=UTF-8>

the "very urgent reasons" included in the Marriage Law, so that almost 99% of marriage dispensation applications are accepted by judges, this factually has an impact on children who are married and based on the stipulation of marriage dispensation can only wade households in a matter of years or even in a matter of months, thus making the divorce rate go up and up. If this incident is related to Lawrence M's theory of the legal system, which states that the main factor for the success of law is the legal culture that is believed by the community, then to realize the goals of the Marriage Law, it is necessary for the government's enthusiasm to socialize the consequences of implementing early marriage. So that in order to reduce the number of early marriages, the government can carry out several stages including individual approaches, data collection, socialization and clarifying the rule of law.

Bibliography

- Bahroni Achmad dkk, "Dispensasi Nikah Dalam Tinjauan Undang-Undang Nomor 23 Tahun 2002 Juncto Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak", *Jurnal Transparansi Hukum*, Vol. 2 No. 2, 2019.
- Efendi Jonaedi dan Johny Ibrahim, 2018, *Penelitian Hukum Normatif dan Empiris Edisi Pertama*, Depok: Prenadamedia Group.
- Fachria Octaviani, "Dampak Pernikahan Usia Dini Terhadap Perceraian Di Indonesia", diakses melalui: <https://www.google.com/search?q=DAMPAK+PERNIKAHAN+USIA+DINI+TERHADAP+PERCERAIAN+DI+INDONESIA&oq=DAMPAK+PERNIKAHAN+USIA+DINI+TERHADAP+PERCERAIAN+DI+INDONESIA&aqs=chrome..69j57.944j0j15&sourceid=chrome&ie=UTF-8>
- Friedman Lawrence M. ,1975, *The Legal System, A social Science Perspective*, Russel Sage Foundation, New York.
- Gani, "Perubahan Batas Usia Kawin Dalam Putusan Mahkamah Konstitusi Nomor 22/PUUXV/2017 Di Lihat Dari Penerapan Maqasid Asy-Syari'ah," .
<https://www.harianbhirawa.co.id/pandemi-covid-19-permohonan-dispensasi-nikah-meningkat-di-kabupaten-bondowoso/>, di lihat tanggal 27 September 2022.
- Mughniatul Ilma, "Regulasi Dispensasi Dalam Penguatan Aturan Batas Usia Kawin Bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019", *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam*, Vol. 2 No. 2, Juli - Desember 2020.
- Muhammad Fahrezi dan Nunung Nurwati, "Pengaruh Perkawinan Dibawah Umur Terhadap Tingkat Perceraian", *Prosiding Penelitian & Pengabdian Kepada Masyarakat*, Vol 7, No.1, April 2020.
- Muqaffi Ahmad, Rusdiyah, Diana Rahmi, "Menilik Problematika Dispensasi Nikah Dalam Upaya Pencegahan Pernikahan Anak Pasca Revisi Uu Perkawinan", *Journal Of Islamic And Law Studies* Vol. 5, No. 3, 2021.

Inayatul Anisah, *et.al*

Rahardjo, Satjipto, 1986, *Pembangunan Hukum dalam Perspektif Politik Hukum Nasional*, Jakarta: Rajawali.

Ronny Hanitijo Sumitro, 1994, *Metodologi Penelitian Hukum*, Jakarta: Ghalia Indonesia.