

# The Implementation of Underage Marriage Dispensation in Palu Religious Court

*By* Marzuki Marzuki

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## Abstract

This research aims to further understand the essence of granting underage marriage dispensation in Palu city. This is qualitative research, carried out at the Palu City Religious Court, Central Sulawesi, Indonesia. The research results show that the backgrounds for marriage dispensation applications in Palu Religious Court include concerns of slander, avoiding premarital pregnancy, and various considerations from the economic, social, and moral aspects. In providing marriage dispensation verdicts in court, the judge assembly upholds the principle of al-mashlahah al-mursalah (a virtue which is not stipulated in the Islamic sharia, but is carried out to bring benefit). Thus, even though the minimum age of marriage and marriage dispensation is not stipulated detailly in the Holy Koran, its essence of public interest is parallel to the sharia, which is aimed to bring benefit to the people (the bride, the groom, and their families).

## Keywords

Dispensation, Marriage, Underage, Religious Court, Virtue

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## Introduction

The Republic of Indonesia's 1945 Constitution Article 28B stipulates that every citizen has the right to form a family and to reproduce through legal marriage, and the state guarantees the children's rights to live, grow, and develop, and their rights for protection against violence and discrimination (Ahyani, Muharir, & Permana, 2020). Then, the Law No. 16 of 2019 on Marriage increased the minimum marriageable age for women. The minimum age for women to legally marry is now the same as men, which is 19 (nineteen) years old (Aisyah, 2017). At that age, a woman is deemed to be both physically and mentally mature to marry and to achieve the goals of marriage (Azizah, 2018). It is also hoped that the increase of minimum age from 16 years for women will lower the rate of birth and decrease the risk of infant and maternal mortality. It is also aimed to optimize the fulfillment of the children's rights for growth, development, and parental assistance. Plus, it is hoped to give the children access to higher education (Ernawa, 2020).

In the case of deviation against Article 7, clause (1), a dispensation may be applied to the court or other officials appointed by both the parents of the bride-to-be and the groom-to-be [3]. In that case, the parents of the girl and/or the boy may apply for the dispensation to the court with urgent reasons, supported by adequate evidence. In granting the dispensation as in clause (2), the court must hear out the opinions of the girl and the boy who will get married (Hidayatulloh & Janah, 2020). Social facts show that there is a significant increase of underage marriage in Palu Religious Court. From 2018 to 2020, there were 42 applications of marriage dispensation which were given verdicts. Some of those applications were due to extramarital pregnancy. The couples get married as a responsibility for their actions. This also indicates that free sex does not only happen in large cities, but it also happens in villages and rural areas. This paper aims to explain the procedures in implementing the marriage dispensation, the reasons for granting marriage dispensations, and also the impacts of underage marriage towards the existence of marriage in the legal area of Palu Religious Court. This paper departs from the fact that the problem of underage marriage is a factual thing amongst the Palu City citizens. This condition certainly results in pro and contra (Indrawati & Santoso, 2020). Part of the society sees it as a solution. But in the aspect of law, this shows the society's low legal awareness on the Law on Marriage.

## Method

This is a qualitative research which aims to uncover the background behind the granting of underage marriage dispensations in Palu city, using observation and interview techniques. The key informants of this research are the presiding judge and the member judges of Palu Religious Court. This research uses primary and secondary data.

## Results

The table below shows the number of couples who applied for marriage dispensation from 2018 to 2020 and their reasons for application at the area of Palu Religious Court.

**Table 1**

Reasons for Underage Marriage Dispensation Application in Palu Religious Court 2018-2020 Tab. 1

No,	Reason for Application	Number of Couples
1	The parents' willingness	11 couples
2	Extramarital pregnancy	31 couples

From the table above, it is known that there are two factors which cause the application of marriage dispensation. *First*, it is because parents are worried about slander if their children have had a relationship with a boyfriend/girlfriend for a long time. The children often go on dates, which may cause unwanted things to happen. Regarding that, it must be understood that most of the area in Central Sulawesi consists of villages. In the villages, if a couple of teenagers often date, it will cause slander among the society. This makes the parents worried; thus, they believe that it will bring more benefit if they are married to avoid slander. The age difference between the couple

who applied for marriage dispensation is between 3 to 5 years (Mumek, 2020). Second, is extramarital pregnancy. The ever-sophisticated electronic media sociologically impacts the escalation of free sex. One of the factors is the easily accessible pornography. This causes the escalating cases of extramarital pregnancy, which is the dominating factor of marriage dispensation applications. Marriage becomes a facility to cover the family's disgrace and to prevent further damage (*mafsadat*) if they are not married off. The research results show that in the case of extramarital pregnancy, the marriage dispensation is proposed by the boy's side. The age difference between the couples who carry out underage marriage for this reason is around several months – starting from two months to a year, as stated by Khalis, Head of the Religious Court, Class 1A, Palu during an interview in Palu City, Central Sulawesi. The research results show that the marriage dispensation cases in Palu Religious Court are examined and given a verdict voluntarily. The marriage dispensation verdict is given at the maximum of 2 months. In the Palu Religious Court, in 2018 there were 8 cases, in 2019 there were 14 cases, and in 2020 there was a steep increase, where there were 20 cases. It means that there is an increasing trend of marriage dispensation verdicts in the Palu Religious Court area during the last three years. The factors which cause the increase of marriage dispensation cases are: (1) there is worry over slander which may inflict the couple, and (2) the parents wish the children to marry at a young age. This means that these cases of underage marriage emphasize the parents' interests instead of those of the children. This condition places the children in a situation where they are unable to make their own decisions.

## Discussion

### Marriage Dispensation Application

According to the Islamic law, the essence of the age limit in marriage dispensation is determined from a person's freedom to make his/her own decisions after having reached a mature age (*baligh*). Lexically, *baligh* means *to arrive or clear*. This means that a person's mind has reached the capability to consider or to differentiate between the good and the bad. Then, according to the Indonesian law [4], the limit of marriageable age is stipulated as follows, "Marriage is only permitted if a woman and a man has reached the age of 19 (nineteen) years." The marital age limit is also to resolve the problem of population. If marital age is not limited, there will be a population explosion in Indonesia. Thus, essentially, the granting of underage marriage dispensation is an emergency exit for bride and groom-to-be who have not reached the age of 19 years. Juridically, it is necessary, but it cannot be granted at any time. This dispensation has the aim so that the bride and groom-to-be may still get married. This dispensation is applied by the parents or the guardian of the couple and it cannot be applied by the couple themselves. The application mechanism of marriage dispensation in the Religious Court is the same as the mechanism of applying for a lawsuit. It starts from the application or registration of the marriage dispensation until the reading of the judge's verdict regarding that application.

The application requirement consists of a general requirement and special requirements of marriage dispensation statement. The general requirement is paying for the advance court fees which have been assessed by the Table I officials at the local Religious Court Office according to the radius. Meanwhile, the special requirements must be fulfilled outside of the general requirements by the applicant to the Religious Court. In granting the marriage dispensation, the judge has the authority to run his/her job as the executor in the field of justice. The judge cannot be influenced by the things which may change his/her authorities. The judge is subject to the law and he/she must give the verdict justly (Noor et al., 2018). In making a decision, the judge must consider the existing laws and the facts in court (Noor et al., 2018).

This is what is implemented by the judges of Palu Religious Court. In determining the granting of the applicant's dispensation, the judge considers the evidence and the witnesses [9]. Apart from that, in granting the marriage dispensation application, the judge also considers the principles of Islamic law as the living law in the society. The usage of this principle happens if there is good and also harm (*mafsadat*) within a case. If this happens, the priority is to eradicate harm (Iqbal & Rabiah, 2020). This is based on the consideration that the harm may extend and spread out everywhere, causing further damage (Iqbal & Rabiah, 2020). According to the judge's perception, the harm is that if the couple is not married off, it will add sins. Also, if the marriage dispensation application is not granted and then the couple chooses to marry without registering

to the court, it will disturb the next legal processes. It will also rob the legal rights of the children born from that couple (Judiasih, Dajaan, & Nugroho, 2020).

As discussed above, the main reason for the granting of marriage dispensation in Palu Religious Court is extramarital pregnancy. In this condition, applying for the marriage dispensation is the best solution to eradicate the worries of slander to the women in their social lives (Sakirman, 2017). The research results show that the judge grants marriage dispensation applications with the consideration of virtue, because after the dispensation is granted, the couple's marriage is deemed as legal in the face of law and in the face of the society (Siswanto, 2017). Because of that, in such cases, the judges always grant the marriage dispensation applications, with the consideration that women who are pregnant without a husband will be humiliated and isolated by the society. Thus, the granting of marriage dispensations is not only a legal solution, but it also resolves social problems. At this point, the urgency of marrying off pregnant children is to save the families from shame (Jannah, 2012).

### **The Impacts of the Granting of Underage Marriage Dispensation Application towards the Existence of Marriage in Palu Religious Court Legal Area**

The social aspect of marriage is based on the presumption that someone who has married is already mature and is brave enough to live independently. A couple must be mature, ready to marry, and ready to face the marital problems if they wish to achieve the hope of the social aspect. One of the maturity indicators which is most easily detected is age. Thus, the marriage law gives the system of minimum age as a requirement of marriage. Even so, it seems that the law-makers are aware of the social conditions in the society, thus they provide a way for underage marriage through the granting of dispensations. It is a "back door" provided by the court to the bride and groom-to-be who have not reached the minimum age to marry. In other words, the dispensation is an exception from the formal legal stipulations in a certain condition. Thus, the writer found that judges always grant marriage dispensations. This verdict is based on the consideration of the social aspect (the aspect of virtue/*maslahat*). Sociologically, a woman who is pregnant without a husband will be humiliated and isolated by the society. This will cause the woman to avoid social gatherings due to shame. Worse, for unmarried couples, pregnancy is a very scary thing, as it is a threat to their future and it is unwanted bad news.

Even though the granting of marriage dispensations may be regarded as a solution, it doesn't mean that it is free from social residuals. According to the writer's observations, underage marriage has direct impacts to the existence of the marriage itself. One of the factors is that due to the young age, the couple are still unstable, thus they are not married for long as they tend to apply for early divorce (Supianto & Budiman, 2020). The immature age and unstable condition make it difficult to reach a harmonious marital life, as fights often happen between the couple. It cannot be denied that a couple who married at a young age are unable to fulfill their responsibilities well as they do not know their rights and responsibilities as husband and wife. This is because they are not yet physically nor mentally mature, thus they have high egoism. Underage marriage often causes various domestic problems such as fights, disputes, and continuous conflicts, causing divorce. Young couples tend to prioritize their own egos and they are unable to curb emotions in their marital life (Supianto & Budiman, 2020). Though actually, one of the aims of marriage is for the couple to have responsibility and love in the family to form a family which is *sakinah mawaddah wa rahmah* (peaceful, calm, and harmonious in an eternal love) (Vijayantera, 2020).

If so, the consideration of virtue/*maslahat* (for the common good and for the social interests) as a philosophical basis in granting the underage marriage dispensation is not achieved. This is because the granting of this dispensation aims to bring goodness to the bride, the groom, and their families and also to save them from the harm from the sins carried out by the couple before marriage (Jannah, 2012). The aim of marriage is not only for temporary happiness neither it is to merely fulfill biological needs. But it is an eternal happiness which must be accounted for in front of God. That is why God hates divorce (Jannah, 2012).

### **Conclusion**

The underage marriage dispensation which is almost always granted by the Palu Religious Court is based on sociological and philosophical considerations (*al-mashlahat al-ammah*) instead of

mere juridical consideration. The marriage dispensation application is a form of the parents' responsibility towards the children, especially children who are pregnant outside of marriage to cover their shame, so that they may be protected from being humiliated by the society. The factor of extramarital pregnancy dominates the reason for the underage marriage dispensation application in Palu Religious Court. Apart from that, another reason is to protect teenage couples from slander.

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