



The Phenomenon of Unregistered Marriages Due to Rejection of Marriage Dispensation: Study of the Enrekang Religious Court and KUA Kec. Baroque

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ABSTRACT

The general aim of this research is to find out the reality/phenomenon of unregistered marriages in the district. Baroko, To find out the judge's considerations in rejecting requests for marriage dispensation at the Religious Court and KUA District Determination. Baroko, and to find out legal responsibility for marriage dispensations in Kec. Baroque. This type of research is qualitative research carried out at the Enrekang Religious Court and KUA District. Baroque. The main instruments of this research are observation, interviews and documentation. Data sources are primary data and secondary data. The research results show that first; The reality/phenomenon of marriage is not recorded in Kec. Baroko, namely unregistered marriages in Baroko District, illustrates a complex social phenomenon, where a number of couples choose not to officially register their marriages. This phenomenon reflects various factors, ranging from a lack of understanding of the importance of marriage registration, administrative obstacles, to economic and social factors that influence individual decisions. The consequences of unregistered marriages can impact the legal rights of spouses and their children, as well as hinder access to public services and legal protection, secondly; The judge's consideration in rejecting the application for marriage dispensation in the Religious Court and KUA District Determination. Baroko, namely the judge's considerations in rejecting requests for marriage dispensation at the Religious Court and KUA District. Baroko is based on the insufficiency of legal reasons, evidence, and fulfillment of the requirements stipulated by law. The judge assesses whether the application meets the best interests of the child and is in accordance with applicable legal norms, and thirdly; Legal responsibility for marriage dispensation in Kec. Baroko, namely legal responsibility for marriage dispensation in Baroko District includes the obligation to comply with legal requirements stipulated by statutory regulations. Marriage dispensation must be carried out on the basis of strong reasons and compliance with correct administrative procedures. Failure to comply with these provisions can have legal consequences for the parties involved, including protecting children's rights and enforcing legal norms.

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INTRODUCTION

A marriage dispensation is a leniency or relief given by the Religious Court to prospective husband and wife who are about to get married. However, in granting marriage dispensation permits from the Religious Courts, judges are guided by the laws and regulations in force in Indonesia. Therefore, the judge's decision can grant permission for a marriage dispensation or reject the marriage dispensation proposed by the applicant.

Regarding applications for marriage dispensation, statutory regulations do not provide specific criteria as a basis for the judge's consideration in rejecting or accepting the applicant's application. Meanwhile, article 10 paragraph (1) of Law number 48 of 2009 concerning judicial power strictly prohibits judges from refusing

to examine, try and decide on a case submitted on the pretext that the law does not exist or is unclear, but instead the judge is obliged to examine and put him on trial. Regulations on the freedom of judges to judge are also regulated in international conventions, guaranteeing the freedom of judges to judge and immunity from all legal claims. Legal guarantees for the freedom of judges in adjudicating come from the principles of justice, namely *Ius Curia Novit* (judges are deemed to know the law), *Res Judicata Pro Varitate Habetur* (judges' decisions are deemed to be correct).

When considering a marriage dispensation request, the judge will consider whether the prospective bride and groom are capable of settling down or not. The reasons or factors used in this rejection include, firstly, the child or prospective groom's age is too early. The age of a man who is still not old enough to be the backbone of the family in earning a living means that the child or prospective groom is not yet able to find work for his own living needs. Second, financial factors of the family (family economic background). The judge is of the opinion that if the child or prospective groom is unable to earn a living then all his and his future wife's living needs will be borne by the prospective bride's family. This is done because the status of the child or prospective bride and groom is still the responsibility of the parents.

The authority of the Religious Courts, one of which is related to fulfilling children's rights, is issues related to requests for marriage dispensation. The application was submitted as a form of compliance with the provisions contained in Law no. 16 of 2019 article 7 (paragraphs 1 and 2), the minimum age requirement for prospective grooms and prospective brides is 19 years. This provision takes effect starting on 15 October 2019 based on the Circular Letter of the Director General of Islamic Guidance, Ministry of Religion of the Republic of Indonesia Number: B-2345/DJ.III/HK.00.1/10/2019 dated 28 October 2019 concerning the Implementation of Law No. 16 of 2019. If these provisions are not met, you must obtain dispensation from the court, in this case the Religious Court in the area where the marriage will take place.

Marriage dispensation is a concession or compensation and may also be referred to as flexibility regarding existing provisions given by the court to prospective husbands or prospective wives who have not reached the minimum age limit to be able to enter into a marriage. Flexibility as in the explanation of Law no. 16 of 2019 can only be done by submitting an application for marriage dispensation by the parents of one or both parties of the prospective bride and groom who are diverse Muslims to the Religious Court and the District Court for the other, if the male or female party is under 19 years of age.

The existence of a marriage dispensation for underage children is contrary to Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which states that every child has the right to live at his or her time. However, there are many certain factors that urge the implementation of underage marriages. So, when deciding on a request for marriage dispensation, a judge needs to consider the protection of the child and consider the greater benefit of the child requesting a marriage dispensation as a basis for granting or rejecting the child's request for early marriage.

Ideally, marriages are carried out in accordance with existing regulations, but there are still opportunities provided by the state for the prospective bride and groom and the families/guardians of the prospective bride and groom who still wish to carry out marriages under age. Based on the data we obtained from the Enrekang Religious Court, every year there is always an increase in marriage dispensation cases being handled. In 2022, January to April saw 18 cases, then in 2023 there was an increase in cases submitted by 22 cases.

Applications for marriage dispensation are voluntary in nature, the legal product of which is a court order, namely a court decision on the application case which aims only to determine a certain condition or status for the applicant. Apart from *fiqh*, *fatwa* and *qanun*, court decisions are one of the treasures of Islamic law. Court decisions are the product of judges' thoughts regarding the law, both single judges and panel judges.

Judges, in examining and determining marriage dispensation cases, are based on existing laws and/or laws that have been formulated by previous judges (jurisprudence) and if these are not found in both, then the judge will formulate laws that do not yet exist to resolve the case, which of course must consider and view this matter from various aspects, both in terms of justice, *maṣlaḥah* and its benefits to the applicant in the future.

Maṣlaḥah is one of the considerations of a judge in determining the case, this cannot be separated from the rules of *Usul Fiqh* which are explained in the theory of *maṣlaḥah*, namely determining legal provisions that have not been explained in detail in the *Qur'ān* and *al-Hadith* due to considerations of goodness. and reject damage to social life, and as an effort to anticipate the possibility of disaster.

METHODOLOGY

This type of research is qualitative research carried out at the Enrekang Religious Court and KUA District. Baroque. The main instruments of this research are observation, interviews and documentation. Data sources are primary data and secondary data.

RESULTS AND DISCUSSION

Marriage is an agreement between a man and a woman to lead a domestic life, both parties are bound and since then they have obligations and rights that they did not have before. Underage marriage often occurs due to several factors, one of which is promiscuity which results in pregnancy out of wedlock. Promiscuity that causes pregnancy out of wedlock is something that is very difficult to prevent, so the thing that parents are really worried about eventually happens. In general, the reason for requesting a marriage dispensation is parents' concerns about children's social relations and sexual relations outside of marriage and pregnancy.

A judge's decision reflects expediency when the judge not only applies the law textually and only pursues justice, but also aims at benefiting the interests of the parties involved in the case and the interests of society in general. This means that judges, when applying the law, should consider the results later, whether the judge's decision brings benefits or usefulness to all parties. Judges are expected to apply existing laws and regulations based on their objectives or benefits for the litigants and society.

Based on the Element of Benefit

The Enrekang Religious Court, in examining and deciding cases related to the granting of letters of dispensation, certainly has procedures and legal bases which have become the guidelines for the judges in handling this case. applications will be granted, there are also applications that are rejected because there are strong reasons based on law or sharia.

One of the duties of judges in the Religious Courts is that if there is no demand for rights or there are no judges, however, if a case is submitted, the judge cannot refuse it and must process it in accordance with the Law. Based on article 49 paragraphs 1 and 2 along with the explanation of Law Number 7 of 1989 which has been amended and supplemented by Law Number 3 of 2006, this case falls under the authority of the Religious Court and because it has been submitted in accordance with the applicable provisions, it can be accepted. The Religious Courts are one of the actors of judicial power for people seeking justice who are Muslims regarding certain cases as intended by the Law. The Religious Courts have the authority to examine, adjudicate, decide and resolve cases between people who are Muslims, one of which is related to marriage issues. Regarding the factors that form the basis of the Enrekang Religious Court Judge's views in granting the request for marriage dispensation in Case Number; 147/Pdt.P/2023/PA.Ek, based on article 1 of Law no. 16 of 2022 concerning Marriage Dispensation, as explained by one of the employees at the Enrekang Religious Court who provided the following statement:

Society tends to postpone the age of marriage to an early age, but there are some societies that tend to marry underage children. So people apply for marriage dispensation in religious courts because of the rejection of marriage from the local KUA which is based on Marriage Law number 1 of 1974, article 7 paragraph (2) which reads: in the event of deviation from paragraph (1) of this article, you can ask for dispensation from Courts and other officials, appointed by both parents of the man and the woman.

The researcher's analysis of marriage in principle aims to anticipate the implementation of marriage at a young age, in other words it is intended as an effort to foster legal awareness which can motivate towards delaying the age of marriage, at least for men aged 19 (nineteen) years and women aged 19 (nineteen).) year in accordance with Article 7 paragraph (1) of Law Number 16 of 2019 concerning the minimum age limit for marriage.

In relation to the issue of marriage dispensation, the Religious Courts have authority, powers given between courts within the same judicial environment or authority related to the area of the Religious judicial environment. To determine the relative powers of the Religious Court in cases the petition will be submitted to the court in whose jurisdiction it is.

People who apply for marriage age dispensation to the Enrekang Religious Court usually prioritize the principle of legal benefit. From the perspective of legal sociology, the purpose of law is focused on the aspect of benefit. The principle of legal benefit looks more at humans and non-humans for the law. People who apply for dispensation from the Religious Courts are usually granted it by the judge if the case submitted is deemed to have greater benefits than not granting it.

The problems faced by the Religious Court regarding marriage, such as the evidence submitted by the applicant and the statements of the applicant's children, prospective husbands and witnesses submitted by the applicant, it is clear that the marriage desire has fulfilled the marriage requirements of Article 6 Law no. 1 of 1974.

In Article 6 paragraph 1, it is stated that this marriage must be based on the consent of the bride and groom. From this case, it can be seen that the prospective bride and groom already want to get married, it's just that the prospective bride and groom are hampered by the age of the prospective groom who is still under 21 years old, because in Article 6 paragraph 2 states that in order to enter into a marriage, a person who has not yet reached the age of 21 must obtain permission from both parents. Regarding this matter, the researcher obtained information from one of the judges who served at the Enrekang Religious Court, he provided the following information:

In accordance with Islamic law for the benefit of the family and household, marriage may only be

carried out by prospective brides and grooms who have reached the age stipulated in Article 7 of Law no. 16 of 2019, namely the prospective husband is at least 19 years old and the prospective wife is at least 19 years old based on articles- the article above is that the age of the prospective bride is less than the minimum age limit that has been determined. The next mechanism for this marriage to take place is that the parents of the prospective bride and groom must apply for a marriage dispensation to the religious court.

In making this determination, the religious court judge also wants to ensure that the prospective bride and groom who want to carry out the marriage are not forced to do so, this is because Article 6 paragraph 1 states that the marriage must be based on the consent of the prospective bride and groom based on the statements of the Petitioners which are supported by evidence. and the testimony of witnesses has proven that the applicant's child has had a close relationship and is in love and is often with a man whose relationship, if this relationship is not immediately followed by marriage, is feared that things could happen that violate the law and moral norms. In the researcher's interview with one of the judges who served at the Enrekang Religious Court, he provided the following information:

One of the factors that became the basis for the judge's view at the Enrekang Religious Court in granting the request for marriage dispensation in case No. 147/Pdt.P/2023/PA.Ek based on Article 7 of Law No. 16 of 2012 concerning Marriage Dispensation, including that it is very urgent for the marriage to take place because the two of them have been in contact for a long time and their relationship is so close, that there is great concern that acts that are prohibited by religion will occur if they are not immediately married, apart from that, the families of both parties The parties have agreed to immediately marry their child to avoid unexpected things.

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Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate, optimally in accordance with human dignity, and receive protection from violence and discrimination if you look carefully at several cases that relate to if it is not immediately followed by marriage, it is feared that things that violate the law and moral norms of this dispensation are a form of protection for children so that they can live, grow, develop and participate optimally in accordance with human dignity.

Although in other articles in Law no. 23 of 2002 concerning child protection Article 26 paragraph 1 point c, parents are obliged and responsible to prevent marriages at the age of children, and isn't the granting of this dispensation a form of protection from discrimination against children, as in the case of the applicants who have intimate relationships and being in love and often being with a man so that as soon as possible the relationship becomes legal before religion and the state. Because in this case the parents of the two prospective brides and grooms have made various efforts to prevent marriages occurring at the age of children, but in the end the parents of the two prospective brides and grooms are no longer able to take preventive measures as mandated by Law no. 23 of 2002. This point was made by the Enrekang religious court and then wrote down its considerations with the sentence, Considering, that the applicant's child and her future husband have stated that they love each other and both wish to carry out the marriage because there is no other way out other than giving marriage dispensation to the applicants.

Apart from that, in the researcher's analysis of the applicant's children and their future husband, there are no blood relations, other blood relations, blood relatives or other relationships, and besides, neither of them has a status that could legally prevent their marriage from taking place. This is in accordance with the Compilation of Islamic Law Article 39 concerning the prohibition of marriage. Even though judging from the age of the applicant's children, they are usually still under the age at which marriage is not permitted according to Article 7 paragraph (1) of Law Number 16 of 2019, but from a physical and mental perspective they are deemed capable and worthy enough to carry out their obligations as a husband. . During the trial, the panel of judges explained to the prospective bride about the consequences that would arise after marriage, such as the responsibility of a wife to serve her husband and as a mother who would later have to educate her children and take care of all household matters.

Factors of Different Types of Cases

The formation of Islamic law (Islamic family law/Islamic marriage law) formed a religious court which had the authority to resolve family law problems. Resolving the marriage dispensation application case at the Enrekang Religious Court gave a decision by considering the existing legal facts. Based on the existing facts, the panel of judges gave a decision using the basic principles of Ushul Fiqh where rejecting damage must take priority over achieving benefit.

Whereas based on the arguments of the applicant's petition, the statements of the applicant's children, the applicant's child's future husband and the witnesses, it is proven that the applicant's son (male) and his future wife have been dating and love each other for a long time, the two of them have had a very close relationship and neither of them has an obstacle to carrying out a marriage both according to Islamic law and according to the law. That because the applicant's child and his future wife have been in love with each other for a long time and both have agreed that they will continue to marriage (building a household), the two cannot be separated, in order to avoid negative public opinion and the possibility of further violations of Sharia law. far away and the mafsadat is greater than both, therefore the emergency situation is the reason for granting the marriage dispensation to avoid even greater harm if the marriage does not take place. So the panel of judges decided to grant the request for marriage dispensation submitted by the prospective bride and groom, so the two of them needed to be married immediately. In the results of interviews, researchers with judges serving at the Enrekang Religious Court provided the following information:

Various types of cases and problems are usually raised by applicants when applying for marriage dispensation, such as the problem between applicant A and applicant B who wants to marry her 16 year old Muslim biological daughter to her 23 year old Muslim husband. The desire to marry off their children was rejected by the Office of Religious Affairs because the applicant's children had not yet reached the minimum age for marriage. However, it is very urgent for the marriage to continue because the relationship between the two of them is very close and the applicant's child has stated that the two of them have repeatedly had relations like husband and wife and as a result of these actions the condition of the future wife was pregnant even though it was ultimately aborted, so the applicant is worried if not married immediately.

Based on the researcher's analysis, it can be analyzed that judges as executors of justice have independence and authority in carrying out their duties, in carrying out their duties judges are not influenced by any agency because judges only obey the law and justice, besides that, in making decisions judges must consider all the findings. found in the trial and all these findings must be considered and then used as consideration to determine the law. The applicant in the case referred to the parents of a girl who was planning to get married and the Office of Religious Affairs refused to marry her because the male candidate was old enough while the female candidate was not old enough. The applicant's daughter has been dating a

man who they have known and have loved each other for a long time. Between the applicant's child and her future husband, there are no obstacles to marriage, the applicant's family and the parents of the applicant's child's future husband have approved the marriage plan and there are no other third parties who object to the marriage taking place. The applicant's child has been proposed to by her future husband and his proposal has been accepted.

The Islamic view is that marriage is not just a civil matter, nor is it a family and cultural matter, but a religious matter and matter because marriage is carried out to fulfill the sunnah of Allah and the sunnah of the Prophet and is carried out with the guidance of Allah and the guidance of the Prophet. Likewise, the prospective husband is also ready to become a husband or head of the household and is already working. Based on these matters, the petitioners asked the Chairman of the Religious Court to immediately examine and try the case and make a decision by granting the petitioners' request, giving dispensation.

The researcher's analysis refers to the problem where the judge's decision reflects expediency when the judge not only applies the law purely textually and only pursues justice, but also aims at benefiting the interests of the litigants and the interests of society in general. A judge's decision reflects expediency when the judge not only applies the law purely textually and only pursues justice, but also aims at benefiting the interests of the parties involved in the case, and the interests of society in general.

CONCLUSION

This research concludes that first; The reality/phenomenon of marriage is not recorded in Kec. Baroko, namely unregistered marriages in Baroko District, illustrates a complex social phenomenon, where a number of couples choose not to officially register their marriages. This phenomenon reflects various factors, ranging from a lack of understanding of the importance of marriage registration, administrative obstacles, to economic and social factors that influence individual decisions. The consequences of unregistered marriages can impact the legal rights of spouses and their children, as well as hinder access to public services and legal protection, secondly; The judge's consideration in rejecting the application for marriage dispensation in the Religious Court and KUA District Determination. Baroko, namely the judge's considerations in rejecting requests for marriage dispensation at the Religious Court and KUA District. Baroko is based on the insufficiency of legal reasons, evidence, and fulfillment of the conditions set by law. The judge assesses whether the application meets the best interests of the child and is in accordance with applicable legal norms, and thirdly; Legal responsibility for marriage dispensation in Kec. Baroko, namely legal responsibility for marriage dispensation in Baroko District includes the obligation to comply with legal requirements stipulated by statutory regulations. Marriage dispensation must be carried out on the basis of strong reasons and compliance with correct administrative procedures. Failure to comply with these provisions can have legal consequences for the parties involved, including protecting children's rights and enforcing legal norms.

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