

Requests for Child Marriage Dispensation in West Nusa Tenggara Province

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Abstract. In Act Number 16 of 2019 concerning amendments to Act Number 1 of 1974 concerning Marriage, Article 7 paragraph (1) states that marriage is only permitted if the man and woman are 19 years old. However, in reality, there are a lot of early marriages, especially in West Nusa Tenggara (NTB) province. The West Nusa Tenggara Provincial Government recorded that 1,870 children applied for marriage dispensation throughout 2021-2022. This is a problematic problem that the NTB government must face. Marriage is not something that is prohibited, but there are terms and conditions that must be met by a couple to proceed to a marriage. Before the COVID-19 pandemic, the number of early marriages was steady, whereas during and after the pandemic, the number of early marriages was prone to increase. In communities, marriage dispensation occurs due to poverty, low education and traditions from the community itself. Therefore, in this case, in granting the decision, the judge must consider various important aspects before carrying out the marriage.

1 Introduction

Marriage is a legal act. Every valid legal action is one that gives rise to legal consequences in the form of rights and obligations for both parties (husband and wife) and/or also for other/third parties with whom one of the parties or both/husband and wife enter into certain legal relations [1]. In positive law, a valid marriage must fulfil the terms and conditions that have been regulated in accordance with the applicable laws and regulations. Article 7, paragraph (1) of Act Number 16 of 2019 concerning Amendments to Act Number 1 of 1974 concerning Marriage states that "marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years" [2]. This means that a man and a woman who are not yet 19 years old are not allowed to get married. However, in society, there are many problems related to early marriage, where marriages are carried out by children who have yet to reach the minimum marriageable age of 19 (nineteen) years. In the law on child protection, it is said that someone who is not yet 18 (eighteen) years old is still categorized as a child. Even though, in this case, the child can be said to be a legal subject, he is not yet legally competent. This has become a problem for the government due to a large number of cases of child marriage, so parents/guardians have to ask for marriage dispensation at the local religious court.

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The problem with early marriage is based on various factors, which can be seen from the customs of a society itself, which require marriage at a young age. On the other hand, early marriage also occurs for the reason that a woman is already pregnant or the man and woman have often been together (dating), so they are required to carry out the marriage. If the marriage is not carried out, then neither of them will be able to have children, so support and dispensation from the religious court are needed.

Allowing early marriage through a "marriage dispensation" according to state law is a legal breakthrough to provide clear legal status to children. This ability is regulated in certain conditions, and the same thing is also regulated in Islamic Law, especially in the Compilation of Islamic Law (KHI) [3]. In this case, the judge, when deciding the permissibility of early marriage, must also pay attention to the factors that require the child to marry. Based on this background, it is interesting for the author to review and analyze related to marriage dispensation with the title "Request for Child Marriage Dispensation in West Nusa Tenggara Province".

2 Methodology

This paper uses normative legal research methods, which examine primary legal materials in the form of statutory regulations [4], secondary legal materials, namely literature or opinions of legal experts, and tertiary legal materials in the form of legal dictionaries. The approach methods used in this writing are the statutory approach, the conceptual approach, and the case approach. The collection of legal materials was carried out using library research, namely searching and studying literature related to this writing material. A literature study was carried out by taking inventory and studying legal materials related to the problems in this writing.

3 Results and Discussion

3.1 The cause of early marriage so that marriage dispensation is required

Marriage of minors is not something new in Indonesia. This practice has been going on for a long time with many perpetrators, where the factors that cause early marriage are economic problems, low education, cultural understanding and religious values, as well as being pregnant out of wedlock [5]. Children should have the right to live their lives without having to destroy their future because marrying a child who is not yet old enough can destroy the child's future. Act Number 23 of 2002 concerning Child Protection, in Article 26 paragraph (1), states that "parents are obliged to prevent marriage at the age of children." where children should be protected, not become victims of early marriage.

In Indonesia, early marriage is increasingly common, especially in West Nusa Tenggara Province, where, according to data from the Women's Empowerment Service, Child Protection, Population Control and Family Planning (DP3AP2KB) of West Nusa Tenggara Province, requests for marriage dispensation throughout 2021-2022 reached 1,837 children from 10 districts/municipalities [6]. Based on this data, it can be seen that many cases of child marriage occur in NTB Province. In dealing with this problem, the government must first look for the factors behind the cases of early marriage. The factors that cause early marriage are:

3.1.1 Economic factors

Economic problems are one of the causes of early marriage. These are frequently found in those who cannot continue their education because of the costs. Although the school still provides scholarships for underprivileged students, the scholarships still need to be distributed equally. So many people choose to marry at a young age rather than having to continue their education because expensive costs constrain them. Based on data from BPS RI, NTB province ranks 8th among the poorest provinces in Indonesia. Indeed, the reason the number of requests for marriage dispensation is increasing is the low economy; NTB is one of the poorest provinces in Indonesia.

3.1.2 Low Education

Low education is one of the factors causing early marriage. This is due to a person's need for knowledge when deciding to marry young. However, on the other hand, the inhibiting factor for low education is also caused by economic factors. Because education cannot be separated from the economy for someone to continue their education, without a capable economy, someone will experience difficulties in continuing their education. So, in this case, economic factors and low education are correlated as the main factors causing early marriage.

3.1.3 Surrounding environmental factors or promiscuity

Free association is an attitude carried out by a person or group without being limited by the legal rules that apply in a society. It is not uncommon for many early marriages to occur due to promiscuity. There is a lack of boundaries given by parents so that children cannot choose and sort out which relationships are good and which are bad. Children falling into free association can cause children to have bad personalities, so this needs to be avoided, bearing in mind that with today's sophistication of technology, children are becoming increasingly uncontrolled in their daily interactions.

3.1.4 Parents Affection

Parental affection is an important factor in a child's development. A lack of attention and affection given by parents can result in poor child behaviour, so in this case, children become vulnerable and easily fall into bad relationships and environments. This can cause many children to make their own decisions, especially regarding marriage issues. When carrying out legal actions, every child should be under guardianship, which in this case is carried out by the child's parents/guardians. Because children still need to be competent in this matter, more supervision from parents is needed.

3.1.5 Cultural Factor

Culture is a way of life carried out by the surrounding community, which is carried out continuously so that it becomes a habit that is always carried out in that community. The culture of one society may be different from another. Culture is one of the factors in early marriage because this culture was born from the views of ordinary people who do not yet know the consequences of early marriage. In the past, ordinary people did not recognize that there was a minimum age limit for marriage. If, in a society, some men and women were considered mature in taking care of the house, then it was considered legal for the man and woman to get married. This is a wrong view because a person's age level influences how that person thinks. Apart from that, both mentally and physically, a child is still not said to be

mature if he has not yet reached adulthood. So, there needs to be an understanding provided by the general public regarding this view to avoid early marriage. Apart from that, sometimes culture can be used as a reason to legalize early marriage, where many pregnancies occur outside of marriage, and this is used as a culture by the local community to legalize early marriage. This culture continues to this day, especially in the Bima-Dompu area, which is the area with the lowest number of requests for marriage dispensation in NTB Province.

Of these five factors, economic factors are one of the main factors in the occurrence of early marriage. This economic factor arises from poor lineages, who are unable to pay for their children's living costs or the usual costs of continuing their education. So many parents marry their children at an early age, even though by law, the minimum age limit for men and women to marry has been determined at a minimum of 19 years based on Act No. 16 of 2019.

3.2 Reasons the Judges Panel want to grant marriage dispensation

Act Number 16 of 2019, in Article 7 paragraph (2), states that "if there is a deviation from the age provisions, the parents of the man or woman are permitted to apply for a marriage dispensation to the Court for urgent reasons and accompanied by supporting evidence" [7]. This is the legal basis for the panel of judges to grant a request for a marriage dispensation. What is meant by "deviation" is that it can only be done by submitting a request for dispensation by the parents of one or both parties of the prospective bride and groom to the Religious Court for those who are Muslim and the District Court for others, if the male and female parties are under the age of 19 (nineteen) years old. Then, the meaning of "very urgent reasons" is a situation where there is no other choice, and the marriage must take place. So, in this case, the court to provide legality for men and women who married underage was given a marriage dispensation.

The granting of marriage dispensation also aims to provide legal legality for citizens to ensure that men and women are both religiously and legally considered legitimate. Apart from that, certainty is needed for the bride and groom regarding the status of the child who will be born, where the status of the child can be considered legal in positive law. Judges in handling cases must really consider the reasons and conditions experienced by the applicants, where the judge can explore new ideas and ideas if the regulations that regulate them are found in the matter. A judge cannot reject a case on the grounds that there are no rules governing it. So here, interpretation is needed by the judge in interpreting an existing rule in the case being handled.

4 Conclusion

Early marriage is a problem that must be faced by the government, where the number of requests for marriage dispensation is increasing, especially in West Nusa Tenggara Province. The judge's decision is very necessary to provide legality in allowing marriage for men and women who have not reached the minimum age limit determined by law. So, the judge must look for the main factors and the impact of granting the marriage dispensation. So, the author suggests that the government can carry out outreach related to early marriage and what impacts will occur if early marriage, free sex and the condition of child psychologists if they are married.

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