

The Effectiveness of the Implementation of Law Number 16 of 2019 Amending Law Number 1 of 1974 on Marriage (A Study on Child Marriage Dispensation at the Religious Court of Palu City Indonesia)

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ABSTRACT

Child marriage remains a significant social and legal issue in Indonesia, particularly after the enactment of Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 on Marriage, which raised the minimum marriage age to 19 years for both men and women. This study aims to analyze the implementation and effectiveness of the law in preventing child marriage through marriage dispensation cases at the Religious Court of Palu. This research employed an empirical juridical method using a qualitative approach. Data were obtained through interviews with the Vice Chairman and the Registrar of the Religious Court of Palu, documentation, and analysis of relevant laws and court decisions. The findings indicate that the implementation of Law Number 16 of 2019 has been carried out through stricter and more selective procedures in examining marriage dispensation applications. Judges not only consider administrative requirements, but also evaluate psychological readiness, educational continuity, economic conditions, and the best interests of the child in accordance with Supreme Court Regulation Number 5 of 2019 and child protection principles. However, the law has not been fully effective in reducing child marriage practices because marriage dispensation applications remain relatively high. Pregnancy outside marriage, low legal awareness, economic conditions, cultural acceptance of early marriage, and limited legal socialization are the dominant factors influencing the persistence of child marriage. Nevertheless, the amendment to the Marriage Law can be considered effective within judicial practice because judges have become more selective and cautious in granting marriage dispensations by prioritizing child protection and the best interests of the child.

Keywords: Marriage Dispensation, Child Marriage, Legal Effectiveness.

ABSTRAK

Perkawinan anak masih menjadi persoalan sosial dan hukum di Indonesia, khususnya setelah diberlakukannya Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan yang menaikkan batas minimal usia perkawinan menjadi 19 tahun bagi laki-laki dan perempuan. Penelitian ini bertujuan untuk menganalisis penerapan dan efektivitas undang-undang tersebut

dalam mencegah perkawinan anak melalui perkara dispensasi kawin di Pengadilan Agama Kota Palu. Penelitian ini menggunakan metode yuridis empiris dengan pendekatan kualitatif. Data diperoleh melalui wawancara dengan Wakil Ketua dan Panitera Pengadilan Agama Kota Palu, dokumentasi, serta analisis terhadap peraturan perundang-undangan dan putusan pengadilan yang berkaitan. Hasil penelitian menunjukkan bahwa penerapan Undang-Undang Nomor 16 Tahun 2019 telah dilakukan melalui prosedur pemeriksaan dispensasi kawin yang lebih ketat dan selektif. Hakim tidak hanya mempertimbangkan persyaratan administratif, tetapi juga memperhatikan kesiapan psikologis, keberlanjutan pendidikan, kondisi ekonomi, serta kepentingan terbaik bagi anak sesuai dengan Peraturan Mahkamah Agung Nomor 5 Tahun 2019 dan prinsip perlindungan anak. Namun demikian, undang-undang tersebut belum sepenuhnya efektif dalam menekan praktik perkawinan anak karena permohonan dispensasi kawin masih tergolong tinggi. Kehamilan di luar nikah, rendahnya kesadaran hukum masyarakat, kondisi ekonomi, budaya perkawinan usia dini, serta kurangnya sosialisasi hukum menjadi faktor dominan yang memengaruhi tingginya dispensasi kawin. Meskipun demikian, perubahan Undang-Undang Perkawinan dapat dikatakan efektif dalam praktik peradilan karena hakim menjadi lebih selektif dan berhati-hati dalam mengabulkan dispensasi kawin dengan mengutamakan perlindungan anak dan kepentingan terbaik bagi anak.

Kata Kunci: Dispensasi Kawin, Perkawinan Anak, Efektivitas Hukum.

INTRODUCTION

Marriage is a fundamental institution in society that encompasses religious, social, and juridical dimensions. In the Indonesian legal system, marriage is not merely regarded as a civil relationship between a man and a woman, but also as an effort to establish a happy and everlasting family based on the belief in Almighty God, as stipulated in Article 1 of Law Number 1 of 1974 concerning Marriage. Therefore, the state has an important role in regulating marriage in order to ensure legal order, protection of rights, and family welfare.

In the development of modern law, child protection has become a major concern, including the prevention of child marriage practices. Child marriage is considered to have negative impacts on children's health, education, psychological condition, and future life. As a form of legal protection, the Indonesian government amended the minimum age requirement for marriage through Law Number 16 of 2019, which equalized the minimum marriage age for both men and women to 19 years old. This amendment was a follow-up to the Constitutional Court Decision Number 22/PUU-XV/2017, which emphasized the principles of equality before the law and child protection. Normatively, the amendment aims to reduce child marriage rates, minimize divorce, improve educational quality, and protect maternal and child health. However, the law still provides an opportunity for marriage dispensation through the court in urgent circumstances. For Muslim communities, such authority is granted to the

Religious Courts under the guidance of Supreme Court Regulation Number 5 of 2019, which prioritizes the best interests of the child.

In practice, after the enactment of Law Number 16 of 2019, applications for marriage dispensation have significantly increased in various regions. This phenomenon indicates that the minimum marriage age policy has not been fully effective in preventing child marriage practices. Factors such as premarital pregnancy, cultural pressure, economic conditions, low educational background, and certain religious understandings remain dominant reasons for submitting marriage dispensation requests. This condition is also evident in the Religious Court of Palu City, which plays an important role in deciding marriage dispensation cases. Therefore, it is important to examine the effectiveness of the implementation of Law Number 16 of 2019 in reducing child marriage practices through marriage dispensation cases in the Religious Court of Palu City. This study is expected to provide an overview of legal effectiveness in judicial practice as well as the factors influencing its implementation within society.

METHODS

This study is an empirical legal research using a qualitative approach aimed at analyzing the effectiveness of the implementation of Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 on Marriage toward marriage dispensation cases at the Religious Court of Palu City. The approaches used in this research include the statute approach, sociological approach, and case approach. The research was conducted at the Religious Court of Palu City because the institution has the authority to examine and decide marriage dispensation cases for Muslim communities. The data used in this study consist of primary and secondary data. Primary data were obtained through interviews with the Vice Chairman and the Registrar of the Religious Court of Palu City regarding the handling of marriage dispensation cases. Meanwhile, secondary data were collected through library research, including legislation, court decisions, books, scientific journals, and previous studies relevant to this research. Data collection techniques were carried out through semi-structured interviews and documentation. The collected data were analyzed descriptively and qualitatively through the stages of data reduction, data presentation, and conclusion drawing. To ensure data validity, this study employed source and method triangulation techniques.

RESULTS AND DISCUSSION

Legal Basis for the Establishment of the Religious Court of Palu

This research was conducted at the Religious Court of Palu as one of the judicial institutions under the Supreme Court of the Republic of Indonesia which has the authority to examine and resolve Islamic civil cases, including marriage dispensation cases as regulated by statutory regulations. The selection of this research location was based on the high number of marriage dispensation applications submitted after the enactment of Law Number 16 of 2019 concerning amendments to Law Number 1 of

1974 on Marriage. Geographically, Palu City is the capital of Central Sulawesi Province and serves as a strategic center of government, education, and economic activities. The heterogeneous social conditions of the community influence family and marital dynamics, including the phenomenon of child marriage. Cultural, economic, educational, and social interaction factors contribute to the increasing number of marriage dispensation applications within the jurisdiction of the Religious Court of Palu. The Religious Court of Palu has the duty and authority to receive, examine, adjudicate, and resolve cases involving Muslim communities in accordance with Islamic law and statutory regulations. In marriage dispensation cases, the court is authorized to grant permission for prospective spouses who have not yet reached the minimum marriage age as stipulated in Article 7 of Law Number 16 of 2019, namely 19 years for both men and women.

Institutionally, the Religious Court of Palu is led by a Chief Judge assisted by a Vice Chief Judge, judges, registrars, and administrative staff. In carrying out its duties, the court adheres to the principles of simple, fast, and low-cost justice. The court has also implemented information technology-based services to improve public service effectiveness. Research findings indicate that marriage dispensation cases have become one of the dominant cases in recent years. The increase in applications occurred after the amendment of the minimum marriage age through Law Number 16 of 2019. Previously, the minimum marriage age for women was 16 years, but it was later amended to 19 years, requiring underage applicants to seek dispensation from the religious court. In practice, applications for marriage dispensation at the Religious Court of Palu are influenced by several factors, including low educational background, family economic conditions, parental concerns regarding children's social relationships, cultural influences, and pregnancies outside marriage. These factors become important considerations for judges in examining and deciding marriage dispensation cases while prioritizing child protection and public benefit.

Furthermore, the Religious Court of Palu also applies Supreme Court Regulation (PERMA) Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications. In the trial process, judges consider not only normative legal aspects but also the psychological condition, mental readiness, educational continuity, and future welfare of the child applying for dispensation. Therefore, judges are required to be more selective and cautious in granting marriage dispensations in order to achieve the purpose of the amendment law in reducing child marriage rates. Thus, the Religious Court of Palu has a strategic role in implementing and evaluating the effectiveness of Law Number 16 of 2019, particularly in efforts to prevent child marriage through the marriage dispensation mechanism. This condition makes the Religious Court of Palu relevant as a research location to analyze the effectiveness of implementing the law in judicial practice.

Implementation of the Minimum Marriage Age Regulation After the Amendment

Based on the research findings, the implementation of Law Number 16 of 2019 in preventing child marriage at the Religious Court of Palu demonstrates relatively

complex dynamics. Normatively, the amendment aims to strengthen the minimum marriage age to 19 years for both men and women as an effort to reduce child marriage practices.

After the enactment of Law Number 16 of 2019, every prospective spouse under the age of 19 is required to submit a marriage dispensation application to the Religious Court. Research findings indicate that the implementation of this regulation has been carried out through stricter examination procedures. Judges no longer easily grant permission for underage marriage but instead consider various legal and social benefit aspects.

In practice, the implementation of the regulation is reflected in the marriage dispensation mechanism. Although the minimum marriage age has been increased, the court still has the authority to grant dispensation by considering specific reasons submitted by applicants. This demonstrates that child marriage prevention is not solely repressive but also considers sociological and psychological aspects. Judges at the Religious Court of Palu play an important role in assessing the feasibility of applications based on child protection principles and public benefit. However, obstacles remain in the implementation process, including limited public understanding regarding the new minimum marriage age regulation and the tendency of society to continue seeking dispensation as a legal solution.

Based on interviews conducted with the Vice Chief Judge of the Religious Court of Palu, many applicants were unaware that the minimum marriage age had changed to 19 years. Consequently, when their applications were rejected by the Office of Religious Affairs (KUA), they were directed to submit marriage dispensation applications to the Religious Court. These findings indicate that the Religious Court plays an important role in implementing Law Number 16 of 2019, particularly in handling marriage dispensation applications resulting from failure to meet the minimum marriage age requirement. However, the high number of dispensation applications caused by public unawareness also demonstrates that the socialization of the amendment law has not been fully effective. This condition illustrates that the implementation of Law Number 16 of 2019 in preventing child marriage at the Religious Court of Palu has not been fully supported by adequate legal awareness within society. As a result, the Religious Court not only performs judicial functions but also indirectly confronts issues related to low public legal literacy concerning changes in the minimum marriage age regulation.

Mechanism for Examining Marriage Dispensation Applications

Based on interviews with research informants, each marriage dispensation application is examined thoroughly by the panel of judges. The examination process is not limited to administrative aspects but also includes the psychological condition of the child, mental readiness, family economic background, educational status, and the underlying reasons for submitting the dispensation request. In practice, judges seek to ensure that marriage dispensation is granted only under urgent circumstances. This demonstrates that the Religious Court has exercised a preventive function in reducing arbitrary child marriage practices.

The Religious Court of Palu applies statutory regulations as legal considerations in examining marriage dispensation cases, particularly Supreme Court Regulation (PERMA) Number 5 of 2019 and Law Number 35 of 2014 concerning Child Protection. Judges consider that every decision must prioritize the best interests of the child. The implementation of Law Number 16 of 2019 is therefore integrated with other legal instruments focusing on child protection. The existence of PERMA Number 5 of 2019 is particularly important because it serves as a judicial response to the increasing number of marriage dispensation applications after the minimum marriage age was raised to 19 years.

Substantively, PERMA Number 5 of 2019 emphasizes that judges must prioritize the principle of “the best interest of the child.” Therefore, judges not only accommodate parental requests or cultural considerations but also ensure that the decision does not harm the child’s future.

This condition indicates a paradigm shift in religious court practice. Before the amendment to the Marriage Law, marriage dispensation was often viewed merely as an administrative solution for underage marriage legalization. However, after the legal amendment, marriage dispensation has become a limited legal exception that must be carefully examined to protect children’s rights.

Pregnancy Outside Marriage as the Dominant Factor in Marriage Dispensation Applications

Research findings indicate that the dominant reason for marriage dispensation applications is pregnancy outside marriage. According to interviews with the Vice Chief Judge of the Religious Court of Palu, not all applications are granted unless urgent circumstances exist, and most approved applications involve pregnancies outside marriage. This finding demonstrates that although Law Number 16 of 2019 aims to reduce child marriage rates, the court still grants dispensations in order to consider broader public benefit. Judges consider marriage necessary to provide legal protection for women and unborn children, maintain the civil status of the child, and avoid social stigma within society.

The findings also show that judges apply a selective approach in granting marriage dispensation applications. Nevertheless, pregnancy outside marriage remains the primary factor contributing to the high number of dispensation cases.

This condition places the Religious Court in a dilemma between implementing child protection principles and resolving social problems that have already occurred. Therefore, the implementation of Law Number 16 of 2019 has not yet fully achieved substantive effectiveness in preventing child marriage. In addition, the research findings reveal that the implementation of child marriage prevention policies is influenced not only by judicial enforcement but also by social conditions, lack of sexual and religious education, inadequate parental supervision, and juvenile social behavior. Thus, efforts to prevent child marriage require cooperation among judicial institutions, families, educational institutions, religious leaders, and local governments in order to achieve the objectives of the amendment law effectively.

CONCLUSIONS

Based on the research findings, the implementation of Law Number 16 of 2019 concerning the amendment to Law Number 1 of 1974 on Marriage at the Religious Court of Palu has been carried out through stricter and more selective procedures in examining marriage dispensation applications. Judges no longer merely consider administrative requirements, but also assess psychological readiness, educational continuity, economic conditions, and the best interests of the child in accordance with Supreme Court Regulation (PERMA) Number 5 of 2019 and child protection principles. Normatively, the amendment has strengthened child legal protection by increasing the minimum marriage age to 19 years for both men and women. However, empirically, the implementation has not been fully effective in reducing child marriage practices because marriage dispensation applications remain relatively high, mainly due to pregnancies outside marriage, low public legal awareness, economic conditions, early marriage culture, and limited legal socialization. Nevertheless, the amendment can be considered relatively effective within judicial practice because judges at the Religious Court of Palu have become more selective and cautious in deciding marriage dispensation cases by prioritizing child protection and the best interests of the child before granting any application.

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