



## Judge's Considerations in Granting the Request for Marriage Dispensation

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**Abstract:** Implementation of Law No. 16 of 2019 concerning marriage on the dispensation of marriage, a factor that was considered by the judges of the Limboto religious court in granting the request for dispensation of marriage after the enactment of UU No. 16 of 2019 concerning marriage. The Limboto Religious Court implements and implements Law Number 16 of 2019 concerning Marriage. The law regulates the minimum age for marriage as stated in Article 7 paragraph (1), namely marriage is only permitted if a man and a woman have reached the age of 19. Then in Article 7 paragraph (2) In the event of a deviation from the age requirement, as referred to in paragraph (1), the parents of the man and/or the parents of the woman can request a dispensation from the Court with very urgent reasons accompanied by sufficient supporting evidence. Article 7 paragraph (3) states that the granting of dispensation by the Court as referred to in paragraph (2) must listen to the opinions of both bride and groom who will enter into a marriage.

**Keywords:** Marriage, Child Marriage Dispensation, Limboto Religious Court.

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# 1. Introduction

Indonesia is the highest agreement of the state's formers, even though it has experienced a constitutional test when the 1945 Constitution was amended into the Constitution of the United Republic of Indonesia in 1949, even so, the recognition of the regions under the auspices of the State of Indonesia is still recognized.<sup>1</sup>An absolute requirement for state sovereignty is the existence of a society that obeys the Constitution and its government. Because the essence of the constitution is the conception of the state which is the basis and limitation of the constellation of the state administration system.<sup>2</sup>Therefore, in legal politics, legal discovery and new law-making that is in accordance with the goals of the State is a value that must be implemented in order to achieve legal supremacy and justice.

In our daily lives, even in society, in order to make ends meet, there are often crimes and violations committed by certain people and people who threaten some members of society, which in law is known as criminal acts.<sup>3</sup> At present, not only the crime rate or quantity of crime is increasing but also the type of crime or quality has developed rapidly in Indonesia. Criminal sanctions are seen as an effective solution in tackling this problem. Criminal sanctions are a manifestation of the state's responsibility to maintain security and order as well as efforts to protect the law for its citizens. This is a logical consequence of the concept of forming a state which, according to JJ Rosseau, is based on community agreements. Furthermore, the people agreed to enter into a noble agreement (*modus vivendi*) which was set forth in a basic law in the form of the state constitution. Legal protection is really needed because of efforts to integrate various needs in associations so that there are no conflicts between needs and can enjoy all the rights granted by law.<sup>4</sup>

Marriage is often identified by the Indonesian people as a form of a process of mutual ownership and care between men and women in a legal way, both religiously valid and legal in national law so that the life of a family is achieved to form a new household. This formation, of course, goes through a process and requirements that must be fulfilled for candidates who want to carry out the marriage. So that by fulfilling these conditions, things that cancel the marriage can be avoided.<sup>5</sup> Marriage comes from the word "marry"

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<sup>1</sup> Novendri M. Nggilu, "Tinjauan Yuridis Pengaturan Sanksi Pidana Dalam Peraturan Daerah Provinsi Gorontalo," *Lambung Mangkurat Law Journal*. 5, No. 2 (2020): 109-121., 110

<sup>2</sup> Ahmad dan Novendri M. Nggilu Fakultas, "Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution of the Constitution Through the the Principle of the Guardian of the Constitution." *Jurnal Konstitusi*. 16, No. 4 (2019): 785-808., 791

<sup>3</sup> Dian Ekawaty Ismail and Mohamad Taufiq Zulfikar Sarson, "Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes," *Jambura Law Review* 3, no. 1 (2021): 57-76., 58

<sup>4</sup> Jufryanto Puluhulawa, Mellisa Towadi, and Vifi Swarianata, "Perlindungan Hukum Situs Bawah Air Leato / Japanese Cargo Wreck The Legal Protection of The Leato Underwater Site" *Jurnal Reformasi Hukum* 24. No. 2 (2020): 189-208., 197

<sup>5</sup> Muhammad Ilham, "Nikah Beda Agama Dalam Kajian Hukum Islam Dan Tatanan Hukum Nasional," *Jurnal Syariah Dan Hukum* 2, no. 1 (2020): 43.

which according to language means forming a family with the opposite sex, having sex or having intercourse.<sup>6</sup> Marriage is a very deep and strong bond as a link between a man and a woman in forming a family. In forming a family, of course, it requires a strong commitment between the couple so that in this case marriage in Indonesia is regulated by Law Number 16 of 2019 concerning Marriage. Therefore, the same law stipulates that a marriage is legal if it is carried out according to the laws of each religion and belief and has been recorded according to the applicable laws and regulations.<sup>7</sup>

Since the marriage took place, there will be an inner and outer bond between the bride and groom and also a kinship relationship between the relatives of both parties. With marriage there will arise a bond that contains rights and obligations.<sup>8</sup> The issue of marriage is not just a personal matter for those who will get married, but is a religious issue that is quite sensitive and closely related to one's spirituality. As a religious matter, almost every religion in the world has its own regulations regarding marriage so that in principle it is governed and must comply with the provisions of the religious teachings adhered to by those who enter into marriage.<sup>9</sup>

Marriage is legal if it is carried out in accordance with the religion and belief that is adhered to and does not conflict with the applicable laws and regulations. One of the legal provisions governing marriage is contained in Law Number 16 of 2019 concerning Marriage. This law is the reference for marriage in Indonesia. This means that the state has serious attention to the issue of marriage as the beginning of the birth of the nation's next generation. One of the most important articles in Law Number 16 of 2019 concerning Marriage is related to the age limit for marriage. The importance of this marriage, then the government has regulated it by issuing Law Number 16 of 2019 concerning Marriage and its implementing provisions, namely Government Regulation Number 9 of 1975 concerning the implementation of Law Number 1 of 1974 concerning Marriage and Compilation of Islamic Law (KHI) as an additional special for citizens Indonesia is a Muslim country. According to Article 1 of Law Number 16 of 2019 Concerning Marriage, the meaning of marriage is:<sup>10</sup> "The inner and outer 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".

The Limboto Religious Court in determining the case for a marriage dispensation application is of course carried out with various considerations. From the results of the researcher's initial interview with the Judge of the Limboto Religious Court, Mr. Ollis Tuna, SHI, he said that not all requests for dispensation from marriage that were submitted could be accepted and granted. An application for a marriage dispensation can

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<sup>6</sup> Abdul Rahman Ghazaly, *Fiqh Munakahat* (Jakarta: Kencana, 2019).

<sup>7</sup> Abdurrahman, *Kompilasi Hukum Islam Indonesia* (Jakarta: Akademika Pressindo, 2010).

<sup>8</sup> Afandi Ali, *Hukum Waris, Hukum Keluarga, Dan Hukum Pembuktian* (Jakarta: PT. Rineka Cipta, 2006).

<sup>9</sup> Usman Rachmadi, *Aspek-Aspek Hukum Perorangan Dan Keluarga Di Indonesia* (Jakarta: Sinar Grafika, 2006).

<sup>10</sup> Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan

be accepted if the admission requirements have been met. Then regarding the decision granted or not can be seen based on legal facts proven in court to be granted a dispensation permit.<sup>11</sup>

Article 26 Paragraph (1), Letter (c) of Law Number 23 of 2002 concerning Child Protection, explains that among the responsibilities and obligations of parents towards children is preventing marriage at a young age.<sup>12</sup> In fact, efforts to prevent marriage at a young age can be seen clearly from the amendment to Law Number 16 of 2019 concerning Marriage, the second amendment to Law Number 1 of 1974. The substance of the change is regarding the age of marriage, as contained in Article 7 paragraph (1) which states that marriage only allowed if both men and women have reached the age of 19 (nineteen) years. In the next paragraph, the parents of a man and/or woman can submit a request for dispensation to the Court with very urgent reasons accompanied by sufficient supporting evidence.<sup>13</sup>

One of the reasons for changing the minimum age limit for marriage is based on Constitutional Court Decision Number 22/PUU-XV/2017 which granted the applicant's request and ordered the DPR RI for a maximum period of 3 years to implement changes to Law Number 1 of 1974 concerning Marriage, specifically the limit minimum age of marriage for women, taking into account the existence of differences in treatment between men and women whose impact can hinder the fulfillment of basic rights or constitutional rights of citizens who are members of the civil and political rights group as well as economic, educational, social and cultural rights which should not be differentiated based on gender. The same consideration also states that the difference in the minimum age of marriage between men and women not only creates discrimination related to the exercise of the right to have a family guaranteed in Article 28 B Paragraph (1) of the 1945 Constitution of the Republic of Indonesia but also discrimination against protection and fulfillment of children's rights as guaranteed in Article 28 B, Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. In this case, when the minimum age of marriage for women is lower than for men, legally women can form a more quickly family. Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. In this case, when the minimum age for marriage for women is lower than for men, legally women can start a family more quickly. Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. In this case, when the minimum age for marriage for women is lower than for men, legally women can start a family more quickly.

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<sup>11</sup> Hasil Wawancara bersama Bapak Olis Tuna, S.H.I selaku Hakim Pengadilan Agama Limboto, 24 Januari 2023, Pukul 13.00 Wita

<sup>12</sup> Pasal 26 ayat (1), huruf (c) Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak

<sup>13</sup> Pasal 7 ayat (1) Undang-Undang Nomor 16 Tahun 2019 tentang Perkawinan

**Table I**

Data on Classification of Marriage Dispensation Cases at the Limboto Religious Court for 2019-2022

No	Case Classification	Number of Cases	Year
1	Marriage Dispensation	20 Cases	2019
2	Marriage Dispensation	25 Cases	2020
3	Marriage Dispensation	30 Cases	2021
4	Marriage Dispensation	35 Cases	2022
<b>Total Cases</b>		<b>110 Cases</b>	

*Data source:* Limboto Religious Court Case Tracing Information System<sup>14</sup>

Based on the phenomenon that occurred and from the results of initial observations conducted through the Limboto Religious Court case tracking information system and the Limboto Religious Court Judge Mr. Odis Tuna, SHI explained that every year many applicants apply for dispensation from marriage for various reasons. It was recorded that from 2019 there were 20 cases, in 2020 there were 25 cases, and in 2021 there were 30 cases and in 2022 there was an increase in cases of dispensation of marriage to 35 cases.

As the Marriage Law in Indonesia prevents marriage at a young age, because child marriage is a last resort, it is necessary to have a dispensation from the Religious Courts to be able to carry out child marriages. Therefore, the Limboto Religious Court as an institution legally authorized to assess whether or not a marriage is urgently required to take place, must pay attention to legal facts arising from various aspects of consideration, especially now based on the revision of the marriage law, namely Law Number 16 Year 2019 concerning Marriage has made the age of marriage for men and women 19 (nineteen) years old.

The birth of Law Number 16 of 2019 concerning the Second Amendment to Law Number 1 of 1974 concerning Marriage is suspected to have been one of the triggers for the increase in the number of applications for marriage dispensation in all Religious Courts in Indonesia. This is due to changes in the nomenclature regarding the minimum age limit for a person to enter into marriage. The Marriage Law changed the minimum age limit to be able to enter into a marriage from 16 years for women and 19 years for men, now it is 19 years for both potential partners.

<sup>14</sup> Sistem Informasi Penelusuran Perkara, "Dispensasi Kawin," SIPP, 2022, [http://sipp.palimboto.go.id/list\\_perkara](http://sipp.palimboto.go.id/list_perkara).

Thus, the researcher is interested in conducting research related to **Implementation of Dispensation for Underage Marriage in Review of Article 7 Law Number 16 of 2019 Concerning Marriage (Case Study of the Limboto Religious Court)**.

## **2. method**

This type of research is normative-empirical research, a type of research based on norms or laws and regulations examines the process of working or interacting with law in society. In the process of working the law, what is meant is to examine more deeply whether the legal process that applies in society has been running properly or not, so that juridical sociological legal research which obtains data from primary and secondary, it is hoped that from this approach it can be known how the law is applied. empirically it is a symptom of society that can be studied as a cause that gives rise to consequences on various aspects of social life.<sup>15</sup>

## **3. Analysis And Discussion**

### **Factors Considered by the Judge of the Limboto Religious Court in Granting the Request for Marriage Dispensation After the Entry into force of Article 7 of Law Number 16 of 2019 Concerning Marriage**

Based on the research results that the researchers obtained with the Judge of the Limboto Religious Court, Mr. Ollis Tuna, SHI, that became the reference in granting marriage dispensation is to refer to PERMA Number 5 of 2019 concerning guidelines for adjudicating marriage dispensation cases. The most urgent consideration is whether or not there is an urgent reason in accordance with Law Number 16 of 2019. If there is no evidence of an urgent reason, then the application must be rejected. Then the second is how to prove the urgency, what are the reasons so that this petition fulfills the element of urgency. Usually what is granted is when they are pregnant first, or they are proven to be on the verge of having sexual intercourse.”

From this evidence, if the Judge considers that the petition submitted should be granted, it will be granted, and vice versa. The consideration referred to is if there are urgent matters proven in court, including their relationship that cannot be separated or pregnant out of wedlock. If this is the case, then it can be granted. Then if there is no urgent matter, the child in question is also not ready to be married or maybe after being given advice and the parents understand, then the request submitted is not granted. So, the judge's consideration depends on the examination at trial and evidence related to the statement of the child, the statement of the parents and other evidence that can be used as the basis for the judge's consideration in determining the request for dispensation from marriage.

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<sup>15</sup> Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris* (Yogyakarta: Pustaka Pelajar, 2015).

There are several factors that are the reasons for the consideration of the Judge of the Limboto Religious Court in granting the request for early marriage:<sup>16</sup>

Educational factor. Education is one of the things that is very important for everyone, therefore the Indonesian government has designed a 9-year compulsory education program. However, due to low economic limitations, this is often one of the reasons why education is neglected, because they cannot afford school fees or cannot afford all school supplies. Lack of parental knowledge about education so that parents often just surrender and accept their child's decision to drop out of school. This can actually lead to low levels of education that occur in the community, so that many early marriages occur due to dropping out of school. Researchers assume that due to the low level of education of parents, children and society, early marriage is increasingly widespread.

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Economic Factors, Economic problems in the family are often a motivating factor for parents to quickly marry off their children. This happens because parents cannot afford to pay for their children's life and school, sometimes resulting in children having to decide to marry at an early age on the grounds that they do not want to become a burden on the family for their parents so that by getting married themselves is considered a burden on the family's economy. The economic problems of the family's parents assume that if their daughter has already proposed and asked to marry, at least she is expected to be independent and no longer dependent on her parents, because there is already a husband who can provide for her. Even though the age of the daughter has not yet reached maturity, both physically and mentally. Unfortunately, these girls are also married to men with similar economic status, thus creating new poverty.

According to the assumptions of economic researchers, the incidence of early marriage is very influential because parents who have a low economy will encourage their children to marry soon to ease the burden on the family, because after marriage it will be the husband's responsibility. In addition, young women who live in families with low economic status do not have alternative options to continue their education to a higher level of education because they cannot afford the fees determined by the school.<sup>18</sup>

According to the researchers' understanding, the influence of cultural factors that are inherent in people's lives is also the cause of parents marrying off their children based on the voluntary principle in marriage that one of the conditions that must be met by parties who want to get married is by agreement or without coercion.

Environmental factors and self-will, Adolescence is a stage where it is between the child and adult phases marked by physical, behavioral, cognitive, biological, and emotional

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<sup>16</sup> Hasil Wawancara Bersama Hakim Pengadilan Agama Limboto, Bapak Olis Tuna, S.H.I, pada Jumat 17 Maret 2023, Pukul 13.00 Wita

<sup>17</sup> Abdi Fauji Hadiono, "Pernikahan Dini Dalam Perspektif Psikologi Komunikasi," *Jurnal Darussalam; Jurnal Pendidikan, Komunikasi Dan Pemikiran Hukum Islam* 9, no. 2 (2018): 393.

<sup>18</sup> Nurul Mouliza dan Novi Ramini, "Faktor Yang Berhubungan Dengan Pernikahandini Pada Remaja Putri Di Desa Nanow Kecamatan Teluk," *Jurnal Bidan Mandiri* 1, no. 1 (2023): 31.

changes. So those who already have a partner or lover are influenced to marry at a young age with the reason that they are suitable and love each other. One of the environmental factors is the school environment which pays little attention to students and does not provide proper sex education, especially in educating the negative effects of premarital sex. Community environment such as promiscuity and lack of concern between individuals are also contributing factors.<sup>19</sup>

According to researchers, environmental factors greatly influence the child's mindset that an environment that is not supportive or in an environment will influence the child to commit deviant acts so that this becomes the cause of underage marriages.

Factors Promiscuity, marriage at a young age occurs due to lack of monitoring from parents which results in the two children having sex without their parents' knowledge. Adolescence is a time when sexual growth increases and the psyche develops towards maturity. According to the researchers, it is possible that in a relationship they have high and uncontrollable sexual appetite so they dare to have sexual intercourse just to show love.

The factor of getting pregnant out of wedlock, we have encountered the phenomenon of getting pregnant out of wedlock and we have encountered it in the surrounding community, as for the factors that cause pregnancies out of wedlock they must be married off to avoid disgrace to their families, even though they are still underage, the marriage is still carried out because the girl is already pregnant. In addition, lifestyle and free-sex behavior accelerate the increase in pregnancy in adolescence. This can also be due to the fact that children are often influenced by their relationships which are often entangled in promiscuity and wrong. According to researchers, due to promiscuity, being in a negative environment without supervision and coaching will direct children to free sex behavior so that which causes pregnancy out of wedlock.

## 4. Conclusion

The enactment of Law Number 16 of 2019 had an impact on the request for a marriage dispensation at the Limboto Religious Court. There are several factors that are the reasons for the consideration of the Judge of the Limboto Religious Court in granting the request for early marriage, including educational factors, economic factors, customs/culture, environmental factors and self-will, promiscuity, and pregnancy out of wedlock.

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