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## Increasing Application for Marriage Dispensation during the COVID-19 Pandemic in the Sociology Review of Law at the Jombang Religious Court\*

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### Abstract

This paper discusses the increasing application for Marriage Dispensation during the corona virus pandemic which is viewed from the sociological aspect of law. Applications for dispensation for marriage are more complicated and must be submitted through the Religious Courts, but the facts on the ground show that the number of applications for dispensation for marriage is increasing during this pandemic. The situation during this pandemic which makes sociological factors, the occurrence of imbalances in the structure of society makes the dysfunction of the community's inability to maintain their nature. The legal issues are: (1) What are the factors that increase the number of applications for a marriage dispensation in the Jombang Religious Courts (2) What are the considerations of the Jombang Religious Court judges in granting the marriage dispensation. This research is juridical and sociological in Jombang Religious Court. By using a statue approach, conceptual, with primary and secondary data types and analyzed descriptively qualitatively. The discussion of the research results shows that: 1). The increasing application for Marriage Dispensation during this pandemic is caused by the association of children with restrictions on learning activities so that their time is used more for playing gadgets that are not common and the lack of parental supervision, this makes many factors that can plunge them. 2). The basis of the judge's consideration in granting the application for dispensation for marriage is based on "benefit and harm" then the court will grant the request for dispensation. Because it is feared that if they are not married, they will increase sin and disrupt the legal rights of children who are born under the law.

**Keywords:** Application; Marriage Dispensation; Pandemic; Sociology of Law; Religious Courts

### Abstrak

Tulisan ini membahas tentang meningkatnya permohonan Dispensasi Perkawinan pada masa pandemi virus corona ditinjau dari aspek sosiologis hukum. Permohonan dispensasi nikah memang lebih rumit dan harus diajukan melalui Pengadilan Agama, namun fakta di lapangan menunjukkan jumlah permohonan dispensasi nikah semakin meningkat di masa pandemi ini. Situasi di masa pandemi ini yang menjadikan faktor sosiologis, terjadinya ketidakseimbangan dalam struktur masyarakat menjadikan disfungsi ketidakmampuan masyarakat dalam menjaga kodratnya. Permasalahan hukum tersebut adalah: (1) Faktor-faktor apa sajakah yang menyebabkan meningkatnya jumlah permohonan dispensasi nikah

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di Pengadilan Agama Jombang (2) Apa saja pertimbangan hakim Pengadilan Agama Jombang dalam memberikan dispensasi nikah. Penelitian ini bersifat yuridis dan sosiologis di Pengadilan Agama Jombang. Dengan menggunakan pendekatan patung, konseptual, dengan jenis data primer dan sekunder serta dianalisis secara deskriptif kualitatif. Pembahasan hasil penelitian menunjukkan bahwa: 1). Meningkatnya permohonan Dispensasi Nikah di masa pandemi ini disebabkan oleh pergaulan anak dengan pembatasan kegiatan belajar sehingga waktunya lebih banyak digunakan untuk bermain gadget yang tidak lazim dan kurangnya pengawasan orang tua, hal ini menjadikan banyak faktor yang dapat menjerumuskan mereka. 2). Dasar pertimbangan hakim dalam mengabulkan permohonan dispensasi perkawinan didasarkan pada "manfaat dan kerugian" maka pengadilan akan mengabulkan permohonan dispensasi. Karena dikhawatirkan jika tidak menikah akan menambah dosa dan mengganggu hak-hak hukum anak yang lahir di bawah hukum.

**Kata Kunci:** Penerapan, Dispensasi Perkawinan, Pandemi, Sosiologi Hukum, Peradilan Agama.

## A. INTRODUCTION

Marriage is a form of bond between humans. Marriage can be seen as a relationship between a man and a woman in order to continue the ideal life in maintaining sustainability in preserving life. Through marriage, is one of God's ways that is generally done by God's creatures. regulated in positive law, the purpose of marriage according to Law Number 1 of 1974 concerning Marriage is to form a happy, prosperous and eternal family based on the One Godhead. Child is internationally recognized and defined to refer to every human being under the age of 18 years<sup>3</sup>.

Thus, it is necessary to fulfil the supporting factors of physical, material and mental maturity of both partners. Islam is a religion that pays attention to marriage and encourages adherents to carry out this sunatullah, but not everyone is considered capable of bringing a family in warm and comfortable conditions, as well as a peaceful family. Then departing from this through Law No. 1 of 1974 regulating the age limit for a person to be allowed to marry. Paragraph 2 of Law No. 1 of 1974 states "Marriage is only permitted if the man has reached 19 years and the woman has reached 16 years", this provision is considered to be a polemic because the minimum age limit for women is considered contrary to the Law on the Protection of Women and Children. which stipulates that a child is a person who is not yet 18 years old. So that it encourages the public to submit a judicial review so that it is stated in the revision of Law No. 1 of 1974 concerning Marriage, Law No. 16 of 2019 was born which reaches the age limit for holding marriages for women, which is equated with the minimum marriage age for men, which is 19 years, then in Article 7 Paragraph (2) states that: "In the event of a deviation from the age provisions as referred to in Paragraph (1), the parents of

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<sup>3</sup> Roz Evans, 2012, Understanding Young People's Rights to Decide "What is Childhood and What Do We Mean by 'Young Person'". IPPF. page. 2.

the male and/or female parents may request a dispensation from the court on very urgent grounds accompanied by sufficient supporting evidence.”

The current situation, especially in Indonesia itself, is experiencing many factors that have an impact on life, one of which is strongly influenced by social and economic conditions. The enactment of a policy from the government regarding Large-Scale Social Restrictions (PSBB) in order to reduce the transmission of the corona virus. In addition, the enactment of Law Number 16 of 2019 concerning Marriage, the revision of the Marriage Law Number 1 of 1974 which is expected to be one of the government's efforts to suppress the number of underage marriages, has not yet achieved optimal results.

The existence of this law shows that applications for dispensation for marriage are more difficult and must be submitted through the Religious Courts, but the facts on the ground show that the number of applications for dispensation for marriage is increasing during this pandemic. The situation during the pandemic is what makes sociological factors, the occurrence of imbalances in the structure of society, causing the dysfunction of the community's inability to maintain nature and the influence of the environment. This study aims to determine: (1) What is the factor in the increase in the number of applications for marriage dispensation in the Jombang Religious Court (2) How are the considerations of the judges of the Jombang Religious Court in granting the application for a marriage dispensation.

## **B. METHODS**

The research method used in this study is in the form of a descriptive approach which aims to describe the nature of something that is ongoing at the time the research is conducted and examines the causes of the current social phenomena. that is<sup>4</sup>, this research was conducted in a certain community environment, both in institutions, social community organizations and government institutions. This research is sociological juridical, by conducting a study at the Jombang Religious Court. By using primary data and secondary data. Data collection techniques were carried out by means of documentation studies and interviews with several officers at the Jombang Religious Court. That the data that has been obtained from the field and has not been processed, namely by making a boundary of the processed data (based on the data obtained), then concluded based on the data obtained and has been processed and analysis of the data, which begins with making categories relating to the issue of divorce at a young age in the Religious Courts of Jombang. Data analysis was carried out by content analysis. The data that has been collected is then analyzed in terms of content analysis / based on its content and presented in a qualitative descriptive manner.

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<sup>4</sup> Husen Umar, 2004, *Metode Penelitian untuk Skripsi dan thesis bisnis*, Jakarta: Raja grafindo Persada. cet. Ke-6, page. 22

### C. RESULTS

Basically, marriage is a form of inner and outer bond that unites both men and women to form an eternal and happy family. In Indonesia, it is regulated in Law No. 1 of 1974 concerning Marriage, article 1 which reads "Marriage is an inner and outer bond between a man and a woman as husband and wife with the goal of forming a happy and eternal family (household) based on the One Godhead<sup>5</sup>.

The purpose of marriage according to Islam is to fulfil religious instructions in order to establish a harmonious, prosperous, and happy family. Marriage is the best way that can distance a Muslim from all lust that can bring him closer to adultery<sup>6</sup>.

The next goal is to fulfil the instinctive demands/intentions of human nature (*menschelijke natuur*), protect humans from evil and damage, and foster activity in trying to find lawful sustenance and increase a sense of responsibility<sup>7</sup>.

The arrangements in Law No. 1 of 1974 concerning Marriage have resulted in a lot of balancing so that it encourages to apply for a judicial review which is regulated in Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. Previously, the provisions regarding the minimum age limit for marriage was regulated in Law Number 1 of 1974 with a minimum age limit of 16 years for women and 19 years for men. The provisions of Article 7 regarding the age requirements and dispensation were then amended and updated in Law Number 16 of 2019 concerning Marriage concerning Amendments to Law Number 1 of 1974 concerning Marriage.

If in this condition the men and women have not reached the specified age, they can ask the court for dispensation. Marriage dispensation can only be filed in court, especially for Muslims, it can be filed in a religious court, then your court will issue a decision in accordance with the judge's consideration, which makes the decision in accordance with the provisions of the application<sup>8</sup>.

Table 1.

#### Comparison of Article 7 of the Marriage Law

Law Number 1 of 1974 concerning Marriage

Law Number 16 of 2019 concerning Marriage concerning Amendments to Law Number 1 of 1974 concerning Marriage

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<sup>5</sup> Abd. Shomad, 2010, *Hukum Islam Penormaan Prinsip Syariah dalam Hukum Indonesia*, Jakarta, Kencana, page .274.

<sup>6</sup> Abdul Rahman Ghazali, 2010, *Fiqh Munakahat*. Jakarta: Kencana., page.7.

<sup>7</sup> Soemiyati., 1997, *Hukum Perkawinan Islam dan Undang-Undang Perkawinan*, Yogyakarta, Liberty, Cet. 3, page. 15-17.

<sup>8</sup> Rachmadi Usman, 2006, *Aspek-Aspek Hukum Perorangan dan Keluarga di Indonesia*. Jakarta: Sinar Grafika, page. 275.

Article 7:

- (1) Marriage is only permitted if the man reaches the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years;
- (2) In case of deviation in paragraph (1) of this article, you can request a dispensation from the court or other official requested by the parents of the male or female side.

Article 7:

- (1) Marriage is only permitted if a man and a woman have reached the age of 19 (nineteen) years;
- (2) In the event of deviation from the age provision as referred to in paragraph (1), the male parent and/or female parent may request a dispensation from the Court on the grounds that it is very urgent, accompanied by sufficient supporting evidence.

The change in the marriage law which regulates the minimum age limit for marriage makes the position of men and women both 19 years old, which changes the position of the female age limit which was previously 16 years. Amendment to Law No. 1 of 1974 in article 7 paragraph (2) which means very urgent reason is a situation where there is no other choice and it is imperative that a marriage must take place with sufficient supporting evidence in accordance with the provisions such as a certificate proving that the age of the prospective partner is still under the provisions of the law and a certificate from a health worker explaining the parents' statement that the marriage is really very urgent to be carried out.

## D. DISCUSSION

Dispensation itself is a form of permission for prohibitions that have been regulated by law. Dispensation according to the Big Indonesian Dictionary is exemption from rules due to special considerations, exemption from an obligation or prohibition<sup>9</sup>, while the definition of dispensation in the legal dictionary written by Sudarsono is an exception from a general rule for a special situation, exemption from a prohibition or obligation.<sup>18</sup> Likewise as stated by CST The meaning of dispensation is a stipulation which states that a regulatory provision does not apply to a case submitted by an applicant.<sup>10</sup>

### 1. Social Causes of Marriage at a Young Age

Marriage at a young age is only a piece of the social reality faced by today's society. Among teenagers, especially in the neighborhood, marriage at a young age is considered a way out to avoid free sex. There are also those who do it out of necessity and because they are pregnant out of wedlock. This opinion may be true, but marriage

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<sup>9</sup> Kamus Besar Bahasa Indonesia, diakses dari <https://kbbi.web.id/dispensasi>, at Februari, 06. 2021, at 00:45 WIB.

<sup>10</sup> C.S.T Kansil dan Christine S.T Kansil, 2001, *Kamus Istilah Aneka Ilmu*, Jakarta, Surya Multi Grafika, page. 52.

is certainly not just uniting yourself in marriage as an answer to the problems of life that are being faced. Marriage is a provision of life that must be prepared carefully. Teenagers' sexual drive is high because it is driven by a teenager's social environment that likes to allow/allow and has almost no limits. In the end, physically children can look more mature and mature, but psychologically, economically, religiously, socially, and other forms of independence are not necessarily able to build a new community called family.

To form a family, husband and wife need moral and material readiness to navigate and share anything with their beloved partner, must be mature enough, physically and mentally healthy and have the ability to earn a living. Marriage at a young age is very vulnerable to problems because the level of emotional control is not yet stable. In a marriage, there will be various problems that require maturity in handling so that a marriage is not seen as mere material readiness, but also mental readiness and maturity to wade through it. Usually, the condition where the couple is unable to resolve and overcome the problems that occur can cause various other problems that can lead to family divorce. So that the number of young marriages is also directly proportional to the high divorce rate. The number of divorce cases is the impact of the young age of divorced couples when they decide to get married. But the reason for divorce is of course not for reasons of marrying young, but economic problems and so on, but these problems are of course the impact of marriages that are carried out without self-maturity from all aspects.

Marriage dispensations related to underage marriage in practice have increased significantly. The increase in the minimum age limit for marriage to take place in the revision of the Marriage Law, namely in Law Number 16 of 2019 concerning Marriage, which is expected as one of the efforts to suppress the abolition of the number of underage marriages in Indonesia has not achieved optimal results.

## **2. Factors for the Increase in the Number of Applications for Marriage Dispensation at the Jombang Religious Court**

Dispensation is the granting of the right to a person to get married even though they have not reached the minimum age for marriage. Simply put, in Perma No. 5 of 2019 concerning Guidelines for Adjudicating Applications for Dispensation, a marriage dispensation is the granting of a marriage permit by the court to a prospective husband/wife who is not yet 19 years of age to get married. In this case, it means that when a person marries outside the provisions when he is in a state of "wanting" and there is no other option (*ultimum remedium*) then permission can be given in accordance with the legislation. It is regulated in Law Number 16 of 2019 amendments to Law Number 1 of 1974 concerning Marriage where the word "deviance" can be made through submitting an application for dispensation by the parents of one or both parties of the prospective bride and groom<sup>11</sup>.

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<sup>11</sup>Afif Zakiyudin. *Menakar Potensi Dispensasi Nikah Pasca Revisi UUU Perkawinan*,

In Law Number 16 of 2019 amendments to Law Number 1 of 1974 concerning Marriage stipulate that the marriage age for men and women is the same. The Supreme Court of the Republic of Indonesia Article 1 paragraph (1) Perma Dispensation for Marriage. A child who must apply for a marriage dispensation before marriage is a child who is not yet 19 (nineteen) years old or has never been married according to statutory regulations.

The parties who have legal standing in submitting the application for a marriage dispensation are the parents of the candidate. when the parents of one of the parties have divorced, the application is still filed by both parents by means of one of the parents appointed by the court as the holder of the custody (*hadhanah right*) based on a court decision. In the event that one of the prospective parents has passed away, the application for dispensation for marriage can be submitted by the living parent<sup>12</sup>. All of this is in the interests of the child in order to ensure the protection, welfare and survival of the child.

Article 7 paragraph 3 of Law Number 16 of 2019 amendments to Law Number 1 of 1974 concerning Marriage: "The granting of dispensation by the Court as referred to in paragraph (2) must listen to the opinions of the two prospective brides who will carry out the marriage."

The following is data regarding the number of marriage dispensations obtained from the results of research at the Jombang Religious Court (2018-2020).

Table 2.  
Number of Marriage Dispensation Cases at the Jombang Religious Court

Case	2018	2019	2020
Marriage dispensation	105	196	409

It can be seen in the table above that there has been an increase in the number of applications for dispensation for marriage in the year starting from 2018 to 2021. There is a significant increase when entering 2020. In 2018 there were 105 people, in 2019 there were 196, there was an increase of 91 and 2020 continues to rise to 409 people (there is a difference of 213). This means that this has increased by around 299% compared to 2019. And the early 2020 year was already in the Covid-19 pandemic period which began with the PSBB in Indonesia as of March 20, 2020. It also means that Covid 19 has only been around for 9 months and since then the PSBB has been enacted and the work from home (WFH) policy, school from home (online) in Indonesia was born. Reports on the number of marriage dispensations from January to December 2020 were the highest in July with 54 reports, the lowest in August and December with 17

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<https://Pa-Kajen.Go.Id/V3/Artikel/Menakar-Potensi-Dispensasi-Nikah-Pasca-Revisi-Uu-Perkawinan>.

<sup>12</sup> Mahkamah Agung RI, Peraturan Mahkamah Agung RI Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin.

reports. Meanwhile, from January to December 2019, the highest reports of requests for marriage dispensation were in November with 81 reports, the lowest was in May with 4 reports. The increasing application for Marriage Dispensation during this pandemic is caused by the association of children with restrictions on learning activities so that their time is used more for playing gadgets that are not common and the lack of parental supervision, this makes many factors that can plunge them.

From the results of a study at the Jombang Religious Court, it was found that there were many factors involved in the occurrence of marriage dispensations, including: environmental factors, the influence of technology, lack of parental attention, application, and on average pregnant first, already contained. Even from research, it is also known that there are other x-factors, such as being pregnant and some having an abortion.

The average age of those applying for a marriage dispensation at the Jombang Religious Court is 16 years old or less than 19 years old and this cannot be separated from the fact that some of them come from religious schools.

### **3. Considerations of Judges of the Jombang Religious Court**

Since the revision of the Marriage Law, the number of marriage dispensations in Indonesia has even increased sharply. The government is not ready to face the consequences of increasing the minimum age limit for marriage, which is followed by the permanent existence of the provisions regarding the granting of dispensation permits to the minimum age limit. This rule cannot be applied firmly and is enforced on the entire community because apart from exceptions or permission to deviate from these rules, it is indeed for the granting of dispensation even though Article 7 Paragraph (2) of Law Number 16 of 2019 concerning Marriage does not explain in detail the reasons for urgency. What are the reasons for submitting an application for a marriage dispensation, besides that the judge immediately grants the application for a dispensation without looking further and more carefully as to whether the reasons are urgent so that the prospective brides who are under the age are eligible to be granted a marriage dispensation.

Here the position of the judge is actually also very risky when the application for Dispensation for Marriage is not granted, it is very feared that there will be many consequences of this situation such as social sanctions, children's rights when a woman is pregnant and so on. But when the marriage dispensation application is granted, there will also be fear that will occur when something like that results in the lack of maturity of the bride and groom in undergoing the household ark due to lack of maturity of thought, lack of economic stability so that it is feared that disputes will lead to early divorce.

A person who wishes to file a case for a marriage dispensation, as stated in Law Number 16 of 2019 concerning Marriage, article 7 paragraph (2), namely: "In the case of deviation from paragraph (1) of this article, he can request his dispensation to the



Court or, as appointed by the Court. by both male and female parents<sup>13</sup>. Before the Chairperson of the Assembly makes a determination, the Chairperson of the Assembly has considerations whether the application can be granted or not.

The basis for consideration of the Panel of Judges in the trial is as follows: first, the applicant. The Panel of Judges in the trial will examine whether the person who filed the case for the dispensation has the right to file or not. Second, reason. At the trial, the Panel of Judges asked the reasons for the child's application, then the Panel of Judges examined the reasons for the child's application with the applicant's application. Whether the reasons for the child of the applicant and the applicant are similar or not. Third, there is a ban on marriage or not. For prospective husbands and prospective wives who are going to get married, there are obstacles or not, as regulated in the Marriage Law. Fourth, benefit and harm. If two people are in love, so that they have sexual relations outside of marriage that led to pregnancy, then the Court will grant the dispensation request. Because it is feared that if they are not married, they will increase sin and an underhand marriage will occur which will disrupt the legal processes that will occur next or disrupt the legal rights of the child born according to the law. In addition, society will insult and ostracize women who are pregnant without a husband.

## E. CONCLUSION

From the discussion of the results of the study, it can be concluded: *First*, the factors that affect the increase in applications for Marriage Dispensation during this pandemic are due to the association of children with restrictions on learning activities (learning from home) so that their time is used more for playing gadgets that are not in general. and the lack of parental supervision, this makes many factors that can plunge them. *Second*, the consideration of the Jombang Religious Court judge in granting the marriage dispensation application is more concerned with the existence/for benefit and harm. The court will grant the dispensation request. Because it is feared that if they are not married, they will increase sin and disrupt the legal rights of the child born according to the law.

As a recommendation from this research, the government and law enforcers with such facts in the field should: 1). provide education and assistance to the community, both regarding the importance of education to the dangers of early marriage on health and reproduction at a young age. 2). It is necessary to provide continuous counseling and outreach to the community.

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<sup>13</sup> Undang-Undang No. 1 Tahun 1974 tentang Perkawinan, Article 7 paragraph (2).

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