

Marriage dispensation in the city of Surabaya

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Abstract

Underage marriage dispensation is a permit issued by the Religious Courts to provide relief to prospective brides who will carry out underage marriages. The issuance of underage marriage dispensation was based on the Republic Indonesia of Law Number 1 of 1974 concerning Marriage which was amended to become the Republic Indonesia of Law Number 16 of 2019. The study was aim to find out the underage marriage dispensation phenomenon in the city of Surabaya. In this study, a qualitative method is used with a phenomenological approach. The informant used in this study are 10 people consisting of the key informant, the main informant, and the additional informant. Data were collected using an in-depth interview method. The results of the study found that there were causative motives which included religious factors, cultural factors, economic factors, other factors, and regulations. This research also found form of action which included the final decision of the Religious Court judge on the request for underage marriage dispensation. Various forms motives and actions have some impacts on the dispensation application which includes underage marriage as a result of the dispensation application approval and the emergence of the unregistered marriage phenomenon as a result of the dispensation application rejection.

Keywords: Marriage dispensation; Religious courts; Phenomenological approach; Regulations; Judge's decision

1. Introduction

Regulations and rules are an essential part of people's lives. Marriage is one of the critical moments in one's life. Marriage must comply with regulations set by the state and religion because it is a sacred process. Marriage in Indonesia regulates in the Republic of Indonesia Law Number 1 of 1974, later amended to become the Republic of Indonesia Law Number 16 of 2019. The change contains in Article 7, paragraph 1, which discusses the minimum age for marriage for men and women.

The Republic of Indonesia Law Number 23 of 2002 concerning Child Protection stipulates that a child is someone who is not yet 18 years old, including children who are still in the womb. Article 7 Paragraph 1 Law Number 1 of 1974 stipulates that the minimum age for marriage for men is 19 years, and the minimum age for marriage for women is 16 years. This decision is contrary to the Law on Child Protection because marriage under the age of 18 can hurt a child's life.

The impacts of marriage under 18 are dropping out of school, divorce, reproductive health problems, difficulties in improving household welfare, and increasing maternal and child mortality [1].

The existence of the Republic of Indonesia Law Number 16 of 2019, especially in Article 7 Paragraph 1, needs to be fixed because of still many phenomena of child marriage. It happens because relief is written in Article 7, Paragraph 2 of the Republic of Indonesia Law Number 16 of 2019. Article 7 Paragraph 2 of the Republic of Indonesia Law Number 16 of 2019 concerning Amendments to the Republic of Indonesia Law Number 1 of 1974 concerning Marriage explains that

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the parents of the man or the parents of the woman can apply application for marriage dispensation to the court accompanied by reasons urgent and robust evidence.

Underage marriage dispensation is a letter issued with the approval of the Religious Court's judge because of this deviation from the marriage regulations established by the state, such as early marriage involving minors with or without other accompanying events [2]. Based on this definition, it can be concluded that the dispensation of marriage in underage is the granting of the right to marry under the age of 19 years issued by the Religious Court in the form of a written document.

In 2016–2022, the Surabaya Religious Court approved as many as 1,567 requests for dispensation from underage marriages and rejected one file of marriage dispensation application. Based on the results of the recapitulation of applications for marriage dispensation in Surabaya Religious Court in 2022, the number of requests for dispensation Underage marriages accepted by the Religious Courts is dominated by 18-year-old children. As many as 60% of all applications for dispensation of underage marriages that go to the Religious Courts request for dispensation of marriage caused by the presence of parents' concerns about adultery and promiscuity. At the same time, the rest are requests for dispensation from underage marriages filed with reasons of pregnancy out of wedlock and economic factors.

One of the studies that have been done in the past mention some of the factors that encourage the occurrence of underage marriage. Some of these driving factors were found in a study conducted using a phenomenological approach. Teenagers have two motives for marrying young: causal factors of action (because motive) and form of action (in order to motive). The reason for underage marriage is the parents' concern against promiscuity, pregnancy out of wedlock, and mutual feelings of trust and comfort from a partner. And then the purpose of underage marriage is to live with a partner [3].

The phenomenon of underage marriage encourages the applicant to apply for a marriage dispensation in underage. The researcher will explore the factors that cause someone to apply for dispensation of underage marriage, the decision of the judge of the Religious Court against an application for dispensation of underage marriage, as well as the impact of the phenomenon of underage marriage dispensation guided by theory Phenomenology of Alfred Schutz.

2. Material and methods

This study uses a qualitative method with an approach phenomenology. The selection of qualitative methods as a research design is because researchers want to see the phenomenon of early marriage and the issuance of letters of underage marriage dispensation by understanding the informants personally through in-depth interviews. There are 10 informants in this study. This research has been approved by the Health Research Ethics Clearance Commission of the Faculty of Dentistry, Airlangga University, Indonesia.

The research was carried out from October 2022 to April 2023 in the city of Surabaya, in particular, two sub-districts in the city of Surabaya, namely Sawahan and Semampir. Data collection techniques used in this study are in-depth interviews. In conducting in-depth interviews, researchers assisted with interview guidelines through questions asked by researchers will be improvised to adjust the informants' answers and the researchers' needs.

3. Results and discussion

3.1 Causal Factors of Action (Because Motive)

The findings in this study indicate the existence of several factors the causes that prompted the action of the research subjects. The causal factors were found from the results of data collection in the field to be a direct causal factor of the existence of the application phenomenon dispensation for underage marriage and become an indirect causal factor of the phenomenon of underage marriage. This cause underlies the research subjects to be involved in the application process dispensation for underage marriage is a socio-cultural factor, an economic factor, other factors, and the existence of binding regulations (legal norms).

There is a fear of adultery that can lead to sin because of the cultural influence of the Madurese people. The economic factor, which is also a factor causing the application for dispensation of underage marriage, is the inability of parents to support their children. Another factor that causes research subjects to be involved in the process of applying for underage marriage dispensation includes the desire to get married oneself or the occurrence of an accident in the form of Pre-marital pregnancy also encourages parents to apply dispensation for underage marriages. There are regulations

(legal norms) that bind all couples who will marry underage to apply for a marriage dispensation under age is also one of the factors causing the application for dispensation of underage marriages.

The findings in this study align with those in the study of others in the past. The reason someone applies dispensation for underage marriages is a preventive measure to prevent acts of adultery and as a curative effort for means healing for couples who experience pre-marital pregnancy in order can cover disgrace and save child status [4].

Economic factors also contributed to submitting applications for dispensing underage marriage. Research results carried out in the region of Amhara, Ethiopia, state that the family is wealthy with middle and upper-family incomes are less likely to engage in underage marriages when compared to families poor with low-income family income [5].

There is desire from oneself to get married even though it is still Underage is also a factor causing the filing of an application dispensation for underage marriages. One of the studies in 2021 explains that children under 19 years already have the mind and intention to build a household and take on new assignments [6].

The accident factor (pre-marital pregnancy) is included in the factor cause of action. Pre-marital pregnancy is a result of adolescent sexual behaviour. Pre-marital pregnancies that occur will encourage minors to marry. Pre-marital pregnancies can occur due to the influence of social media [7]. Apart from being influenced by social media, Pre-marital pregnancies can also occur due to the influence of parenting permissive parents [8].

3.2 Form of Action

Every phenomenon in a study with an approach to phenomenology does not always produce the same form of action, but it will adapt to what has been found in the field so far research process. The form of action found in this research is the judge's decision on the application dispensation for underage marriages.

The final form of action in this phenomenon is the judge's decision on the application for marriage dispensation is underage. The judge's decision determines other phenomena that will occur in society, namely the phenomenon of underage marriage and the phenomenon of marriage series.

Religious court judges need deep consideration to decide on the application for marriage dispensation under age. The results of this study identify two types of decisions from judges, i.e. approval and rejection. The Religious Courts judges need consideration in approving the application for underage marriage dispensation because of regulations and social sanctions.

The findings in this study state why the court judges religion in rejecting requests for underage marriage dispensation based on the age of the bride and groom. The findings in this study are supported by one of the other studies, which mentions that the age of the candidate, the bride and the groom are one form of judge's consideration in rejecting a marriage application for dispensation of underage marriage because of the age of the prospective bride and groom very influential on household life [9].

In Mukmin's research, it was explained that the judge's decision was in the form of a refusal has two sides; on the one hand, the judge's decision can give rights to the applicant, namely the right to obtain justice; however, on the other hand, this decision hindered the rights of the parties the applicant's right to marry and found a family.

3.3 The Impact of The Phenomenon of Underage Marriage Dispensation

Based on the results of research on the phenomenon of marriage dispensation in The city of Surabaya obtained the fact that there are two forms of consequence there is a request for dispensation of underage marriage, namely the occurrence of underage marriage as a result of the judge's approval Religious Court against requests for dispensation of underage marriages and the emergence of the phenomenon of unregistered marriage as a result of rejection against the request for dispensation of underage marriage by the judge Religious courts.

The results of other studies support the results of this study. The impact approval of the request for dispensation from underage marriage is that the child can legally be married [10]. The result of previous research stated that the impact of rejection against the application for dispensation of underage marriage is the occurrence of marriages that are not registered at the KUA so that the spouse does not have the marriage book [11].

Underage marriages carried out due to pre-marital pregnancy causes abuse aimed at children and women who become pregnant outside of marriage because of the lousy stigma and moral standards created by society [12]. In line with other research, bullying can impact mental health, such as depression, anxiety, low self-esteem, and eating disorders [13].

Problems experienced by all participants involved in the process of applying for underage marriage dispensation can be overcome by involving the role of government and across sectors. An educational program that explicitly addresses KUA officers, Religious Court judges, and all communities as an alternative solution. Educational programs are minimal because of the influence of culture and traditions, considering the population in Surabaya, especially North Surabaya, is dominated by Madurese, who has a culture that marries young. Suppose the culture of marrying young is still influential in society. In that case, the government and cross-sectors cannot easily make changes in culture, so the only solution that can be provided is to educate all underage married couples to postpone pregnancy after marriage.

Alternative solutions that can be given to prevent pregnancy pre-marriage that can encourage teenagers to marry under age is to implement a fun learning system in schools and provide free school assistance to people who are in trouble economically so that teenagers will be more interested and focused on learning at school.

The alternative solution for KUA officers and judges in Religious Courts is to organize free marriage classes. To everyone who will do the wedding, the community can later have a reasonably mature readiness if it feels sure to get married.

4. Conclusion

Based on the results and discussion of the analysis by method Interpretative Phenomenological Analysis (IPA) is related to phenomena dispensation of marriage in the city of Surabaya, it can be concluded that the causative factors of the action (because motive) are internal the phenomenon of requests for marriage dispensation in the city of Surabaya, among others socio-cultural factors which include religious factors and cultural factors, economic factors, other factors that include premarital pregnancy and the desire to get married from oneself, as well as the existence of regulations (norms law). In addition, there are motives, causes and various forms of action caused several impacts from the application for marriage dispensation in minors, such as underage marriages as a result of the approval of the application for marriage dispensation under age and the emergence of the phenomenon of unregistered marriage as a result of this rejection of the application for dispensation of underage marriages.

Compliance with ethical standards

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Disclosure of Conflict of interest

The Author proclaim that no conflict of interest.

Statement of informed consent

All informants who involved in this research have stated their consent to provide information for research needs.

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