

**CRIMINAL LIABILITY AGAINST PERPETRATORS OF FRAUDULENT
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Telp./Fax: +62-451-45446 Email: imhamaddusila@gmail.com*Submitted: Nov 28, 2020; Reviewed: Apr 15, 2021; Accepted: Jun 11, 2021***Abstract**

Act Number 16 Year 2019 on Marriage stipulates that the minimum age for marriage for a person is 19 years for both men and women. Whereas the previous Act stipulated the age limit of marriage, 19 years for men and 16 years for women. This is considered very burdensome for some religious people who obey traditions and laws as well as other factors. Thus, child marriage in the period before the Marriage Act Amendment was already quite high and it is even higher afterward. This writing aims to determine and analyze how many applications for marriage dispensation after the Amendment of the Marriage Act at the Religious Court of Palu City, using empirical research methods. The results showed that there was a significant increase in applications for marriage dispensation in the Religious Court of Palu City after the amendment.

Keywords: *Child Marriage; Marriage Dispensation; Religious Court***INTRODUCTION**

Article 7 paragraph (1) of Act No. 1 Year 1974 on Marriage states that the minimum age of marriage is 19 years (for men) and 16 years (for women). It has been amended by Act No. 16 of 2019 which states that the minimum age of marriage is 19 years for both men and women. This is in line with the Child Protection Act which stipulates that all activi-

ties to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally following human dignity and protection from violence and discrimination¹ because to marry a 16-year-old child is the same as taking away the rights of the child so that he/she can live and develop optimally un-

¹ Article 1 Paragraph (2) Act No. 23 Year 2002 on Child Protection.

til 18 years old. However, the spirit of the Act to protect its citizens has always faced violation. At least 12 cases of child marriage were recorded in evacuees shelter for earthquake and tsunami victims throughout Palu, Sigi, and Donggala in Central Sulawesi².

By definition, child marriage is a marriage conducted by one or both of the brides under the age of 19. This has an impact on the economic, psychological, and health aspects of the perpetrator³. Many things have become the reasons for Indonesian to practice child marriage. For example, it is a way that must be taken to save religion, avoid promiscuity, and adultery. Some parents feel proud of their daughters to get married quickly and do not become “old maidens”, as well as economic reasons in the form of efforts to reduce their economic burdens because getting a son-in-law is viewed as economic assets that support the family⁴.

Child marriage must receive a dispensation from the Court. This is regulat-

ed in the new Marriage Act. Marriage dispensation is the granting of the right to a person to get married even though their age has not reached the minimum age of 19 years. A man and a woman are allowed to marry if they are 19 years of age or older. If the circumstances require it, the marriage can take place even though one of the parties or both have not reached the specified age. This means that the parties can override the minimum age requirement for marriage. According to the new Marriage Act, irregularities can only be made by submitting a request for dispensation to the Court by the parents of one or both parties of the prospective bride. For couples who are Muslims, the application is submitted to the Religious Court. For followers of other religions, they are submitted to the District Court.

Article 7 Paragraph (2) of the new Marriage Act confirms that marriage dispensation from the Court can be granted for urgent reasons. In the explanation, it stated that the urgent reason is that there was no other choice and that the marriage is forced to be done. The urgent reason cannot be just a claim. There must be sufficient evidence to support the claim. The letter of statement from the Court that proving that the bridegroom’s age is still under the provisions of the law and a cer-

² Kompas.Com, *Kisah Pernikahan Anak di Kamp Pengungsian Palu, Menikah dengan Teman hingga Hamil Lebih Dulu* (online), Friday, 26 July 2019. Accessed 24 February 2020.

³ Hasan Bastomi, 2016, *Pernikahan Dini dan Dampaknya (Tinjauan Batas Umur Perkawinan Menurut Hukum Islam dan Hukum Perkawinan di Indonesia)*, Jurnal Yudisia, Vol. 7, No. 2, December 2016.

⁴ Umi Sumbulah and Faridatul Jannah, 2012, *Pernikahan Dini dan Implikasinya Terhadap Kehidupan Keluarga Pada Masyarakat Madura (Perspektif Hukum dan Gender)*, Egalita Jurnal Kesetaraan dan Keadilan Gender, Vol. 7, No. 1, January 2012, page. 84.

tificate from a health worker that supports the parents' statement that the marriage is very urgent to be carried out. One of the examples is because the bride-to-be is pregnant, and there may be other examples that are in the urgent category.

The percentage of rampant child marriages in this paper is limited to those for which dispensation is requested to the Religious Court. Meanwhile, child marriage for which dispensation has been requested to the District Court has not been captured in this paper. With the assumption that the majority of Palu City residents are Muslim. Therefore, the data provided by the Religious Courts can represent all of its citizens. Thus, the objective of this paper is how the application for dispensation to marry after the Marriage Act Amendment at the Religious Court of Palu City. The aim is to find out and analyze applications for dispensation of marriage after the Marriage Act Amendment at the Religious Court of Palu City.

METHOD

The research was conducted with the empirical research method. The data sources were taken from primary and secondary data. Data collection is done by observation, interviews, and documentation techniques. The focus of this re-

search, as mentioned above, is the Religious Court of Palu City.

DISCUSSION

Marriage in Indonesia is regulated in Act No. 1 of 1974. It's been renewed with the existence of Act No.16 of 2019 that only changes the minimum age limit for marriage, which is 19 years. The previous rule, 19 years for men and 16 years for women. The etymological definition of marriage comes from Arabic which means "*nikah*" or "*zawaj*". These two words are commonly used in the daily life of Arabs and are widely available in the Qur'an and the hadiths of the Prophet Muhammad. "*Al-Nikah*" means "*Al-Wath'i, Al-Dhommuh, Al-Tadakhul, Al-Jam'u*" or like "*an al-wath wa al aqd*" which means intercourse, gathering, *jima'* and contract. Meanwhile, terminologically, marriage is a contract that allows *istimta'* (intercourse) with a woman, as long as a woman is not forbidden either due to hereditary or foster suckling⁵.

Act No.1 of 1974 concerning Marriage as amended into Act No. 16 of 2019 in Article 1 states that marriage is a physical and spiritual bond between a man and a woman as a wife to form a family (household) that is eternally happy based

⁵ Mardani, 2011, *Hukum Perkawinan Islam Di Dunia Islam Modern*, Graha Ilmu, Yogyakarta, page. 4.

on a divine Almighty God⁶. The definition of the term “marriage” is broader than the term “*nikah*”. “Marriage” is a word that refers to things related to a marriage bond or relationship. If “*nikah*” refers to a bond that is made by the husband and wife to live together, and/or refers to a process of the bond, marriage refers to the things that arise concerning the implementation process and the consequences of marriage⁷. Therefore, marriage includes not only the terms and conditions of marriage and how the marriage should be carried out, but also issues of the rights and obligations of husband and wife, living for divorce, childcare, guardianship, and others. The principles of the Marriage Act are as follows⁸:

- a. Marriage aims to form a happy and lasting family.
- b. Marriage is legal if it is carried out according to the law of religion and belief.
- c. Marriages must be recorded according to statutory regulations.
- d. The marriage principle is open monogamous.

- e. A prospective husband and wife must have entered the body and soul to get married.
- f. The minimum age of marriage is 19 years.
- g. Divorce is complicated and must be done before a Court hearing.
- h. The rights and positions of husband and wife are balanced.

Based on these principles, one of them is the minimum age of marriage, which is 19 years. To obtain the legality of a marriage, all procedures must be carried out, including if there is a violation. If something urgent happens as described above and happens to one of the prospective brides or both of them are under 19 years old, submitting a marriage dispensation application to the Court is an obligation.

The results of the study proved that there was an increase in the incidence of child marriage in Palu City based on applications for marriage dispensation to the Religious Court. This can be seen in the tables below:

⁶ Undang-Undang RI Nomor 1 Tahun 1974 tentang Perkawinan, 2012, Citra Umbara, Bandung, page. 2.

⁷ Jamhari Makruf and Asep Saefudin Jahar, 2013, *Hukum Keluarga, Pidana dan Bisnis Kajian Perundang-undangan Indonesia, Fikih dan Hukum Internasional*, Kencana Prenadamadia, Jakarta, page. 24.

⁸ Hilman Hadikusuma, 2007. *Hukum Perkawinan Indonesia menurut: Perundangan, Hukum Adat, dan Hukum Agama*. Cet. III, CV. Mandar Maju, Bandung, page. 6.

Table 1: Marriage Dispensation in 2019

No.	Month	Number of Cases	Places
1	January	1	Mantikulore
2	February	1	Mantikulore
3	March	1	Palu Selatan
4	April	1	Palu Selatan
5	May	0	-
6	June	1	Mantikulore
7	July	1	Tatanga
8	August	6	Palu Barat, Mantikulore, Palu Utara, and Palu Selatan.
9	September	0	-
10	October	2	Mantikulore and Palu Barat
11	November	4	Ulujadi, Palu Timur, and Mantikulore
12	December	8	Mantikulore, Palu Timur, Tatanga, and Ulujadi

Sources: Religious Court of Palu City.

Table 2: Marriage Dispensation in 2020

No	Month	Number of Cases	Places
1	January	8	Tatanga, Mantikulore, and Palu Selatan
2	February	8	Palu Selatan, Palu Utara, Palu Barat, Mantikulore, and Layana Indah
3	March	2	Mantikulore
4	April	2	Tawaeli and Tatanga
5	May	0	-
6	June	4	Palu Selatan, Palu Utara, and Palu Barat
7	July	11	Palu Utara, Palu Selatan, Ulujadi, Palu Timur, Palu Barat, and Tatanga
8	August	5	Palu Barat, Mantikulore, Palu Selatan, and Palu Utara

Sources: Religious Court of Palu City.

The tables show the percentage of marriage dispensation since the Marriage Act promulgation around October 2019 until now, the last data collection is from August 2020. The district with the highest

number of requested marriage dispensation is Mantikulore District. Not all applications for dispensation of marriage have been granted by the Court. The table above is only for granted events. The applications were rejected a lot. The rejec-

tion of applications for dispensation of marriage is due to several reasons:

1. It does not meet the requirements for marriage, such as the couple coming from different religions, even though the woman is pregnant.
2. Not urgent. The woman is not pregnant and all parties can still be patient and able to wait until the prospective bride is old enough to marry.

Applications for dispensation of marriage were submitted after rejection from the Office of Religious Affairs (KUA). If there is no rejection, the marriage is accepted and carried out by the KUA, even with various violations due to the minimum age limit for marriage. However, of course, if that kind of violation appears, the marriage certificate would not be issued by the KUA. Even though the marriage certificate is something very important to be able to constitute a child's birth certificate. The urgency of owning a marriage certificate makes a married couple who do not have it, lost it, or have not registered their marriage, apply for a marriage certificate (*istbat nikah*) to the Court. Therefore, the KUA, the Religious Courts, and Population and Civil Registration are interrelated with one another. Thus, marriage is closely related to the population. If the three government

agencies come together to serve the community, it will certainly help the community. The integration of the three institutions makes it easier for people to obtain marriage certificates and birth certificates through one procedure. It does not take time and effort or uncertain cost to get it. This can be categorized as excellent service for the community. Of course, the three institutions must jointly sign a Memorandum of Understanding (MoU) to realize this excellent service.

It was from the request of *istbat nikah* the Religious Court then recognized the violation of the age of marriage. There are many cases of marriage without dispensation from the Religious Court. Dispensation should be owned before marriage, not afterward. To obtain a marriage certificate, some couples try to apply for dispensation after marriage. It is unfortunate and has become a problem for the Religious Court to date.

Dispensation or *rukhsah* is an exception to a predefined provision for certain circumstances⁹. Marriage dispensation is given to spouses, one of them or both, who are getting married because they do not meet the minimum age of marriage. The provisions of the Marriage

⁹ A. Kadir. 2020. *Perspektif Baru Hukum Perkawinan Islam Nikah, Talak, Rujuk*. Fatawa Publishing, Semarang, page. 130.

Act in Indonesia concerning the minimum age limit for marriage is 19 years, both for men and for women¹⁰. Previously, the Marriage Act only allowed marriage to happen if the male is 19 years old, and the female is 16 years old¹¹. Several reasons for applying for dispensation of marriage:

Pregnancy

This reason dominates applications for dispensation of marriage in the Religious Court of Palu City. The free association among teenagers is increase due to the escalation of sophisticated social media users. Parents find it difficult to control their children. Elementary and even kindergarten children have been encouraged to have smartphones with cameras as learning media. If the parents are careless in watching their children, then the impact is huge.

Social media as a communication tool is very important. Especially during the Covid-19 pandemic. Appeals to stay at home, avoid crowds, and maintain distance are things that must be followed. Workers, both public and private, partly bring their work home. The learning system, even today, is been done online. This

is what requires every student to have a smartphone. Whereas before the Covid-19 pandemic hit, cellphones with cameras or smartphones were prohibited from accompanying the learning process at school.

Various social media applications such as Facebook, Twitter, Instagram, WhatsApp, Line, and others expand friendships in cyberspace. Various ethnic groups, regions, and countries can be connected through it all. Various kinds of content are available, from content for children to adults. Religious materials to pornography are all there. Thus, if it is wrong in using it, then negative things will happen. Many criminal cases have occurred, even lives have been lost because of social media. As an example, people meet up on Facebook, continuing to the real world, having an affair, and ending in the loss of life. It is easy to access adult content on the internet that causes people to rape because they don't have a legal biological medium to channel their desire. Many also practice sex with their boyfriends/girlfriends, even though they are still students. In the end, pregnancy took place without a plan. The social media factors that cause pregnancy are Ms. Dra. Tumisah, judge of Religious Court in Palu City, means.

¹⁰ Article 1 Act No. 16 Year 2019 on Revision of Act Number 1 of 1974 on Marriage.

¹¹ Asro Sosroatmodjo and A. Wasit Aulawi. 2004. *Hukum Perkawinan di Indonesia*, 4th Printed Ed., PT. Bulan Bintang, Jakarta, page. 77-78.

It is undeniable that the Palu, Sigi, and Donggala disaster on 28 September 2018 brought about another disaster afterward. After the disaster, the Religious Court of Palu City was flooded with requests for dispensation of marriage. Factors of loss of family, loss of residence, free association, having to live in evacuees shelter, factors of education, economy, culture, and so on¹². Evacuees shelter is a narrow place, close to almost no realm of privacy, and it makes people meet the same person for a long time. Even now there are Palu, Sigi, and Donggala people who still live in evacuees shelter.

The rise of child marriage in the evacuees shelter in Palu, Sigi, and Donggala is quite alarming. At least 12 cases were recorded that occurred only in the last few months. This phenomenon adds to the blurry portrait of Central Sulawesi as one of the regions with the highest prevalence of child marriage (kompas.com, 26 July 2019).

Fear of being caught up in adultery

¹² Susi Susilawati, 2019, *Dampak Bencana Terhadap Tingkat Perkawinan Anak di Sigi Biromaru*. Unpublished Paper, Delivered at National Symposium, 30 November 2019.

This one reason is rare. In Islam, the definition of *zina* is different from the definition of *zina* in the Criminal Code (KUHP). The definition of “adultery” according to Islam is a sinful act committed by a person of the opposite sex and not a “mahrom” (someone who is *haram* to marry). Whether it’s doing sex or something that leads to it. Performed by people who are still married or single, both are categorized as committing adultery. Meanwhile, the definition of “adultery” in the Criminal Code is having sex if one or both of them are married to another party. If both of them are still single, it is not categorized as adultery. Parents worry about this because they see the children relationship is getting closer. They cannot be separated even though parents have tried to separate them. By delaying the marriage, it is feared that the further their relationship is, the more *zina* is committed and before the woman becomes pregnant, it is better to be married. Thus the reason for this happened.

The effectiveness of Act No. 16 of 2019 concerning Amendments to Act No. 1 of 1974 concerning Marriage is still a burden on the Religious Courts. The community’s readiness to welcome these changes is still considered very minimal. Moreover, there is still a lack of socializa-

tion to the public regarding changes to the minimum age of marriage for women.

CONCLUSION

Based on the explanation above, it can be concluded that there has been a significant increase in child marriage after the Amendment to the Marriage Act in Palu City, with reasons of pregnancy and religious factors. Thus, it is recommended to massively socialize Act No. 16 of 2019. Good cooperation between the Religious Courts, the Office of Religious Affairs (KUA), and the Population and Civil Registration Office are needed to help people get marriage certificates and birth certificates received at one place in the context of excellent service, and further research is needed to find out the factors that cause people to marriage at an early age. It can be prioritized on the address of the majority of the dispensation applicant for marriage in Religious Court of Palu City, such as Mantikulore District.

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