

THE IMPACTS OF MARRIAGE DISPENSATION IN PSYCHOLOGICAL, JURIDICAL AND ISLAMIC LAW PERSPECTIVES

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Abstract

Marriage dispensation is an exception made in emergency situations, and in Islam, it can be applied without violating the principles of Islamic law. It means that it can be carried out as long as it complies with the legal requirements of the state and Islamic law, and there is evidence of permission from the Religious Court because of, for example, pregnancy out of wedlock. The purpose of this study is to examine the psychological and juridical implications of marriage dispensation. To help couples understand the purpose of marriage, they must be mentally and physically prepared. The results of this study indicate the impact of psychologically immature marriage dispensation on mindset and psychological immaturity. Therefore, if rules and evidence are not limited, it will lead to several problems such as increasing divorce rates, low economic conditions, vulnerability to domestic violence, and so on. Meanwhile, the juridical impact of Law No. 16 of 2019 indeed regulates marriage dispensation only in a normative sense. However, in practice, sociologically, there is room to facilitate marriage dispensation. Meanwhile Islamic law does not have specific provisions regulating marriage dispensation because most scholars only affirm that maturity (baligh) is a prerequisite for someone's marriage to be valid, without specifying a minimum age limit for marriage.

Keywords: Marriage Dispensation, Psychological Impacts, Islamic Law

INTRODUCTION

A dispensation is a special permission or exemption from the rules or laws that are normally in effect. Dispensation is synonymous with an exemption that allows something that would normally be prohibited due to an unexpected circumstance. In the context of carrying out a sacred binding agreement between male and female couple by building a joyful and an eternal family, a marriage dispensation means exemption from age limits in carrying out the marriage (Hidayatulloh and Janah 2020).

One of the negative effects of early marriage is increased vulnerability to domestic violence, with women typically being the victims of this type of abuse. If people get married at a young age because they are unable to have a successful beginning to their lives, this will have an effect on the country's ability to compete with other nations over the next few years. In addition, one of the consequences of being married too young is that the couple is typically not ready for marriage, which can lead to divorce. Another factor that can affect a woman's health is being married at a young age. In the case of couples who get into early marriages for the purpose of achieving female reproduction, this can result in agony, continuous sexual trauma, hemorrhage, miscarriage, and even fatal maternal death during childbirth (Hadiono 2018).

A marriage that takes place between people who are not old enough to legally marry will inadvertently produce additional problems, including the potential for them to separate. In addition, in terms of reproductive health, there is an increased risk of death in both mothers and their offspring. According to conventional wisdom in the field of medicine, a woman's reproductive systems are not mature enough to conceive a child if she is less than 21 years old. Children might also have physical and mental retardation because of early marriage, which is true on both biological and psychological levels. Because children are thrust into the adult world so quickly after having children, early marriage is another factor that contributes to the loss of rights for children.

The prevalence of early marriage in Indonesia can be attributed to a variety of causes, including low levels of education and economic status, as well as the presence of unwed pregnancies. The maturation of one's cultural and religious ideals is another element that contributes to the prevalence of early marriage (Yoosefi Lebni et al. 2023). The controversy surrounding early marriage in Indonesia is further complicated by the fact that different laws have varying provisions governing the minimum age at which a person can no longer be considered a kid. According to Law No. 35 of 2014, which amended Law No. 23 of 2002 regarding Child Protection, children are defined as individuals who have not yet reached the age of 18, and parents have the responsibility to prevent their children from getting married too young (Nurfieni 2023).

Marriage dispensation is something that has recently been a matter of interest from both psychological and legal point of view. Because of this exception, individuals or couples are permitted to disobey obligations imposed on them by law or social conventions in the process of getting married. Against this backdrop, the purpose of this research is to investigate, from both psychological and legal point of view, the consequences that marriage dispensation has. These repercussions include the psychological effects they have as well as the influence they have on the relevant legal system. Keeping these factors in mind, the purpose of this research is to offer a more in-depth examination of the marital stipulation and the ways in which it influences spouses and society as a whole.

The marital dispensation shows the complicated nature of the interaction that exists between psychology and the law in the setting of marriage. In order to establish better legal laws and take into account the welfare of the individuals participating in the marriage process, it is necessary to have a good understanding of the psychological and legal implications of this dispensation. Thus, psychological and legal perspectives will form the basis of this investigation as its primary points of departure respectively. The psychological perspective will disclose how the marriage dispensation can affect the mental well-being of the

individuals involved, and the juridical viewpoint will examine the legal impact of this dispensation and its significance to the relevant legal system. The psychological perspective will also expose how the marriage dispensation can affect the mental well-being of the individuals involved.

METHOD

This study employs descriptive analytical research approach using a combination of psychological and legal methods. This research utilizes books, journals, and other writings that are closely tied to the issue under investigation. This study makes use of primary data as its source of information that includes Law No. 1 of 1974 on Marriage as well as Law No. 35 of 2014 on Child Protection.

RESULTS AND DISCUSSION

Definition of Marriage Dispensation

Marriage dispensation is a form of dispensation that is granted by the Religious Courts to prospective spouses who are under the age required to legally marry. A departure from the norm or an exception from the law is what is meant by the term “dispensation”. Marriage dispensation for couples who have not met the age requirement may be granted if the pair can submit an application to a judge of a religious court. This application is evaluated based on a variety of considerations, including shar'ia, juridical, psychological, sociological, and health considerations (S. Zulkifli 2019).

In order to ensure that the marriage is truly necessary in an urgent situation, with the purpose of realizing the aims of Islamic law (*maqashid syar'iyah*), marriage must take place to keep the offspring safe (*hifdz al-nasl*), without jeopardizing the safety of the souls of children who are granted a marriage dispensation (*hifdz al-nafs*), and ensuring that they continue their education (*hifzhu al-aql*). This objective ought to be at the level of *al-dharuriyah*, which

translates to “the fundamental requirements of life,” or at the least *al-hajiyyah*, which means “needs” (Z. Zulkifli 2021).

If the marriage is not performed right away, based on the facts and legal data that have been shown in court, there will be damage caused by partnerships that are forbidden by Allah SWT, such as adultery. At trial, it was discovered that legal facts such as the person in question had been arrested by the public when they were in a quiet place (seclusion), or at the very least, the persons in question were frequently met, or showed other intimate relationships that were contrary to the applicable laws and regulations as well as living law in society, even though both of them have been reminded by the family and various other authorities of their legal obligations in this regard (Adillah, Taufik, and Purnawan 2022).

Impacts of Marriage Dispensation

Law No. 1 of 1974 governing marriage gives a larger space for the occurrence of marriage at an early age. However, Article 7 paragraph 2 of the Law indicates that the objective to be attained is to set a marriage age restriction to maintain the health of the husband and wife as well as their offspring. This goal is to set a marriage age limit in order to maintain the health of their progeny.

As a result, it has the potential to harm the children of Indonesia, both in terms of their development and their growth mostly because they missed out the chance to receive an education and grow when they were still young. When making a decision regarding a case, the courts take into account a number of extremely broad aspects. They also take into account how the applicant's life would be improved in the future. Some of the impacts of early marriage are as follows:

1. The health impacts is for women who marry at the age of less than 15 years will experience a high risk, even if she has had your period. Young marriage can negatively impact on the womb and lead to gynecological diseases, uterine infection and cervical cancer. This is because there is a period of transition from children's cells to adult

cells which is too fast for the growth of cells that grow for new children will end at the age of 19 years.

2. The psychological impacts on couples who marry underage is mentally immature or still in an unstable state and their mindset is also immature. Psychologically, children also do not understand biological relationships so that it creates psychological trauma in the child's soul.
3. The biological impacts for couples who are married, especially women, is related to immature reproductive problems so that the impact when giving birth is having a miscarriage.
4. The educational impacts of a child who enters an underage marriage will experience a decrease in the desire to study or go to school.
5. The legal impact on this law is a violation of the laws that have been regulated by the State including Law No. 1 of 1974 on Marriage and Law No. 23 of 2002 on Child Protection.

Marriage dispensation in the religious court is carried out to obtain legality and legal certainty or juridical evidence related to legal problems caused by the presence of a marriage for prospective husbands or wives whose age has not yet reached the maximum age limit as stipulated in Law No. 1 of 1974 article 7 paragraph 1. This is because prospective husbands or wives whose age has not yet reached the maximum age limit in a marriage are not allowed to marry until their 18th birthday.

Legal consequences are those that are carried out to attain an effect sought by the perpetrator and which has been regulated by law. These are the kind of consequences that are known as “consequences of law”. The action that has been performed is referred to as a legal action, which is defined as an activity that is carried out with the intention of achieving a specific result. In addition, legal consequences are a result that arises from all legal actions carried out by legal subjects against legal objects caused by certain occurrences caused by the applicable law that have been determined and regarded to be legal consequences. This means that legal consequences are the result that occurs from all legal acts.

It is still common practice in many parts of the world, particularly in Indonesia, for young women (those under the age of 20) to get married before

they reach their 20th birthday. The chairman of the training and development division of the BKKBN stated that the average age of marriage for women in West Java is 18.05 years old, and that the majority of them are married.

The inclination of a woman to love herself, and her tendency to be willing to make sacrifices in order to have children is quite strong. Love for a woman, when combined with this inclination, offers her the capacity to triumph over challenges and sicknesses that have become an inevitable part of life and must be endured, particularly in the context of menstruation, pregnancy, childbirth, and breastfeeding, as well as in the context of raising children. As a result, the consequences of an early marriage for a woman are dangerous because she is both physically and mentally immature at the time of the marriage. According to Zakiyah, many of the issues that arise in the lives of women are related to their mental health. For women to appropriately interpret the teachings that are sent by religion, they need to have a comprehensive education and deep knowledge. In order for a woman's spirit and mind to remain steady in the face of challenges, she needs to be able to make decisions and figure out the path that her life will take. This requires that she have a substantial amount of information (Maudina 2019).

Psychological Impacts of Marriage Dispensation

Building a household cannot be separated from the problems. One of them is the cause of domestic disputes for couples who are not mature enough. The age factor that is not old enough indirectly affects maturity for couples in building a household. From a developmental psychology point of view, the more a person gets older, usually in household life one cannot be separated from problems. This is one of the main factors in household problems for immature couples. The factor of not being old enough indirectly affects maturity of the couples.

In developmental psychology, development does not appear to be regular, and it may not go forward or backward according to age. However, basically development does not jump up and down. Perhaps it involves a moral dimension

or self-discovery. So that development must be mastered before stepping on the next stage of the process. Also related to the age limit for couples who want to get married, the problem of maturity is not seen in terms of age; instead, it is a person's age that influences his development. So, for couples who want to get married, age and maturity issues must be considered so that the marriage remains intact and lasting.

One of the factors in the occurrence of divorce for married couples is due to lack of maturity in dealing with family problems. Currently, more and more marriages are under five years old because it is very easy for husband and wife to divorce. In fact, it is the wife who often files for divorce, meaning that age maturity must be considered for couples who want to get married. For couples who want to get married age is not a problem, but after marriage, their true nature and characteristics will be seen and indirectly affects the nature and character of their family. Couples with immature age are usually easily offended, jealous, introverted and so on and unable to control their emotions (Alexander 2020).

According to Article 7 paragraph 1 of Law No. 1 of 1974, the age limit for marriage, seen from psychological theory, only looks at physical readiness, and does not consider the psychological readiness of potential partners. The age limit is only based on the needs of society and as a middle ground between low age and too high age. According to Islamic law and positive law, it is valid, but the provisions in the compilation of Islamic law are not yet ideal for carrying out responsibilities as husband and wife and as parents and have not implemented the goals of marriage. In forming a household, the psychological readiness of both potential partners is needed. If a marriage is carried out without mental preparation it will often experience problems in the household, even the impact will end up being a divorce.

The impacts of early marriage on health include the birth of premature babies causing death in infants, and susceptibility to high blood pressure which causes difficulty getting pregnant. Using birth control pills can also cause weight

changes. Besides that, being physically not ready to get pregnant and lack of reproductive maturity might result in miscarriage and bleeding. Psychologically, there are also impacts of early marriage for couples who are not mentally ready. Couples might not be ready to become a father or mother and face household problems. They might also regret to lose school time. Couples who marry young and experience unwanted pregnancies also tend to feel inferior and insecure.

Juridical Impacts of Marriage Dispensation

Law No. 1 of 1974, that changes to Law No. 16 of 2019 concerning Marriage does not clearly and definitively explain what the factors are for obtaining a marriage dispensation in court. In addition, the marriage law does not specify any conditions that can be used as reasons for requesting a dispensation (Agustian, Mukhlas, and Arfaizar 2023). Every time there is a case related to a marriage dispensation, there must be an application from the court and an appointed official, for example, a prospective bride who has not reached the age of 19 and is already pregnant. In order to maintain the good name of the woman's household and family, she must be married off immediately so that the child born will have a father and not be called an illegitimate child (Hak, Yusdani, and Arfaizar 2022).

In accordance with the amendments made to Law No. 1 of 1974 by Law no. 16 of 2019 on Marriage, new regulations regarding the issue of the maximum age a woman can be married at have been enacted. The age restriction on marriage for women is the same as the age restriction on marriage for men, as stated in Law No. 16 of 2019, article 7 paragraph 1. This law indicates that marriage is only allowed if both the man and the woman have achieved the age of 19 years. If we take a more in-depth look at the process of psychological growth, we can see that the age of 19 years, from both biological and cognitive aspects, is more mature than the age of 16 years, and from an emotional one, it is more tranquil.

If a woman gets married when she is 19 years old and is about to give birth when she is 20 years old, for example, then at that age it is excellent for her to

give birth, and it is likely to lower the danger of death for both the mother and the child. Therefore, because of the existence of this law, it is envisaged that a higher age restriction for a woman will result in a lower birth rate and be able to lessen the danger of mortality for both the mother and the child. In addition, it has the potential to satisfy the rights and obligations of children, maximizing the expansion and development of children. It also has the potential to grant access to a higher quality of education. The law is thus based on several important principles as follows:

1. Principle of Non-Discrimination

The principle of non-discrimination is to understand that every child has the right and obligation to receive protection so that there are no differences from other children.

2. Principle of Best Interests for the child

This principle is to provide protection for children against the interests of the child so that the child's needs are achieved what is expected

3. Principle of Right to Life

This principle is the survival and development of the child's goals, because his rights and obligations must exist, and his survival is guaranteed, because the continuity of the child is attached to the child and not a gift from the State or per person.

4. The principle of respect for the opinion of children.

This principle is to provide conventions on the rights of the child and attention to children's opinions in the process of fulfilling children's rights needs (Muqaffi, Rusdiyah, and Rahmi 2021).

These principles must be taken into account in deciding whether or not to give a marriage dispensation. There are still exceptions that can be made in order to be granted permission to submit an application for a marriage dispensation. It is possible for them to request approval from other officials if other officials are unable to carry out the action. This is a concession that has been made to ensure that the requirements for the marriage dispensation are not overly stringent.

Because of this, the only place where a request for a marriage dispensation can be made is in court. This is done to ensure that the law is followed. Article 7 emphasizes that there are phrases with extremely compelling and time-sensitive reasons to acquire certain reasons and acquire adequate evidence.

Law No. 35 of 2014 on Child Protection also to the principles of non-discrimination, the principle of the child's right to life, survival, and growth, and the principle of respect for the child's viewpoint. This law was passed in 2014. In addition to this, Article 26 of the Constitution states that parents have the responsibility to prevent their minor children from getting married. This means that in Article 26, it is obvious that when parents have passed away or they do not know where they are, they are not entitled to visitation rights. Responsibility was split amongst the family members. If there is not an urgent or emergency reason, such as being pregnant outside of wedlock, for which the objective of the dispensation from marriage is to rescue the child being conceived, the parents do not ask for permission to apply for dispensation from marriage for whatever reason their kid may have. This is done to prevent child marriage from occurring.

Marriage Dispensation from the Perspective of Islamic Law

Marriage dispensation in Islam is granted as an exception to the regular marriage rules in emergency situations or circumstances that require it. The emergency situations referred to have a basis in Islamic law, which is derived from the Quran, Hadith, and jurisprudence. Essentially, marriage in Islamic law is a sacred bond with a strong legal basis and plays an important role in building a just and harmonious society (Kamarusdiana and Sofia 2020). However, Islamic rules also acknowledge that in certain situations, there may be urgent needs or emergencies that justify exceptions to marriage regulations.

It is important to understand that marriage dispensation in Islam should not be used as a justification to violate religious principles. Dispensation can only be granted under certain conditions and in accordance with the applicable Islamic

law. For example, if a Muslim woman intends to marry but does not have any living guardian or is unaware of their whereabouts, then she can marry without a guardian and instead be represented by a judge (Yusdani, Arfaizar, and Rizki 2021). Marriage dispensation is not granted arbitrarily by anyone but by authorized parties, namely a *qadi* (Islamic judge) or scholars who have the ability and knowledge of Islamic law. The grantor of marriage dispensation must also ensure that the decision does not contradict the principles of Islamic law (Piliang and Misbahuzzulam 2023). Dispensation is not based on requests, coercion, or on the basis of interests that contradict Islamic teachings.

Another consideration that must be taken into account is the welfare and interests of both parties intending to marry. Dispensation must consider the rights of individuals involved in the marriage and should prioritize them in making decisions. Although it may sound flexible as it can be applied in emergency situations, its implementation is still based on the principles of Islamic teachings. Furthermore, consideration must be given to the issue of children in marriage dispensation. Children are the most vulnerable party in a marriage, so the decision to grant marriage dispensation should consider the impact on children, both now and in the future. Moreover, the decision on marriage dispensation must also encompass the rights of children, their physical and mental conditions, and the stability within the family environment (Hasan and Yusup 2021). Another consideration is non-discrimination; marriage dispensation should not be used to discriminate based on skin color, ethnicity, gender, or social status. Every individual has the right to equal and fair treatment under the law. Similarly, in Islam, every individual has an equal status in the eyes of Allah, and the only distinction is based on piety, as stated in Surah Al-Hujurat, verse 13.

By considering these principles, marriage dispensation in Islam can be regulated in such a way as to provide protection and justice for all parties involved. Those authorized to grant dispensation have a significant responsibility to ensure that the decisions made consider important aspects such as the best

interests of the child, non-discrimination, and family welfare. Thus, marriage dispensation can be an appropriate instrument to address emergency situations or circumstances without sacrificing the fundamental principles of Islamic teachings.

CONCLUSION

As a result of this research, it can be concluded that marriage dispensation is granted as an exception in emergency situations. Islamic law also regulates that marriage dispensation can be granted without violating Islamic law and considering several aspects related to the dispensation itself. This means that it can be granted as long as it meets the requirements for permission from the Religious Court and there is evidence of the application such as being pregnant outside of a romantic relationship and facing pressure from one's own parents to marry. Couples considering marriage should reconsider their decision, especially regarding age differences, and ensure that they are psychologically, physically, and mentally ready for such a commitment. The court needs to emphasize this more and reconsider not allowing room for marriage dispensation requests.

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