

Rejection of Marriage Dispensation and Its Legal Consequences: Analysis of the Decision of the Sintang Religious Court No. 014Pdt.P2015PA.Stg

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Abstract

The problems that occurred in the field, especially in the Sintang class II religious court, were from all cases handled, at least one case was rejected, namely case number 014/Pdt.P/2015/PA.Stg. The purpose of this research is to describe and analyze the basic considerations of the judges of the Sintang religious court, the juridical factors of the rejection of the marriage dispensation, and the legal consequences of the refusal of the marriage dispensation based on the case decision Number 014/Pdt.P/2015/PA.Stg. The method used is descriptive with a qualitative approach. Data collection techniques were carried out through interviews, observation, and documentation. Meanwhile, data analysis was carried out through data reduction, data presentation and drawing conclusions. The results showed that the procedure for dispensation for marriage in the Sintang religious court was in accordance with the rules, only in case number 014/Pdt.P/2015/PA.Stg. judges who use these rules. lose the heavier by doing the lighter of the two. On the other hand, in determining the case, the panel of judges does not provide a basic right to register a marriage for every couple. The factor that caused the rejection of the case was because the applicant's child objected and was old enough to marry the applicant's future wife.

Keywords: Juridical Analysis, Case, Marriage Dispensation

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INTRODUCTION

Outwardly, humans always tend to live together with other humans. This phenomenon is human nature as a single and multiple beings, namely individual beings as well as social beings. Therefore, as social beings, humans tend to always live in togetherness both in the family and in social life (Saputra, 2020). Family is a phenomenon of human life which was originally formed by a married couple consisting of at least a man and a woman. Living together between a man and a woman who has met these requirements is called marriage (Khumaeni, 2020).

The problem that arises from marriage is the age limit for marriage. The bride and groom cannot get married because they have not met the predetermined age limit (Najwan, 2020). For marriage to be carried out in accordance with the purpose of marriage, Law Number 1 of 1974 concerning Marriage has clearly stated the basics that must be met by every couple who will marry. Among them are Article 7 paragraph (1) which states that: "Marriage is only allowed if the man has reached the age of 19 years and the woman has reached the age of 16 years", then in the next paragraph it is stated that if there are considerations in Article 7 paragraph (1) can request a dispensation from the court or other authorized official appointed by both parties, both male and female (Riyyanno, 2020).

Dispensation itself is a form of exception to the rules made. Marriage age dispensation has the meaning of reducing certain limits (age limits) in the bond between a man and a woman as husband and wife with the aim of forming a harmonious and happy (family) based on God. Marriage age dispensation is an exception or waiver granted by the court to prospective brides who have not reached the age limit for marriage (Munajjah, 2021).

In Indonesia itself, Law Number 23 of 2002 concerning Child Protection has regulated a child protection strategy that includes children's rights and obligations. Article 1 states that those included in the category of children are children who are not yet eighteen years old, including children who are still in the womb. Article 2 states that the purpose of this protection is that child protection is all forms of activity aimed at providing guarantees and protection for children and their rights so that they can live, grow, develop, and participate optimally in accordance with their rights. as human beings and citizens as well as protection from violence and discrimination (Al-jauhari et al., 2018).

The provisions of the marriage law and its implementing regulations do not provide specific reasons for refusing or issuing a marriage. In the sense that the reasons for applying for a marriage dispensation for married couples are only based on the judge's assessment (Ardila, 2014). The consideration of the Panel of Judges will determine whether the application will be granted, rejected, or rejected. Therefore, the marriage dispensation application submitted to the court is basically always granted by the Panel of Judges. Religious courts are often unable to refuse applications in accordance with the provisions of the Marriage Law and the Petitioners can prove the arguments submitted (Agustian & Salim, 2020).

In Sintang Regency itself there are still many underage marriages, promiscuity, and lack of supervision from parents to children, this has resulted in rampant cases of marriage dispensation in terms of the age factor that does not meet the requirements for marriage and is registered with the Office. Religious Affairs (KUA). Furthermore, to be able to register his marriage, he must obtain permission from the Religious Court in the form of a determination so that his marriage can be legally registered and recognized according to law (Hakim & Mutmainah, 2021).

The application for dispensation at the Religious Court has several stages, namely the first stage the prospective bride and groom make a letter of application with the aim of facing the Head of the local Religious Court. Next, make an application letter consisting of three parts, namely the identity of the applicant by mentioning the two prospective couples to be married, then the reason (Posita) for the application for marriage dispensation and mentioning the essence of the application (Setiawan, 2020). The applicant when asking questions to present the prospective bride, documents, and evidence of the trial, then by the panel of judges if a marriage permit will be issued (Hosen & Faizi, 2021).

In the jurisdiction of the Sintang Class II Religious Court itself, which consists of 14 kelurahan, 16 kelurahan, and 390 villages, during 2015 there was only 1 case of a marriage dispensation invitation. The case for dispensation for underage marriage has been determined at the Sintang Class II Religious Court and has received a decision from the local judge. The consideration of the Panel of Judges will determine whether the application will be granted,

rejected, or disqualified. In general, the application for a marriage dispensation submitted to the Court is always granted by the Panel of Judges. The Religious Courts are often unable to reject the submitted application because all the requirements have been determined by the applicable laws and regulations and the applicants can prove the arguments submitted.

However, in contrast to the one in the Sintang Class II Religious Court, it was found that of all the cases submitted, there was one case involving the Marriage Dispensation. The case for dispensation for underage marriage has been determined at the Sintang Class II Religious Court and has received a local judge's decision. The case of rejected marriage dispensation is Case Number 014/Pdt.P/2015/PA.Stg. The Panel of Judges in deciding the application for a marriage dispensation must have considerations, both juridical and non-juridical considerations.

This study uses previous research as the initial determination in the study. The first previous research entitled Juridical Analysis of Case Number 0280/Pdt.P/2017/PA.Po Regarding the Rejection of Marriage Dispensation at the Ponorogo Religious Court (Rohmah, 2018), the second previous study entitled Juridical Analysis of Judge's Decision Against the Case of Application for Marriage Dispensation in Court Palopo Religion (Khumaeni, 2020), The three previous studies entitled Analysis of Juridical Benefits in Legal Considerations for Determining Marriage Dispensation (Mahardika, 2018), Further previous research entitled Juridical Analysis of Case Number 0280/Pdt.P/2017/PA.Po Regarding Rejection Marriage Dispensation in the Religious Courts (Mahmud, 2019), then the previous research entitled Juridical Analysis of Case Number 0280/Pdt.P/2017/PA. Po Regarding the Rejection of Marriage Dispensation at the Ponorogo Religious Court (Rohmah, 2018), and the fourth previous study entitled Juridical Analysis of Marriage Dispensation by the Religious Court in Reviewing Decision No. 18/Pdt.P/2017/PA.Mrs (Najwan, 2020). The similarities between the previous research and the research to be carried out are that they both discuss the issue of Marriage Dispensation from the juridical aspect, while the differences in the research to be carried out focus on one case of Refusal of Marriage Dispensation. what happened at the Sintang Religious Court?

Based on the description of the phenomenon of the problem, the purpose of this study is to describe and analyze the basis of judge's considerations, juridical factors and legal consequences of refusing marriage dispensation based on case decision Number 014/Pdt.P/2015/PA.Stg. The interest of this research is based on a case that is rarely raised, namely the rejection of the case of the Marriage Dispensation in the Religious Courts.

RESEARCH METHODS

This study used a qualitative descriptive method with a case study approach. As Maman (Zulvayana, 2018) did that descriptive research is research that aims to describe social, political, economic, and cultural phenomena. Data collection techniques commonly used in this type of quantitative research, according to Creswell (Supratiknya, 2015) in general and survey research designs are various types of questionnaires and structured interviews. The type of data collection used is through observation and interviews.

Furthermore, data analysis is the process of systematically searching and compiling any data obtained from the field, observations, and other materials, so that it can be understood,

and the findings can be informed to others. Data analysis is done by organizing data, breaking it down into analytical units, synthesizing, compiling into patterns, selecting, and sorting between things that are important to learn and making conclusions (Abubakar, 2021). Qualitative data analysis describes the data obtained. In drawing conclusions, the method of inductive thinking is used, namely drawing conclusions from a statement or proposition that is specific to something general (Azani, 2021).

RESULTS AND DISCUSSION

Basis for Consideration of the Judges of the Sintang Religious Court in Resolving the Case of Refusal of Marriage Dispensation Number 014/Pdt.P/2015/PA.Stg

Judges are officials who exercise judicial power as regulated by law. In the decision, legal considerations must be used, namely an assessment of the event, the evidence submitted, everything that exists, and the articles contained in the laws and regulations relating to the case. Judges in considering the legal basis that will be used to decide a case must not conflict with Islamic law or law. However, a judge can decide a case with his *ijtihad* if it does not contradict or is not clearly regulated in Islamic law or sharia. In deciding a case, the judge of the Sintang Religious Court must pay attention to the considerations that are used as the basis for deciding, so that later they can make a fair decision and do not harm the parties involved, such as marriage. case. dispensation.

As stated in Article 49 of Law Number 3 of 2006 concerning the Religious Courts, the marriage dispensation case is one of the absolute powers of the Religious Courts in the field of marriage, so the Sintang Religious Court resolves the marriage dispensation case. application submitted by the applicant as a question of the Religious Court. Sintang Number 014/Pdt.P/2015/PA.Stg.

From the observations made, it is known the legal facts submitted by the Petitioner, it is known that the marriage is very urgent to take place because the two have a close relationship as husband and wife and the prospective wife of the Petitioner's child. was seven months pregnant so it was very worrying if the child was born without the presence of the father. Whereas between the Petitioner's child and the prospective wife of the Petitioner's child, there is no obstacle to marrying, because they have no kinship/blood relationship and are not breast-fed. Therefore, they filed a will at the local Office of Religious Affairs. However, when they registered their will to marry at the local Religious Affairs Office, it was rejected on the grounds that the bride and groom had not yet reached the minimum age of marriage according to the marriage law, which is 19 years. In the case of this marriage application, the Sintang Religious Court gave a decision considering the existing legal facts.

Based on the facts above, the panel of judges gave a decision based on Article 6 of 1974, as well as the rules of *ushul fiqh*, namely:

أَرْضُ الْمُفْسَدَتَانِ أَوْ زَيْنَابِ

Meaning: do the lighter of the two."

The results show that based on the arguments of the Petitioners' petition, the statements of the Petitioners' children, the prospective wife of the Petitioner's child and witnesses, it is proven that the Petitioner's child and the Petitioner's prospective wife have a husband-and-

wife relationship. have had sexual relations more than three times and now the prospective wife of the applicant's child is seven months pregnant, and both are not prohibited either according to Islamic law or according to sharia. The statement states that not only the applicant's child has had sexual relations but also with a friend of the applicant's child. Although it is known that a man who has sexual intercourse is a minor, it is in the best interest to choose from the two men who are more mature. So, the panel of judges decided to reject the application for dispensation of marriage submitted by the applicant.

Juridical Analysis of Case Number 014/Pdt.P/2015/PA.Stg

To be able to marry, all couples must reach the minimum age limit, as stated in law number 16 of 2019 amendments to law number 16 of 2019 article 7 paragraph (1). Not only law number 16 of 2019, Article 15 of the Compilation of Islamic Law paragraph (1) also reaffirms the age limit requirements so that the marriage of each partner can be recorded, which reads: "For the sake of family and household, marriage can only be carried out by prospective the bride and groom who have reached the age stipulated in Article 7 of Law number 16 of 2016. Realizing this, the parents of the male party who are not yet old enough to marry then register their marriage application. For the author, the dispensation to the Sintang Religious Court has the right to examine this application because it is in accordance with law number 16 of 2019 Article 7 paragraph (3), and in its implementation system it applies to marriage dispensations in accordance with the provisions of the Supreme Court number 5 of 2019.

About case number: 014/Pdt.P/2015/PA.Stg., the basis of the problem is the prospective wife of the applicant's 16-year-old child. However, the applicant's child is still 14 years old, so the registration of the marriage between the applicant's child and his future wife must be postponed until a copy of the marriage dispensation is obtained at the Sintang Religious Court. Furthermore, to determine the case of this marriage dispensation. The judge then used Law Number 16 of 2016 concerning Marriage, article 7 paragraph (2) which reads: "In the event of a deviation from paragraph (1) of the article, they can request a dispensation from the Court or to another appointed official. by two people who are older than the man or woman. In addition to using Law Number 16 of 2016 Article 7 paragraph (2), the panel of judges used Article 15 of the Criminal Procedure Code paragraph (2) in deciding this case, which reads:) for the bride and groom who have not reached the age of 21 years, must obtain a permit as stipulated in Article 6 paragraph (2), (3), (4), and (5) of Law number 16 of 2019". The Sintang Religious Court rejected the marriage dispensation case number: 14/Pdt.P/2015/PA.Stg

Basically, there is no clear relationship between the refusal of the panel of judges and Law Number 1 of 1974 concerning Marriage, Article 7 paragraph (2) and Article 15 of the Compilation of Islamic Law which regulates marriage dispensation. The results of the analysis show that the deviation is in accordance with the mandate of the two regulations. So, it must be understood as a space to provide legal opportunities for every couple, both male and female, who have not met the age limit to get his right to marry and be registered with the local Office of Religious Affairs.

The results show that the judge's refusal on the one hand can be said to be true, but on the other hand it is not. The rejection of this case has protected the applicant's child who is under 19 (eighteen) years old. This is as expected by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which does not want underage marriages to occur. From a psychological point of view, this is good for the interests of the child conceived by the prospective wife of the applicant's child. Furthermore, the inaccuracy of refusing marriage dispensation can be seen from a psychological perspective, for example, a prospective wife will be humiliated as a woman who has children without a husband. On the other hand, in cases of out-of-wedlock pregnancy, the victims are children. Children should not be victims or insurers for the actions of their parents. In general, children who are born have the same rights to live a normal life, to be accepted in society, and to obtain legal certainty and protection, as Article 7 of the Universal Declaration of Human Rights states that "everyone is equal before the law and has the same legal status." without discrimination".

The panel of judges realized that the marriage dispensation was very important for the prospective wife of the applicant's child because of the condition that occurred (pregnant) due to the actions of the applicant's child. This aspect must be a sign for the panel of judges in deciding cases. To resolve this case, the panel of judges can use Article 53 of the Compilation of Islamic Law which regulates the permissibility of a man marrying a pregnant woman, which reads: "(1) women who are pregnant out of wedlock can be married. a man who impregnates her. (2) Marriage with a pregnant woman as referred to in paragraph (1) can be carried out without waiting for the birth of her child. there is no need to remarry after the child is conceived."

The results of the field analysis showed that the judge did not realize that he had rejected the application because the applicant's child objected to marrying the applicant's child's prospective wife, and because the two men were both pregnant, both of whom were underage, to make it better. interest, it's better. choose from two men. -More mature men, judges should be more considerate of decisions. However, it should be realized that the urgency of the marriage dispensation in this case is so that the applicant's child can marry his future wife who is pregnant out of wedlock. According to the author, it is necessary to reposition the case and legal considerations used by the panel of judges in the perspective of maqashid sharia. In general, in cases of early marriage, there is a clash between hifdz al-nafs, hifdz aql and hifdz al-nasl.

Where the age of the child is still very risky for marriage. In addition, the age of the child is more suitable for the development of intellectual function and education than for marrying and having children. So that prioritizing the safety of the child's soul from risks due to marriage and the development of the function of the mind takes precedence over Hifdzu al-Nasl. Early marriage is also considered not in line with one of the maqashid alnikah, namely building a sakinah, mawaddah and rahmah family from husband and wife, where the psychology of children does not understand all that except love. their parents.

Settled the case by the panel of judges of the Sintang Religious Court. The author regrets the decision that has been determined by the panel of judges, here the judge does not

apply justice evenly. We can see this injustice from the point of view of Hifdzu Nasl, the prospective wife of the applicant's child who has been confirmed to be 7 months pregnant, when not married. On the other hand, this will backfire for judges' *ijtihad*. In addition, according to the author, pregnant women can ask for protection and justice other than in court, as well as greater losses if the judge does not grant the request for discussion. Later, if there is a similar case, the man can use an alibi to be irresponsible to the woman he is carrying and object to marrying the woman on the grounds that he does not love her. According to the authors, the judge should not ignore the case but postpone the case until the child is born, so that the DNA test results can later determine the biological father of the baby.

Based on the description of the results, in general it can be said that the *fiqh* rules used by the judges are indeed appropriate, but the more severe cases are not because the applicant's child is not ready for marriage and the benefits cannot be expected. arise if he is at his age to become a husband in the future, but the judge must be psychologically burdensome for the wife of the applicant's child and the baby she is carrying.

Legal Consequences of Rejecting Marriage Dispensation Based on Case Decision Number 014/Pdt.P/2015/PA.Stg

Regarding the application for marriage dispensation submitted by the applicant to the Sintang Religious Court, not all applications will be granted, but there are also applications that will be rejected by the Religious Court Judge Sintang Religion. With the approval or rejection of the application for a marriage dispensation by the Panel of Judges, legal consequences will arise.

As for the legal consequences arising from the granting or refusal of a marriage dispensation application, among others:

1. The legal consequences of the granting of a marriage dispensation request
 - a. Obtaining a determination from the Sintang Religious Court in the form of granting a marriage dispensation request.
 - b. Can be legally married according to the law at the local KUA.
 - c. The applicant's child, the applicant's child as husband, is still given the opportunity to participate in caring for and raising the child conceived by his future wife. Can be an example to dare to take responsibility for the actions that have been done.
 - d. The prospective wife of the applicant's child, the wife will feel her psychological burden is reduced due to the actions she has done. The physical burden of carrying children will be reduced, this is due to the control of social sanctions from the community due to pregnancy out of wedlock.
 - e. Can protect the honor of the family for the actions that have been done by the family, the extended family of both parties can still protect themselves from social life.
 - f. The child who is conceived, the child who will be born by the prospective wife of the applicant's child, gets legal certainty and protection like children in general.

2. On the other hand, if the panel of judges rejects the marriage dispensation case number 014/Pdt.P/2015/Pa.Stg, the benefits that will arise from this case are:
 - a. Obtaining a determination in the form of rejection of the application for dispensation of marriage.
 - b. Cannot Hold a Marriage If the application for a marriage dispensation is rejected by the Sintang Religious Court, then there is no basis for the right to enter a marriage. The applicant's child must wait until the minimum age is met.
 - c. For the applicant's child, in his social life he will be considered an irresponsible man, until the emergence of this expression fails to become an example for his extended family.
 - d. The Petitioner's Prospective Child Wife will be burdened psychologically, because they must care for and raise the child they are carrying without the presence of a father. This will cause the condition of the fetus in the womb to be threatened, because it must bear a prolonged psychological burden.
 - e. Families, families will receive social sanctions from the community, who consider their parents unable to educate and instill religious values in their children from an early age.

Children out of wedlock know nothing, born in a pure state, innocent. When viewed from sin, it is both parents who must bear the sin, not children born due to promiscuity and various other examples. Legal protection for children has shifted from the beginning, namely legal protection is only given to children born from marriage or the result of marriage to legal protection given by law to children out of wedlock or children out of wedlock. The laws and regulations in Indonesia initially only protected the legal status of legitimate children, which were based on legal marriages with all the rights attached to legitimate children, while children out of wedlock or children out of wedlock were only entitled to civil law. protection from the mother or her mother's family.

CONCLUSIONS AND RECOMMENDATIONS

From the results and discussion, the following conclusions can be drawn as a whole:

1. The judge's legal basis in rejecting the application for marriage dispensation in case number: 14/Pdt.P/2015/PA.Stg is the provision of Law Number 16 of 2019 Article 7 paragraph (1) and Article 15 of Law No. Islamic law, both regulating the age limit and dispensation for marriage. In the trial, the panel of judges saw that the applicant's child was physically and mentally unfit for marriage, so that if the applicant's application was granted it would only result in greater mafsadah for the applicant's child and his future wife. In justifying his opinion, the Panel of Judges used the rules of fiqh in deciding the case, which reads: "If there are two opposing losses, then the heavier one must be defended by making the smaller loss".
2. In deciding this case, the panel of judges did not give a basic right to register a marriage for each couple. Supposedly Law no. 16 of 2019 Article 7 paragraph (1) and Article 15 of the Compilation of Islamic Law which regulates deviations for people who are not old enough to marry, the two laws and regulations must be

understood by the panel of judges as legitimacy for everyone who wishes. can register their marriage.

3. The legal consequence of refusing a marriage dispensation application in case number 014/Pdt.P/2015/PA.Stg is to get a determination in the form of rejection of a marriage dispensation application, unable to carry out a marriage. . The applicant's child will be considered an irresponsible man, psychologically burdened by the prospective wife. If she becomes pregnant and gives birth to her baby without a father, the family will receive social sanctions from the community and the child will not receive legal certainty and protection.

Based on the conclusions above, the recommendation points for this research are as follows:

1. The Panel of Judges must consider other aspects such as maqashid ash-syaria'h and the future of the child conceived by the prospective wife. The author hopes that all courts determine cases that have a basis for measurable and directed considerations and are more careful and thorough in examining cases so that the resulting decisions are of high quality and have clear and permanent legal force.
2. Every society, especially parents, should provide a better understanding of religion to children and maximum supervision for their children, so that children can fortify themselves from promiscuity, and in the future underage marriage can be avoided.
3. There needs to be an evaluation step carried out by the government with the aim of producing a comprehensive strategy to suppress the occurrence of early marriage, one of which is at the Sintang Religious Court.

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