

THE ROLES OF THE OFFICE OF RELIGIOUS AFFAIRS RELATING TO THE DISPENSATION FOR THE MARRIAGE OF UNDERAGE CHILDREN

(CASE STUDY AMPAR DISTRICT, BATAM CITY)

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Abstract

Marriage of children who are still underage is often a problem because there are many conflicting factors occurring, namely age and health in child protection. Therefore, a rule is formed that regulates the age limit in marriage, but in practice there are still children who marry underage because they have received permission from the Religious Courts, namely the provision of marriage dispensation. In order to analyze this problem, this research uses the Theory of Authority by Miriam Budiardjo and the theory of Development Law by Mochtar Kusumaatmadja to analyze the obstacles faced by the Batam City Government in preventing the underage marriages in Batam City, especially in Batu Ampar District and to analyze solutions that can be taken to overcome the underage marriage in Batam City, especially in Batu Ampar District. The research uses a socio-legal research method. The data collection techniques for the primary data were obtained directly from the first source through interviews and analyzed by using a qualitative approach. The research found that the implementation of underage marriages in Batam City, especially in Batu Ampar District is carried out based on the limits of the authority of the Head of Religious Affairs Office and the existence of permission from the Religious Courts, namely the granting of marriage dispensation.

Keywords: *Underage Marriage, Marriage Dispensation, Batu Ampar District, Batam City*

A. Introduction

Marriage is a contract between a man and a woman on the basis of the willingness and preference of both parties, which is carried out by the other party (Custodian) according to the nature and conditions set by Syara' (Islamic Law) to justify the mixing of the two parties as partners in the household.¹ In order to complete human perfection as a noble creature, the Almighty God (ALLAH SWT) has guided humans towards their nature, namely the tendency to live in pairs. In other words, "humans have a feeling

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¹ Slamet Abidin and Aminuddin, *Fiqih Munakahat* (Bandung: Pustaka Setia, 1999).

of attraction to the opposite sex which in the language of the Qur'an is called Azwaj (pairs).²

Based on the provisions of Islamic rules, basically there is no age standard for marriage. The benchmark only refers to reaching the age of puberty.³ The age limit for marriage raises a lot of debate and its own problems in its application, ranging from mental readiness to material ability which is considered a separate problem why someone who marries underage tends to fail in building a household.⁴ On this basis, the state needs to establish a rule that regulates the age limit for marriage, so that these problems can be resolved. One of these regulatory instruments is Law Number 1 of 1974 concerning Marriage which determines the minimum age limit for carrying out marriages. The provisions regarding the minimum age limit are contained in Article 7 paragraph (1) of Law Number 1 of 1974 which states that: "Marriage only permitted if the man has reached the age of 19 years and the woman has reached the age of 16 years."⁵ The regulation is considered capable of solving the problem of the age limit for marriage. However, in reality the regulations have changed due to changes in social and economic behavior of the community as well as conflicts with human rights. As the results, the provision was changed by the Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, the provisions of Article 7 were amended. The new provision stipulates that "Marriage is only permitted if a man and a woman have reached the age of 19 (nineteen) years".

One of the principles of marriage specified in the Marriage Law is that the prospective husband and wife must have matured physically and mentally to be able to carry out a marriage, in order to realize the purpose of marriage properly without ending in divorce and obtaining good and healthy offspring. For this reason, it is necessary to prevent underage marriages.⁶

In addition, marriage has a relationship with population problems. It turns out that a lower age limit for a woman to marry results in a higher birth rate when compared to a higher age limit. In the context of children's rights, it is very clear as stated in the Child Protection Law (Law No. 35 of 2014 as the Amendment of Law Number 23 of 2002 concerning Child Protection) that parents are obliged and responsible to prevent marriage at the age of children. From the perspective of children's rights, the inclusion of this sentence is that children who are forced to marry at an age that is still classified as a child, is deprived of their rights, such as the right to play, the right to education, the right to grow and develop according to their age.

² Muhammad Quraish Shihab, *Tafsir Al-Misbah: Pesan, Kesan, Dan Keserasian Al-Quran* (Jakarta: Lentera Hati, 2002).

³ Siskawati Thaib, "Perkawinan Dibawah Umur (Ditinjau Dari Hukum Islam Dan Undang-Undang Nomor 1 Tahun 1974)," *Lex Privatum* 5, no. 9 (2017): 48–56.

⁴ Andika Prawira Buana, "Konsistensi Dan Pengaruh Implementasi Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Terhadap Praktek Perkawinan Beda Agama Di Makassar," *Jurnal HAM* 8, no. 2 (2017): 117–29, <https://doi.org/http://dx.doi.org/10.30641/ham.2017.8.117-129>.

⁵ Pasal 7 Ayat (1) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

⁶ Sudarsono, *Hukum Perkawinan Nasional* (Jakarta: Rineka Cipta, 2005).

Many parents from poor families think that by marrying off their children, even though they are minors, it will reduce the family's economic burden and it is possible to help the family's economic burden without thinking about the positive or negative impacts of the marriage of their underage children. This condition ultimately raises the aspect of abuse of power over the economy by viewing that children are a family property/asset and not a mandate from God who has the rights over himself and the most heinous is to use religious terminology.

One thing that must also be a common concern is to prioritize the best interests of children in providing the right to education, the right to grow and develop, the right to play, the right to get protection from violence, all forms of exploitation, and discrimination. And the most important thing is to place the child's position in the child's own world to develop according to the child's developmental age. Therefore, the age limit for carrying out marriage is determined, namely 19 years for men and 16 years for women. It is even recommended that marriage be carried out at the age of about 25 years for men and 20 years for women. However, in very compelling circumstances, marriage under the minimum age limit as stipulated in the Marriage Law is possible after obtaining dispensation from the Court at the request of the parents.

Marriage has the intention that husband and wife can form an eternal family, so an action that results in the dissolution of a marriage must really be considered carefully. This provision is intended to prevent repeated marriages and divorces, so that husbands or wives truly respect each other. In line with the development of human life, a problem arises in society, namely pregnancy before marriage. Children commit adultery because of the internal factors in the family, namely the lack of parental supervision or parental attention and affection for children. In addition, external factors, namely from environmental factors or sociological factors may cause children to fall into "free and uncontrolled relationships". After the child is pregnant before marriage, the parents are embarrassed and consequently they hastily marry off their child even though she/he is still under the legal age limit.

When a girl is pregnant because of the free and uncontrolled relationship, it is a form of responsibility that must be borne by the boy. The girl and her family have the right to demand the boy to married her because she is already pregnant. In relation to the fetus conceived by girls who were pregnant before marriage causes gossip in society and it will disgrace the girl's family. Hence, the judge based on a sense of justice and propriety for each party and as well as for the social values of the community issue a dispensation for the marriage of underage children.⁷

⁷ Hilman Hadikusuma, *Hukum Perkawinan Indonesia Menurut: Perundangan, Hukum Adat, Hukum Agama* (Bandung: Mandar Maju, 2003).

B. Identified Problems

The circumstance above raises some questions in relation to the research location, namely:

1. What are the roles of the Office of Religious Affairs in Batu Ampar Sub-District, Batam City in assisting the marriage of minors based on the dispensation?
2. What are the obstacles faced by the Office of Religious Affairs, Batu Ampar Sub-district, Batam City in assisting the marriage of minors based on the dispensation?
3. What are the solutions to overcome the underage marriages in Batu Ampar District of Batam City?

C. Research Methods

The research uses a socio-legal research method. The object of this research is the Office of Religious Affairs in Batu Ampar District, Batam City. The data collection techniques for the primary data were obtained directly from the first source through interviews. The interviews as the primary data were conducted to the Batam City Ministry of Religion, namely Ms. Magdalena Silfia as Head of the Administration Sub-Division, and Community Leaders in Batu Ampar District and teenagers who had early marriages in Batu Ampar District. The secondary data was from legislation, books, journals and other sources related to the research issues. They were obtained through Internet and library. The analysis data adopted the qualitative approach.

D. Research Findings and Discussions

1. The roles of the Office of Religious Affairs in Batu Ampar Sub-District, Batam City in assisting the marriage of minors based on the dispensation

In the Regulation of the Minister of Religion of the Republic of Indonesia No. 34 of 2016 concerning the Organization and Work Procedures of the Sub-District Religious Affairs Office, it is stated that to improve the performance, services and guidance of the Islamic community, it is necessary to arrange the Organization and Work Procedure of the Sub-District Religious Affairs Office and the organization and work procedures of the Sub-District Office of Religious Affairs. District Religious Affairs has received approval from the Minister for Administrative Reform and Bureaucratic Reform Number: B/1304/M/PAN-RB/03/2016 concerning the Organization and Work Procedures of the District Office of Religious Affairs (hereinafter refer to as *Kantor Urusan Agama/KUA*).

In Article 1 number (1) of the Regulation of the Minister of Religion of the Republic of Indonesia No. 34 of 2016 concerning the Organization and Work Procedures of the Sub-District Religious Affairs Office, it is stated that the Subdistrict Office of Religious Affairs is a technical implementing unit at the Ministry of Religion. It

is under and responsible to the Director General of Islamic Community Guidance and is operationally fostered by the Head of the Regency/City Ministry of Religion Office.

The growing number of sub-districts in Batam City based on Law No. 53 of 1999 concerning the Establishment of Pelalawan Regency, Rokan Hulu Regency, Rokan Hilir Regency, Siak Regency, Karimun Regency, Natuna Regency, Kuantan Singingi Regency, and Batam City and for its effectiveness in improving services to the community, both in the field of marriage, fostering tranquil families and other religions, it was established the Batu Ampar District Religious Affairs Office based on the Decree of the Minister of Religion of the Republic of Indonesia No. 19 of 2007 concerning the Establishment of 362 (three hundred and sixty-two) District Religious Affairs Offices including the Batu Ampar District Religious Affairs Office which is located on Jl. Kuda Laut No. 3 Batu Ampar, Batam City.

The KUA of Batu Ampar District has the task of carrying out services and guidance for Islamic community in its working area. In carrying out the tasks as intended, the KUA of Batu Ampar District carries out one of its functions, namely the implementation of services, supervision, recording, and reporting of marriage and reconciliation. In carrying out its duties and functions to lead the District KUA, the Head of the Batu Ampar District KUA is also responsible as the Headman for Marriage Rituals (*Penghulu*) with additional duties. The additional task is not a structural position provided by Article 6 of the Regulation of the Minister of Religion of the Republic of Indonesia No. 34 of 2016 concerning the Organization and Work Procedures of the Sub-District Religious Affairs Office. It states that

- (1) "In carrying out his duties and functions to lead the District KUA, the Head of the District KUA as referred to in Article 5 letter a, is held by a penghulu with additional duties.
- (2) The additional task of leading the District KUA as referred to in paragraph (1) is not a structural position."

This research adopts the Authority Theory by Miriam Budiardjo in which the concept of authority begins with the characteristics of a country, namely the existence of power that has authority. Miriam Budiardjo argues that power usually takes the form of a relationship in the sense that there is one party who rules and the other party is ruled (the ruler and being ruled). In addition, Miriam Budiardjo argues that power is the core of the administration of the state so that it is in a state of motion. The state can take part, work, have capacity, achieve, and perform in serving its citizens. Therefore, it must be given power. Power is the ability of a person or group of human beings to influence the behavior of another person or group in such a way that the behavior is in accordance with the wishes and goals of the person or country.

The Batam Religious Court Decision Number 22/Pdt.P/2020/PA.Btm is one of the examples of the dispensation of

minor's marriage. Based on the Petitioner's statement which was corroborated by evidence P.1 (Identity Card), it is proven that the Petitioner resides in the jurisdiction of the Batam Religious Court, therefore in accordance with the provisions of Article 63 paragraph (1) letter a of Law Number 1 of 1974 jo. Article 49 paragraph (1) of Law Number 7 of 1989, which has been amended by Law Number 3 of 2006, and the second amendment by Law Number 50 of 2009, this case becomes the competence of the Batam Religious Court.

The Petitioner intends to immediately marry his son, aged 14 years and 10 months, to a man named Zulfikar bin Mattang, aged 22 years and 8 months, Muslim, on the grounds that the Petitioner's child and his future husband love each other and both have agreed to marry. The Petitioner has suggested that the Petitioner's child be patient and wait until she is 19 years old, but the Petitioner's child refuses and prefers to immediately marry his future husband because they love each other and the Petitioner is worried that the Petitioner's child and his future husband will do something forbidden by religion to happen again.

Meanwhile, the Office of Religious Affairs in Sekupang Sub-district, Batam City, stated that it refused to marry the Petitioner's child on the grounds that the Petitioner's child is not yet 19 years old, as stated in Exhibit P.9 (Marriage Certificate). Furthermore, between the Petitioner's child and her future husband, there is no obstacle to marriage, both according to the provisions. Islamic law as well as according to the provisions of Article 8 of Law No. 1 of 1974 which has been amended by Law No. 16 of 2019 and/or Article 39 and Article 40 of the Compilation of Islamic Law. The judge has advised the Petitioner's child and the Petitioner's child's prospective husband to postpone their marriage because the prospective wife is not old enough to marry, but both of them have stated that they still want it.

Based on the considerations above and because of the conditions of marriage as stipulated in Article 6 paragraphs (1) and (2) of Law No.1 of 1974 which has been amended by Law Number 16 of 2019 jo. Article 15 paragraph (2) and Article 16 (1) and (2) of the Compilation of Islamic Law have been fulfilled. The only obstacle is that the prospective wife is only 14 years and 10 months old. The Judge is of the opinion that in order to prevent the occurrence of continuous acts of sin and evil, it is necessary to grant a marriage dispensation to the child of the Petitioner to carry out the marriage with her future husband as stated above. In this regard, the judges presents the following arguments:

- a. The word of ALLAH SWT in Surah An-Nuur verse 32 states that "And marry those who are alone among you and those who are worthy (marriages) of your female slaves. If they are poor Allah will give them ability by His bounty. And Allah is Extensive of His gifts, All-Knowing";

- b. The Fiqhiyyah rules which states that “rejecting harm must take precedence over attracting benefit.” “The policy of the *Imam*/Government towards people must be balanced with the benefit.”

The basis for the judge's consideration in granting a marriage dispensation in the decisions of the Batam Religious Court Decision Number Case 22/Pdt.P/2020/PA.Btm, stating that the Judge has given advice to the Petitioner, to the Petitioner's children, the prospective husband of the Petitioner's child and also the biological brother of the Petitioner's child's prospective husband regarding the intent and purpose of the Petitioner's petition. The Judge has also provided a view of the legal consequences, the risks of underage marriage, the possibility of cessation of education for children during the 12 (twelve) year compulsory education, as well as the economic impact, the potential for disputes and domestic violence, reminding the age difference between the Petitioner's child and his future husband as well as the rights and obligations arising from the marriage of the Petitioner's child, but the Petitioner remains with his petition.

From the advice that has been conveyed by the Judge, it is certain that the child, prospective husband, and parents have understood the risks of marriage related to the possibility of cessation of education for children during the 12 (twelve) years of compulsory education, as well as the economic impact, the potential for disputes and quarrels and domestic violence as well as rights and obligations arising from the marriage of the Petitioner's child and which is the subject of the Petitioner's petition. The main problem is that the Petitioner's child has been pregnant for more than 2 (two) months, to strengthen the arguments for his petition the Petitioner has submitted written evidence and two witnesses who each have given their statements under oath.

Based on the considerations above, the Petitioner's application can be granted based on Article 89 paragraph (1) of Law No. 7 of 1989 which has been amended for the second time by Law No. 50 of 2009, and the second amendment by Law No. 50 of 1989. 2009. After reviewing all the prevailing laws and regulations as well as the provisions of Islamic Law relating to this case, the Judge determined that it was to grant the Petitioner's request and to grant dispensation to the Petitioner's child to marry.

It can be deduced here that in principle Article 2 of Law No. 16 of 2019 concerning Amendments to Law No.1 of 1974 concerning Marriage stipulates that marriage is legal, if it is carried out according to the laws of each religion and belief. It should be noted, regarding the minimum age limit for a person to marry, Article 7 paragraph (1) of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage stipulates that marriage is only permitted if a woman has reached the age of 19 years old. Based on these provisions, early marriage or underage marriage is not allowed by law. However, Article 7 paragraph of Law No.16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage opens a possibility to have deviations from the 19 years age condition of getting married for a woman. This also applies to a man who has not reach the age of 19 years old

(marriage age for a man). In this regard, the parents of a boy or a girl can request a dispensation to the court on the grounds that it is very urgent and accompanied by sufficient supporting evidence. The very urgent reason means a situation where there is no other choice and it is necessary to have a marriage take place, for example a girl is already pregnant.

The dispensation application is submitted to the Batam City Religious Court for Muslims and the District Court for non-Muslims. The provision of dispensation by the court is obliged to listen to the opinions of the two prospective brides who will carry out the marriage. Thus, based on the above provisions, early marriage is still possible. However, the marriage cannot be done haphazardly and must meet certain conditions.

In the implementation of underage marriages in Batam City, especially in Batu Ampar sub-district, the Head of KUA Batu Ampar District as a Penghulu has the authority to carry out underage marriages in Batam City, especially in Batu Ampar sub-district if the prospective underage bride or groom has received a religious court ruling on the application of marriage dispensation. Nevertheless, some processes and procedures must be met to conduct this minor marriage with a dispensation. The prospective husband and wife must fill out an application form for marriage. This marriage request form is marked with the code N2 where on this form there is the name of the prospective husband and wife, then the date and time of the wedding plan. At the bottom it is written where the marriage contract will be held at the Office of Religious Affairs at the Marriage Hall or according to a request from the guardian of the bride and groom. This form is submitted by the prospective bride and groom or their representative and they must give their signatures in the application column located on the right. The attachments of the form are marriage cover letters, approval of the prospective bride and groom, photocopies of ID cards, birth certificates, family cards, 2 × 3 = 3 photographs with a blue background. The prospective bride and groom sign the Approval Letter which contains a solemn statement about the willingness of the prospective bride and groom to marry voluntarily and self-consciously, without coercion from others and consent to marry. This is a form signed by both parties of the prospective bride and groom but there is no signature from the village official or KUA. The parents of prospective bride and groom must sign a parental consent letter if the prospective bride and groom who have not reached the marriage age. This letter includes the biodata of the father and mother of the prospective bride and groom (or those who replace them as guardians, such as grandfather, uncle, sibling, etc.).

2. The obstacles faced by the Office of Religious Affairs, Batu Ampar Sub-district, Batam City in assisting the marriage of minors based on the dispensation

Based on the interviews, one of the factors that causes an early marriage is the cultural factor of people in the Batu Ampar Sub-District. There are still many people who perform a matchmaking and uphold their cultural values. As the results, many brides and grooms marry at a young age because of cultural factors that are passed on by their parents.

Parents match their children because they want to avoid undesirable conditions, more precisely to avoid promiscuity which is increasingly happening at a young age.

The other factor that causes early marriage is education. In this regard, the those who perform an early marriage because they have dropped out of school. Consequently, there are no work and businesses for them. In addition, several informants also said that parents did not explains the importance of school to their children. This happens a lot, especially if the parents have also low education and with less economical capabilities. The alternative of getting married is an option for unemployed children if they do not work and go to school. The low level of education or knowledge of parents, children and the community affect the children's mindset in understanding the meaning and the purpose of a marriage. This condition apprently causes a tendency to marry off their underage children.

Based on the results of research in Batu Ampar District, it was found that low economic conditions cause an early marriage. In order to ease the burden on their parents, their daughters are married off to men who are considered capable. Parents assume that if their daughter are proposed and asked for a marriage, at least they will be independent and no longer depend on their parents. The husband is the one to provide for them. Unfortunately, they mostly marry those with the same low economic level, thus this creates new poverty and problems.

Based on the empirical research, it was also found that the low thinking level of parents is also the factor contributing to a marriage at young age. It was found that there is also a lack of role from the government in controlling early marriage in Batu Ampar District contributing to this underage marriage. The other factors that influence the occurrence of early marriage in Batu Ampar District obtained from the results of field research is the existence of promiscuity in Batu Ampar District. The overall early marriage in this district is caused by promiscuity due to pregnancy of young children.

3. The solutions to overcome the underage marriages in Batu Ampar District of Batam City

Theory of Development Law by Mochtar Kusumaatmadja is a legal theory that is in line with the basis of the Indonesian state. This theory asserts that one of the goals of law itself is order. The urgency here is not only for the orderly life of society, but it is an absolute requirement for a living organization that transcends the boundaries of the present moment. In the development of Indonesian law in the context of Development Law Theory is based on the principles under Pancasila. According to Mochtar Kusumaatmadja, law is the whole of the principles and rules that govern human life in society, it also includes institutions and processes that embody these rules. Mochtar Kusumaatmadja opines that the function of law as a means of

development aims at increasing welfare and prosperity of the whole community.

In implementing the application of the Development Law theory of Mochtar Kusumaatmadja, it is submitted that the role of the Batu Ampar District KUA as the executor of controlling early marriage, especially regarding the permissible age of a person to get married is very important. However, it was found that there is a gap between the government's and community's responses to early marriage. The government reveals that it has provided information about the legal age for marriage. Yet only some people obey the government regulations. Nevertheless, the Government efforts in this regard must be increased so that people are willing to obey the age limit for marriage under the law. According to information obtained by researchers from interviews with teenagers who had early marriages in Batu Ampar District. Only few have known about the regulation, and most of them are not aware at all regarding the age limit that is allowed by law for someone to get married. Accordingly, the government's efforts are needed to engage the community in educating them about the age limit for marriage permitted by the law.

The solution that can be adopted to prevent an underage marriage in Batam City, especially in Batu Ampar District is by implementing a family planning program which is carried out in the form of controlling joint socialization. The community is invited to come to the family planning program whose place has been provided by the KUA in Batu Ampar District. The KUA of Batu Ampar Sub-District urges the community to join the family planning program and follow government regulations regarding the age limit for marriage. The government also directs them not to be too hasty in marrying their children who are underage or young because it is dangerous for the children. It is necessary for the KUA of Batu Ampar District to hold a meeting with Community Leaders of Batu Ampar District, this coordination is carried out every week, so the programs discussed at the meeting can be implemented.

The purpose of KUA Batu Ampar District in socializing the reproductive health issues to the community is to educate public about the importance of maintaining reproductive health and the dangers of getting married at a young age. Getting married at a young age is very dangerous for reproduction because sexual relations carried out under the age of 20 years are at risk of cervical cancer and sexually transmitted diseases. It is unfortunate that many people do not participate in the socialization of reproductive health problems organized by the government because they never get information about this, even though the government has done its job well by providing information to the community.

E. Conclusions

1. The KUA of Batu Ampar District has the task of carrying out services and guidances for the Islamic community in its working area. In carrying out the tasks referred to by the KUA of Batu Ampar Sub-district as held by a *penghulu* with additional duties. He has the authority to carry out underage marriages in Batu Ampar Sub-District only if the Religious Court has issued a marriage dispensation.
2. The obstacles faced by the government in preventing underage marriages in Batu Ampar District are influenced by the community's customs or cultural the low level of educational and economic in this area. In addition, the promiscuity which results in early pregnancy is one of the prominent factors of the early marriage in Batu Ampar District.
3. To prevent an underage marriage in Batu Ampar District requires the significant role of the KUA of Batu Ampar Sub-District. It needs to strictly supervise and urge the community to be aware and understand about the reproductive health issues and the dangers of getting married at a young age.

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