



ANALYSIS OF COMPLETION OF CONSULTATION AND LEGAL AID INSTITUTIONS IN HANDLING APPLICATIONS FOR MARRIAGE DISPENSATION DUE TO PREGNANCY (Case Study of LKBH Justisia Kudus)

Qotru Nada Nafisah , Taufiqurrahman

Institut Agama Islam Negeri Kudus

Email: qotrunadanafisah@gmail.com

Abstract

Marriage is being able to get a balance in life both psychologically and biologically. However, there is a minimum age requirement that must be carried out, especially with the reason of being pregnant, this of course involves LKBH in the handling process. The purpose of this study was to analyze the ongoing process of handling the dispensation of marriage due to pregnancy at LKBH Justisia Kudus. This research method uses research methods used by field research, namely data search and data collection carried out at the place where the case occurred. The results of this study are that a person submitting a marriage dispensation with the reason of being pregnant against LKBH Kudus. , identity card of the prospective bride and groom, marriage refusal letter with the excuse that they are not old enough from the KUA, marriage dispensation letter and doctor's psychology recommendation letter, recommendation for children ready for marriage and pregnancy certificate. All of these conditions are given the power of attorney to make a marriage application letter which will be registered with the Religious Courts. .

Keywords: Marriage Dispensation, Legal Aid Institutions, Pregnancy

INTRODUCTION

Along with the development of human civilization which is currently increasingly advanced, of course there is a development in the field of family law, namely the issue of marriage or matrimony, a person who enters into a marriage will of course carry out life in society which is determined by the emotional maturity of both husband and wife.

What is meant by family law is that it comes from the translation *Familierech* (Dutch) or *law of familie* (English). According to Thahir Mahmoed, family law is a legal principle that is applied in relation to family rules, marriage, divorce and relationships within the family, giving dowries or dowries, guardianship and others. The definition of family law is the law that regulates blood kinship and is related to marriage.¹

Marriage is a necessity for humans, as it helps them achieve psychological, social, and biological balance in their lives. Marriage is a ceremonial act of union between a man and a woman governed by moral

¹ Supriyadi, *Basics of Civil Law in Indonesia* (Holy: CV. Kiara Science, 2015), 37.



law and religious principles. ²According to Law No. 16 of 2019, "Marriage is a physical and spiritual bond between a man and a woman as a husband and wife whose aim is to form a happy and eternal family based on the belief in the Almighty God."

According to Hilman Hadikusuma, the meaning of marriage is a sacred matter, which means that because of the bond between the groom and the woman, the bride and groom have carried out this matter (marriage) on the basis of His command. So that humans can build a family life and be able to avoid actions that Allah does not like, namely immorality.³ In Islam there is a legal aspect to regulate the course of human life, through marriage it is the goal to create a harmonious and peaceful life, as well as being a way to protect and care for offspring well. It is also hoped that marriage can build a family that is blessed by Allah SWT.⁴

By getting married, you can build a good bond with both partners, the purpose of marriage is to preserve human life and preserve blood ties for the next generation. Marriage can also be a way to get closer to God.⁵ *Hifzun Nasl* is a term for legal provisions or marriage regulations which aim to uphold the rules of Islamic law which apply in accordance with religion and which aim to safeguard and nurture offspring.⁶

Getting married, however, can be everyone's fantasy. Making this happen, however, is not an easy task, especially for young children, because several problems occur and cause disruption, especially taking shortcuts by carrying out deviant social behavior and low morality, this can lead to many children applying for special marriage dispensations. because of being pregnant out of wedlock and being underage, and being forced to immediately get married at an age where they may not be ready to move on to a more serious life.

In Law no. 16 of 2019 concerning Marriage "that marriage is only permitted if the man and woman have each reached the age of 19 (nineteen) years". ⁷If you want to get married under the age of 19, you are not legally competent to get married, previously the age limit for marriage was regulated in Article 7 paragraph (1) of Law Number 1 of 1974 which states "Marriage is only permitted if the man has reached 19 years old and the

² Shofiyun Nahidloh, *Underage Marriage Controversy: Compilation Study of Fiqh Science and Compilation of Islamic Law* (Surabaya: IAIN Sunan Ampel, 2009), 1.

³ Hilman Hadikusuma, *Indonesian Marriage Law According to: Legislation - Customary Law - Religious Law*, (Bandung: Mandar Maju, 1990), 1.

⁴ Abdul Manan, *Various Islamic Civil Law Problems in Indonesia* (Kencana, 2006), 1.

⁵ Aziz Nasaiy and Muksal Mina, "Fate of Children Born Out of Wedlock, Analysis of Aceh MPU Fatwa Number 18 of 2015 and Constitutional Court Decision Number 46/PUU/-VII2010," *Journal of Family Law and Islamic Law* 1, no. 1 (2017): 73.

⁶ Nasaiy and Muksal Mina, 61.

⁷ Effendy's excuse, *Law Number 16 of 2019 concerning Marriage, namely that prospective husband and wife must be at least 19 years old*. (Pontianak, 2011), 43.



woman has reached the age of 16 years. However, currently, the age limit for marriage that applies is Law No. 16 of 2019."

As is the case with many cases that require requests to be handled by the Legal Consultation and Assistance Institute (LKBH) before submitting them to the religious court regarding marriage dispensations, especially because they are pregnant and still underage.

As time goes by, marriage due to pregnancy is becoming more and more common, and is considered a normal thing. This is the problem with many cases of pregnant women due to adultery who are still underage, therefore the court judge requires consideration of requests for dispensation accompanied by power of attorney or strong proof of information, for this reason the efforts of advocates are very important in handling these cases, and strategies and processes are needed from the relevant institutions in handling marriage dispensations.⁸

A legal consultation and aid institution is an institution which is a form of advocacy or lawyer service to the community in an effort to help and contribute to achieving a fair legal process, in article 22 paragraph (1) of Law Number 18 of 2003 concerning advocates it is stated that "Advocate obliged to provide free legal assistance to citizens who cannot afford it. Consultation and legal aid institutions have a very important role in equalizing justice, so that everyone has the right to obtain justice and equal recognition, whether they are capable or not."

Based on the description presented by the author, the author is interested in knowing in more detail about the efforts and handling process, as well as what factors support and inhibit the process of handling applications for marriage dispensation due to pregnancy, therefore researchers are interested in conducting research entitled "**Analysis of the Completion of Legal Aid and Consultation Institutions in Handling Applications for Marriage Dispensation Due to Pregnancy (Case Study at the Justisia Kudus Legal Aid and Consultation Institute)**".

RESEARCH METHOD

field research, which means that the required data is obtained through field studies by observing, recording the results of observations, and conducting *interviews* directly with parties related to this research. The aim of this type of research is to find facts that are related to the completion of applications for marriage dispensation due to pregnancy. Furthermore, what is used in this approach is a descriptive qualitative approach, namely

⁸ Haris hidayatulloh, "Dispensation for Underage Marriage in Islamic Law," *Journal of Islamic Family Law* 5, no. 1 (2020): 32.



data collected in the form of words and images, not numbers.⁹ Qualitative research is research that examines a phenomenon in the field using a naturalistic approach, which is used to research natural objects, and the results of this qualitative research emphasize meaning rather than generalizations.¹⁰

This research method uses descriptive research, so this method is used to describe and illustrate phenomena that actually exist, whether human engineering or natural phenomena. A descriptive qualitative approach will be a research procedure that can produce descriptive data, in the form of written or spoken words from actors who have been directly observed.¹¹ From the explanation that has been described, the aim of the descriptive research method is to carry out research systematically, factually and accurately.¹² The aim of this research is to use this type of researcher because researchers conduct research directly in the field in order to obtain valid and reliable data results. In this research, researchers will make observations about the process of handling marriage dispensations due to pregnancy at the Justisia Kudus Legal Aid and Consultation Institute (LKBH).

RESEARCH RESULTS AND DISCUSSION

Profile of Legal Assistance and Consultation Institutions (LKBH) Holy Justisia

LKBH Justisia Kudus was founded in 2008 by Dr. Supriyadi SH, MH, the first office was at his residence at Wergu Wetan then moved and finally in 2013 until now the address is at Golan Tepus Rt.001 Rw. 003 Mejobo District, Kudus Regency. In 2014 it was submitted for approval from the Ministry of Law but was officially registered and accredited class C by the Ministry of Law and Human Rights (Ministry of Law and Human Rights) in 2016 as an accredited OBH so that it received an aid budget from the Ministry of Law for disadvantaged communities and a budget for non-litigation such as counseling and legal empowerment.

The foundation of LKBH JUSTISIA HOLY was motivated by the very low level of public awareness of the supremacy of law at that time. Therefore, Dr. Supriyadi SH, MH took the initiative to establish a legal institution that can help underprivileged people resolve legal cases, both litigation and non-litigation, for free.¹³

⁹ Sudarwan Danim, *Becoming a Qualitative Researcher Presentation Methodology Design, Publication of Research Results for Students and Research Beginners in Social Sciences, Education and Humanities* (Bandung: PT.Remaja Rosdakarya, 2022), 51.

¹⁰ Sugiyono, *Qualitative Research Methods* (Compare: Alfabeta, 2018), 15.

¹¹ Masrukin, *Qualitative Research Methodology* (Media Ilmu Press, 2017), 2.

¹² Lexy J. Lexy J. Moloeng, *Qualitative Research Methodology* (Bandung: PT. Teen Rosdakarya, 2003), 3.

¹³ Siti Suryati, Director of LKBH Justisia Kudus, February 16, 2023.



Brief History of the Golan Tepus

Initially, Golan Tepus Village came from two villages, namely Golan Village and Tepus Village, then the names of the two villages were combined to become Golantepus, because during the Dutch colonial period, if you sent letters addressed to Golan Village, they were often confused with a village called Gulang, therefore The Dutch government decided that the Golan and Tepus villages would be combined into one, namely Golantepus. At that time, the village head was first determined in 1921 AD, which was done by means of (pilkades), followed by the head of Golan Village named Abas and the head of Tepus named Musaleh. At that time the election results were won by Abas, therefore Abas was the first head of Golan Tepus Village.

According to the elders, "Golan" means superior neng dalan, meaning that every person who is in the Golan, if they leave the Golan, must have their own name or be considered high in rank and the 'Ulama' scholars who are outside the Golan when they are in the Golan are considered nothing. - anything or considered normal, whereas if it comes out it can have its own name.¹⁴ **Natural conditions;** The topography of Golan Tepus Village, Kudus Regency is flat, so it is relatively easy to develop. However, even though the land conditions in Kudus Regency are easy to develop, very serious treatment is needed in drainage planning. **Location of Golan Tepus Village;** The location of Golan Tepus Village is in Mejobo sub-district, Kudus, Central Java. Golan Tepus is located to the north of Tenggeles village, Mejobo District. South of Mejobo village, Mejobo District, East of Hadiwarno village, Mejobo District. West of Ngembal Kulon Village, Mejobo District. **Soil and Climate Conditions;** The rainfall in the Golan Tepus is 1,459 Mm, the number of rainy months is 6 months, the average daily temperature is 150-32 ° Celsius, the height above sea level is 14 meters above sea level. Some of the soil types in Golan Tepus Kudus Regency are soil with dark brown Mediterranean and reddish brown Mediterranean associations, amounting to 34.05% of the land area, where most of the land has a slope of 0-2 ° and an effective depth of >90 cm.¹⁵

Process for Handling Applications for Marriage Dispensation Due to Pregnancy by the Legal Assistance and Consultation Institute (LKBH) Justisia Kudus

Marriage is something that a person really desires, but quite a few teenagers get married at the appropriate age in Law No. 16 of 2019 concerning Marriage "that marriage is only permitted if the man and

¹⁴ Muhammad Taufiq, Golan Tepus Village Hall Administrator, February 16, 2023.

¹⁵ Taufiq.



woman have reached the age of 19 (nineteen) respectively.) year. ¹⁶Not a few people want to get married under age because they are pregnant. To apply for dispensation from the court, someone must consult the Legal Assistance and Consultation Institute (LKBH) to handle the case.

In this research, the author analyzes the process of handling requests for marriage dispensation due to pregnancy carried out by the Legal Assistance and Consultation Institute (LKBH Justisia Kudus). Based on the results of interviews and observations conducted by researchers with the director of LKBH Justisia Kudus regarding the process of handling applications for marriage dispensation due to pregnancy, there are conditions that must be fulfilled during consultations at the Justisia Kudus Legal Aid and Consultation Institute (LKBH), the parents submitted a request to LKBH for reasons The child is underage and pregnant and when problems arise due to pregnancy, before applying for a dispensation, a discussion is first held with the family or related parties to decide on an agreement, then it is submitted to the LKBH which will be submitted to the Religious Court. The conditions that must be fulfilled are: Identities of both parents, both male and female parents; Marriage book of both parents; Family card of the female candidate; The child's identity is known through a student card statement; The child's final school diploma; Identity of the prospective groom's KTP; Deed of male candidate.

Before being submitted to a religious court, it is necessary to register the marriage with the KUA as evidenced by a letter refusing the marriage on the grounds that it is not old enough. Then get a marriage dispensation letter and a psychology recommendation letter from a doctor and the National Children's Commission Obtain a letter of recommendation for the child to be ready for marriage, Pregnancy certificate. All the conditions above are then authorized by LKBH Justisia to be registered with the Religious Court along with a marriage application letter. Then legalized with a 10,000 stamp from the post office. LKBH assists male and female candidates by presenting two witnesses each who complete the requirements of the KUA.¹⁷

In Law No. 16 of 2019 concerning marriage, "marriage is only permitted if the man and woman have each reached the age of 19 (nineteen) years."¹⁸If you want to marry a minor with a predetermined age limit, before submitting it to court, you are expected to first consult with the LKBH, however, in carrying out the handling, certain conditions must be met, this

¹⁶ Effendy, *Law Number 16 of 2019 concerning Marriage, namely that prospective husband and wife must be at least 19 years old.* , 43.

¹⁷ Suryati, Director of LKBH Justisia Kudus.

¹⁸ Effendy, *Law Number 16 of 2019 concerning Marriage, namely that prospective husband and wife must be at least 19 years old.* , 45.



was conveyed by Siti Suryati SH as director of the Consultation Institute and Legal Aid (LKBH) Justisia Kudus.

In the handling process carried out by LKBH Justisia Kudus, LKBH provides guidance on the requirements that must be met by parties who apply for marriage dispensation due to pregnancy, these requirements are in the form of the identity of both parents, the marriage book of both parents, the family card of the prospective bride and groom, the identity of the children consisting of from student certificates, deeds, children's final school certificates, identity card of the prospective bride and groom, letters of rejection of marriage on the grounds that they are not old enough from the KUA, marriage dispensation letters as well as doctor's psychology recommendation letters, recommendations for children being ready for marriage and pregnancy certificates. All these conditions are given to Justisia to make a marriage application letter which will be registered with the Religious Court. LKBH accompanied the bride and groom and witnesses during the trial.¹⁹

Factors that Encourage and Inhibit the implementation of the process of handling marriage dispensation due to pregnancy by LKBH Justisia Kudus

a. Driving Factors

From the results of interviews conducted by researchers with the director of LKBH Justisia Kudus, there are several factors that encourage the process of handling marriage dispensations due to pregnancy, namely providing marriage education regarding prayer or worship as well as provision in running a household, completeness of files and completeness of witnesses are the driving factors.²⁰

Motivating factors are factors that influence someone to do something, there are several motivating factors, namely the requirements for someone who wants to apply for a marriage dispensation while pregnant are met and when making an application to the Religious Court if accompanied by the LKBH it is much easier. Another motivating factor is providing guidance to someone who applies for a marriage dispensation because they are pregnant in preparation for how to live their life after marriage.²¹

b. Obstacle factor

Apart from the driving factors, there are also several factors that hinder the implementation of the process of handling marriage dispensation due to pregnancy, namely the man does not want to come to the trial, which

¹⁹ Suryati, Director of LKBH Justisia Kudus.

²⁰ Bahagianti Hananing Putri, Public Relations for Non-Litigation, February 16, 2023.

²¹ Putri, Public Relations for Non-Litigation.



means the man does not want to take responsibility. This is supported by a statement from the director of LKBH Justisia Kudus.²² In carrying out the process of handling applications for marriage dispensation due to pregnancy, there are encouraging and inhibiting factors

Apart from the driving factors, there are also inhibiting factors in the process of handling applications for marriage dispensation due to pregnancy. These obstacles are in the form of requirements from the Religious Court which are handled by the LKBH for someone who applies for a marriage dispensation due to pregnancy which is not fulfilled, apart from that, other inhibiting factors when holding a trial are that the man is not present or does not want to take responsibility.²³

CONCLUSION

From the explanation that has been given in the previous discussion, the conclusions of this research are:

- a. Applying for a marriage dispensation by someone on the grounds of pregnancy to the Justisia Kudus Legal Assistance and Consultation Institute, the process in handling LKBH requires those who apply to fulfill the conditions that have been determined including the identity of both parents, marriage book of both parents, family card of the prospective bride and groom, the identity of the child which consists of a student certificate, a certificate, the child's last school diploma, the ID card of the prospective bride and groom, a letter of refusal to marry on the grounds that they are not old enough from the KUA, a marriage dispensation letter as well as a doctor's psychology recommendation letter, a recommendation that the child is ready for marriage and a certificate of pregnancy. All these conditions are given to Justisia to make a marriage application letter which will be registered with the Religious Court.
- b. A supporting factor in the process of handling applications for marriage dispensation due to pregnancy is that the predetermined requirements must be completed. Another supporting factor is providing education on how to be prepared after getting married to prospective brides who apply for marriage dispensation because they are pregnant. The inhibiting factor for LKBH Justisia in accompanying someone in a trial where the man is not present or does not want to take responsibility, resulting in difficulties.

²² Daughter.

²³ Daughter.



BIBLIOGRAPHY

- Ali, Zainuddin. *Islamic Civil Law in Indonesia* . Jakarta: Sinar Graphics, 2007.
- Aristoni, and Junaidi Abdillah. "Decade of Marriage Law in Indonesia: Examining Legal Problems in Marriage in the Era of Modernization." *Journal of Legal Thought and Islamic Law* 2, no. 1 (2016).
- Atabik, Ahmad, and khoridatul Mudhiiah. "Journal of Legal Thought and Islamic Law." *Judicial : Journal of Legal Thought and Islamic Law* 5, no. 2 (2014).
- Aulia. *Compilation of Islamic Law* . Bandung: Nuansa Aulia, 2011.
- Bahroni, Achmad. "THE CRIME OF HUMAN TRAFFICKING IS REVIEWED FROM NATIONAL LAW AND INTERNATIONAL LAW." *Journal of Legal Transparency* 4, no. 1 (2021).
- Basyir, Ahmad Azhar. *Islamic Marriage Law* . Yogyakarta: UII Press, 2010.
- Bugin, Burhan. *Qualitative Research Data Analysis* . Jakarta: PT Raja Grafindo Persada, 2005.
- danim, Sudarwan. *Becoming a Qualitative Researcher, Presentation Methodology Design, Publication of Research Results for Students and Research Beginners in Social Sciences, Education and Humanities* . Bandung: PT. Remaja Rosdakarya, 2022.
- Department of Religion. *The Koran and its Translation* . Jakarta: Ministry of Religion of the Republic of Indonesia, 2012.
- Effendy, Pretext. *Law Number 16 of 2019 concerning Marriage, namely that prospective husband and wife must be at least 19 years old*. Pontianak, 2011.
- Hadikusuma, Hilman. *Indonesian Marriage Law According to: Legislation – Customary Law – Religious Law*, . Bandung: Mandar Maju, 1990.
- Hasan, Sofyan. *Family Law in Islam* . Malang: Equivalent to Pres, 2018.
- Hidayatullah, Haris. "Dispensation for Underage Marriage in Islamic Law." *Islamic Family Law Journal* 5, no. 1 (2020).
- Iskandar. *Educational Psychology* . Ciputat: Gaung Press, 2009.
- Janur, Nur Akifah. "ANALYSIS OF ISLAMIC LAW IN GRANTING DISPENSATION FOR MARRIAGE FOR PREGNANCY REASONS." *Journal of Sharia and Law* 3, no. 2 (2022).
- Lexy J. Moloeng, Lexy J. *Qualitative Research Methodology* . Bandung: PT. Rosdakarya Youth, 2003.
- Manan, Abdul. *Various Islamic Civil Law Problems in Indonesia* . Kencana, 2006.
- Masrukin. *Qualitative Research Methodology* . Media Ilmu Press, 2017.



- Millah, Saiful. "Marriage of Pregnant Women Out of Wedlock and Its Legal Consequences: An Examination of the Dualism of Jurisprudence and the Compilation of Islamic Law." *MISYKAT Journal* 2, no. 2 (2017).
- Mubarok, Jaih. *Modernization of Marriage Law in Indonesia*. Bandung: Pustaka Bani Quraisy, 2005.
- Nahidloh, Shofiyun. *Underage Marriage Controversy: Compilation Study of Fiqh Science and Compilation of Islamic Law*. Surabaya: IAIN Sunan Ampel, 2009.
- Naim, Abdul Haris. *Munakahat Fiqh*. STAIN, 2008.
- Nasaiy, Aziz, and Muksal Mina. "The fate of children born out of wedlock, analysis of the Aceh MPU fatwa number 18 of 2015 and MK decision number 46/PUU/-VII2010." *Journal of Family Law and Islamic Law* 1, no. 1 (2017).
- Prastowo, Andi. *Research Methods in Research Planning Perspective*. Yogyakarta: Ar-Ruzz, 2011.
- Daughter, Bahagianti Hananing. Public Relations in the Non-Litigation Sector, February 16, 2023.
- Sofari, Sahrani. *Munakahat Fiqh*. Jakarta: Rajawali Press, 2013.
- Stevani, Nurulita Dwi. "Factors of Pregnant Teenagers Out of Wedlock in Mosque Village, Pesawahan Subdistrict, Teluk Betung Selatan District, Bandar Lampung (Case Study of 3 Teenagers)." Thesis, UIN Raden Intan Lampung, 2018.
- Sugiyono. *Qualitative Research Methods*. Bandung: Alfabeta, 2018.
- Supriyadi. *Basics of Civil Law in Indonesia*. Kudus: CV. Kiara Science, 2015.
- Suryati, Siti. Director of LKBH Justisia Kudus, February 16, 2023.
- Suwandi, Basrowi. *Understanding Qualitative Research*. Jakarta: Rineka Cipta, 2008.
- Taufiq, Muhammad. Golan Tepus Village Hall Management, February 16, 2023.
- Tihami. *Munakahat Fiqh : Complete Study of the Fiqh of Marriage*. Jakarta: PT Raja Grafindo Persada, 2014.
- Yusuf, A. Muri. *Quantitative, Qualitative, and Combined Research Methods*. Jakarta: Kencana, 2017.