

Disparity In Judges' Determinations Regarding The Confirmation Of Marriage For Underage Sirri Marriages From The Perspective Of Legal Certainty

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Abstract.

This study aims to understand and analyze disparities in judges' decisions on marriage validation for secret marriages conducted by underage couples and the legal implications (consequences) that arise. The type of method used in this study is a normative legal research method, using a statutory approach. The findings of this study indicate that the judge rejected the marriage validation case in Decision No. 951/Pdt.P/2023/PA.Krs and Decision No. 59/Pdt.P/2019/PA. Apn reviewed the legal certainty aspect in accordance with the applicable laws and referred to the fatwa of the Secretary of the Supreme Court of the Republic of Indonesia No. 231/PAN/HK. 05/01/2019, which states that marriages involving minors who do not meet the minimum age requirement for marriage must be renewed through tajdid nikah and registered. This relates to the judge's decision to grant the marriage validation case in Judgment No. 614/Pdt.P/2022/PA.Tg and No. 58/Pdt.P/2023/PA. Rtg reviews the aspect of masalah mursal (public interest) within the family. This study aims to provide recommendations to enhance consistency and fairness in the enforcement of laws related to underage secret marriages, particularly for unregistered marriages, and to promote public awareness of the importance of marriage registration to ensure their legal rights.

Keywords: Marriage Isbat; Secret Marriage and Legal Certainty.

I. INTRODUCTION

Marriage is a crucial aspect of human life. Through marriage, a household can be built in accordance with religious norms and social order. Article 3 of the Indonesian Compilation of Islamic Law (KHI) states that the purpose of marriage is to create a household life that is peaceful, loving, and compassionate. (KHI Indonesia, tt). Therefore, the role of husband and wife is needed to complement each other in order to achieve spiritual and material well-being. As formulated in Law Number 1 of 1974 which has been amended by Law Number 16 of 2019 Article (1) concerning Marriage in force in Indonesia: "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Almighty God". Furthermore, it is also emphasized in KHI Article 2 which defines the meaning of marriage according to Islamic Law as marriage, namely "a very strong contract or mitsaaqon gholiidzhan to obey Allah's commands and carrying it out is worship". Likewise, in accordance with the Word of Allah SWT. in the Qur'an Surah Ar-Rum verse 21: "And among His signs (of His greatness) is that He created partners for you from your own kind, so that you will be inclined and feel at ease with them, and He created among you a feeling of love and affection. Indeed, such feelings are truly signs (of the greatness of Allah) for a people who think." However, it cannot be denied that in practice there are still many problems that occur, such as underage unregistered marriages.

From a positive legal perspective, underage unregistered marriages are a violation of applicable law, even though in Islamic law the marriage is considered valid, as long as the conditions have been met and the pillars have been perfected. In fact, the minimum age limit for marriage that has been set in Indonesia is 19 years old for both men and women, as stated in Article 7 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage "marriage is only permitted if both parties have reached the age of 19 years". The assumption is that at that age a person is considered to be mentally and physically mature to enter into marriage in order to realize the marriage, have healthy and

quality offspring without ending in divorce, and aims to reduce the birth rate and the risk of maternal and child mortality, in addition parents can also fulfill the rights of children so that they can develop optimally including getting maximum access to education.(Nelli, 2022). Meanwhile, according to Islamic law, there is no evidence in the Qur'an or Hadith regarding a definite standard regarding the minimum age for marriage. This then causes scholars to provide different interpretations regarding the age limit for marriage. Therefore, Imam Shafi'i and Imam Hanbali define puberty at 15 years of age, for both boys and girls. It is agreed that puberty begins with the arrival of menstruation for girls and semen/wet dreams for boys. Imam Maliki sets the age of puberty for boys and girls at 17 years.

Meanwhile, Imam Hanafi sets the age of puberty for boys at 18 years and for girls at 17 years.(Fausi & Asmuni, 2024).Unregistered marriages often lead to various legal and social problems. These marriages are often conducted to improve socioeconomic status and the perception that registering the marriage will complicate matters. As we see, the prevailing culture in society generally emphasizes material success, leading to the marriage of minors through unregistered marriages. This shortcut is a deviation from the existing social system, adopting alternative, sometimes unacceptable, and illegal methods to achieve its goals. Therefore, to anticipate any potential problems, marriages need to be registered.(Bawono & Khairani, 2022).Has explained in Law Number 16 of 2019, an amendment to Law Number 1 of 1974 concerning Marriage, Article 2 paragraph (1) states that a marriage is valid if it is carried out according to Islamic law, and it is also explained in Law Number 1 of 1974, Article 2 paragraph (2) that every marriage is recorded according to the applicable laws and regulations.(Article 2 of Law of the Republic of Indonesia No. 16 of 2019, tt).This means that every marriage that is only carried out according to Islamic law without registration at the KUA which is carried out by the Marriage Registrar (PPN) is the same as an invalid marriage because it does not have a complete legal basis so that the following legal consequences will arise: 1) The marriage is considered invalid, 2) The child born only has a civil relationship with the mother and the mother's family. The provisions regarding marriage registration aim to protect the order of marriage for the community and serve as valid proof of the existence of a marriage.

In principle, applications for marriage confirmation can be submitted for the purpose of legalizing a marriage and other matters, as well as for marriage registration and birth registration. One function of a marriage confirmation application is to process birth certificates for unregistered marriages.Isbat Nikah is a process of registering a marriage for a sirri marriage that has been carried out, to obtain a Marriage Certificate as authentic proof that a marriage has been registered, for the Marriage Certificate to be used by the parties concerned to process a child's Birth Certificate at the Civil Registry Office accompanied by the isbat marriage determination by the Religious Court. Isbat in the popular scientific dictionary is defined as deciding or determining, while Nikah in the legal dictionary is defined as a contract that provides benefits for carrying out mut'ah intentionally, the permissibility of a man to have istimta' with a woman as long as there are no factors that prevent the validity of the marriage according to sharia.(Lubis et al., 2023)Article 5 paragraph (1) of Law Number 1 of 1974 concerning Marriage regulates the provisions for marriage registration, which aims to ensure orderly marriages for the Muslim community. Article 6 paragraphs (1 and 2) also state that every marriage must be conducted before a Marriage Registrar and if the marriage is conducted outside of supervision, the marriage does not have legal provisions. Research on isbat marriage cases involving underage sirri marriages has previously been carried out by several previous researchers, with discussions from the perspective of positive law, Islamic law, maslahah murlah, study of decisions and the views of judges in granting and rejecting isbat marriage cases for sirri marriages.(Laili & Santoso, 2021).

Stating that there are several causal factors that influence married couples to have secret and unregistered marriages, including: (1) low legal awareness; many people still do not know the importance of registering marriages, especially for rural communities; (2) customs, where it has been passed down from generation to generation that their parents' marriages were not registered; (3) a small number of economic factors (cannot afford/do not have the funds); (4) the desire to have polygamy but not getting permission from the first wife and (5) not wanting to bother with taking care of the marriage documents.It is also explained in the Regulation of the Minister of Religion (PERMENAG) Number 3 of 1975 in Article 39 paragraph (4) which states that if the KUA cannot prove a duplicate Marriage Certificate because the record

is damaged or lost, then to determine the existence of a marriage, divorce, reconciliation or divorce, it must be proven by a decision or ruling of the Religious Court.(Amin, 2021). By submitting a marriage confirmation application to the Religious Court.According to(Dewi et al., 2023).A couple who are still underage and have carried out a secret marriage have violated two provisions of Law Number 1 of 1974 at once. First, the provision contained in Article 2 paragraph (2) regarding the marriage must be registered by the authorized party. Second, the provision contained in Article 7 paragraph (1) regarding the minimum age limit for marriage, namely 19 years for men and women. Although the statutory provisions provide solutions for unregistered marriages with the existence of marriage confirmation and underage marriages with the existence of marriage dispensation, this has the potential for legal smuggling, because there are still legal loopholes that can still be exploited by naughty parents to carry out legal smuggling under the pretext of being forced or forcing themselves to carry out a marriage for their child while the age is still below the minimum limit determined by the law.

ased on the above description, the Tegal Religious Court, Ruteng Religious Court, Kraksaan Religious Court, and Ampa Religious Court have received marriage confirmation cases filed by applicants, where the marriage was conducted by a child under 19 years of age, which the researcher learned from the Supreme Court Decision Directory and several legal journals/books, and the researcher obtained it herself through the Kraksaan Religious Court. The following are some of the case registration numbers that the author managed to collect: (63/Pdt.P/2022/PA.Tg), (58/Pdt.P/2023/PA.Rtg), (951/Pdt.P/2023/PA.Krs), (59/Pdt.P/2019/PA.Apn). From the results of the researcher's investigation, not all applications for marriage confirmation of underage couples can be accepted, some are also rejected. Therefore, in this study the author intends to explore the disparity in the judge's determination of marriage confirmation for cases of underage unregistered marriages by the Religious Court, by reviewing the aspects of legal certainty and the judge's considerations. This study also aims to uncover the factors underlying the practice of marriage, such as the influence of culture, economic conditions, or religious aspects, as well as their impact on women and children. This study emphasizes the importance of legal certainty in the process of determining marriage confirmation, especially for cases of unregistered marriages involving underage couples. The contribution of this study is to support harmonization between religious law and positive law in the context of child marriage, while strengthening efforts to protect children's rights.

II. METHODS

This research uses a normative legal research method., the normative legal method is a research that aims to examine the written legal norms that apply in a legal system. This research is doctrinal, which means analyzing legal regulations based on relevant legal concepts, principles, and theories. In general, the approaches used in writing normative research consist of 5 approaches, namely; Statute Approach, Conceptual Approach, Historical Approach, Case Approach and Comparative Approach. The author himself prefers the statutory approach (Statute Approach) as the type of method in this research, this approach is carried out by examining laws and regulations related to the legal issues studied. With this research, it is hoped that it can provide recommendations (suggestions) to improve consistency and fairness in law enforcement related to underage unregistered marriages, especially unregistered marriages, as well as increase public awareness of the importance of marriage registration to guarantee their rights legally.

III. RESULTS AND DISCUSSION

Definition of Underage Secret Marriage

A secret marriage is a marriage that is carried out secretly or clandestinely through an imam without the presence of a marriage registrar, so it is not officially registered at the Office of Religious Affairs (KUA). The practice of a secret marriage is carried out through three stages, namely; 1) The pre-marriage contract stage where the parties approach the imam and express their intention to marry, the imam holds a discussion and selects the case, the parties pay the marriage contract administration fee and determine the time and place of the marriage contract. 2) The implementation stage of the marriage contract, where the parties carry out the ijab qabul procession guided by the imam. 3) The post-marriage contract stage, namely the

submission of the dowry and a marriage certificate. (Devriansyah, 2019). Meanwhile, underage marriage is a marriage carried out by a man and a woman where the age of both is still below the minimum limit regulated by Law Number 16 of 2019 concerning Marriage Article 7 Paragraph (1) "Marriage is only permitted if the man and woman have reached the age of 19 years" if there is a deviation from the age provisions as referred to in Paragraph (1), then the parents of the man/woman can request dispensation from the Religious Court on the grounds of urgency accompanied by sufficient supporting evidence(Wibowo, 2021).If combined, underage secret marriage is a marriage process that is carried out secretly where the person involved is a child who is not yet old enough (not yet at the minimum age for marriage) so that many negative impacts occur in society, especially for women and children.

Factors and Impacts of Underage Secret Marriages

Several factors cause underage unregistered marriages; 1) Economic factors, the parents are no longer able to support their children so they decide to marry their children to people who are considered more capable. 2) Educational factors, low education factors greatly influence the mindset of a society, so they will prioritize marriage to be able to meet the needs of life. 3) Self-Desire Factors, assuming they love each other regardless of age and the problems that will arise later. 4) Parental Factors, the influence and coercion of parents for reasons of worry that their children will fall into promiscuity and have negative consequences, because they want to perpetuate relationships with their relatives by matching their children with their relatives or their relatives' children, or matching their children with their siblings' children with the reason that their property does not fall into the hands of others, but remains in the hands of the family. 5) Free Association Factors, lack of guidance and attention from parents so that children look for ways to feel happy, namely by associating with people whose behavior is not seen first. What often happens is pregnancy outside of marriage, so that parents will inevitably give permission for their children to marry underage(Muntamah et al., 2019).

The impacts that occur for women and children as viewed from the Compilation of Islamic Law are:(Ediningsih et al., 2022).

1. The KHI has the same perspective as the Marriage Law, because Article 100 of the KHI contains a formulation that is not different from Article 42 and 43 Paragraph (1) of the 1974 Marriage Law, where a child born out of wedlock only has a civil/lineage relationship with the mother and the mother's family, as well as inheritance rights. Unless the child has been acknowledged by his biological father.(Article 872 of the Civil Code, tt).Furthermore, Article 103 of the KHI explains that a child's origins can only be proven by having a birth certificate or other evidence.
2. A child cannot apply for a birth certificate if the parents cannot show their marriage certificate, so in the child's birth certificate the child's status is considered as an illegitimate child, the father's name is not written, only the mother's name is written.
3. A wife is not considered a legal wife, nor is she entitled to maintenance or inheritance from her husband (if he dies), nor is she entitled to marital property in the event of divorce. This is because, legally, the marriage never took place.

Marriage Dispensation

Dispensation itself is a political law issued by a judge based on a court decision (the power held by the judge), the judge creates new rules that allow underage marriage for certain reasons. Marriage dispensation is a relief given by the Religious Court to prospective husband and wife who have not reached the age limit for carrying out marriage. Underage marriage dispensation cannot be done immediately for any reason, there are many factors behind the determination of underage marriage dispensation either from the applicant or from the judge's own consideration as the grantor of underage marriage dispensation. In the application for marriage dispensation, the judge always includes Article 7 Paragraph (2) of Law No. 1 of 1974 concerning Marriage, which is the legitimacy for the judge that has been regulated in the law. In Article 7 Paragraph (2) it is stated that deviations from the provisions of Paragraph (1) regarding the minimum age limit for marriage can submit a dispensation application to the Religious Court.(Akbar, 2021).

Definition of Marriage Confirmation

The Arabic word for marriage confirmation comes from the two words "isbat" and "niki." The word "isbat" means confirmation, confirmation, or determination. "To confirm or confirm the truth of something" means to confirm or determine the truth of something. (Amin, 2021). Whereas marriage, linguistically, means sexual intercourse or mixing. Islamic scholars are of the opinion that marriage means a marriage contract established by sharia, that a husband can exploit and enjoy the honor of a wife and her entire body. Meanwhile, marriage according to positive law, Law Number 1 of 1974 concerning Marriage, is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family, household based on the One Almighty God. (Islamiati, 2019). According to the Big Indonesian Dictionary (KBBI), marriage confirmation means determining the truth or validity of a marriage. More specifically, marriage confirmation is the process of validating or confirming a marriage that has been carried out according to Islamic law, but has not been or is not registered by an authorized institution such as the KUA or Marriage Registrar (PPN). The Compilation of Islamic Law does not regulate the definition of marriage confirmation, only in Article 7 paragraph 2 it states that "In the case of a marriage that cannot be proven by a Marriage Certificate, the marriage confirmation can be submitted to the Religious Court." Article 5 of the KHI also states that: 1) To ensure orderly marriages for the Islamic community, every marriage must be registered. 2) The registration of the marriage referred to in paragraph (1) is carried out by a Marriage Registrar.

Thus, a person who has had a private marriage (sirri) and has not been registered by the KUA or PPN can submit a marriage confirmation to the Religious Court to obtain legalization of their marriage. (Khamidiyah & Hertina, 2020). The existence of the marriage validation/isbat regulation was created based on the occurrence of marriages conducted solely based on religious provisions or not registered by the authorized Marriage Registrar (PPN). Initially, marriages were only validated for marriages that took place before the enactment of Law No. 1 of 1974 concerning Marriage. However, the emergence of Article 7 of the Compilation of Islamic Law (KHI) provides an opportunity to validate marriages not registered by the PPN, which took place before or after the enactment of Law No. 1 of 1974 concerning Marriage. Isbat nikah is essentially not a validation but a determination. The term isbat nikah with determination indicates that isbat nikah is carried out solely as an administrative function. Because the marriage that has taken place has essentially fulfilled the requirements and pillars of marriage, in other words, it has fulfilled the material and formal requirements. Material here refers to the conditions inherent in each pillar of marriage, both according to religion and law. While formal refers to the administrative requirements related to marriage registration. (Ato, 2024).

It is also explained that marriage confirmation is a request for marriage validation submitted to the Religious Court to declare the marriage valid and have legal force, marriage confirmation is the determination of the marriage of a man and a woman as husband and wife that has been carried out in accordance with Islamic religious provisions (the requirements and pillars of marriage have been fulfilled). However, this previous marriage has not been or is not registered with the authorized official, the KUA official, namely the Marriage Registrar Officer {PPN} (Hijawati, 2023). As explained by the author above, if viewed from the aspect of legislation as stated in Article 5 paragraph (1) of Law Number 1 of 1974 concerning Marriage, it regulates the provisions for marriage registration which aim to ensure orderly marriages for the Islamic community. Article 6 paragraphs (1 and 2) also state that every marriage must be conducted before a Marriage Registrar and if the marriage is conducted outside of supervision, the marriage does not have legal provisions. (Article 5 of Law of the Republic of Indonesia No. 16 of 2019, tt).

Requirements for Marriage Confirmation

A marriage can only be proven by a marriage certificate issued by a Marriage Registrar (PPN). If the marriage cannot be proven by a marriage certificate, a marriage confirmation can be submitted to the Religious Court. The requirements for marriage confirmation have been explained by (Ni'mah, 2022). In his research, he stated that there are 5 conditions for marriage confirmation, quoted from the explanation of KHI Article 7 paragraph (3), including:

1. The existence of marriage in the context of divorce settlement.
2. Lost Marriage Certificate.
3. There is doubt about the validity or invalidity of one of the conditions of marriage.
4. There were marriages that occurred before the enactment of Law No. 1 of 1974.
5. Marriages carried out by those who do not have obstacles to marriage according to Law no. 1 of 1974.

Meanwhile, on the other hand, the conditions for marriage confirmation are analogous to the requirements for marriage, including:(Siregar, 2019).

1. The requirements for the man are: he is Muslim, male, a clear person, can give an agreement and has no obstacles to marriage.
2. The requirements for the woman are: she is Muslim, female, has a clear identity, can be asked for a statement and has no obstacles to marriage.
3. The requirements for a marriage guardian are: male, puberty, has the right of guardianship, and his guardianship is not obstructed.
4. The requirements for witnesses are: at least two people, present at the time of the ijab qabul, understand the contract, are Muslim, and are of legal age.
5. Acceptance of marriage.

Furthermore, Article 7 paragraph (4) also explains the requirements for submitting a marriage confirmation application, which states: "Those who have the right to submit a marriage confirmation application are the husband or wife, their children, the marriage guardian and parties who have an interest in the marriage."(Musliani, 2023).Based on the provisions of the conditions for marriage confirmation contained in Article 7 paragraphs (3) and (4) of the KHI, it can be understood that not all marriage confirmations submitted to the Religious Court will be granted and accepted by the Panel of Judges. Some are rejected and not accepted, this occurs because of looking at the conditions based on the conditions for marriage confirmation as explained in Article 7 paragraph (3) of the KHI above. However, the Panel of Judges can use logical arguments to consider the decision of a case, whether the decision can bring benefits or actually bring harm to the family concerned.

The Purpose of Marriage Confirmation

As we know, according to the applicable laws and regulations, and in Article 7 of the KHI, it is stated that the existence of a marriage can only be proven by a Marriage Certificate, meaning that a person who submits a marriage confirmation aims to have the marriage that has been carried out receive authentic evidence in the form of a Marriage Certificate Extract and be legalized both formally and among the wider community. In addition, it is also to avoid slander that can occur at any time in everyday life and the impact that will occur later on women and children. Therefore, the marriage confirmation which is the authority of the Religious Court is a wise solution to resolve problems in society, because the registration and confirmation of marriage aims to realize order in marriage in society which has implications for efforts to protect the rights of those involved in the marriage.(Maisyaro, 2022).

Legal certainty

Another term for legal certainty is the principle of legal security and rechtzekerheid. Law and legal certainty are interrelated and inseparable. Law exists because of certainty, and certainty also makes the law more obedient. Certainty itself, etymologically, comes from the word "past" (certain), which means unchangeable. Furthermore, the KBBI (Big Indonesian Dictionary) explains that certainty is a definite condition; therefore, the law must also be certain.(Mickael, 2023).Whereas(Neltje & Panjiyoga, 2023). in his research, he stated that according to Fence M. Wantu, "legal certainty is a standard clarity so that it can be used as a guideline for those covered by this regulation, the meaning of certainty can be interpreted as there is clarity and firmness in the process of making social law." Then Van Apeldoorn completes it by arguing that legal certainty is a guarantee that the law will be enforced, those entitled will obtain their rights and decisions can be enforced.

In his study, Gustav Radbruch explains that there are four main points regarding legal certainty, namely: (Afdhali & Syahuri, 2023).

- Law is a positive thing (it has been declared by law as law).
- Positive law must be certain, based on reality, facts, or reality.
- The facts stated in the law must be formulated in a clear manner, so as to avoid errors in terms of meaning and interpretation and can be easily implemented.
- Positive law cannot be easily changed.

Case Description

From the results of this research, four decisions were found regarding applications for confirmation of marriage in underage sirri marriages, of which not all of these decisions were granted by the judge, some were rejected.

Decision Rejected

Decision of case Number 951/Pdt.P/2023/PA.Krs, marriage confirmation filed by Petitioner I aged 18 years with bachelor status and Petitioner II aged 12 years with virgin status. That the Petitioners have submitted an application registered at the Kraksaan Religious Court Clerk's Office, Probolinggo, East Java on October 5, 2023. That on December 20, 2020, Petitioner I has carried out a marriage contract according to Islamic law with Petitioner II in Batu Hamlet RT.011/RW,005 Banyuanyar Kidul Village, Banyuanyar District, Probolinggo Regency. That between Petitioner I and Petitioner II there is no family relationship either by blood, breastfeeding or in-laws which causes there to be no prohibition on marriage either according to Islamic Law or applicable laws and regulations. That during their marriage the Petitioners have never divorced (fallen divorce), changed religions and no other party has ever objected to the validity of their marriage. During their marriage, the Applicants had marital relations and were blessed with one daughter, therefore the Applicants needed a marriage certificate as authentic proof of legal certainty regarding their marriage and to make it easier to process the child's birth certificate. Considering based on SEMA RI Number 07 of 2012 letter B, Formulation of the Results of the Plenary Meeting of the Religious Chamber number 11 explains that a sirri marriage that violates the Law cannot be justified, so it cannot be confirmed.

Based on these legal facts, the Panel of Judges considers that even though the sirri marriage of the two has fulfilled the requirements and pillars of Islamic marriage, in its implementation it does not meet the minimum age limit permitted for marriage as stipulated in Article 7 paragraph (1) of Law Number 16 of 2019 amendment to Law Number 1 of 1974 concerning Marriage. Considering based on these considerations, the petition of the Applicants is not based on law and is declared inadmissible (Niet Ontvankelijk Verklaard) (Kraksaan PA Decision, 2023). Decision of case Number 59/Pdt.P/2019/PA.Apn, marriage confirmation filed by Petitioner I aged 18 years with single status and Petitioner II aged 16 years with girl status. That the Petitioners have filed an application registered at the Clerk of the Ampana Religious Court, Tojo Una-Una, Central Sulawesi on December 5, 2019. That on October 13, 2019, the Petitioners have married according to Islam in Labuan Village, Ratolindo District, Tojo Una-Una Regency. That between Petitioner I and Petitioner II there is no kinship, in-law relationship or breastfeeding relationship that causes there to be no prohibition on marriage, both according to Islamic law and applicable laws and regulations. That during their marriage the Petitioners live in harmony like husband and wife, have not been blessed with children and there are no other obstacles, the Petitioners need a marriage book for legal certainty of their marriage and other legal interests. Considering that based on Article 49 paragraph (1) of Law Number 7 of 1989 concerning Religious Courts which has been amended and supplemented by Law Number 3 of 2006, the second amendment to Law Number 50 of 2009, this case is the absolute competence of the Religious Court to examine and adjudicate it.

In accordance with Article 142 R.Bg, this case is the relative competence of the Ampana Religious Court because the Petitioners reside in the Tojo Una-Una district. Based on the Petitioners' request, the judge first examined the legal standing in *judicio* or the position of the Petitioners which includes the pillars and requirements of marriage, it was revealed that the Petitioners were still minors, then the Petitioners did not undergo the marriage dispensation procedure before carrying out the marriage so that their marriage was not

recognized by the state. Based on the fatwa of the Registrar of the Supreme Court of the Republic of Indonesia addressed to the Director General of Population and Civil Registration of the Ministry of Home Affairs, No.231/PAN/HK.05/01/2019 dated January 30, 2019, point 1 letter b explains that "the administrative requirements for underage marriage must have permission and dispensation from the Court, if the requirements are not met, then such marriage is unlawful. If they want to register a marriage after fulfilling the requirements, they must remarry or renew their marriage (tajdid nikah) and have it registered." Considering based on all considerations, the petition of the Applicants does not meet the formal requirements of error in persona with the category of disqualification in person so that the petition is declared inadmissible (Niet Ontvankelijk Verklaard)(Ampana PA Decision, 2019).

The decision was granted.

Decision of case Number 63/Pdt.P/2022/PA.Tg, marriage confirmation submitted by Petitioner I aged 18 years and 9 months with bachelor status and Petitioner II aged 18 years and 4 months with virgin status. That the Petitioners have submitted an application registered at the Tegal Religious Court Clerk's Office in 2022. That on November 8, 2018, the Petitioners have held a sirri marriage in Margadana Village, Margadana District, Tegal City. That during the marriage the Petitioners have lived in harmony as husband and wife and have been blessed with a daughter, therefore the Petitioners need a marriage book for legal certainty of their marriage and so that the child's status has legal force by having a Birth Certificate. Considering based on the law, the judge quoted from the opinions of experts: 1) Prof. Dr. Bagir Manan, SH, who concluded that marriage registration is an essential action and does not reduce the validity of the marriage itself; 2) Prof. Dr. Mahfud Md, SH, as the Chief Justice of the Constitutional Court at that time who stated that marriages conducted in secret are not contrary to the constitution, because they are carried out in accordance with religious beliefs whose protection is guaranteed by the 1945 Constitution; 3) Dr. H. Harifin A, Tumpa, SH, Mh., the Chief Justice at that time was of the view that if unregistered marriages are commonplace and are carried out in good faith or in an emergency, then the judge needs to consider it. Based on this opinion, the Panel of Judges considered that marriage registration is an important event which according to population administration law must be registered, the marriage of the Petitioners is also based on religious beliefs and is based on good faith, in addition the Petitioners have given birth to children.

Considering the existing considerations, the Panel of Judges granted the application for marriage confirmation by prioritizing the public interest or achieving greater benefits.(Barok, 2024).Decision of case Number 58/Pdt.P/2023/PA.Rtg, marriage confirmation filed by Petitioner I aged 19 years with bachelor status and Petitioner II aged 17 years with virgin status. That the Petitioners have filed an application registered at the Registry of the Ruteng Religious Court on October 3, 2023. That on April 17, 2008, the Petitioners have held a marriage according to Islamic law at the house of Petitioner I's older brother, Lamba Leda District, East Manggarai Regency. That between Petitioner I and Petitioner II there is no blood relationship, in-law relationship and breastfeeding relationship, and fulfills the requirements and there are no prohibitions that can hinder the validity of the marriage, both according to Islamic Law and applicable laws and regulations. That during their marriage the Applicants have never divorced, remain Muslim and no one has ever objected to their marriage, and have been blessed with three children, therefore the Applicants need a Marriage Certificate Extract as a legal reason for making a Child's Birth Certificate and complete population administration.Considering that even though the Applicants' marriage had fulfilled the pillars and requirements of marriage, due to their negligence the marriage was not registered at the local KUA.

However, by looking at the urgency of registering marriages, as a basic right of every resident as stated in Article 2 letter (a) of Law No. 23 of 2006 concerning Population Administration, the articles and contents of which were not amended by Law No. 24 of 2013 concerning Amendments to Law No. 23 of 2006 concerning Population Administration and also the legal implications for the rights of the Applicants' descendants to obtain certainty of origin as stated in Article 7 paragraph (1) of Law No. 23 of 2002 concerning Child Protection which was amended by Law No. 35 of 2014, the Panel of Judges is of the view that this negligence does not prevent the legalization of the Applicants' marriage in order to maintain greater interests.Considering that if the Applicants' marriage is not confirmed, it will result in them falling into prolonged difficulties, in cassu the Applicants and their descendants will not receive proper legal protection

from the Government of the Republic of Indonesia (dloror). Considering that sociologically the Applicants live in a Muslim society, so it is impossible for the Applicants to live together as husband and wife without a valid Islamic marriage bond. Considering that based on the Judge's considerations both juridically, sharia, and sociologically, based on the provisions of Article 2 paragraph (1) and (2) of Law No. 1 of 1974 concerning Marriage in conjunction with Article 7 paragraph (2) and (3) and Article 14 of the Compilation of Islamic Law, the Panel of Judges granted the application for marriage confirmation by declaring the Applicants' marriage valid.(Ruteng PA Decision, 2023).

Analysis of Judges' Considerations in Rejecting Marriage Confirmation for Minors

In decision Number 951/Pdt.P/2023/PA.Krs and decision Number 59/Pdt.P/2019/PA.Apn, it was revealed that the Applicants' marriage had fulfilled the requirements and pillars of Islamic marriage, but did not meet the minimum requirements for marriage.(Article 7 Paragraph (1) of the Republic of Indonesia Law No. 16 of 2019, tt). and before carrying out the marriage, the Applicants did not apply for a marriage dispensation to the Religious Court so that their marriage was not registered at the KUA.In this case, the Panel of Judges rejected the petition for marriage confirmation of the Applicants referring to the Supreme Court Clerk's Fatwa Number 231/PAN/HK.05/01/2019 that underage marriages that do not meet the requirements must be renewed through marriage confirmation and re-registered, also stated in the Circular Letter of the Supreme Court of the Republic of Indonesia No. 07 of 2012 letter B. The Formulation of the Results of the Plenary Meeting of the Religious Chamber number 11 explains that unregistered marriages that violate the Law cannot be justified, so unregistered marriages that violate the Law cannot be confirmed.(SEMA No. 07 of 2012, tt).

Analysis of Judges' Considerations in Granting Marriage Confirmation for Minors

In the decision of case Number 63/Pdt.P/2022/PA.Tg and the decision of case Number 58/Pdt.P/2023/PA.Rtg, it was revealed that the Petitioners had entered into a legal marriage according to the requirements and pillars of Islam as referred to in the provisions of Articles 14 to 38 of the KHI, and the marriage did not violate the prohibition on marriage as referred to in the provisions of Articles 8 to 10 of Law No. 1 of 1974 in conjunction with Articles 39 to 44 of the KHI, and the Petitioners had been blessed with children. Therefore, the Panel of Judges considered that if the marriage of the Petitioners was not granted, it would result in prolonged difficulties and their children would not have legal power.In this case, the Panel of Judges granted the applicants' request for marriage confirmation by prioritizing the interests of the mursalah as the basis for deciding the case, because this theory teaches that what is not commanded textually in the Qur'an and Hadith can be made into a rule based on the value of interests and at the same time avoiding harm.(Zulfikri & Faizah, 2023).

Legal Consequences of Granting and Rejecting Applications for Marriage Confirmation for Underage Marriages(Poppy & Amanita, 2020).

Legal consequences if the application for marriage confirmation is granted:

1. Legal Recognition of Marriage, a previously unregistered marriage becomes recognized after the marriage isbat, so that the marriage has legal force and obtains legal protection.
2. Legal Status of Husband, Wife and Children, husband and wife have the right to legal rights such as maintenance and inheritance, and children are also legally legitimate and therefore have the right to inheritance and maintenance from their father.
3. The Religious Court grants marriage dispensation based on considerations of family interests and sufficient supporting evidence, even if the age is under 19 years.

Legal consequences if the application for marriage confirmation is rejected:

1. Her marriage remains unrecognized and considered invalid by the state.
2. Husband and wife do not receive legal protection, so that rights such as maintenance and inheritance cannot be fulfilled, and children born are considered illegitimate children by law and do not have any lineage or inheritance rights from their father.
3. Rejection usually occurs if the applicants cannot provide sufficient and convincing evidence to the Religious Court for underage marriage dispensation.

IV. CONCLUSION

Based on the results of research and discussion on the Disparity in Judges' Determination of Marriage Confirmation for Underage Sirri Marriages, the author can conclude that:

- 1) The legal basis for the judge in determining the isbat nikah of a minor's sirri marriage is to review the aspect of legal certainty in accordance with applicable legislation and the aspect of *maslahah mursalah* (benefit) in the family, which is in accordance with the judge's jurisprudence.
- 2) In granting or rejecting a marriage confirmation case, the judge first considers various factors, such as the evidence submitted, the relationship status of the parties, and the reasons for the marriage being carried out without registration at the KUA.
- 3) The determination of marriage confirmation also has legal consequences that impact the couple and children, both in terms of legal protection and rights such as maintenance and inheritance.

V. SUGGESTION

There is a need for education and outreach regarding the minimum age limit for marriage and the legal consequences of underage unregistered marriages, which are still common among the community, especially in rural communities with low levels of education. Consistent implementation of Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 concerning the minimum age limit for marriage is also needed, as well as an affirmation that marriage confirmation is not a solution to legalize legal violations, but rather a last resort to protect civil rights, especially children born from the marriage. In addition, the author hopes that further research will be conducted in the future to further examine the effectiveness of policies and implementation of marriage confirmation decisions in various regions, and their impact on legal certainty and the protection of the rights of children and women.

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