

## Judge's Considerations In Imposing A Decision On Divorce Lawsuit On Early Marriage Cases In Bengkulu

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### ABSTRACT

According to Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, marriage is considered legitimate if both men and women are 19 years old. But in reality, in Bengkulu city there are still many early marriages that occurred and resulting in divorce. This study aims to analyze and to describe why divorce cases in minor couples in Bengkulu city are quite high, as well as to analyze and to describe the basis of judges' considerations in imposing a decision on divorce lawsuit in early age couples. The type of research used in this study was empirical legal research. In empirical legal research, the law is conceptualized as an empirical symptom that can be observed in real life. Based on the results of the study, it is known that the cause of divorce cases in early age couples in Bengkulu city is due to the emergence of various problems after marriage, such as increasing domestic violence rates, children's education rights that have not fully given by their parents, and stigma that must be borne by the children. These issues generally result in divorce on early age couples. In addition, the basis of the consideration of the Bengkulu Religious Court of Class IA in imposing a decision on divorce lawsuit in an early age couples has no difference with couples who is not married at an early age. There are three judges' decisions, namely the first is legal certainty. When divorce happened, the status becomes certain, namely the widow and widower. This status certainty allows a divorced couple to remarry later in the day. The second is justice. Justice is fair according to the judge if divorced. The third is the benefit. If the status is left unclear, there will be no benefit. It can even be a *mudarah* or another problem again in the future.

**Keywords:** Judge's considerations; divorce; early age marriage

### INTRODUCTION

#### Background of the Research

Marriage is one of the very important family institutions in human life. Therefore, every human being who has become an adult will generally wish to step into marriage. However, humans cannot be haphazard like an animal in

carrying out marriage, because marriage for humans has the procedures and rules determined by law, both Islamic law (*Shari'a*) and positive law. In Indonesia, this is regulated through Law No. 1 of 1974 concerning Marriage.<sup>1</sup> Since

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<sup>1</sup> Sirman Dahwal, *Hukum Perkawinan Beda Agama dalam Teori dan Praktiknya di*

marriage is long-term, it must go through mental readiness and physical readiness that is quite mature. A person's readiness, both mentally and physically, is strongly related to the age of a person when married.

The provisions regarding marriage according to Islamic *Shari'ah* are binding to every Muslim, and every Muslim needs to realize that in marriage contains *Ubudiyah* values. Therefore, the marriage bond is termed by the Qur'an with "*Mitsaaqan Ghalidza*", a sturdy bond. As a bond containing the value of *Ubudiyah*, then paying attention to the validity of marriage is a very principle.<sup>2</sup>

In Article 1 Law No. 1 of 1974 on the marriage states that "marriage is an outward and blended bond between a man and a woman as a husband and wife with the purpose of forming a happy and permanent family (household) based on the Supreme God".

The validity of a marriage and marriage registry can be found on Article 2 of the law of 1974 No. 1 about marriage which states that:

- 1) The marriage is valid, when done according to the law of each of religion and beliefs.

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*Indonesia*, Publisher: CV. Mandar Maju, Bandung, 2017, p. 9.

<sup>2</sup> M. Anshary MK, *HUKUM PERKAWINAN DI INDONESIA - Masalah-Masalah Krusial*, Publisher: Pustaka Pelajar, 2009, Jakarta, p. 11.

- 2) Every marriage is noted in accordance with the prevailing laws and regulations.

According to the law No. 16 of 2019 about amendment for Law No. 1 year 1974 about marriage, marriage is considered valid when men and women are 19 years old. In Article 7 paragraph (1) states that "Marriage is permitted only when men and women have reached the age of 19 (nineteen) years". Minimal limitations are ideal for Indonesian citizens to marry, which is after being 21 years old, both men and women. It is found in Article 6 paragraph (2) Law No. 1 of 1974 about marriage stating that "to make marriage, a person who has not reached the age of 21 (twenty one) years must get the parents' permission." Marriage law enables men and women less than 19 years to marry as long as it gets dispensation from court.

Indonesia is a state with a high percentage for marriage young age in the world (ranking 37), second highest in ASEAN (World Fertility Report 2012).<sup>3</sup> Based on UNICEF data, Indonesia ranks 7th highest in the world, and the highest number in ASEAN in the case of child marriage. It has become legal in Indonesia due to the existence of early marriage dispensation contained in Law No. 1 of

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<sup>3</sup> World Fertility Report *United Nations Department of Economic and Social Affairs/Population Division*, 2012.

1974 concerning the marriage article 7 paragraph (3) which states that:

"The provisions regarding the state of one or the two parents in Article 7 paragraph (2) state that in terms of irregularities against paragraph (1) this article can request a dispensation to the court or other officials appointed by the two parents of man and woman."

The Central Statistics Agency (BPS) and UNICEF noted, child marriages in Indonesia almost occur in all regions. The report was revealed that marital numbers under 18 years have reached 23 percent, and that children's marriage in rural areas is one third higher than what happens in urban areas. Behind the high period of early marriage that has been recorded by the Central Statistics Agency and UNICEF in line with the high divorce rate that occurred in Indonesia. Early age marriage happens a lot, one of which is like what happened in the community in Bengkulu city.

The data obtained from *BKKBN* of Bengkulu Province showed that the number of women as the heads of the family according to the age group based data collection in 2018 in Bengkulu city was as many as 1669, which was less than 15 years old to age 29 years as many as 69 people, and age 30 years to 65 years was as many as 1600 people. Whereas in 2019, there were 87 people with the age of less than 15 years to age of 29 years. As for the

age 30 years until 65 years and above, there were 84 people.

The study from the population side is difficult to obtain, especially the impact on the social and economic side. In addition, the appeal of early marriage has not been strengthened by a comprehensive study of population. The issue of marriage on young age still has not touched a society like in Bengkulu. Therefore, it is necessary to be reviewed deeper. In addition, the government needs to invite all circles to not only look at the number of early marriages in Indonesia but also the impact of it, like a high infant mortality rate caused by prospective mothers who are too young, maternal deaths during childbirth, divorce, and domestic violence. Judging from the many negative impacts of early age marriage which causes divorce, then the writer was interested in raising research entitled: **“Judge’s Considerations in Imposing a Decision on Divorce Lawsuit on Early Marriage Cases in Bengkulu.”**

#### **Identification of the Problems**

1. Why were divorce cases in a young age couples in Bengkulu city high enough?
2. What was the basis of judge’s considerations in making a verdict on divorce lawsuit in an early age marriage?

## **RESEARCH METHOD**

### **Type of Research**

The type of research used in this study was empirical legal research. In empirical legal research, the law is conceptualized as an empirical symptom that can be observed in real life.<sup>4</sup> In this study it illustrated the consideration of the judge in deciding the divorce on early age marriage in Bengkulu city.

### **Research Approach**

The research approach applying empirical or sociological legal research methods is a study of law in action, because this research involves reciprocal between laws and social institutions in society.<sup>5</sup>

### **Population and Sample**

#### **Population**

The population is a generalization area consisting of objects/subjects that have certain qualities and characteristics determined by the researcher to be studied and then drawn conclusions.<sup>6</sup> The population in this research was the Bengkulu Religious Court Class IA and the Bengkulu Province *BKKBN*.

#### **Sample**

The sample is part of the number and characteristics possessed by the population.<sup>7</sup> Determination of the sample in this study was carried out by purposive sampling technique or sampling was done by taking the subject for a specific purpose, due to time, energy and cost limitations, so it was not possible to take a large number of samples and were far away.<sup>8</sup> The samples in this research were Judges of Bengkulu Religious Court Class IA.

### **Data Source**

#### **Primary data**

The primary data is data sourced from field research, namely data obtained directly from the first source in the field, both respondents and informants.<sup>9</sup> The primary data sourced from this field was obtained from the Bengkulu Religious Court class IA and the Bengkulu Province *BKKBN*.

#### **Secondary Data**

The secondary data is data obtained from library research by conducting library research which aims to find data in the form of theories, opinions, views and legal principles that are closely related to the subject matter studied.<sup>10</sup> The secondary data in this study is Law No. 1 of 1974

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<sup>4</sup> The Composing Team, *Panduan Penulisan Tugas Akhir Untuk Sarjana Hukum (S1)*, Bengkulu, 2016, p. 41.

<sup>5</sup> The Composing Team, *loc.cit.*

<sup>6</sup> Sugiyono, *Qualitative Quantitative Research Methods and R&D*, Publisher: Alfabeta, Bandung, 2013, p. 80.

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<sup>7</sup> Ibid, p. 81.

<sup>8</sup> Drafting Team, *op.cit.*, p. 43.

<sup>9</sup> Ibid, p. 44.

<sup>10</sup> Ade Saptomo, *Pokok-Pokok Metodologi Penelitian Hukum Empiris Murni*, Publisher: Trisakti University, Jakarta, 2009, p. 86.

concerning Marriage, the Government Regulation Number 9 of 1975 concerning the Implementation of Law no. 1 of 1974 concerning Marriage, Law No. 16 of 2019 concerning amendments to Law no. 1 of 1974 concerning Marriage and books related to this issue.

### **Data Collection Technique**

#### **Document Study**

At the beginning of legal research, secondary data was collected, namely data that already existed in the community and certain institutions.

#### **Interview**

The interviews were conducted in a structured manner, this interview was used as a data collection technique, if the researcher or data collector knew for sure what information would be obtained. In practice, apart from bringing an instrument as an interview guide, data collectors can also use tools such as tape recorders, pictures, brochures and other materials that can assist in the interview.<sup>11</sup>

#### **Data Processing**

The data processing is a research process where the collected data was processed. Data processing is generally

done by checking, marking, reconstructing and systematizing data.<sup>12</sup>

### **Data Analysis**

In empirical legal research, data processing and analysis basically be done qualitatively and/or quantitatively. After the data was processed, the researcher determines the analytical methods that can be used, namely qualitative analysis, quantitative analysis, or both methods because they complement each other.<sup>13</sup>

Data analysis in this study is essentially carried out continuously from the beginning to the end of the study. In this data analysis, the data was compiled, which were classified into patterns, themes or categories. After that, an interpretation was held, namely giving meaning, explaining patterns or categories and also looking for interest in various concepts.

## **RESULTS AND DISCUSSION**

### **Causes of Divorce Cases in Early Age Couples in Bengkulu City**

Divorce is the end of a wedding. The divorce is the severance of the relationship between husband and wife, caused by the failure of the husband or wife in carrying out their respective roles. The divorce is understood as the end of instability marriage between husband and wife who then live separately and are legally

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<sup>11</sup> Fitwiethayalisiyi, “*Penelitian Kualitatif (Metode Pengumpulan Data)*”, downloaded on January 24, 2020 from <https://fitwiethayalisiyi.wordpress.com/teknologi-pendidikan/penelitian-kualitatif-metode-pengumpulan-data/>.

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<sup>12</sup>Drafting Team, op.cit., p. 46.

<sup>13</sup>Ibid, p. 47.

recognized based on law applicable.<sup>14</sup> The divorce rate in Indonesia is quite high. In one year there are about four hundred thousand cases and most occur from early age couples. Based on National Population and Family Planning Agency (*BKKBN*) states that early marriage can lead to high divorce rates. This is in accordance with the data found by researchers in the field. There are several factors in the occurrence of early marriages carried out by children who are in junior high school (*SMP*) to high school (*SMA*), one of which is economic factors, promiscuity, matchmaking and others. In addition to these factors, child marriage also has other significant impacts, including health problems that can increase the risk of Maternal Mortality Rate (*MMR*) and Infant Mortality Rate (*IMR*) and trigger women's social and economic problems. Not to mention the emergence of various other problems after marriage, such as the increasing number of domestic violence (Domestic Violence), children's education rights, as well as the stigma that must be borne by children and lead to divorce in early childhood couples. For this reason, it is necessary to make efforts to protect children's welfare by providing guarantees for the fulfillment of their rights and

treatment without discrimination. The young couples usually have not been able to prepare for family life, so they are prone to divorce.

The way to minimize the occurrence of divorce caused by early marriage is by pre-marital education was needed to minimize the consequences of early marriage. Although not entirely the consequences of early marriage can be avoided, but they can be prevented and are not too fatal.

Mr. Asymawi as a judge at the Class I A of Bengkulu Religious Court states that the judge always tries to reconcile the two parties, even the judge feels very successful if both parties can make peace. In the trial, if the divorce case is essentially not looking for who is wrong and who is right, there is no such thing as losing and winning, everyone loses. Then the judge's consideration, even in the jurisprudence of the Supreme Court it is stated, that the judge or court does not need to find out who is wrong and who is right, what needs to be whether these two parties can be reconciled or not.

### **The basis for Consideration of Judges of Class I A of Bengkulu Religious Court in Deciding on Divorce Claims on Early Age Spouses**

Based on an interview with the judge at the Bengkulu Religious Court Class IA, Mr. Asmawi states that the judge in

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<sup>14</sup> Wikipedia, "Divorce", downloaded 17 June 2021 from <https://id.wikipedia.org/wiki/Divorce>.

making considerations in deciding divorce cases, there is no difference between an early age and an old age (not early marriage), which is clear that divorce is as much effort as possible to be reconciled, even the judge must reconcile, it can be seen in Article 82 of Law no. 7 of 1989 concerning Religious Courts. Mr. Asyamawi states that in the case of divorce:

"Imperative obligations (coercion) are not allowed not, even at every trial the judge is obliged to remind the peace efforts in various ways if have children, children need to be considered, then in social life, marriage and divorce in the community will feel ashamed, then also if both parties present, to maximize the peaceful effort there is Perma No. 1 of 2016 concerning Mediation Procedures in Courts, mediation is mandatory. We have mediators from outside, if there is no mediator from outside the judge as well as a mediator, it so happens that there are external mediators who are certified, some former judges are also certified, willing to be there every day, that's what we do."

Divorce cases in early marriage are the same as divorce cases in general. To file a divorce, according to judge Asyamawi, the requirements must be complete, the case cannot be decided if the conditions are not complete. One of the requirements is an ID card that has met the age of maturity. Instead of rushing to make a decision, we postpone reading the verdict and both parties must be present. On average 90% of divorce cases are decided at the first trial. In the case of divorce in

early and non-early marriages, it is the same, if indeed the two parties cannot be reconciled every time the trial and are reminded and advised during the mediation process in other words cannot be reconciled, then the judge will decide on divorce.

As stated in the Marriage Law No. 1 of 1974 article 39 states:

- 1) Divorce can only be carried out before a Court Session after the Court concerned has tried and failed to reconcile the two parties.
- 2) To divorce, there must be sufficient reason that the husband and wife will not be able to get along as husband and wife.
- 3) The procedure for divorce before a court hearing is regulated in the legislation.

Based on an interview with Mr. Asyamawi as a judge at the Class IA of Bengkulu Religious Court, there are three judges' decisions, legal certainty, if, for example, the divorce status became certain, the status of widows, and widowers could then remarry. Then the second is justice, justice is fair according to the judge if divorced. The third is the benefit, if we let it be clear there will be no benefit, it can even become another harm and problem. That's why we must divorce; there is no difference between those who are divorced due to an early age and those who are not. Whatever the reason, if it

cannot be reconciled, whatever the factors and reasons for divorce, because there is no point in letting people sway like that because they can no longer get along.

Divorce is something that should be avoided as much as possible, except in a state of necessity. Because divorce does not only concern the interests of the husband and wife concerned but also concerns the interests of all family members, divorce is the last way that must be taken.

## **CLOSING**

### **Conclusion**

There are several factors in the occurrence of early marriages carried out by children who are in junior high school to high school, one of which is economic factors, promiscuity, matchmaking, and others. In addition to these factors, child marriage also has other significant impacts, including health problems that can increase the risk of Maternal Mortality Rate and Infant Mortality rates and trigger women's social and economic problems. In addition, the emergence of various other problems after marriage, such as the increasing number of domestic violence, children's education rights, and the stigma that must be borne by children and resulting in divorce in early-age couples. Based on an interview with the judge at the Class I A of Bengkulu Religious Court Class IA, Mr. Asmawi states that the judge

in making considerations in deciding divorce cases there is no difference between an early age and an old age (not early marriage), that divorce is as much effort as possible to be reconciled, even the judge must reconcile, it can be seen in Article 82 of Law no. 7 of 1989 concerning Religious Courts.

### **Suggestion**

The couples who will marry at an early age it would be nice to build a household not only based on love, but other things must pay attention to the impact that will occur in the future such as economic and religious problems. And for couples who have decided to divorce at an early age, who already have children as parents are obliged to provide for and educate their children to adulthood, do not let them as parents neglect their responsibilities when they are divorced. Education and intense attention to children must be obtained from parents, so that their children are not misguided when their parents are divorced. Even though one of the parents is gone or has divorced, it does not mean that the child is ignored. Children are still the responsibility of both parents if in this case both parents are disabled, then the guardian has the responsibility, even though the guardian does not fully have the responsibility, it does not mean the guardian leaves the child free to act, every guardian still has



obligations until the child is an adult and married.

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