

Judges' Considerations in the Determination of Marriage Dispensation in Court as a Form of Protection of Children's Rights

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Abstract: *Marriage is the right of every human being to build a family. To provide protection to each party, the state through the government stipulates the Marriage Law as a regulation to create order. So that people who want to get married are required to fulfill the requirements and provisions in the Marriage Law, so that marriage can be said to be legal in religion and the state. The research method used is the juridical-normative method with descriptive-analytical research specifications, with the data collection technique used, namely library document studies. The results of the study include that the judge in determining whether to grant or refuse to grant marriage dispensation to children who will enter into marriage underage is based on consideration of all aspects, both positive and negative impacts of the determination of marriage dispensation. Therefore, the judge carefully considers the best interests of the child and the aspect of danger or disadvantage to the child if the underage marriage is allowed to take place, and also the danger or disadvantage that will arise if the application for dispensation to marry the child is rejected.*

Keywords: *Marriage, Dispensation of Marriage, Judge's Consideration*

Abstract : Perkawinan adalah hak setiap manusia untuk membangun keluarga. Untuk memberikan perlindungan kepada setiap pihak, negara melalui pemerintah menetapkan Undang-Undang Perkawinan sebagai pengaturan agar terciptanya ketertiban. Sehingga masyarakat yang ingin melangsungkan perkawinan diwajibkan untuk memenuhi persyaratan dan ketentuan di dalam Undang-Undang Perkawinan tersebut, agar perkawinan dapat dikatakan sah secara agama dan negara. Metode penelitian yang digunakan adalah metode yuridis-normatif dengan spesifikasi penelitian yang bersifat deskriptif-analitis, dengan teknik pengumpulan data yang digunakan yaitu studi dokumen kepustakaan. Hasil penelitian diantaranya bahwa hakim dalam menetapkan untuk mengabulkan atau menolak memberikan dispensasi kawin pada anak yang akan melangsungkan perkawinan di bawah umur berdasarkan pertimbangan segala aspek, baik dampak positif maupun negatif dari adanya penetapan dispensasi kawin tersebut. Oleh karena itu, hakim mempertimbangkan dengan hati-hati pada aspek kepentingan terbaik bagi anak dan aspek kerusakan atau kerugian pada anak jika perkawinan di bawah umur diizinkan dilaksanakan, serta kerusakan atau kerugian yang akan timbul jika ditolaknya permohonan dispensasi kawin pada anak

Keywords: Perkawinan, Dispensasi Kawin, Pertimbangan Hakim



I. INTRODUCTION

Humans have the right to carry out marriage to build a family. As in Indonesia, it has been mentioned in Article 28B paragraph 1 which reads: "Every person has the right to form a family and continue offspring through legal marriage". Indonesia is a state of law, so all aspects of life must be based on applicable law. Because the law has an alluring and imposing power. Thus, people who want to carry out marriage are required to comply with the provisions or requirements that have been regulated by the state. Marriage in Indonesia is regulated in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage hereinafter referred to as the Marriage Law

Marriage in Article 1 of the Marriage Law is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty. Likewise, in Article 2 Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI) which is hereinafter referred to as the Compilation of Islamic Law states that marriage according to Islamic law is marriage. That is a very strong contract or *mittsaqan ghalidzan* to obey Allah's commands and carrying it out is an act of worship. Looking at the definition of marriage mentioned in the Marriage Law and the Compilation of Islamic Law, it means that marriage is a very strong bond and doing it is an act of worship with the aim of forming a happy and lasting family.

The process towards the goal of a happy and lasting marriage, the state as a form of carrying out its obligations sets out the requirements or obligations that must be fulfilled by the community to enter into marriage, which are listed in the Marriage Law. One of the requirements that must be met, namely Article 7 paragraph (1) of the Marriage Law states that marriage is only permitted if the man and woman have reached the age of 19 (Nineteen) years. The government's determination regarding the minimum age aims to protect children's rights, which means that the fulfillment of basic rights or constitutional rights of can be implemented.

Protection of citizens, especially children, is said to be important because basically children are legal subjects of the national legal system that need to be protected, maintained and fostered to achieve child welfare. Children are the next generation. They reflect the nation's outlook on life and determine its development¹. So, the government and society have a responsibility to the social, juridical and political problems that exist in children. ²Efforts to protect children's rights need to be implemented as early or as soon as possible, starting from the fetus in the mother's womb and reaching the age of 18 years. These efforts are intended to realize the best life for children who are expected to be the successors of the nation.³

¹ Joko Sriwidodo dan Ramlani Lina Sinaulan, "The Role of Legal Analysis and Evaluation in Realizing the Formation of Better Legislation," *KRTHA BHAYANGKARA* 19, no. 1 (April 30, 2025): 188–206

² Abdul Rahman Kanang, "Perspektif Perlindungan Anak di Indonesia," *Al-Risalah: Jurnal Ilmu Syariah dan Hukum* 17, no. 1 (2017), hlm. 1

³ Saadatul Maghfira, "Kedudukan Anak Menurut Hukum Positif di Indonesia," *Jurnal Ilmiah Syari'ah* 15, no. 2 (2016), hlm.218

The state and government protect children's rights by issuing policies or laws and regulations to ensure child protection, one of which is regarding the provisions of marriage that are permitted to be carried out, namely when the age of the man or woman is 19 years old, this is on the basis that the child has reached adulthood. However, in addition to determining the age limit permitted for marriage, the government also issued an exception policy, namely the permissibility of underage marriage or when the age of the child has not reached the age of 19, provided that they obtain marriage dispensation from the court with urgent reasons that can be proven by evidence that supports these reasons as stated in Article 7 paragraph (2) of the Marriage Law.

The marriage dispensation policy has pro and con views in the midst of society, because with the exception of the marriage dispensation, it opens the way for children who want to carry out a legal marriage underage. The government made this policy basically in response to the many irregularities in underage marriage in Indonesia, so that the existence of marriage dispensation that can be obtained in court is an alternative and another way for the government to provide child protection, for those who have urgent matters so that marriage is required to be carried out so that there is no greater harm to children even though they are not yet adults or have reached the age of 19

The number of applications for marriage dispensation, especially for the Muslim community in the Religious Courts, in 2021 was 62,913 applications, in 2022 there were 52,094 applications and in 2023 there were 42,780 applications.⁴ In particular, according to data recorded in Plan Indonesia in 2024, the underage marriage rate in West Java reached 8.56 percent.⁵ So that the implementation of underage marriage is still being carried out. In the last 3 years, requests for marriage dispensation have basically decreased, but supervision and prevention of child marriage must still be prioritized, because even though underage marriage can be religiously valid based on the acquisition of marriage dispensation, underage marriage itself has a negative impact or can endanger women and children who will be conceived or born by these underage women. So, as an effort to protect the rights of the child in the determination of marriage dispensation, the Supreme Court established Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Dispensation Kawin. The regulation was established in order to avoid disparities in the decisions that judges make in court.

The government's granting of authority to the court in the acquisition of marriage dispensation, namely as an effort to prevent the marriage of children who do not have urgent reasons. Because in the process of examining the evidence provided by the applicant to the court, the judge will examine whether the child does have an urgent reason or not based on this evidence. Thus, the judge is authorized to determine whether or not to grant dispensation to marry, based on the judge's consideration during the examination process in court. So that in the examination process, the judge tries and is careful in giving the marriage dispensation determination to the child who applies for

⁴ "Laporan Tahunan Pelaksanaan Kegiatan Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung Republik Indonesia," t.t.

⁵ Amus Mustaqim, "Perkawinan Anak di Jawa Barat Masih Marak, Sukabumi Jadi yang Tertinggi," <https://www.radarjabar.com/jawa-barat/95112306067/perkawinan-anak-di-jawa-barat-masih-marak-sukabumi-jadi-yang-tertinggi>, 29 Maret 2024.

marriage underage. So that harm to children does not occur and children's rights can be guaranteed and protected from the determination that the judge will determine in the end. Therefore, this article will discuss how the judge's consideration of his or her wisdom and efforts in providing a determination to grant an application for dispensation to marry, so that a man or woman who is still underage can marry.

II. RESEARCH METHODS

The approach method in writing this article uses the juridical-normative method. The specification of this research is descriptive-analytical, namely describing legal topics with the facts studied, then analyzed systematically and thoroughly. This legal research is conducted by examining library materials or secondary data, consisting of primary, secondary, and tertiary legal materials. ⁶With data collection techniques of literature document studies (*Library Research*) related to the research topic, which includes techniques in telling, analyzing, and classifying an event, data or material in the research.⁷

Assessment of data that has been collected based on the concept of child protection, the concept of marriage arrangements and the concept of marriage dispensation obtained from secondary data both from various book literature, scientific journal articles, then the data is collected and analyzed as a whole based on qualitative juridical analysis, the results of which are presented or written descriptively (clear and detailed).

III. DISCUSSION

The Concept of Minimum Age Limit in Marriage and Dispensation of Marriage

According to Soedharyo Saimin, marriage is a contract between two people. In this case, the contract between a man and a woman has a material goal, namely to create a happy and eternal family (household). Meanwhile, Wirjono Prodjodikoro states that marriage is a necessity of life in society. Therefore, marriage requires clear provisions regarding its terms, fulfillment, extension, and termination. Marriage in the Islamic concept is a strong agreement between husband and wife to create peace and happiness in a family life filled with love in a way that is approved by Allah SWT.⁸

The implementation of marriage in Indonesia has been regulated in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, hereinafter referred to as the Marriage Law. In this regulation, it has been stated regarding the minimum age limit of a person who is permitted to enter into marriage. As in Article 7 paragraph (1) of the Marriage Law which states: "Marriage is only permitted if the man and woman have reached the age of 19 (Nineteen) years". The minimum age limit for

⁶ Soerjono Sukanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Pengantar* (Depok: PT RajaGrafindo Persada, 2021), hlm.13-14

⁷ Beni Ahmad Saebani dan Yana Sutisna, *Metode Penelitian (Edisi Revisi)* (Bandung: CV. Pustaka Setia, 2018), hlm. 112

⁸ Dwi Atmoko dan Ahmad Baihaki, *Hukum Perkawinan dan Keluarga* (Malang: CV. Literasi Nusantara Abadi, 2022), hlm.3-4

entering into marriage is the result of changes to the previous arrangement, where the minimum age limit for marriage for women was 16 years.

The Explanation of the Marriage Law states that the change in the minimum age limit for marriage was initiated based on the Constitutional Court Decision Number 22/PUU-XV/2017, with the consideration that "the differentiation of treatment between men and women has an impact on or hinders the fulfillment of the basic rights or constitutional rights of citizens, both those included in the group of civil and political rights as well as economic, educational, social and cultural rights, which should not be differentiated solely on the basis of sex, so such differentiation is clearly discrimination". Then the minimum age limit for women, which is equal to the minimum age limit for men, namely 19 (nineteen) years, is considered to be mature in body and soul to be able to enter into marriage in order to realize the purpose of marriage properly without ending in divorce and getting healthy and quality offspring.

The determination of the minimum age limit, which departs from the main issues in improving the quality of human life, including how the country is able to protect children, namely being able to understand the values of children's rights, being able to implement positive legal norms to be binding, being able to provide infrastructure, and being able to carry out management so that child protection in a country can be achieved.⁹ The determination of the age limit in marriage can also be seen because of the customs of indigenous peoples who still marry many of their children who have not reached the age of maturity, so the age limit is to eliminate children who are still in the stage of growth and development in marrying.¹⁰

Abdul Rahim Umran argues that age limits can be seen in terms of, among others:¹¹

- a. Biological. Biologically, sexual relations with a physically immature wife can cause suffering for the wife in biological relations, especially when pregnant and giving birth.
- b. Sociocultural. Socioculturally, married couples must be able to fulfill social demands, namely taking care of the household and taking care of the children.
- c. Demographic (population). Demographically, underage marriage is one of the factors that lead to higher population growth.

The scholars give the opinion that in Islamic law, determining the age limit of marriage can be returned to three foundations, as follows:¹²

- a. Age of marriage in relation to the age of majority (baligh)
- b. Age of marriage based on the generality of the meaning of the Qur'anic verses that mention the limits of the ability to marry

⁹ Mardi Candra, *Aspek Perlindungan Anak Indonesia: Analisis Tentang Perkawinan di Bawah Umur* (Jakarta: Prenadamedia Group, 2018), hlm.45

¹⁰ Moch Isnaeni, *Hukum Perkawinan Indonesia* (Bandung: PT Refika Aditama, 2016), hlm.56

¹¹ Mardi Candra, *Op.Cit.*, hlm. 48-49

¹² *Ibid.*, hlm.49

- c. The hadith that explains the age of Aisha r.a when she married the Prophet Muhammad.

Marriages that deviate from the minimum age restriction or can be referred to as underage marriages have been regulated in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, hereinafter referred to as the Marriage Law, which can apply for dispensation of marriage to the court.

Dispensation for marriage is divided into two words, namely dispensation and marriage. Dispensation is grammatically an exception to the general rule in certain or special situations. Then marriage can be said to be the process of forming a family bond between a man and a woman. Dispensation in legal terms refers to the condition that there is an exception from the general rule to a special rule, which makes it possible to violate certain prohibitions. Simply put, dispensation is the condition of allowing an action to be carried out that is actually prohibited or not allowed to be carried out under applicable law. The norm of dispensation described by Indarti is that it allows the implementation of special actions that in reality contradict the general rules. In that context, the word "exempted from obligation" indicates that the general rule cannot apply to certain (special) situations or conditions.¹³

The enactment of marriage dispensation basically means that underage marriage is allowed, but in obtaining this dispensation, it is not necessarily given freely, but on condition that there are urgent reasons and evidence to support these reasons, and those entitled to grant marriage dispensation are judges in court. For prospective brides and grooms who are Muslims, they can apply for marriage dispensation to the Religious Court. The Religious Court will grant permission to enter into marriage through the determination of an application for dispensation to marry after hearing testimony from parents, close family, or guardians.

Procedure for filing and hearing marriage dispensation cases in

When applying to the Court for marriage dispensation, a parent or guardian whose child wishes to enter into a marriage but is underage, must apply based on the jurisdiction of the applicant's residence. After applying for dispensation, the Court will examine and accept the dispensation and then proceed with the trial process by providing evidence and facts to convince the judge to grant the dispensation with a decision. Then a copy of this decision becomes the basis for the applicant to proceed with the marriage process.¹⁴

The administrative requirements that need to be fulfilled by the parents/guardians of their children who will marry underage, as regulated in Article 5 paragraph (1) of PERMA No.5 of 2019 include:

1. Application letter
2. Copy of Identity Card of both Parents/Guardians

¹³ Mohammad Hamsa Fauriz, *Dinamika Dispensasi Nikah* (Grobogan: CV. Sarnu Untung, 2024), hlm.9

¹⁴ Annisa Ayu Martiana, "Juridical Review of Minor Marriage Dispensation," *Hakim: Journal of Legal and Social Sciences* 2, no. 1 (January 22, 2024), p.166

3. Copy of Family Card
4. Photocopy of Identity Card or Child's identity card and/or child's birth certificate
5. Photocopy of Identity Card or Child Identity Card and/or birth certificate of prospective husband/wife
6. Copy of the child's last education certificate and/or school certificate from the child's school.

Article 5 paragraph (2) also states that "if the requirements as referred to in paragraph (1) letters b through f cannot be met, other documents that explain the identity and educational status of the Child and the identity of the Parent/Guardian may be used."

Administrative requirements that have been fulfilled in accordance with the provisions of PERMA Number 5 of 2019, then what the applicant needs to know is the parent or guardian as Article 9 states including:

1. An application for Dispensation of Marriage shall be submitted to the competent Court.
2. The Registrar shall examine the administrative requirements for filing an application for Dispensation of Marriage as referred to in Article 5, Article 6, Article 7 and Article 8.
3. In the event that the application for Marriage Dispensation does not fulfill the requirements as referred to in paragraph (2), the clerk shall return the application for Marriage Dispensation to the applicant to be completed.
4. In the event that the application for Dispensation of Marriage has met the requirements as referred to in paragraph 92), the application for Dispensation of Marriage shall be registered in the register, after paying the court fee.
5. Applicants who are unable to afford it may apply for Dispensation of Marriage free of charge (*prodeo*).

The examination of marriage dispensation cases regulated in Perma Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Cases has a different procedure than before. The judge examining the marriage dispensation case is a single judge (Article 1 point 11 of PERMA Number 5 of 2019). The judge is preferably classified as a Juvenile Judge. However, if the court does not have a judge with this classification, any judge may hear the marriage dispensation case (Article 20 of PERMA No. 5/2019).

Article 10 of PERMA Number 5 of 2019 stipulates that in the first hearing, the Applicant must present:

1. Child for whom marriage dispensation is sought
2. Prospective husband/wife
3. Parent/guardian of the husband/wife candidate

If there is a condition that the applicant is unable to present the party on the day of the first hearing, it will be postponed until the second hearing. However, if in the second hearing the Applicant is again unable to present the parties, it will be postponed to the third hearing. If the third hearing is also unable to present, then the application for dispensation of marriage is declared inadmissible. If the applicant does not attend the first hearing and remains absent at the second hearing after being properly summoned, the application is declared void.

In the process of examining a number of parties, the judge must consider the party's testimony in the determination of marriage dispensation. If not, it will result in the determination being null and void. When the judge explores the testimony of the parties, the judge identifies the matters as regulated in Article 14 of PERMA Number 5 of 2019, namely:

1. The child proposed in the petition is aware of and consents to the marriage plan
2. The psychological condition, health, and loneliness of children to enter into marriage and build a home life and
3. Psychological, physical, sexual, or economic coercion of a child/family to marry or give birth to a child

In addition to identifying the matters that have been regulated, the judge is required to explore information that the marriage of the applicant's child with his prospective husband/wife has no relationship that prevents marriage, either blood relations or inbreeding, is not under the proposal of another person, and there are no other obstacles related to the terms and conditions of marriage.¹⁵

When the judge examines and explores the testimony of the child for whom the dispensation is sought, in accordance with Article 15 of PERMA Number 5 of 2019, the judge may:

1. Hearing the child's testimony without the parents being present
2. Hearing the child's testimony through remote audio-visual communication examination at the local court or elsewhere.
3. Suggest that the child be accompanied by a chaperone
4. Request recommendations from psychologists or doctors/midwives, Professional Social Workers, Social Welfare Workers, Integrated Service Center for the Protection of Women and Children (P2TP2A), Indonesian/Regional Child Protection Commission (KPAI/KPAID)
5. Present an interpreter / person who is used to communicating with the child, in case of need

Judges' Considerations in Deciding to Grant Dispensation Requests at the Religious Court

The state, through the government that forms laws and regulations, stipulates the enactment of marriage dispensation that can be obtained from the court, but there are conditions that must be met that require urgent reasons and are proven by supporting evidence. With these requirements, marriage dispensation cannot be obtained freely. Then, the role of the court, which acts directly in determining whether the prospective bride and groom have fulfilled the requirements to obtain dispensation of marriage, is a process of protection of children's rights, so that the interests of children are maximally fulfilled.

¹⁵ Usman, "Dispensasi Kawin (Pasca Disahkannya Undang-Undang Nomor 16 Tahun 2019 dan Peraturan Mahkamah Agung RI No.5 Tahun 2019)," <https://www.pta-peganbaru.go.id/images/stories/DISPENSASI%20NIKAH.pdf>, 2023.

Basically, dispensation of marriage is intended for the benefit of children and the protection of children's rights when underage marriage cannot be prevented or postponed, with urgent reasons and supported by supporting evidence that the implementation must be carried out immediately even though the prospective bride and/or groom are under the age of 19 years or below the minimum age limit stipulated in the Marriage Law. However, in fact, with the existence of marriage dispensation, it cannot be denied that behind the positive impact or side of the enactment of the marriage dispensation, there is an impact or negative side that follows, likened to the two sides of a coin. This means that the enforcement has various consequences and further impacts when applied or not applied.

Therefore, the judge reviews each application for dispensation of marriage by considering all aspects that are inherent in the prospective bride and groom, such as readiness in terms of physical, psychological and economic aspects, as well as in terms of evidence that supports the reasons why the marriage must be carried out even though they are underage. The judge's consideration regarding the determination of the application for dispensation of marriage, refers to the negative impact that will be caused, if the judge rejects the application for dispensation of marriage submitted to the court. in the conditions and situation of the child applicant for dispensation of marriage who insists on having conjugal relations and in the end the woman becomes pregnant before carrying out the marriage. this is more detrimental to the prospective bride and groom and their families who have to bear the gossip and scorn of others for the disgrace that occurred.¹⁶

Judicial power is part of the Trias Politika which has absolute authority in providing decisions in the Court as an important organ in judicial power. Thus, in determining the application for dispensation of marriage, the judge has absolute authority to assess, examine and determine the terms and reasons for the application for dispensation of marriage. So, the judge in determining the application for dispensation of marriage has legal considerations so that the resulting determination can provide legal certainty by considering the principles of justice and expediency.¹⁷ Judges must use the principle of the best interests of the child in submitting a determination of a marriage dispensation application. This is expected to have a positive impact on both parties, both the prospective groom and the prospective bride. In addition, the most important thing is that judges must consider several conditions such as psychological, sociological, cultural, educational, and economic conditions of parents and children. In this case, the judge has considered the entire case with all the facts that occurred in the trial process.¹⁸

¹⁶ Diana Nanda, Ni Ketut Sari Adnyani, dan Dewa Bagus Sanjaya, "Implikasi Pemberian Dispensasi Perkawinan Terhadap Perkawinan Anak Di Bawah Umur Menurut Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan (Studi Kasus Di Pengadilan Agama Singaraja)," Jurnal Ilmu Hukum Sui Generis 3, no. 2 (2023), hlm.29

¹⁷ Sulhah Darwis, Lomba Sultan, dan Kurniati Kurniati, "Pertimbangan Hakim Dalam Menetapkan Dispensasi Nikah Di Pengadilan Agama Sungguminasa," Inspiratif Pendidikan 12, no. 1 (2023), hlm.279

¹⁸ Rose Benedict Angel dan Mia Hadiati, "Pertimbangan Hakim Terhadap Kepentingan Anak Dalam Mengabulkan Dispensasi Perkawinan Pasca Berlakunya Undang-Undang No. 16 Tahun 2019," UNES Law Review 6, no. 1 (2023), hlm. 3688

Specifically, that the judge at the Soreang Religious Court, which is the researcher's research site, stated that in deciding to grant a marriage license in the determination of an application for dispensation of marriage to a prospective spouse or prospective bridegroom and prospective bride who is still underage, even though the prospective bride is pregnant, that the examination of the facts and conditions of the prospective bride is prioritized, namely psychologically, the maturity of thinking to marry and the readiness of the prospective bride to run a household. Likewise, the prospective bridegroom who is still underage, an examination of the facts and conditions is carried out, such as psychology, readiness to become the head of the household and meet the needs of his prospective wife and the unborn child if his prospective wife is pregnant. Therefore, the judge of the Soreang Religious Court, in addition to looking at the facts seen and submitted to the Court, still attention to the interests of the child whether psychologically he is able to carry out the marriage or not.

Judges in considering the determination of marriage dispensation applications are basically regulated in Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications. Article 2 of PERMA Number 5 of 2019 states the principles of judges in adjudicating applications for dispensation of marriage, including:

1. Best interests of the child
2. The right to life and development of children
3. Respect for children's opinions
4. Respect for human dignity
5. Non-discrimination
6. Gender equality
7. Equality before the law
8. Justice
9. Expediency
10. Legal certainty

In examining cases, referring to Article 16 of PERMA Number 5 of 2019 that judges pay attention to the best interests of children by:

1. Carefully and thoroughly study the applicant's request
2. Examine the legal standing of the applicant
3. Exploring the background and reasons for child marriage
4. Exploring information related to whether or not there are obstacles to marriage
5. Exploring information related to children's understanding and consent to marriage
6. Taking into account the age difference between the child and the prospective husband/wife
7. Hearing testimony from the Applicant, child, prospective husband/wife, parent/guardian of the prospective husband/wife
8. Considering the psychological, cultural, educational, health, economic conditions of children and parents, based on recommendations from

psychologists, doctors / midwives, professional social workers, social welfare workers, integrated service centers for the protection of women and children (P2TP2A) or the Indonesian / Regional Child Protection Commission (KPAI / KPAD).

9. Considering the presence or absence of elements of psychological, physical, sexual and/or economic coercion
10. Ensure parents' commitment to take responsibility for their children's economic, social, health and education issues.

Article 17 of PERMA Number 5 of 2019 states that judges in determining applications for dispensation of marriage consider:

1. Protection and the best interests of the child in legislation and unwritten law in the form of legal values, local wisdom, and a sense of justice that lives in the community.
2. International conventions and/or treaties related to child protection

Judges are officials who have the duty to exercise judicial power in upholding law and justice in accordance with Article 24 of the 1945 Constitution, which is independent of the influence of any power in carrying out their duties. In determining the implementation of underage marriage, the judge is a very important influential party which has a decisive position and role, because the judge has a decision in granting permission or preventing underage marriage, which is the power of the judge. When judges decide whether or not to grant permission for underage marriage, they are often faced with difficult conditions, on the one hand judges are tasked with protecting children from underage marriage, but on the same hand preventing underage marriage can cause greater dangers such as allowing the potential for adultery and preventing the Applicant from maintaining the good name of the Applicant's family.¹⁹

Based on this, in Islamic law regarding the consideration of judges, especially in the Religious Courts when determining whether to grant or deny the applicant's marriage dispensation application, there will be two considerations for damage or loss. Among them are damage or loss due to underage marriage and damage or loss arising from the refusal of an application for dispensation of marriage. Judges are generally more frequent in granting applications for dispensation of marriage, with the consideration that the loss or damage that will arise as a result of the denial of an application for dispensation of marriage will be greater than the damage or loss due to underage marriage. This is in accordance with the rule "rejecting damage or loss must take precedence over achieving good".²⁰

¹⁹ Ahmad Zubaeri, Aizaturrohman, dan Muhammad Rofiq, "Pemeriksaan Perkara Dispensasi Kawin Oleh Hakim Tunggal Di Pengadilan Agama Batang Perspektif Masalahah," *An-Nawa : Jurnal Studi Islam* 4 (30 Juni 2022): 40–56, <https://doi.org/10.37758/annawa.v4i1.450>.

²⁰ Zamroni Wafa, "Dispensasi Perkawinan Perspektif Undang-Undang Perlindungan Anak dan Maqasid Al-Shari'ah," *Ad-DA'WAH* 21, no. 2 (2023), hlm.155

Analysis of Judges' Considerations in Marriage Dispensation Cases that were granted at the Soreang Religious Court

The following is an example of the determination of a marriage dispensation case at the Soreang Religious Court which is the place of research for researchers, including the following:

1. Determination of Marriage Dispensation at the Soreang Religious Court with Number 562/Pdt.P/2024/PA.Sor.

The case submitted by the Plaintiffs is that the children of the Plaintiffs are capable and ready for everything in ensuring the continuity of their household, and currently have their own income. Likewise, the prospective wife of the Plaintiffs' child understands and is ready to become a wife or housewife. The urgent reason for the Plaintiffs to immediately marry off their biological son with his prospective wife is because the relationship between the two has been established for quite a long time, which turns out that the Plaintiffs' son has fallen into things that are prohibited by religion, namely having intercourse, which resulted in his prospective wife being pregnant for 8 months or entering the age of 37 weeks.

Based on the petition of the Petitioners, the judge of the Soreang Religious Court gave a decision by granting a man to enter into marriage with his prospective wife. The determination of the judge to grant dispensation to marry, previously there had been matters of consideration for the judge to finally grant dispensation to marry. The judge's consideration is that the judge has given advice or explained the risks of underage marriage to the parties, considering that the Petitioners have submitted supporting evidence and witnesses. Then there is no element of coercion, sexual, physical or economic exploitation of children and marriage will protect the interests and rights of the couple. The judge also considered based on the legal facts that the prospective bride and groom had the ability both physically, psychologically, morally and materially to settle down in a household.

The judge further noted that even though marriage under the age of 19 can cause a number of disadvantages, but specifically in this case, the disadvantages that can be caused if the marriage between the couple is prevented or suspended, will result in greater and more concrete losses, namely because the two have had sexual intercourse like a married couple which has now caused the woman to become pregnant with a 37-week pregnancy. Therefore, considering both the normative review and the legal utility review, the petition of the Plaintiffs should be granted by granting marriage dispensation to the child of the Plaintiffs to marry his prospective wife.

2. Determination of Marriage Dispensation at the Soreang Religious Court with Number 575/Pdt.P/2024/PA.Sor.

The Applicant's case stated that the prospective bride was able and ready to become a wife or housewife. Likewise, the prospective husband was able and ready to

become a husband or head of household, and also had his own income. The Applicant's urgent reason for wanting to immediately marry off her biological daughter with her prospective husband is because the two of them have been in a relationship for approximately 1 year and are worried about slipping into sin and/or violating Islamic law and laws and regulations because the two of them love each other very much and are difficult to separate, so the Applicant requests that the judge of the Soreang Religious Court grant a marriage dispensation order to her child to enter into marriage.

The judge of the Soreang Religious Court gave a decision by granting the petition of the Plaintiffs and giving marriage dispensation to the child of the Plaintiffs to marry her prospective husband. The judge's consideration was that the judge had given advice or explanation about the risks of underage marriage to the Plaintiffs, the Plaintiffs' children, the Plaintiffs' children's prospective husbands, and the parents of the Plaintiffs' children's prospective husbands, but stated that they remained in their request. The Plaintiffs have submitted supporting evidence and witnesses. Then there is no element of coercion, sexual, physical or economic exploitation of children and marriage will protect the interests and rights of the couple. The judge also considered, based on the legal facts, that the prospective bride and groom had the ability both physically, psychologically, morally and materially to settle down in a household.

The judge further noted that the relationship between the prospective bride and groom had reached the level of an emergency to be married immediately so as not to cause harm. This is in line with the rule: "rejecting damage takes precedence over taking good". Therefore, the reasoning of the Plaintiffs is not contrary to legislation, customary law, local wisdom, or religion.

IV. CONCLUSIONS

Everyone has the right to carry out marriage to build a family. In the implementation of marriage in Indonesia, it has been regulated in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, hereinafter referred to as the Marriage Law to maintain order and provide legal protection. One of the aspects regulated in the Marriage Law is the regulation of the minimum age limit for entering into marriage, where the party is permitted to carry out marriage when they reach the age of 19 years. This age is believed that those who will enter into marriage have reached adulthood so that children can be protected from underage marriage.

In addition to regulating the minimum age of marriage, the government also provides a policy regarding exceptions for parties who have urgent reasons so that they are required to marry even though they have not reached the age of majority, provided that they obtain marriage dispensation from the court. In obtaining this dispensation, there are considerations for judges in determining whether to grant or refuse to grant marriage dispensation. Specifically, in the religious courts, these considerations include the best interests of the child and the damage or loss caused by the underage marriage and the damage or loss arising from the refusal of the marriage dispensation application. Therefore, it is necessary to exercise caution and discretion by judges in determining marriage dispensation.

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