


# Ahmad Baihaki

## The Legal Reasoning of Religious Court Judges in Granting Marriage Dispensations from the Perspective of Maqāshid Al-S...

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## The Legal Reasoning of Religious Court Judges in Granting Marriage Dispensations from the Perspective of *Maqāshid Al-Shari'ah*

Ahmad Baihaki\*, Rabiah Al-Adawiah  
Faculty of Law, Bhayangkara University

Email: [ahmad.baihaki@dsn.ubharajaya.ac.id](mailto:ahmad.baihaki@dsn.ubharajaya.ac.id),  
[rabiah.aladawiah@dsn.ubharajaya.ac.id](mailto:rabiah.aladawiah@dsn.ubharajaya.ac.id)

*\*corresponding author*

### Abstract

The issue of preventing child marriage and marriage dispensation to provide legal certainty in the process of marriage dispensation. Email: [ahmad.baihaki@dsn.ubharajaya.ac.id](mailto:ahmad.baihaki@dsn.ubharajaya.ac.id),  
[rabiah.aladawiah@dsn.ubharajaya.ac.id](mailto:rabiah.aladawiah@dsn.ubharajaya.ac.id)

*\*corresponding author*

Child protection remains a crucial legal problem. This research aims to examine the legal reasoning in the rulings of Religious Court judges regarding marriage dispensation applications and to what extent these rulings provide child protection from the perspective of *Maqāshid Al-Shari'ah*. This study employs normative legal research methods and analyzes legal issues from the perspective of *Maqāshid Al-Shari'ah*. Data collection was conducted through a literature review. The findings indicate that the legal reasoning in the rulings of Religious Court judges has not fully aligned with the spirit of the Marriage Law, the Child Protection Law, and the Supreme Court Regulation on Marriage Dispensation, which aim to prevent child marriage. There is a dilemma among judges between efforts to prevent child marriage and the legal reality where the child applying for marriage dispensation has met urgent reasons and supporting evidence. Most of the rulings by Religious Court judges on marriage dispensation cases align with the main objectives of Islamic law (*Maqāshid Al-Shari'ah*), which are the protection of religion (*hifz al-din*), the protection of life (*hifz al-nafs*), the protection of lineage (*hifz al-nasl*), the protection of intellect (*hifz al-aql*), and the protection of property (*hifz al-māl*).

Keywords: Legal Reasoning, Religious Courts, Marriage Dispensation, *Maqāshid al-syari'ah*

### Abstrak

Persoalan pencegahan perkawinan anak dan dispensasi perkawinan dalam rangka memberikan perlindungan terhadap anak hingga kini masih menjadi problematika hukum yang krusial. Penelitian ini bertujuan untuk mengkaji *legal reasoning* dalam penetapan Hakim Pengadilan Agama mengenai perkara permohonan dispensasi perkawinan dan sejauhmana penetapan hakim tersebut memberikan perlindungan terhadap anak ditinjau dari perspektif *maqāshid al-syari'ah*. Penelitian ini menggunakan metode penelitian hukum normatif dan menganalisis masalah hukum

dari perspektif *maqāshid al-syari'ah*. Pengumpulan data dilakukan melalui penelusuran data kepustakaan. Hasil penelitian menunjukkan *legal reasoning* dalam penetapan Hakim Pengadilan Agama belum sepenuhnya sejalan dengan spirit UU Perkawinan, UU Perlindungan Anak, dan PERMA Dispensasi Perkawinan yaitu untuk mencegah perkawinan anak terjadi. Ada dilema di kalangan para Hakim, antara upaya mencegah perkawinan anak dengan fakta hukum adanya kepentingan anak yang dimohonkan dispensasi perkawinan telah memenuhi alasan sangat mendesak dan bukti pendukung yang mencukupi. Sebagian besar penetapan Hakim Pengadilan Agama terhadap perkara dispensasi perkawinan telah sesuai dengan tujuan-tujuan utama hukum Islam (*Maqāshid al-syari'ah*), yaitu perlindungan agama (*hifz al-din*), perlindungan jiwa (*hifz al-nafs*), perlindungan keturunan (*hifz al-nasl*), perlindungan akal (*hifz al-aql*), dan perlindungan (*hifz al-māl*).

Kata Kunci : *Legal Reasoning*, Pengadilan Agama, Dispensasi Perkawinan, *Maqāshid al-syari'ah*

## Introduction

Marriage aims to form a happy and eternal family or in Islamic legal terminology it is known to form a *sakinah, mawaddah, warahmah* family.<sup>1</sup> Therefore, every person who is getting married must be carefully prepared, both physically and spiritually, in order to achieve the goal of marriage. It is feared that child marriage will have a negative impact on the future development of children and will not fulfill the protection of children's rights to survival, growth and development of children and avoid all forms of violence and discrimination. Apart from marriage at an early age, it has a negative impact on physical and mental health, reproductive health, such as birth defects, maternal death during childbirth.<sup>2</sup>

The birth of Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 has the spirit that the government, parents and/or guardians are obliged to prevent child marriages.<sup>3</sup> Even Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) confirms that child marriage is a form of criminal sexual violence. Explicitly, Law Number 1 of 1974 concerning Marriage (UUP) as amended by Law Number 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage regulates that every person, whether male or female, is only permitted to marry if they are 19 years old.<sup>4</sup>

The enactment of Law Number 16 of 2019 aims not only to eliminate gender discrimination regarding the marriage age limits for women and men, but is also based on the spirit of protecting the interests of children (best interest of children) by preventing marriages at the age of children.<sup>5</sup> Changing the marriage age limit for girls to the same as 19 years for boys is an effort to prevent the negative impacts of child marriage. These changes aim to ensure that women have physical and mental readiness

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<sup>1</sup> The purpose of marriage is stated in Article 1 of Law no. 1 of 1974 concerning Marriage and Article 3 of the Compilation of Islamic Law

<sup>2</sup> Ahmad Juhaidi & Masyithah Umar, *Pernikahan Dini, Pendidikan, Kesehatan Dan Kemiskinan Di Indonesia, Masihkah Berkorelasi?*, Khazanah: Jurnal Studi Islam dan Humaniora, Vol. 18, No. 1 (2020), hlm. 12-20. Lihat juga Shafa Yuandina Sekarayu & Nunung Nurwati, *Dampak Pernikahan Usia Dini Terhadap Kesehatan Reproduksi*, Jurnal Pengabdian dan Penelitian Kepada Masyarakat (JPPM), Vol. 2 No.1, April 2021: hlm. 42-43.

<sup>3</sup> There are differences in understanding regarding the concept of children between UUPA and UUHLM. In the general provisions of UUPA Article 1, it is stated that what is meant by child is a child under 18 (eighteen) years of age, including children in the womb. Meanwhile, the UUP states that child marriage is a marriage carried out under the age of 19 for which a marriage dispensation can be requested

<sup>4</sup> UU no. 16 of 2019 concerning Law Number 1 of 1974 concerning Marriage was born as a form of implementation of the Constitutional Court Decision Number 22/PUU-XV/2017 which ordered changes to the provisions on the marriage age limit regulated in Article 7 of Law Number 1 1974 concerning Marriage. The marriage age limit for girls, which was originally at least 16 years old in accordance with Article 7 of Law 1 of 1974 concerning Marriage, was changed to be the same as for boys with a minimum age of 19 years. The Constitutional Court judges considered that the difference in marriage age limits was contrary to the principle of equality before the law, which is the main characteristic of a democratic state based on law (democracy state under the rule of law) as regulated in Article 27 of the Constitution of the Republic of Indonesia. Indonesia in 1945. See Constitutional Court Decision Number 22/PUU-XV/2017.

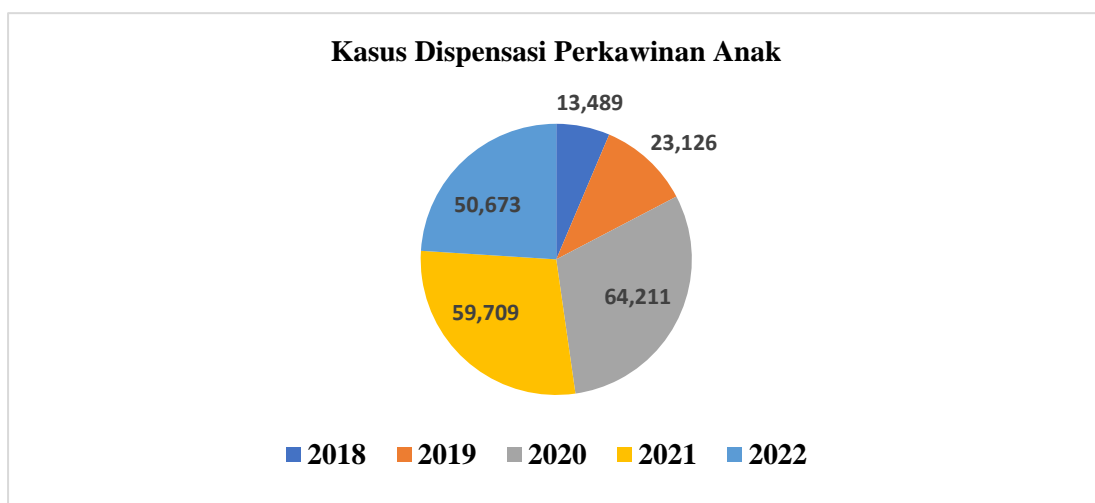
<sup>5</sup> Miftakur Rohman, *Dispensasi Perkawinan Dan Kebijakan Politik Hukum Di Indonesia*, MASADIR: Jurnal Hukum Islam Volume 03, Nomor 01, April 2023. hlm. 566-567. Lihat juga Trisadini Prasastinah Usanti, Xavier Nugraha, dan Dita Elvia Kusuma Putri, *Analisis Perubahan Politik Hukum Dispensasi Perkawinan Pasca Undang-Undang Nomor 16 Tahun 2019*, Journal Of Notarial Law (NOTAIRE), Vol. 4 No. 3, Oktober 2021, hlm. 479-485.

as well as wider opportunities to access education on an equal basis with men so that they can become human beings who can play an active role in community life.<sup>6</sup>

Meanwhile, Article 15 of the Compilation of Islamic Law (KHI) also has the same provisions as Article 7 of the UUP before the changes. Islamic law does not determine the exact age limit for marriage. Classical Ulama and contemporary Ulama see that religion in principle does not strictly prohibit underage marriage, but also never recommends it, especially if it is carried out without considering physical and mental readiness and the best interests of the child. As long as the marriage provides benefits to the children, then everyone has the right to marry.<sup>7</sup> This is in line with the formulation in the Marriage Law that even though the age limit is set at 19 years, in its provisions the UUP still grants the right to every child who wishes to marry under the age limit determined by law to still be able to do so by submitting an application for marriage dispensation to the court.<sup>8</sup>

In practice, the spirit of legal politics to prevent child marriage is still far from what was expected. Based on data from the United Nations Children's Fund (UNICEF) report, there is a phenomenon of marriage cases in Indonesia. The UNICEF report stated that in the period between 2008-2018 there was a prevalence of child marriage in Indonesia. In 2023, Indonesia will rank fourth in global child marriage with a total of 25.53 million cases.<sup>9</sup> This figure is one of the highest in the East Asia and Pacific region.<sup>10</sup> The practice of child marriage most often occurs among low-educated children and children from low-income families who are often found in rural areas.

Meanwhile, based on data from the Religious Courts Agency, it records the number of requests for dispensation over the last four five from 2018-2022.



<sup>6</sup> Holijah & Jariyah binti Abd Manaf, *The Importance of Increasing Minimum Age For Marriage In Indonesian Marriage Law*, Al-'Adalah, Vol. 16, No. 2 (2019), hlm. 427-428

<sup>7</sup> Moh Hatta, *Batasan Usia Perkawinan Dalam Perspektif Ulama Klasik Dan Kontemporer*, Al-Qānūn: Jurnal Pemikiran Dan Pembaharuan Hukum Islam 19, No. 1 (2016): 73-78. Lihat juga Samsul Hadi, Putusan Mk No.22 /Puu-Xv /2017 Tentang Permohonan Judicial Review Pasal 7 Ayat (1) Uu No. 1 Tahun 1974 Tentang Usia Perkawinan Dalam Perspektif Masalah, Ahwal, Vol. 11, No. 2, (2018). HLM. 74-75.

<sup>8</sup> Pasal 7 ayat (1) dan (2) UU No. 16 Tahun 2019 tentang Perubahan atas UU No. 1 Tahun 1974 tentang Perkawinan

<sup>9</sup> <https://news.schoolmedia.id/lipsus/Indonesia-Peringkat-Empat-Kasus-Kawin-Anak-di-Dunia-2552-Juta-Anak-Menikah-Usia-Dini-3898>

<sup>10</sup> <https://news.unair.ac.id/2021/01/05/fenomena-perkawinan-anak/?lang=id>

Based on this case data, there has been a drastic increase in cases of marriage dispensation in Indonesia, especially after the enactment of Law no. 16 of 2019 concerning Amendments to Law no. 1 of 1974 concerning Marriage.<sup>11</sup> Even though there was a decrease of 17.54% in 2022 compared to cases that occurred in 2021, when compared before and after the birth of the amended UUP, cases of requests for marriage dispensation increased by 100%. This shows that there is an anomaly between the hopes and objectives in the UUP as a result of changes that seek to tighten child marriage, but in fact cases of child marriage are increasing.

Various cases of child marriage practices that have been granted by the Court show that there is a juridical dilemma that influences the judge's decision. At a fundamental level, the 1945 Constitution in Article 28B paragraph (2) mandates that every child has the right to live, grow and develop as an asset for the nation's next generation. Meanwhile, other provisions in Article 28D emphasize that every person is given the right to form a family and continue their offspring through marriage as part of every person's basic rights which must be protected. In the legal reasoning of the judge's decision, there is a dilemma situation between the legal political spirit of the Child Protection Law which requires the prevention of child marriages and the provisions of Law no. 16 of 2019 concerning amendments to Law no. 1 of 1974 concerning Marriage which allows child marriage to occur if there is a very urgent reason. There is a dilemma between providing protection for children and the demands of practical reality where children are already trapped in promiscuous sex or getting pregnant out of wedlock.<sup>12</sup> In fact, marriages are not only carried out because of urgent reasons, but to form a happy and eternal family and prevent divorce.<sup>13</sup>

At this level, the judge's role is not easy in assessing legal facts with the legal provisions that have been regulated in law. This can be understood because the legal provisions in Law no. 16 of 2019 concerning Amendments to Law no. 1 of 1974 concerning Marriage and Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications only determine the reasons, conditions and guidelines for adjudicating marriage dispensation cases. Meanwhile, assessing whether or not there is a "very urgent reason" in the application for dispensation is entirely within the judge's authority to interpret it by prioritizing the best interests of the child.<sup>14</sup>

This study seeks to examine legal reasoning in judges' decisions, including the basic considerations used in assessing legal facts, the legal basis, and the legal interpretation methods used by judges in granting and rejecting marriage dispensations

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<sup>11</sup> <https://dataindonesia.id/varia/detail/dispensasi-pernikahan-anak-mencapai-50673-kasus-pada-2022>

<sup>12</sup> Ahdiyatul Hidayah and Mesfer Ali M. Alaklabi, *Aligning Legal Effectiveness with Children's Interests: A Study of Marriage Dispensation Decisions in Religious Courts of Amuntai*, Jurnal Indo-Islamika, Volume 13, No. 2, January-June 2023, hlm. 111-113.

<sup>13</sup> Nada Putri Rohana, Wilda Rahma Nasution, *Dinamika Pemberian Dispensasi Kawin Dibawah Umur Oleh Hakim Pasca Perubahano Undang-Undang Perkawinan*, AJUDIKASI : Jurnal Ilmu Hukum, Volume 7 Nomor 1, Juni 2023. hlm. 171

<sup>14</sup> In Article 3 of the Convention on the Rights of the Child, as ratified by the Indonesian Government based on Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child (convention on children's rights), it is emphasized that all actions and decisions are carried out on the basis of the best interests. for children.



in terms of the best interests of the child.<sup>15</sup> The extent to which these considerations are connected to the legal objectives (maqasid al-syariah) in Islamic law. This is important to do to offer a solution to legal issues regarding the granting of child marriage dispensations so as to provide justice, certainty and legal benefits for children.

### **Research methods**

This research is normative juridical research, namely research that seeks to examine legal concepts, principles, and principles as well as various statutory regulations that are relevant to the object of study. This research is included in the scope of library research. The data source used is secondary data consisting of primary, secondary, and tertiary legal materials in the form of statutory regulations, court decisions, books, and journals that are directly or indirectly related to the legal issues studied. This research is included in the scope of the type of literature review, namely researching and reviewing various literature or books that are related to the problem being studied. Meanwhile, there are three research approaches, namely; statutory regulatory approach (Statute Approach), conceptual approach (Conceptual Approach), and case approach (Case Approach). These three approaches are used to analyze legal issues comprehensively regarding the meaning of the concept of "urgent reasons accompanied by sufficient supporting evidence" as stated in Article 7 paragraph (2) of Law Number 16 of 2019 concerning Amendments to Law Number 1 1974 concerning Marriage which is used in the law, the legal objectives to be achieved in the marriage law, considerations and methods of legal interpretation used by judges in deciding cases of granting marriage dispensations to minors. The analysis is descriptive-analytical using a review of maqashid al-syari'ah in Islamic law.

### **Discussion**

#### **Legal Reasoning in Granting and Refusal of Marriage Dispensation**

All provisions regarding marriage conditions as regulated in Articles 6 to Article 12 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage is expected to achieve the goal of marriage, namely realizing the goal of marriage, namely forming a happy and eternal household based on Belief in the Almighty God. or in accordance with the purpose of marriage as stated in Article 3 of the KHI, namely forming a sakinah (tranquil), mawaddah (mutual love) and rahmah (mutual affection) family.

The age limit for marriage as regulated in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage which has set the marriage age limit for men and women at a minimum of 19 years aims to prevent child marriage from occurring.<sup>16</sup> Setting the minimum age limit for marriage aims to ensure that people who are going to get married can prepare the maturity of the prospective bride and groom as well as to minimize the risks of marriage and its impact on

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<sup>15</sup> Ahmad Rizza Habibi, *Dialektika Pembuktian Alasan Mendesak dalam Dispensasi Nikah dan Korelasinya terhadap Kepentingan Terbaik bagi Anak*, Artikel Website Resmi Mahkamah Agung, 26 April 2022

<sup>16</sup> According to Article 1 of Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Application Cases, a child is a person who is not yet 19 years old or has never been married.

education, health including the readiness of reproductive organs, psychological, psychological, sociological, cultural, economic and the potential for disputes and domestic violence.<sup>17</sup>

Even though various regulations attempt to prevent child marriage from occurring, the law still gives children the right to marry under the age of 19 as one of the rights of every person which is also guaranteed by law by giving the child's parents the opportunity to apply for marriage. request for marriage dispensation with very urgent reasons and sufficient supporting evidence.<sup>18</sup>

Article 7 paragraph (2) of the UUP as a result of the amendment stipulates that requests for marriage dispensation can only be granted if there is a "very urgent reason" accompanied by supporting evidence. In the explanation of the article, it is stated that "very urgent reasons" are defined as a situation where the parents of girls and/or boys have no other choice so they are forced to marry off their child. Meanwhile, what is meant by "sufficient supporting evidence" is that the party applying for a marriage dispensation must attach a certificate proving that the age of the bride and groom who wish to marry is still under the provisions of the law and a certificate from a health worker supporting the reason that the marriage is very important and urgent to do.<sup>19</sup>

The explanation mentioned in the UUP is a systematic interpretation that is still general in nature, thereby giving freedom to judges as the spearhead of law enforcement officials to carry out legal interpretations or legal findings (*rechtsvinding*) regarding whether there are or are not "very urgent reasons" in concrete case examinations in court. . At this level, precision and caution is needed for judges in considering legal facts and legal reasoning that will be used in deciding cases regarding applications for marriage dispensation.

1 The assessment of whether or not there are "very urgent reasons" in the request for dispensation is the judge's responsibility in law enforcement efforts. The judge will concretize the reasons and sufficient evidence based on the facts found at the trial. A request will be granted if the reasons and supporting evidence submitted by the applicant for dispensation can convince the judge that the reasons can be accepted. On the other hand, the judge will reject the request for dispensation if the request for dispensation does not contain very urgent reasons and the evidence presented does not support the reasons for the request at trial. The judge's main consideration in making decisions is to look at the best interests of the child to ensure the child's protection, care, welfare, survival, and growth and development.

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1 According to the provisions of Article 25 paragraph (3) of Law no. 48 of 2009 concerning Judicial Power, religious courts have the authority to judge, decide and resolve cases between people who are Muslim in accordance with the provisions of statutory regulations. In carrying out their duties, Religious Court Judges are obliged to uphold certain Islamic material or Islamic civil law which is within the authority of the Religious Court. One of the authorities of the Religious Courts as regulated in Law

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<sup>17</sup> Salma Mursyid, Nasruddin Yusuf, *Changes in Marriage Age Limits and Marriage Dispensations: A Study of Causes and Impacts on the Religious Courts in North Sulawesi*, Samarah: Jurnal Hukum Kelurga dan Hukum Islam, Vol. 6, No. 2 (2022), hlm. 975-996.

<sup>18</sup> Article 7 paragraph (2) Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage

<sup>19</sup> See the explanation of Article 7 paragraph (2) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage

no. 3 of 2006 concerning Amendments to Law no. 7 of 1989 concerning Religious Courts, namely marriage, which also regulates marriage dispensations.<sup>20</sup>

Religious Court judges can grant requests or reject requests for dispensation based on certain legal reasoning which is the basis for the judge's considerations. The judge grants a case granted by the judge if it is seen from the case and the legal considerations in accordance with the provisions of Islamic law and applicable legislation. On the other hand, the judge refused if he looked at the case and the legal considerations were not in accordance with the provisions of Islamic law or applicable legislation.<sup>21</sup>

Based on data in several court decisions, it shows that some judges accepted and rejected requests for marriage dispensation based on various legal considerations. The basic considerations used by the judge in determining the petition case consist of two things, namely consideration of the legal facts and the legal basis and thoughts of the judge. When considering the legal facts, the judge will examine whether or not there are "very urgent reasons" as the reason for the request for dispensation submitted by the parent or guardian. Several "very urgent reasons" which are often used as reasons by the applicant as well as being the basis for the judge's consideration in granting or rejecting the request for dispensation, include because the child's relationship with the prospective husband/wife is very close, there has been intimate relations, pregnancy out of wedlock, it is disturbing to be caught red-handed. by people who are alone together in a quiet place (khalwat).<sup>22</sup>

Firstly, the child's relationship with his or her future husband/wife is so close that it is feared that they will fall into adultery or other acts that violate religious norms.<sup>23</sup> This reason is often used as the basis for children's parents to apply for dispensation. This is also the basis for the judge's consideration in granting the marriage dispensation request. Second, the reason for having intimate relations outside of marriage.<sup>24</sup> During the trial, it was revealed that there were many cases of requests for dispensation due to out-of-wedlock pregnancies.<sup>25</sup> Pregnancy out of wedlock is mostly the main reason that drives parents to want to marry off their child to cover the shame and worry that their child will be born without a father. Women's parents often demand responsibility from men for causing their children to become pregnant out of wedlock.

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<sup>20</sup> Mardani, *Hukum Acara Perdata Peradilan Agama & Mahkamah Syariah*, Jakarta: Sinar Grafika, 2009, hlm. 53-60; Abdul Ghofur Anshori, *Peradilan Agama di Indonesia Pasca UU No. 3 Tahun 2006: Sejarah, Kedudukan, dan Kewenangan*, Yogyakarta: UII Press, 2007, hlm. 49-50

<sup>21</sup> Widihartati Setiasih, *Analisis Putusan Dispensasi Nikah Dibawah Umur Dalam Perspektif Perlindungan Perempuan*, Jurnal PPKM UNSIQ, Vol. 4, No. 3 (2017). Hlm. 235 -245

<sup>22</sup> M. Beni Kurniawan, Dinora Refiasari, *Penafsiran Makna "Alasan Sangat Mendesak" Dalam Penolakan Permohonan Dispensasi Kawin*, Jurnal Yudisial, Vol. 15 No. 1 (2022), hlm. 83-96.

<sup>23</sup> See Determination of the Kediri Religious Court Number 48/Pdt.P/2023/PA.Kdr, Determination of the Tahuna Religious Court Number 13/Pdt.P/2023/PA.Thn, Determination of the Sukamara Religious Court Number 64/Pdt.P/2023/PA. Now, Determination of the Jember Religious Court Number 1791/Pdt.P/2023/PA.Jr

<sup>24</sup> Bagya Agung Prabowo, *Pertimbangan Hakim dalam Penetapan Dispensasi Perkawinan Dini Akibat Hamil di Luar Nikah pada Pengadilan Agama Bantul*, Jurnal Hukum IUS QUIA IUSTUM, Vol. 20 No. 2 (2013), hlm. 300 – 317. Lihat juga hasil penelitian, BKKBN melaporkan terdapat 60 Persen Remaja Usia 16-17 Tahun di Indonesia Lakoni Seks Pranikah. Kalau diklasifikasi berdasarkan usia anak, BKKBN mencatat bahwa remaja pada usia 16-17 tahun ada sebanyak 60% remaja yang melakukan hubungan seksual diluar nikah, pada usia 14-15 tahun ada 20%, dan pada usia 19-20 ada 20%. <https://news.solopos.com/bkkbn-60-persen-remaja-usia-16-17-tahun-di-indonesia-lakoni-seks-pranikah-1703798>

<sup>25</sup> Sijunjung Religious Court Decision Number 201/Pdt.P/2023/PA.SJJ

3 Third, the reason is because she was pregnant out of wedlock.<sup>26</sup> Legal facts show that many cases of requests for marriage dispensation are submitted to the court due to pregnancy out of wedlock.<sup>27</sup> Most of the requests for marriage dispensation are due to pregnancy out of wedlock which ultimately forces the parents to marry off their children to cover their shame and avoid committing adultery again and other acts prohibited by religion.

Fourth, the child who was applied for with her future husband was arrested by the community because they were alone together.<sup>28</sup> Requests for dispensation for this reason often occur in Aceh. As a result, couples who are found by the community together with a man who is not their mahram will usually be married off because they are afraid they will fall into sin and adultery.

Fifth, because the child has dropped out of school. In some cases, children dropping out of school is one of the causes of child marriage.<sup>29</sup> Even though the government has regulated that children must study for 12 years until they graduate from high school, in fact there are still many cases of children dropping out of school for various reasons, including cost factors, children's lack of interest in going to school, and lack of parental attention. Children who have dropped out of school are often trapped in promiscuity. This situation encourages children's parents to marry their children early so that they do not fall into actions that are prohibited by law or religious teachings and at the same time reduce the burden on the family due to economic problems.

In order to ensure that examinations of marriage dispensation cases take into account the best interests of the child, in accordance with PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, the Judges have carried out steps in the examination process, namely; explore the background and reasons for child marriage, seek information related to the child's understanding and consent to be married off, hear statements from the applicant, children, prospective husband/wife, and parents/guardians of prospective husband/wife; taking into account the psychological, sociological, cultural, educational, health and 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).<sup>30</sup>

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<sup>26</sup> Penetapan Pengadilan Agama Manna Nomor 91/Pdt.P/2023/PA.Mna, Penetapan Pengadilan Agama Nomor 170/Pdt.P/2022/PA.Kdr, Putusan Pengadilan Agama Waingapu Nomor 2/Pdt.P/2024/PA.WGP, Penetapan Pengadilan Agama Bantul Nomor 192/Pdt.P/2023/PA.Btl; Penetapan Pengadilan Agama Bantul Nomor 48/Pdt.P/2023/PA.Kdr. <https://putusan3.mahkamahagung.go.id/direktori/index/kategori/dispensasi-nikah-1.html>

<sup>27</sup> Based on BKKBN's findings, there are more than 50 early childhood marriages that occur due to pregnancy out of wedlock. <https://www.cnnindonesia.com/nasional/20230118133119-20-901969/ribuan-anak-hamil-di-luar-nikah-bkkbn-nilai-pengetahuan-rendah>

<sup>28</sup> Determination of the Suka Makmue Sharia Court Number 250/Pdt.P/2019/MS.Skm.

<sup>29</sup> Children's education only reaches Junior High School (SMP) level and they do not want to continue their education. See Determination of the Sukamara Religious Court Number 64/Pdt.P/2023/PA.Skr, Determination of the Tahuna Religious Court Number 13/Pdt.P/2023/PA.Thn

<sup>30</sup> Article 16 Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications

In the process of examining a case in court, the judge will initially examine and adjudicate formal aspects regarding the legal standing of the applicant and the completeness of documentary evidence and witnesses from the party applying for marriage dispensation. After that, the judge will examine and adjudicate on the material aspects regarding the extent to which the urgent reasons for the request for marriage dispensation have been supported by documentary evidence and the witnesses have fulfilled the formal and material requirements, as well as statements from the parties regarding child protection.

This emphasis on urgent reasons and sufficient evidence is actually aimed at suppressing underage marriages. The applicant (parent or guardian) must prove to the judge that the reason is urgent so that it encourages the applicant to submit an application. Likewise, the applicant is required to bring sufficient evidence and show the judge that the child for whom the marriage dispensation is requested is fit for marriage. These reasons and evidence are the basis for the judge to accept or reject the proposed marriage dispensation.

PERMA on Marriage Dispensation explains that judges are obliged to consider many things in deciding cases regarding requests for marriage dispensation by prioritizing the best interests of the child. Apart from that, when examining a case, the judge is obliged to consider the reasons and supporting evidence presented in the trial process. However, this does not rule out the possibility that every case submitted to a religious court can be accepted or rejected because the judge has the authority to determine and decide the outcome of the application.<sup>31</sup> The results of these considerations constitute law because they have binding force as law because they take the form of a determination.<sup>32</sup>

Apart from considering legal facts regarding whether or not there are very urgent reasons and supporting evidence submitted, the judge also considers the legal basis, legal principles or legal rules to strengthen the legal reasoning in his decision. The legal basis used is Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage and explanations, Supreme Court Regulation Law Number 5 of 2019, and also the Child Protection Law.

Article 7 paragraph 2 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage in conjunction with Article 16 letter (h) of the Republic of Indonesia Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, and Article 26 Paragraph (1) number (3) Law Number 23 of 2002 as amended by Law Number 35 of 2014 and the second amendment to Law Number 17 of 2016 concerning Child Protection which states that parents are obliged and responsible for preventing marriage at the age of children. , must be understood within the framework of safeguarding and protecting the best interests of children where according to 2014 United Nations Children's Fund (UNICEF) data, women who give birth at the age of 15-19 years are twice as likely to die as women who give birth at an age above 20 years old and in this case the Petitioner's child is also 14 years old.<sup>33</sup>

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<sup>31</sup> Kamijan, *Studi Kritis Ditolak dan Diterima Dispensasi Kawin di Pengadilan Agama Muara Teweh*, Jurnal Sosial dan Sains, Vol. 1, No. 8, (2021), hlm. 762.

<sup>32</sup> Sudikno Mertokusumo, *Penemuan Hukum*, Yogyakarta: Liberty, 2009, hlm. 39.

<sup>33</sup> M. Akhlis Azamuddin Tifani & Ahmad Junaidi, Dispensasi Perkawinan oleh Hakim PA Ponorogo Perspektif Peraturan Mahkamah Agung Nomor 5 Tahun 2019, JELHUM: Journal of Economics, Law, and Humanities, Vol. 2, No.1, (2023), hlm. 45-55

In examining the case, the Judge carried out examination procedures in accordance with the mandate of Article 1 Paragraph (11) PERMA on Marriage Dispensation. During the trial, the judge heard statements from the child, parents as applicants, witnesses and related parties. After listening to this statement, the judge then gave advice to the applicant and the applicant's child regarding the risks that might arise from underage marriage in terms of education, readiness of the child's production organs, social, economic, psychological, potential disputes and domestic violence for children, as stated in mandated in Article 12 paragraphs (1) and (2) PERMA Marriage Dispensation. To strengthen this, the judge also received information regarding the results of assessments from the Social Service and PPPA regarding whether or not the child was suitable for marriage. In fact, even though advice has been implemented, these efforts are often unsuccessful.

The judges use the legal basis in the laws and regulations of the Marriage Law, Child Protection Law, PERMA Marriage Dispensation, and other related regulations. Apart from that, Religious Court Judges also use basic ideas in the Koran, Hadith, and fiqh rules that are relevant to cases of requests for marriage dispensation, such as:

الضَّرُّ يُزَالُ

Meaning: "harm must be eliminated."

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

This means "rejecting harm must be prioritized over attracting good."

إِذَا تَزَاحَمَتِ الْمَصَالِحُ قُدِّمَ الْأَعْلَى مِنْهَا  
وَإِذَا تَزَاحَمَتِ الْمَفَاسِدُ قُدِّمَ الْأَخْفُ مِنْهَا

Meaning: "If there are several good/benefit conflicts, then the greater good must take precedence. And if there are several dangers, damage (mafsadah) is formed, then the lightest mafsadah takes precedence."

تَصَرُّفُ الْأِمَامِ عَلَى الرَّاعِيَّةِ مَنْوُوطٌ  
بِالْمَصْلَحَةِ

This means: "The imam/government policy for the people must be based on maslahah."

Several fiqh rules are often used by judges in decisions to grant or reject requests for marriage dispensations. The decision judge granted the petition, the judge often used the rule "rejecting harm must be prioritized over taking harm." Many cases of applications for marriage dispensation are submitted because the applicant's child has a very close relationship with their partner or there has been sexual relations or pregnancy outside of marriage. The judge granted the request for this reason because he was feared that he would increasingly fall into acts that violate religious norms and disturb the community which could give rise to "vigilantes".

Some other judges rejected requests for dispensation from marriage for children under 16 years of age on the grounds that the children were not yet physically or mentally mature so it was feared that it would have a negative impact on the continuity

of household life which could lead to divorce.<sup>34</sup> The judge bases his considerations by assessing that if there are two harms (unfavorable conditions), then the judge chooses the harm that is fewer/lighter. According to the judge, refusing a marriage dispensation request could cause the applicant's child to commit adultery again and receive a negative stigma from society. Second, giving dispensation from marriage when the Petitioner's child is only 14 years old will create many risks ranging from reproductive health risks, immature physical and psychological conditions, an unsettled economy, the risk of dropping out of school, the risk of premature births which can cause defects in babies, even the risk of death of the mother and child, and the potential for disputes and domestic violence which can result in divorce.

Based on this description, it can be seen that the enactment of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage which changed the age limit for marriage to 19 years for women has actually increasingly resulted in the number of cases requesting marriage dispensation increasing. The existence of the provisions of article 7 paragraph (2) which require very urgent reasons in requests for marriage dispensation does not seem to help minimize the number of cases. This is partly because the provisions are not specific and unclear so that the requirements for very urgent reasons in a request for dispensation are left entirely to the judge's interpretation. Apart from that, the problem of requesting a marriage dispensation involves many problem factors, such as social, economic, cultural and educational factors. Even the Republic of Indonesia Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications which contains the spirit of limiting child marriage from occurring is also not completely effective.<sup>35</sup> This gives the impression that there is a contradiction between the hope of preventing or minimizing the occurrence of child marriages and the legal facts which show an increase in the number of child marriages in Indonesia.<sup>36</sup>

### **Analysis of Legal Reasoning in Determining Marriage Dispensations from a Maqashid Syariah Perspective**

In the doctrine of Islamic teachings, it is believed that all of Allah's provisions, both in the form of commands and prohibitions contained in the Al-Qur'an and the Hadith/Sunnah conveyed or exemplified by the Prophet Muhammad SAW, definitely contain wisdom and the aim of making human life happy in this world and the afterlife. Imam Al-Syatibi stated:

انَّ وَضَعَ الشَّارِعَ إِنَّمَا هُوَ لِمَصَالِحِ  
العِبَادِ فِي الْعَاجِلِ وَالْآجَلِ مَعًا

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<sup>34</sup> Takdir, Muhammad Tahmid Nur, & Muhammad Farhan Abdullah, *Implications of the Determination of Marriage Dispensation on Divorce Case (Case Study at Sengkang Religious Court)*, NAJAH: International Journal Law and Society, Vol. 1, No. 3 (2022), hlm. 209-210

<sup>35</sup> Ahmad Muqaffi, Rusdiyah, Diana Rahmi, *Menilik Problematika Dispensasi Nikah Dalam Upaya Pencegahan Pernikahan Anak Pasca Revisi Uu Perkawinan*, Journal Of Islamic And Law Studies, Vol. 5, No. 3, (2021), hlm. 361-377.

<sup>36</sup> Sonny Dewi Judiasih, Susilowati S. Dajaan, Bambang Daru Nugroho, *Kontradiksi Antara Dispensasi Kawin Dengan Upaya Meminimalisir Perkawinan Bawah Umur Di Indonesia*, ACTA DIURNAL: Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum Unpad, Vol. 3, No. 2, (2020), hlm. 203

This means: "Indeed, the syari' (shari'a makers) in enacting their laws aim to realize the benefit of their servants both in this world and in the afterlife simultaneously"

Based on this view, it can be understood that every legal regulation that is established aims to provide benefits to human life. This benefit is not only oriented towards achieving happiness in life in this world but also in the afterlife. Based on this view, Imam Al-Syatibi was the first to introduce the objectives of Islamic law with the concept of *Maqāshid al-syari'ah*.<sup>37</sup> Ibn al-Qayyim al-Jauziyah further explains more concretely the essence of the concept of maqashid shari'ah, namely efforts to take advantage and prevent damage with truth, justice and virtue, as well as explaining the road signs that must be followed before reason. man.<sup>38</sup> Not much different from Ibn Qayyim al-Jauziyyah's opinion, according to Abdul Wahhab al-Khallaf, the aim of Islamic law (maqāshid al-syari'ah), namely to safeguard human interests in this life by taking what is beneficial and rejecting what is detrimental to them.

In al-Syâtibî's conception, maqāshid al-syari'ah is related to three basic interests in human life, namely dharuriyyah (primary interests), hajiyyah (secondary interests) and tahsiniyyah (tertiary interests). If these interests or needs have been fulfilled then the benefit of human life will be realized.<sup>39</sup> Maqashid al-Syari'ah is directed to protect the five basic principles in Islamic law (al-Kulliyah al-khamsah), namely maintaining religion (*Hifz al-din*, soul (*Hifz al-nafs*), reason (*Hifz al-aql*), descendants (Hifz al-Nasl), and property (Hifz al-Mal).<sup>40</sup>

In the context of studies regarding legal reasoning in granting marriage dispensations in Religious Courts, it is important to review it from the perspective of maqāshid al-syari'ah as the legal goal to be achieved. This is done in order to understand the extent to which the granting of marriage dispensations to children by Religious Court Judges is in line with the principles, rules and legal objectives of Islamic law.

Based on the results of a study of several judges' decisions in granting and rejecting applications for marriage dispensations, it was revealed that the very urgent reasons used as the basis for the applicants were that the relationship between the applicant's child and the applicant's child's partner was very close, there had been sexual relations outside of marriage, and she had become pregnant outside of marriage. . Apart from looking at whether or not there are very urgent reasons, the Court Judge also considers the supporting evidence submitted by the child's parents as applicants.

In its implementation, judges have also carried out procedures for adjudicating dispensation cases by referring to the PERMA on Marriage Dispensation. PERMA on Marriage Dispensation in the provisions of Article 12 clearly states that a request for a marriage dispensation can be granted if the decision is in line with the best interests of the child. What is meant by the best interests of the child is that the decision can ensure that the child can grow and develop in accordance with his or her dignity. Therefore, the child's readiness to build a household physically, psychologically and

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<sup>37</sup> Abu Ishaq al-Syatibi, *al-Muwafaqat fi Usul al-Ahkam*, Mesir : Darul Fiqr, 1341, hlm. 15

<sup>38</sup> Ibn al-Qayyim al-Jauziyah, *I'lam al-Muwaqqi'in*, Juz III, Kairo: Dar al-Kutub al-Hadis, 1969, hlm. 177

<sup>39</sup> Abdul Wahhab Khallaf, *'Ilmu Ushul al-Fiqh*, Cet. III, Kuwait: Mathba' al-Nasyr, 1977, hlm. 198.

<sup>40</sup> Abu Ishaq al-Syatibi, *Ohlm. Cit.*, hlm. 25



economically, and prevention of all possible violence in the future, and prevention of bad stigma from society.<sup>41</sup>

All of Allah's commands and prohibitions contained in the Qur'an, as well as the commands and prohibitions of the Prophet Muhammad SAW contained in the Hadith, are assumed to be related to law, giving the conclusion that everything has a specific purpose and nothing is in vain. Everything has deep wisdom, namely as a blessing for humanity. Basically, the essence of the aim of syar'iat (law) or maqāshid al-syarī'ah is the benefit of humanity. In this regard, al-Syāthibi stated that:

Determination of applications for marriage dispensation has a tendency towards the benefit of maintaining offspring in the daruriyat level. The purpose of law must be known in order to develop legal thinking in Islam in general and answer legal issues that are not explicitly regulated by the Qur'an and Hadith.

The decision to accept or reject a decision is of course based on long-term goals that are in accordance with maqāshid al-syarī'ah. The judge's considerations regarding the protection of children's rights are of course in line with the provisions contained in the Child Protection Law and PERMA number 5 of 2019 and are also in accordance with what maqāshid al-syarī'ah will achieve, namely to maintain the benefit and consider the aspect of caring for offspring.

First, the determination of granting marriage dispensations to children who have had a close relationship with their partner, have had sexual relations outside of marriage, or have become pregnant outside of marriage is in line with maintaining the child's religion or protection of the religion (*hifz al-dīn*). If parents, guardians, or society are unable to prevent children from violating religious norms, such as often being alone together in places that are difficult to supervise or even committing adultery, then giving dispensation is in line with *hifz al-dīn* which can prevent the child's moral damage from occurring. Ignoring very close relationships that are difficult to control can harm children and become increasingly trapped in major sins that are hated by Allah.

Immoral acts or acts of adultery that result in pregnancies outside of marriage can give birth to children resulting from adultery. Children resulting from adultery are often stigmatized as 'illegitimate children' in society. According to Islamic law, children resulting from adultery have no lineage (descent or blood) relationship with their biological father. Even though currently illegitimate children can still claim support and inheritance from their biological father in court, their position is certainly not the same as that of legitimate children who are related to their father.

Second, the marriage dispensation is seen from the perspective of considering the protection of the soul (*hifz al-nafs*). Based on health science studies, it shows that early marriage has the potential to be bad for life safety, especially for the mother and the child she is carrying. Law Number 23 of 2002 concerning Child Protection explains that children should be protected from things that carry risks and negative impacts on children's development, both physical and psychological. Some of the risks of marrying underage children include:

1. Increases the chance of transmitting sexual diseases,
2. Unpreparedness of the reproductive organs is prone to causing miscarriage during pregnancy,

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<sup>41</sup> Aliya Karima, Nabila Luthvita Rahma, Abdurrohman Kasdi, Labib Nubahai, *Kepentingan Terbaik Anak Dalam Permohon Dispensasi Pernikahan: Sebuah Penafsiran Hukum Oleh Hakim*, Al-Syakhsyiyah: Journal of Law & Family Studies, Vol. 5 No. 2, December (2023), hlm. 128-130.

3. Increases the risk of death in mother and baby,
4. Risk of stunting in babies conceived by young mothers,
5. Increases the risk of depression, trauma and stress in partners
6. Vulnerable to domestic violence,
7. Vulnerable to divorce.<sup>42</sup>

Based on the legal facts found in the case in the court's decision, it was revealed that the judge did not actually rule out the risk of negative impacts that might arise from the marriage of children at an age below the provisions of the law. However, the judge has identified several things in accordance with the provisions of Article 14 PERMA Marriage Dispensation, such as examining the psychological condition, health and readiness of the child to enter into a marriage and build a home life; and identify the possibility of psychological, physical, sexual or economic coercion against the child and/or family to marry or marry off the child. Therefore, the Judge looked at the results of assessments from several related parties, such as the Social Service for Women's Empowerment and Child Protection (Dinsos PPPA), doctors and other necessary parties. To prevent psychological, physical, sexual and economic coercion in requests for dispensation, the judge asks the child directly during the trial. Based on these various considerations, as long as the request for marriage dispensation is submitted by prioritizing the protection and best interests of the child, the judge grants the request for dispensation. On the other hand, if the request is not supported by supporting evidence and information, the judge is likely to reject the request for dispensation.

Third, the marriage dispensation is seen from the perspective of offspring protection (hifz al-nasl). Most applications for dispensation are submitted on the grounds that there has been an out-of-wedlock pregnancy. This situation has raised concerns that children will be scolded, ridiculed and even kicked out by their parents. The parents of these children usually feel very stressed about their child's behavior which violates social and religious norms. Parents are usually very ashamed of their family and society regarding the situation that befell their child. To prevent violations of religious norms from continuing and cover up the shame of others, parents usually try to marry off their child to their partner.<sup>43</sup>

Apart from that, the condition of pregnancy experienced by children also causes psychological pressure. A weak psychological condition can affect the development of the fetus it contains. This situation will trigger the fetus to be born prematurely and so on. Providing a marriage dispensation to a child who has met the reasons and supporting evidence will prevent the child from continuing moral damage (mafsadat) and on the contrary will provide benefits to the child's condition. After the child conceived by the child applying for marriage dispensation is born, the status of the child born can be recognized as a legitimate child. Even if the child is already pregnant

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<sup>42</sup> Syakroni, *Pernikahan Dini Dan Dampaknya Terhadap Kesehatan Reproduksi Dan Keutuhan Rumah Tangga*, Jurnal Sosial dan Teknologi (SOSTECH), Vol. 1, No. 11, (2021), hlm. 1469-1470. Lihat juga Ahsandy Ramadhan Suardi, Imanuddin Abil Fida, *Analisis Dampak Pernikahan Dini Terhadap Kehidupan Keluarga Di Desa Sumberkedawungkecamatan Leces Kota Probolinggo*, USRAH: Jurnal Hukum Keluarga Islam, Vol. 4 No. 2, Oktober 2023, hlm. 164-165

<sup>43</sup> Mad Said, *Dispensasi Perkawinan Hamil Di Luar Nikah Pada Pengadilan Agama Parigi Menurut Undang-Undang Nomor 16 Tahun 2019 (Suatu Analisis Maqasid Syari'ah)*, Tesis Magister Hukum (M.H) pada Prodi Magister *Ahwal Syaksiyyah*, Pascasarjana Universitas Islam Negeri (UIN) Datokarama Palu 2023, hlm. 156-159

before marriage, if the child is married to a partner who has made her pregnant, then the child born will become a legitimate child. Providing dispensation in this context can provide legal protection for the child of the dispensation applicant and for children born later to that child. This is of course in line with the principles of sharia or Islamic law in the context of protecting or preserving offspring (*hifz al-nasl*).

Fourth, the marriage dispensation is seen from the perspective of considering the protection of reason (*hifz al-aql*). Marriage at an early age has the potential for children to fail to carry out their study obligations or attend 9 years of basic education. If marriage occurs during school age, the threat of dropping out of school becomes very large. Children's low education certainly has implications for a lack of knowledge which also influences the maturity of children's way of thinking and behaving in home life as well as in social life and the world of work. Therefore, providing dispensations can reduce opportunities to develop intellectual potential in developing knowledge and skills that support life.

In the case of a marriage dispensation, a child's relationship that is very close or a relationship that results in pregnancy out of wedlock can cause slander and unrest in society. As a result, children are often stigmatized and mistreated which actually has a negative impact on the child's mental development. If this is not stopped, it is feared that it will have implications for the destruction of buildings of honor, both for children, parents, families and the community in their environment. Apart from that, the psychological or mental readiness of the prospective bride and groom to face and accept all risks arising from acts of violating social and religious norms must be an important consideration in deciding marriage dispensation cases.

Based on the legal arguments regarding the determination of the marriage dispensation by the judge above, it can be interpreted that the Ponorogo Religious Court judge in handling the marriage dispensation application case has attempted to carry out progressive reasoning in the form of reading the potential mafsadat or damage that could potentially be caused if the marriage does not take place. This effort will have positive consequences in the form of maintaining the honor of all parties involved in the implementation of the marriage as well as the security of the psychological condition and mental readiness of the child which is related to the aim of protecting the mind.

Fifth, the marriage dispensation is seen from the perspective of consideration of property protection (*hifz al-māl*). In several decisions, it appears that the economic readiness factor is incorrectly stated by the dispensation applicant to confirm that their child or partner has sufficient economic means to raise a household. On the other hand, if the child or partner is not yet economically prepared, the judge asks the child's parents to provide temporary living expenses support so that they do not experience economic difficulties in carrying out household life. If this cannot be fulfilled, then granting a dispensation can cause difficulties for the child and their partner, which can result in disputes between the two of them which can lead to divorce in the future.

Economic assistance by the child's parents is very important in cases of child marriage. Children's economic unpreparedness will cause problems which will of course affect their home life. The judge's efforts in examining and adjudicating this case are of course by providing advice to the child and his parents in the process of economic assistance until they are able to support their family independently.

The case of requesting a marriage dispensation is a dilemma. On the one hand, the judge is required to protect children's rights and prevent child marriages, but on the

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2 other hand, the judge is faced with the fact that "whether the child wants to get married or not," he said. In such circumstances, the judge is more likely to be guided by the fiqh principle "avoiding harm rather than taking masalah", namely granting the request for marriage dispensation is seen as an effort to avoid greater harm, namely preventing children from committing adultery continuously rather than seeing the benefit of preventing child marriage from occurring by various arguments include reproductive health factors, the risk of children being born prematurely, economic problems or other reasons. According to the judge, reasons like this can be minimized by the results of examinations from other related parties which can support the results of the examination.<sup>44</sup>

The use of fiqhiyah rules is used by judges in every decision of the Religious Court which is declared accepted or granted. The judge's basis for using this rule is that rejecting harm must be prioritized, which is known to be the case in most cases encountered in applications for marriage dispensation here, namely because the child is pregnant and the child has a very close relationship with his partner. So accepting requests based on pregnancy and unrest in society is important because rejecting harm must be prioritized.

To minimize the occurrence of child marriage, comprehensive steps are needed from all parties, children, families, society and judicial institutions and social institutions related to child protection and social welfare. There needs to be socialization so that children, parents and the community have a good understanding and awareness of the law to prevent child marriage from occurring.<sup>45</sup> Apart from that, interconnection between institutions is also needed, both between related judicial institutions and participation from various other agencies. It is necessary to build a synergistic relationship between judicial institutions, both District Courts and Religious Courts, with other institutions or agencies that need to be involved in the framework of preventing child marriage, including; Social Service and PPA, KPAI and others. This new framework makes external non-judicial institutions capable of assisting and supervising the implementation of marriage dispensation.

## 2 Conclusion

In determining requests for marriage dispensation, the Religious Court Judges have used the legal basis in statutory regulations and Islamic law which originates from the Koran, Hadith, and the rules of fiqh or the opinions of ulama. The provisions of Article 7 paragraph (2) of the Marriage Law as a result of amendments regarding the reasons and supporting evidence for requests for dispensation, Article 14 of the Child Protection Law, and Article 14 in the PERMA on Marriage Dispensation have always been the legal basis in the laws and regulations that are always used. Apart from examining whether or not there are reasons and supporting evidence for the request for marriage dispensation, the Judge also carries out procedures for adjudicating dispensation cases using various information from the relevant parties, especially information from the results of the Social Services and PPPA assessments and doctors who support the request for marriage dispensation.

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<sup>44</sup> M. Akhlis Azamuddin Tifani & Ahmad Junaidi, *Ohlm. Cit.*, hlm. 45-55

<sup>45</sup> Humaeroh, Zakaria Syafei, Nurul Ma'rifah, *Formulation of Underage Marriage in The Perspective of Islamic Law and Legal Sociology*, Krtha Bhayangkara, Vol. 17, No. 3 (2023), hlm. 680-683

The considerations of Religious Court judges in adjudicating cases of applications for marriage dispensation are generally in line with the provisions of the Marriage Law, PERMA Number 5 of 2019 and are also in accordance with the objectives of Islamic law as *maqāshid al-syarāh*, namely to realize the benefit of human life, in particular children who will marry through a request for marriage dispensation. However, the court judge's decision to grant the marriage dispensation request is certainly not in line with the spirit of the legislation which requires the prevention of child marriage at an early age. However, if viewed from the perspective of *maqāshid al-syarāh*, the decision to accept a request for dispensation can be granted as long as the reasons, supporting evidence and supporting statements submitted are in line with the main objectives of Islamic law, protection of religion (*hifz al-din*), protection soul (*hifz al-nafs*), protection of descendants (*hifz al-nasl*), protection of the mind (*hifz al-aql*), and protection (*hifz al-māl*).<sup>46</sup>

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