

Analysis of Judge Considerations in Decision Number 0077/Pdt.P/2019/PA.Tnk concerning Marriage Dispensation and Its Implications viewed from *Mashlahah* perspective

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Abstract

Marriage dispensation is the granting of marriage permits to brides who are not yet of the age specified in the law with clear reasons, for example in this study dispensation is given to brides who have been permitted to marry by their parents, what is interesting from this research is the basic considerations of judges in giving perspective marriage dispensation *problem*. The main problem to be examined is the judge's consideration in decision Number 0077/Pdt.P/2019/PA.Tnk regarding the dispensation of marriage and its implications. This research is qualitative research with literature study (*library research*), characteristic *descriptive analytic*. The results of this study are: *First*, the judge's consideration is the most important aspect in determining a decision that contains legal certainty, justice, and contains benefits for the parties concerned and justice seekers. Viewed from perspective *problem* then the granting of a marriage dispensation in the decision is in accordance with *maslahah ad-daruriyyah* or fit for purpose *advice* to safeguard the five aspects of Islamic law, namely safeguarding religion, soul, intellect, lineage, and property which will certainly benefit the bride and her family, if this is not continued it will result in *mafsadah*. *Second*, Implications of the Judge's Decision Number 0077/Pdt.P/2019-/PA.Tnk regarding marriage dispensation has positive implications for the bride and her family, by granting permission to marry it will clarify the status of the child, avoid negative views from society and avoid acts adultery which is prohibited by religion.

Keywords: Advice, Decision, Judge Consideration, Marriage Dispensation



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INTRODUCTION

Marriage is an essential problem for human life, because besides marriage to form a family, marriage is also in human nature to fulfill their sexual needs. Sacredness is the human relationship with God. This is evident that all religions regulate the implementation of marriage with their respective regulations. (Wasman, 2011).

Meanwhile, according to Mohd. Idris Ramulyo's marriage can be seen from three perspectives, namely: social, religious, and legal. The social aspect of marriage is that in every society (nation), there is a general assessment that people who are married have a more respected (honorable) position than those who are not married. Meanwhile, from a religious point of view, marriage is something that is considered holy (sacred). Therefore, it is not surprising that all religions basically recognize the existence of the institution of marriage. (Muhammad Amin Suma, 2004) In the context of Islam, marriage is *sunnatullah* which applies to all of God's creatures, both humans, animals, and plants. All God's creatures are created in

pairs, as is the case with humans. This is in accordance with the words of Allah SWT in Q.S. Az-Dzariyat Verse 49 which reads:

وَمِنْ كُلِّ شَيْءٍ خَلَقْنَا زَوْجَيْنِ لَعَلَّكُمْ تَذَكَّرُونَ

It means: "And everything that was created in pairs so that you remember the greatness of God"(Al-Quran and Translated, n.d.)

In the view of Islam, marriage is not only a matter of legal action and has social respect in the eyes of society, more than that marriage also has religious values. That is why many people find it difficult to differentiate marriage from a religious and legal point of view when both are related to religion and Islamic law. Because in Islam, the law is only one aspect of the teaching system *dinul* Islam as a whole. (Boedi Abdulla, 2013)

Marriage will become increasingly clear and very important in its existence when viewed from a legal aspect, including Islamic law. According to Islamic law, marriage is seen as a legal act (*unlawful*), namely: "the actions and behavior of legal subjects that bring legal consequences, because the law has binding power for legal subjects or because legal subjects are bound by legal force". (Boedi Abdulla, 2013)

In the national context, marriage law or rules are discussed in Law Number 16 of 2019, with this Law all matters relating to marriage apply nationally including all religions, races, ethnicities, ethnicities in Indonesia are subject to these regulations .(Wasman, 2011) The regulation of marriage law does not stop with Law Number 16 of 2019 concerning Marriage, but marriage matters are also regulated in the Compilation of Islamic Law (KHI). The issue of marriage in the Compilation of Islamic Law (KHI) is more to be handled by judges in the Religious Courts. The birth of the Compilation of Islamic Law (KHI) was driven by a judicial technical need. (Umar Haris Sanjaya & Aunur Rahim Faqih, 2017) The Compilation of Islamic Law (KHI) is designed to be implemented as far as possible on a practical level of society. as its relevance and logical consequence, the design of the Compilation of Islamic Law (KHI) is considered and aspires to stand firmly on the foundation of internal plurality of Indonesian Muslim society, especially diversity(*diversity*) *jurisprudence* which are generally patterned into four major madhhabs covering *Hanafi*, *Maliki*, *Shafi'i*, and *Hanbali*.(Nur Yasin, 2008) With the Compilation of Islamic Law (KHI), the implementation of Islamic law in the Religious Courts can be uniformed, including those relating to laws or regulations that discuss marriage. (Umar Haris Sanjaya & Aunur Rahim Faqih, 2017)

Since the enactment of Law Number 16 of 2019 concerning Marriage, the legality of marriage according to religious law in Indonesia is decisive. If a marriage is not carried out according to the respective religious law, then the marriage is considered invalid. If a marriage is carried out in a court or civil registry office without being carried out according to certain religious laws, then the marriage is invalid. Likewise, marriages carried out based on customary law or non-religious beliefs, and not carried out according to procedures recognized by the government, are said to be invalid. Thus, a valid marriage is a marriage that is carried out according to the procedures that apply in a religion that is recognized in Indonesia. In Islam, a marriage is considered valid if it fulfills the conditions and pillars of marriage. (Wasman, 2011) The pillars of marriage in the Compilation of Islamic Law (KHI), namely: 1. Husband, 2. wife, 3. Still, 4. Two witnesses, 5. *Ijab* and acceptance.

In the context of the prospective bride and groom, one of the criteria or conditions stipulated by Law Number 16 of 2019 relates to the minimum age of the prospective bride and groom. Article 7 paragraph (1) states that marriage is only permitted at the age of 19 for men and 19 for women. This determination is based on the standard of physical and psychological maturity needed by the prospective bride and groom as the basic capital in navigating the household ship. (Wasman, 2011) Furthermore, if the age limit of each bride has not been met as explained, the prospective bride and groom should apply for dispensation marriage to the court appointed by the parents of the bride and groom or guardians of the bride and groom. Marriage dispensation is a leniency or waiver given by the Religious Courts to prospective bride and groom couples who will carry out marriages where the age of both or one of them has not reached the age specified by law. (Wasman, 2011)

On the plains of reality, even though the Compilation of Islamic Law (KHI) does not allow someone to marry under a predetermined age limit, we still encounter many marriages where the bridegroom is not old enough according to the provisions of the law. One example of the phenomenon that the author took was acted by Raysa bint Riki Antoni, a 15-year-old girl, and there are still many phenomena like this case with different motives, ranging from fear of slander to fear of sleeping alone. (Poerwa Dar Minta, 2011)

This phenomenon is certainly interesting to study more deeply related to the role of the Religious Courts in granting marriage dispensation. Marriage Dispensation is a letter of request for registration of marriage in a special court for prospective husband-wife couples who are under the age limit for marriage determined by the Marriage Law (Melinda Rahmawati & Heni Ani Nuraeni, 2021). Generally, judges use the basis *problem* to give the dispensation of the marriage. Maslahah is seen from the compatibility and consistency of the good assumption by reason with the purpose of syar'a in setting the law. (Hasan Baharun & Syafiqiyah Adhimiy, 2018) This is certainly not immediately allowed in the law *fiqh*, because after all the majority of scholars 'of the opinion that the basis *problem* This study uses several criteria, including that the maslahah must be clear and essential, the maslahah must be in accordance with the objectiveness *shara'*, *problem* is not contradictory to law *advice'* others, and should use *problem* it's in condition *storm*. (Amir Syarifuddin, 2009)

So far, research on marriage dispensation from the perspective of maslahah tends to discuss several issues. First, research on the perspective of marriage dispensation *problem* which emphasizes the permissibility of granting a request for a marriage dispensation if it does not conflict with the principle *shearing* sharia. This research was conducted by Agus Khalimi (Agus Khalimi et al., 2021). The two studies emphasize that the granting of a marriage dispensation is based on *maslahah mursalah* like a double-edged sword because it can bring benefits and harm. For this reason, the judge must be careful by considering the various things that contain it *problem* in deciding the request for dispensation. (Eka Gifriana et al., 2022). The three studies regarding the paradigm of marriage dispensation emphasizing the maslahah principle as the basis for granting requests for marriage dispensation are appropriate. This is since if it is not granted, there is a fear of adultery and other bad effects. (Adhari et al., 2022). None of the three studies have examined in depth related to contextualization *problem* in granting a marriage dispensation request. The focus in research is contextualization *problem* in

the request for marriage dispensation in the Tanjung Karang class 1A Religious Court case which is recorded in Decision No. 0077/Pdt.P/2019/PA.Tnk.

RESEARCH METHODS

This research is qualitative research with literature study (*library research*), analytic descriptive in nature, namely a research method by collecting data compiled, explained, analyzed, interpreted, and then concluded. (Zainudin Ali, 2011). The data source in this research is primary legal material, namely Decision Number 0077/Pdt.P/2019/PA.Tnk. This study uses *theoryproblem* as a legal lens. The analysis process is carried out by reading the legal considerations in the decision and then contextualizing it with various things that are the result of the decision.

RESULT AND DISCUSSION

A. Age Restrictions According to the Marriage Law

Like the regulations in religion regarding the age of marriage, even in positive law marriage has a minimum age limit for both women and men as set forth in Law Number 16 of 2019 Jo. Law Number 1 of 1974 concerning marriage. Law Number 16 of 2019 stipulates that the minimum age limit for both men and women is 19 (nineteen) years. This is stated in Article 7 Paragraph (1) which reads "marriage is only permitted if the man and woman have reached the age of 19 years". (Marriage Law, n.d.) the guardian parents of the prospective bride and groom are required to ask permission from the Religious Court which is called a marriage dispensation. The reason for the Law setting the minimum age for marriage is to consider several factors, namely, compulsory education in force in Indonesia is 12 years so that if the age of marriage is below 19 years, the educational requirement of 12 years will not be met. Another thing that dominates is that women's reproduction is just ready after the age of 20 so that the law regulates the minimum age of marriage is 19 years. (Hasto Wardoyo, 2019)

Child marriage will have a negative impact on the child's growth and development and will lead to the non-fulfillment of the basic rights of the child himself such as the right to protection from violence and discrimination, children's civil rights, health rights, educational rights, and children's social rights. (The Marriage Law), n.d.) For the Law to provide confirmation regarding the determination of the age limit for a person to carry out a marriage. If the rules of the law are violated, of course it will have a negative impact on the bridal couple which can be fatal, especially for women who are called wives in the household. This can be proven by several indications, namely:

- a) School opportunities and periods for self-development for girls are cut short and shorter than for boys. Even though basically the development of intellectuality, knowledge, talents, skills of boys and girls is of the same standard age.
- b) The domination of men over women in poor families has more and more justifications. Older husbands tend to feel more authorized in managing and deciding family policies.
- c) Relatively young marriage age and immediately pregnancy will be at high risk of the number of mothers dying during childbirth.
- d) At a young age, a woman's brain is immature and unable to bear the burden of marriage.

Marriages that are not in accordance with the provisions of the marriage law can make the population continue to increase and muzzle the next generation of the nation. Someone who has lost something may not be able to provide the same thing, how can someone who is still in care provide good care for their children.

Based on the description above, that the minimum age limit for marriage for men and women tends to be feared to have negative influences and impacts on both partners which should be based on psychological maturity and physical health. (Zaitunnah Subhan, 2008)

B. Judge's Consideration in Decision Number 0077/Pdt.P/2019/PA.Tnk Concerning Marriage Dispensation

The judge's considerations in the decision Number: 0077/Pdt.P/2019/PA.Tnk put forward the following matters: (Decision of the Supreme Court, n.d.)

- 1) That the Petitioner's daughter Raisya Binti Riki Antoni wants to marry a man named Ahmad Maulana Bin Ngademin but is not old enough according to the State rules because she is only 19 years old.
- 2) Whereas the Petitioner's child (Raisya Binti Riki Antoni) has been dating for 2 (two) years with (Ahmad Maulana Bin Ngademin) and insists on getting married because the Petitioner's child (Raisya Binti Riki Antoni) and (Ahmad Maulana Bin Ngademin) are due to mutual feelings.
- 3) Whereas the Petitioner's child (Raisya Binti Riki Antoni) and a man named Ahmad Maulana Bin Ngademin have agreed to marry.
- 4) That the conditions for the marriage of the Petitioner's child (Raisya Binti Riki Antoni) to a man named Ahmad Maulana bin Ngademin according to Islamic law have all been fulfilled, except for one condition, namely the age limit, which is still underage, which until now has not reached 19 years.
- 5) That between the Petitioner's daughter (Raisya Binti Riki Antoni) and a man named Ahmad Maulana Bin Ngademin. There is no prohibition to marry.
- 6) Whereas the Petitioner's family and parents have approved the wedding plan and there are no other parties who object to the planned marriage.
- 7) Whereas the Petitioner had registered the plans for the marriage of the Petitioner's child Raisya Binti Riki Antoni and with a man named Ahmad Maulana Bin Ngademin at the Office of Religious Affairs (KUA) in Bumi Waras District, Bandar Lampung City, but the KUA refused to carry it out on the grounds that the Petitioner's child (Raisya Binti Riki Antoni) is not old enough, as stated in the Marriage Refusal Letter Number B-270/Kua.08.09.18-/PW.01/09/2019, September 4 2019.
- 8) Whereas for the marriage of the Petitioner's child (Raisya Binti Riki Antoni) to a man named Ahmad Maulana Bin Ngademin to be carried out, the Petitioner requests that the Head of the Tanjungkarang Religious Court order the Penghulu at the KUA of Bumi sane District, Bandar Lampung City to carry out the marriage; (Decision of the Court Agung, n.d.)

Based on the above arguments and with some considerations from the Tanjung Karang Religious Court, the case of the Tanjung Karang Religious Court Number: 0077/Pdt.P/2019/PA.Tnk stipulates:

1. Granting the Applicant's application:
2. Giving dispensation to the Applicant to marry the Applicant's daughter named Raisya Binti Riki Antoni with a prospective husband named Ahmad Maulana Bin Ngademini
3. Burdened the Petitioner to pay court fees which until now have been calculated at Rp. 211.000,- (Two hundred eleven thousand rupiah)

Thus, this decision was handed down in a deliberative meeting of the Panel of Judges of the Tanjung Karang Religious Court on Tuesday 08 October 2019 AD to coincide with 09 Safar 1441 H, by us Dra. Hj. Nadimah as the Chief Judge of the Assembly and Drs. H. Salahuddin Haji Abbas, M.H. and Drs. H. A. Nasrul MD as Member Judge, and on that day it was also said in a hearing open to the public by the Head Judge of the Panel, accompanied by Member Judges assisted by Mahmilawati, S.H., M.H. as a Substitute Registrar and attended by the Petitioner, the Petitioner's Children, the prospective husband of the Petitioner's child, and the parents of the prospective husband of the Petitioner's child. (Decision of the Supreme Court, n.d.)

C. Analysis of Perspective Judge Considerations *No problem*

Underage marriage is a complex issue, so that in considering a marriage dispensation application, the Religious Courts must formulate considerations from various perspectives, including considerations *syar'i*, juridical, sociological, psychological, and health. The Religious Courts in considering a request for a marriage dispensation must also include consideration of the objectives of Islamic sharia (*maqashid syari'ah*) (Ahmad al-Raisuni, 1999), both in terms of existence (*janibu al-wujud*) through the existence of an order, or in terms of the absence of an order (*janibu al-'adm*) with the prohibition.

Legal obligations in Islamic Shari'ah with the aim of benefiting humans, this goal consists of three levels, namely first, *al-daruriyyah*, is with a purpose that must be taken care of in order to create worldly and spiritual benefits, if the purpose is not achieved, then the benefits will not be realized at all, rather it will be in the form of damage (*mafsadat*). Second, *al-hajiyyah*, goals that must be maintained to provide relief for humans, if these goals are not achieved, then humans will experience difficulties (*hard work*). Third, *al-tahsiniyyah*, is a goal that must be achieved to realize good ethical and moral standards (*morals*) in human life. (Abu Ishaq Ibrahim bin Musa bin Muhammad al-Lukhmi al-Syathibi, 1998) Each of these goals includes 5 main things, namely first, maintaining religion (*hifzu al-din*). Second, take care of the soul (*hifzu al-nafs*). Third, take care of offspring (*hifzu al-nasl*). Fourth, take care of property (*hifzu al-mal*). Fifth, take care of your mind (*wisdom*). (Ahmad al-Raisuni, 1999) The purpose of Islamic law is sometimes achieved by doing (*janibu al-wujud*) something or by leaving something (*janibu al-'adm*) which is prohibited.

No problem is one of the judge's references in deciding matters. benefits that have the same purpose as *advice* to create benefits and avoid harm based on existing conditions. In setting the law in the Religious Court, the judge cannot be separated from the Islamic shari'ah, cannot be based on lust or mere pity. So, in setting the law, the judge must reflect the five

aspects of purpose *advice*' as well as rejecting all forms of harm related to the five aspects of purpose *advice*' such. (Ahmad al-Raisuni, 1999)

As for what the author means in the judge's consideration is a basis in determining a case submitted to him. The judge's considerations contain logical-rational grounds, reasons, and considerations. However, the judge's considerations also contain other considerations which are interpretations and legal constructions for judges in dealing with the disputes they are trying. The description of the judge's considerations in the decision should be compiled in a systematic and comprehensive manner. So that the judge's consideration is a series of all stages of the judge's thinking from the case he is trying to get a sense of justice for justice seekers. So that in this way justice seekers understand the judge's considerations in granting a case.

Judges in trying marriage dispensation cases do not always grant the request, although according to data submitted by Deri Fahrizal Ulu, *Child Protection Officer* UNICEF Indonesia that, more than 90% of marriage dispensation applications are granted by the court. (Agus Khalimi et al., 2021). Among the considerations presented by the Religious Court in granting the application for marriage dispensation is because the application is justified *syar'i*, juridical, and sociological including:

- a) Children who are requested for dispensation from marriage, if the man has enough work and income and if the woman is used to doing household activities.
- b) The families of both parties have mutually agreed to their son's marriage.
- c) Based on the legal facts at trial, the relationship between the two prospective bride and groom is so close, there are indications that if the marriage is not carried out, things that violate religious norms will occur.
- d) The bride and groom have no obstacles in common *syar'i* to get married. (Agus Khalimi et al., 2021)

The judge's consideration when rejecting the application for marriage dispensation is when the judge does not find legal facts that form the basis of the application *syar'i*, juridical, and sociological to be granted. Determination of the dispensation of marriage must be imposed by considering the possibility of the smallest harm from various other harms, in accordance with the rules of fiqh which means "*when faced with two harms, avoid the greater harm by choosing the lesser harm between the two*". (Ahmad al-Raisuni, 1999)

Granting a marriage dispensation request or rejecting the request, the judge will be faced with a dialectic of considerations between the two possible harms. The panel of judges must consider carefully from various aspects of consideration, both from the perspective of considerations *syar'i*, juridical, sociological and health.

From the various aspects of the considerations obtained at the trial, the panel of judges also needs to consider these aspects *maslahah* to stipulate a request for dispensation from marriage because the age limit provisions are not specified in *nash*, but content *maslahah* hits in line with the action *advice*' who want to realize the benefit for humans (both bride and groom and family). Draft *maslahah* which is contained in the rules of majority jurisprudence is considered by the judge in determining the marriage dispensation application. (Agus Khalimi et al., 2021)

In stipulation number 0077/Pdt.P/2019/PA.Tnk, that the Majelis Hakim had advised the applicant to postpone his child's marriage until his child reached the age of 19, but was

unsuccessful and the applicant remained in his stance. The applicant's request, the content and intent of which was maintained by the applicant, was reinforced by the statement of the applicant's child who stated that he wanted to marry his future husband, Ahmad Maulana Bin Ngademin, but was rejected by the Office of Religious Affairs (KUA) of Bumi Waras District, Bandar Lampung City on the grounds that he was not old enough. At trial, statements were heard from the families that had blessed the bride and groom to be married and had even applied and the families of the two brides were ready to guide the bride and groom when they were already married. This statement was corroborated by witnesses at trial.

Based on the results of the research and consideration, the Judge granted the application and gave a letter of marriage dispensation to the applicant's daughter (raisya) to marry her prospective husband (Ahmad Maulana), among others:

- 1) The intent and purpose as well as the reason for the applicant submitting a marriage dispensation application which principally wants to marry off their child who is not old enough.
- 2) Conciliation, that the Judge has advised the applicant to abandon his intention and reconsider his application, but to no avail.
- 3) Legitimate documentary evidence, based on the documentary evidence submitted by the applicant, proves that the applicant is the bride's parents.
- 4) The statements of the two prospective brides and the parents of the prospective bride stated that they had wanted to get married for their children and had even applied but were rejected by the Office of Religious Affairs (KUA) of Bumi Waras District, Bandar Lampung City. That the prospective bride and groom do not have an affinity, marriage, breastfeeding, or other relationship that could hinder the validity of the marriage. And the parents of the bride and groom have approved and are ready to guide.
- 5) If the witnesses submitted at trial have sworn an oath according to their religious procedures, and what information they experienced themselves, then formally the testimony is considered valid as evidence.
- 6) The legal facts found, based on the description, facts were found at the trial which are basically as follows:
 - a) The applicant's child is 15 years old, thus physically and spiritually not yet mature enough to enter a marriage.
 - b) The two prospective bride and groom have stated that they love each other and wish to get married and have even proposed.
 - c) The parents of the prospective bride and groom have stated that they are ready to guide the bride and groom and are responsible for the bride and groom's household.
 - d) Between the two prospective bridegrooms there is no relationship of lineage, marriage, breastfeeding, or anything else that hinders the validity of the marriage.
- 7) The Judge's conclusion from the facts found that based on these facts the Judge considered that the applicant's child was ready to enter marriage. Based on all of these considerations and the conditions for marriage as stipulated in Article 6 paragraph (1) and (2) of law number 1 of 1974, in conjunction with Article 15 paragraph (2) and Article 16 paragraph (1) and (2) of the Compilation of Islamic Law has been fulfilled,

but because the age of the prospective bride has not been fulfilled, the Majelis Hakim is of the opinion that in order to prevent acts of sin and harm, it is necessary to give dispensation to the applicant's child to carry out the marriage with her future husband as stipulated in Article 7 paragraph (2) of the Law Marriage Law.(Supreme Court Decision, n.d.)

Juridical review based on the Marriage Law, the age limit for marriage must indeed meet the applicable requirements, but judges may consider it from the legal aspect. *Problem*-his. In the process of determining the dispensation of marriage basically refers to the reasons of the applicant and the testimony of the witnesses at trial. In this case, the judge must always consider based on the facts and all available information and then examine it carefully and then decide whether to grant the application for a marriage dispensation or not.

The judge's considerations are not only addressed to justice seekers but are addressed to God Almighty. The judge is responsible for the decisions and decisions he makes, that responsibility will be a change in the integrity of the judge in deciding a case which will have an impact on public trust in the judiciary. Of course, this must be supported by good and correct legal arguments for the Judge in deciding the case. According to M. Yahya Harahab as quoted by the Religious Court magazine team which stated:

"Legal considerations are the first element of a decision, for this reason judges must understand how and methods to make good and argumentative legal considerations. In addition, it is necessary to renew the way of thinking of judges in resolving a civil case in accordance with existing legal considerations. ("Highlighting the Crown of Religious Court Judges," n.d.)

So, based on this opinion, the author views the importance of the judge's consideration in deciding a case. However, it should also be remembered that one of the objectives of Islamic law is to create goodness and avoid it *mafsadah*, if an act that has not been committed is strongly suspected of causing *mafsadah* (damage), then prohibited things that lead to these actions, this method is known *sadd adz-dzari'ah*. Among the legal provisions developed by the scholars are: *sadd adz-dzari'ah* and *fath adz-dzariah*. Method *sadd adz-dzariah* is a preventive method to prevent something that has a negative impact from happening or can be used to avoid it *mafsadat* at the *nash* right and of course. Therefore, the content of the Judge's considerations in the decision if reviewed with theory problem is in line with action *advice'* who want to create benefits for the people, especially the bride and groom and their families. Draft *problems* contained in the fiqh rules are taken into consideration by the judge in determining the decision. Because there is no prohibition in Islamic law to marry at an early age, it's just that both men and women are allowed to get married if they have *puberty* and already have perfect skills. The judge who determined this case believed that if the request was granted it would have positive implications for the bride and groom and their families or at least avoid even greater harm.

The Judge of the Class 1 A Religious Court of Tanjung Karang in determining the application for marriage dispensation saw the benefit aspect for the prospective bride and groom who will marry based on the reasons of the applicant and the testimony of the witnesses at the trial, even though the marriage dispensation has been regulated in the Marriage Law. Judges

cannot be separated from principles *problem* what is in the rule *fiqh* which explains that all things related to basic human needs that bring benefit or goodness, must be taken and carried out. In determining the decision number 0077/Pdt.P/2019/PA.Tnk regarding marriage dispensation, when viewed from the reasons of the applicant and the testimony of the witnesses at the trial, there is already an interest in accordance with the theory *maslahah ad-daruriyyat*.

In determining a marriage dispensation permit, the judge has the right to review the applicant's reasons for submitting a marriage dispensation application, even the judge has the right to provide input to the applicant regarding the impact that will occur if the application is granted. As in the considerations in the decision number 0077/Pdt.P/2019/PA.Tnk. the judge has given input to the applicant, but the applicant still wants to continue his child's marriage. Therefore, if the contents of the application are in accordance with the provisions(*emergency*) and conditions that have been determined. And if the application for dissolution of marriage is urgent and proven, then the judge can grant the request so that it does not cause *mafsadah* later.

The author argues if viewed from perspective *problem* then the granting of the request by the judge is an appropriate determination, because there is an urgent interest in the reasons for the application and it is proven. This is in accordance with the concept of marriage dispensation and *problem* that resisting damage must take precedence over achieving benefit. In this decision a judge is allowed to grant a request because it has fulfilled the aspects *maslahah ad-dharuriyyah* namely *maslahah* related to basic human needs both in this world and in the hereafter. This benefit is known as maintenance *al masalih al-khams* (religion, soul, intellect, lineage, and property). (Abu Ishaq Ibrahim bin Musa bin Muhammad al-Lukhmi al-Syathibi, 1998)

D. Implications of Judge's Decision Number 0077/Pdt.P/2019/PA.Tnk Perspective *Mashlahah*

The family is the smallest unit in society, the hope that every couple always wants is to establish a *sakinah*, *mawaddah* and *rohmah* family. The harmony that every married human being craves does not necessarily just flow without any obstacles. (Sobri Mersi al-Faqih, 2015) Harmony in the household is necessary so that the household remains intact without conflict and divorce. However, in fact, marriage, which is expected to always provide a sense of comfort and peace in the family, is sometimes tested with various problems. So that in this case each partner is required to be able to control their emotions. (Sobri Mersi al-Faqih, 2015)

The implications of marriage at a young age that he is worried about are: *First*, adds to the burden on parents, this happens because children who are married are not yet economically, emotionally and psychologically mature so that children who are married still really need guidance from their parents, besides that at the age of their children they do not have a definite job to meet their needs. his family so that these needs are still borne by his parents. This means that the burden on parents is not reduced, but rather increased. *Second*, the granting of permission to marry at a young age will lead to a lack of independence for the couple, this can be seen from the couple at a young age tend to live with their parents because they do not have their own place to live and household chores are still often done by their parents because the wife who married the child is not yet proficient in doing it all. Furthermore, for work problems,

they still follow directions from their parents because the minds of children are not yet mature to think about business opportunities. *Third*, with the dispensation given by the Religious Courts for child brides, it will increase the divorce rate higher. It is undeniable that married couples who marry underage do not have good emotional maturity and are immature physically and mentally so that divorce will easily occur for married couples who marry underage because they are more concerned with high selfishness and unstable thinking. Furthermore, marriage for children or marriage under the minimum age also results in high levels of domestic violence (KDRT). Domestic violence (KDRT) arises due to the emotional immaturity of each partner so that it is difficult to control emotions which results in acts of violence by partners in the household. (Sobri Mersi al-Faqih, 2015)

As for the brief case on the determination of the Majelis Hakim number 0077/Pdt.P/2019/PA.Tnk, the husband and wife submitted a request for dispensation from marriage for their children at the Tanjung Karang Class 1A Religious Court. In his application, a husband and wife called the applicant, then the applicant submitted a marriage dispensation application for their child (Raisya Binti Riki Antoni) who wished to marry her future husband (Ahmad Maulana Bin Ngademin) but was rejected by the Religious Affairs Office (KUA) Bumi Waras City Bandar Lampung because they have not met the age specified in the Marriage Law.

During the examination of the case, the applicant himself came to the Tanjung Karang Class 1 A Religious Court facing trial, then the panel of judges attempted to advise the applicant and provide views on the applicant to discourage him from requesting a marriage dispensation, and the applicant's children who requested a marriage dispensation, future husband, and the families of the bride and groom to find out the impact of underage marriage that will occur. However, the efforts made by the Majelis Hakim were not successful and the applicant remained in his position.

The panel of judges at the Tanjung Karang Class 1 A Religious Court in their legal considerations stated:

"That the panel of judges has advised the applicant to reconsider his application, but the applicant remains in his stance."

The panel of judges then considered that the applicant's child already wanted to get married, had been dating her future husband for 2 years. So that the panel of judges is of the view that it is necessary to get married immediately to avoid acts that are prohibited by religion. The opinion of the panel of judges is in accordance with the words of Allah SWT in Q.S. An-Nur verse 32 which reads:

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ ۖ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ ۗ وَاللَّهُ وَاسِعٌ عَلِيمٌ

And marry the unmarried among you and the righteous among your male slaves and female slaves. If they should be poor, Allah will enrich them from His bounty, and Allah is all-Encompassing and knowing.

Based on the description above with the granting of a marriage dispensation application to marry off the applicant's child based on perspective *problem* proves that the implications of Decision Number 0077/Pdt.P/2019/PA.Tnk regarding marriage dispensation have positive implications for both the bride and groom who are getting married and also their families, by granting permission to marry it will clarify the status of children, avoid negative views from society and avoid committing adultery which is prohibited by religion. In accordance with the rules of fiqh *problem* which means "When faced with two harms, avoid the greater harm by choosing the lesser harm" even though the prospective bride and groom are not yet of the age set by the Marriage Law. The child's emotional maturity is expected to cause disputes in the household, but the testimony at trial explains that the parents of the bride and groom are ready to guide the household of the child who will get married and be responsible for his family. Based on the legal facts that happened that the bride and groom were so close and often alone together, the judge considered various aspects, both *syar'i*, juridical, sociological, psychological, and health, that the marriage is very urgent to take place to realize the goals of Islamic law (*maqashid al-syariah*). The goals are in levels *maslahah ad-dharuriyyah* or at least *al-hajiyyah*. If the marriage is not performed immediately, then there will be even greater harm, which is adultery.

CONCLUSION

Judge's consideration is the most important aspect in determining a decision that contains legal certainty, justice, and contains benefits for the parties concerned and justice seekers. For this reason, marriage dispensation is a form of solution to deviations from the age limit for marriage which should have been proposed for very urgent reasons in accordance with the provisions of Article 7 of the Marriage Law. The intent of the law reflects the firmness of efforts to apply for a marriage dispensation which may not be filed for any reason. However, the absence of an explanation of these provisions meant that the judges did not have standard guidelines. This triggers many requests for dispensation of marriage for various reasons. From the point of view of the objectives of Islamic law (*maqosidu al-syari'ah*) in terms of fiqh rules *problem* then the granting of a marriage dispensation in Decision Number 0077/Pdt.P/2019/PA.Tnk is in accordance with the rules. Because there are three basic things that need to be considered in underage marriages, namely the safety of the child's soul related to the purpose of protecting the soul (*hifzu an-nafs*), also the protection of children's education related to the purpose of protecting the mind (*hifzu al-'aql*), and security for offspring related to the purpose of protection for offspring (*hifzu al-nasl*). The goals are in levels *maslahah ad-dharuriyyah*.

If seen from the reasons of the applicant and also the testimony of the witnesses at the trial, the Judge's Decision Number 0077/Pdt.P/2019/PA.Tnk regarding the dispensation is in accordance with the rules of fiqh *problem* which means "when faced with two harms, then avoid the greater harm by choosing the lesser harm" So by granting the request for a marriage dispensation to the decision it will actually have positive implications for the bride and her family. Because by giving permission to marry, the first will clarify the status of the child, the second will avoid negative views from society, and avoid committing adultery which is prohibited by religion.

REFERENCES

- Abu Ishaq Ibrahim bin Musa bin Muhammad al-Lukhmi al-Syathibi. (1998). *Al-Muwafaqat, jilid 2, al-Mamlakah al Arabiyah al-Su'udiyah*. Dar al-Affan.
- Adhari, M. N., Aidhil Alwana, H., & Rio, W. (2022). Paradigma Dispensasi Perkawinan di Pengadilan Agama Muara Labuh Antara Masalah dan Inkonsistensi Hukum. *Journal of Sharia and Law Studies*, 10(1), 22.
- Agus Khalimi, Triana Sofiani, & Tarmidzi. (2021). Dispensasi Nikah Perpektif Mashlahah. *Al Hukkam Jurnal of Islamic Law*, 1(2), 1.
- Ahmad al-Raisuni. (1999). *Al-Fikru al-Maqasidi Qawa'iduhu wa fawa'iduhu*. Ribat.
- Al-Quran Dan Terjemah*. (n.d.). Departemen Agama RI.
- Amir Syarifuddin. (2009). *Ushul Fiqh Jilid II*. Kencana.
- Boedi Abdulla. (2013). *Perkawinan dan Perceraian Keluarga Muslim*. Pustaka Setia.
- Eka Gifriana, H.B. Syafuri, & H. E. Zaenal Mutaqin. (2022). Dispensasi Nikah Usia Dini: Perspektif Masalah Mursalah (Analisis Yuridis Putusan Perkara Nomor: 1635/Pdt.P/2019/Pa.Srg). *Journal of Legal and Cultural Analytics*, 1(3), 199–216. <https://doi.org/10.55927/jlca.v1i3.1284>
- Hasan Baharun & Syafiqiyah Adhimiy. (2018). Limitasi Keluar Rumah Bagi Perempuan 'Iddah Wafat dalam Perspektif Masalah Mursalah. *Jurnal Al'Adalah*, 15(1), 158.
- Hasto Wardoyo. (2019). *Kuliah Umum Di STKIP Bangka Belitung*.
- Putusan Mahkamah Agung, Nomor 0077/Pdt.P/2019/Pa.Tnk.
- Melinda Rahmawati & Heni Ani Nuraeni. (2021). Peran Dispensasi Kawin dalam Peningkatan Angka Pernikahan Dini di Wilayah Kotamadya Jakarta Barat. *Jurnal Al-Istinbat*, 6(1), 5.
- Menyorot Mahkota Hakim Peradilan Agama. (n.d.). *Majalah Peradilan Agama*.
- Muhammad Amin Suma. (2004). *Hukum Keluarga Islam di Dunia*. RajaGrafinfo.
- Nur Yasin. (2008). *Hukum Perkawinan Islam Sasak*. UIN Malang Press.
- Poerwa Darminta. (2011). *Kamus Umum Bahasa Indonesia*. Balai Pustaka.
- Sobri Mersi al-Faqih. (2015). *Solusi Problematika Rumah Tangga Modern*. Sukses Publising.
- Umar Haris Sanjaya & Aunur Rahim Faqih. (2017). *Hukum Perkawinan Islam di Indonesia*. Gama Media.
- Undang-Undang Perkawinan, Nomor 16 Tahun 2019 Tentang Perkawinan.
- Wasman. (2011). *Hukum Perkawinan Islam di Indonesia: Perbandingan Fiqih dan Hukum Positif*. Teras.
- Zainudin Ali. (2011). *Metode Penelitian Hukum*. Sinar Grafika.

