

Analysis of Marriage Dispensation Factors (Case Study of Class 1A Jombang Religious Decision Results)

Yayat Dimiyati

Sekolah Tinggi Agama Islam At-Tahtdzib Jombang, Indonesia

Email: yayatdimiyati5@gmail.com

Abstract

A marriage dispensation is an exception to the rules or law that is given to an applicant to enter into a marriage. In this research the author examines the decision on requests for marriage dispensation in the Jombang religious court. The focus of the research problem formulation is: 1. What is the level of requests for marriage dispensation in the Jombang religious court. 2. What is the background for submitting the application for marriage dispensation? 3. What are the judge's considerations in determining the application for marriage dispensation in the Jombang religious court? The type of research is descriptive analysis research. This descriptive characteristic is to get a good, clear picture, and can provide as thorough an analysis of the data as possible about the object under study. The results of this research show that the factors behind the request for marriage dispensation are internal and external factors. The judge's legal consideration in granting marriage dispensation is that there is Article 7 paragraph 2 of Law No. 1 of 1974 concerning deviations from the age limit for marriage. Court or other official appointed by both parents of the man and woman.

Keywords: Analysis, Dispensation, Mating

INTRODUCTION

Marriage is a form of physical and spiritual bond between a man and a woman until they are called husband and wife based on a marriage contract regulated by Islamic law and applicable laws and regulations, with the aim of forming a *sakinah, mawwaddah, warrahmah* family or in other words towards a happy household according to Islamic law.¹

Marriage is the law of nature, the law of nature in the world. Marriage is done by humans, animals, even by plants, because everything consists of two partners. For example, the water we drink consists of oxygen and hydrogen, electricity has positive and negative.²

The bond of marriage is very important in social life. Because marriage is not only to continue the lineage, but also to fulfill physical and spiritual needs, this is the main joint for the formation of the state and nation. The welfare and happiness of the family determine the welfare and happiness of society and the state, conversely, the damage and chaos of the family will cause damage and chaos in society.³

However, harmony in a family cannot be created easily. Therefore, the parties who have decided to marry must at least be ready to face a life journey that is more difficult than before, so that there needs to be mental and material readiness, and other very important factors, namely maturity in thinking and independence in life (already able to provide for his wife and children). From here, Islamic law and legislation in Indonesia regulate marriage procedures with several fairly strict provisions.

¹ M. Dahlan R, *Fiqh munakahat*. Yogyakarta: Deepublish, 2015, p.10.

² Tihami, Sohari Sahrani, *Fikih munakahat: Kajian fikih nikah lengkap*. Jakarta: Rajawali Press, 2009, p.9.

³ Soedharyo Soimin, *Hukum orang dan keluarga: Perspektif hukum perdata barat, Hukum Islam, dan hukum adat*, Jakarta: Sinar Grafika, 2004, p.3.

Marriage in Indonesia is regulated in Law Number 1 of 1974 concerning Marriage. This law is one of the legal unifications in Indonesia that accommodates the aspirations of the community which is the source of material law for marriage. Based on Article 1 of Law Number 1 of 1974 concerning marriage, it is explained that "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God." Meanwhile, the definition of marriage in Islamic teachings has a value of worship so that Article 2 of the Compilation of Islamic Law formulates it that "Marriage according to Islamic law is a marriage, namely a very strong contract or *mitzaqan ghalizan* to obey the command of Allah and carrying it out is worship."⁴

In cases that are the authority of the Religious Court, there are several cases that are very closely related to children's rights, including cases of requests for marriage dispensation. A request for marriage dispensation is a request case submitted by the applicant for the case so that the court grants permission to the person requesting the dispensation to be able to carry out the marriage, because there are conditions that are not met by the prospective bride and groom, namely the fulfillment of the age limit for marriage.

The determination of the age limit for marriage is very important. Because a marriage requires not only biological but also psychological maturity. So in the General Explanation of the Marriage Law it is stated that the prospective husband and wife must be physically and mentally mature to be able to marry in order to realize a good marriage without ending in divorce and having good and healthy offspring, for that it is necessary to prevent marriage between prospective husband and wife who are still minors Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage stipulates that the age limit for men and women is 19 years.⁵

Marriage dispensation is one of the areas of Civil Law, namely marriage. So the application is submitted to the Religious Court which has the authority to accept, decide and resolve cases for people who are Muslim. The application can be granted or rejected, according to the considerations of the judge who has been given the authority to try the case. Therefore, the wisdom and caution of the court play a very important role in determining the application for marriage dispensation, both in granting and rejecting, which must be in accordance with strong reasons, so that the number of marriage dispensation applications can be reduced.

METHOD

This research is a qualitative research. The definition of qualitative according to Gog and Taylor as quoted by Lexy J. Meleong, is a research procedure that produces descriptive data in the form of written or spoken words from people and observable behavior.⁶ research that aims to reveal symptoms in a holistic-contextual manner through collecting data from natural settings by utilizing the researcher as a key instrument.

Qualitative research is descriptive and tends to use analysis with an inductive approach. The process and meaning (subject perspective) are more emphasized in qualitative research. Qualitative research, namely research that intends to understand phenomena, behavior, perception, motivation, actions holistically by means of description with words and language, in a specific natural context and utilizing research methods.⁷

The qualitative research used is field research, namely research conducted in real life.⁸ Data analysis method is a method used to analyze, study and manage certain data so that concrete conclusions can be drawn about the problems being studied and discussed. After all the data has been

⁴ Muhammad Amin Suma, *Hukum keluarga islam di dunia islam*. Jakarta: PT Raja Grafindo Persada, 2004, p.46.

⁵ <https://www.hukumonline.com/pusatdata/detail/lt5dafedf4cd014/undang-undang-nomor-16-tahun-2019#> diakses pada 17.03.20 pukul 23:50

⁶ Lexy J. Meleong, *Metode penelitian kualitatif*, Bandung: Remaja Rosdakarya, 2003, p.51.

⁷ Suhartono Irawan, *Metode penelitian sosial*, Bandung: Remaja Rosdakarya, 1993, p.63.

⁸ Suharsimi Arikunto, *Prosedur penelitian, Suatu pendekatan praktek*, Cet 1X, Jakarta: PT. Rineka Cipta, 1993, p.131.

collected, the next step is to analyze the data using the Inductive thinking method, namely starting from the concrete facts or events, general generalizations are drawn. research field. Compiling a research proposal, consulting a concrete research proposal, general generalizations are drawn. This is done by creating data metaphors, connecting one variable to another and constructing a logical chain between various evidence, starting from specific facts and concrete events which are then generalized into general conclusions. So the conclusion is drawn from the information data that has been analyzed using the inductive method. This means that the author explains or provides a clear picture of the phenomena in the field based on accurate facts and data, namely in the form of a marriage dispensation case at the Jombang Religious Court

RESULTS AND DISCUSSION

Etymologically (language) marriage dispensation consists of two words, dispensation which means an exception to the rules due to special considerations, or exemption from an obligation or prohibition.⁹ Being married (marriage) is a marriage bond that is carried out in accordance with legal provisions and religious teachings.¹⁰

The terminological definition (term) can be seen from various opinions: According to Roihan A. Rasyid, marriage dispensation is a dispensation given by the Religious Court to prospective brides and grooms who are not old enough to get married, for men who are not yet 19 (nineteen) years old and women who are not yet 16 (sixteen) years old. The application for dispensation is submitted by the parents or guardians of the prospective bride and groom to the local Religious Court.

Subekti and Tjirosudibio, dispensation means a deviation or exception from a regulation.¹¹ The dispensation referred to here is an exception in the application of the provisions of Article 7 paragraph (1) of Law Number 1 of 1974 which is granted by the court for a marriage which will be carried out because one or both prospective brides and grooms have not reached the minimum age to enter the world of marriage.

Regarding marriage or marriage in Indonesia has been regulated in the law. One of them is the rule regarding the age limit or age for someone to be allowed to marry. However, when in an emergency, marriage can be permitted with various special requirements and procedures.

To carry out underage marriage, both parents of the man and both parents of the woman can request a dispensation of the age requirement to the Religious Court for Muslims and the District Court for non-Muslims. This is in accordance with Article 7 paragraph 2 of the Marriage Law in conjunction with Article 1 letter b of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage. The application for dispensation is submitted to the Court according to the applicant's area of residence.

In applying for a marriage dispensation, there are several administrative requirements that must be met. Such as a letter of application for a marriage dispensation, rejection from the Office of Religious Affairs, a photocopy of identity, both KTP and KK, and a photocopy of the diploma. These things are the initial requirements in applying for a marriage dispensation

The mechanism for filing a marriage dispensation case in Court is the same as the mechanism for filing a lawsuit. The mechanism for filing a case application in the Religious Court is as follows: Prameja: Before the applicant submits his application, the applicant goes to the previous prameja to obtain an explanation of how to litigate, how to make a letter of application, and at the prameja application can ask for help to make a letter of application.

Table I: The letter of application that has been made and signed is submitted to the sub-clerk of the application, the applicant faces the first table which will estimate the amount of the down payment for the court costs and write it on The Letter Power of Attorney to Pay. The amount of the down payment for the court costs is estimated to be sufficient to resolve the case, which based on

⁹ Departemen Pendidikan Nasional, *Kamus besar bahasa indonesia pusat bahasa*, Jakarta: PT Gramedia Pustaka Utama, 2008, p.335.

¹⁰ Departemen Pendidikan Nasional, *Kamus besar bahasa indonesia pusat bahasa*, p.962.

¹¹ Subekti dan R. Tjirosudibio, *Kamus hukum*, Jakarta: Pradnya Paramita, 1979, p.33.

Article 193 R.Bg or Article 182 (paragraph 1) HIR or Article 90 (paragraph 1) Agrarian Law, includes: Clerk's fees and stamp duty. Examination fees, expert witnesses, interpreters and oath fees. Local examination fees and other Judge's actions. Summons fees, and others upon order.

The court in question, for those who are unable to afford it, is allowed to litigate prodeo (free of charge). The inability is by attaching a certificate from the local Lurah or Village Head which is legalized by the sub-district head. For those who are unable to afford it, the down payment is estimated at Rp. 0.00 and written on the The Letter Power of Attorney to Pay.

Cashier: The applicant then meets the cashier by submitting a letter of application and The Letter Power of Attorney to Pay. The cashier then: Receives the money and records it in the court costs journal. Signs and gives a case number and a paid-in-full mark on the The Letter Power of Attorney to Pay Returns the letter of application and The Letter Power of Attorney to Pay. Return the application letter and The Letter Power of Attorney to Pay to the applicant.

Table II: The applicant then faces table II by submitting the application letter and The Letter Power of Attorney to Pay that has been paid. Then table II: Gives a number to the application letter according to the number given by the cashier. As a sign that it has been registered, the desk II officer initials and submits one sheet of the registered application letter along with one sheet of The Letter Power of Attorney to Pay to the applicant.

The process of resolving a marriage dispensation application case at the Religious Court, the Chief Justice after receiving the case files together with his member judges studies the case files. Then determines the day, date and time when the case will be tried and orders that the parties be summoned to appear on the day, date, and time that have been determined.

The parties are also informed that they can prepare the evidence submitted in the trial. However, usually the evidence has been deposited with the clerk before the trial. After the trial is opened and declared open to the public by the Chief Justice, the parties to the case are summoned to the courtroom. Then the Chairman of the Assembly tries to advise the applicant, the applicant's child, and the applicant's prospective child by providing an explanation of the causes and consequences if the marriage is carried out before the age is sufficient and to postpone the marriage. If the advice is unsuccessful, then the Chairman of the Assembly reads the applicant's application letter that has been registered at the Religious Court clerk's office.

Next, the Chairman of the Assembly began the examination by asking questions to the applicant, the applicant's child and the applicant's prospective child in turn. Then the Chairman of the Assembly continued the examination of the documentary evidence, and the applicant submitted documentary evidence: Photocopy of the birth certificate in the name of the applicant's child issued by the Village or Sub-district Head, marked P.I. by the Chairman of the Assembly. Notification letter of refusal to conduct a marriage Model N-9 issued by the Office of Religious Affairs. Next, the Chairman of the Assembly declared the trial suspended for deliberation. The applicant, the applicant's child and the applicant's prospective child were ordered to leave the courtroom. After the deliberation was complete, the suspension was lifted and the applicant was called back into the courtroom, then the decision was read out, the order of which was as follows: to judge. First, to grant the applicant's request. Second, to determine to give dispensation to the applicant to marry his child named xxx with xx. Third, to charge the applicant with court costs of Rp. After reading his decision, the Chairman of the Assembly declared the trial closed. If the applicant is not satisfied with the Judge's decision, the applicant can immediately appeal.

Age Limits for Marriage According to Islamic Law

Early marriage is a marriage carried out by those who are under the age permitted for marriage in the Marriage Law Number 1 of 1974. In the Marriage Law No. 1 of 1974, the age limit for marriage for prospective male and female brides is regulated. This provision is contained in Article 7 paragraph (1), which states that: Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years."¹²

¹² Undang-undang Republik Indonesia Nomor 1 tahun 1974 tentang perkawinan, Bab II, pasal 7, Ayat 1.

The age of marriage as referred to in the article in the Marriage Law does not conflict with the intent of Article 6 paragraph (2) which states: “To enter into a marriage, those who have not reached the age of 21 (twenty one) years must obtain permission from both parents.”¹³

In relation to the marriage age limit for prospective male and female brides that has been set, the marriage law provides flexibility in deviations from the age limit rules. In article 7 paragraph (2) and (3) which states: article two “In the case of deviation from paragraph (1) of this article, a dispensation may be requested from the court or other official appointed by both parents of the male and female parties.” And article three “the provisions regarding the condition of one or both parents in article 6 paragraph (3) and (4) of this Law, also apply in the case of a request for dispensation in paragraph (2) of this article without reducing the meaning of article 6 paragraph (2).”

Regarding the age limit for marriage, it is also stated in the Compilation of Islamic Law which is contained in article 15 paragraphs (1) and (2) which reads: paragraph one “For the benefit of the family and household, marriage may only be carried out by prospective brides and grooms who have reached the age specified in the article 7 Law no. 1 of 1974, namely that the prospective husband must be at least 19 years old and the prospective wife must be at least 16 years old.” paragraph two “For prospective brides who have not reached the age of 21 years, they must obtain permission as regulated in article 6 paragraphs (2), (3), (4), and (5) of Law no. 1 of 1974.”¹⁴

This age limit provision, as stated in the Compilation of Islamic Law, Article 15 paragraph (1), is based on considerations of the welfare of the family and the marriage household. This is in line with the principle laid down in the Marriage Law, that the prospective husband and wife must be physically and mentally mature to be able to carry out the marriage, so that the purpose of marriage can be realized properly without ending in divorce and having good and healthy offspring. For this reason, marriages between prospective husband and wife who are still minors must be prevented.¹⁵ The issue of determining age in the Marriage Law and in the compilation is indeed *ijtihadiah* in nature, as an effort to renew previous *fiqh* thinking..

Regulation of the Minister of Religion Number 3 of 1975 concerning the Obligations of Marriage Registrars and the Work Procedures of Religious Courts in implementing the Marriage Regulations for Muslims, also regulates the age limit for marriage as stated in Article 13 paragraph (1) and (2): paragraph one “If a prospective husband has not reached the age of 19 years and a prospective wife has not reached the age of 16 years, they must obtain dispensation from the Religious Court.” paragraph two “A request for dispensation for those referred to in paragraph (1) of this article is submitted by both the parents of the man and the woman to the Religious Court in the jurisdiction where they reside.”¹⁶

Age Limit for Marriage According to *Fiqh*

In Islam there is no age limit for carrying out marriage, but Islam only shows the signs, in this case Islamic scientists also have different opinions about these signs.

The Holy Qur’an does not specifically determine the age limit for those who will get married. The limit is only given based on the quality that must be married by them as in the letter An-Nisa verse 6. “وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ ءَانَسْتُمْ مِّنْهُمْ رُّشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ” “And test the orphans until they reach the age of marriage. Then if in your opinion they are intelligent (good at managing wealth), then hand over their wealth to them.”(QS. An-Nisa:6).

What is meant by being old enough to marry is after the desire to have a household arises, and is ready to become a husband leading a family. This will not be able to run perfectly, if he is not yet able to manage wealth.

¹³ *Ibid*, Ayat 2 dan 3.

¹⁴ Kementerian Agama Republik Indonesia, *Kompilasi Hukum Islam*, Pasal 15, Ayat 1 dan 2

¹⁵ Sudarsono, *Hukum perkawinan nasional*, Cet. III; Jakarta: Rineka Cipta, 2005, p.7.

¹⁶ Kementerian Agama Republik Indonesia, “Peraturan Menteri Agama Nomor 3 Tahun 1975 tentang Kewajiban Pegawai Pencatat Nikah dan Tata Kerja Pengadilan Agama dalam Melaksanakan Peraturan Perundang-Undangan Perkawinan bagi yang Beragama Islam.”

Based on these provisions, the fuqaha and legal experts agree to stipulate that a person is held accountable for his actions and has the freedom to determine his life after reaching the age of puberty (*baligh*). *Baligh* means reaching or clear, namely children who have reached a certain age where all matters or problems faced become clear to them. Their minds have been able to consider or clarify what is good and what is bad.

The ‘Ulemas of the madzhab of thought agree that menstruation and pregnancy are proof (of puberty) of a woman. Pregnancy occurs due to the fertilization of the ovum by sperm, while menstruation is the same as releasing sperm.¹⁷ The ‘Ulemas of the madzhab agree that menstruation and pregnancy are proof of a woman’s puberty. In determining the maturity of a person’s age, there are several opinions, including; The Maliki, Syafi’i and Hambali madzhab state that the growth of armpit hair is proof of a person’s puberty. They also state that the age of puberty for boys and girls is 15 (fifteen) years..

The Hanafi madzhab of thought rejects underarm hair as evidence of a person’s puberty. Because underarm hair is no different from other hair on the body. Hanafi sets the maximum age limit for boys to reach puberty at 18 (eighteen) years and the minimum at 12 (twelve) years, while the maximum age limit for girls to reach puberty is 17 (seventeen) years and the minimum is 9 (nine) years.

Yusuf Musa said that adulthood is after someone is 21 years old. This is because in modern times people do thorough preparation, because they still lack life experience and are still in the learning process. However, they can be given some affairs from the age of 18.¹⁸

In Islamic law, it is recommended that one of the main conditions for the validity of a law is that the person concerned has reached puberty, therefore a man who has not reached puberty cannot legally carry out qabul in a marriage contract.

The opinions of these ‘Ulemas are the characteristics of puberty that are only related to sexual maturity that marks the beginning of adulthood. If maturity refers to all stages of maturity, then puberty is only related to sexual maturity. A person’s maturity will greatly determine their lifestyle and sense of responsibility in a household to face a life full of problems that they never faced when they were not married. Maturity is also one of the elements that encourages the formation of a *sakinah, mawaddah, warahmah* family.

Because of the importance of the institution of marriage, a person who is going to get married must have thorough preparation in all areas. This preparation is related to a person’s maturity. There is no doubt that life today is more difficult than in the past. And the arrival of ihtilam is often not in line with the maturity of our minds so that we have maturity of thought. Therefore, it is obligatory for us to hold on to in determining a child’s maturity is his spiritual maturity, not from the amount of age and physical signs (body).

Factors in Submitting a Marriage Dispensation Application at the Jombang Religious Court

A marriage age dispensation occurs when there is a request from the guardian of one of the male and female parties who are not old enough to marry in Law Number 1 of 1974 concerning Marriage, for men at least 19 years old and for women at least 16 years old, requesting permission from the Religious Court.

Article 7 paragraph (2) states that deviations from the provisions of paragraph (1) concerning the minimum age limit for marriage, can request a dispensation from the Religious Court or other officials appointed by both the parents of the male and female parties. So, based on Article 7 paragraph (2) of Law Number 1 of 1974 concerning Marriage, the judge is given the authority to grant a request for a marriage age dispensation, while in general the religious court can permit early marriage if it is considered that the marriage is very urgent. Based on the case files submitted to the Jombang Religious Court and data obtained by the author by reading the case decision files of the perpetrators of the application for marriage dispensation, namely the parents as the applicant and the

¹⁷ Muhammad Jawad Mughniyah, *Fiqh lima madzhab*, Yokyakarta: Basrie Press, 2010, p.22.

¹⁸ Hasbi Ash Shidieqy, *Pengantar hukum islam*, Jilid 2, Jakarta: Bulan Bintang, 1975, p.20.

prospective bride and groom as the perpetrators of the marriage, it is analyzed that there are 2 factors that underlie the submission of the application for marriage dispensation.

Internal factors

Internal factors and external factors. Internal factors are factors that come from within oneself (nature and attitude).

Pregnant out of wedlock

Adolescence is a transition period between childhood and adulthood. During this period, growth spurts occur, secondary sexual characteristics emerge, fertility is achieved, and cognitive and psychological changes occur. An important event during adolescence is puberty, which is a rapid morphological and physiological change from childhood to adulthood. During adolescence, many adolescents experience changes both physically and psychologically, resulting in changes in attitudes and behavior, such as starting to pay attention to their appearance, starting to be interested in the opposite sex, trying to attract attention and feelings of love appear, sexual urges will arise, which then justify doing things that are prohibited by religion to have sex even though they are not married first, thus triggering negative things that are not allowed

Currently, many adolescents do not receive enough information and education about reproductive health. Adolescents' knowledge about reproductive health is still very low. about the fertile period and the risk of pregnancy. As a result of the lack of information about reproductive health, the risk of unwanted pregnancy will increase, even though in reality the adolescent still does not know the impacts and factors that will harm themselves, even though this concerns pregnancy. Pregnancy should be a happy news, if it comes to married couples and it is good news that is longed for and awaited by married couples with the presence of a child or a little angel who is a coolness in their daily lives. However, it will be different if it happens to young women, especially those who are still in madzhab/college and have not yet gone through the marriage process. Even pregnancy will be a very scary specter, namely a threat to the future, for those who are not married, and will be bad news that is very feared and unwanted, the causal factors, including, First because of very high curiosity, usually for those who are still in their teens, due to promiscuity. Second, lack of knowledge related to sex, Third, lack of education about religion. Fourth, lack of attention or supervision from both parents.

Too intimate relationship

In addition to getting pregnant outside of marriage, one of the factors causing the submission of a marriage dispensation application at the Jombang Religious Court is because the prospective bride and groom have had a premarital relationship where the relationship between the two is too intimate, even to the point of having sex. This is due to the lack of knowledge of adolescents about the risks and dangers of sex, this behavior is caused by several factors, namely starting from the lack of role of family, madzhab and environment in socializing sexual knowledge, and lack of understanding of religious values in life. In addition, in today's era, the role of mass media is very influential, starting from the internet, television, newspapers and so on, which have recently increasingly provided transparent sexual knowledge.

Mass media should be used by adolescents as the most influential source of knowledge because mass media presents various kinds of information and knowledge about sex openly and transparently. Mass media has a great influence in efforts to provide information and knowledge about sex for themselves

Adolescents' knowledge about premarital sex is in accordance with their ability to think about what they see, what they experience and find. Knowing the definition, factors, impacts, causes, risks, and consequences of premarital sex makes teenagers think twice about having sex before marriage. When teenagers who do not have sex before marriage, even though they want to, they also think about the risks in the long term. Based on interviews that the author has conducted regarding premarital sexual behavior among teenagers according to respondents who do not have premarital sex, he said that premarital sexual behavior is currently commonplace with many supporting factors, one of which is the lack of knowledge about the various negative aspects of premarital sexual behavior, such as

pregnancy, transmission of sexually transmitted diseases and so on. So that this knowledge can minimize what they do. The opposite also happens to teenagers who have sex before marriage, they do not understand what sex is. They just do what they want now without thinking about the long-term risks.

External Factors

External factors are factors that come from outside a person, these factors include the surrounding environment including the people closest to them.

Parental concerns

It is only right that parents are fully responsible for their children, whether in terms of morality or material, therefore parents also have their own opinions so that their children do not fall into acts that violate religious norms and customs. The reasons parents marry off their children at an early age are; First, the development of the era and technology, therefore parents prefer to marry off their children rather than later fall into wrongdoing, Second, their children's relationships that are too intimate with the opposite sex. Third, the low level of parental knowledge about the problem of early marriage so that there is minimal knowledge regarding the negative impacts of early marriage.

From the description related to the factors submitted, it can be concluded that the purpose behind the submission of the application for marriage dispensation is as a form of healing effort for parents who have no other choice but to give the child the option to marry to cover up the shame and save the child's status as well as to protect from slander (curative) or prevention of adultery committed by their children because the development of media (especially electronic media) that entered Jombang Regency greatly influenced the lifestyle and socialization of teenagers in the regency, their tendency to socialize freely is higher. So hastening marriage is an effort to overcome the dangers for teenagers from free association (preventive).

Judge's Considerations in Granting Marriage Dispensation Permit

The Religious Court is one of the legitimate Indonesian State Courts, which is a special court, which has authority in Islamic civil cases, of course, for Muslims in Indonesia.¹⁹

The field of marriage under the authority of the Religious Court is the matter of marriage dispensation. The principle contained in the Marriage Law is the maturity of the age of marriage, meaning that the prospective husband and wife must be mature in body and soul in carrying out the marriage. In order to achieve the intention that the marriage be carried out by adults, experts determine the age limit for marriage through the Marriage Law, Article 7 paragraph (1), namely the limit for men is 19 years and the limit for women is 16 years.

Judge is a title that is attached to someone who has a special job and specifications in the field of law and justice so that he often comes into contact with issues regarding freedom and legal justice in the context of decisions on cases made.²⁰ In this case, the Judge knows the law, the matter of finding it is the Judge's business. Therefore, the Judge in considering his decision is obliged because of his position to complete the reasons that were not put forward by the parties.²¹

Judges may not judge that the law is incomplete or that a provision of the law is unclear. In accordance with Article 10 paragraph (1) of the Judicial Law Number 48 of 2009 concerning Judicial Power, judges may not refuse to examine and examine a case. Judges are prohibited from deciding cases that depend on them based on general regulations, stipulations or regulations. This means that judges may only examine and examine concrete events and may not create general regulations in their decisions. Decisions only apply to concrete events and do not provide general power or apply generally to those situations. And judges may not position themselves as lawmakers. They may only examine and examine concrete cases and may not create regulations that are binding on the general

¹⁹ Roihan A. Rasyid, *Hukum acara peradilan agama*, Jakarta: PT Raja Grafindo Persada, 2002, p.6.

²⁰ Ahmad Kamil, *Filsafat kebebasan hakim*, Jakarta: Prenadamedia Group, 2012, p.169.

²¹ Dewi Iriani, *Pengetahuan ilmu hukum dan pengalaman tentang hukum di indonesia*, Jakarta: Bulan Bintang, 2009, p.96.

public.²² In making a decision, a judge must explore the values of justice that exist in society, as well as a judge in making a decision regarding a person's application for a marriage dispensation as stated in the Marriage Law, Article 7 paragraph (2) which reads: "In the case of deviation from paragraph 1 of this article, a dispensation may be requested from the court and other officials, appointed by the parents of the male or female parties."

A marriage dispensation application is a petition case because in this case there is no dispute and the judge accepts and decides by making a decision that grants or rejects the application. For a decision to grant or reject a marriage dispensation application, the judge with his/her independence will issue a legal summons regarding the applicant's reasons while simultaneously translating, interpreting, sorting and selecting the most appropriate and relevant rules for the marriage dispensation being faced.

The legal basis used in each decision contains the Judge's legal basis in deciding the case. Because the Religious Court is an Islamic Court, the basis for its decision is all applicable relevant laws and regulations, arranged relevantly, arranged according to the order of degree and other unwritten legal order.

In a decision, the consideration section is the section that begins with "About Legal Considerations or About the Law" which contains; First, a description of how the judge qualifies, namely seeking and finding the law that must be applied to a fact and incident that is submitted. Second, the Judge's assessment of the facts submitted. Third, the Judge's considerations chronologically and in detail for each item, both from the defendant and the plaintiff. Fourth, the legal basis used by the Judge in assessing the facts and deciding the case, written law and unwritten law.

Before deciding a case that is submitted to the Jombang Religious Court, the Judge must explore, follow, understand the legal values and sense of justice that live in society, especially the facts that occur related to the application for marriage dispensation. Because the Religious Court and its Implementation must follow all existing regulations, the judge decides based on Law Number 48 of 2009 concerning judicial power.

Based on Article 16 Paragraph (1) of Law Number 4 of 2004, and by taking over the interpretation in the book *Al Asbah wa al Nadzour*: 128 which reads: *تصرف الامام على الرعية منوط بالمصلحة* "The actions/decisions of the Imam (leader/judge) towards his people should always be oriented towards the welfare of the people." And remembering the *Fiqhiyah* rule which states: *درء المفسد مقدم على جلب المصالح* "Rejecting damage is prioritized over seeking benefit." Therefore, the Panel of Judges concluded that the applicants had been able to prove their arguments in court, so that the marriage dispensation was granted.

CONCLUSION

Marriage dispensation is a dispensation given by the Religious Court to prospective brides and grooms who are not old enough to marry, for men who are not yet 19 (nineteen) years old and women who are not yet 16 (sixteen) years old. Marriage dispensation is submitted by the respective parents. Submission of a marriage dispensation application case is made in the form of an application (voluntary) not a lawsuit.

The first is that the level of marriage dispensation applications at the Jombang Religious Court tends to continue to increase, this is indicated by the increasing number of cases decided at the Jombang Religious Court compared to the decreasing number of applications decided and Factors that cause marriage dispensation to be submitted at the Jombang Religious Court:

Namely internal factors that come from within oneself (nature and attitude). Includes: Pregnant outside of marriage, relationships that are too intimate including: already married secretly, have had sex, dating that is too clingy.

²² Sudikno Mertokusumo, *Penemun hukum sebuah pengantar*, Bandung: Citra Umbara, 2001, p.53.

External factors are factors that come from outside a person, these factors include the surrounding environment including those closest to them, such as parents' concerns about their children. The purpose of submitting a marriage dispensation application is as a preventive form (preventive effort) to prevent adultery committed by their children due to media developments and a curative form (effort or healing effort) for parents who have no other choice but to give the child the option to marry to cover up the shame and save the child's status and also to protect against slander.

REFERENCES

- Kamil, A. (2012). *Filsafat kebebasan hakim*, Jakarta: Prenadamedia Group.
- Departemen Pendidikan Nasional. (2008). *Kamus Besar Bahasa Indonesia*. Jakarta: PT Gramedia Pustaka Utama.
- Iriani, D. (2009). *Pengetahuan ilmu hukum dan pengalaman tentang hukum di indonesia*, Jakarta: Bulan Bintang.
- Ash-Shidieqy, H. (1975). *Pengantar hukum islam*, Jilid 2, Jakarta: Bulan Bintang.
- <https://www.hukumonline.com/pusatdata/detail/lt5dafedf4cd014/undang-undang-nomor-16-tahun-2019#> diakses pada 17.03.20 pukul 23:50
- Kementrian Agama Republik Indonesia. "Peraturan Menteri Agama Nomor 3 Tahun 1975 tentang Kewajiban Pegawai Pencatat Nikah dan Tata Kerja Pengadilan Agama dalam Melaksanakan Peraturan Perundang-Undangan Perkawinan bagi yang Beragama Islam."
- Kementrian Agama Republik Indonesia, *Kompilasi hukum islam*, Pasal 15, Ayat 1 dan 2
- Meleong, L.J. (2003) *Metode penelitian kualitatif*, Bandung: Remaja Rosdakarya.
- M. Dahlan R, (2015). *Fiqh munakahat*. Yogyakarta: Deepublish, .
- Suma, M.A. (2004). *Hukum keluarga islam di dunia islam*. Jakarta: Raja Grafindo Persada.
- Mughniyah, M.J. 2010(). *Fiqh lima madzhab*, Yokyakarta: Basrie Press.
- Undang-undang Republik Indonesia, Nomor 1 tahun 1974 tentang perkawinan.
- Rasyid, R.A. (2002). *Hukum acara peradilan agama*, Jakarta: Raja Grafindo Persada.
- Soimin, S. (2004). *Hukum orang dan keluarga: Perspektif hukum perdata barat, Hukum islam, dan hukum adat*, Jakarta: Sinar Grafika.
- Subekti., & Tjitrosudibio, R. (1979). *Kamus hukum*, Jakarta: Pradnya Paramita.
- Sudarsono. (2005). *Hukum perkawinan nasional*, Cet. III; Jakarta: Rineka Cipta.
- Mertokusumo, S. (2001). *Penemuan hukum sebuah pengantar*, Bandung: Citra Umbara.
- Arikunto, S. (1993). *Prosedur penelitian, Suatu pendekatan praktek*, Cet 1X, Jakarta: Rineka Cipta.
- Irawan, S. (1993). *Metode penelitian sosial*, Bandung: Remaja Rosdakarya.
- Tihami, S.S. (2009). *Fikih munakahat: Kajian fikih nikah lengkap*. Jakarta: Rajawali Press.
-