



Legal Analysis of The Judge's Consideration on The Matter “Marriage Dispensation from The Perspective of Justice”

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Abstract. This study aims to examine the judge's considerations in granting, cannot accept or reject a marriage dispensation application at the Religious Court, and whether the considerations reflect principles of justice, legal certainty, and legal benefits. Dispensation Marriage is a mechanism that parents submit to the court to allowing children under the minimum age of marriage to marry. However, early often has negative impacts both physically, psychological, and social for children who carry it out. This study uses a research method with a normative empirical type, a descriptive research type by explaining existing problems, and a problem-solving approach. *judicial case study* or reviewing cases in several court decisions that have been taken in relation to marriage dispensation. The results of the study show that Judge in various cases of marriage dispensation considered the following factors: such as mental readiness, health, and long-term social impacts for who married at a young age. Some decisions that were rejected and unacceptable marriage dispensation is based on the principle of child protection and long-term welfare, while the decision to accept the dispensation taking into account emergency situations or very urgent conditions. Conclusion from this study is that not all of the judge's considerations in granting permission for marriage dispensation always reflect justice for children, but there must be justice for parents, social. The suggestion from this research is that is needed cooperation between institutions such as the Ministry of Religion, the Department of Education, and the Department of Child Protection to minimize the practice of underage marriage, strengthening protection for children and educational efforts, socialization regarding dangers of underage marriage in order to create a prosperous generation, educated, healthy in the future.

Keywords: *Marriage Dispensation, Judge's Consideration, Justice, Legal Certainty, Legal Benefit.*

Introduction

Marriage is one of the most important things in human life, because humans cannot live without other people and humans to fulfill their physical needs need a partner and instinctively need offspring as the successor of their life. Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 concerning Marriage states 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. When the marriage is to be carried out, the prospective groom and prospective bride can, by mutual agreement, enter into a written agreement which is ratified by the Marriage Registration Officer regarding the basic rights to form a marriage.¹

Marriage in Islamic Law is a command from the teachings of Allah that must be carried out to complete the longest worship, namely marriage. The purpose of marriage is to fulfill biological needs related to social, religious, and psychological life to achieve a happy life and stay away from inequality and deviation. In this case, marriage is a religious command to its people to marry with the aim of creating a harmonious relationship without any limitations in the relationship because with marriage, a relationship can be said to be halal.² Islamic law stipulates that marriage is carried out with several conditions, one of which is the condition of being sane and mature. The Qur'an mentions the term "balaghu al-nikah" which means old enough to carry out marriage, which means that the age specifications in marriage are clearly found. The problem of determining age in the Marriage Law and in the Compilation of Islamic Law is indeed ijthadiyyah, this is where social influence appears as an effort to renew past fiqh thinking. However, there is a sign from Allah in QS. An-Nisa 4: 9

وَلْيَخْشَ الَّذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعَافًا خَافُوا عَلَيْهِمْ
فَلْيَتَّقُوا اللَّهَ وَيْلِقُوا اللَّهَ قَوْلًا سَدِيدًا

¹Mukhtar, Kamal, *Principles of Islamic Law on Marriage*, 3rd edition, Jakarta: Bulan Bintang, pp. 5-8

²Aziz, Abdul Muhammad Azzam and Wahab, Abdul Sayyed Hawad, 2009, *Fiqh Munakabat Khitbah, Nikah, and Talak*, Jakarta : Amzah, p. 39

And fear Allah those who leave behind them weak children, who fear for their (welfare). Therefore, let them fear Allah and let them speak the right words. The verse does not directly imply that marriages conducted by young couples in accordance with Law No. 1 of 1974 concerning Marriage will produce offspring who experience questionable welfare. However, field observations, especially related to the results of marriage at a young age, show that there are many problems that arise in their household life. This makes achieving goals in household life difficult.³

Marriage is regulated in Law No. 1 of 1974 concerning Marriage which states that marriage can be permitted if the prospective groom is 19 years old and the prospective bride is 16 years old. However, at this time when the age determination number for marriage is regulated concretely, namely according to Law Number 16 of 2019 concerning Marriage, Article 7 paragraph (1) of the Amendment to Law Number 1 of 1974 concerning Marriage states that marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years.⁴The existence of restrictions on the age of marriage aims to achieve a good marriage, one of which is to have children, determine the age of marriage and the health of the reproductive organs. Therefore, we must pay attention to the age of marriage in a household.

Application for marriage dispensation, namely in Article 7 paragraph 2 of Law No. 1 of 1974 concerning Marriage, marriage dispensation can be done if the man is 19 years old and the woman is 16 years old, and the application for marriage dispensation is submitted to the Court or other officials, while in Article 7 paragraph 2 of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, marriage dispensation can be done if the man and woman are 19 years old and the application for marriage dispensation can be submitted to the Court with very urgent reasons and supporting

³Ministry of Religion of the Republic of Indonesia, 2007, Al-Quran and its Translation, Bandung: Syaamil Quran, p.95

⁴State Institution of the Republic of Indonesia, *Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage*, State Gazette of 2019, No.198, Supplement to the State Gazette No. 6401

evidence. In such a situation, the Judge with all his considerations is very decisive in rejecting, not being able to accept or accepting the application for marriage dispensation submitted by the parents.

A marriage between a man and a woman where both are under the minimum age limit set by law and both prospective bride and groom are not physically, mentally and materially ready.⁵ Underage marriage is one of the problems that often occur in the community. Underage marriage is something that is quite feared by some parents because parents assume that children who marry underage are a natural calling that is considered sacred to get married, besides that there are those who assume that young marriage can lead to divorce due to lack of awareness to be responsible in household life.

The large number of men and women who want to marry underage can be a solution with the existence of a marriage dispensation regulated in Article 7 paragraph (2) of Law No. 1 of 1974 concerning Marriage which states that "In the case of problems of deviation from the age provisions as referred to in Paragraph (1) the parents of both the man and woman can request permission for dispensation from the Religious Court for very urgent reasons and with sufficient supporting evidence for the dispensation. So it can be interpreted that the marriage dispensation is an exemption from the obligation of prohibition for men and women who have not met the requirements to marry, namely the granting of permission by the Religious Court to prospective brides and grooms who are not yet old enough as required by the Law to marry."⁶ The dispensation can provide legal leniency to prospective brides and grooms who do not meet the requirements for a valid marriage according to positive law, so that the law gives the Court the authority to grant a marriage dispensation by considering several things based on the law and Islamic law. Marriage dispensation can have a significant impact on life in society. Deciding to get married at a young age is

⁵Directorate of Adolescents and Adolescent Reproductive Rights, 2010, *Age of Marriage and Protection of Reproductive Rights for Indonesian Adolescents*, Second Edition, Jakarta: National Family Planning Coordinating Board (BKKBN), p.13

⁶Kunardi, Muhammad and Muzamil, *Mawardi, Implications of Marriage Dispensation on the Existence of Households in the Semarang Religious Court*, Journal of Legal Reform, Vol.1 No.2, May-August 2014

certainly related to mental readiness to bear all burdens ranging from providing a living, children's education, health, and relationships that have positive and negative impacts. This can certainly have an impact on the household life of the couple who take marriage dispensation.

Regarding granting a letter of dispensation to conduct a marriage, it is certainly related to the justice desired by the parents who request permission for dispensation from the Court. This is related to the Judge's considerations that are needed to provide limitations in accepting the application for marriage dispensation so that there are no problems that can occur to the Judge in resolving and accepting the application for marriage dispensation. So that the Judge is expected to be a role model in providing justice, not because it is only based on the Law so that it has a bad impact on minors which can have an impact on the child's future. The Judge's considerations must consider the child's internal and external aspects, whether it is appropriate to conduct a marriage, and whether there are benefits to the minor.

This study aims to show how the Judge's consideration of the application for marriage dispensation in the Religious Court is in accordance with the perspective of justice. Several decisions that have been submitted to the Religious Court via the Supreme Court Directory website, namely were rejected and could not be accepted Decision, Decision No. 33 / Pdt.P / 2024 / Pa.Pkb and decisions were accepted Decision No. 11 / Pdt.P / / 2024 / Ms.Skl, by looking at the considerations of the Judges at the Tanggamus Religious Court Class 1B, Metro Religious Court Class 1A, Pringsewu Religious Court Class II.

The many phenomena of early marriage in teenage girls and boys, what are the inhibiting factors and their supporters in applying for marriage dispensation so that the Judge's consideration in granting permission for marriage dispensation is very important in order to realize justice between the parties in the Religious Court. Based on the description above, the author wishes to conduct a more in-depth study of the mechanism of marriage dispensation that occurs in society with the title of this study being "Legal Analysis of Judge's Consideration of Marriage Dispensation Cases in the Perspective of Justice".

The theory used in this research is the theory of legal justice by Theo Huijbers,

which is related to justice in that besides general justice, there is also justice as a special moral priority, which is related to human attitudes in certain fields which aims to determine good relations between people and others. people and balance between the two parties. The measure of this balance can be seen in terms of numerical equality, which means the equality of people in one unit, and proportional, which means giving each person what is their right, according to their abilities and achievements. John Rawls, in his theory of justice, introduced two main principles, namely the Equal Liberty Principle and the Difference Principle supplemented by Fair Equality of Opportunity. The Equal Liberty Principle states that every individual is entitled to the most extensive basic liberties, provided that those liberties do not interfere with the liberties of others. This includes freedom of thought, freedom of speech, and rights. Meanwhile, the Difference Principle states that social and economic inequalities are acceptable only if they provide the greatest benefit to the least advantaged group, and fair equality of opportunity asserts that offices and positions should be open to all under conditions of equality of opportunity. These two principles should be arranged hierarchically, where basic liberties take priority over economic equality, and equality of opportunity is more important than tolerance of economic inequality.⁸

Research methods

Based on the explanation above, the author chose to use normative-empirical legal research methods. This choice is taken with the aim of ensuring the suitability of the application of the law to concrete legal events with the applicable regulatory provisions or whether these provisions have been implemented adequately.⁹ In this research, the judicial case study method will be used which requires the involvement of the by looking at the considerations of the Judges at the Tanggamus Religious Court Class 1B, Metro Religious Court Class 1A, Pringsewu Religious Court Class II.

⁷ Hujerbers, Theo, 2020. *Theory of Justice: Legal and Ethical Perspectives*. Yogyakarta: Andi Publisher. Pp. 20-45

⁸ John Rawls, 1999, *A Theory of Justice, Revised edition* Cambridge, MA: Harvard University Press, pp. 53-54.

⁹ Sukardi, M. 2020. *Legal Research Methodology: Normative and Empirical Approaches*. Jakarta: Prenada Media. pp. 45-78

Based on the explanation above, the author chose to use the normative-empirical legal research method.¹⁰ This choice was taken with the aim of ensuring the suitability of the application of law in marriage dispensation events with the provisions of applicable regulations or whether these provisions have been implemented properly. In this study, a judicial case study method will be used which requires the involvement of several decisions that have been submitted to the Religious Court via the Court Directory website as well as the considerations of Judges at the Religious Court.

Purposive sampling is a sampling method that considers certain criteria according to the needs of the researcher. This technique is widely used in research. Researchers choose purposive sampling to obtain samples that are in accordance with the research objectives and meet the criteria needed to provide relevant information.¹¹ In this study, a homogeneous sample was used that focused on similarities, namely similarities in work as Judges with the criteria of Child Judges in several Lampung Religious Courts. The author uses an interview method conducted verbally or in writing to the informant as an informant by asking several questions openly. The informants in this study are Judge of Tanggamus Religious Court Class 1B M. Agus Budiawan, S.H.I., Judge of Metro Religious Court Class 1A Nur Said, S.H.I., M. Ag., Judge of Pringsewu Religious Court Class II Nurman Ferdiana, S.H., M.H.

Data analysis in this research uses qualitative methods. The qualitative method here focuses on the general principles that underlie the manifestation of symptom units that exist in life, or patterns that are analyzed by socio-cultural phenomena using the culture of the society concerned to obtain an overview of the prevailing patterns. These patterns were analyzed again using objective theory. The data that has been collected and presented is then analyzed descriptively, namely in the form of a description that connects theoretical provisions and research results in the field to obtain answers to existing problems.

¹⁰ Muhammad Abdulkadir, 2004, *Law and Research*, Bandung: PT Citra Aditya Bakti, p. 2

¹¹ Sugiyono, 2018, *Quantitative, Qualitative, and R&D Research Methods* Alfabeta Publisher. Bandung, pp. 224-230

Discussion

A. Judge's considerations in granting, rejecting and not being able to accept marriage dispensation cases in Religious Courts

Marriage dispensation can be granted in certain situations that are not in accordance with general norms but require adjustments based on special needs and conditions. Several reasons or conditions for which marriage dispensation is requested by the parents of the couple who will carry out the marriage dispensation are obtained from the Supreme Court Directory website. The Judge's Decision consists of several categories, namely decisions that are rejected, unacceptable, and granted. Judge's decision rejected This means that the judge rejected the lawsuit or application because it did not meet legal requirements or for other fundamental reasons. The judge's decision is unacceptable indicating that the case cannot be processed further in court, The judge's decision was granted is a decision that grants the plaintiff's request or lawsuit, stating that the claim is valid and in accordance with applicable law.

Analysis of the decision to grant a marriage dispensation is usually granted by the court if there are urgent reasons, such as pregnancy outside of marriage, or if the prospective bride and groom are considered physically and psychologically mature enough. In addition, the consent of parents or guardians is an important factor as the beginning of a request for a marriage dispensation in Court, as well as local social or cultural conditions that support marriage at a young age. The judge also considers whether the marriage protects the best interests of the underage prospective bride and groom. This decision is taken based on evidence, witnesses presented during the trial.

1. Decision No. 11/PDT.P//2024/Singkil Sharia Court

A. Position Case

That the Applicants have come and reported to the Marriage Registrar of the Religious Affairs Office of Xxxxx District, Aceh Singkil Regency to register the Applicant's child, but were rejected on the grounds that he was not old enough according to the Rejection Letter Number: B50 / Kua.01.14.04 / PW.01 / 1/2024 and B-53 / Kua.01.14.04 / PW.01 / 1/2024 dated January 22, 2024. That the marriage is very urgent to be

carried out because the two have established a close relationship so that the marriage cannot be postponed any longer. That between the prospective bride and the prospective groom there is no blood relationship or breastfeeding relationship or family relationship, so that according to sharia and according to statutory regulations there is no prohibition on carrying out the marriage and there are no other parties who object because they are still married. That the prospective groom currently works as Xxxxxx with a monthly income of Rp. 3,500,000.00,- (Three Million Five Hundred Thousand Rupiah). That the child of the Petitioners has the status of a Virgin and has reached puberty and is ready to become a Wife and later become a mother, as well as her prospective Husband has reached puberty and is old enough to marry both according to sharia and according to statutory regulations and is ready to become a husband/father and become a head of household who is responsible for the Family. The Petitioner is willing to pay the court costs in accordance with the applicable provisions.

Setgranting the petitioners' request to grant dispensation to the two children of the petitioners (both prospective brides and grooms) the prospective groom and the prospective bride to marry. Charging the petitioners to pay court costs of Rp180,000.00 (one hundred and eighty thousand rupiah). Thus, this decision was made on Tuesday, January 30, 2024 AD, coinciding with the 18th of Rajab 1445 Hجريyah, by Zulkarnaini, S.Sy. who acted as the Sole Judge, which decision was read out in an open hearing for the public on that day and date by the Judge assisted by Darmansyah, SH, as a substitute Registrar attended by the Petitioners electronically.

B. Judge's Consideration

Considering, that based on the statements of the applicants, the two children of the applicants, documentary evidence and witness statements, which are mutually consistent, the Judge can find the following facts: that the two children of the applicants named the prospective groom bin Muhammad and the prospective bride have had a love relationship with each other, that the child of applicant I has the status of a bachelor while the children of applicant II and applicant III have the status of a virgin bachelor, that the child of applicant I has graduated from high school and the children of applicant I and applicant III have also graduated, that the

two children of the applicants know and agree to their marriage plan submitted by the applicants, that the wife of applicant I has died, that the two children of the applicants state that they are physically and mentally ready, physically and mentally healthy, to carry out marriage and build a household life, that the two children of the applicants state that there is no coercion against them and their families, physically, mentally, sexually or economically in this marriage plan, that the child of applicant I has worked as a guard at a gas station with a fixed monthly income of Rp. 3,500,000.00 (three million five hundred thousand rupiah), that the two children of the applicants are not related and breastfeeding that can hinder their marriage, that this marriage dispensation application was submitted because the two children of the Applicants have been dating for too long, it is very worrying that they will violate local religious and customary norms and to better protect the honor of the family and the moral norms that apply in society, that the parents of the two children who are being asked for marriage dispensation are committed to taking responsibility for the economic, social, health and education problems of their children, that the Applicants have good intentions to carry out the marriage under the supervision and recording of the Head of the local Religious Affairs Office but were rejected with evidence of a Notification Letter of Lack of Requirements / Rejection of Marriage issued by the local Sub-district Religious Affairs Office.

The petitum considerations consider that regarding these facts, the Judge considered them as follows:

1. Considering that marriage is a physical bond between a man and a woman as husband and wife to form a happy and eternal household based on the Almighty God, therefore every marriage must fulfill the requirements determined by law;
2. Considering, that based on these facts, the marriage plans of the two children of the Applicants only lack one requirement, namely that the two children of the Applicants have not reached the age of 19 years so that they must obtain a marriage dispensation from the Sharia Court as regulated in Article 7 paragraph (1) and (2) of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage, while other requirements, including that the two children of

the Applicants have no blood relationship, no breastfeeding relationship and no prohibition on marriage, have been fulfilled as regulated in Articles 6 and 8 of Law Number 1 of 1974 concerning Marriage;

3. Considering, that between the two children of the Applicants there is no blood relationship, no breastfeeding relationship and there is no prohibition on marriage as stipulated in Article 8 of Law Number 1 of 1974 concerning Marriage which has been amended by Law Number 16 of 2019;
4. Considering that the minimum age requirement of 19 years is basically an indication of a person's maturity and mental maturity to be able to carry out rights and obligations in the household properly and responsibly, in addition to also maintaining the health and offspring of the husband and wife;
5. Considering that in Islamic law the minimum age limit is not a requirement for marriage, Islamic law only determines that the criteria for a person to be competent and able to carry out legal actions (including marriage) is by using the mukallaf criteria, namely that the person is already aqil (sensible or able to think well) and baligh (adulthood which is indicated by ihtilam/wet dreams for men or menstruation for women), and a mukallaf is considered capable of carrying out rights and obligations properly and with full responsibility;
6. Considering, that based on these facts, the two children of the Applicants can be categorized as mukallaf because they are of sound mind and mature and can therefore be considered capable of carrying out their rights and obligations properly and with full responsibility;
7. Considering, that however, according to positive law and the law that is alive in society, the mukallaf of a child who is marked by aqil and baligh must also be accompanied by physical and spiritual abilities, for the child of Applicant I (prospective husband) must be ready as the head of the family as marked by loving his wife/family and having worked as a guard at the Xxxxxx gas station with a fixed monthly income of Rp. 3,500,000.00, (three million five hundred thousand rupiah) and for a prospective wife must be ready as a good housewife as marked by respecting and guarding the husband/family's assets;
8. Considering, that based on the above considerations, the Judge is of the opinion that even though the two children of the Applicants are not yet

19 years old, the two children of the Applicants are considered to be adults and are able to carry out their rights and obligations in the household properly and with full responsibility.

9. Considering that the marriage plan of the two children of the Applicants is the will of the bride and groom themselves without any coercion from any party, the plan has also been supported and approved by the parents of each prospective bride and groom and even committed to taking responsibility for economic, social, health and education issues for the prospective bride and groom, so that the marriage plan has taken into account the best interests of the children, as regulated in Article 26 paragraph (1) letter a of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection and the latest amendment with Law Number 17 of 2016 concerning the stipulation of Perppu Number 1 of 2016 in conjunction with Article 3 of the Convention on the Rights of the Child approved by the United Nations (UN) on 20 November 1989;
10. Considering that the two children of the prospective bride and groom have been dating for a long time and love each other and have agreed to continue to the level of marriage, and the family is worried that if they are not married, they will be worried that they will commit acts prohibited by religion which will give rise to greater slander and mafsadah in the future, this is a very urgent reason and in a situation where there is no other choice, then to avoid this, the two children of the Applicants must be married immediately in accordance with Article 7 paragraph (2) of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage and its explanation; This is in accordance with the Principles of Fiqhiyah, and is taken as the opinion of the Judge, namely: The rules of the imam (government) towards his people are based on maslahah (goodness)” *درءالمفاسد مقدم على جلب المصالح* “Preventing mafsadah (damage) takes precedence over attracting maslahah (goodness)”

11. Considering, that based on these considerations, the Applicants' application has legal grounds and therefore should be granted by granting dispensation to the Applicants' two children to marry.¹²

C. Analysis

Analyzing the Judge's considerations in this case from the perspective of justice, it is necessary to see whether the decision considers various aspects that are fair, both for the parties involved (prospective bride and groom, parents, and society) and not only focuses on fulfilling formal legal requirements. The principle of justice for both prospective bride and groom. In this consideration, according to Judge Nurman Ferdiana, SH, MH, he said that the Judge must pay attention to the fact that both prospective bride and groom have reached puberty (adulthood according to Islamic law), have been dating for a long time, and there is no coercion from any party regarding this marriage. From the perspective of justice, this is important because it ensures that their personal rights and wishes to enter into marriage are respected. The Judge also noted that both parties have agreed to marry and are ready to carry out the responsibilities of married life, even though they are still under 19 years old. However, justice for both prospective bride and groom must also include whether they are truly mentally, emotionally, and economically ready to face the challenges of marriage. Even though the prospective husband has a permanent job with a stable income, justice also means ensuring that they have emotional and psychological readiness, which may not be fully achieved just because they are physically mature.¹³ By paying attention to this, it can minimize the occurrence of domestic violence that can affect the mental condition of the child in obtaining a marriage dispensation. Justice for parents The judge also considered that the parents of both parties supported the marriage and even committed to share responsibility for economic, social, health and educational matters. From a justice perspective, this shows parental support

¹² Decision No. 11/PDT.P//2024/ Singkil Sharia Court, Directory of Decisions of the Supreme Court of the Republic of Indonesia, accessed from <https://bangunan3.mahkamahagung.go.id/direktori/index/kompasi/dispensasi-nikah-1/tahun/Jenis/regis/tahun/2024.html> on September 3, 2024, 10.29 WIB

¹³ Interview with Judge of Pringsewu Religious Court Class II, Mr. Nurman Ferdiana, SH, MH, September 9, 2024, 09.20 WIB

and a guarantee that the bride and groom will not face difficulties alone. This is important because early marriages often require additional support from the family.

Justice in positive law Mr. Judge Nurman Ferdiana, SH, MH said that the Judge's considerations also showed a balance between the application of positive law (which requires a minimum age of 19 years to marry) and Islamic law (which is guided by maturity based on aqil and baligh). From the perspective of justice, the Judge tried to combine the two by granting dispensation even though the prospective bride and groom had not reached the age stipulated in positive law. This decision reflects the Judge's efforts to find a fair middle ground between different legal norms, namely religious law and positive state law. Justice for society and social norms The Judge also considered social risk factors, where if the marriage is not carried out immediately, there is a high possibility that the two prospective brides and grooms will violate local religious and customary norms. In this context, justice also includes protection of family dignity and social norms that apply in society. The Judge is of the opinion that in order to avoid the potential for greater moral damage, the marriage must be carried out immediately.

Based on a justice perspective The Judge's decision to grant a marriage dispensation is based on broad and comprehensive considerations. From a justice perspective, the Judge attempts to balance the rights and interests of the parties involved, the prospective bride and groom, their families, and the community. The Judge takes into account the physical, mental, and financial readiness of the prospective bride and groom, as well as maintaining applicable religious and social norms. Although the prospective bride and groom have not reached the minimum age limit set by law, the Judge considers that they are mature enough to marry and that their marriage brings benefits to all parties. However, if reviewed further, the question of the mental and emotional readiness of the prospective bride and groom to live a married life at a young age can still be questioned. This aspect may not have been fully met, which could be a challenge for long-term justice in this marriage.

The relationship between theory and judge's considerations In the theory of justice outlined by Theo Huijbers, justice is divided into three main types, namely commutative justice, distributive justice, and legal justice (general justice). The analysis of the Judge's considerations above can be seen from the three types of justice. Commutative justice is concerned with the relationship between individuals and individuals, and aims to ensure that the rights of each party are fulfilled in a balanced manner. In the context of the Judge's considerations, commutative justice can be analyzed from the perspective of the relationship between the prospective bride and groom and their families.¹⁴ The rights and agreements of the two prospective bride and groom The judge stated that the two prospective brides and grooms love each other, have agreed to marry, and there is no coercion from any party. Commutative justice is applied because the wishes of the two prospective brides and grooms and the agreement of both families are recognized and respected. Consent without coercion with the statement that there is no element of coercion in this marriage plan, commutative justice seems to be maintained because the decision to marry is based on free consent between the two parties. However, from the perspective of commutative justice, there is a potential problem in terms of the status of minors. Although they are categorized as mukallaf according to Islamic law, the question of the emotional and mental maturity of these minors still needs to be considered. Do the two prospective brides and grooms really have a mature understanding of the rights and responsibilities of marriage? If not, then commutative justice can be ignored.

Distributive justice is concerned with the fair distribution of benefits and burdens among members of society, particularly in terms of welfare, protection and responsibilities. In this context, the judge's consideration of the dispensation of underage marriage needs to be evaluated in terms of how the decision affects the welfare and protection of children. Protection and welfare of children The judge stated that the decision took into account the best interests of the child, in accordance with the Child Protection Act. Here, distributive justice is applied to ensure that children are treated well

¹⁴ Hujerbers, Theo, 2020. *Theory of Justice: Legal and Ethical Perspectives*. Yogyakarta: Andi Publisher. Pp. 20-45

and receive welfare. However, it is unclear whether granting permission for underage marriage actually protects children or actually harms them in the long term, particularly in terms of health and educational risks. Role of parents The judge emphasized that the parents of both prospective bride and groom are committed to taking responsibility for the economic, social, health and educational issues of the child. This can be considered as part of distributive justice as the burden of responsibility is distributed between the prospective bride and groom and their parents. However, whether parents can truly ensure the welfare of the child after marriage, particularly given their young age, is an important question in distributive justice.

Legal justice is related to the relationship between individuals and society as a whole, and how laws and regulations are obeyed for the public interest. In the Judge's consideration, this is reflected in efforts to prevent greater "mafsadah" (damage), such as violations of religious and customary norms, which can cause social problems in the future. Preventing greater damage (mafsadah) Judge Nur Said, SHI, M.Ag argued that by granting this marriage permit, it can prevent violations of religious and customary norms that can cause slander in society. This reflects legal justice because the judge considers the public interest and social norms that exist in society. Thus, there is an effort to balance the interests of the individual and the interests of the wider community. Fulfillment of positive law even though the child has not reached the age of 19 as regulated in the Marriage Law, the judge uses the consideration that they are mukallaf in Islamic law. This raises questions in terms of legal justice.¹⁵ Can religious legal considerations replace positive law designed to protect minors? In this context, there is a potential tension between legal justice (compliance with the law) and substantial justice (based on special conditions). Based on Theo Huijbers' theory of justice, the Judge's consideration in this case tries to apply commutative justice (protecting individual rights), distributive justice (considering child welfare and family responsibilities), and legal justice (protecting public interests and community norms). However, from the

¹⁵ Interview with Judge of Metro Religious Court Class II, Mr. Nur Said, SHI, M.Ag, September 13, 2024, 13.20 WIB

perspective of distributive and legal justice, this decision is still questionable. Although preventing social damage is considered a priority, whether legal protection and the long-term welfare of children are also sufficiently considered is an issue that needs to be further considered.

In the considerations taken by Mr. Judge Nurman Ferdiana, there is an attempt to balance the individual rights of the prospective bride and groom and the prevailing social norms. By granting a marriage dispensation even though the prospective bride and groom are not yet 19 years old, the Judge respects the decision of both parties who have loved each other and are committed to getting married, reflecting commutative justice, where the rights and consent of each party are recognized and respected. However, even though physical maturity is recognized, the question of their mental and emotional readiness to live a married life remains important. Justice should not only be seen from the fulfillment of legal requirements, but also from the overall readiness of the individual.¹⁶

According to the author, the Judge's considerations in this case have tried to reflect justice by balancing several important aspects, such as the consent of the prospective bride and groom and social norms. From the perspective of commutative justice, the Judge respects the will of the prospective bride and groom who want to get married without coercion and are supported by their families. This shows respect for the individual's right to determine their future. However, I feel that even though the prospective bride and groom are physically considered adults according to religious law, their emotional and psychological readiness to live a married life at a young age is still an important question. Justice, in my opinion, should not only include formal aspects, but also consider mental readiness to face the challenges of marriage. On the other hand, from the perspective of distributive and legal justice, I feel that the protection of children's broader rights, such as education and long-term welfare, may not have been fully considered. The Judge gave a dispensation because it avoided greater moral damage in society, but I think this decision still leaves potential risks for children who

¹⁶ Interview with Judge of Pringsewu Religious Court Class II, Mr. Nurman Ferdiana, SH, MH, September 9, 2024, 09.20 WIB

marry at a young age, especially in terms of health and education. Although the intention to prevent bad deeds is commendable, true justice in my opinion includes optimal protection of the future of children, which may not have been fully achieved in this case.

2. Decision No. 33/Pdt.P/2024/Pangkalan Balai Religious Court

A. Position Case

That, the applicant's biological child and her prospective husband have been in a relationship (dating) for a long time and do not want to be separated anymore because they both like each other. That, the applicant's extended family has accepted the proposal from the applicant's biological child's prospective husband's family. That the applicant's biological child and her prospective husband are in good health, and the applicant's biological child is not pregnant. That, between the applicant's biological child and her prospective husband there is no family/blood relationship, breastfeeding or other things that can prevent the validity of the marriage of the applicant's biological child and her prospective husband and both are Muslims. That, for this purpose the applicant's biological child and the prospective husband of the applicant's biological child have appeared and taken care of all the administrative requirements determined at the Rantau Bayur District Religious Affairs Office, Banyuasin Regency, however the Head of the Rantau Bayur District Religious Affairs Office, refused to carry out the marriage of the applicant's biological child with the prospective husband, on the grounds that the applicant's biological child was declared not old enough because she was still 16 (sixteen) years old with the marriage rejection number. That, with the rejection from the Head of the Religious Affairs Office of Rantau Bayur District, Banyuasin Regency, the applicant's biological child cannot marry the prospective husband, therefore a marriage dispensation determination is required from the Pangkalan Balai Religious Court.

Determine that the applicant's application cannot be accepted. Charges the Applicant to pay court costs of Rp740,000.00 (seven hundred and forty thousand rupiah); Thus this decision was made in a trial of the Sole Judge of the Pangkalan Balai Religious Court on Tuesday, April 19, 2024 AD/8 Ramadhan 1445 Hijriah by Lia Rachmatilah, S.Sy., as the Sole Judge, which

decision was pronounced in a trial open to the public by the Sole Judge assisted by Rizki Amelia, SE, SH as the Substitute Clerk outside the presence of the applicant.

B. Judge's Considerations

1. Considering, that the Single Judge has attempted to provide advice to the applicant, the applicant's child, the applicant's child's prospective husband and the applicant's child's prospective husband's parents as required by Article 12 of Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, by providing advice and views on the risks of carrying out marriage at a young age in terms of health, encouraging them to undertake further studies first, continuing the 12-year compulsory education, the economic, social and psychological impacts on children, and the potential for disputes and domestic violence;
2. Considering, that based on the advice from the Single Judge, the applicant, the applicant's child, the prospective husband and the parents of the applicant's child's prospective husband have understood it, however the applicant still maintains his desire to marry off his child;
3. Considering, that the applicant, the applicant's child, the applicant's child's prospective husband and the applicant's child's prospective husband's parents have provided information as required by Article 13 number (1) letters a, b, c and d, Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, the essence of which is that the marriage of the applicant's child with her prospective husband is a situation that requires it to be expedited, because the two have been in a very close relationship and are ready to start a household;
4. Considering, that from the statements of the applicant, the applicant's child, the applicant's child's prospective husband and the applicant's child's prospective husband's parents, the planned marriage between the applicant's child and her prospective husband was not based on coercion but because of the needs and desires of the applicant's child and the applicant's child's prospective husband;
5. Considering, that the Single Judge took statements from the applicant, the applicant's child, the applicant's child's prospective husband and the

- applicant's child's prospective husband's parents and has provided maximum advice and views;
6. Considering, that in order to prove the arguments of his application, the applicant has been given the opportunity to submit evidence, however the applicant has never attended the trial again and has not ordered anyone else to attend as his representative or legal attorney, even though he was properly summoned at the trial on March 5, 2024 and based on case summons Number 33/Pdt.P/2024/PA.Pkb dated March 13, 2024 and it turns out that the applicant's absence was not for a valid reason.;
 7. Considering, that the Legal Formulation of the Religious Chamber, number 5 letter a, Circular Letter of the Supreme Court of the Republic of Indonesia Number 1 of 2022 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2022 as a Guideline for the Implementation of Duties for the Court, provides guidelines that if the applicant/plaintiff who was present at the first hearing then never attended again twice in a row at the next hearing, then the application/lawsuit is declared inadmissible;
 8. Considering, that based on the considerations above, the applicant was present at the first hearing and then never attended again twice in a row at the next hearing, then based on the Legal Formulation of the Religious Chamber, number 5 letter a, Circular Letter of the Supreme Court of the Republic of Indonesia Number 1 of 2022 concerning the Enforcement of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2022 as a Guideline for the Implementation of Duties for the Court, the applicant's application is declared unacceptable;
 9. Considering, that based on article 89 paragraph 1 of Law Number 7 of 1989 concerning Religious Courts, as amended for the second time by Law Number 50 of 2009, all court costs arising from this case are borne by the applicant; Considering all applicable laws and regulations and sharia law relating to this case.¹⁷

¹⁷ Decision No. 33/Pdt.P/2024/PA.Pangkalan Balai, Directory of Decisions of the Supreme Court of the Republic of Indonesia, accessed

C. Analysis

In analyzing the above decision from the perspective of justice, there are several aspects that must be examined. Individual justice for child protection, this decision shows the court's efforts to protect the rights and welfare of children by rejecting the application for marriage dispensation. Although there are personal and social reasons from the applicant, the Judge's decision is based on the principle that the child concerned is not old enough and has not reached the maturity required to marry, this reflects an effort to protect children from the risks associated with early marriage, which is in line with the principle of individual justice which emphasizes the protection of individual rights, especially those who are still in their developmental age. Health and education The Judge also considered advice on health risks According to Judge Mohammad Agus Budiawan, SHI related to health is from an internal perspective the absence of reproductive organ readiness which can cause damage, the education of the couple who are taking the marriage dispensation will certainly stop, the couple who are taking the marriage dispensation are not 100% ready to face all the problems in their household which will certainly affect the psyche. The need to continue education, which shows consideration for the child's overall welfare, shows that the Court's decision took into account the long-term impact of early marriage on the child's health, education and emotional stability.¹⁸

Social justice social and economic considerations The judge considered that early marriage could have a negative impact on the social and economic life of the child. This reflects social justice in the context that society has the right to protect its members, especially the vulnerable, from the potential negative impacts that may arise from early marriage. Social acceptance even though the applicant's extended family has accepted the proposal and there is a good relationship between the two parties, the court's decision still

from <https://bangunan3.mahkamahagung.go.id/direktori/index/kompasi/dispensasi-nikah-1/tahun/Jenis/regis/tahun/2024.html> on September 3, 2024, 12.41 WIB

¹⁸ Interview with Judge of Tanggamus Religious Court Class 1B, Mr. Mohammad Agus Budiawan SHI on April 2, 2024, 11.06 WIB

considers that this is not enough to ignore the existing legal provisions regarding the minimum age. This shows that social justice prioritizes individual interests over social consensus which may be temporary.

Legal justice is the application of law. The Judge's decision to reject the application for marriage dispensation reflects the application of the principle of legal justice, namely compliance with existing legal provisions, especially Law Number 16 of 2019 concerning Marriage. By complying with applicable laws, this decision provides legal certainty and consistency in the application of the rules. According to Judge Mohammad Agus Budiawan, S.HI, this is related to the Judge's Consideration, namely the Judge decides by granting permission to carry out marriage dispensation by referring to the regulations of the Law, Islamic Law, the Views of Jurisprudence Scholars, Compilation of Islamic Law, Judge's Doctrine, and the Judge's own Belief in providing considerations, this policy is from the Judge himself by looking at the evidence from the related parties, and evidence during the trial by looking at the existing arguments. Legal procedure The judge follows legal procedure by giving the applicant the opportunity to present evidence and attend the trial. Rejection of the application due to the applicant's absence without a valid reason also shows the application of the principle of legal justice which requires compliance with applicable legal procedures.

Legal certainty procedural certainty This decision provides legal certainty by upholding existing guidelines regarding marriage dispensation. By stating that the application is inadmissible due to the applicant's absence and inability to meet the legal requirements, the court ensures that the decision is made based on clear legal and procedural certainty. The certainty of the costs of determining the court costs that must be paid by the applicant also reflects legal certainty regarding financial responsibility in the judicial process. Based on this decision, it can be considered fair in the context of individual, social, legal justice, and legal certainty. The judge prioritizes the protection of children's rights and compliance with applicable laws, while considering the procedural aspects and long-term impacts of the decision. This decision demonstrates a commitment to protecting individual rights,

maintaining compliance with the law, and providing legal certainty in the judicial process.

The relationship between the Judge's considerations and Theo Huijbers' theory of justice, in his theory of justice, puts forward several main principles that can be applied to analyze the decision in this case. The following is the relationship between the Judge's considerations and Huijbers' theory of justice. The principle of justice as a balance, children's rights and social interests Huijbers emphasizes the importance of a balance between individual rights and social responsibility. In this decision, the judge considers the child's right to continue the marriage and the family's wishes, but also balances it with the social responsibility to protect children from early marriage. The emphasis on health risks, educational impacts, and psychological aspects reflects an effort to achieve a fair balance between individual interests and broader social interests. This is in line with the opinion of Mr. Judge Nurman Ferdiana, SH, MH, namely in Article 3 of Perma No. 5 of 2019 which aims to apply how these principles, guarantee the protection of children's rights, increase parental accountability towards children, identify whether or not there is coercion in marriage, this coercion is divided into two, namely mental and physical, this must be seen, which is the guideline for the Pringsewu Class II Religious Court in deciding a marriage dispensation case.¹⁹

Protection of individuals, children's interests Theo Huijbers considers the protection of individual rights as an important aspect of justice. The judge in this decision provides advice on the risks of early marriage and its impacts, and considers the child's maturity and emotional readiness. By rejecting the application for marriage dispensation, the judge prioritizes the protection of the child's welfare, which is in accordance with Huijbers' view on the importance of protecting individual rights in the context of justice. Compliance with legal rules and principles, law enforcement and consistency Huijbers emphasizes the importance of compliance with the law and the principle of justice in its application. The judge in this case

¹⁹ Nugroho, Budi.2023, *Justice in Law and Ethics*. Yogyakarta: Pustaka Pelajar, pp. 132-135.

followed the applicable legal provisions, including the minimum age for marriage and the dispensation procedure. By doing so, the judge ensures that the decision taken is consistent with the principles of legal justice and provides legal certainty.

Social responsibility, social and economic impact Huijbers also acknowledged the importance of social responsibility in upholding justice. The judge's decision to reject the application took into account the social and economic impacts of early marriage, and provided advice on the long-term impacts. This reflects a concern for social responsibility and an effort to achieve justice in a broader context, including community welfare and social stability.

Procedural justice, fair procedures According to Huijbers, fair procedures are an important aspect of justice. In this case, the judge followed the established procedures, including giving the applicant the opportunity to present evidence and attend the trial. The rejection of the application after the applicant's absence reflects the application of fair legal procedures and is consistent with the principle of procedural justice. Based on the Judge's considerations in this decision, it is in line with Huijbers' theory of justice in following fair legal procedures. This decision reflects an effort to apply Huijbers' principle of justice comprehensively, integrating individual protection with social responsibility and legal compliance.

The author's analysis of Decision No. 100/Pdt.P/2024/PA.JB reflects that justice cannot accept the case of a marriage dispensation application that places the protection of children's rights as the main priority, taking into account aspects of health, education, and emotional stability. The judge's decision confirms that a child aged 17 years and 8 months has not reached the maturity required to marry, in line with the principle of individual justice that emphasizes the protection of individual rights during development. In addition, this decision pays attention to the social and economic impacts of early marriage, reflecting social justice that prioritizes individual interests over social consensus that may be temporary. By complying with applicable legal provisions, this decision also demonstrates a commitment to legal justice and legal certainty, and integrates aspects of procedural justice by

providing the applicant with the opportunity to present evidence. Overall, this decision not only protects children's rights, but also creates a fair and transparent legal environment, thus reflecting the principles of justice as a whole.

B. The considerations of the Religious Court Judges reflect the principles of justice, legal certainty and legal benefits.

Analysis of the decision to grant marriage dispensation from the perspective of legal certainty, legal benefits, and justice aims to provide a legitimate legal status for marriage and guarantee the rights of the parties from the benefit side, this decision helps maintain social and economic stability, especially in urgent cases such as pregnancy outside of marriage. In terms of justice, the Judge considers the readiness of the prospective bride and groom and the best impact on their welfare, so that decisions are taken for the protection and interests of all parties involved. The following is an analysis of several decisions, including:

1. Decision No.11/Rev.P/2024/Singkil Sharia Court.

A. Analysis

Subjective justice The judge in this decision considered that although the two children who were requested for dispensation had not reached the minimum age of 19 years, they were considered mentally and physically mature (*mukallaf*), and ready to carry out the rights and obligations in the household. The judge also considered that the request for dispensation was submitted to prevent the possibility of violations of religious and customary norms that could cause social problems. This is related to the opinion of Judge Mohammad Agus Budiawan, SHI, namely the Judge's consideration in deciding this also looks at the cultural culture of the community in the Village, how and what the local culture is like, because there are some villages that do have the habit of marrying off their children when they are mature, and there are also those that do not. So, in this case the Judge will consider it as best as possible. These considerations show that judges seek to achieve justice by adapting the law to the particular circumstances of the individual.

Objective justice Judges consider the best interests of the children by

taking into account the social and moral impacts if the marriage does not take place immediately. By allowing the marriage, the judge seeks to prevent potential slander or greater moral damage, which is an attempt to achieve justice in the context of the wider society.²⁰

Legal certainty, compliance with the law The judge refers to Article 7 paragraph (2) of Law Number 16 of 2019 which allows for the granting of marriage dispensation if there is an urgent reason. The judge also pays attention to the provisions of Islamic law on maturity (mukallaf), which shows that these considerations are in accordance with applicable legal principles, thus providing legal certainty for the parties. Transparency in the legal process, the judge provides advice to applicants about the risks of early marriage and ensures that both children and their parents understand and accept these risks. This process shows that the judge is trying to maintain transparency and integrity in the decision-making process, which supports legal certainty.²¹ According to Gustav, legal certainty in marriage dispensation is a positive thing so that it is able to properly regulate the interests of every human being in society and must always be obeyed even though the positive law is considered inappropriate or unfair. Then legal certainty is a definite condition, with the provisions and provisions of the law itself or especially the product of legislation. As long as the marriage dispensation process is carried out in accordance with statutory regulations and provides more benefits to the prospective bride and groom than the prevention itself, then the dispensation is legally valid.

Legal benefits, benefits for the parties involved This decision provides direct benefits for both families by allowing marriages that are considered important to maintain family honor and avoid potential

²⁰ Interview with Judge of Tanggamus Religious Court Class 1B, Mr. Mohammad Agus Budiawan, SHI, April 2, 2024, 11.06 WIB

²¹Fadhli, M., Rahmiati, S., Fathur, A., & Ramadhan, M. (2022). *Politik hukum batas usia perkawinan di Indonesia*. *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum*, Vol. 20, No. 2, 114–121. Diakses pada 15 November 2024, dari <https://media.neliti.com>

social violations. This shows that the Judge considers the expediency of the law by focusing on the welfare of the individuals and families involved. Benefiting society by preventing potential social and moral problems, this ruling also benefits society at large. The judge took into account the rules of *fiqhiyah* which emphasize that preventing harm (*mafsadah*) takes precedence over attracting good (*maslahah*), which shows that the decision was made to maintain social and moral order in society.²²

Based on The Judge's considerations in this decision seem to reflect justice, legal certainty, and legal benefits. The Judge balances the need to apply the law, the specific conditions of the individual, and the social impact of the decision. Therefore, this decision is considered to have met all three perspectives. The author's analysis of the Judge's considerations in decision number 11/Pdt.P/2024/MS.Skl shows that the decision has reflected the principles of justice, legal certainty, and legal benefits comprehensively. In terms of subjective justice, the judge assessed the mental and physical readiness of the two children who applied for dispensation even though they had not reached the minimum age of 19 years, and considered local cultural norms that encourage marriage at a young age, and attempted to prevent potential violations of religious and customary norms that could lead to social problems. Objective justice is reflected in the judge's efforts to protect the best interests of the children and prevent greater social impacts, such as slander and moral damage. In terms of legal certainty, the judge adhered to the provisions of Article 7 paragraph (2) of Law Number 16 of 2019, which allows for dispensation in urgent situations, and provides clear advice on the risks of early marriage. This demonstrates transparency and compliance with applicable law, providing legal certainty for the parties. In addition, from the perspective of legal benefits, this decision brings direct benefits to individuals and families

²² Kamarusdiana, K., & Sofia, I. (2022). *Dispensasi nikah dalam perspektif hukum Islam, Undang-Undang Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam*. SALAM: Jurnal Sosial dan Budaya Syar'i, Vol. 9, No. 2, 41–52. Diakses pada 15 November 2024, dari <https://journal.uinjkt.ac.id>.

by maintaining honor and social stability. The judge also considered the principle of *fiqhiyah* which emphasizes prevention of harm as a priority, which shows a commitment to maintaining the social and moral order of society. Overall, the judge's considerations in this decision reflect the harmony between individual justice, legal certainty, and benefits for society.

2. Decision Number 33/Pdt.P/2024/Pangkalan Balai Religious Court

A. Analysis:

Justice The judge in this decision has attempted to achieve justice, especially in terms of protecting minors from the risk of early marriage. The judge's considerations include aspects of substantive justice that not only focus on the family's request, but also on the child's rights. The judge provides advice to the applicant and related parties regarding the risks of early marriage from various aspects, including health, education, and psychology. The decision to reject the dispensation request reflects the judge's efforts to maintain justice for girls who are still 15 years old. Although the family and child want marriage, the judge upholds justice by protecting the child's right to grow and develop in better conditions. The justice that is prioritized is not only the wishes of the parents, but also the best interests of the child.

Legal certainty The Judge's considerations are fully consistent with the principle of legal certainty. The Judge refers to Law Number 16 of 2019 which sets the minimum age limit for marriage, which is 19 years. Although marriage dispensation is possible in certain cases, the Judge considers that there is no urgent reason to grant dispensation, especially since the child is not pregnant, and there are major risks that must be considered regarding early marriage. The Judge also follows the procedures stipulated in PERMA Number 5 of 2019 concerning guidelines for submitting marriage dispensation, which requires an in-depth examination of the reasons submitted. In addition, the applicant's absence from the next trial without a valid reason is a strong basis for the Judge to reject the application, in accordance with Circular Letter of the Supreme Court Number 1 of 2022. This rejection provides legal certainty that every court process must comply with applicable provisions and cannot be carried out carelessly. The applicant's absence is the Judge's point of consideration, as according to

Gustav, the decision of the panel of Judges to grant a marriage dispensation application usually goes through an in-depth examination process and is accompanied by careful legal considerations, based on relevant legal circumstances and facts. Thus, the results of this determination are expected to provide optimal benefits and achieve a sense of justice which is the main objective of the law.

Benefits of the law The Judge's considerations in this decision also prioritize the aspect of legal benefits. By rejecting the dispensation request, the Judge ensures that the child is not trapped in an early marriage that can have a negative impact on his/her future. The legal benefit here is to provide an opportunity for the child to continue their education and achieve physical and mental maturity before getting married. In addition, the judge also emphasized the importance of waiting until the child reaches a more mature age so that they are better prepared to face the challenges of marriage. The Judge provides an understanding to the applicant about the risks that may be faced if the marriage is still carried out at a young age, so that this decision brings long-term benefits to the child and his/her family. Based on the Judge's considerations in this decision, it is in accordance with the perspective of justice, legal certainty, and legal benefits. The Judge seeks to protect children from the risks of early marriage, ensure the application of laws that are consistent with applicable regulations, and provide solutions that are beneficial for the child's future. The decision to reject the request reflects the protection of children's rights and prevents the negative impacts that can arise from marriage at a young age. According to Mr. Judge Nurman Ferdiana, SH, MH, the Judge, in accordance with the reasons contained in the application for marriage dispensation, if the granting of the dispensation is not granted, must also see the negative impacts such as if the child is not married, it will have an impact on his daily life such as loss of enthusiasm, feeling annoyed continuously and others. The judge must see the impact by paying attention to the problems and providing education such as providing advice and guidance to the applicant's children.²³

²³ Sofia, I., & Kamarusdiana. (2020). *Dispensasi nikah dalam perspektif hukum Islam, Undang-Undang Nomor 1 Tahun 1974 dan Kompilasi Hukum Islam*. SALAM: Jurnal Sosial dan Budaya Syar'i, 7(1), 60–75. Diakses pada 15 November 2024, dari <https://ejournal.unisba.ac.id>.

Decisions No. 11/Rev.P/2024/MS.Skl and No. 33/Pdt.P/2024/PA.Pkl.Balai demonstrate the application of justice, legal certainty, and legal benefits, each tailored to the specific context of the cases. In the first decision, the judge prioritized subjective justice by considering the mental and physical readiness of the children applying for dispensation, as well as respecting local customs and religious norms, thereby preventing potential social and moral violations. This decision ensured legal certainty by referencing Article 7(2) of Law No. 16/2019 and following a transparent process, while also providing benefits by preserving family honor and social stability. Conversely, in the second decision, the judge rejected the dispensation to protect the child's rights, taking into account the risks to her health, education, and psychology from early marriage. The judge strictly adhered to legal provisions, including Law No. 16/2019, PERMA No. 5/2019, and Circular Letter No. 1/2022, ensuring legal certainty in the decision-making process. From the perspective of legal benefits, this decision allowed the child to grow and develop optimally before marriage, ensuring long-term advantages for her and her family. Thus, both decisions reflect a comprehensive application of the law, maintaining a balance between justice, legal certainty, and legal benefits.

In my analysis, the Judge's decision clearly reflects the principles of justice, legal certainty, and legal benefits. In terms of justice, the Judge tried to protect the rights of a 15-year-old girl by rejecting the marriage dispensation application, despite the wishes of the family and the child. The Judge focused on the best interests of the child, considering that early marriage poses risks to her health, education, and psychology. Thus, the justice upheld here does not merely fulfill the wishes of the parents, but protects the child from risks that could endanger her development. From the perspective of legal certainty, the Judge followed the rules set out in Law Number 16 of 2019 concerning the minimum age limit for marriage, and complied with the procedures set out in PERMA Number 5 of 2019 and Circular of the Supreme Court Number 1 of 2022. The applicant's absence from the trial was an important factor that strengthened the Judge's decision to reject the dispensation, thus ensuring a consistent and orderly legal process. From the perspective of benefit, the Judge considered the

long-term impacts, including the opportunity for the child to continue their education and achieve greater maturity before marriage, so that this decision is beneficial for the future of the child and his/her family. Thus, the Judge's decision to reject the application is in accordance with the principles of justice, legal certainty, and legal benefit, and provides appropriate protection for the rights of the child.²⁴

Conclusion

Judges' considerations in marriage dispensation cases do not fully reflect justice, although in some cases judges' considerations reflect efforts to protect children from the negative impacts of early marriage, such as health risks and emotional instability, justice is not always achieved consistently. Some decisions granting dispensation are based on emergency situations or urgent needs, which can ignore the principles of child protection and long-term justice for them. Judges' considerations in granting dispensation in certain situations may prioritize short-term interests, such as family honor or urgent social circumstances, without taking into account the long-term impacts that can be detrimental to children. Therefore, justice in this context has not been fully realized, because it does not always consider children's welfare as the main priority in every decision.

Judges' considerations in marriage dispensation cases do not fully reflect justice, legal certainty, and legal benefits in a balanced manner. Although some decisions reflect efforts to protect children by rejecting dispensation to prevent long-term negative impacts, many decisions that grant dispensation focus more on emergencies without considering comprehensive child protection. This shows that the principle of justice has not been fully achieved because not all decisions consider the best interests of the child. In addition, legal certainty is sometimes disrupted by variations in judges' decisions that depend on the situational context, and legal benefits are also not always optimal because the

²⁴ Fadhli, F., Rahmiati, N., Fathur, M., & Ramadhan, A. (2022). *Politik hukum batas usia perkawinan dan peran PERMA No. 5 Tahun 2019*. *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum*, 20(2), 113–114. Diakses pada 15 November 2024, dari <https://media.neliti.com>.

decisions taken sometimes only provide short-term solutions without considering the long-term impacts on children and society.

Suggestion

This recommendation is addressed to the government, child protection institutions, and religious courts to strengthen education and socialization efforts regarding the dangers of early marriage and the importance of protecting children's rights. The government needs to develop programs that focus on educating the community, especially parents and adolescents, regarding the negative impacts of early marriage on children's physical and mental health, education, and social development. In addition, collaboration with non-governmental institutions, civil society organizations, and religious leaders can help create effective campaigns to disseminate this information. Implementing training programs for court officials and judges regarding the protection of children's rights is also very important to ensure that legal decisions are always oriented towards the best interests of the child. By increasing public awareness and building a solid support network, it is hoped that a more conducive social environment will be created for the protection of children's rights, thereby reducing requests for marriage dispensation. The benefits of this recommendation are improving the protection of children's rights as a whole, reducing the number of early marriages, and creating a better culture in maintaining the welfare of future generations, which can ultimately produce a healthier, more educated, and more competitive society.

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