

Legal Considerations of Marriage Dispensation Cases For Couples That Lead to Divorce

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ABSTRACT

Dispensation of marriage by the court is an attempt to assess the suitability and readiness of couples who are not old enough to marry. However, it turns out that the couple who married under dispensation of marriage later divorced in the same court. This phenomenon shows that there are substantive problems in judicial practice that are interesting to research with the aim of examining the legal facts / reasons for determining marriage dispensation which then divorced in the same court. By using a normative legal method with a case approach, which is based on an analysis of a copy of the marriage dispensation determination and the Religious Court's divorce decision against the same couple as the primary legal material. The results showed that there were similarities in the legal considerations put forward by judges in several marriage dispensation decisions, which indicated the use of a pattern of case handling that tended to be uniform without considering the specific conditions of each case revealed in the posit. This led to a mismatch between the legal considerations and the concrete reality of the litigants. This finding shows the inconsistency and shallowness of juridical considerations, especially in determining the existence of very urgent reasons as the basis for the feasibility of granting marriage dispensation, which had an impact on the unsettled household of the young couple and led to the filing of a case that ended with the issuance of a divorce verdict. In fact, judges should be selective, based on benefit in assessing the reasons for filing a marriage dispensation application because this assessment is the last resort to maintain the continuity of the household, so that it does not lead to divorce.

Keywords: *Marriage dispensation, divorce, Religious Court.*

A. INTRODUCTION

Divorce as a condition that describes the dissolution of marital ties can occur due to various backgrounds, one of which is due to the couple's unpreparedness for married life. There are many readiness that must be possessed by the couple, which is usually termed maturity, which can be assumed by age at

the time of marriage. Normatively, Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage sets a minimum age limit for marriage, which is 19 years for both men and women. This provision aims to ensure the physical, mental and social readiness of the prospective bride and groom in building a household, as well as to protect children's rights from the risks of marriage at an early age.

For those who have not reached the age as stipulated in these provisions, they can take the route of marriage dispensation to the court as stipulated in Article 7 paragraphs (2) and (3) of the Marriage Law, and reinforced through Supreme Court Regulation (Perma) Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications. The granting of marriage dispensation is expected to guarantee the readiness of the young couple to enter into marriage so that the impact of marriage at a young age can be minimised. However, it turns out that not a few young marriages that occur and have gone through the process of granting marriage dispensation by the court end in divorce. This is a big question and is interesting to study, especially regarding the judge's consideration when issuing a decision for the recipient of the marriage dispensation application. So this research was conducted with the aim of examining legal considerations that contain reasons based on legal facts revealed at trial as well as the basis used by the judge / court in determining marriage dispensation which then leads to divorce.

This research is here to complement previous research related to young marriage and marriage dispensation such as that written by Sonny Dewi Juliasih and friends, which states that applications for marriage dispensation in Indonesia are now being made more difficult as an effort to reduce the number of underage marriages. However, this policy has shown contradictory results in the field, as evidenced by the increasing number of marriage dispensation applications submitted through the courts. This significant surge is a major challenge in realising the goal of minimising the practice of underage marriage in Indonesia.¹ Likewise, research conducted by Fendi et al, revealed that when granting marriage dispensation cases, judges still adhere to the applicable law, while considering the condition of the prospective bride and groom. Early marriage has two sides, namely from the religious aspect it is seen as a way to avoid adultery and fitnah, but on the other hand it also has a negative impact, namely the lack of independence, the increased burden on parents and the high risk of divorce.²

Through normative legal research with a case approach to divorce cases sourced from primary legal materials in the form of Religious Court decisions on cases of applications for dispensation of marriage and divorce decisions with the same spouse, it is known that the legal considerations of judges when granting dispensation of marriage seem uniform in several different cases and are less careful in assessing the facts of the trial, especially related to urgent circumstances

¹ Sonny Dewi Juliasih et al, The Contradiction Between Marriage Dispensation and Efforts to Minimise Underage Marriage in Indonesia, *Acta Diurnal, Journal of Legal Science and Kenotariatan*, Vol 3 No 2 in 2020, p. 203. 203.

²Fendi Fendi, et al, Impact, Dispensation of Underage Marriage in Practice at the Kuala Simpang Syar'iyah Court, *Locus, Journal of Academic Literature Review* Volume, 3. Issue 1, January, 2024, p. 14. 14.

as a reason for granting dispensation of marriage. Likewise, in assessing the couple's readiness for marriage, which is not accompanied by various evidence or documents from several institutions that are recommended to be able to provide an assessment of the couple's readiness, both psychologically and physiologically for the prospective bride as a prospective wife and readiness to take responsibility as head of the family for the prospective husband. So that later the marriage of the young couple does not lead to divorce.

B. METHOD

This type of research is normative law, Peter Mahmud Marzuki explains that normative legal research is a process for finding legal rules, legal principles, and legal doctrines in order to answer the legal issues at hand.³

This research approach uses a case approach, namely trying to examine and analyse court decisions on marriage dispensation cases and court decisions in divorce cases with the same spouse as primary legal material and various literature as secondary legal material and legal dictionaries as tertiary legal material. This research applies a qualitative analysis method by interpreting the legal materials that have been collected with the theory which is then arranged systematically s.

C. DISCUSSION

Judgement is the activity of applying the law to a particular case, with the aim of finding an appropriate legal solution. This process involves matching the general law (material law) with the specific facts of the case, and following prescribed legal steps (formal law)⁴. Judicial institutions, termed courts, are one of the important pillars in building a civilised social order, by establishing and enforcing prevailing norms⁵. In the evolution of the dispute resolution system, the judiciary emerged as a mechanism that has the authority to take action and impose decisions on disputing parties. Equipped with strict procedures and sanctions, the judiciary becomes a crucial last resort when alternative resolution efforts reach a dead end. Furthermore, the judiciary is the only legitimate institution to deal with violations of the law and criminal offences.⁶

Religious Courts. According to article 1 point (1) of Law No. 50 of 2009 concerning the second amendment to Law No. 7 of 1989 concerning Religious Courts states that: Religious Courts are courts for people who are Muslims. The Religious Courts referred to are Islamic Courts because the types of cases that are competent are the types of cases according to Islam, but the Religious Courts are

³Peter Mahmud Marzuki. 2011. *Legal Research*. Jakarta: Kencana Prenada Media Group, p. 35

⁴Syahrani Basah. 1985. *Existence and Benchmarks of Judicial Bodies in Indonesia*, Bandung: Akemui, p. 56.

⁵Mocan, Naci, Samantha Bielen, and Wim Marneffe. 2020. "Quality of Judicial Institutions, Crimes, Misdemeanors, and Dishonesty." *European Journal of Political Economy*, No. 61

⁶Abdul Halim. 2000. *Religious Courts in Indonesian Legal Politics*. Jakarta: PT Raja Grafindo Persada, p. 74

Islamic courts which are limitative in nature as stipulated in Article 2 jo. Article 49 of Law No. 3 of 2006 concerning the amendment of Law No. 7 of 1989 concerning Religious Courts, so that the competence of Religious Courts does not include competence according to Islamic Courts universally.⁷ Religious courts are also one of the specialised courts in Indonesia. The special criteria concern the authority to adjudicate in certain areas of law or certain legal subjects.⁸

It is said to be a special court because religious courts specifically handle certain cases or regarding certain groups of people⁹. The purpose of this particular case is that not all cases can be resolved in courts within the Religious Courts, only certain civil cases and not including criminal cases.¹⁰ This particular civil case is only certain Islamic civil cases as contained in Article 49 of Law No. 3 of 2006 concerning amendments to Law No. 7 of 1989 concerning Religious Courts. While what is meant by certain legal subjects is for certain groups of people, namely Religious Courts are only intended for Indonesian citizens who are Muslims and or who subject themselves to Islamic law (specifically for sharia economic cases). Cases that fall under the authority of the Religious Courts are very diverse, for the field of marriage, among others, are marriage dispensation and divorce.

Dispensation of marriage is a form of leniency from the authorised institution to allow marriage for one of the prospective bride and groom whose age is still not met in the regulations. It is also an attempt to minimise underage marriage. So that the application for marriage dispensation seems to be complicated because it can only be done through an official determination process by the authorised court.¹¹ This strict process aims to ensure that each case is carefully considered in order to protect the interests of children and prevent inappropriate early marriages. Dispensation is a special licence that allows a person or party not to follow the prohibitions set out in the law. The granting of this permission is possible due to important considerations underlying the decision, even though it is essentially prohibited by the law.¹²

Society is familiar with the term dispensation, because everything that happens in society does not escape a dispensation, as long as it does not get out of the norms that apply in the life of society, state and religion. So that Marriage Dispensation is a marriage concession granted by the government that actually should not be carried out or implemented due to the lack of age of the prospective bride and groom according to the applicable laws in Indonesia.

However, the diverse life of the community raises problems in terms of age limits in marriage, so the government provides marriage dispensation to

⁷Roihan A. Rasyid, *Procedural Law of Religious Courts*, Rajawali Pers, Jakarta, 1990, p. 6. 6.

⁸ Philipus M Hadjon, 1987, *Legal Protection for the People in Indonesia*, Surabaya, Bina Ilmu, pp. 116.

⁹ Elucidation of Article 10 paragraph 1 of Law No. 14/1970 on the Provisions on the Basic Provisions of Judicial Power.

¹⁰ Except for Aceh (Religious Courts in Aceh) are given special authority to handle some criminal cases).

¹¹ Agus Hermanto, *Problematics of Islamic Family Law in Indonesia* (Malang: CV. Literacy Nusantara Abadi, 2021). 163

¹² Soetomo, *Introduction to Constitutional Law*, Brawijaya University, Malang: 1981, h. 46

certain people and makes it a problem solving for the community. According to Roihan A Rasyid, Marriage Dispensation is a Marriage Dispensation granted by the Religious Court to a prospective bride and groom who are not old enough to enter into marriage, for men 19 (Nineteen) years, and for women 16 (sixteen) years. According to Subekti and Tjitrosudibio, dispensation means deviation or exception from a rule. Meanwhile, marriage is a marriage bond that is carried out in accordance with legal and religious provisions.¹³

A marriage dispensation from the court is expected to be a tool to ensure the eligibility of couples to enter into marriage. However, this hope is not always fully realised. In fact, it was found that some marriages that started with a marriage dispensation from the court ended in divorce at the same court. This shows that although the government has given the green light, other factors may also influence the sustainability of the household, so that the main purpose of marriage dispensation as a guarantor of eligibility has not been fully achieved.

Various considerations have actually been given by the judge in determining the marriage dispensation. These considerations become the basis for the judge in taking a stance on granting the application. Legal considerations in every court decision/decision are based on facts revealed at trial (legal facts). Legal considerations are a crucial stage in the process of preparing a decision, where the panel of judges conducts a comprehensive assessment of all the facts revealed during the trial¹⁴ which are then referred to as reasons. Legal facts in the context of a trial refer to a judge's effort to confirm the truth of all concrete and verifiable circumstances or events revealed during the trial process.¹⁵ Thus, legal considerations function as a link between the facts revealed at trial and the verdict imposed, so that their preparation must be carried out logically, systematically, and accountably.

Despite the judge's consideration based on the facts of the trial and the applicable provisions, some of these marriage dispensation decisions later led to divorce. The following describes the facts of the trial which were then used as the judge's reasons for determining dispensation and and divorce decisions against the same couple at the same court, as can be seen in the table below.

Table of Reasons for Determining Marriage Dispensation and Divorce Decisions:

NO Case	Identity and Case No.	(Reason/Legal Facts)	
		Marriage Dispensation	Divorce
1	K with MR Marriage Dispensation: 76/Pdt.P/2020/PA.Mrb Divorce:	<ul style="list-style-type: none">• There was a rejection by the KUA.• Has been dating for more than 1 year.• Not related by blood, consanguinity, or	<ul style="list-style-type: none">• Legal marriage• There is a child• Disputes and quarrels occur.• There is no good relationship

¹³Royhan A Rasyid, *Procedural Law of Religious Courts*, Raja Grafindo Persada, Jakarta, 2005, pp. 32

¹⁴Rasyid and Syaifuddin, *Civil Procedure Law in Theory and Practice in Religious Courts*, p. 122. 122.

¹⁵Sururi, *Court Decisions*, p. 53.

PROCEEDINGS - ICILF 2025

INTERNATIONAL CONFERENCE ON "Inclusive Legal Futures: Islamic Perspectives, Constitutional Developments, and Comparative Law"

	31/Pdt.G/2023/PA.Mrb	<ul style="list-style-type: none"> sepersusuan. Willing to marry without coercion. 	<ul style="list-style-type: none"> anymore Not successfully reconciled.
2	<p>I with MAY</p> <p>Dispensation to marry: 231/Pdt.P/2021/PA.Mrb</p> <p>Divorce: 35/Pdt.G/2024/PA.Mrb</p>	<ul style="list-style-type: none"> There was a rejection by the KUA. Mutual love Preparation for marriage has matured. Willing to marry without coercion. There is no blood relationship, consanguinity, or sepersusuan. 	<ul style="list-style-type: none"> Legal marriage There is a child Disputes and quarrels occur. There is no good relationship anymore Not successfully reconciled.
3	<p>P with M</p> <p>Dispensation to marry: 179/Pdt.P/2022/PA.Mrb</p> <p>Divorce: 187/Pdt.G/2024/PA.Mrb</p>	<ul style="list-style-type: none"> Rejection by. Has been dating for a long time. Marriage preparations have matured. Willing to marry without coercion. There is no blood relationship, consanguinity, or sepersusuan. 	<ul style="list-style-type: none"> Legal marriage There is a child Disputes and quarrels occur. There is no good relationship anymore No reconciliation.
4	<p>AF and AY</p> <p>Marriage Dispensation: 279/Pdt.P/2022/PA.Plh</p> <p>Divorce: 707/Pdt.G/2024/PA.Plh</p>	<ul style="list-style-type: none"> There was rejection by KU. There was no impediment to marriage. Both were in a relationship and loved each other. Family consent. Both have never been married. 	<ul style="list-style-type: none"> Marriage is valid and there are children. Disputes and quarrels. There is no good relationship anymore Have separated residences. . Not successfully reconciled
5	<p>MR and LS</p> <p>Dispensation to marry : 80/Pdt.P/2021/PA.Amt</p> <p>Divorce: 520/Pdt.G/2024/PA.Amt</p>	<ul style="list-style-type: none"> There was rejection by KU. There is no impediment to marriage. Both are in a relationship and love each other. Already have a job. Ready to build a household. 	<ul style="list-style-type: none"> Legal marriage Disputes and quarrels. Have separated residence. Not successfully reconciled
6	<p>ZN and MR</p> <p>Marriage Dispensation: 105/Pdt.P/2023/PA.Mtp</p> <p>Divorce:</p>	<ul style="list-style-type: none"> Know each other and get along well. Not forced to get married Declare that they are capable of being a 	<ul style="list-style-type: none"> Legal marriage Disputes and quarrels. Have separated residence. Not successfully

PROCEEDINGS - ICILF 2025

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	876/Pdt.G/2024/PA.Mtp	<ul style="list-style-type: none">responsible husband.There are no impediments to marriage and they agree to get married.	reconciled
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From the table presented, it is revealed that the marriage dispensation decisions that later led to divorce judgements for the same couples had some similar legal facts. Each of these dispensation cases originated from a KUA application because the applicants were under the age of 19, which is contrary to the minimum age of marriage set by law. However, in each case, there was an existing relationship (dating) or mutual love between them, and there were no other impediments to marriage. Furthermore, all parties expressed their willingness to marry without coercion, confirming that this decision was their genuine desire. Thus, overall, the determination of dispensation to marry was generally based on the same legal facts, namely the approval of the KUA because the age of the applicant was below the minimum limit, the existence of a romantic relationship without other marriage impediments, and the willingness to marry without coercion.

In addition to these basic facts, some cases also presented additional details that strengthened the application. For example, in cases 2 and 3, it was revealed that preparations for the wedding were well advanced, demonstrating the couple's seriousness. Meanwhile, case 4 highlighted family consent, an important factor in Indonesia's cultural and social context. In case 5, the husband-to-be was employed and ready to settle down, demonstrating financial independence and readiness to assume responsibility. Finally, in case 6, the applicants explicitly stated the readiness of the prospective husband to take full responsibility for the marriage. All of these facts then became crucial considerations for the court in making a decision on the marriage dispensation application.

The descriptions show that marriage dispensation decisions are essentially based on a number of key legal facts: a request from the KUA because the age of the prospective bride and groom is below the minimum age set out in Law No. 16/2019 on Marriage, the existence of a romantic relationship without the impediment of another's marriage, and the willingness of both parties to marry voluntarily. In addition, the cases outlined highlight additional factors such as financial readiness, maturity of marriage preparations, and family approval, which are important considerations in the court's decision, given the cultural and social context in Indonesia where family blessings and the readiness of the prospective bride and groom are very important. Thus, the courts do not only consider the formal legal aspects, but also the social and psychological factors of the applicant in deciding on marriage dispensation.

Regulations related to this mechanism have been elaborated holistically through PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Requests. The minimum age limit for marriage is regulated in the Marriage Law with Article 7 paragraph (1) setting a minimum age parameter of 19 years, and paragraph (2) providing exceptions through dispensation that can be granted by a court or authorised official. Supreme Court Regulation No. 5/2019 completes the legal vacuum related to marriage dispensation which is not specifically regulated in the previous formal and material provisions. The enactment of this Perma aims to provide guidelines and standards for judges in deciding cases, so that court decisions or rulings always consider the best interests of the child when granting marriage dispensation applications.¹⁶

In the determination of marriage dispensation which is the legal material in the research, the judge provides a description of legal facts that are similar to each other. The similarity of legal facts in all of these decisions shows a consistent pattern in marriage dispensation cases in the Religious Courts. This indicates that the issue of dispensation of marriage due to the age factor has similar characteristics. From this trend, it appears that the marriage dispensation applications have relatively uniform characteristics, both in terms of the law and the social context. The problems that arise revolve around the age factor, which is the main reason for the dispensation application. This signals that the phenomenon of young marriage is relatively significantly manifested in the reality of life, which is influenced by a number of factors, such as local culture, economic pressures, or uneven levels of education.

Upon further investigation, it was found that the similarities in the legal facts of some of these decisions were handled by the same judge in the same court, while others were handled by other judges in different courts. The similarity in the preparation of legal facts indicates the use of a certain pattern or *template* by the judge that can be used in handling cases that have similar characteristics. According to the author, the use of this *template* can be used as an alternative to assist the work efficiency of judges, especially in saving time and energy in completing and compiling a determination. It can certainly be used as long as the substance of the case at hand is similar. However, it is important to emphasise that the *template* needs to be used selectively. Uniform use without considering the differences in facts and conditions inherent in each case may lead to a mismatch between the judge's consideration in his determination and the concrete reality faced by the Applicant. Therefore, it is important for a judge to have a high level of sensitivity

¹⁶Fahadil Amin Al Hasan et al, Dispensation for Marriage in the Indonesian Legal System (Safeguarding the Best Interests of Children through Judicial Decisions), *Journal of Al-Aḥwāl*, Vol. 14, No. 1, 2021, p. 86. 86

and rigour in distinguishing between similar cases and cases that, although generally similar, contain significant nuances of difference.

Parents' decision to apply for dispensation to marry their underage children is motivated by conditions that are considered urgent and not easily avoidable. One of the most prominent situations is when the child has been in a romantic relationship that is quite intense and lasts for a relatively long period of time. The urge to marry off their children immediately is often understood by parents as an effort to maintain family honour and avoid the possibility of more serious moral transgressions. In this context, such actions reflect social pressures and cultural values that emphasise the importance of marriage as a way to protect the family image. Therefore, marriage dispensation is often seen as a pragmatic solution that is considered the most effective way to respond to situations that develop quickly and tend to get out of control.

Child marriage refers to the practice of marriage involving individuals less than 18 years of age who typically have not reached an optimal level of biological, physiological and psychological preparation for domestic responsibilities and reproduction.¹⁷ This unpreparedness of the child can have an impact on the quality of life in marriage. Based on this, the author sees that the case shows that marriage at a relatively young age does not bring good luck to those who do it. This is certainly inseparable from the factors of physical and psychological maturity that are not yet optimal, coupled with the ability to control emotions that are still weak, making divorce occur.

A woman's maturity, especially in her role as a mother, is a key factor that can determine the quality of child development. This maturity includes not only physical but also psychological aspects. Therefore, a judge must conduct a careful and in-depth examination. In the course of the judicial process, the judge implemented his duty to listen to the child's opinion and conducted a preventive strategy through the delivery of educational material to all parties present to provide an understanding of the various consequences of the practice of marriage before reaching the age of majority.

A court decision is basically not only required to include the reasons and reasoning behind the decision, but must also explicitly refer to relevant legal provisions. Such references include certain articles of applicable laws and regulations as well as unwritten sources of law that are legitimately recognised in judicial practice. This is in line with the provisions of Article 50 paragraph (1) of Law No. 48/2009 on Judicial Power. This provision emphasises the importance of normative legitimacy in every judge's decision to ensure that it is not only legally valid, but also accountable.

In the process of examining and making decisions, judges have the responsibility to comprehensively consider various aspects including juridical, sociological, and philosophical aspects.¹⁸ In adjudicating applications for dispensation of marriage in all of the determinations that are the legal material in

¹⁷ International Planned Parenthood Federation and The Forum on Marriage and the Rights of Women and Girls, *Ending Child Marriage (a guide for global policy action)*, p. 7. 7.

¹⁸ Fuadah, *Procedural Law of Religious Courts Plus Islamic Legal Principles in the Risalah Qadha of Umar bin Khattab*, pp. 166.

this study, judges are not only guided by one source of law, but refer to various laws and regulations and other relevant sources of law. The main juridical basis used is Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, which sets a minimum age limit for marriage. In addition, judges also refer to PERMA Number 5 of 2019 which provides technical and substantive guidance on aspects that must be considered, including psychological, health, social, and urgency elements of marriage, as well as the Compilation of Islamic Law and fiqh rules.

Article 2 of PERMA Number 5 of 2019 Judges hear dispensation applications based on the principles of:

- a. the best interests of the child;
- b. the right to life and development of the child;
- c. respect for the opinion of the child;
- d. respect for human dignity;
- e. non-discrimination;
- f. gender equality;
- g. equality before the law;
- h. justice;
- i. expediency; and
- j. legal certainty.

This phenomenon indicates a gap between legal regulations and social practices that develop in society. Although marriage is legally possible through the mechanism of marriage dispensation, the reality is that the success of marriage is not solely determined by the fulfilment of legal aspects, but also depends on the biological and psychological maturity of both partners. Unpreparedness in these aspects can hamper the couple's ability to build an ideal home life, as they are not yet able to face the challenges and responsibilities that come with marriage. Therefore, it is important for all parties, including law enforcement officials, to consider the psychological and social dimensions more thoroughly in handling marriage dispensation cases.

In the decision that became the legal material in this research, the judges considered that the provisions in Article 16 paragraph (1) of the Compilation of Islamic Law (KHI) had been fulfilled, and referred to the fulfilment of the conditions stipulated in Articles 14, 16, and 17 of Supreme Court Regulation (PERMA) Number 5 of 2019. However, based on the results of the author's research, the provisions in Article 14 letter (b) of PERMA Number 5 of 2019 have not been fully implemented optimally. The article explicitly stipulates that judges are obliged to analyse the child's psychological aspects, health status, and capacity for readiness for marriage. In the examination process, the judge should not only rely on the statements of the parties or assess the answers and gestures of the applicant child when giving testimony at trial. Concrete evidence showing that the child is physically healthy and psychologically mature is required. Such evidence should ideally be in the form of a health certificate from a community health centre and counselling results from the relevant service unit or agency that has the authority and competence to assess a child's readiness for marriage.

In addition, in the description of the legal facts presented, there is no explicit explanation or evidence of the child's psychological and physical maturity. This can be seen from the absence of a medical certificate or psychological assessment submitted by the Applicant as supporting evidence for the claim in the trial process. As a result, during the examination phase, the juridical aspect was not fully achieved. This condition was caused by the non-implementation of the regulation contained in Article 14 letter (b) of PERMA Number 5 of 2019 by the judge as a whole. The absence of explicit evidence of the child's psychological and physical maturity in the description of legal facts shows that the juridical aspect has not been fully fulfilled in the trial process.

Likewise, the judgement states that based on the legal facts revealed, the marriage plan has been considered mature. This was shown by the fact that the application process had been carried out and the date of the marriage had been determined, so the judge concluded that the child's situation could be categorised as a "very urgent reason". However, in the considerations in the decision, the author did not find any explicit statement from the applicant's child, the prospective husband, or the prospective husband's parents stating that the date of the marriage had been fixed. The only relevant information is the testimony of one of the witnesses that a proposal process took place. And when this proposal is used as a reason for extreme urgency, in the author's opinion it is also inappropriate. In order to maintain the integrity and accountability of the decision, judges must prioritise the principle of prudence in compiling each part of the consideration by ensuring that all facts used as the basis for argumentation have first been set out in detail and proportionally in the legal facts section.

Some of the decisions were indeed finalised by the same judge, so they have similarities in both sentence structure and the pattern of drafting considerations in the decision. This shows that there is consistency in the legal reasoning applied by judges. Nevertheless, judges should remain critical and careful in evaluating each case independently. It is important to ensure that the considerations taken are truly based on objective analyses and do not merely follow previous patterns. Reasons that are considered urgent must be carefully assessed and in line with the precautionary principle and applicable positive legal provisions, so that the resulting decision is not only formally consistent, but also substantively fair and accountable.

In these decisions, the judges explained that urgency refers to a situation where there is no other alternative solution but to organise the marriage, so that the implementation becomes very urgent and cannot be postponed any longer. Meanwhile, sufficient supporting evidence is defined as the existence of administrative documents in the form of official statements from medical personnel that corroborate the parents' statements regarding the urgency of the marriage. However, in this case the author considers that the petition submitted by the Applicant does not contain arguments that concretely describe the emergency conditions as described by the judge. Furthermore, the reasons submitted by the Applicant tended to be emotional in nature, namely the fear of unwanted events arising if the marriage was not immediately realised, given that the romance between the two had been going on for a long time and was difficult to end.

From the description above, the author is of the opinion that the arguments presented do not fulfil the criteria of a very urgent situation. Parents' personal anxiety should not be the main basis for granting dispensation to marry, especially if it is not supported by valid evidence. This is different if there is medical or psychological evidence to suggest that the marriage should take place immediately to prevent more serious consequences. Conversely, the situation will be different if it is proven that the child has committed a violation of religious norms such as having entered into a relationship that should only be conducted by husband and wife or pregnancy outside of marriage. In this scenario, the urgency to perform the marriage would be more legally and morally acceptable as a very urgent situation.

The judge's consideration of the child's maturity without concrete and verified evidence raises doubts about the objectivity and accuracy of the judgement. When fundamental aspects such as mental readiness and health conditions are taken into consideration, the judgement should be built on the basis of juridically valid evidence. In this case, the evidence in question should ideally be in the form of official documents such as health certificates from medical personnel or professional psychologists who have competence and authority in their fields. Without the support of evidence, claims about the psychological maturity and health of children tend to be assumptive and have the potential to weaken the validity of the judge's judgement.

Based on the analysis of some of these decisions, it appears that judges have a fairly broad view in interpreting the meaning of urgent reasons. Judges did not limit the meaning of urgent reasons to pregnancy or violation of legal and religious norms, but also included other contextual aspects. In these cases, the judges considered that the maturity of the marriage plan, the acceptance of the proposal by the family, and the date of the marriage could be considered as a form of urgency that deserved to be categorised as a very urgent reason. This was because it was accompanied by supporting evidence, namely the testimony of the parties and witnesses presented at the trial.

In the context of handling marriage dispensation cases, it is very important for a judge to be careful and responsible in assessing crucial aspects such as the mental readiness and physical condition of the child concerned. Consideration of these aspects must be based on valid, relevant and accountable evidence. Therefore, the existence of verified evidence is an essential requirement to ensure that the judge's decision is not only technically procedurally valid, but also just and has the potential to protect the optimal interests of the child. Thus, there is no comprehensive actualisation of the sociological aspects in the process of evaluating the social situation of the child being petitioned. Thus, it is important for judges to ensure that any considerations concerning important aspects must be based on legally accountable evidence, in order to ensure the validity and legitimacy of the decision rendered.

Despite having some of the same facts, there were some determinations that were not supported by health certificates or counselling results. However, these determinations have similar structures and patterns of consideration used. This shows a tendency to equate cases that factually and juridically have

fundamental differences. This indicates a lack of thoroughness on the part of the judge in examining and analysing each case. When legal considerations between cases supported by complete evidence are treated the same as cases that have deficiencies in the evidentiary aspect, this creates confusion in the judicial process and reduces the accuracy and accountability of decisions.

In deciding a marriage dispensation case, the judge should conduct a careful assessment of the factual circumstances of the applicant's child to ensure that the circumstances faced really fall into the category of very urgent reasons as referred to in the legal provisions. This assessment should include aspects of the legal needs of marriage for the child, including considering the legal position of marriage in its individual context. Basically, the original law of marriage is permissible. However, in practice, the law of marriage can change to wajib, sunnah, haram, or makruh, depending on the conditions and situation of the individual getting married.¹⁹ This review of the legal status of marriage is very important, as marriage can only be considered obligatory and therefore a valid basis for granting dispensation if there is significant harm if it is not performed immediately. Conversely, if marriage is merely permissible or close to makruh or even haram, then the urgency to get married becomes irrelevant if the child who wants to get married lacks mental and physical readiness. This would lead to bad consequences. Therefore, the judge has a duty to not just accept the petitioner's argument as it is. It is also important to conduct an in-depth analysis of the child's condition which includes psychological aspects, health, social readiness, and the relevance of Islamic law regarding the status of marriage for that individual.

Based on the facts revealed in the case, the determination of marriage dispensation which then led to divorce as presented in the case presentation in this study provides a clear picture that domestic life requires maturity from both partners. Divorce is also interpreted as the termination of the relationship between husband and wife based on certain reasons. These reasons refer to conditions or problems in the household that cause the marriage bond to no longer be maintained.²⁰ The breakdown of marriage due to divorce can occur in two ways, namely a divorce petition if the husband's initiative and a divorce lawsuit if it is based on the wife's initiative. In the Islamic legal tradition, divorce can be referred to by several terms depending on the cause. If the divorce is filed by the husband, it is called divorce. If the divorce comes from the wife, it is called khulu.²¹ In this research, some divorces were filed for divorce and some were filed for divorce.

Maturity in marriage does not only include the age aspect, but also emotional readiness, mental, and social responsibility in living a family life. Because without adequate maturity, couples are vulnerable to various problems, including domestic conflicts. These conflicts are not only trivial or temporary, but develop into prolonged and unresolved disputes, which ultimately lead to divorce. This shows that the policy of granting marriage dispensation must be carried out very carefully and take into account in depth the psychological readiness and

¹⁹ Abdul Rahman Ghazaly, *Fiqh Munakahat* (Jakarta: Kencana, 2003), p. 13. 13.

²⁰ Jamaluddin and Nanda Amalia, *Textbook of Marriage Law* (Lhocseumawe: Unimal Press, 2016), p. 87. 87.

²¹ Faris El Amin, *Fikih Munakahat 2* (Pamekasan: Duta Media Publishing, 2021), p. 71.

personal maturity of each prospective bride and groom. Thus, the divorce verdicts issued by the Religious Courts against couples who previously obtained dispensation to marry reflect the relationship between the young age of marriage and difficulties in building a household. The risk of divorce remains consistent across occupations, regardless of education level or location (rural/urban). However, the higher a person's education level, the less likely they are to divorce .
22

Before filing for divorce, they first requested marriage dispensation through their parents. This fact shows that the marriage was initiated out of urgent need, rather than based on the mature psychological and emotional readiness of both partners. This indicates that marriages built without a strong foundation result in facing severe challenges. Thus, although the divorces that occurred were not a direct result of the court's granting of marriage dispensation, as dispensation is only the first step in the legal process to enter into marriage. However, the granting of this dispensation should be done more carefully. This is because although the continuity and harmony of the household is very dependent on the ability and readiness of the couple to face married life. However, the readiness of the prospective husband and wife must really go through maximum assessment. Because the main cause of divorce in this case is more accurately placed on the personal unpreparedness of each party, which was not previously considered in the granting of marriage dispensation by the court. In addition, this divorce will also have an impact on the children of couples who already have children, because however the separation or divorce of parents, whatever the time and under whatever conditions, can be a painful and challenging experience for children. Such events can trigger problems in various aspects of life, such as causing behavioural and emotional disturbances in children, reducing the parent-child relationship, and increasing conflict within the family.²³

D. CONCLUSION

The judges' legal considerations in granting marriage dispensation applications in the cases that were the object of this study appear to use a similar pattern of reasons. The reasons presented generally included statements that the applicants' children and their prospective spouses loved each other, had made careful preparations for marriage, expressed readiness to marry without coercion, and that there were no impediments to marriage. In one case, it was even mentioned that the couple had already held a proposal procession and set a date for the wedding. This pattern of consideration reflects the consistency in the judges' approach to dispensation applications. However, the resulting judgements are not always in line with the reality that the parties later face, especially when the marriage ends in divorce. This suggests the need for a more in-depth and

²²Arshad et. All., 2024. "Examining divorce risk through gender roles in Pakistan." *Women's Studies International Forum*, p. 104.

²³Walker, J.H., A. Bautista, M. Cuervo, and A. Venta, 2024. "Parental divorce and family transitions." In *Encyclopedia of Adolescence*, pp.m391-403.

contextual assessment in considering the readiness of the prospective bride and groom, not only based on formal indicators, but also taking into account the potential risks in future domestic life.

Although the determination of marriage dispensation has been based on considerations that refer to facts indicating the existence of urgent reasons, in reality the couple still ended up in divorce due to domestic quarrels. This incident reflects the relationship between the young age of marriage and immaturity in dealing with the dynamics of married life. An immature age often results in a lack of ability to resolve conflicts, maintain healthy communication, and build long-term commitments. Therefore, judges need to be thorough and careful in examining and analysing each urgent reason submitted by the parties, so that the dispensation decision is truly based on comprehensive readiness, not merely on temporary or emotional circumstances.

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