

THE BASIS FOR THE JUDGE'S CONSIDERATION OF THE BREBES RELIGIOUS COURT ON GRANTING PERMISSION FOR MARRIAGE DISPENSATION IN DECISION NUMBER 179/PDT. P/2023/PA. BBS AFTER JO KAWIN ANAK PROGRAM



Encep Abdul Rojak¹, Marsella Yulia², Amrullah Hayatudin³

*Correspondence :

Email :
encepabdulrojak@unisba.a
c.id

Authors Affiliation:

- ¹ Universitas Islam Bandung
² Universitas Islam Bandung

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Abstract

The marriage dispensation is intended for someone who wants to get married but is hindered because the minimum age limit for marriage is 19 (nineteen) years. One of the decisions related to this marriage dispensation is in case Number 179/Pdt.P/2023/PA.Bbs, which in its application requested the Panel of Judges as state officials to grant the request for marriage dispensation to their daughter, who is still aged 18 (eighteen) years. This research is field research, using qualitative analysis techniques with an inductive mindset. The results of this study are the factors that cause the application for marriage dispensation, namely because the parents are concerned for their children, who are already very close to their future husbands, so if they do not get married immediately, it is feared that they will fall into immoral acts. As for the consideration of the Panel of Judges in granting the request for marriage dispensation in Case Number 179/Pdt.P/2023/PA.Bbs after the Jo Kawin Boy programme in Central Java, namely considering the daughter of the petitioner who has been engaged since 1 (one) year ago and is known to have had a love affair for 3 (three) years with her future husband, it is feared that if she does not get married soon, it will cause harm.

Dispensasi pernikahan ditujukan bagi seseorang yang ingin melangsungkan pernikahan akan tetapi terhalang karena batas usia minimal pernikahan yaitu 19 (Sembilan belas) Tahun. Salah satu Putusan terkait dengan dispensasi pernikahan ini yaitu pada perkara Nomor 179/Pdt.P/2023/PA.Bbs, yang dalam permohonannya tersebut memohon Majelis Hakim selaku pejabat Negara untuk mengabulkan permohonan dispensasi pernikahan pada anak perempuannya yang masih berusia 18 (delapan belas) tahun. Penelitian ini merupakan penelitian lapangan (Field Research), menggunakan teknik analisis kualitatif dengan pola pikir induktif. Hasil dari penelitian ini yaitu faktor yang menjadi penyebab permohonan dispensasi pernikahan yaitu karena faktor kekhawatiran orang tua terhadap anaknya yang sudah berhubungan sangat dekat dengan calon suaminya sehingga jika tidak segera melangsungkan pernikahan dikhawatirkan akan terjerumus kedalam perbuatan maksiat. Adapun yang menjadi pertimbangan Majelis Hakim dalam mengabulkan permohonan dispensasi pernikahan pada Perkara Nomor 179/Pdt.P/2023/PA.Bbs, setelah adanya program Jo Kawin Bocah di Jawa Tengah yaitu mempertimbangkan anak Perempuan dari Pemohon yang sudah bertunangan sejak 1 (satu) Tahun yang lalu dan diketahui sudah memiliki hubungan cinta selama 3 (tiga) Tahun dengan calon suaminya tersebut, sehingga dikhawatirkan jika tidak segera menikah akan menimbulkan banyak kemudharatan.

INTRDUCTION

Law Number 1 of 1974 concerning Marriage Article 1 states, "Marriage is an inner birth bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the One and Only Godhead." The Compilation of Islamic Law (KHI) Article 2 states that "Marriage according to Islamic Law is marriage, that is, a strong covenant or mitsaaqon gholiidhan to obey Allah's commandments and perform



them constitutes worship." (Law of the Republic of Indonesia Number 1 of 1974 Concerning Marriage and the Compilation of Islamic Law, 2019)

The purpose of marriage is not to fulfill biological desires per se, but there is a certain noble mission. The KHI affirms that the purpose of marriage is to obtain two benefits, namely 1) worldly benefits in the form of pleasure and 2) ukhrawi benefits in the form of worship rewards promised by surge. Therefore, in the view of religion and state, marriage has the same purpose, which is to form a family that is Sakinah, Mawaddah, and Warahmah. So for the creation of this purpose, it is necessary to have conditions in a marriage. One of them is the age limit allowed for marriage. In Central Java, this is in the form of a ban on marriage for children who are not old enough, known as jo kawin anak. So a rule was made in Law Number 1 of 1974 concerning marriage and updated with Law Number 16 of 2019 (Basri, 2019).

The legal basis of marriage is Surah An Nur verse 32:

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ ۚ إِنَّ يَكُونُوا فُقَرَاءَ يُغْنِيهِمُ اللَّهُ مِنْ فَضْلِهِ ۗ وَاللَّهُ وَاسِعٌ عَلِيمٌ

"Marry those who are single among you and also those who are worthy (married) of your sahaya servants, both male and female. If they are poor, God will empower them with His gifts. Allah is Vast (His gift) again All-Knowing." (Indonesian Ministry of Religious Affairs, 2010)

Marriage in Islam includes the Sunnah of the Prophet Muhammad (PBUH), and marriage is also considered the completion of half of the religion, according to the Hadith of the Prophet Muhammad (PBUH), sourced from Anas bin Malik (ra), which reads: (Basri, 2019)

إِذَا تَزَوَّجَ الْعَبْدُ فَقَدْ اسْتَكْمَلَ نِصْفَ الدِّينِ فَلْيَتَّقِ اللَّهَ فِي التَّصْفِ الْبَاقِي

"If a person is married, he has perfected half the religion. Then let him fear Allah in the remaining half." (HR. Baihaqi)

According to data from the Office of Women's Empowerment, Child Protection, Population Control, and Family Planning (BP3AP2KB) of Central Java Province from 2018 to 2020, the number of marriage dispensation applications in Central Java Province always increased, and the highest increase occurred from 2019 to 2020, caused by changes to Law No. 16 of 2019 concerning marriage due to changes to Law No. 1 of 1974 concerning the age limit for marriage between men and women equalised, i.e., 19 years. (Women et al., 2021) Because the number of early marriages in Central Java Province has increased significantly, the Central Java Provincial Government, to reduce the number of child marriages, issued a programme called "Jo Kawin Bocah," which was formed in 2020 and is a movement and invitation for the community (including children).

Before holding a wedding, one of the things that need to be considered is about the age limit of marriage itself. In Law Number 16 of 2019 Article 7 Paragraph (1) concerning Amendments to Law Number 1 of 1974 concerning Marriage, it is explained that "Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years." (Law Number 16 of 2019 on Amendements from Law Number 1 of 1974 concerning Marriage, n.d.)

The difference in the minimum age of marriage stipulated in Law Number 1 of 1974 for men and women causes discrimination both in the context of fulfilling the right to form a family as described in Article 28B paragraph (1) of the 1945 Constitution as well

as causing discrimination against the fulfilment and protection of children as in Article 28B paragraph (2) of the 1945 Constitution. (Sitorus, 2020)

The main duties and functions of the Religious Court are to receive, examine, adjudicate, and resolve cases submitted based on the provisions of the applicable law. One of the absolute competencies of the Religious Court itself is the application for marriage dispensation. In granting permission for marriage dispensation for a minor, the Religious Court will not give permission just like that without a strong and clear reason and permission from both parents so that the Religious Court grants permission to marry the minor. (Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts, n.d.)

There was a ruling in the Brebes Religious Court related to the application for marriage dispensation permits that was granted in 2023. The case has been registered at the Registrar of Brebes Religious Court Class 1.A with Case Number 179/Pdt.P/2023/PA.Bbs. In this case, it is stated that the applicant applied for marriage dispensation because the child of the applicant and the prospective husband of the applicant's child have been in close contact in love for three (three) years, and they have made a proposal or engaged since one (one) year ago, so it is feared that they will fall into immoral action if you don't get married immediately.

METHODS

This study used qualitative research methods through a juridical – empirical approach, with the primary data source taken being the results of interviews with Brebes Class 1 Religious Court Judges. A, while the secondary data obtained are the annual report of the Brebes Religious Court, a copy of the decision on the marriage disqualification application case number 179/Pdt.P/2023/PA. Bbs, and library research. Then the data is presented descriptively. The purpose of this study is to find out the consideration of the Judge of the Brebes Religious Court in granting permission for marriage dispensation in case number 179/Pdt.P/2023/PA. BBS after the Jo Kawin Anak programmeme because the purpose of the programmeme is to reduce the number of early marriages, which experienced a surge in 2019 towards 2020.

RESULT AND DISCUSSION

RESULT

Dispensation, according to the KBBI (Big Dictionary of Indonesian), is the granting of permission or relief in terms of obligations or prohibitions. So, a dispensation is a relief that was previously not allowed and then becomes permissible to be implemented but must be based on the conditions stipulated in the law. This marriage dispensation must obtain permission from both parents of each prospective bride. Then, you can submit your application to the religious court where the bride and groom live or to the Shar'iyah court, after which the marriage can be legalized by the KUA at the bride's residence. (Iqbal, 2020)

The issue of marriage dispensation is one of the issues that has always been a concern for researchers, especially in Indonesia. What is used as an aspect of the glance is because it is related to the aspect of child protection. After all, a child who has not reached the age limit stipulated in the law can ask for a marriage dispensation permit from the religious court under their respective jurisdictions or the religious court closest to their place of residence. (Mansari, 2021)

This amendment to Law Number 16 of 2019 concerning Marriage, which was originally 16 (sixteen) years for women and then raised to 19 (nineteen) years, is expected to provide benefits for the women themselves and also to reduce the risk of premature

death for mothers and children in the future. Thus, the growth and development of the daughter become more optimal, and the role of parents is also very important to provide the highest possible education for the daughter. 31 Parents should be aware of their obligation to prevent their children from marrying at an early age..(Sitorus, 2020)

Law Number 1 of 1974 concerning marriage and Law Number 16 of 2019 concerning marriage, both in general and specifically, do not explain the meaning of the marriage dispensation itself. However, the Supreme Court Regulation of the Republic of Indonesia Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation explains the definition of marriage dispensation. Article 1, number 5, states that marriage dispensation is the granting of marriage permission by the court to a prospective husband or wife who is not yet 19 (nineteen) years old to be able to hold a marriage.(Judiasih, 2020)

Researchers found that facts that occur on the ground regarding early marriage still occur in Indonesia. One of them happened in Brebes Regency, which had a few dispensations for marriage at the Brebes Religious Court. According to data from the Office of Women's Empowerment, Child Protection, Population Control, and Family Planning (BP3AP2KB) of Central Java Province from 2018 to 2020, the number of marriage dispensation applications in Central Java Province always increases, and the highest increase occurs from 2019 to 2020, caused by changes to Law No. 16 of 2019 concerning marriage due to changes to Law No. 1 of 1974 concerning the age limit for marriage between men and women equalised, i.e., 19 years. (Women and Children Office of Central Java Province, 2021)

The minimum age restriction for marriage has not been implemented optimally because there is still a lack of public awareness of early marriage for the welfare of both parties. The levelling of the minimum age of marriage in Law Number 16 of 2019 actually increases the number of early marriages compared to when Law Number 1 of 1974 concerning marriage was enacted.(Sunarti, 2021)

One of the factors that changed the marriage law was that the Constitutional Court considered Indonesia to be in the emergency phase of early childhood marriage cases. According to research data from UNICEF, in 2016, Indonesia ranked 7th out of the countries in the world that experienced the highest rate of early marriage, reaching the 2nd rank in ASEAN after Cambodia. In this case, it will certainly worry the younger generation, especially for their growth and development in the future, and it does not rule out the possibility of eliminating basic rights that they should get, such as the right to education, health rights, civil rights, the right to be free from discrimination and violence, and other rights. The state must be able to guarantee efforts to protect children from cases of early marriage.(Ilma, 2020)

According to the IUS Constitution, the government has, through the Child Protection Law, regulated that every parent has the right to be responsible and obliged to prevent early marriage. The provisions related to the marriage age limit of 16 years are still classified as early when viewed based on the provisions of the Child Protection Law, which state that the category of children includes a person who has not reached the age of 18 years or a child who is still in the womb.(Nurcholis, 2019)

The institution of marriage seems to open opportunities for the legalisation of early marriage with the existence of Article 7 in the Marriage Law, resulting in early marriage submitting a judicial review of the Article to the Supreme Court so that a revision of the Marriage Law was born.(Ilma, 2020)

Islam does not provide a specific minimum age of marriage, but Islam only provides instructions related to the signs, namely Baligh (already able to distinguish between good

and bad for the problems faced by the child). For women, puberty is characterised by menstrual blood, while signs of puberty for men are already semen. As the Word of Allah in Q.S. An – Nisa verse 6, which reads:(Habibah, 2022)

وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ ۖ وَلَا تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَنْ يَكْبَرُوا ۗ وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعْفِفْ ۖ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ ۗ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهَدُوا عَلَيْهِمْ ۗ وَكَفَىٰ بِاللَّهِ حَسِيبًا

"Test the orphans (in terms of managing property) until they are old enough to marry. Then, if, in your judgement, they have been clever in managing their property, hand the judgement over to them. Do not eat them (the orphans' possessions) beyond the limits of propriety, and do not be hasty to finish them before they grow up. Whoever (among the keepers) is able, then let him refrain from eating the orphan's property, and whoever is poor, then may he eat the treasure in a good way. Then, when you give up the treasure to them, you should hold witnesses. God is sufficient as a guardian." (Indonesian Ministry of Religious Affairs, 2010)

The age referred to in the verse above already has the desire to establish a household and is ready to become a husband who leads his own family in the future. But if he is still unable to take care of his wealth, then it is not said to be perfect.

KHI has special rules related to the age limit for marriage for Muslims, which is explained in Article 15 paragraph (1): "For the benefit of the family and household, marriage may only be carried out by the prospective bride and groom who have been determined in Article 7 of Law Number 1 of 1974 concerning Marriage, namely that the prospective husband is at least 19 (nineteen) years old and the prospective wife is 16 (sixteen) years old." In order for the marriage to have a good purpose and hopefully not end in divorce, the provisions of the IHL in Article 15 paragraph (1) are in line with the principles of the Marriage Law.(Iqbal, 2020)

According to data from the Office of Women's Empowerment, Child Protection, Population Control, and Family Planning (DP3AP2KB) of Java Tengah Province, the number of early marriages in Central Java Province has increased significantly. In 2019, the number of early marriages in Central Java amounted to 5,007, while in 2020 it rose rapidly to 13,398.(Perempuan et al., 2021)



Figure 1. Central Java Provincial Marriage Dispensation Chart 2016 – 2020

As data from the Office of Women's Empowerment, Child Protection, Population Control, and Family Planning (DP3AP2KB) of Central Java Province mentioned above shows, there are three largest contributors to early marriage cases in Central Java, such as in Cilacap, Brebes, and Banyumas Regencies, caused by several factors, while the main

factors are due to the economy and pregnancy out of wedlock. (Dinas Perempuan dan Anak Provinsi Jawa Tengah, 2021)

Because the number of early marriages has increased significantly, the Central Java Provincial Government (PEMROV JATENG) formed a programme called Jo Kawin Bocah. Literally, Jo Kawin Anak comes from three words in Javanese consisting of: Jo or Ojo means don't, Kawin means married, and Anak means child. Therefore, Jo Kawin Anak is a movement and also an invitation addressed to the community, especially to children in Central Java, with the aim of preventing marriage at an early age. The Jo Kawin Anak programme is a massive joint movement initiated by the Women's and Children's Office of Central Java Province as an effort to mandate Law Number 16 of 2019 concerning the minimum age limit in marriage to 19 years for both men and women. The purpose of this movement is to prevent child marriage in Central Java Province. (Perempuan *et al.*, 2021)

The Jo Kawin Anak Program itself is a massive joint movement to prevent child marriage, especially in Central Java Province, which was initiated by the Women and Children Office of Central Java Province. The Jo Kawin Anak programme was formed in 2020 under the mandate of Law Number 16 of 2019 on changes from Law Number 1 of 1974 concerning marriage related to the minimum age of marriage, which is generalised to 19 years for both men and women. (Nisa *et al.*, 2022)

This programme is also carried out in PENTAHHELIX, which involves the government, academics, the business world, mass media, and also the community. The targets of this programme include parents, families (especially for families in the categories of poor families, low education, and rural communities), and especially the children themselves (such as adolescents, single/alternative care, and other vulnerable groups). The communication strategy of the Jo Kawin Anak programme is through the production of logos, jingles, #NIKAHSEHATI hashtags, and other IEC media delivered online and offline/outside the network (socialisation through social media, mass media, religious leaders, community leaders, influencers, and others). (Perempuan *et al.*, 2021)

The difference between the Jo Kawin Anak programme, which was established in November 2020, and other programmes aimed at reducing the increase in marriage dispensation is that the Governor of Central Java (Ganjar Pranowo) also socialised blood – boosting pills, especially to junior high school students, to inform them about education related to stunting and the negative impacts of early marriage. Because, according to him, some of the junior high school students have started menstruating, they may experience anemia. Therefore, blood – boosting pills must be consumed regularly every week to be truly prepared as a mother in the future, and from an early age, young women become healthy.

Child marriage has something to do with tradition and culture, so it is unlikely to change it. One of the reasons for early marriage is economic reasons in the hope of achieving social and financial security that is considered to improve after marriage, causing many parents to encourage their children to marry immediately even though their children are still underage. Thus, early marriage is a very common thing to do in rural communities, leading to high applications for marriage dispensation in religious courts. Some of the factors that cause the application for marriage dispensation itself are generally grouped into two categories, including the following: (Muhajir, 2019)

1. Child Factors

One of the factors causing the application for marriage dispensation is the child himself, such as a child who drops out of school due to unstable family economic conditions that result in the child already working at an early age to improve the family economy. This is then caused by the child having biological relations at an

early age, so it does not rule out the possibility that the child may become pregnant out of wedlock. In the condition of pregnancy out of wedlock at this early age, the child's parents are forced to marry off their daughter.

2. External Factors

Factors from outside the child itself include: concerns that the child violates religious norms such as having a relationship with the opposite sex without a marriage bond that is included in the category of adultery, then economic factors from the family, traditional and cultural factors or arranged marriages that are still commonly carried out in some areas, and technological factors that are partly misused by teenagers to view porn sites so that it does not rule out the possibility of the child falling into promiscuity that causes pregnancy out of wedlock so that the child has an early marriage.

The legal considerations given by the judge are one of the most important parts of a decision and can also be said to be the juridical core of a decision. Conceptually, the judge, in making a decision, must consider the fulfilment of legal and applicable principles, including the following: (Manan, 2018)

1. There is a juridical analysis of various aspects concerning all facts or matters proven in the trial.
2. There is a consideration of the judge, who is juridically *ratio decidendi*, namely by starting from the opinions of doctrines, evidence, and jurisprudence. The content of consideration must also be arranged logically, systematically, and interconnected (*samenhang*) and fill each other.
3. The existence of all parts of the plaintiff's *petitum* must be considered or must be tried one by one so that the judge can conclude whether or not the claim is mentioned in the judgement.

The judge, in explaining his legal considerations, is required to be careful in choosing and sorting out the articles or provisions used as a basis for considering a decision. (Setiadi, 2017)

As a law enforcer, the judge in deciding a case cannot be separated from being guided by the applicable law and also some legal considerations that will be used. As in the case of marriage dispensation permits that occur in Brebes Religious Court Class 1.A., the basis for consideration by the judge at the Brebes Religious Court in granting permission for marriage dispensation includes the following:

1. The relationship between the bride and groom is too familiar, and it is worrying if the wedding does not take place immediately.
2. The bride – to – be who is already pregnant.
3. The physical and mental readiness of the bride and groom.
4. The health condition of the bride and groom.
5. Education of the bride and groom.

The research data described in this study is the result of research obtained by researchers from interviews, observations, and documentation. The results of this study are also presented sequentially by focusing on the second formulation, namely the basis for the balance of judges at the Brebes Religious Court in granting permission for marriage dispensation after the Jo Kawin Anak programme in decision number 9/PDT/PA PA.Bbs. In its legal balance, the panel of judges decided case number 179/PDT/ PA. The BBs are as follows:

The panel of judges has advised the applicants and the bride and groom as instructed by Article 12 Paragraph (1) and Paragraph (2) of PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation, namely not to hold

underage marriages first because the daughter of the applicant is still 18 years and 4 months old. The panel of judges has also warned related to the risks of early marriage, which if it continues to have a high probability of impact on the child, such as impaired education, reproductive organs that are not ready, the child's psychology, psychological, social, cultural, economic, and potentially causing domestic violence. Thus, the panel of judges advised the children of the petitioners to postpone their marriage first until it is sufficient at the age stipulated according to Law Number 16 of 2019 concerning marriage as an amendment of Law Number 1 of 1974 concerning marriage, namely the minimum age limit for marriage for a man and a woman, namely if both are 19 (nineteen) years old. However, the petitioners stood by their stance of wanting to marry off their child. In this case, the panel of judges has heard statements from the children of the applicants, the prospective husbands of the children of the applicants, and also the parents of the prospective husbands of the applicants. Thus, the following facts are obtained:

First, the children of the petitioners and the prospective husbands of the children of the applicants have been in love or dating for more than three years.

Second, the children of the petitioners and the prospective husbands of the children of the applicants have been engaged or proposed since one year ago and will also soon get married.

Third, the petitioner's son admitted that he had never had conjugal intercourse with her future husband.

Fourth, the children of the petitioners and their future husbands are not related by blood, either to hinder her future marriage or to ask for someone else.

Fifth Fact: The marriage to be performed by the petitioners' children as well as her future husband is not coerced by any party, and the petitioners' children already know her duty as a wife in establishing a household.

When we look at the facts mentioned above, the Panel of Judges considers that the children of the petitioners are ready to marry at an early age and meet the reasons for applying for marriage dispensation as per PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Applications. Then, in this case, the researcher interviewed the judge at the Brebes Religious Court who handled case No. 179/Pdt.P/PA. Bbs, namely Mrs. Awaliatun Nikmah, as the chairman of the Assembly.

The panel of judges argued that if you look at the existing facts and if you look at them according to PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation, then the applicant's application to apply for marriage dispensation has qualified. When viewed from a financial point of view, the prospective husband of the applicant's child is considered sufficient to meet the needs of the family.

Being financially capable is very necessary in a marriage, especially for men. Later, they must be able to provide for their own families. The transfer of parental obligations from the prospective wife to the prospective husband later, so that the prospective husband must already have his fixed income. As in decision number 179/Pdt.P/PA. BBS, the future husband already has a permanent job, namely as an honorary teacher.

The judge's basis for consideration was used in granting permission for marriage dispensation at the Brebes Religious Court in case number 179/Pdt.P/2023/PA. In addition to the above considerations, namely, the judge considers the relationship factors of the two prospective brides who are quite close, love each other, have been dating for more than three years, and are difficult to separate. The two prospective brides have been engaged or proposed for more than one year.

The panel of judges, when granting a request for marriage dispensation, must consider several aspects, such as juridical and sociological, because this judge's consideration will be a very important aspect in realising the values of a judge's decision that contains justice (*ex aequo et bono*) and must also contain legal certainty. The consideration given by the judge must be addressed carefully because there are benefits for the parties.

Whether the application for permission to dispense marriage is rejected or granted, the judge has first considered it so that the decision that has been made is strong and mature. The marriage dispensation is made in the form of a petition (volunteer), not in the form of a lawsuit. (Iqbal, 2020)

According to Ibu Awaliatun Nikmah and Ibu Sri Rokhmani, in interviews conducted by researchers, they said:

"The judge has several guidelines in examining marriage dispensation cases, which he said are as follows:

1. Article 7 Paragraph (2) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.
2. Article 49 Paragraph 1 of Law Number 7 of 1989, which has been amended by Law Number 3 of 2006 concerning Religious Courts, and the second by Law Number 50 of 2009 concerning Religious Courts.
3. Supreme Court Regulation (PERMA) Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation

Granting permission for marriage dispensation in case number 179/Pdt.P/2023/PA. BBS is an urgent situation that will later provide glory for the bride and groom if the request is not granted. The panel of judges must also consider if the relationship between the bride and groom is close enough and if they love each other. It is feared that it will cause immoral or evil acts. This is also under the rules of jurisprudence:

الضَّرْرُ يُدْفَعُ عَلَى قَدْرِ الْإِمْكَانِ

"It should be eliminated wherever possible"

The purpose of the rules of jurisprudence is the obligation to avoid the occurrence of a crime, or it can also be interpreted as the obligation to do something so that the crime does not occur.

The judge's concern for the parties who applied for dispensation to the Religious Court became a reference point in granting his request. If it is complicated to carry out, they will likely carry out an underhand marriage or Sirri marriage, which, of course, before the law is considered invalid, does not rule out the possibility that they will cancel the marriage while they have prepared the wedding date so that it will become a byword in the community.

From several statements from the Panel of Judges who decided the marriage dispensation case, it can be concluded that the Panel of Judges, in deciding the case of the application for marriage dispensation, not only uses the law as a reference but also thinks about the sociological impact on the part of the applicant.

Marriage dispensation is an effort made by the bride and groom to submit their application to the Religious Court if they do not meet the minimum age requirement for marriage by Law Number 16 of 2019 concerning Marriage on Amendments from Law Number 1 of 1974, which is 19 years for both men and women. However, Islamic law itself does not regulate the age limit for carrying out marriage. This marriage dispensation is a relief given to someone if they want to marry but are hindered by the age limit set according to Law Number 16 of 2019 on Amendments from Law Number 1 of 1974

concerning Marriage, so this dispensation provides a little leeway. As in the Islamic legal method, Saddz Dzari'ah, according to Ash – Shatibi in his work al – Muwafat, explains that Sadd Ad.(Hayatudin, 2019)

It can be concluded that Saddudz Dzari'ah is a legal establishment on the prohibition of a certain act that is permissible or prohibited to prevent something else that is prohibited. This is the word of Allah in Q.S. Al – An'am Verse 6, as follows:

أَلَمْ يَرَوْا كَمْ أَهْلَكْنَا مِنْ قَبْلِهِمْ مِنْ قَرْنٍ مَكَّنَّاهُمْ فِي الْأَرْضِ مَا لَمْ نُمَكِّنْ لَكُمْ وَأَرْسَلْنَا السَّمَاءَ عَلَيْهِمْ
تَجْرِي مِنَ تَحْتِهِمْ فَأَهْلَكْنَاهُمْ بِذُنُوبِهِمْ وَأَنْشَأْنَا مِنْ بَعْدِهِمْ قَرْنًا آخَرِينَ مِثْلَهُمْ وَمَا كُنَّا بِمُعَذِّبِينَ الْأُمَّةَ

"Did they not notice how many generations before them we had destroyed? (That is) the generation in which We have established their position on the face of the earth, which We have never done to you; and We poured out heavy rainwaters; We made rivers flow under them; and We destroyed them because of their sins, and We appeared after them another generation."

The purpose of establishing the law in Saddudz Dzari'ah is to facilitate the achievement of a benefit or keep away from damage to avoid immoral acts. As the purpose of the marriage dispensation itself is to relieve someone who is not yet 19 (nineteen) years old but wants to hold a marriage, it is expected to avoid immoral acts. However, applicants must also consider the impact on children who engage in early marriage, both for themselves and the child they will give birth to.

The role of parents can be done by educating their children to instill ethical values from an early age so that the child can distinguish whether the actions to be done are reprehensible or not. Thus, there is no longer a deep worry of parents for their children who are afraid that they will fall into adultery. The form of parental protection for children can also be in the form of providing affection and meeting the needs of children both physically and psychologically which in this case is included in economic fulfillment. Child marriage for economic reasons is categorized as a form of exploitation of the child itself. Thus, the application for marriage dispensation for economic reasons is actually not justified because the fulfillment of the needs of the child and the family remains the responsibility of the parent or head of household, not the child. Thus, the reasons for this application for dispensation can be rejected or suspended.(Ilma, 2020)

The formulation of appropriate regulations for marriage dispensation is not a solution to reduce the rate of early marriage. However, what is more crucial is the deviant sexual behaviour carried out by some adolescents, resulting in less reproductive and sexual health education. In addition, poverty is also a classic problem that triggers early marriage in Indonesia. Therefore, preventing early marriage is not only the duty of law enforcement, but the government must also take part in making policies and handling them, and the community must obey the established rules of law and other policies to avoid the effects of early marriage that are very detrimental to the children themselves.(Ilma, 2020)

The impact of child marriage includes the following:(Perempuan et al., 2021)

1. Gender Inequality

The most vulnerable to domestic violence (KDRT), especially among the most disadvantaged, are women, resulting in gender inequality based on the power of their parents and husbands.

2. Nation's Economy

Low human resources (HR) make people vulnerable to increasing poverty. Children born into poor families are more vulnerable to early marriage, which can indirectly lead to a cycle of poverty that occurs in an increasingly lasting society.

3. Social Issues

Social problems such as poverty caused by child marriage will interfere with the welfare of the community, which is vulnerable to crime.

4. Government programmes hampered.

Under the direction of the President of the Republic of Indonesia (Joko Widodo) regarding the prevention of child marriage, government programmes such as compulsory education for 12 (twelve years) will be hampered due to constraints in human resources and the economic unpreparedness of children if early marriage still occurs.

Marriages carried out at a young age are very vulnerable to shocks in the household caused by a lack of mental readiness and an immature body and soul to establish a married life, which results in vulnerable quarrels, differences of opinion, excessive jealousy, not communicating with each other properly, and also economic factors, which are the most important in married life, so that they are vulnerable to the occurrence of divorce. Therefore, to make the marriage an eternal and happy one, it must be prepared mentally, physically, and economically very carefully so that the marriage follows what has been aspired to. (Badruzaman STAI Sabili Bandung, 2019)

Another impact of early marriage itself will be that the girl child experiences a high risk of death when giving birth later compared to women who are old enough to be able to hold a marriage. And the girl does not rule out the possibility that it will cause a lot of life problems, such as psychological impacts in the form of excessive camas, depression, or even suicidal thoughts. And another impact due to early marriage can be in the form of a lack of knowledge and understanding related to sexuality such as HIV and AIDS infectious diseases. (Eleanora & Sari, 2020)

The impact of early marriage mentioned above will cause very complex problems if carried out continuously, so the state will lose a quality young generation if it does not immediately make appropriate and effective regulations to eliminate the practice of child marriage at this early age.

DISCUSSION

The basis for the consideration of the Judge at the Brebes Religious Court in granting permission for marriage dispensation in case number 179/Pdt.P/2023/PA. Bbs is because of concerns about the bride and groom, who have a very close love relationship that has been established for three (three) years. The bride and groom have also been engaged or proposed to since one year ago, and it is feared that it will cause glory if they do not immediately hold a wedding. If you look at the financial condition of the prospective husband, who already has a fixed income, namely as a home teacher, then the panel of judges permits the marriage dispensation. In addition, the judge, in examining marriage dispensation cases, is guided by Supreme Court Regulation (PERMA) Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications.

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