



Marriage Dispensation in Underage Marriage: A Case Study at the Purwokerto Religious Court

Syufa'at

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Abstract: *The purpose of marriage is to make family in happy and eternal according to the purpose of Law Number 1 of 1974, and the state has set a marriage age limit. Problems occur because there are many cases of marriage dispensation with decisions being granted which sometimes contradict the purpose of marriage. This study discusses the marriage dispensation decision at the Purwokerto Religious Court in 2018 with 108 decisions. The results show that there are two main factors that make judges allow children to marry through marriage dispensation. The first factor considered by the panel of judges, namely the existence of such a close relationship between the prospective groom and the prospective bride that causes the parents of each prospective bride and groom to worry that their child will fall into things that will be detrimental. The second reason assessed by the panel of judges was that the bride and groom were pregnant. In order to reduce the practice of marriage dispensation, pre-marital guidance, counseling through recitation is a psychological and mental preparation to achieve the purpose of marriage.*

Keyword: *marriage dispensation; underage; close relationship; guidance; pregnant.*

Abstrak: Tujuan perkawinan adalah untuk membentuk keluarga yang bahagia dan kekal sesuai tujuan Undang-Undang Nomor 1 Tahun 1974, dan negara telah menetapkan batas usia perkawinan. Permasalahan terjadi karena banyaknya kasus dispensasi perkawinan dengan putusan yang dikabulkan yang terkadang bertentangan dengan tujuan perkawinan. Penelitian ini membahas tentang putusan dispensasi nikah di Pengadilan Agama Purwokerto Tahun 2018 dengan 108 putusan. Hasil penelitian menunjukkan bahwa ada dua faktor utama yang membuat hakim membolehkan anak menikah melalui dispensasi perkawinan. Faktor pertama yang menjadi pertimbangan majelis hakim, yaitu adanya hubungan yang begitu erat antara calon mempelai pria dan calon mempelai wanita yang menyebabkan orang tua dari masing-masing calon mempelai khawatir anaknya terjerumus ke hal-hal yang akan merugikan. Alasan kedua yang dinilai majelis hakim adalah calon pengantin sedang hamil. Guna mengurangi praktik dispensasi nikah, maka bimbingan pranikah, penyuluhan melalui pengajian merupakan persiapan psikis dan mental untuk mengapai tujuan perkawinan.

Kata kunci: *dispensasi perkawinan; di bawah umur; hubungan dekat; panduan; hamil.*

Introduction

Child marriage is not a simple matter, because it does not merely violate the law, namely Article 7 paragraph (1) of Law Number 1 of 1974 concerning marriage. Child marriage can destroy the social order caused by poverty, culture, environment, to the demands of parents in lightening the economy. Cases of marriage of a 16-year-old boy with a grandmother in Bantaeng, Jenoponto, as well as many other underage marriages such as in Maros Regency, South Sulawesi, in 2018 there were at least 100 cases of underage marriage per month.¹

Data from the Central Bureau of Statistics states that in 2015 the prevalence (how often the condition occurs) of child marriages reached 23 %. One of five women aged 20-24 years turned out to have had their first marriage under the age of 18. The prevalence of child marriage in rural areas is 27.11 percent, while in urban areas it is 17.09 %. Provinces with the highest child marriage rates are West Sulawesi is 34.22 %, Central Kalimantan is 33.68 %, West Kalimantan is 32.21 %, and Central Sulawesi is 31.91 %.²

The data shows that child marriage has been “institutionalized” in the social system of society. People still think that marriage is just a matter of consensual. People also think that underage marriage can be justified by religious teachings. Although this understanding is wrong, it cannot be justified by common sense. The number of young marriages certainly causes a lot of conflict, both social-economic and religious. In 2017 there were 56 cases of child marriage dispensation. Meanwhile, in 2018 there were 68 cases of marriage dispensation based on the decision data of the Purwokerto Religious Court.³ In 2019, there were three applications for marriage dispensation at Religious Affairs Office in South Purwokerto, which were submitted by male candidates, all three of whom were 18 years old. One of the students and 2 others are still studying at the Junior High School. Meanwhile, in 2018 there were 3 applications for marriage dispensation at Religious Affairs Office in South Purwokerto.⁴ The fact states that 99% of couples who apply for marriage dispensation are unwed pregnancy, as the statement of judge Purwokerto. While the other 1% is because they have known for a long time and want to get married soon to avoid unwanted sex.⁵

The increasing of dispensation for marriage has resulted many conflicts, as stated by judge, who stated that couples who apply for marriage dispensation at a young age (before nineteen old for men and sixteen old for women) often experience family conflicts, early marriage often results in divorce after six months of marriage. Married couple disharmony in their life, because they do not have materials and psychological readiness.⁶

Explicitly, the age limit in marriage is not mentioned in the Qur'an and hadith. Classical Muslim scholars do not discuss the age of marriage clearly in terms of age for marriage. In fiqh books, marriage advice is only mentioned in the terms *baligh* and *ba'ah*. Rasulullah said:

¹ Muhammad Taufiqqurahman, “Heboh! Kakek 53 Tahun Nikahi Gadis 17 Tahun Di Bantaeng Sulsel,” detiknews, 2018, <https://news.detik.com/berita/d-4336157/heboh-kakek-53-tahun-nikahi-gadis-17-tahun-di-bantaeng-sulsel>. Lihat pula, Lin, “Puluhan Ajukan Nikah Dini,” Radar Banyumas, 2018, radarbanyumas.co.id/puluhan-ajukan-nikah-dini.

² BPS, “Kemajuan Yang Tertunda: Analisis Data Perkawinan Usia Anak Di Indonesia,” Badan Pusat Statistik, 2016, <https://www.bps.go.id/publication/2016/01/04/aa6bb91f9368be69e00d036d/kemajuan-yang-tertunda--analisis-data-perkawinan-usia-anak-di-indonesia.html>.

³ Fij (ed.), “Kasus Hamil Diluar Nikah Meningkatkan,” Radar Banyumas, 2019, <https://radarbanyumas.co.id/kasus-hamil-diluar-nikah-meningkat/>.

⁴ Sayuti, “Interview” (South Purwokerto, 2019).

⁵ Sri Lestari Wasis, “Interview” (Purwokerto, 2019).

⁶ Wasis.

يَا مَعْشَرَ الشَّبَابِ مَنِ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ، فَإِنَّهُ أَغْضُ لِلْبَصْرِ وَأَحْصَنُ لِلْفَرْجِ، وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ
 بِالصَّوْمِ فَإِنَّهُ لَهُ وَجَاءٌ.”

O youths! Whoever among you is able to marry, then marry, because marriage lowers the gaze and fortifies privates, and whoever is unable, then let him to fast, because fasting can fortify himself.

The Shafi'i school states that the age limit for puberty is fifteen years for men and nine years for women. So it can be seen that the age limit for marriage in the Shafi'i school is fifteen years for men and nine years for women. Whereas in Law Number 1 of 1974 concerning marriage, article 7 paragraph (1) it is stated that the age limit for marriage for men is nineteen years and sixteen years for women, prior to the revision of Law Number 16 of 2019. This limit is not unreasonable, the responsibilities that are carried out after marriage and the maturity of one's mind and behavior for the bride and groom are one of the factors for this marriage age limit.⁷ Where the purpose of marriage is to protect offspring and protect the spouse from acts that are prohibited by Islamic law. Every married couple is expected to build a household that is *sakinah mawaddah wa rahmah* (serene, love, and affection) with the birth of generations of Islam who become successors in spreading and practicing Islamic teachings.⁸

Marriage dispensation as regulated in Law Number 1 of 1974 is intended to continue to maintain Islamic values and avoid unwanted problems such as sexual intercourse outside of marriage. However, the marriage dispensation is often misused, so that the values in marriage, which were originally worship and sharia, actually cause new problems after the marriage dispensation. This article will explore the problems of marriage dispensation at the Purwokerto Religious Court from the court's decision accompanied by the results of interviews with court judges.

Legal Awareness for the Community

Legal culture is a special layer of culture that can be associated with the society as a whole, political and legal state bodies, officials, social groups, ordinary citizens, etc. It is believed that the legal culture is closely connected with legal awareness and even relies on it. Some also believe that the concept of legal culture is broader than the concept of legal awareness, because the first one includes not only certain ideological and psychological elements, but also the legally meaningful behavior of citizens.⁹ Karipbaev believes that the elements (subsystems) of legal culture are the level states, i.e. the “degree of legal development” of such components of the legal system of society as: (a) legal texts (documents and texts having legal content); (b) legal activities (theoretical and practical); (c) legal awareness (including cognitive, emotional, and installation components); (d) the subject as the bearer of legal culture (society, classes, nations, nationalities, collectives, and individuals).¹⁰

⁷ Ahmad Asrori, “Batas Usia Perkawinan Menurut Fukaha Dan Penerapannya Dalam Undang-Undang Perkawinan Di Dunia Muslim,” *Al-'Adalah* 12, no. 2 (2015): 807–26. See more Dwi Rifiani, “Pernikahan Dini Dalam Perspektif Hukum Islam,” *Journal de Jure* 3, no. 2 (2011).

⁸ Wahyu Wibisana, “Pernikahan Dalam Islam,” *Jurnal Pendidikan Agama Islam-Ta'lim* 14, no. 2 (2016): 185–93.

⁹ Madina Kozhukhova and Miras Zhiyenbayev, “Conceptualizing Legal Culture and Legal Awareness: Meaning and Structural Components,” in *SHS Web of Conferences*, vol. 55 (EDP Sciences, 2018), 2009, <https://doi.org/10.1051/shsconf/20185502009>.

¹⁰ Kozhukhova and Zhiyenbayev.

Law is seen as one of the important aspects in society that aims to realize the formation of a comfortable and fair society, sometimes by a handful of people being ignored. Not infrequently the law was injured, violated, and even manipulated its functions by people who do have interests or people who still consider the importance of a law that is in the community. These people are people who are not aware and do not obey the law. The role of public legal awareness as the goal of the law itself is to ensure certainty and justice. In the life of the community, there is always a difference between the patterns of behaviour that apply in society with the patterns of behaviour desired by legal norms. This can lead to a problem in the form of social inequality so that at certain times there tends to be conflict and social tensions that can certainly disrupt the course of changes in society in the desired direction. This situation occurs because the existence of created law is expected to be used as a guide (standard) in acting for the public without legal awareness, so there tends to be no legal observance.¹¹

Legal awareness in the community needs to be nurtured and instilled so that the community will be more compliant with existing laws, both written laws and laws that are indeed growing and developing in the community and their existence is recognized by the community. Legal awareness has several conceptions, one of which is the conception of legal culture. This conception contains the teachings of legal awareness more concerned with legal awareness which is considered as a mediator between law and human behaviour, both individually and collectively. Legal awareness is an abstract conception in humans about the harmony between order and peace that is desired or appropriate. Legal awareness is often associated with law compliance, law formation, and law effectiveness. Legal awareness is an awareness of the values contained in humans about the existing law. Legal awareness is related to legal compliance, the thing that distinguishes it is that in legal compliance there is a fear of sanctions.

Legal awareness is self-awareness without pressure, coercion, or orders from outside to comply with applicable laws. With legal awareness in society, the law does not need to impose sanctions. Sanctions are only imposed on residents who are actually proven to have violated the law. The law contains commands and prohibitions. The law tells us which actions are contrary to the law which, if done, will be threatened in the form of legal sanctions. For acts that are contrary to the law, of course, are considered to violate the law so that they are threatened with punishment.

Legal Theories of Dispensation

According to Utrecht, legal certainty contains two definitions, first, the existence of general rules that make individuals know what actions are allowed or not to be done, and secondly in the form of legal security for individuals from government abuse because with these general rules individuals can know what what the state may impose or do on individuals.¹² This doctrine of legal certainty comes from juridical-dogmatic teachings which are based on a positivist school of thought, which

¹¹ Aartje Tehupeiory and Lamhot Naibaho, "Enhancing Community Legal Awareness of Land Right Disputes through the Use of Legal Aid Institutions," *International Journal of Psychosocial Rehabilitation* 24, no. 8 (2020): 1223-31.

¹² Rudi Mayandra, "Regulation of Marriage Dispensation Against Marriage of Children Under The Age of Post Decision of The Constitutional Court Number 22 / Puu-Xv / 2017," *Syariah: Jurnal Hukum Dan Pemikiran*; Vol 20, No 2 (2020) DO - 10.18592/Sjhp.V20i2.4160, December 28, 2020, <http://jurnal.uin-antasari.ac.id/index.php/syariah/article/view/4160>.maka perkawinan baru dapat dilangsungkan setelah mendapat dispensasi dari Pengadilan Agama. Dengan adanya peluang perkawinan anak di bawah umur yang diberikan oleh Undang-undang Nomor 16 tahun 2019 perubahan atas Undang-undang Nomor 1 tahun 1974 Tentang Perkawinan. Hal ini bertentangan dengan Undang-Undang Perlindungan Anak yaitu Pasal 26 Ayat (1

tends to see law as something autonomous, independent, because for adherents of this thought law is only a collection of rules. For adherents of this school, the objective of the law is nothing more than just guaranteeing the realization of legal certainty. Legal certainty is manifested by law with its nature that only makes general legal rules. The general nature of legal rules proves that law does not aim at realizing justice and benefit, but solely for certainty.¹³

In Islamic law, law can be categorized in general which applies to all mukallaf, on the other side, there is an exception law known as 'azimah and rukhsah that include in the theory of wad'i. Shaykh Ismail Usman Zein in al-Mawahib as-Saniyah defined it as ease. Whereas in terms of sharia, rukhsah is:

تغير الحكم من صعوبة إلى سهولة لعذر مع قيام السبب الحكم الأصلي¹⁴

[Changes in the law, from difficult things to easy because of excuses based on original legal reasons]

Al-Syatibi defined it as something that was allowed something that was previously prohibited accompanied by the evidence. The existence of rukhsah is often mentioned in several religious texts, both the Qur'an and hadith.

هُوَ اجْتَبَاكُمْ وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ

[He chose you, and He placed no difficulty in religion (Al Hajj/22:78)]

رِيدُ اللَّهُ أَنْ يُخَفِّفَ عَنْكُمْ ۗ وَخُلِقَ الْإِنْسَانُ ضَعِيفًا

[God intends to lighten your burden-the human being was created weak (Al-Nisa/4:28)]

In addition to these two verses, there are several hadiths that explain rukhsah, like:

إِنَّمَا بُعِثْتُمْ مُبَسِّرِينَ لَا مُعَسِّرِينَ

[Indeed, all of you were sent to make things easier, not to make things difficult.]

Rukhsah obligatory, namely rukhsah which if we do not take it will cause harm or danger to someone. It is permissible to eat meat that is originally haram but when in an emergency situation if he does not eat the meat he will die, then it is obligatory to eat the meat. Rukhsah Sunnah, namely Rukhsah that is recommended to be done. For example, the plural prayer, these two conditions are a form of rukhsah or relief for any Muslim who travels long distances to reach a journey of more than two marhalah according to al-Syafi'i. Rukhsah mubah, namely rukhsah that can be abandoned. Like a greeting. Buying things that don't exist (ma'dum). Rukhsah khilaful awla, which is better rukhsah. For example, breaking the fast during the day for travelers who do not experience musyaqqah. Rukhsah makruh, which is rukhsah which is better left behind. It's like paying for prayers on a journey that hasn't fulfilled the three marhalahs. But rukhsah does not apply when in a state that intends to

¹³ Mayandra.maka perkawinan baru dapat dilangsungkan setelah mendapat dispensasi dari Pengadilan Agama. Dengan adanya peluang perkawinan anak di bawah umur yang diberikan oleh Undang-undang Nomor 16 tahun 2019 perubahan atas Undang-undang Nomor 1 tahun 1974 Tentang Perkawinan. Hal ini bertentangan dengan Undang-Undang Perlindungan Anak yaitu Pasal 26 Ayat (1)

¹⁴ Ismail Usman Zein, *Al-Mawahib as-Saniyah Syarh Fawaid Al-Bahiyah* (Beirut: Dar al-Kutub al-'Alamiyah, 2002), 240.

disobey. If the purpose of the trip was initiated by bad intentions such as gambling, and so on, then this rukhsah or relief will not apply to him.

The order regarding marriage cannot be separated from the Hadith regarding the recommendation for marriage:

يَا مَعْشَرَ الشَّبَابِ مَنِ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ، وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ وَجَاءٌ

[“O youths, whoever among you has a ba-ah, then let him marry, and whoever is not able, let him fast because it will be more able to calm his turmoil.”]

In the above hadith, Rasulullah SAW ordered young people who have the ability (*bā'ah*) to immediately get married. The word *bā'ah* has two means: (1) the ability to do *jima'* (sex relationship), and the meaning of the hadith is that anyone who is able to have intercourse, then he is able to bear the burden of marriage, then let him marry. On the other hand, whoever is not able to sympathize, because of his weakness in carrying his burden, then let him fast; (2) the meaning of *bā'ah* is the burden or expense of marriage. Imam Nawawi explained that the meaning of *bā'ah* is the formation of the word *al-mabā'ah*, which is a house or place like the word *mabā'ah al-ibil*, which is where the camel lives, so that the woman who is married will be placed at home.¹⁵

Al-Suyuthi explains the meaning of *bā'ah* in the hadith there are differences of opinion, the first word of *bā'ah* is that which of you is able to have intercourse is mature and is able to have intercourse, let him marry. Secondly, the word *bā'ah* has mean anyone who is unable, namely unable to marry (but is able to have intercourse), then for him to fast.¹⁶ Al-Syaukani explains the word *bā'ah* tends to mean “who is unable to marry” i.e. unable to marry because of lack of ability to bear the burden. The burden of marriage or because of a lack of intercourse, then for him to fast. Meanwhile, another hadith narrated by al-Nasa'i, Ahmad, al-Bazzar, namely anyone who is able to prepare the marriage.¹⁷ Although the ability to marry and manage property is not mentioned in the above hadith or verse, it can be seen from the obligations of husband and wife in household rules contained in the verses of the Qur'an, hadith, and books of fiqh, then the age limit for marriage becomes something important to discuss and Islam mentions the word *ba'ah* or *rusyd*.¹⁸

Marriage Dispensation at the Purwokerto Religious Court

In 2017, at the Purwokerto Religious Court there were 56 cases of child marriage dispensation. Based on data from the Case Investigation Information System (SIPP) of the Purwokerto Religious Court, the total number of marriage dispensation cases in 2018 was 108 cases. From these data, it shows that the composition of the application for a marriage dispensation is 85 applicants for a marriage dispensation with applicants for the prospective groom while 23 from the prospective bride.

¹⁵ Abī Zakariyā al-Nawāwī, *Syarh Shahih Muslim* (Beirut: Dar al-Kutub al-'Ilmiyah, 1999), 173.

¹⁶ Al-Syuyuthi, *Syarah Al-Suyuthi Li Al-Sunan Al-Nasa'i*, Vol. IV (Beirut: Dar al-Kutub al-'Ilmiyah, 1999), 171.

¹⁷ Al-Syaukani, *Nail Al-Awthar*, Vol. VI (Beirut: Dar al-Kutub al-'Ilmiyah, 1998), 229.

¹⁸ Muhammad Fuad Zain and Ansori Ansori, “Rekontruksi Batas Usia Perkawinan Pasca Putusan Mk No. 22/Puu-Xv/2017 Sebagai Penguat Bangsa Di Era Industri 4.0,” *ADHKI: Journal of Islamic Family Law* 1, no. 1 (2019): 45–56, <https://doi.org/10.37876/adhki.v1i1.9>.

The increasing of requests for dispensation for marriage has not resulted in many conflicts. According to the judge of the Purwokerto Religious Court, Sri Lestari Wasis mentioned that couples who apply for marriage dispensation at a young age (before reaching the age of 19 for men and 16 for women) often experience family conflicts and even many of them file for divorce after 6 months of marriage. The cause is household disharmony caused by the unpreparedness of husband and wife in living the household ark. Citing Jamilah's research which states that the submission of a marriage dispensation application in the Religious Courts is at least caused by two factors, namely: (1) Preventive Factors, and (2) Curative Factors. Preventive Factors is the prevention of adultery by their children because the development of the media (especially electronic media) greatly affects the lifestyle and association of teenagers, their tendency to associate freely is higher. So hastening the marriage is an attempt to overcome the dangers for teenagers from promiscuity. Curative factors or healing efforts for parents who have no other choice but to give the child the choice to get married to cover the disgrace and save the child's status as well as to guard against slander as a result of: a) pregnant out of wedlock; b) economic factors; c) educational factor.

The judge's decision cannot be separated from three theories, namely legal certainty, justice, and benefits. The three elements above are essential elements in law. Grustav Radbruch argued that three basic values must be contained in the law, namely legal certainty, justice, and benefits, and in every decision, it must mention the sentence of the verdict as fair as possible for justice seekers.

Article 7 paragraph (2) of the Marriage Law states in the case of deviations from paragraph (1) of this article, you can request a dispensation from the Court or another official, appointed by both the parents of the man and the woman. Thus, it is the duty of the judge to decide on the marriage dispensation case submitted by the petitioner.

In practice, judges of religious courts in deciding their cases must refer to book II of Guidelines for the Implementation of the Duties of Religious Courts, including marriage dispensation cases. The regulation states that for prospective husband and wife who have not reached the age of 19 and 16 years who want to get married, the parents concerned must apply for a marriage dispensation to the religious court/syar'iyah court. Furthermore, the application for a marriage dispensation is submitted by the prospective bride and groom to the religious court in the jurisdiction where the prospective bride and/or the prospective bride and groom's parents reside. Applications for dispensation from marriage submitted by the prospective groom and/or prospective bride can be made jointly to the religious court in the jurisdiction where the prospective groom and bride reside.

In examining a case, the judge is tasked with establishing (constating), qualifying and then constituting. Constating means that the judge must assess whether the events or facts stated by the parties are actually happening. This can only be done through evidence. Proving it means considering logically the truth of a fact or event based on valid evidence and according to the applicable evidentiary law.

From Purwokerto Religious Court, the total number of decisions regarding the determination of the marriage dispensation of 108 cases, the authors took a sample of 10 (ten) marriage dispensations determined by the Panel of Judges at random with the following details:

No	Case Number	The judge's legal considerations in granting the case
1	0169/Pdt.P/2017/PA.Pwt	The Petitioner's child and her potential partner have been close and have had a husband and wife relationship which caused the petitioner's potential pair of children to be 5 months pregnant.
2	0091/Pdt.P/2018/PA.Pwt	The Petitioner's child and her potential partner are already close and must be married immediately so as not to fall into things that lead to harm.
3	0097/Pdt.P/2018/PA.Pwt	The Petitioner's child and her potential partner have been close and have had a husband and wife relationship which caused the petitioner's potential pair of children to be 5 months pregnant.
4	0098/Pdt.P/2018/PA.Pwt	The Petitioner's child and her potential partner have been close and have had a husband and wife relationship which caused the petitioner's potential pair of children to be 5 months pregnant.
5	0103/Pdt.P/2018/PA.Pwt	The Petitioner's child and her potential partner have been close and have had a husband and wife relationship which caused the petitioner's potential pair of children to be 5 months pregnant.
6	0110/Pdt.P/2018/PA.Pwt	The petitioner's child and his potential partner are already close and must be married immediately so as not to fall into things that lead to harm.
7	0114/Pdt.P/2018/PA.Pwt	The Petitioner's child and her potential partner have been close and have had a husband and wife relationship which caused the petitioner's potential pair of children to be 5 months pregnant.
8	0128/Pdt.P/2018/PA.Pwt	The petitioner's child and his potential partner are already close and must be married immediately so as not to fall into things that lead to harm.
9	0137/Pdt.P/2018/PA.Pwt	The petitioner's child and his potential partner are already close and must be married immediately so as not to fall into things that lead to harm.
10	0156/Pdt.P/2018/PA.Pwt	The Petitioner's child and her potential partner have been close and have had a husband and wife relationship which caused the petitioner's potential pair of children to be 5 months pregnant.

Ten court decisions, there are two main factors that judges allow children to marry through marriage dispensation. The first reason that was considered by the judges of the Purwokerto Religious Court was the close relationship between the prospective groom and the prospective bride, and even had a relationship like husband and wife and caused the prospective bride to become pregnant. The second factor that is considered by the judges of the Purwokerto Religious Court is that there has been a close relationship between the prospective groom and prospective bride which causes the

parents of each prospective bride to worry that their child will fall into things that lead to harm. Therefore, the judge issued a marriage dispensation permit.

The judge puts forward the concept of *maṣlahat*, namely consideration of goodness, preventing harm, and rejecting damage in society. The benefit of granting the marriage age dispensation to children who are not old enough to marry can be accepted by common sense by bringing benefits to the two prospective brides and their respective families and avoiding harm from sinful acts committed by young couples outside of marriage. What is judged by common sense as an essential *maslahah* is actually in line with the aims and objectives of *syara'* (building a complete household) in establishing every law, namely realizing the benefit of mankind. What is considered common sense as an essential *maslahah* and is in line with the objectives of *syara'* in establishing the law does not conflict with the existing *syara'* arguments, both in the form of the Qur'anic texts and Sunnah, as well as the previous consensus of scholars. *Maslahah* used by judges in granting dispensation for the age of marriage, which if the benefits are not resolved in this way, then the people will be in a narrow life with the meaning that it must be taken to prevent people from difficulties in channeling biological desires so as to avoid the trap of immoral acts outside the marriage fence. In the case of early marriage, in addition to Law No.1 of 1974 concerning Marriage and Islamic Law Compilation, the rules regarding the prevention of early marriage can also be found in Article 26 paragraph (1) which stipulates that parents are obliged and responsible for: nurturing, educating and protect children and develop children according to their abilities, talents and interests; and prevent child marriage. However, even though there are regulations mentioned above, in fact, early marriage is still common in Indonesia. Even though the impact of early marriage for these two young couples, there are still more negative things than positive things. Among others, such as depression, health, mental health of both partners, domestic violence, neglected children, social pressure, the emergence of child labor.

According to Fransisca Handy at least five health consequences of pregnancy under the age of 18 years, namely: mental health of the mother, infectious diseases, pregnancy disorders, delivery problems and the health of the baby she is born with. In addition, another impact of early marriage is frequent quarrels with partners. This is because they tend to be childish and have not been able to curb their emotions. The trigger factors for the quarrel were disputes concerning financial problems in the household because the two of them no longer respect each other and carry out their rights and obligations as husband and wife.

A study conducted by Ananta stated that in order to minimize the impact caused by underage marriage, in the General Elucidation of Law Number 1 of 1974 concerning Marriage number 4 letter (d) it is stated that underage marriage must be prevented. This prevention is solely based so that the bride and groom can fulfill the noble purpose of their marriage. This prevention can be carried out in several steps, for example by conducting socialization about the impact of implementing early marriage, explaining to the public about the nature of marriage. This can be achieved by maximizing government and non-governmental organizations.

In addition to resolving cases of underage marriage disputes, in tackling underage marriages include providing guidance to prospective brides who want to marry, providing counseling through recitation of the importance of marriage with physical and mental preparation. In addition, the marriage registrar should provide advice to prospective husband and wife couples who carry out

underage marriages to postpone carrying out marriages before the age has fulfilled what is stipulated by law. However, currently there is a lack of socialization or the absence of counseling programs from relevant agencies or community leaders to increase public awareness about early marriage which can be linked to the marriage law both religiously and stately. The impact is that the number of child marriages will increase.

Conclusion

In 2018 the Purwokerto Religious Court has issued a marriage dispensation decision 108 cases. From these data, it shows that the composition of applicants in submitting a marriage dispensation is 85 applicants for a marriage dispensation with an applicant for a prospective groom, while 23 applicants for a marriage dispensation with an applicant for a prospective bride. Based on the sample of 10 decisions, there are two main factors that judges allow children to marry through a marriage dispensation. The first factor that was considered by the judges of the Purwokerto Religious Court was that there had been such a close relationship between the prospective groom and the prospective bride which caused the parents of each prospective bride and groom to worry that their child would fall into things that would lead to harm. The second reason considered by the judges of the Purwokerto Religious Court was that the prospective bride was pregnant. To reduce the practice of marriage dispensation are providing guidance to prospective brides who want to marry, providing counseling through recitation of the importance of marriage with physical and mental preparation. In addition, the marriage registrar should provide advice to prospective husband and wife couples who carry out underage marriages to delay carrying out marriages as stipulated by law.

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