

Consideration of Religious Court Judges in Lampung Province Indonesia in Marriage Dispensation Cases from a Maslahat Perspective

Iwannudin^{1*}

¹ Ma'arif University Lampung, Indonesia

Abstract: This article discusses the granting of marriage dispensation which is given in order to provide legal certainty to conduct marriages outside the age limit of marriage. While some sources state that marriage at a young age has a negative impact. The purpose of this article is to analyze the basis of the judge's argument in deciding the marriage dispensation case from a benefit perspective. This article is a field research, by examining the decisions of judges at the Religious Court in Lampung Province in 2022, primary sources are then analyzed qualitatively, analyzed based on the theory of legal sociology and benefits. The results of the analysis found that the basis of the judge's argument in the marriage dispensation case is several laws and regulations, and the principles of Islamic law. If the judge's decision only focuses on granting dispensation and imposing court costs, then the decision is inappropriate, because the judge's legal considerations are basically only based on the marriage law without considering other laws related to children such as Law No. 4 of 1979 concerning Child Welfare, Law No. 23 of 2002 concerning Child Protection. Based on the theory of Maqosid Syariah, the decision in question is less useful, because it only gives the impression of legal certainty to obtain marriage dispensation, without any certainty that the rights of children will be guaranteed in the future. The implications of the results of this study are as study material and consideration in the renewal of family law.

Keywords: Legal Basis, Decision of Marriage Dispensation Judge, Maslahat

Abstrak: Artikel ini membahas tentang pemberian dispensasi nikah yang diberikan dalam rangka memberikan kepastian hukum untuk melangsungkan perkawinan di luar batas usia perkawinan. Sementara beberapa sumber menyatakan, perkawinan di usia anak berdampak negatif. Tujuan dari artikel ini adalah untuk menganalisis dasar dalil hakim dalam memutus perkara dispensasi nikah perspektif maslahat. Artikel ini merupakan penelitian lapangan, dengan mengkaji putusan-putusan hakim pada Pengadilan Agama di Provinsi Lampung Tahun 2022, sumber primer kemudian dianalisis secara kualitatif, dianalisis berdasarkan teori sosiologi hukum dan maslahat. Hasil analisis menemukan bahwa, dasar dalil hakim dalam perkara dispensasi nikah adalah beberapa peraturan perundang-undangan, dan asas-asas hukum Islam. Jika putusan hakim hanya berfokus pada pemberian dispensasi dan pengenaan biaya perkara, maka putusan tersebut kurang tepat, karena pertimbangan hukum hakim pada dasarnya hanya berdasar pada undang-undang perkawinan tanpa mempertimbangkan undang-undang lain yang terkait dengan anak seperti Undang-Undang No.4 Tahun 1979 tentang Kesejahteraan Anak, Undang-Undang No.23 Tahun 2002 tentang Perlindungan Anak. Berdasarkan teori Maqosid Syariah, putusan dimaksud kurang bermanfaat, karena hanya terkesan kepastian hukum untuk memperoleh dispensasi kawin saja, tanpa adanya kepastian akan terjaminnya hak-hak anak di kemudian hari. Implikasi dari hasil penelitian ini adalah sebagai bahan kajian dan pertimbangan dalam pembaharuan hukum keluarga.

Kata Kunci: Dasar Hukum, Putusan Hakim Dispensasi Nikah, Maslahat

Corresponding Author: Iwannudin (iwannudin000@gmail.com)

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A. INTRODUCTION

Regarding the age of men and women who are allowed to marry in Law No. 1 of 1974 concerning marriage, it is regulated in Article 7 paragraph 1 which was later updated and since October 15, 2019 Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage which states that, marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years. (Yasin, 2019).

Marriage for children under the specified age means that it has also violated many laws, namely, *First* Violation of Law No.21 of 2002 concerning Child Protection, in Article 1 states that a child is someone who is not yet 18 years old (Asnawi., 2023), in this Law has a function to protect children and mandate parents who have obligations and responsibilities for the protection of their children, as in the article Article 26 paragraph 1 Parents are obliged and responsible for: a) nurturing, maintaining, educating and protecting children. b) developing children according to their abilities, talents and interests and c) preventing marriage at the age of children (Kashvi, 2024). *Secondly*, in violation of Law No.4 of 1979 concerning Child Welfare, chapter II article 2, children are entitled to: a) Children have the right to welfare, care, upbringing and guidance based on love both in their families and in special care to grow and develop naturally. b) Children have the right to services to develop their abilities and social life, in accordance with the culture and personality of the nation, to become good and useful citizens. c) Children have the right to care and protection, both during the womb and after birth. d) Children have the right to protection against the environment that can harm or hinder their growth and development naturally. *Third*, violating Law No. 39/1999 on Human Rights, Article 61 states that every child has the right to rest, associate with children of the same age, play, recreate, and be creative in accordance with their interests, talents, and level of intelligence for their own development. *Fourth*, it violates the principle of civil law, that agreements including marriage at least fulfill the element of legal capacity, meaning that the person is able to perform actions that are considered legally valid, while children are included in the category of not yet / not legally capable, so children can be considered legally capable after the age of 18 years (Yoki Pradikta et al., 2024). As stated in the Civil Code Article 1330, those who are incapable of making agreements are: minors; persons placed under guardianship; women who have married in matters determined by law and in general all persons who are prohibited by law from making certain agreements; thus the law has regulated it, but empirically the events of marriage under the age that has been prohibited by law still occur in Lampung society (Hasan & Pradikta, 2024).

Therefore, this article examines in depth the judge's decision in deciding the case of an application for dispensation of marriage (Asnawi., 2024). The study of this article is interesting to write because the fulfillment of children's rights after marriage is difficult to implement, it must be done to find a way out so that these rights can be implemented so that children can feel the existence of justice after marriage.

There are several studies similar to the study of this article (literature review), as written by Bagya Agung Prabowo entitled: *"Judges' Considerations in Determining Dispensation for Early Marriage Due to Pregnancy Outside Marriage at the Bantul Religious Court"*, In Bagya Agung Prabowo's writing, he tries to uncover the

relevance of KHI as the basis for determining dispensation for early marriage due to pregnancy outside marriage. (Prabowo, 2013). Then research by Muhammad Kunardi, HM Mawardi Muzamil entitled: *"Implications of Marriage Dispensation for Household Existence in the Semarang Religious Court"*. The discussion in this journal is that the impact of marriage dispensation will have legal consequences for the parties and implications for the existence of the bride and groom's household, considering that the marriage is carried out by a prospective bride and groom who are not physically or psychologically mature. (Muzzamil & Muhammad Kunardi, 2014). Another study written by Nur Aisyah entitled *"Dispensation of Underage Marriage in Islamic Society in Bantaeng Regency"*. This research is only limited to discussing and describing several factors that cause marriage dispensation applications to be submitted, including the factor of pregnancy before marriage, economic factors, educational factors and judges' considerations in granting dispensation applications. (Aisyah, 2017).

The similarity between the above research and this article is that both examine marriage dispensation. The research gap of this article is different from the above research. The novelty of this article *first* lies in the analysis of the basis of the judge's consideration that the author does not only in the perspective of one law, but the author tries to look at various existing laws by starting from the process of legal consideration of the judges, the dialectical process of various laws to become a decision, with the theoretical approach of *"The law as a form of social engineering"*. (*law as a form of social engineering*) (Pound, 2017) In addition, in relation to the appropriateness and *maslahat* of a decision, the author will approach the theory of *Maslahat Imam Asy-Syatibi*. *The second* writing that the author is doing is after the renewal of the marriage law, namely Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, which has applied the same age for men and women, namely 19 years, while in previous studies the age issue was still not equalized between men and women, namely men 19 years and women 16 years. This means that age adequacy is still easier to achieve than at present, where the age standard is higher. This will affect the more complicated the settlement of the case so that the analysis of the basis of the judge's consideration will be deeper.

The questions to be answered in this article are what is the basis for the judge's argument in deciding the marriage dispensation case, is the judge's decision correct and *maslahat*? The implications of this research are expected to be the judge's consideration in the process of granting marriage dispensation as an effort to harmonize the judge's decision with the aim of enforcing the minimum bride age of 19 years, namely to minimize child marriage, this is actually not optimal because the marriage dispensation seems to be full of the subjectivity of the judge's decision. In terms of law reform, regulations or judicial decisions made must accommodate other laws so that legal harmonization occurs. For example, marriage laws that have contradictions that need to be reconsidered for the benefit of society.

B. Research Method

This research is a type of field research (*Field Research*). That is, trying to collect data available in the field. While the nature of this research is descriptive-analytical, namely an attempt to describe proportionally something that is studied and then analyzed comprehensively. The sources of data in this writing come from three

sources, among others, the *first* is primary data, namely data from the results of questionnaires with respondents in the form of words, actions, information and information as well as decision documents related to dispensation of marriage from the Religious Court office in Lampung province. *Second*, secondary data are documents such as literature studies used to obtain data and information related to supporting research problems, which are obtained through literature studies through books, scientific papers, documents, archives of related parties, notes, articles and newspapers both print and *online*. *Third* Tertiary data in the form of supporting data in this study. In collecting the above data in several ways *First* conduct interviews, (Soemitro, 1988). Interviews in this case were conducted with simple interviews to explore data that revolved around how and what was the basis for the legal considerations of the judges in deciding the marriage dispensation case. *Second* through Documentation, namely by collecting the necessary information through documents of records of events, minutes of hearings, books, diktat and laws and regulations relating to research issues. And *the third* is observation, namely making direct observations of the object of research in the field. (Ishaq, 2007).

C. RESULT

Data on Marriage Dispensation Cases in Lampung Province in 2022

Based on field data that the first level Religious Court office in Lampung Province consists of three classes, namely Class 1 A, Class 1B and Class II Courts. To facilitate this research the author determines one Religious Court office in each class. In this study, the courts taken were the Tanjung Karang Religious Court (class 1 A), the Tanggamus Religious Court (class 1 B), and the Sukadana Religious Court (class 2) with the assumption of representing each of the existing classes. The number of dispensation cases from the three Religious Courts reached 89 marriage dispensation cases throughout 2022.

Throughout 2022 at the Tanjung Karang Religious Court there were 31 (thirty-one) cases of requests for dispensation of marriage with various reasons for submission, while these reasons can be grouped into three parts, *first* because of fears of adultery, *second* because they are looking for a good day and *third* because the girl is pregnant first. Meanwhile, in the Class IB Religious Court of Tanggamus there are 17 (Seventeen) Marriage dispensation cases with several reasons for submission, including because they are considered economically sufficient, have entered into an irri marriage, because they are pregnant outside of marriage and because they have been in a relationship for a long time, then in the Class II Sukadana Religious Court there are also several reasons for applying for dispensation of marriage, including (1) Because of Pregnancy outside of Marriage (2) To keep things that are not wanted (3) have already spread invitations (4) because of running and customs (5) because they are engaged (6) because of duty (7) Because of nikah sirri.

Table 1
Data on the number of marriage dispensation cases in 2022

No.	Court	Number of marriage dispensation cases
1	PA Class IA Tanjung Karang	31 Cases
2	PA Class IB Tanggamus	17 Cases
3	PA Class II Sukadana	41 Cases

	Total	89 Case
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Table 2
Data on reasons for marriage dispensation requests in 2022

No.	Reason for Request	Religious Court			jmlh	%
		Class IA Tanjung Karang	Class IB Tanggamus	Class II Sukadana		
1	Avoiding Adultery / unwanted things	17 Cases		10 Cases	27 Cases	30%
2	Good Day	1 Case			1 Case	1%
3	Pregnant out of wedlock	13 Cases	10 Cases	24 Cases	47 Cases	52%
4	Has enough economy		6 Cases		6 Cases	7%
5	Has been in a relationship for a long time		1 Case		1 Case	1%
6	Invitations have been distributed			1 Case	1 Case	1%
7	Runaway/indigeno us			4 Cases	3 Cases	3%
8	Engaged			1 Case	1 Case	1%
9	because of the task			1 Case	1 Case	1%
Total		31 Cases	17 Cases	41 Cases	89 Cases	100%

Reasons for Marriage Dispensation Requests in Lampung Province

Based on the data in table 2 above, it appears that there were 89 marriage dispensation cases in Lampung, while the applications were filed for various reasons, among others.

a. The reason is to avoid adultery or other undesirable things,

For this reason, it reached 30% or 27 cases. as quoted from one of the decisions that the applicant's child had been in love with a man for approximately 1 year while the child had not yet reached the age of consent, so it was all considered very urgent to get married because to avoid adultery, the prospective man's family wanted to carry out the marriage. (*Putusan Nomor 97/Pdt.P/2022/PA.Tnk*, n.d.) However, a relationship that lasts too long can also pose risks and problems, especially if the couple does not have a clear and mature plan to continue their relationship to a more serious level, such as marriage, which can lead to adultery in the future. This is the background to several cases of marriage dispensation applications (*Putusan Nomor 150/Pdt.P/2022/PA.Sdn*, n.d.) Because of this condition, marriage is very urgent, because if we do not get married immediately, we are worried that we will commit acts prohibited by Islam and after marriage we plan to continue our education to a higher level if there is an opportunity. (*Putusan Nomor 95/Pdt.P/2022/PA.Sdn*, n.d.).

From several existing decisions, the consideration to avoid adultery is due to several reasons, *the first* being that adultery is considered a serious moral and religious offense. By avoiding adultery, one can maintain the moral and religious principles that one adheres to, on this basis, it is considered very urgent to get married, because if we do not get married immediately we are worried that we will commit acts prohibited by Islam. (Putusan Nomor 95/Pdt.P/2022/PA.Sdn, n.d.). *The second* motive is to protect mental and physical health because adultery can cause various mental and physical health problems, such as unprotected sexual intercourse can lead to the risk of getting sexually transmitted diseases (STDs), in addition, adultery can also cause severe guilt and anxiety, which can affect a person's mental health. *Thirdly*, to protect honor because adultery can damage a person's reputation and make him lose honor in the eyes of society, in societies that have traditional values, adultery is a disgrace and can affect a person's chances of getting a job or getting married. *Fourth*, out of respect for one's partner, avoiding adultery can show respect and loyalty to one's partner. *Fifth* is the demands of laws and norms, as adultery is an act that violates laws and norms in many countries. Therefore, by avoiding adultery, one can avoid the risk of being exposed to lawsuits or legal problems associated with adultery.

b. Good Day

Good day is also used as a reason for applying for marriage dispensation although it does not dominate only 1% of cases, but this happened in one of the religious courts in Lampung, in addition to having been in love for a long time and because of fear of unwanted things according to the family of the prospective husband of the applicant's child on November 10, 2022 is a good day for marriage between the applicant's children, so they must be married immediately even though they are not of legal age. (Putusan Nomor 135/Pdt.P/2022/PA.Tnk, n.d.).

c. Pregnant outside of Marriage

Pregnancy outside of marriage is one of the most dominant reasons for applying for marriage dispensation in Lampung, there are 47 cases or 52% of cases. as the decision of the judge of the Class Ia Tanjung Karang Religious Court against a woman who was only 17 years and 2 months old. However, it is considered urgent to get married because the bride-to-be is 5 months pregnant. (Putusan Nomor 103/Pdt.P/2022/PA.Tnk, n.d.) In addition, it is feared that there will be difficulties in the future, such as administrative difficulties that may arise if the marriage is not immediately solemnized. (Putusan Nomor 27/Pdt.P/2022/PA.Tgm, n.d.). This is the case in Sukadana Religious Court where the applicant's child is 14 years old and agrees to the marriage plan with her prospective husband because she is 9 (nine) weeks pregnant. (Putusan Nomor 144/Pdt.P/2022/PA.Sdn, n.d.).

d. Enough Economy

The readiness to become a wife and / or mother of the household as well as the prospective husband is ready to become a husband / head of the family and

already has an income as a private employee, is a consideration for applying for marriage dispensation, the consideration of being economically ready in applying for marriage dispensation can be an important factor because marriage is a long-term commitment that requires financial readiness and responsibility in living a family life. (*Putusan Nomor 25/Pdt.P/2022/PA.Tgm*, n.d.).

e. Been in a Relationship for a Long Time

That, the reason why the applicant intends to immediately marry off his child with his future wife is because the two of them have been in a relationship since May 2021, in order to anticipate administrative difficulties that may arise in the future if they are not married immediately. (*Putusan Nomor 42/Pdt.P/2022/PA.Tgm*, n.d.). Another case also explained that the prospective husband had been in a romantic relationship with the applicant's child for approximately 2 (two) years. (*Putusan Nomor 98/Pdt.P/2022/PA.Tgm*, n.d.).

f. Have distributed invitations

The conditions for carrying out the marriage both according to the provisions of Islamic law and the applicable laws and regulations have been fulfilled except for the age requirement for the Applicant's child not yet reaching the age of 19 years. However, the marriage was urgent to be held because both parties had made and distributed invitations on July 15, 2022. ((*Putusan Nomor 110/Pdt.P/2022/PA.Sdn*), n.d.).

g. Larian/Adat

The marriage was very urgent to be carried out because the child was already getting along very closely with the prospective husband and even the Applicant's child and prospective husband had run away to get married. (*Putusan Nomor 77/Pdt.P/2022/PA.Sdn*, n.d.). It is this customary background that and the applicants' children have been in a long relationship for approximately 2 (two) years and the prospective wife of the applicants' children has been secluded (*sebumbangan* custom) and customarily the date of marriage has been determined through the traditional leaders of each village, namely October 23, 2022, as is customary in Lampung, if the girl has been taken away by the bachelor's son then it is necessary to continue several further customs until the agreement to the wedding day. In the event that the girl has been taken away by a man, the parents of the male party will report to the traditional leaders that their son has taken away a girl from another village, and then the local traditional leaders will meet the traditional leaders of the girl's home village. After the girl is taken away by the man to his house, it is customary that the woman cannot pick up her daughter and must continue the customary process until the day of the marriage. (*Putusan Nomor 152/Pdt.P/2022/PA.Sdn*, n.d.).

h. Engaged

Getting married is the goal of two people who have been in a romantic relationship. Getting engaged is a common thing to do in order to get married. However, being engaged also does not guarantee that marriage will occur. This can be caused by the distance between marriage and engagement being too far, which is the background of Riki bin Wagiman and his future wife who were engaged in May 2022 and will soon get married. (*Putusan Nomor 101/Pdt.P/2022/PA.Sdn*, n.d.).

i. Due to Duty

This task became an urgent reason, because both of them had been matched to take care of the Islamic boarding school. (*Putusan Nomor 74/Pdt.P/2022/PA.Sdn.*, n.d.).

From the various motives and backgrounds for submitting applications for dispensation of marriage, there are basic considerations for judges in deciding.

1. That this marriage dispensation is one of the cases in the nature of the case *a quo*, namely a request for marriage dispensation. Therefore, based on the Explanation of Article 49 letter a point (3) of Law No. 3 of 2006 Concerning the Amendment to Law No. 7 of 1989 Concerning Religious Courts, as amended by Law No. 50 of 2009 Concerning the Second Amendment to Law No. 7 of 1989 Concerning Religious Courts, and based on the petition of the Plaintiffs which argues that the Plaintiffs are Muslims, in the sense that it is in accordance with the principle of Islamic personality, the case *a quo* is the absolute competency of the Religious Court.
2. In the realm of age, the legal consideration used is that although the minimum age for marriage is set at 19 (nineteen) years of age for men and women, this provision can be revoked in certain situations. This is regulated in Article 7 paragraph (2) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. Based on this provision, the parents of the male party and/or the parents of the female party may request dispensation to the Court in the event of a deviation from the age provision on very urgent grounds accompanied by sufficient supporting evidence. In the explanation of Article 7 paragraph (2), the reason for extreme urgency is defined as a situation where there is no other choice and the marriage must be held under compulsion.
3. The judges' legal considerations also prioritize the rights of children. The most important right for children is the right to enter into marriage with a prospective husband or wife of their own choice with the blessing of their parents to form a household and family that is *sakinah, mawaddah warahmah* based on the Almighty God. (RI, 2019).
4. The next consideration of judges in providing legal decisions is the principle of benefit. This principle is one of the principles in Islamic law that accompanies the principles of justice and legal certainty. The principle of expediency emphasizes that every legal decision must be considered based on the benefits or *maslahat* that will result from the decision. In this context, the principle of expediency is the basis for judges to consider all aspects related to the legal decision to be given in order to provide the maximum benefit for the parties seeking justice and the wider community. (Mahendra, 2014a).
5. A sense of justice that exists in society. This is because the authority of judges as stipulated in Law Number 48 of 2009 concerning Judicial Power article 5 paragraph 1 requires judges and constitutional judges to understand the values of law and sense of justice that exist in society, as an absolute obligation in adjudicating cases. The aim is that the judge's decision is in accordance with the law and the sense of justice of the community.
6. The juridical aspect in considering the petition, taking into account the juridical aspect. This is based on the provisions in Law No. 16/2019 on Marriage, which stipulates that the age limit for marriage is 19 years, both for men and women.

7. Taking into account sociological aspects relating to social values and norms that live in society. For example, judges must consider whether granting marriage dispensation will conflict with social values and benefits for the prospective bride and groom and the surrounding community. (Hasanah, 2018). By paying attention to these aspects, judges are expected to make decisions that are fair and in accordance with the law and the interests of society.
8. Psychological Considerations, in the research conducted, it is known that the Class II Sukadana religious court prioritizes psychological analysis in deciding whether the child to be married is psychologically mature. In its implementation, the judge asks for consideration from a doctor or midwife to check that the person concerned is ready to carry out the marriage. Before the Court makes a decision on the aquo petition, the judge must evaluate the facts revealed in the trial. (Mahendra, 2014b).

DISCUSSION

Legal Basis of Judges in Deciding Marriage Dispensation Cases

The government amended the provisions of Article 7 of Law Number 1 of 1974 concerning Marriage into Law Number 16 of 2019 as a follow-up to the Decision of the Constitutional Court of the Republic of Indonesia Number 22/PUU-XV/2017 dated December 13, 2018. The amendment was made by considering the importance of the rights of citizens to form a family and continue offspring through legal marriage, but must also guarantee children's rights to survival, growth, and development and the right to protection from violence and discrimination, as mandated in the 1945 Constitution of the Republic of Indonesia. Child marriage is considered to have a negative impact on children's growth and development and does not fulfill children's basic rights such as the right to protection from violence and discrimination, children's civil rights, health rights, education rights, and children's social rights. Therefore, the government is trying to realize the constitutional rights of citizens, namely every person has the right to form a family and continue offspring through legal marriage and every child has the right to survival, growth, and development and the right to protection from violence and discrimination. (Rahmania, 2023).

Children are considered a mandate and a gift from God Almighty who has dignity as a whole human being and has the same rights to grow and develop. Therefore, in protecting children, the state, parents, family, and society must play an active role, both through child protection institutions, religious institutions, non-governmental organizations, community organizations, social organizations, the business world, mass media, and even judicial institutions, including in the case of marriage (Ahmad Muslimin, Habib Shulton Asnawi, Rahmat Dahlan, Aicha el-Hajjami, Alamsyah Alamsyah, 2024).

Marriage is only permitted for those who have met the age requirements that have exceeded the age of the child, although in certain circumstances the Court may grant dispensation to marry in accordance with statutory regulations. Thus, the government strives to always pay attention and fight for children's rights and provide the best protection for them in marriage and all other aspects of life.

The statement in the marriage dispensation application can actually be considered as an act of violence against children, especially girls, because it aims to

limit the freedom and rights of the child. However, the type of violence in question is not related to criminal law (Hermanto et al., 2024). In the elucidation of the revised Marriage Law No. 16/2019, "very urgent reasons" are explained as circumstances where there is no other choice and the marriage must take place. Therefore, it is important to clearly understand what are the reasons that can be considered as "very urgent" in this case.

Some of the reasons that are commonly used as grounds for marriage dispensation include: Getting pregnant before marriage, to prevent unwanted things from happening and having sex. Pregnancy before marriage often occurs in adolescents due to lack of knowledge about reproductive health, parental supervision. This leads to risky sexual behavior, which eventually leads to pregnancy before marriage. In the community, pregnancy outside of marriage is considered a disgrace, so the solution often taken is to marry off the pregnant girl to the man who impregnated her to cover the disgrace, as well as maintain the dignity of the family and the surrounding environment.

Unfortunately, these marriages are often conducted without considering the reasons for the pregnancy, such as whether there is coercion or intimidation of one of the vulnerable parties, such as the girl. If the girl is already pregnant, the application for marriage dispensation is likely to be granted by the panel of judges. Therefore, the panel of judges will consider several legal factors, including fuqaha opinions and fiqh rules on the government's obligation to realize the public good (Kurniawan & Hudafi, 2021). (Kurniawan & Hudafi, 2021a). All of these legal considerations will be clearly stated in the content of the decision.

However, if the girl is not yet or not pregnant, most marriage dispensation cases are still granted on the grounds that parents are afraid that their children will fall into greater adultery if the marriage is delayed. In this case, the blessing of both parents to enter into marriage and the ability of the applicant to bear any risks that may arise in the future are important factors in the approval of the marriage dispensation application.

Judges considering applications for dispensation of marriage age are not only bound by positive laws, but can also use the methodology of studying Islamic law (fiqh) and consider *maslahat mursalah* (public good). The concept of *maslahat mursalah* put forward by judges is a consideration of goodness and rejecting damage in society and efforts to prevent harm. (Mansari & Rizkal, 2021). Dispensation of marriage age can be accepted by common sense if it is considered to provide benefits to both prospective brides and their respective families and prevent harm. This means that the *mursalah* considered by the judge is to realize the benefit of mankind. Judges consider dispensation of marriage age as an effort to prevent people from difficulties in channeling biological lust so as to avoid the trap of perverted acts outside the marriage fence.

Then the principle of legal certainty basically emphasizes the importance of order and order in society, while the principle of justice considers the laws that live in society, including customs and unwritten legal provisions.

In choosing the principle of justice as the basis for handing down a verdict, judges must consider the sense of justice that differs among individuals, groups and communities.

The principle of legal expediency focuses more on the economic benefits that can be provided to society. In the case of marriage age dispensation cases, judges tend to prioritize the principle of legal expediency because the law should be useful for humans. (Majelis Ulama Indonesia Komisi Fatwa, 1991). For example, in a case where parents apply for dispensation of the age of marriage for a boy who has not reached the age of 19, the judge may grant the application if he considers that the benefits of the marriage outweigh the risks. If the boy is physically and religiously mature, and can help his father work in the fields, and the prospective wife has been in love with each other for a long time, the judge may grant dispensation of marriage age to avoid undesirable consequences. In such a situation, the judge will be inclined to grant dispensation of marriageable age because it is considered that the risks are greater if the application is rejected.

Dispensation to marry is granted by the Religious Courts to ensure that the relationship and marital status of children who like and love each other is valid in the eyes of the law and society. If an application for dispensation to marry is refused, there is a huge risk that the children will engage in conjugal relations and become pregnant before marriage, which would be a disgrace to the family. The family will also receive adverse social punishment, such as shameful gossip because they are considered unable to look after their children. This will disrupt the psyches of children who are still unstable, especially if they hear disgraceful gossip about themselves. Therefore, the granting of marriage dispensation will minimize these negative impacts.

One of the reasons for filing an application for Dispensation of Marriage was that the girl had become pregnant outside of marriage as a result of sexual relations with her boyfriend. The child's parents felt compelled to marry off their child because the pregnancy was large enough and could no longer be concealed. Such a condition is a disgrace to the family and becomes a topic of conversation in the neighborhood. Most applications for Dispensation of Marriage are caused by conditions where the prospective bride is already pregnant before the marriage takes place (Habib Shulton Asnawi, 2004). This is due to the lack of parental attention to religion and the moral decline experienced by children as a result of parents rarely reminding them of religious rules. Without a legal marriage, children who are born later will have unclear status and a negative impact on the child's future.

In order to protect the interests of children, the hope to protect the interests of children stated in the changes to the norms of Law Number 1 of 1974 concerning Marriage which was followed up by Supreme Court Regulation Number 5 of 2019 is that the minimum age of marriage for women is equal to the minimum age of marriage for men, namely 19 (nineteen) years. This is so that at that age, a person has reached the maturity of his soul and body to be able to carry out marriage properly, so that he can realize the purpose of marriage optimally, without ending in divorce and getting healthy and quality offspring.

It can be concluded that it is practically impossible for a child to file a petition on their own. The reason for this is because as a child, he or she is not yet considered competent to perform legal acts, including filing a petition with the Court. Although judges are required to understand and follow the values of law and justice that live in the community, so they should not reject a petition simply because the law is

unclear, this does not apply if the law is clear and there are clear reasons for rejecting the petition.

Previously, there was a polemic over a guidebook that allowed a child to file a petition on their own. The guideline is Book II on Guidelines for the Implementation of Duties and Administration of Religious Courts in 2013. In the guideline, it is stated that parents of prospective husband/wife who have not reached the age of 19 years and 16 years who want to get married must apply for marriage dispensation to the Religious Court. However, the problem is what if the prospective husband is less than 18 years old but has impregnated a woman, and he has no family or legally responsible guardian.

However, in reality, it is practically impossible for children to file their own petitions. This is because as a child, they do not yet have the legal capacity to perform legal acts, including filing a petition with the Court. For example, in the case of an application for dispensation to marry, which is regulated in Book II of the 2013 Guidelines for the Implementation of Duties and Administration of Religious Courts, a prospective bride and groom who have not reached the age of 19 years and 16 years who wish to enter into marriage, must be submitted by the parents of the prospective bride and groom to the Religious Court/Mahkamah Syar'iyah. Thus, in the event that the child is less than 18 years of age and does not have a responsible guardian, then the judge can provide a way out, in the perspective of Islamic law that this child is considered an adult because he has experienced a 'wet dream' or has even been able to impregnate a woman.

However, there is a difference of opinion among judges as to whether an application for dispensation to marry can be made by the bride and groom themselves if it cannot be made by their parents or surrogates as provided for in the law.

According to Pound, as pointed out by Friedmann, the social engineering function of the law and judges' decisions is determined and limited by the need to balance between legal stability and certainty towards legal development as a means of social evolution. In addition, the independence of the courts, which is essential in a democratic society, can be further determined if the courts act as the highest interpreters of the constitution (Friedmann, 1953). (Friedmann, 1953).

In Indonesia, Pound's concept was developed by Kusumaatmadja who emphasized that law in Indonesia does not simply act as a tool, but also as a means of reforming society. This thinking is referred to by a number of Indonesian jurists as a separate school of legal philosophy.

The essential nature of law, in addition to ensuring legal certainty in its implementation, also seeks to uphold justice. Justice also has two meanings. In the formal sense, justice demands that the law be generally applicable. In the material sense, it demands that the law is in accordance with the ideals of justice in society. The justice in question is justice in the material sense; the content of the law must be fair. The intention to realize a just common life order includes the essence of law itself. A law that does not want to be fair is not a law. What is needed and recognized by society is not just any normative order, but an order that supports common life based on good and fair judgment. Therefore, the direction of the implementation of justice is constitutive, or an essential prerequisite for law.

The judge's basis for deciding the decision is too subjective, which seems to force the marriage dispensation application to be granted. With all the aspects considered in allowing dispensation of marriage, the rights of children are often overlooked in the decisions given. This can be observed in every judge's decision in the dispensation of marriage.

One of the most powerful forms of social control is law. Law acts as a mechanism run by the state to regulate people's behavior and enforce rules that apply fairly and evenly. With the law, society has a handle and reference to know what is allowed and what is not, as well as the consequences of actions that violate the law. It provides a foothold for society to live within predetermined boundaries in order to achieve order and security.

Law serves as the foundation in supporting the primary function of the state, which is to create and maintain social order. However, it is important to remember that law does not stand alone. Pound, a legal scholar, emphasized that law alone is not sufficient to achieve the goal of effective social control. Laws need support from other institutions in society.

In the context of marriage dispensation applications, judges as decision makers should provide decisions that reflect this. Judges' decisions can provide strong social control over all decisions given. The main objective in changing the age of marriage is that the granting of marriage dispensation aims as a form of effort to provide protection in the context of preventing underage marriage. (Judiasih et al., 2020).

The verdict given seems to contradict the main purpose of changing the minimum marriage law. The decisions given tend to refer to regulations that do not reflect this. The judge in his decision took as a basis the consideration of the Constitutional Court in its decision Number 30-74/PUU-XII/2014 which stated that the ability to grant marriage dispensation for children who are not yet of age according to the Law is "...if there are compelling circumstances at the request of parents and / or guardians...". In addition, the basis for the decision also prioritizes the *Qaidah Fiqhiyah* in the Book of *Asybah wan Nadhaair* which states that "Rejecting the evil is in the interest of the good". (Putusan Nomor 45/Pdt.P/2022/PA.Tgm, n.d.).

Force in this context provides an ambiguous part of every marriage dispensation application. Underage marriage is easily granted when the child is already pregnant from the relationship. This includes compelling circumstances so that many requests in marriage dispensation can be granted.

Judging from the decision given, the granting of dispensation to marry on the pretext of rejecting future badness seems ambiguous and provides a momentary solution. Dispensation of marriage can be submitted by anyone on the pretext that there are urgent matters. Making a decision based on this argument does not reflect the law as a tool of social engineering.

The law should be able to do more than provide legality for the applications made. Judges can consider other articles that provide more opportunities for children to continue to obtain their rights, but can also avoid the evils that may arise if marriage dispensation is not granted.

Table 3
Judges' Legal Arguments

No.	Subject	Legal Basis	Description
1	PA Authority	Article 49 letter (a) point (3) of Law Number 3 of 2006 Concerning the Amendment to Law Number 7 of 1989 Concerning Religious Courts, as amended by Law Number 50 of 2009 Concerning the Second Amendment to Law Number 7 of 1989 Concerning Religious Courts.	The law is used as a basis, to emphasize that the issue of dispensation of marriage is the authority of the Religious Court, so the applicant filed his application in accordance with the law.
2	Single Judge	Article 1 point 11 of Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Requests	This regulation is used as a consideration, to state that in the case of dispensation of marriage the judge acting is a single judge.
3	Applicant Attendance	<ol style="list-style-type: none"> 1. Article 718 R.Bg juncto Article 55 of Law Number 7 of 1989 Concerning Religious Courts, 2. Law No. 3 of 2006 Concerning the Amendment to Law No. 7 of 1989 Concerning Religious Courts 3. Law Number 50 of 2009 Concerning the Second Amendment to Law Number 7 of 1989 Concerning Religious Courts. 	This is used as a legal basis that the applicants were actually present at the hearing.
4	No Mediation Required	<ol style="list-style-type: none"> 1. Supreme Court Regulation No. 1 of 2016 on mediation 2. Law number 50 of 2009 amending Law number 7 of 1989 number 3 explanation paragraph (2) article 49 	This is the basis that dispensation cases are not required to be mediated.
5	Giving Advice	Article 12 paragraphs (1) and (2) of Supreme Court Regulation Number 5 of 2019 concerning Trial Guidelines.	This article is the basis for judges to conduct pre-trial counseling.
6	Language Easy to understand	Article 11 of Supreme Court Regulation Number 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Petitions)	The article is the basis for the judge that in the trial process the judge uses language that is easily understood by the child.
7	Listening to Children	<ol style="list-style-type: none"> 1. Article 7 paragraph (3) of Law Number 16 of 2019 Concerning Marriage. 2. Article 13 of Supreme Court Regulation Number 5 of 2019 concerning Guidelines for 	The article is the judge's basis that in the process the judge listens to what the child says.

		Adjudicating Marriage Dispensation Petitions.	
8	Evidence	Exhibits P.1 to P.16 which have met the formal and material requirements. Article 7 paragraph (2) of Law Number 16 of 2019 Concerning the Amendment to Law Number 1 of 1974 Concerning Marriage jo. Article 6 of Supreme Court Regulation Number 5 of 2019 Concerning Guidelines for Adjudicating Marriage Dispensation Petitions, it is proven that the Plaintiffs have legal standing.	This article is the basis for the judge to examine the evidence submitted by the applicant.
9	No Coercion	Article 16 letters [i] and [j] of Supreme Court Regulation Number 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Petitions.	The article is the basis for judges to ensure that there is no coercion from any party.
10	Witnesses and testimonies	1. not a person who is prohibited from being heard as a witness (vide: Article 172 paragraph (1) R.Bg. in conjunction with Article 1910 and Article 1912 of the Civil Code), 2. have been sworn in accordance with their religion (vide: Article 175 R.Bg. juncto Article 1911 of the Civil Code) (vide: Article 171 paragraph (1) R.Bg. juncto Article 1909 of the Civil Code).	This article is the basis for judges to determine that the witness is the right person to give testimony and has been sworn.
11	Qodrati	1. Article 28b paragraph (1) of the 1945 Constitution in conjunction with Article 10 paragraph (1) of Law Number 39 of 1999 Concerning Human Rights. 2. Article 23 paragraph (2) of the International Covenant on Civil and Political Rights, as ratified by Law Number 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights,	The law in the judge's reasoning is used as a basis that marriage is one of the rights of every human being. Therefore, there should be no prohibition. If it is prohibited then it is contradictory.
12	No blood relationship	1. Article 8 of Law Number 1 Year 1974 as amended by Law Number 16 Year 2019 Jo. Articles 39 and 40 of the Compilation of Islamic Law, 2. Article 6 paragraphs (1) and (2) of Law Number 1 Year 1974 as amended by Law Number 16 Year 2019 Jo. Article 15 paragraph (2) and Article 16 paragraphs (1) and (2) of the Compilation of Islamic Law	The law is used as a corroboration that the evidence submitted states that there is no blood relationship between the bride and groom.

13	Charging of Case Fees	Article 89 paragraph (1) of Law Number 7 of 1989 as amended by Law Number 3 of 2006 and the second amendment by Law Number 50 of 2009 concerning Religious Courts	The law takes into consideration that the burden of court costs is borne by the applicant.
14	Religious Considerations	<ol style="list-style-type: none"> 1. Qur'an <ol style="list-style-type: none"> a. Quran Surah An-Nur:32. "And marry those who are alone among you, and the worthy of your female servants. If they are poor, Allah will enable them by His grace. And Allah is vast (in His provision) and all-knowing"; b. Al-Quran Surat Ar-Rum: 21 "And among the signs of His power is that He created for you wives of your own kind, that you may tend to them and be secure in them, and He has made between you love and affection. Indeed, in such things there are signs for the thinking people"; 2. The Prophetic Hadith which means: "O young men, whoever among you is able to fulfill the obligation of maintenance (physically and mentally), let him marry. Indeed, marriage can close the eyes and reduce lust. And whoever is unable to do so, let him fast, for fasting is a shield for him." 3. Qoidah Fiqh <ol style="list-style-type: none"> a. Avoiding damage / mafsadah must take precedence over maintaining goodness / maslahah; b. The government takes care of its people according to / based on considerations of benefit; 	<p>The verse and hadith were used by the judge as a religious basis that the marriage was permissible and therefore dispensation was granted.</p> <p>This fiqh Qoidah is also used as a basis that rejecting mafsadat (damage) is better than bringing about maslahat. If several benefits collide, then the greater (higher) benefit should take precedence. And if several mafsadah (harms, damages) collide, the lesser of them should be preferred. (Kitab Taqrir al-Qawa'id wa Tahrir al-Fawaid, 2/468. Sharh al-Qawa'id as-Sa'diyah p. 204, al-Qawa'id al-Fiqhiyyah al-Kubra wa Ma Tafarra'a 'Anha, pp. 527);</p>
15	On the subject of granting dispensation	1. The consideration of the Constitutional Court in its decision Number 30-74/PUU-XII/2014 which states that the ability to grant marriage dispensation for children who are not yet of age according to the Law is "...if there are things that	The rule or law in question is used to state the granting of dispensation to marry.

		<p>are compelling at the request of parents and / or guardians.</p> <p>2. Article 7 paragraph (2) of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974;</p> <p>3. Article 53 paragraph 1 of the Compilation of Islamic Law; a woman who becomes pregnant outside of marriage can marry the man who impregnated her,</p>	
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Judges' Decisions in Deciding Marriage Dispensation Maslahah Analysis

Legal consideration is an important stage in the trial process conducted by the panel of judges (Mohamed & Pratiwi, 2024). At this stage, the judge will consider the facts revealed during the trial, starting from the indictment, charges, exceptions from the defendant, to evidence that meets the formal and material requirements, as well as the pledoi submitted. In addition, the legal considerations will also include articles of legal regulations that are the basis for the decision to be handed down.

The judge's consideration, or commonly referred to as Ratio Decidendi, is an argument or reason used by the judge as a basis for legal consideration before deciding a case. In conducting legal considerations, there are two kinds of considerations made by judges, namely juridical and social considerations. Juridical considerations relate to legal considerations based on applicable legal norms, while sociological considerations relate to legal considerations made based on social considerations and values prevailing in society. Therefore, the judge's consideration is very important in making a fair and correct decision.

Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. Article 7 paragraph (2) of this law provides the possibility for the parents of the male party and/or the parents of the female party to request dispensation from the Court in the event of a deviation from the minimum age requirement for marriage (Mahmudah et al., 2022).

This dispensation can only be granted in certain very urgent situations and must be accompanied by sufficient supporting evidence, such as a certificate of the age of the bride and groom and a certificate from a health worker confirming that the marriage is urgent.

Deviation from the minimum age for marriage is a sensitive matter, as marriages contracted underage can pose serious risks to the physical and mental health of both partners. Therefore, the provision of dispensation must be carefully considered, and only granted in situations that genuinely meet the established criteria (Firdawaty et al., 2023).

In this case, the court plays an important role in determining whether or not dispensation is allowed. The court must ensure that the very urgent reasons put forward are valid and that the supporting evidence provided is adequate. The dispensation must also take into account the interests and welfare of the couple getting married, as well as any potential risks that may arise.

Overall, Article 7 paragraph (2) of Law No. 16/2019 on the Amendment to Law No. 1/1974 on Marriage provides leeway for the parents of the male and/or female

party to request dispensation in the event of a deviation from the minimum age requirement for marriage. However, dispensation can only be granted in certain very urgent situations and must be accompanied by adequate supporting evidence, and carefully considered by the court.

In every decision, almost all requests are granted. However, these decisions often do not include the important consequences of the decision. The judge's decision on marriage dispensation only included that the application was granted, and the costs were borne by the applicant. This is contrary to the purpose of other laws.

The decisions made clearly do not provide special regulations for children. The right to education, the right to growth and development, and other children's rights seem to be neglected in the absence of clear regulations on whether these rights can be fought for. The decision instead centers on the dispensation granted and the costs imposed on the applicant. (Putusan Nomor 45/Pdt.P/2022/PA.Tgm, n.d.).

The existence of law as a means of social engineering is not very clear in this case. The law in the form of a judge's decision should be able to accommodate existing problems related to marriage dispensation. Decisions that focus on the granting of marriage dispensation applications and the fees charged are not effective in achieving the goal of changing the age limit in marriage.

As social engineering, the decision should still be able to accommodate these objectives. This can be done by providing clear regulations on children's rights in the future if the marriage has been carried out. This form of engineering can at least have a positive impact on children's rights.

In addition to this, as mandated by Law No.4 of 1979 concerning Child Welfare, children have many rights as stated in chapter II article 2 that children are entitled to:

- a. Children are entitled to welfare, care, nurture and guidance based on love both in their families and in special care to grow and develop naturally.
- b. Children are entitled to services to develop their abilities and social life, in accordance with the culture and personality of the nation, to become good and useful citizens.
- c. Children are entitled to care and protection, both during the womb and after birth.
- d. Children have the right to protection against an environment that may harm or inhibit their proper growth and development. (*Undang-Undang Nomor 4 Tahun 1979 Tentang Kesejahteraan Anak*, n.d.).

Rather than a verdict that only centers on the granting of dispensation and the costs imposed on the applicant, the law as social engineering should be able to provide special regulations for these rights.

However, when viewed from the perspective of *Maqasid Sharia*, the decision that has been made cannot be fully blamed. This cannot be separated from the fact that the marriage is religiously valid. The judge's decision in granting dispensation to marry refers to the following verse (*Putusan Nomor 127/Ptd.P/2022/PA.Sdn.*, n.d.).

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ ۖ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ ۗ وَاللَّهُ وَاسِعٌ عَلِيمٌ

Meaning: *Marry off those who are celibate among you and those who are marriageable among your bond-servants, both men and women. If they are poor, Allah will*

enable them by His bounty. Allah is All-Wise (His provision) and All-Knowing (Q.S An-Nur: 32).

Maqashid al-syariah contains four aspects, namely: The initial purpose of sharia is the benefit in the world and in the hereafter, sharia as something that must be understood, sharia as a taklif law that must be carried out, and the purpose of sharia is to bring humans under the auspices of the law. (Kurniawan & Hudafi, 2021b).

The pillars of marriage consist of a) the groom, b) the bride, c) the guardian, d) two witnesses, and e) ijab and qabul (marriage contract). The requirements for the groom are: a) Islam, b) consenting to the marriage, c) the person is clear, d) there is no shara' impediment, such as not being in ihram for Hajj or Umrah. According to the Hanafis, puberty and intelligence are not conditions for the validity of marriage; rather, they are conditions for the validity of the marriage contract, while mumayyiz, which is seven years old, is sufficient (Alamsyah, 2024).

The conditions for the bride are: a) she is happy with the marriage, b) she is Muslim or Ahl al-Kitāb, c) she is a clear person, d) there are no shar'i impediments to marriage, either muabbad (forever) because of mahram, or muaqqat (temporarily) for example being married to someone else (Asnawi, 2024).

A striking difference can be seen in the age required for men to be able to marry. However, there is no age requirement for women to marry. Although in Islam there is no age requirement for the bride, based on *Maqosid sharia* it should also be necessary to consider the world benefits for each partner (Masrar et al., 2024).

The decision that has been taken so far comes from the Qur'anic argument regarding the recommendation to get married immediately. However, marriage is not just a short-lived relationship like other acts of worship. Marriage is an act of worship that is performed until the end of life. Thus, both parties must be physically and psychologically mature. This is also in line with *Maqashid al-syariah*, namely the initial purpose of sharia, namely the benefit in the world and in the hereafter. (Kurniawan & Hudafi, 2021b).

Conclusion

The basis of the judges' arguments in deciding cases of dispensation of marriage in the Religious Courts in Lampung Province is based on several aspects regulated in the legislation, the principles of Islamic law as stated in the Al-Qur'an surat An-Nur: 32 and Ar-rum 21, the prophet's hadith and also Qoidah Fiqh. And in essence, related to marriage compensation, judges are only based on several laws and regulations, among others: (1) Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974. (2) Consideration of the Constitutional Court in its decision Number 30-74 / PUU-XII / 2014 which states the ability to grant marriage dispensation for children who are not of legal age and, (3) Article 53 paragraph 1 of the Compilation of Islamic Law; women who are pregnant outside of marriage can marry the man who impregnates them.

The judge's decision in the dispensation of marriage focuses on granting dispensation of marriage and imposing court costs on the applicant for the proposed dispensation. A judge's decision on a case cannot be separated from its legal consequences, meaning that legalizing a marriage process contains many consequences of the status of the decision. So according to the author, if seen from the theory of *social engineering*, the decision is not appropriate and accurate for

sitting cases except for pregnancy outside of marriage and, *social engineering* in the Indonesian context, what is desired is the guarantee and maintenance of a state interest as the guardian of the interests of society. Because the object of this case is a child, the interests of the state are implied in several laws concerning children, but the legal considerations of the judges in their decisions are basically only based on the marriage law without considering several other laws related to children such as Law No.4 of 1979 concerning Child Welfare, Law No.23 of 2002 concerning Child Protection. The implications of the results of this study for the renewal of family law in Indonesia, both the written law in the law and the law decided in religious courts in Indonesia are: (1) It can be used as material for study and consideration in reforming family law so that there is harmonization of family law with other laws. (2) As a consideration for judges in legal reasoning towards practical steps that can be applied to realize the objectives of the law as presented in the findings of this research.

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