



Review of Maṣlaḥah Mursalah on the Implementation of Marriage Dispensation under Law No. 16 of 2019 : Case Study of Decree Number 0098/Pdt.P/2023/PA.Bks

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Abstract

This research is based on decision related to marriage dispensation due to marriages under the minimum age limit. Purpose of this research is to determine the factors considered by Judges in granting decision Number 0098/Pdt.P/2023/PA.Bks regarding marriage dispensation and to review the suitability of the decision with the concept of maṣlaḥah mursalah. This research uses a mixed method, namely a normative and empirical approach. The normative approach is carried out through a study of laws and regulations, court decisions, and related legal literature. The empirical approach is carried out through interviews with judges at the Bekasi Religious Court. Data analysis was conducted qualitatively by connecting legal facts and relevant theories. The results show that the judge's considerations in granting marriage dispensation are based on the empirical conditions of the parties, such as the existence of urgent circumstances, the readiness of the prospective husband and wife, and efforts to avoid greater harm. From the perspective of maṣlaḥah mursalah, the decision reflects efforts to realize the benefit, especially in maintaining honor and offspring, and preventing worse social impacts. Thus,



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the granting of marriage dispensation in the ruling is justifiable as long as it remains case-specific and does not become a common practice.

[Penelitian ini didasarkan pada adanya putusan yang berkaitan dengan dispensasi nikah yang disebabkan oleh adanya pernikahan dibawah batas usia nikah. Tujuan penelitian ini bertujuan untuk mengetahui apa saja hal-hal yang menjadi pertimbangan hakim dalam mengabulkan putusan Nomor 0098/Pdt.P/2023/PA.Bks terkait dispensasi nikah serta meninjau kesesuaian putusan tersebut dengan konsep masalah mursalah. Penelitian ini menggunakan metode campuran, yaitu pendekatan normatif dan empiris. Pendekatan normatif dilakukan melalui studi terhadap peraturan perundang-undangan, putusan pengadilan, dan literatur hukum terkait. Sementara itu, pendekatan empiris dilakukan melalui wawancara dengan hakim Pengadilan Agama Bekasi. Analisis data dilakukan secara kualitatif dengan menghubungkan fakta hukum dan teori yang relevan. Hasil penelitian menunjukkan bahwa pertimbangan hakim dalam mengabulkan dispensasi nikah didasarkan pada kondisi empiris para pihak, seperti adanya keadaan mendesak, kesiapan calon suami dan istri, serta upaya menghindari mudharat yang lebih besar. Dalam perspektif masalah mursalah, putusan tersebut mencerminkan upaya mewujudkan kemaslahatan, khususnya dalam menjaga kehormatan dan keturunan, serta mencegah dampak sosial yang lebih buruk. Dengan demikian, pemberian dispensasi nikah dalam putusan tersebut dapat dibenarkan sepanjang tetap bersifat kasuistik serta tidak dijadikan sebagai praktik umum.]

Keywords: marriage age limit; marriage dispensation; judge's consideration; masalah mursalah; child protection.

Introduction

Marriage is a tradition that has an important position in the life of Indonesian society because it is not only seen as a legal bond between a man and a woman, but also as a means to realize family peace, protect offspring, and build a harmonious social order.¹ In sharia law, marriage is a contract that has the value of worship and is one of the instruments to maintain the five main purposes of sharia (*maqāṣid al-shari'ah*), especially the protection of religion (*ḥifẓ al-dīn*) and posterity (*ḥifẓ al-nasl*).² Therefore, the implementation of marriage is not only aimed at fulfilling the formal aspect, but also directed at creating benefits for individuals, families, and society.³ This principle is then applied in the national legal system through Law Number 1 of 1974 concerning marriage as amended by Law Number 16 of 2019 which emphasizes

¹ Hamsah Hudafi, "The Formation of the Sakinah Mawaddah Warahmah Family According to Law Number 1 of 1974 and the Compilation of Islamic Law," *Al Hurriyah : Journal of Islamic Law* 5, No. 2 (2020): 172, <https://doi.org/10.30983/Alhurriyah.V5i2.3647>.

² Maimun Maimun, "Marriage in a Compilation of Islamic and Civil Law," *Al-Mizan Journal* 9, no. 1 (2022): 12–21, <https://doi.org/10.54621/Jiam.V9i1.263>.

³ Muhamad Khafid et al., "Dispensing with Age? Marriage Dispensation, Household Resilience, and the Tensions Between Islamic and State Law," *Sakina: Journal of Family Studies* 9, no. 3 (2025): 356–70, <https://doi.org/10.18860/jfs.v9i3.16724>.

that marriage must be held based on the principles of physical, psychological, and social maturity so that the goal of forming a happy and eternal family can be achieved.⁴

The change in the provisions regarding the marriage age limit through Law Number 16 of 2019 is a form of the state's commitment to improving the protection of children while eliminating discrimination in the marriage age limit between men and women.⁵ If previously Article 7 paragraph (1) of Law Number 1 of 1974 set a minimum age limit of 16 years for women and 19 years for men, then the change equalized the age limit of marriage to 19 years for both prospective brides. The policy is based on the consideration that marriage at a young age has the potential to cause various negative impacts, such as high school dropout rates, increased risk of maternal and infant death, domestic violence, intergenerational poverty, and disruption of child growth and development.⁶ Thus, increasing the marriage age limit is a legal instrument that aims to realize child protection while improving the quality of Indonesian families.

However, the change in the age limit for marriage does not eliminate the possibility of underage marriage. Law Number 16 of 2019 still provides space through the marriage dispensation mechanism submitted to the court if there is a very urgent reason accompanied by sufficient evidence.⁷ These provisions show that the lawmakers are aware of certain conditions that cannot be solved only through the rigid application of rules. In practice, applications for marriage dispensation are still quite often submitted to religious courts with various backgrounds, such as out-of-wedlock pregnancies, economic conditions, and parents' concerns about child association. This condition shows that the application for marriage dispensation is not only related to normative aspects, but is also influenced by the original conditions that are developing in society.⁸

As for after the amendment to Law Number 16 of 2019, the Supreme Court issued PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage

⁴ Ali Sibra Malisi, "Marriage in Islam," *Bundle: Journal of Social, Political and Legal Sciences* 1, no. 1 (2022): 22–28, <https://doi.org/10.55681/Seikat.V1i1.97>.

⁵ Kurnia Khairunnisa, "The Implications of the Marriage Age Limit in Law No. 16 of 2016 Jo Law No. 1 of 1974 on the Number of Marriage Dispensation Applications at the Bekasi Religious Court," 8, No. 2 (2022).

⁶ Leza Melta Rany and Liya Sukma Muliya, "The Implementation of Marriage Dispensation for Minors in Baturaja City, Ogan Komering Ulu Regency, South Sumatra Province Reviewed from Law Number 17 of 2016 concerning Child Protection (Decision on Marriage Number 83/Pdt.P/2020/Pa Bta)," *Journal of Legal Research* 1, No. 2 (2021): 74–79, <https://doi.org/10.29313/Jrih.V1i2.444>.

⁷ Muhammad Nur Falah et al., "The Increase in the Marriage Age Limit According to Law Number 16 of 2019 and Its Implications for the Increase in the Number of Marriage Dispensation Cases in the Pemalang Religious Court," *The Indonesian Journal of Islamic Law and Civil Law* 1, no. 2 (2020): 167–82, <https://doi.org/10.51675/Jaksya.V1i2.173>.

⁸ Bella Sapirah and Musyaffa Amin Ash Shabah, "Ragam Dinamika Penetapan Dispensasi Nikah Dari Tahun 2019–2023 Di Pengadilan Agama Bekasi," *MASLAHAH (Jurnal Hukum Islam Dan Perbankan Syariah)* 15, no. 2 (2024): 111–23, <https://doi.org/10.33558/maslahah.v15i2.10219>.

Dispensation Applications.⁹ The presence of PERMA aims to provide guidelines for judges so that every dispensation application is not decided solely based on the fulfillment of administrative requirements, but also considers the best interests of the child, the child's right to be heard, psychological and health conditions, the readiness of the prospective bride, and the social impact that may arise from the granting or rejection of the application.¹⁰ Thus, PERMA Number 5 of 2019 expands the judge's consideration space so that the process of examining marriage dispensation is not only oriented to legal certainty, but also prioritizes the value of justice, utility, and protection of children's rights.

In judicial practice, judges are often faced with complex situations when examining applications for marriage dispensation. On the one hand, judges are obliged to enforce the purpose of restricting the age of marriage as mandated by Law Number 16 of 2019 as a form of protection for children.¹¹ But on the other hand, judges are also faced with concrete conditions that require immediate resolution, for example when the bride-to-be has become pregnant out of wedlock, so that the rejection of dispensation has the potential to have greater legal, social, and psychological impacts, both for the mother-to-be and the child to be born.¹² This dilemma puts the judge in a strategic position to balance legal certainty with substantive justice through a comprehensive consideration of all the facts of the trial.¹³

Such a condition shows that the granting of marriage dispensation cannot be seen solely as a form of exception to the marriage age limit, but as a legal mechanism aimed at avoiding greater harm. From the perspective of Islamic law, the solution to problems that are not explicitly regulated in the nash can be analyzed through the concept of *maṣlaḥah mursalah*, that is, the benefit that does not have a specific postulate that commands or prohibits it, but is in line with the general purpose of the sharia.¹⁴ This concept provides space for law enforcement to consider the benefits and harms of a decision as long as it does not contradict the basic principles of sharia. Therefore, *maṣlaḥah mursalah* is one of the relevant approaches to assess

⁹ Nurhilal Nazri Arif et al., "Formal Legal Problems Regarding the Provisions of Perma Number 05 of 2019 concerning the Submission of Marriage Dispensation from the Perspective of Maslahah Mursalah," *Yustisi* 11, No. 2 (2024): 137–48, <https://doi.org/10.32832/Yustisi.V11i2.16670>.

¹⁰ Dini Pepri Rahayu, Implementation of Perma No. 5 of 2019 concerning Guidelines for the Granting of Marriage Dispensation, 4, No. 3 (2026).

¹¹ Saidatur Rohmah, Marriage Age Limit in the Perspective of Islamic Law and Law in Indonesia, No. 1 (2021).

¹² Widihartati Setiasih, "Analysis of Underage Marriage Dispensation Decisions in the Perspective of Women's Protection," *Journal of Research and Community Service Unsiq* 4, no. 3 (2017): 235–45, <https://doi.org/10.32699/Ppkm.V4i3.428>.

¹³ Suprihatin Suprihatin, "Analisis Deskriptif Faktor-Faktor Yang Mempengaruhi Pembatalan Perkawinan Di Pengadilan Agama Bekasi," *MASLAHAH (Jurnal Hukum Islam Dan Perbankan Syariah)* 8, no. 2 (2017): 75–100.

¹⁴ Agus Hermanto, "The Concept of Maslahat in Responding to Contemporary Problems (Comparative Studies of Al-Tûfi and Al-Ghazali)," *Al-'Is* 14, no. 2 (2017): 433, <https://doi.org/10.24042/Adalah.V14i2.2414>.

the extent to which the judge's consideration in granting the marriage dispensation reflects the purpose of Islamic law (*maqāṣid al-syarī'ah*).¹⁵

One of the cases that reflects this problem is Decision Number 0098/Pdt.P/2023/PA. Bks decided by the Bekasi Religious Court which is the focus of this study. In this case, the application for marriage dispensation was submitted because the bride-to-be had not reached the minimum age of marriage as determined by Law Number 16 of 2019, while based on the facts of the trial it was known that the bride-to-be had become pregnant due to the relationship with her future husband. The judge then granted the request for dispensation after considering the conditions of the parties, the evidence submitted, and the potential for greater harm if the application is rejected. The decision is interesting to study because it shows a balancing process between the application of positive law, child protection, and the values of welfare in Islamic law.

Based on this description, the research on the judge's considerations in Decision Number 0098/Pdt.P/2023/PA. Bks is important to do. The analysis is not only focused on the conformity of the decision with the provisions of Law Number 16 of 2019 and PERMA Number 5 of 2019, but also on the extent to which the judge's consideration reflects the application of the concept of *maṣlaḥah mursalah* as one of the methods of *istinbāṭ* of Islamic law. This study is expected to be able to make an academic contribution in enriching the development of Islamic family law, especially regarding the harmonization between positive law and the principles of *maqāṣid al-syarī'ah* in resolving marriage dispensation cases.

The marriage dispensation case is still one of the most dominant cases in the religious court environment even though the government has raised the minimum age of marriage to 19 years old through Law Number 16 of 2019.¹⁶ The increase in the age limit is basically intended to reduce the number of child marriages as part of efforts to protect children's rights, improve the quality of human resources, and prevention of various negative impacts caused by early marriage.¹⁷ However, in practice, applications for marriage dispensation continue to be submitted for various reasons, mainly due to out-of-wedlock pregnancies, economic factors, low education levels, the influence of the social environment, and parents' concerns about children's¹⁸ associations. This condition shows that changes in legal norms

¹⁵ Muhyidin Muhyidin, "Maqashid al-Syari'ah (The Purposes of Islamic Law) as the Basic Foundation for Legal Development," *Gema Keadilan* 6, No. 1 (2019): 13–32, <https://doi.org/10.14710/Gk.2019.4948>.

¹⁶ Mutiara Jati Abdawiyah et al., "Analysis of the Determination of Dispensation of Underage Marriage," *Yustitia Journal* 24, No. 1 (2023), <https://doi.org/10.53712/Yustitia.V24i1.1967>.

¹⁷ Eka Gifriana et al., "Early Marriage Dispensation: Maslahah Mursalah Perspective (Juridical Analysis of Case Decision Number: 1635/Pdt.P/2019/Pa.Srg)," *Journal Of Legal And Cultural Analytics* 1, No. 3 (2022): 199–216, <https://doi.org/10.55927/Jlca.V1i3.1284>.

¹⁸ Fitria Devi Wulandari and Musakir Salat, "Legal Protection in Underage Marriage in the Tradition of Merarik of the Sasak Tribe: (Study in East Lombok Regency)," *Private Law* 1, no. 3 (2021): 481–89, <https://doi.org/10.29303/Prlw.V1i3.423>.

have not been fully able to change the social reality of society so that judges are still faced with various dispensation requests that require comprehensive consideration.¹⁹

This phenomenon is also seen in the Bekasi Religious Court as one of the religious courts that handles marriage dispensation applications every year. Based on data on marriage dispensation cases obtained from the Bekasi Religious Court, the number of applications shows fluctuations in recent years. Although not all applications are granted, most cases still obtain a dispensation determination after the judge considers various legal aspects and the factual conditions of the parties. This fact shows that the increase in the age limit of marriage does not necessarily eliminate the need for a dispensation mechanism, but rather shifts the focus of the judge's examination from simply fulfilling administrative requirements to a more substantive assessment of the best interests of the child and the legal consequences that may arise if the application is granted or rejected.

In this context, the role of the judge is very decisive because each dispensation application has different characteristics so that it cannot be resolved only through the application of normative provisions textually. Judges are required to be able to integrate the provisions of Law Number 16 of 2019, PERMA Number 5 of 2019, the principles of child protection, and the values of justice that live in society.²⁰ Thus, the marriage dispensation decision is not only a form of positive legal application, but also reflects the process of legal discovery through consideration of the concrete conditions faced by the parties. This perspective shows that judges have discretion to choose the verdict that is most able to realize justice and benefits without ignoring legal certainty.²¹

From the perspective of Islamic law, it is closely related to the concept of *maslahah mursalah*. This concept provides the basis that a policy or decision can be justified as long as it aims to realize the public interest and does not contradict with the principles of sharia.²² Therefore, the judge's consideration in the case of marriage dispensation is not enough to be assessed only based on conformity with the provisions of laws and regulations, but also needs to be analyzed based on the purpose of Islamic law (*maqāṣid al-syarī'ah*), especially in safeguarding offspring (*ḥifẓ al-nasl*), safeguarding the soul (*ḥifẓ al-nafs*), maintaining honor, and preventing

¹⁹ Hasan Bastomi, *Pernikahan Dini dan Dampaknya (Tinjauan Batas Umur Perkawinan Menurut Hukum Islam Dan Hukum Perkawinan Indonesia)*, n.d.

²⁰ Widdy Oktavian et al., *Juridical Review of Perma 5/2019 on Marriage Dispensation (Case Study 13/Pdt.P/2022/Pa.Clg and 10/Pdt.P/2025/Pa.Mkd)*, n.D.

²¹ Muhammad Jazil Rifqi, "The Dynamics of the Development of the Marriage Age Limit in a Progressive Legal Perspective," *Legal Arena* 15, No. 2 (2022): 285–306, <https://doi.org/10.21776/Ub.Arenahukum.2022.01502.4>.

²² Muhammad Akbar Herman Hamzah Hasan, *Maslahah Mursalah's Analysis of the Granting of Marriage Dispensation*, June 27, 2024, <https://doi.org/10.5281/Zenodo.12562206>.

greater²³ harm. This approach becomes relevant considering that most dispensation applications are submitted to address social problems that cannot be solved through a normative approach alone.

Research on marriage dispensation has actually been done by many previous researchers. Part of the research focuses on the implementation of Law Number 16 of 2019 in reducing the rate of child marriage.²⁴ Another study examined the judge's consideration in granting marriage dispensation applications based on positive legal provisions and child protection principles. On the other hand, there are also studies that analyze the dispensation of marriage using the perspective of *maqāṣid al-syarī'ah* or *maṣlaḥah mursalah*. However, most of the research still places the three aspects separately so that it does not provide a complete picture of the relationship between judges' considerations, the application of PERMA Number 5 of 2019, and the analysis of *maṣlaḥah mursalah* in one concrete decision.

Based on the analysis of the previous research, there are differences that are the basis for this research. First, previous research tends to focus on normative analysis of the provisions of Law Number 16 of 2019 without examining in depth the implementation of PERMA Number 5 of 2019 as a technical guideline for judges in examining marriage dispensation cases. Second, research that uses the perspective of *maṣlaḥah mursalah* generally only examines the conformity of the decision with the principle of benefit without connecting it to the judge's consideration process obtained through empirical data, including the results of interviews with the judge handling the case. Third, there is still limited research that specifically integrates positive legal analysis, judicial practice, and *maṣlaḥah mursalah* theory to Decision Number 0098/Pdt.P/2023/PA. Bks as the object of study. This gap shows that this study has a different position compared to previous studies.²⁵

Based on the results and discussion of this research, the novelty of the research lies in an analysis that integrates three perspectives at once, namely the positive law regarding marriage dispensation after Law Number 16 of 2019, the implementation of PERMA Number 5 of 2019 as a guideline for judges in adjudicating marriage dispensation applications, and the concept of *maṣlaḥah mursalah* as a framework of analysis in assessing the judge's considerations. In addition, this research not only relies on normative analysis of court decisions, but also utilizes empirical data through interviews with judges of the Bekasi Religious Court so that it is able to provide an overview of the legal considerations behind the birth of the decision. Thus, this research is expected to make a theoretical contribution to the

²³ Muhyidin, "Maqashid al-Shari'ah (Objectives of Islamic Law) as the Basic Foundation for the Development of Law."

²⁴ Dhafi Fahryan et al., "Underage Marriage of Pregnant Women in the Perspective of Islamic Law in Kua Pasarkliwon in 2022-2023," *Al Hukmu: Journal of Islamic Law and Economics*, August 31, 2023, 23-32, <https://doi.org/10.54090/Hukmu.214>.

²⁵ Sentia Adelina Nikum Sayyidah, *Menganalisis Pernikahan Dini*, June 27, 2024, <https://doi.org/10.5281/ZENODO.12573951>.

development of Islamic family law as well as make a practical contribution for judges in applying the principles of child welfare and protection in marriage dispensation cases.

Based on this description, this study aims to analyze the judge's considerations in Decision Number 0098/Pdt.P/2023/PA. Bks regarding marriage dispensation after the enactment of Law Number 16 of 2019, examines the implementation of PERMA Number 5 of 2019 in the process of examination and decision-making, and analyzes the suitability of judges' considerations with the concept of *maṣlaḥah mursalah* as one of the methods of *istinbāt* of Islamic law. Through this research, it is hoped that a more comprehensive understanding of the harmonization between positive law and Islamic law in the settlement of marriage dispensation cases can be obtained, so that the resulting judgment not only guarantees legal certainty, but is also able to realize justice and benefits for the parties.

Methodology

This study uses a legal research method with a normative juridical approach supported by empirical data. The normative juridical approach supported by empirical data is a legal research approach that examines norms, laws and regulations, and court decisions as the main object of research, and is strengthened with field data to determine the application of legal norms in practice.²⁶ In this study, a normative juridical approach was used to examine the legal provisions that govern marriage dispensation, including Law Number 1 of 1974 concerning marriage as amended by Law Number 16 of 2019, Compilation of Islamic Law, Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, and Decision Number 0098/Pdt.P/2023/PA. Bks. Meanwhile, The empirical approach was carried out through interviews with judges of the Bekasi Religious Court to obtain information about the judge's consideration in granting the marriage dispensation application.

The source of research data consists of primary data and secondary data. Primary data was obtained through interviews with judges of the Bekasi Religious Court and Decision Number 0098/Pdt.P/2023/PA. Bks as the object of research. The interview was conducted by a judge of the Bekasi Religious Court who has experience in handling marriage dispensation cases in a semi-structured manner. Secondary data was obtained through literature studies which included primary legal materials in the form of laws and regulations, secondary legal materials in the form of books, scientific journals, previous research results, and tertiary legal materials relevant to the research object.

²⁶ Kornelius Benuf and Muhamad Azhar, "Legal Research Methodology as an Instrument for Unraveling Contemporary Legal Problems," *Gema Keadilan* 7, No. 1 (2020): 20–33, <https://doi.org/10.14710/Gk.2020.7504>.

Data collection techniques are carried out through literature studies, documentation studies, and interviews. The data that has been obtained is then analyzed in a qualitative descriptive manner, namely by grouping the data based on the focus of the research, connecting the legal facts with the provisions of laws and regulations, then analyzing them using the concept of *maṣlaḥah mursalah* so that a conclusion is reached about the suitability of the judge's consideration with the purpose of Islamic law (*maqāṣid al-shari'ah*).

Implementation of Marriage Dispensation After Law Number 16 of 2019

The change in the provisions of the marriage age limit through Law Number 16 of 2019 is one of the legal policies that aims to strengthen the protection of children and improve the quality of families in Indonesia. The amendment changes the provisions of Article 7 paragraph (1) of Law Number 1 of 1974 by equalizing the minimum age of marriage for men and women to 19 years.²⁷ The policy is based on the consideration that child marriage has the potential to cause various problems, including high school dropout rates, increased reproductive health risks, high maternal and infant mortality rates, and increased vulnerability to domestic violence. Therefore, the change in the marriage age limit is not only intended as an administrative change, but also as a form of legal protection for children's rights and efforts to create a better quality family.²⁸ Nevertheless, the lawmakers still provide an exemption to the age limit provisions through the marriage dispensation mechanism.²⁹ This provision shows that the law is not applied absolutely, but still leaves open the possibility of exceptions if there are very urgent circumstances and are supported by sufficient evidence. Thus, marriage dispensation is a legal instrument that functions as an exception to the general provisions regarding the age limit for marriage, not as a means to ignore the purpose of limiting the age of marriage itself.

To ensure uniformity in the examination of marriage dispensation cases, the Supreme Court then issued PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications. The regulation provides more comprehensive guidelines for judges in examining marriage dispensation applications. The judge is not only required to check the completeness of the administration of the parties, but also must consider the best interests of the child, listen to the child's testimony directly, pay attention to the psychological condition,

²⁷ Attiatul Khairiyah et al., Normative-Juridical Study of the Marriage Age Limit: A Comparative Study Between the Bkkbn Approach and Islamic Law, N.D.

²⁸ Khairunnisa, The Implications of the Marriage Age Limit in Law No. 16 of 2016 Jo Law No. 1 of 1974 on the Number of Marriage Dispensation Applications at the Bekasi Religious Court.

²⁹ Nur Rahmah and Muhammad Ridho, "Marriage Dispensation After the Change in the Age of Marriage in the Religious Court (Maslahah Mursalah Review)," *El-Qanuniy Journal: Journal of Sharia Sciences and Social Institutions* 9, no. 1 (2023): 162–80, <https://doi.org/10.24952/El-Qanuniy.V9i1.7875>.

health, readiness of the prospective bride, and various social impacts that may arise from the granting or rejection of the dispensation³⁰ application. Thus, PERMA Number 5 of 2019 emphasizes that the examination of marriage dispensation must be carried out carefully and oriented towards child protection.

In practice, the implementation of these provisions shows that judges cannot only adhere to the age limit as stipulated in Law Number 16 of 2019. Each dispensation case has different characteristics so that it requires a casuistic assessment based on the facts revealed at the trial. Therefore, the existence of PERMA Number 5 of 2019 is an important instrument to help judges balance legal certainty with the value of justice and utility. This also shows that the marriage dispensation mechanism is not a form of weakening the marriage age restriction policy, but a legal mechanism provided to deal with extraordinary circumstances that cannot be resolved only through the application of textual norms.³¹

The implementation of these provisions can be seen in Decision Number 0098/Pdt.P/2023/PA. Bks which is the object of this research. Based on the legal facts revealed in the trial, the application for dispensation was submitted by the parents of the bride-to-be because their child had not reached the age of 19 so the application for marriage registration was rejected by the East Bekasi District Religious Affairs Office. All marriage requirements have basically been met, except for the requirements regarding the minimum age of marriage as stipulated in Law Number 16 of 2019.

The circumstances behind the application are not only related to the unmet age limit of marriage, but also because the bride-to-be has been pregnant for about two months as a result of the relationship with her future husband.³² In addition, the two brides-to-be have been in a relationship for quite a long time and have been engaged. This condition raises concerns for parents if the marriage is not held immediately because it is feared that it will have social, psychological, and legal impacts on the child who is being conceived. These facts then become the basis for the judge to assess whether the circumstances of the parties have met the category of "very urgent reasons" as referred to in the provisions of laws and regulations.

In addition to considering the condition of the pregnancy, the judge also assessed the readiness of the husband-to-be to carry out his responsibilities as the head of the family. Based on the facts of the trial, the prospective husband is 26 years and 6 months old, has a permanent job with an income of around IDR 4,000,000 per month, and declares his ability to be responsible for the future wife and children to be born. In addition, there was no prohibition on marriage according to Islamic law or the provisions of laws and regulations, such as mahram relations or other

³⁰ Siti Fatimatuz Zahro' et al., Early Marriage in the Perspective of the Prophet's Hadith and Law No. 16 of 2019, N.D.

³¹ Musyaffa Amin Ash Shabah, "Perkawinan Sebagai HAM," *MASLAHAH (Jurnal Hukum Islam dan Perbankan Syariah)* 11, no. 2 (2021): 25–33, <https://doi.org/10.33558/maslahah.v1i2.2623>.

³² Musyaffa Amin Ash Shabah et al., *Hukum Keluarga: Perspektif Kontemporer* (CV. Gita Lentera, 2025).

obstacles to marriage. This fact shows that the judge's consideration is not only based on the existence of an out-of-wedlock pregnancy, but also pays attention to aspects of economic readiness, maturity of the prospective husband, and protection of the future of the prospective family.

The results of the interview with the Bekasi Religious Court Judge also showed that in practice out-of-wedlock pregnancy was not the only reason that caused the marriage dispensation application to be granted. The judge still conducts a thorough assessment of the readiness of the parties, the psychological condition of the child, the ability of the prospective husband to provide support, family support, and the potential for harm if the application is rejected. Thus, the implementation of marriage dispensation in the Bekasi Religious Court has reflected the implementation of PERMA Number 5 of 2019 which places the best interests of children as the main consideration in the decision-making process.

Based on this description, it can be understood that the implementation of marriage dispensation after the enactment of Law Number 16 of 2019 is not intended to provide convenience for every underage marriage, but rather as a legal mechanism that is cacatistical in dealing with certain circumstances that require immediate resolution. In case Number 0098/Pdt.P/2023/PA. Bks, judges not only apply legal provisions normatively, but also consider the social realities faced by the parties so that the resulting verdict is expected to be able to provide legal protection, ensure certainty of the status of the child to be born, and avoid greater harm. The discussion of this implementation is an important basis for further analyzing the basis of the judge's legal considerations in granting the application for marriage dispensation, which will be discussed in the next subsection.

Analysis of the Judge's Considerations in Decision Number 0098/Pdt.P/2023/PA. Bks

The judge's consideration is the essence of a court decision because it is the basis that shows the legal reasons for granting or rejecting an application. In the case of marriage dispensation, these considerations not only function as a form of implementing laws and regulations, but also as an instrument to realize justice, utility, and legal certainty in a proportionate manner. Therefore, an analysis of the judge's considerations in Decision Number 0098/Pdt.P/2023/PA. It is important for the Bks to know the extent to which the judge implements the provisions of Law Number 16 of 2019 and PERMA Number 5 of 2019 in dealing with the factual conditions of the parties.

Based on Decision Number 0098/Pdt.P/2023/PA. Bks, the Panel of Judges first assessed the absolute and relative authority of the Bekasi Religious Court to examine the application for marriage dispensation. After the authority is declared fulfilled, the judge checks the completeness of the administration, the identity of the parties, the evidence of the letter, and the testimony of the witnesses submitted at

the trial. The evidence submitted included a letter of refusal of marriage registration from the Office of Religious Affairs, a pregnancy certificate, an identity document of the parties, and the statements of two witnesses that matched each other. Based on the entire evidence, the judge concluded that the application had met the formal requirements for further examination.

Furthermore, the judge assesses the legal facts revealed during the trial. The most dominant fact in this case is the age of the bride-to-be who is still 17 years and 6 months so that she has not met the minimum age of marriage as stipulated in Article 7 paragraph (1) of Law Number 16 of 2019. However, the trial also revealed that the bride-to-be was about two months pregnant due to her relationship with her future husband. In addition, there is no prohibition on marriage according to Islamic law, either because of nasab relationships, dairy relationships, or semenda relationships. Thus, the only obstacle to marriage in this case is only the age limit determined by laws and regulations.

This fact then becomes the basis for the judge to assess whether the a quo case meets the category of "very urgent reasons" as referred to in Law Number 16 of 2019 and PERMA Number 5 of 2019. In his deliberations, the judge did not view out-of-wedlock pregnancies as a reason that automatically requires a dispensation to be granted. On the contrary, the pregnancy is positioned as one of the facts that must be analyzed along with the condition of the parties, the readiness of the prospective husband, family support, and the potential legal consequences if the application is rejected. This approach shows that the judge applies the *prudential principle* as required by PERMA Number 5 of 2019.

The next consideration is related to the readiness of the prospective husband to build a household. Based on the facts of the trial, the prospective husband is 26 years and 6 months old, has a permanent job, and earns around IDR 4,000,000 every month. In addition, the husband-to-be expresses his ability to be responsible for the prospective wife and child who is being conceived. According to the panel of judges, this condition shows the existence of economic readiness and moral responsibility so that the marriage that will be held is not solely aimed at legalizing the relationship of the parties, but also provides protection for the sustainability of the family to be formed.

The analysis was strengthened by the results of an interview with the Bekasi Religious Court Judge who explained that the main consideration in the marriage dispensation case does not only lie in the unfulfilled marriage age limit, but in all the facts that arise during the trial. According to the source, the judge first analyzed the concrete circumstances of the parties, including the urgent reasons behind the application, the physical, mental, and economic readiness of the prospective husband, and the ability to provide support to the family. Based on the results of the interview, the judge stated that: "*Pregnancy is not an automatic reason for granted. We continue to look at the readiness of the parties and the best interests of the*

child. The statement shows that the decision-making process is carried out through a thorough assessment of the empirical conditions of the parties, not only based on normative provisions regarding the minimum age of marriage.

In addition to considering formal legal aspects, the judge also considered the social and psychological impact that may arise if the application for marriage dispensation is rejected. Based on the results of the interview, the judge explained that in every marriage dispensation case, the court tried to choose the verdict that caused the least harm. Therefore, in cases involving out-of-wedlock pregnancies, the rejection of the application has the potential to cause psychological pressure on the mother-to-be, the unclear legal status of the child to be born, and social stigma that can affect the lives of the parties in the future. These considerations show that judges not only apply the law textually, but also consider the real consequences that may arise from the verdict handed down.

From a positive legal perspective, the judge's consideration pattern has been in line with the purpose of the formation of Law Number 16 of 2019 and PERMA Number 5 of 2019. Although the main purpose of the law change is to prevent child marriage, it still leaves room for judges to grant dispensation in certain circumstances as long as there is a compelling reason and is supported by sufficient evidence.³³ In this case, the judge did not rule out the provision of the age limit for marriage, but used the dispensation mechanism as a form of exception that is limited by law. Thus, the granting of the application is not an aberration of the law, but the exercise of the authority that has been given by the lawmaker to the court.

The findings of this study show that the basis for the judge's consideration in Decision Number 0098/Pdt.P/2023/PA. Bks not only relies on normative aspects in the form of marriage age limits, but also considers the factual conditions of the parties, the absence of a marriage ban according to Islamic law, the readiness of the prospective husband economically and mentally, the protection of prospective children who are being conceived, and the potential social and psychological impact if the application is rejected. Thus, the judge's consideration reflects a pattern of legal reasoning that not only prioritizes legal certainty, but also pays attention to the value of justice and usefulness as the main goal of the implementation of the law. All of these considerations are an important basis for assessing whether a quo ruling is in accordance with the concept of *maṣlaḥah mursalah* in Islamic law, which will be analyzed in the next subsection.

³³ Andini Asmarini, "Judges' Considerations on the Dispensation of Underage Marriage (Case Study of the Parigi Religious Court)," *Familia: Journal of Family Law* 2, no. 2 (2021): 165–87, <https://doi.org/10.24239/Familia.V2i2.30>.

Maṣlaḥah Mursalah's Analysis of the Judge's Considerations in Decision Number 0098/Pdt.P/2023/PA. Bks

The granting of marriage dispensation in Decision Number 0098/Pdt.P/2023/PA. Bks not only needs to be analyzed from a positive legal perspective, but also from the perspective of Islamic law through the concept of *maṣlaḥah mursalah*. This analysis is important because the issue of marriage dispensation is a problem that is in the *ijtihadi* space, that is, a problem that is not regulated in detail in the *nash*, but requires the determination of the law based on the purpose of the sharia (*maqāṣid al-syarī'ah*). Therefore, it is not enough to assess the judge's decision only to look at the fulfillment of administrative provisions as stipulated in Law Number 16 of 2019 and PERMA Number 5 of 2019, but also to consider whether the decision really presents greater benefits than the harm that may arise.

As described in the previous subchapter, the facts of the trial show that the bride-to-be has not reached the minimum age of marriage, but has become pregnant due to the relationship with her future husband. This condition puts judges on two legal choices that both have consequences. On the one hand, the rejection of the application will maintain the purpose of restricting the age of marriage as required by Law Number 16 of 2019. However, on the other hand, this rejection has the potential to cause new problems in the form of uncertainty in family status, psychological burden for mothers-to-be, and social impacts on children to be born. On the other hand, the granting of dispensation is indeed an exception to the age limit of marriage, but it has the potential to provide legal protection for women and children who are being conceived. Thus, judges are faced with the need to choose alternatives that result in greater benefits.

From the perspective of Islamic law, this condition can be analyzed through the concept of *maṣlaḥah mursalah*.³⁴ According to Imam al-Ghazali, *maṣlaḥah mursalah* is a benefit that does not have a specific postulate that commands or prohibits it, but is in harmony with the general purpose of the shari'a in safeguarding religion, soul, intellect, descent, and property. This concept provides room for judges to make decisions based on real merits as long as they do not conflict with sharia principles. Therefore, the use of *maṣlaḥah mursalah* in the case of marriage dispensation is not intended to override the provisions of the law, but to assess whether the exemption granted is really intended to prevent the parties from greater harm.

Analysis of the verdict shows that the most dominant aspect of benefit is the protection of offspring (*hifẓ al-nasl*). A pregnancy that has occurred before marriage is a legal fact that cannot be ignored. If the application for dispensation is rejected, the child to be born will still receive legal protection in accordance with the

³⁴ Agus Supriyanto, "Ijtihad: Meaning and Relationship with Sharia, Fiqh, and Ushul Fiqih," *Maslahah (Journal of Islamic Law and Sharia Banking)* 1, no. 1 (2010): 1–20, <https://doi.org/10.33558/Maslahah.V1i1.1198>.

provisions of laws and regulations. However, from the perspective of Islamic family law, dispensation provides certainty regarding the formation of a legitimate family, clarifies the responsibility of both parents towards the child, and encourages the implementation of the obligation to support, maintenance, and education of children in a single family. Thus, the judge's consideration is not only oriented towards solving momentary problems, but also on protecting the sustainability of the family as one of the goals of sharia.

In addition to *hifz al-nasl*, the judge's consideration also reflects the protection of the soul (*hifz al-nafs*). Based on the results of the interview with the judge, the court not only considered the normative aspects of age, but also considered the psychological, social, and humanitarian impacts that may arise if the application is rejected.³⁵ These considerations show that the judge is trying to minimize the risks that can be experienced by the mother-to-be and the child who is being conceived. This approach is in line with the purpose of the Shari'ah which places the protection of human life as one of the primary needs (*darūriyyāt*), so that every decision must be directed at preventing greater damage.

In this case, the judge considered that the harm that may arise if the dispensation is rejected is greater than the consequences of its grant. The rejection of the application has the potential to cause prolonged social and psychological problems for the parties, while the granting of dispensation provides legal certainty regarding family relations while requiring the husband-to-be to be responsible for the wife and child to be born. Thus, the judge's consideration shows the application of the principle of harm prevention as the main orientation in decision-making.

The analysis is also in line with the rules *الضَّرُّ الْأَشَدُّ يُزَالُ بِالضَّرِّ الْأَخَفِّ* which means: "The greater harm must be eliminated by bearing the lesser harm." that is, any harm must be eliminated.³⁶ In this case, the existence of an out-of-wedlock pregnancy is a factual condition that has occurred before the trial process so that the judge is no longer at the prevention stage, but at the stage of choosing the legal settlement that is most able to reduce the negative impact on the parties. Therefore, the granting of dispensation cannot be interpreted as a justification for child marriage or out-of-wedlock pregnancies, but as a legal step to reduce greater losses in accordance with the purposes of sharia and the principle of child protection.

In addition, this decision also reflects the application of the principle of *al murunah* (flexibility of Islamic law). In the theoretical studies that have been described in this study, Islamic law has an adaptive character to *mutaghayyirāt problems*, namely problems that can change according to the development of time, place, and social conditions. This principle can be seen in the marriage dispensation

³⁵ Muhyidin, "Maqashid al-Shari'ah (Objectives of Islamic Law) as the Basic Foundation for the Development of Law."

³⁶ Fauziah Ma'rifatul Aulia et al., The Application of Ushul Fiqh Rules in Marriage Dispensation Recommendations: A Study of Considerations of Benefits at the Mojoakerto Religious Court, N.D.

mechanism which is a form of exception to the general provisions regarding the age limit for marriage. In other words, the age restriction of marriage remains a general rule, while dispensation is granted on a limited basis to deal with certain conditions that cannot be resolved through the rigid application of the rules. This understanding is in line with the concept that has been explained in the theoretical foundation regarding the flexibility of Islamic law in the face of changing social conditions.

Nevertheless, the application of *maṣlaḥah mursalah* in the case of marriage dispensation must still be done carefully. The concept of benefits should not be used as an excuse to ignore the main purpose of Law Number 16 of 2019 in preventing child marriage. Therefore, dispensation granting must be understood as a casuistic exception, not as a practice that can be applied in general to all dispensation applications. Each case must still be assessed based on the facts of the trial, the level of emergency, the readiness of the parties, and the potential benefits and harms arising from the decision to be handed down.

Based on the overall analysis, it can be concluded that Decision Number 0098/Pdt.P/2023/PA. Bks has reflected the application of *maṣlaḥah mursalah* because the judge's consideration is not only based on normative provisions regarding marriage dispensation, but also considers the purpose of sharia in protecting offspring, protecting lives, preventing harm, and providing certainty of responsibility for the family to be formed. Thus, the decision does not contradict the purpose of the establishment of Law Number 16 of 2019, but rather is a form of harmonization between positive law and Islamic law through the application of a dispensation mechanism in a selective, proportional, and benefit-oriented manner.

Conclusion

Based on the results of the research, it can be concluded that the judge's consideration in Decision Number 0098/Pdt.P/2023/PA. The BKS regarding the application for marriage dispensation has considered the juridical, sociological, and welfare aspects in a balanced manner. The judge was not only guided by the provisions of Law Number 16 of 2019 and PERMA Number 5 of 2019, but also paid attention to the factual conditions of the parties, such as the existence of an out-of-wedlock pregnancy, the readiness of the prospective husband to be responsible, and the potential impact that would arise if the dispensation application was rejected. Thus, the decision reflects the application of the principle of protection of the best interests of the child and efforts to prevent greater harm.

Viewed from the perspective of *maṣlaḥah mursalah*, the judge's decision is in line with the purpose of Islamic law (*maqāṣid al-syarī'ah*), especially in safeguarding one's offspring (*ḥifẓ al-nasl*) and safeguarding one's soul (*ḥifẓ al-nafs*). The granting of marriage dispensation in this case is not intended as a form of justification for underage marriage, but as a legal solution chosen to realize the benefits and provide

protection for women and children who are being conceived. Therefore, this study shows that the application of the concept of *maṣlahah mursalah* can be the basis for harmonizing positive legal provisions with Islamic legal values, so that the resulting verdicts not only provide legal certainty, but also fulfill the aspects of justice and utility.

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