

**JUDGE'S CONSIDERATIONS IN DECIDING THE CASE OF MARRIAGE
DISPENSATION BASED UPON PERMA NUMBER 5 OF 2019 AND MAQASHID
SHARIA (ANALYSIS OF RULING NUMBER 369/PDT.P/2023/PA.SMN)**

THESIS



By :

REGITA HIKMATUL FADHILAH

NIM : 20421076

Presented as Partial Fulfillment of the Requirements for Obtaining a Bachelor of Law Degree
in Ahwal Syakhshiyah Departement International Program Faculty of Islamic Studies
Universitas Islam Indonesia

YOGYAKARTA

2024

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Supervisor : Dr. Anisah Budiwati, S.H.I., M.S.I.

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YOGYAKARTA

2024

STATEMENT LETTER

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Hereby declare that this thesis is the result of my work and true originality. Suppose in the future it turns out that the writing of this thesis is the result of plagiarism toward other people's work. In that case, I am willing to take responsibility and, at the same time be willing to accept the sanctions based on the rules of conduct that apply at Universitas Islam Indonesia. Thus, the statement I made truthfully and without any force.

Yogyakarta, 24 April 2024

Yang menyatakan,



Regita Hikmatul Fadhillah



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PENGESAHAN

Tugas Akhir ini telah diujikan dalam Sidang Munaqasah Program Sarjana Strata Satu (S1) Fakultas Ilmu Agama Islam Universitas Islam Indonesia Program Studi Ahwal Al-Syakhshiyah IP yang dilaksanakan pada:

Hari : Rabu
Tanggal : 29 Mei 2024
Judul Tugas Akhir : Judge's Considerations in Deciding the Case of Marriage Dispensation Based Upon PERMA Number 5 of 2019 and Maqasid Sharia (Analysis of Ruling Number 369/Pdt.P/2023/PA.Smn)
Disusun oleh : REGITA HIKMATUL FADHILAH
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(.....)
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Yogyakarta, 29 Mei 2024



Dr. Drs. Asmuni, MA

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Assalaamu'alaikum Wr. Wb.

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NUMBER 369/PDT.P/2023/PA.SMN)**

After researching and making necessary improvements, we finally decided that your thesis above fulfills the requirements to be submitted to the Munaqasa Trial of the Islamic Studies Faculty, Universitas Islam Indonesian

Thus, it can be tested soon, and together with us, we will send 4 (four) copies of the thesis in question.

Wassalaamu'alaikum Wr. Wb.

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Dr. Anisah Budiwati, SHL., MSI.

SUPERVISOR'S APPROVAL

The undersigned is the thesis supervisor, certifying that:

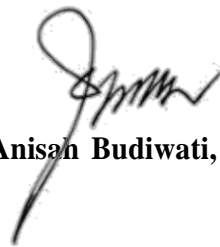
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According to the process and the results of supervising among several months, and being made necessary improvements, then the concerned person can register herself to join the Munaqasah Trial of the Alhwal Syakhsiyyah International Program Department, Faculty of Islamic Studies, Universitas Islam Indonesian.

Supervisor,



Dr. Anisah Budiwati, SHI., MSI.

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This thesis is dedicated to my father (alm), who wanted me to study at the Islamic University of Indonesia, even though my father (alm) could not see his first daughter graduate but his affection is still felt until now and this thesis is a proof that I can finish college as my father (alm) expected.

اللَّهُمَّ اغْفِرْ لَهُ وَارْحَمْهُ وَعَافِهِ وَاعْفُ عَنْهُ

آمِينَ

MOTTO

عَلَيْكُمْ وَاللَّهُ وَاسِعٌ وَأَلِيمٌ وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُعْزِهِمُ اللَّهُ مِنْ فَضْلِهِ ۗ

Marry off the “free” singles among you, as well as the righteous of your bondmen and bondwomen. If they are poor, Allah will enrich them out of His bounty. For Allah is All-Bountiful, All-Knowing.¹

(QS. An-Nur Ayat 32)

¹ Tim Penerjemah Al-Quran UII, “Qur’an Karim Dan Terjemahan Artinya” (Yogyakarta: UII Press, 2023), 626.

KEPUTUSAN BERSAMA

MENTERI AGAMA DAN MENTERI PENDIDIKAN DAN KEBUDAYAAN

REPUBLIK INDONESIA

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TRANSLITERASI ARAB-LATIN

A. Konsonan

Fonem konsonan bahasa Arab yang dalam sistem tulisan Arab dilambangkan dengan huruf, dalam transliterasi ini sebagian dilambangkan dengan huruf dan sebagian dilambangkan dengan tanda, dan sebagian lagi dengan huruf dan tanda sekaligus.

Di bawah ini daftar huruf Arab itu dan transliterasinya dengan huruf Latin.

Table 0.1: Tabel Transliterasi Konsonan

| Huruf Arab | Nama | Huruf Latin | Nama |
|------------|------|--------------------|---------------------------|
| ا | Alif | tidak dilambangkan | tidak dilambangkan |
| ب | Ba | b | be |
| ت | Ta | t | te |
| ث | Śa | ś | es (dengan titik di atas) |
| ج | Jim | j | je |

| | | | |
|---|------|----|-----------------------------|
| ح | Ḥa | ḥ | ha (dengan titikdibawah) |
| خ | Kha | kh | ka dan ha |
| د | Dal | d | de |
| ذ | Ḍal | ḏ | zet (dengan titik diatas) |
| ر | Ra | r | er |
| ز | Zai | z | zet |
| س | Sin | s | es |
| ش | Syin | sy | es dan ye |
| ص | Ṣad | ṣ | es (dengan titik di bawah) |
| ض | Ḍad | ḍ | de (dengan titik di bawah) |
| ط | Ṭa | ṭ | te (dengan titik di bawah) |
| ظ | Ẓa | ẓ | zet (dengan titik di bawah) |
| ع | `ain | ` | koma terbalik (di atas) |
| غ | Gain | g | ge |
| ف | Fa | f | ef |

| | | | |
|----|--------|---|----------|
| ق | Qaf | q | ki |
| ك | Kaf | k | ka |
| ل | Lam | l | el |
| م | Mim | m | em |
| ن | Nun | n | en |
| و | Wau | w | we |
| هـ | Ha | h | ha |
| ء | Hamzah | ‘ | apostrof |
| ي | Ya | y | ye |

B. Vokal

Vokal bahasa Arab, seperti vokal bahasa Indonesia, terdiri dari vokal tunggal atau monoftong dan vokal rangkap atau diftong.

1) Vokal Tunggal

Vokal tunggal bahasa Arab yang lambangnya berupa tanda atau harkat, transliterasinya sebagai berikut:

Table 0.2: Tabel Transliterasi Vokal Tunggal

| Tand | Nama | Huruf Latin | Nam |
|------|--------|-------------|-----|
| ا | fathah | a | a |

| | | | |
|-------|--------|---|---|
| كسرة | kasrah | i | i |
| دamma | Dammah | u | u |

2) Vokal Rangkap

Vokal rangkap bahasa Arab yang lambangnya berupa gabungan antara harkat dan huruf, transliterasinya berupa gabungan huruf, yaitu:

Table 0.3: Tabel Transliterasi Vokal Rangkap

| Tanda | Nama huruf | Gabungan huruf | Nama |
|-------|----------------|----------------|---------|
| يَا | fathah dan ya | ai | a dan i |
| وَا | fathah dan wau | au | a dan u |

Contoh :

- كَتَبَ : kataba
- فَعَلَ : fa'ala
- سُئِلَ : suila
- كَيْفَ : kaifa
- حَوْلَ : haula

C. Maddah

Maddah atau vokal panjang yang lambangnya berupa harakat dan huruf, transliterasinya berupa huruf dan tanda, yaitu:

Table 0.4: Tabel Transliterasi Vokal *Maddah*

| Harakat dan huruf | Nama | Huruf dan Tanda | Nama |
|-------------------|----------------------------|-----------------|---------------------|
| أَ...أَ.. | fathah dan alif atau ya | ā | a dan garis di atas |
| إِ...إِ | kasrah dan ya | ī | i dan garis di atas |
| أُ...أُ | hammah dan wau | ū | u dan garis di atas |

Contoh :

- a. قَالَ: qāla
- b. رَمَى: ramā
- c. قِيلَ: qīla
- d. يَقُولُ: yaqūlu

D. Ta' marbuṭah

Transliterasi untuk ta marbuṭah ada dua:

1. Ta' marbuṭah hidup

Ta' marbuṭah yang hidup atau mendapat harakat fathah, kasrah dan dammah, transliterasinya adalah 't'.

2. Ta' marbuṭah mati

Ta' marbutah yang mati atau mendapat harakat sukun, transliterasinya adalah 'h'.

3. Kalau pada kata yang terakhir dengan ta marbutah diikuti oleh kata yang menggunakan kata sandang al serta bacaan kedua kata itu terpisah maka ta marbutah itu ditransliterasikan dengan ha (h).

Contoh :

- a. رَوْضَةُ الْأَطْفَالِ: raudah al-atfāl/raudahtul atfāl
- b. الْمَدِينَةُ الْمُنَوَّرَةُ: al-madīnah al-munawwarah/al-madīnatul munawwarah
- c. طَلْحَةَ: talhah

E. Syaddah (Tasydid)

Syaddah atau tasydid yang dalam tulisan Arab dilambangkan dengan sebuah tanda, tanda syaddah atau tanda tasydid, dalam transliterasi ini tanda syaddah tersebut dilambangkan dengan huruf, yaitu huruf yang sama dengan huruf yang diberi tanda syaddah itu.

Contoh:

- a. نَزَّلَ: nazzala
- b. الْبِرُّ: al-birr

F. Kata Sandang

Kata sandang dalam sistem tulisan Arab dilambangkan dengan huruf, yaitu ل, namun dalam transliterasi ini kata sandang itu dibedakan atas kata sandang yang diikuti oleh huruf syamsiah dan kata sandang yang diikuti huruf qamariah.

- 1) Kata sandang yang diikuti oleh huruf syamsiah

Kata sandang yang diikuti oleh huruf syamsiah ditransliterasikan sesuai dengan bunyinya, yaitu huruf /1/ diganti dengan huruf yang sama dengan huruf yang langsung mengikuti kata sandang itu.

2) Kata sandang diikuti oleh huruf qamariah

Kata sandang yang diikuti oleh huruf qamariah ditransliterasikan sesuai aturan yang digariskan di depan dan sesuai dengan bunyinya.

Baik diikuti huruf syamsiah maupun huruf qamariah, kata sandang ditulis terpisah dari kata yang mengikuti dan dihubungkan dengan tanda sempang.

Contoh:

- a. الرَّجُلُ: ar-rajulu
- b. الْقَلَمُ: al-qalamu
- c. الْجَلَالُ: al-jalālu

G. Hamzah

Dinyatakan di depan bahwa hamzah ditransliterasikan dengan apostrof. Namun, itu hanya berlaku bagi hamzah yang terletak ditengah dan di akhir kata. Bila hamzah itu terletak di awal kata, is dilambangkan, karena dalam tulisan Arab berupa alif.

Contoh:

- a. تَأْخُذُ: ta'khuzu
- b. شَيْءٌ: syai'un
- c. النَّوْءُ: an-nau'u
- d. إِنَّ: inna

H. Penulisan kata

Pada dasarnya setiap kata, baik fail, isim maupun harf ditulis terpisah. Hanya kata-kata tertentu yang penulisannya dengan huruf Arab sudah lazim dirangkaikan dengan kata lain karena ada huruf atau harkat yang dihilangkan maka transliterasi ini, penulisan kata tersebut dirangkaikan juga dengan kata lain yang mengikutinya.

Contoh:

a. **وَإِنَّ اللَّهَ فَهُوَ خَيْرُ الرَّازِقِينَ**: Wa innallāha lahuwa khair ar-rāziqīn/

Wa innallāha lahuwa khairurrāziqīn

b. **بِسْمِ اللَّهِ مَجْرَاهَا وَ مُرْسَاهَا**: Bismillāhi majrehā wa mursāhā

I. Huruf Kapital

Meskipun dalam sistem tulisan Arab huruf kapital tidak dikenal, dalam transliterasi ini huruf tersebut digunakan juga. Penggunaan huruf kapital seperti apa yang berlaku dalam EYD, di antaranya: Huruf kapital digunakan untuk menuliskan huruf awal nama diri dan permulaan kalimat. Bilamana nama diri itu didahului oleh kata sandang, maka yang ditulis dengan huruf kapital tetap huruf awal nama diri tersebut, bukan huruf awal kata sandangnya.

Contoh:

a. **الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ**: Alhamdu lillāhi rabbi al-`ālamīn/

Alhamdu lillāhi rabbil `ālamīn

b. **الرَّحْمَنُ الرَّحِيمُ**: Ar-rahmānir rahīm/Ar-rahmān ar-rahīm

Penggunaan huruf awal kapital untuk Allah hanya berlaku bila dalam tulisan Arabnya memang lengkap demikian dan kalau penulisan itu disatukan dengan kata

lain sehingga ada huruf atau harkat yang dihilangkan, huruf kapital tidak dipergunakan.

Contoh:

- a. اللَّهُ غَفُورٌ رَحِيمٌ: Allaāhu gafūrun rahīm
- b. لِلَّهِ الْأُمُورُ جَمِيعٌ: Lillāhi al-amru jamī`an/Lillāhil-amru jamī`an

J. Tajwid

Bagi mereka yang menginginkan kefasihan dalam bacaan, pedoman transliterasi ini merupakan bagian yang tak terpisahkan dengan Ilmu Tajwid. Karena itu peresmian pedoman transliterasi ini perlu disertai dengan pedoman tajwid.

ABSTRAK

PERTIMBANGAN HAKIM DALAM MEMUTUSKAN KASUS DISPENSASI NIKAH BERDASARKAN PERMA NOMOR 5 TAHUN 2019 DAN MAQASHID SYARIAH (ANALISIS NOMOR PUTUSAN 369/PDT.P/2023/PA.SMN)

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Perkawinan di Indonesia diatur dalam Undang-Undang Nomor 16 Tahun 2019 mengatur bahwa perkawinan baik untuk laki-laki maupun perempuan diperbolehkan pada usia 19 tahun. Perma Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Perkawinan sebagai wujud ketanggapan Mahkamah Agung dalam menyikapi permasalahan terkait perkawinan anak. Maqashid Syariah mempunyai kedudukan yang sangat penting dalam merumuskan hukum Islam. Penulis akan membahas pertimbangan hakim dalam memutuskan perkara dispensasi nikah berdasarkan Perma Nomor 5 Tahun 2019 dan Maqashid Syariah dengan menganalisis perkara Nomor 369/PDT.G/2023/PA.SMN. Jenis penelitian ini adalah penelitian lapangan merupakan penelitian kualitatif yaitu menggunakan pendekatan yuridis empiris. Pengumpulan data yang dilakukan yaitu dengan cara observasi, wawancara dan dokumentasi. hakim Pengadilan Agama Sleman mengatakan bahwa mempertimbangkan hak anak yaitu dengan mendengarkan pendapat anak seperti yang ada pada Perma no 5 tahun 2019 pasal 2 disebutkan bahwa hakim dalam mengadili perkara dispensasi kawin harus menghargai pendapat seorang anak juga pertimbangan hakim dalam memutuskan dispensasi kawin yaitu dengan berdasarkan pada aspek kemanfaatan atau *mashalahah*.

Kata Kunci : Dispensasi Kawin, Perma Nomor 5, Maqashid Syariah

ABSTRACT

JUDGE'S CONSIDERATIONS IN DECIDING THE CASE OF MARRIAGE DISPENSATION BASED UPON PERMA NUMBER 5 OF 2019 AND MAQASHID SHARIA (ANALYSIS OF RULING NUMBER 369/PDT.P/2023/PA.SMN)

REGITA HIKMATUL FADHILAH
NIM: 20421076

In Indonesia, marriage is regulated in Law Number 16 of 2019 stipulating that marriage for both men and women is legitimate at the age of 19 years. Perma (Regulation of Supreme Court) Number 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Application is a form of the responsiveness of Supreme Court in responding to problems in terms of child marriage and Maqashid Sharia has a critical position in formulating Islamic law. The researcher attempts to discuss the judge's considerations in deciding the case of marriage dispensation based upon Perma Number 5 of 2019 and Maqashid Sharia by analyzing the case Number 369/PDT.G/2023/PA.SMN. This field research is a qualitative research in nature in which it used an empirical juridical approach. Data were collected through observation, interviews and documentation. The judge at the Sleman Religious Court stated that considering the rights of the child by listening to the child's opinion, as stated in Perma No. 5 of 2019 article 2, states that judges in judging marriage dispensation case must respect a child's opinion as well as the judge's consideration in deciding on marriage dispensation based upon aspects of benefit or mashalahah.

Keywords: Marriage Dispensation, Perma Number 5, Maqashid Sharia

April 29, 2024

TRANSLATOR STATEMENT
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PREFACE

الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ وَ بِهِ نَسْتَعِينُ عَلَى أُمُورِ الدُّنْيَا وَالْآخِرَةِ وَالصَّلَاةُ وَالسَّلَامُ عَلَى أَشْرَفِ الْأَنْبِيَاءِ وَ الْمُرْسَلِينَ
أَمَّا بَعْدُ . وَ عَلَى آلِهِ وَصَحْبِهِ أَجْمَعِينَ

Praise Gratitude the author thanks to the presence of Allah SWT for all his mercy and grace the author can complete the thesis on time. and do not forget the sholawat and greetings to our lord the great Prophet Muhammad SAW, his family, friends and his people until the end of time.

Alhamdulillahilahi rabbil alamin, the author offers prayers and gratitude for being able to go well from the beginning to the end of the preparation and completion of this thesis. The authors realize that the preparation and completion of this thesis cannot be separated from the help and support of various parties. For that the author expresses his gratitude to:

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11. My best friend, the owner of NIM 1202040096 who always encourages me in any case, also the owner of NIM 2003046040 who has given understanding when I tell her about anything during this lecture.
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CHAPTER I

INTRODUCTION

A. Background

The legal basis for marriage laws in Indonesia is based on Article 29 of the 1945 Constitution, namely that Indonesian residents worship according to their respective religions and beliefs. Thus, every provision must be in accordance with Article 29 of the 1945 Constitution, including marriage. Marriage in Indonesia is regulated by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage in Article 7 paragraph (1) states that "Marriage can only be permitted if the man and woman have reached the age of 19 (nineteen.) year." According to changes in norms in Law Number 1 of 1974 concerning Marriage regarding the change in the minimum age for marriage for women aged 16 to 19 years in to realize the goals of marriage well and avoid divorce and having unhealthy offspring. also hopes that the birth rate can be lowered and reduce the risk of maternal and child mortality. Apart from that, children's rights can also be fulfilled so that children's growth and development can be optimal and parents can provide children with access to the highest possible education.

The phenomenon of early marriage is often found in society, namely for children under 19 years of age. No. 35 of 2014 concerning Child Protection states that a child is someone who is not yet 18 years old. One of the causes of early marriage is because a child becomes pregnant out of wedlock, this is an environmental factor, namely a child's promiscuity. As is the case that often occurs in society, the child is immediately married off to cover the family's disgrace. Early marriage stems from a mentality that is not ready, resulting in several risks of early marriage such as death, mental unpreparedness,

and marriage failure in those who do so. Early marriage according to the law is not permitted because it deviates from the age requirements set out in the marriage law.

Dispensation is given to provide legal certainty for people who need it, this is casuistry regardless of whether it is beneficial or detrimental.² The marriage dispensation applies to Indonesian people who want to get married but are not yet old enough. For children who want to get married at an early age, they must get permission from their parents and submit their application to the court with urgent reasons and evidence of the causes of early marriage. Article 7 paragraph 2 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage provide a legal gateway that in the event of a deviation from the age provisions as referred to in paragraph (1), the man's parents and/or the woman's parents can request dispensation from the Court for reasons of urgency. accompanied by sufficient supporting evidence.³

The age limit for marriage in Islam is not clearly defined. In Islam only mentions the signs. Baligh is a child who has reached a certain age and is clear about the matters or problems at hand.⁴ Able to consider the good and the bad. For women, it means they have experienced menstruation, while for men it means they have released semen. According to the Indonesian Ulama Council, marriage dispensations are permitted, for the reason of avoiding harm so that benefits can occur. Most of the applications for marriage dispensation are children who are pregnant but underage. So there is an element of coercion in getting married.⁵

² Kamarusdiana Kamarusdiana and Ita Sofia, "Dispensasi Nikah Dalam Perspektif Hukum Islam, Undang-Undang Nomor 1 Tahun 1974 Dan Kompilasi Hukum Islam," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 7, no. 1 (2020): 49–64, <https://doi.org/10.15408/sjsbs.v7i1.14534>.

³ Aryatama Hibrawan, "Implementasi Perma Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin Sebagai Bentuk Perlindungan Kepentingan Anak," *Syariah Mempawah*, 2021.

⁴ Haris Hidayatulloh, "Dispensasi Nikah Di Bawah Umur Dalam Hukum Islam," *Jurnal Hukum Keluarga Islam Volume 5, Nomor 1, April 2020; ISSN: 2541-1489 (Cetak)/2541-1497 (Online)*. 5, no. April (2020).

⁵ M F Firdaus and S Lubis, "Dispensasi Perkawinan Bagi Calon Istri Yang Hamil Diluar Nikah Dibawah Usia 19 Tahun (Studi Kasus Di Pengadilan Agama Stabat Kabupaten Langkat)," *Jurnal Pusat Studi Pendidikan ...* 2

The existence of Perma Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation as a form of responsiveness by the Supreme Court in responding to problems related to child marriage. As an institution that accepts, examines, adjudicates and decides on requests for Marriage Dispensation, of course, the Supreme Court, through the Judiciary below, is required to have a big responsibility to create justice and can also leave benefits that must be achieved, the main goal of which is for the interests of children.⁶

Maqashid Sharia has a very important position in formulating Islamic law. Judges can provide a philosophical dimension for consideration in each case they face, which will be included in the decision made through *ijtihad*. Maqashid Sharia is something that can be used as a tool to understand the law of verses and hadith. Also to resolve contradictory and very important postulates in human life which at any time can experience improvements that are not resolved by the Al-Qur'an and Hadith through linguistic studies. This is to realize the aim of Islamic law (Maqashid Sharia) to maintain the safety of offspring (*hifz an-nas*), without endangering the safety of the souls of children who are given marriage dispensation (*hifz an-nafs*) and the survival of the child. their education (*hifz al-'aq*). This goal must be at the level of *al-dharuriyyah* or at least *al-hajjiyyah*.

Kompas (2023) The granting of marriage dispensations does not fully take into account the rights of children, this is because the districts of West Lombok, West Nusa Tenggara and Sukabumi Regency have high levels of granting marriage dispensations.⁷

In this research, it was found that the reason why judges grant marriage dispensations

(2022): 160–70, <https://pusdikra-publishing.com/index.php/jies/article/view/596%0Ahttps://pusdikra-publishing.com/index.php/jies/article/download/596/519>.

⁶ Hibrawan, “Implementasi Perma Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin Sebagai Bentuk Perlindungan Kepentingan Anak.”

⁷ Nasrun Katingka, “Dispensasi Kawin Belum Sepenuhnya Perhatikan Hak Anak,” *Kompas.Id*, 2023, <https://www.kompas.id/baca/humaniora/2023/06/19/dispensasi-kawin-belum-sepenuhnya-perhatikan-hak-anak>.

is for urgent reasons, namely pregnancy due to an accident or to prevent adultery. Another factor is also the result of regional traditions. This proves that in several regions, children's rights are still ignored.⁸

The reason the Sleman Court was the author's choice for conducting research is because the Sleman Court is one of the courts that has a marriage dispensation rate that is relatively high compared to other courts in DIY Yogyakarta. Based on the Badilag Kinsaker Case Data Center (2023)⁹:

Table 1.1: Marriage Dispensation Cases in Religious High Court Yogyakarta

| No | Islamic Court | Number of Cases | | | | |
|----|---------------|-----------------|------|------|------|------|
| | | 2019 | 2020 | 2021 | 2022 | 2023 |
| 1 | PA Bantul | 124 | 238 | 162 | 154 | 111 |
| 2 | PA Sleman | 134 | 277 | 233 | 254 | 160 |
| 3 | PA Wates | 45 | 119 | 80 | 54 | 59 |
| 4 | PA Wonosari | 108 | 241 | 218 | 271 | 149 |
| 5 | PA Yogyakarta | 57 | 72 | 64 | 56 | 40 |

From the explanation above, it can be concluded that granting marriage dispensations in a number of regions still ignores children's rights. For this reason, the author will discuss the judge's consideration in the implications of Perma Number 5 of 2019 as well as the implications of Maqashid Sharia in the marriage dispensation ruling number 369/PDT.P/2023/ PA.SMN. With the research title “Judge's Considerations In Deciding The Case Of Marriage Dispensation Based Upon Perma Number 5 Of 2019 And Maqasid Sharia (Analysis Of Ruling Number 369/PDT.P/2023/PA.SMN)”.

⁸ Katingka.

⁹ “Rekap Data Jenis Perkara Dispensasi Kawin Tahun 2023 Wilayah Hukum PTA YOGYAKARTA,” 2023, https://kinsatker.badilag.net/JenisPerkara/perkara_persatker_detail/362/45/2023.

B. Problem Formulation

1. What are the judge's considerations in granting a marriage dispensation based on Perma no. 5 of 2019 regarding ruling number 369/PDT.P/2023/PA.SMN?
2. What is the marriage dispensation according to Maqashid Sharia based on ruling number 369/PDT.P/2023/PA.SMN?

C. Research Objectives

The objectives of this research are:

1. To describe the implementation of Perma no. 5 of 2019 in ruling number 369/PDT.P/2023/PA.SMN
2. To describe Maqashid Sharia review in deciding ruling number 369/PDT.P/2023/PA.SMN

D. Benefits of Research

By conducting this research, the author hopes to provide theoretical and practical benefits.

1. Theoretically Benefit

It is hoped that this research will provide benefits in understanding the impact of Supreme Court Regulation (Perma) no. 5 of 2019 concerning guidelines for adjudicating marriage dispensations and understanding the existing Maqashid Sharia reviews in marriage dispensation cases. In accordance with the marriage dispensation case at the Sleman Religious Court.

2. Practically Benefit

This research can provide references and find solutions if there are obstacles in implementing Supreme Court regulations (Perma) no. 5 of 2019. It can also be a benefit that can be accepted by the wider community in accordance with the objectives of maqashid Sharia and this research can be useful for researchers, students and academics as a review of literature related to marriage dispensations.

E. Systematics Discussion

This research was created coherently to make it easier for researchers and readers to understand this research. For this reason, there needs to be a systematic discussion. The systematic discussion in this research is as follows

The first chapter consists of an introduction that discusses the background, problem formulation, research objectives, research benefits, and systematics discussion.

The second chapter consists of a literature review and theoretical framework; The discussion in this chapter is about previous research and the novelty of research used by researchers to compile this research, then a review of literature that is appropriate and relevant to this research.

The third chapter discusses methodology. In this chapter the researcher explains the type of method chosen in carrying out this research; It also contains an explanation of the type of approach, research location, research informants, techniques of informants determination, techniques of data collection, data validity and technique of data analysis.

The fourth chapter is the results and discussion, from the title " Judge's Considerations In Deciding The Case Of Marriage Dispensation Based Upon Perma

Number 5 Of 2019 And Maqasid Sharia (Analysis Of Ruling Number 369/PDT.P/2023/PA.SMN)" then the research results are presented from observations and interviews and discussions whose analysis is obtained from real data. Among the results is the profile of the Sleman Religious Court Class 1A, and the discussion is about the judge's consideration, marriage dispensation based on Perma no. 5 of 2019, marriage dispensation according to Maqashid Sharia and analysis of ruling number 369/PDT.P/2023/PA.SMN.

The final chapter is the fifth, which contains conclusions and suggestions or recommendations. The conclusion is a summary of all research stages and suggestions, namely policies for stakeholders in the future when facing a phenomenon like this.

CHAPTER II

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

A. Literature Review

A literature review is a review of the literature or literature that has been previously discussed with the development of a hypothesis from the results of reviewing old literature. A literature review is needed to avoid plagiarism in the research that will be carried out. There are 15 articles written related to themes or topics related to the author's thesis, including:

Article with the title “Tatacara Pemeriksaan Permohonan Dispensasi Kawin Menurut Perma Nomor 5 Tahun 2019 (Analisis Putusan No.0017/Pdt.P/2020/Pa.Lpk)”. ”Compiled by Muhammad Syukri Albani Nasution and his friends. The results of this research are not there is a consistent attitude from judges to implement Perma No. 5 of 2019.¹⁰ The request for marriage dispensation was granted by the Lubuk Pakam PA judge because she was pregnant before marriage, for which the woman's family insisted on the man's responsibility. What makes this research different is that the researcher will discuss the problems of judges in granting requests for marriage dispensation by analyzing one case, namely decision No. 369/PDT.P/2023/PA.SMN.

Fitriati Salamah (2022) in her thesis “Implementasi Perma No. 5 Tahun 2019 Dalam Upaya Meminimalisir Terjadinya Perkawinan Anak (Studi Di Pengadilan Agama Garut)”,¹¹ discusses the judge's opinion regarding urgent reasons and supporting

¹⁰ Muhammad Syukri Albani Nasution, Ali Akbar, and Maimunah Siagian, “Tatacara Pemeriksaan Permohonan Dispensasi Kawin Menurut Perma Nomor 5 Tahun 2019 (Analisis Putusan No.0017/Pdt.P/2020/Pa.Lpk),” *Al-Hukama'* 10, no. 2 (2021): 271–94, <https://doi.org/10.15642/alhukama.2020.10.2.271-294>.

¹¹ Fitriati Salamah, “Implementasi Perma No. 5 Tahun 2019 Dalam Upaya Meminimalisir Terjadinya Perkawinan Anak (Studi Di Pengadilan Agama Garut)” (UIN Syarif Hidayatullah, 2022), <https://repository.uinjkt.ac.id/dspace/handle/123456789/62145>.

evidence in considering the granting of a marriage dispensation and the legal certainty. From the research results it can be concluded that Perma No. 5 of 2019 has not been able to minimize child marriage and there is no legal certainty because it still creates uncertainty in determining marriage dispensations. What differentiates this research from the research that will be carried out by the author is that the author only analyzes one case of marriage dispensation due to marriage.

Article with the title “Judge's Dilemma in Marriage Dispensation” compiled by Hasyim Sofyan Lahilote and his friends. Based on the results of the research, judges face a dilemma in deciding marriage dispensation cases, because they must be able to balance several principles in their considerations. The influence of Islamic legal theory in the application of *maslahah* is still seen strongly in the case of marriage dispensations. However, it ignores other legal principles contained in one source of procedural law which has been formally enforced and has a stronger position in legal events.¹² The difference with the research that will be discussed by the author is that the author analyzes marriage dispensation decisions based on Perma No. 5 and *maqashid sharia* as research material.

Mad Said (2023) in his thesis entitled “Dispensasi Perkawinan Hamil Di Luar Nikah Pada Pengadilan Agama Parigi Menurut Undang-Undang No. 16 Tahun 2019” (Suatu Analisis *Maqashid Syari’ah*). This policy is in line with the objectives of Islamic *sharia* (*Maqashid Sharia*) but the role of *Maqashid Sharia* is only small, namely related to considerations of protection for offspring (*hifz al nasl*).¹³ What is different from the research that will be discussed by the author is that the author discusses marriage

¹² Hasyim Sofyan Lahilote, “Al-Risalah JUDGE ’ S DILEMMA IN MARRIAGE DISPENSATION” 22, no. 1 (2022): 52–60, <https://doi.org/10.30631/alrisalah.v22i1.979>.

¹³ Mad Said, “Dispensasi Perkawinan Hamil Di Luar Nikah Pada Pengadilan Agama Parigi Menurut Undang-Undang No. 16 Tahun 2019 (Suatu Analisis *Maqashid Syari’ah*)” 2019 (2023): 31–41.

dispensations based on Perma NO 5 of 2019 and Maqashid Sharia by analyzing one of the decisions of the Sleman Court.

Syntia Nurfa'idah (2022) in her thesis entitled "Implementasi Perma Nomor 5 tahun 2019 Dalam Putusan Dispensasi Nikah". from the results of the discussion in ruling number 79/Pdt.P/2021/PA.Ska which was analyzed using a comparison of ruling number 0059/Pdt .P/2016/PA.Ska has broadly implemented the articles in Perma Number 5 of 2019, showing that the Surakarta Religious Court judges have implemented Perma Number 5 of 2019 in examining and adjudicating marriage dispensation cases.¹⁴ The difference with the research that will be discussed by the author is that this thesis discusses the implementation and research that will be discussed by the author, namely related to the judge's consideration.

In thesis entitled "Hakim Majelis Dalam Perkara Dispensasi Nikah Pasca Lahirnya Perma Nomor 5 Tahun 2019" Muhammad Ihsan Muttaqin (2020)¹⁵, from the results of the discussion of this thesis, it can be concluded that the existence of a panel of judges in cases that have been decided and determined by the Garut religious court number 68/Pdt.P/2020/PA.Grt. it is inefficient in extracting information from litigants and seems scary when compared to the use of a single judge after the birth of Perma no. 5 of 2019. However, after the birth of this law, not all courts used this regulation due to the internal readiness factor of the Religious Courts themselves. One of them is the Garut Religious Court. Some of the reasons are incomplete information provided to the Garut community, the Garut Religious Court being late in responding to the Supreme Court's circular and the lack of readiness to implement the Perma. The difference in the research

¹⁴ Syntia Nurfa'idah, "Implementasi Perma No. 5 Tahun 2019 Dalam Putusan Dispensasi Nikah (Analisis Putusan No. 79/Pdt.P/2021/PA.Ska.)" (Universitas Muhammadiyah Surakarta, 2022).

¹⁵ Muhammad Ihsan Muttaqin, "Hakim Majelis Dalam Perkara Dispensasi Nikah Pasca Lahirnya Perma Nomor 5 Tahun 2019" (UIN Syarif Hidayatullah, 2020).

that will be carried out by the author is related to the implications of Perma Number 5 of 2019. The author focuses on the rights that must be protected.

Achmad Kadarisman and Tutik Hamidah (2021) in their Article entitled “Pembatasan Usia Perkawinan Dalam Sudut Pandang Masqashid Syari'ah al-Syathibi” In the decision-making process by judges in court, judges must follow procedures established by the state. *rusdun*¹⁰ principles that must be fulfilled in every case examined. These ten types of principles are in line with the 5 rules in *maqashid al Sharia* initiated by Imam al Syatibi, namely *hifdz al diin*, *hifdz al nafs*, *hifdz al aql*, *hifdz al nasl*, and *hifdz al maal*. These ten principles and five rules are all within the corridor of *dhorury* which must be guarded, fulfilled and maintained for its continuity.¹⁶ The difference with the research that the author will discuss is the analysis of Maqashid Sharia in case decisions.

Article with the title “Why Girls Get Married Early in Sarawak, Malaysia - An Exploratory Qualitative Study” written by Ayoko Kohno and friends (2020). The results of this research show that the driving factors for early marriage in Sarawak, Malaysia are related to individual personality and the relationship between parents and peers. Creating sex education programs and empowering adolescent girls so that they do not choose child marriage is very important to prevent and reduce unwanted pregnancies. Apart from that, it is also important to involve family members in sex education at school so that a close understanding can be achieved between families and schools. because simply raising the legal minimum age for marriage will not solve this problem. Another suggestion is that it is important to create support programs for girls from poor

¹⁶ Achmad Kadarisman and Tutik Hamidah, “Pembatasan Usia Perkawinan Dalam Sudut Pandang Maqashid Syari'ah Al Syathibi,” *CENDEKIA: Jurnal Studi Keislaman* 7, no. 1 (2021): 115–38, <https://www.neliti.com/id/publications/389291/pembatasan-usia-perkawinan-dalam-sudut-pandang-maqashid-sharia-al-syathibi>.

families so that dropping out of school is not an option.¹⁷ The difference with the research that will be carried out by the author is that the author will discuss the marriage dispensation case in the Sleman Religious Court based on Perma no. 5 and Maqashid Sharia.

Maryam Hosseini and Khadijeh Asadisavertsani (2022) in their Article entitled “Reasons For Early Marriage of Women in Zahedan, Iran: A Qualitative Study” based on the results of their research that early marriage between the ages of 13 and 18 is not always a forced marriage. According to the participants in this research who had the experience of being married between the ages of 13 and 18, early marriage is a solution and a voluntary action. This means that women tend to marry early and even pressure their families to marry. This type of marriage is less forced by the original ethnic culture. It can be seen in relatively underdeveloped cities such as Zahedan and more prosperous cities.¹⁸ The difference with the research that the author will discuss is regarding the marriage dispensation applied for by children who want to marry early. Namely a thesis with the title Judge’s Consideration In Deciding Marriage Dispensation Based on Perma No. 5 of 2019 and Maqashid Sharia

The Article entitled “Causes of Early Marriage and its Effect on Reproductive Health of Young Mothers in Bangladesh” was written by Md. Ruhul Kabir and friends. The results of this research show that two important factors in early marriage are poverty and illiteracy. Some health problems that often occur are miscarriage, stillbirth, abortion, premature birth, low birth weight, complications during childbirth and low attention to one's own health and child care. Widespread child marriage and its

¹⁷ Ayako Kohno et al., “Why Girls Get Married Early in Sarawak, Malaysia - An Exploratory Qualitative Study,” *BMC Women’s Health* 20, no. 1 (2020): 1–13, <https://doi.org/10.1186/s12905-020-00911-z>.

¹⁸ Maryam Hosseini and Khadijeh Asadisarvestani, “Reasons for Early Marriage of Women in Zahedan , Iran : A Qualitative Study,” *BMC Women’s Health*, 2022, 1–10, <https://doi.org/10.1186/s12905-022-02127-9>.

association with higher fertility rates and lower control over that fertility. This encourages the need to immediately enforce appropriate marriage laws and regulations as well as strong determination from governments, civil society and communities working together to face this global crisis.¹⁹ The difference between this research and the research that will be examined by the author is that the author will discuss requests for marriage dispensation due to early marriage. By title Judge's Consideration In Deciding Marriage Dispensation Based on Perma No. 5 of 2019 and Maqashid Sharia (Analysis Of ruling number 2019 369/PDT.P/2023/PA.SMN).

The Article entitled "Exploring Iraqi People's Perception About Early Marriage: A Qualitative Study." This Article was written by Abubakir M. Saleh and his friends. From this research, it is explained that in general people in Iraqi Kurdistan are aware of the negative attitudes towards early marriage and the losses and health and psychological consequences of the practice of early marriage. However, different social, traditional, economic, educational and religious factors encourage early marriage in this region. In addition to raising public awareness about this dangerous practice, preventing early marriage involves issuing laws prohibiting early marriage and enforcing these laws.²⁰ Of course, this is very different from the research that will be carried out by the author, namely regarding the problems that exist in religious courts regarding the application of Perma no. 5 and the application of Maqashid Sharia in marriage dispensation decisions.

"Child marriage and sexual violence in United State" this Article written by Jamie O'Quinn (2019). Child marriage in the United States is legal in 48 states, contravenes

¹⁹ Ruhul Kabir, Susmita Ghosh, and Asma Shawly, "Causes of Early Marriage and Its Effect on Reproductive Health of Young Mothers in Bangladesh," 2019, <https://doi.org/10.3844/ajassp.2019.289.297>.

²⁰ Abubakir M Saleh et al., "Exploring Iraqi People ' s Perception about Early Marriage : A Qualitative Study," *BMC Women ' s Health*, 2022, 1–10, <https://doi.org/10.1186/s12905-022-01980-y>.

rape laws and disproportionately impacts girls. These laws are rooted in patriarchal and neoliberal ideals, which promote marriage as a solution to girls' sexuality as a potential burden on the state. The laws reflect society's view of masculinity and reinforce normative understandings of fatherhood. Queer theory challenges the adult/child binary and highlights how social inequalities shape vulnerability to sexual violence. The text calls for more research that prioritizes the voices and experiences of women and young girls affected by child marriage, and emphasizes the need for a different understanding of sexual rights and consent in this context.²¹ The difference between the research that the author will do is that this research is more about looking at the problems of marriage dispensation in Indonesia, especially in the Sleman religious court.

The Article with the title “Conditional cash transfer and early marriage: a case study of Mataram City, West Nusa Tenggara” by Hartarto R and Wibowo W. Summary This research examines the impact of the Family Hope Program (FHP), a conditional cash assistance program in Mataram City, Indonesia, on the perceptions of beneficiary households regarding children's education and early marriage.²² The study found that although parents were motivated to provide higher education to their children to prevent early marriage, children's customs and disobedient behavior became a barrier. The study suggests evaluating local customary arrangements and raising awareness about the consequences of early marriage. The difference between this research and the author's research is that the author conducts research directly in religious courts to see marriage dispensation cases that occur.

²¹ Jamie O'Quinn, “Child Marriage and Sexual Violence in the United States” 25 (2019): 191–205, <https://doi.org/10.1108/s1537-466120190000025011>.

²² Romi Bhakti Hartarto and Wahyu Tri Wibowo, “Conditional Cash Transfer and Early Marriage: A Case Study of Mataram City, West Nusa Tenggara,” *International Article of Development Issues* 22, no. 1 (2023): 57–71, <https://doi.org/10.1108/IJDI-08-2022-0171>.

“Governing Childhood in India: the Up-Hill Battle To Abolish Child Marriage” by Graner E. (2019) This chapter examines the struggle to eradicate child marriage in India, with a focus on changes in discourse and the shift towards treating child marriage as a violation of human rights. This report explores the prevalence of child marriage in India, its negative impact on education and health, and the concept of structural violence. This chapter also examines the role of the UN and the Indian government in addressing child marriage, the legal reform process, and the importance of birth registration in identifying and preventing child marriage.²³The difference between the research and the author is that the author examines the incidence of child marriage in Indonesia, which looks at whether children's rights have been fulfilled when judges grant marriage dispensation cases in Indonesia, especially in the Sleman Religious Court.

The last Article written by Elisabet le Roux “Recognising and responding to complex dilemmas: Child marriage in South Africa” the complex dilemmas surrounding child marriage in South Africa point to the fact that we don't just need to end child marriage. We need to change the way South African society values women and girls, as well as men and boys, and what is considered normal and acceptable in intimate relationships. Therefore, legislative responses will never be comprehensive enough. But there is no simple focus only on child marriage. What about other practices and relationships that harm and exploit girls yet remain 'normal' in South African society. As long as the core beliefs of patriarchy continue to thrive and go unchallenged, child marriage and other practices that harm and exploit girls will continue.²⁴This

²³ Elvira Graner, “Governing Childhood in India: The Up-Hill Battle To Abolish Child Marriage.” *Sociological Studies of Children and Youth* 25 (2019): 149–69, <https://doi.org/10.1108/S1537-466120190000025009>.

²⁴ Elisabet le Roux, “Recognising and Responding to Complex Dilemmas: Child Marriage in South Africa,” *Childhood Vulnerabilities in South Africa: Some Ethical Perspectives*, 2020, 163–80, <https://doi.org/10.18820/9781928480952/07>.

research shows that legislative efforts are not sufficient and comprehensive. The author will examine how child marriage exists in Indonesia, especially in the Sleman Religious Court, whether it is in accordance with Perma no 5 as well as how the maqashid sharia review on the decision of this marriage dispensation case.

Marriage in other countries is caused by several factors, the first factor as happened in Malaysia is that there is a lack of sex education for children, in order to prevent early marriage because by simply raising the minimum age limit of children it is not easy to solve this problem. The second, early marriage in Iran is because marrying at an early age is their solution and is a voluntary act so there is no element of coercion, in other words, self-will. The third, early marriage in Bangladesh, the factor of early marriage in this area is due to poverty and illiteracy. The fourth is early marriage that occurs in Iraq. There are several influencing factors, namely social, economic, educational and religious factors. The fifth is early marriage in the United States, which promotes early marriage as a solution to girls' sexuality. this study emphasizes that there is a need for a different understanding of sexual rights. The sixth is in India, which is about the negative impact of early marriage on health and education. The last is early marriage in Africa that we only need to end child marriage, it is also necessary to respect women and girls' rights also men and legislative responses alone will not be enough.

The conclusion from child marriage that occurs in other countries is that early marriage with the aim of preventing things that have negative consequences needs serious handling that does not only rely on the legislature, it must also be from parents, families and the children themselves who need to be given lessons on how to prevent early marriage so that things that cause harm do not occur. Marriage in Indonesia also has several factors that cause it, and what often happens in this problem is caused by marriage by accident. Like the problems that existed in the Sleman Religious Court in

2023, the most common factor for marriage dispensation applications was due to pregnancy outside of marriage.

The novelty contained in the research entitled “Judge's Considerations In Deciding The Case Of Marriage Dispensation Based Upon Perma Number 5 Of 2019 And Maqasid Sharia (Analysis Of Ruling Number 369/PDT.P/2023/PA.SMN)” is about the consideration of Sleman Religious Court judges regarding the application of PERMA Number 5 of 2019 and the application of Maqashid Sharia in deciding marriage dispensation applications that have not been revealed in previous studies.

B. Theoretical Framework

Therefore, the conceptual framework built within this theoretical framework is divided into 3 parts which are elements of this research.

1. Marriage Dispensation

a. Definition

According to KHI, marriage or marriage is a strong, sturdy contract or agreement or *mitsaqon ghalidhan* as an effort to obey Allah's commands in carrying it out as a pious deed, namely worship, a master's marriage to create a *sakinah* household, *mawadah warahmah* based on the Al-Quran and Hadith²⁵. According to the KBBI, a dispensation is an exception to a rule because there are special considerations or an exemption from an obligation or prohibition. In the legal context, a dispensation means an exception to action based on the law which states that a statutory regulation does not apply to a specific matter. Marriage is a marriage contract carried

²⁵ Khoirul Anam, “Studi Makna Perkawinan Dalam Persepektif Hukum Di Indonesia (Komparasi Kitab Undang-Undang Hukum Perdata (KUH Per) Dengan Komplikasi Hukum Islam,” *Jurnal Fakultas Hukum Universitas Tulungagung*, 2019, 59–68.

out by legal provisions and religious teachings, living together between husband and wife without any violation of religion. The legal basis for marriage in Indonesia is based on Article 29 of the 1945 Constitution, namely that Indonesian residents worship according to their respective religions and beliefs. Marriage in Indonesia is regulated by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage in Article 7 paragraph (1) states that "Marriage can only be permitted if the man and woman have reached the age of 19 (nineteen) year." Therefore, according to the law, marriage can only be carried out by someone who has reached the age of 19, whether male or female. From the definition of marriage dispensation, it can be concluded that marriage dispensation is a policy or legal assistance provided by the Religious Courts to prospective brides and grooms, one or both of whom have not reached the age requirements in Law Number 16 of 2019.²⁶

b. Islamic perspective

The minimum age limit for marriage in the Quran and hadith is not specifically stated. These limits are only given based on the characteristics that must be met by them²⁷ in Surah an-Nisa verse 6:

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

“Test ‘the competence of’ the orphans until they reach a marriageable age. Then if you feel they are capable of sound judgment, return their wealth to

²⁶ Kemendikbud, “Kemendikbud Terbitkan Pedoman Penyelenggaraan Belajar Dari Rumah,” 2020, <https://www.kemdikbud.go.id/main/blog/2020/05/kemendikbud-terbitkan-pedoman-penyelenggaraan-belajar-dari-rumah>.

²⁷ Sri Hartanti and Triana Susanti, “Usia Ideal Menikah Dalam Islam; Tafsir Al-Qur’an Surat An-Nisa Ayat 6 Dan An-Nur Ayat 32,” *Bertuah Jurnal Sharia Dan Ekonomi Islam* 2, no. 2 (2021): 28–35, <https://doi.org/10.56633/jsie.v2i2.277>.

*them. And do not consume it wastefully and hastily before they grow up 'to demand it'. If the guardian is well-off, they should not take compensation; but if the guardian is poor, let them take a reasonable provision. When you give orphans back their property, call in witnesses. And sufficient is Allah as a 'vigilant' Reckoner".*²⁸

Asbabun nuzul regarding the revelation of this verse, namely the story of Thabit bin Rifa'ah and his uncle, Rifa'ah died when his son was still small and his uncle came to the Messenger of Allah and asked "Indeed, my son is an orphan who is under my care, what is halal, what is halal for me from his property and when should I hand it over to Thabit". Then Allah revealed this verse.²⁹

In his tafsir al-munir by Wahbah az-Zuhaili, he agrees with al-qurtubi, explaining that the importance of "*rusdun*" or a child's intelligence is one of the characteristics of maturity. With this intelligence, they can manage their assets, use and manage them in the right way. In terms of age, Wahbah az-Zuhaili follows Imam Syafi'i's opinion regarding the age of puberty, namely 15 years old. He also took Abu Hanifah's opinion that it would be 25 years before the orphan's assets were given, even though they were not yet *ar-rusdu*, but the assets could be given to the orphan and in the opinion of the majority of ulama, if the child did not yet show signs of *ar-rusdu* then the assets were not can be handed over to him. Meanwhile, in his interpretation of al-Misbah by Quraiys Shihab, he strengthens Imam Abu Hanifah's opinion regarding the age of 25 as the maximum age for granting property rights to orphans. According to him, this age still normally influences his mindset, maturity and psychological changes.

²⁸ Tim Penerjemah Al-Quran UII, "Qur'an Karim Dan Terjemahan Artinya" (Yogyakarta: UII Press, 2023), 138.

²⁹ Wahbah Az Zuhaili, *Terjemah Tafsir Al-Munir Jilid 2 (Juz 3 & 4)*, vol. 2, 2018.

Based on the opinions of classical and contemporary commentators, they do not have an agreement regarding the ideal age limit for marriage. Imam Syafi'i, Imam Ibn Hambal and Imam Malik believe that a person's puberty is marked by wet dreams for men and menstruation for women is a sign that someone is carrying out Islamic law such as prayer, fasting and other acts of worship. where marriage is also a form of worship, the age limit for a person to marry is that they have the signs of puberty. Meanwhile, according to some Hanafiyah scholars, that is, if a person has reached the age of 15, a child's intellectual ability is sufficient to differentiate between good and bad and to know the consequences arising from these actions.

According to Imam Syafi'i in his book *al-Umm*, women who are still small and have not reached puberty cannot be married off other than by their father. If someone other than the father wants to marry her then the marriage is annulled.³⁰ In the book *Fathul Baari*,³¹ Ibnu Baththal says it is permissible to marry a young woman to an adult man according to *Ijma'*, but if the girl wants to be fucked she is fit to be fucked or has reached puberty.

Islam itself does not mention the level of maturity of a person. However, in the book *Safinatun Najah* page 3 it is mentioned that, if referring to Islamic law, if a person has reached puberty, then they can be married.³²

c. The Factors

³⁰ Dr.Rif'at Fauzi and Abdul Muththalib, *Terjemah Kitab Al-Umm Jilid 9 (Imam Asy-Syafi'i)* (Pustaka Azzam Anggota IKAPI DKI, 2014).

³¹ Syaikh Abdul Aziz Abdullah Bin Baz, *Fathul Baari (Kitab Nikah)*, n.d.

³² Salim bin Sumair Al-Hadhrami, "Matan Safiinaton Najah," 444, 2009.

Kemen PPPA (2022), around 52 thousand marriage dispensation cases were submitted to the religious courts, around 34 thousand were due to love factors so the parents asked the court to marry their children immediately, then around 13,547 were married because they were pregnant, then 1,132 because they had had intimate relations.³³ Another factor is economic reasons and matchmaking.

With this statement, it can be concluded that the cause of the marriage dispensation is due to several factors:

1) The kids have been in a long-term relationship

Due to long-term dating, a large number of young couples in Indonesia get married early due to the love element.³⁴

2) Marriage by Accident

Sudden marriages or marriages due to accidents often occur in teenagers less than 20 years old. This is caused by 2 factors, namely internal factors due to weak faith and external factors due to promiscuity.³⁵

3) Free Association

This factor is due to children's behavior being out of bounds, they follow the Western style of dating so this promiscuity factor is the biggest influence.³⁶

³³ Kemen PPPA, "Kemen PPPA : Perkawinan Anak Di Indonesia Sudah Mengkhawatirkan," *Siaran Pers Nomor: B- 031/SETMEN/HM.02.04/01/2023*, 2023, <https://www.kemenpppa.go.id/index.php/page/read/29/4357/kemen-pppa-perkawinan-anak-di-indonesia-sudah-mengkhawatirkan>.

³⁴ Hidayati Suhaili and Dasril Afdal, "Faktor Pemicu Pernikahan Dini Di Jorong Koto Tengah Kenagarian Koto Lamo Kecamatan Kapur IX Kabupaten Lima Puluh Kota" 1, no. 1 (2020): 1–9.

³⁵ KM. Al Fathur Ikhsan, "Implications of Marriage by Accident: An Interdisciplinary Approach" 15, no. 1 (2023): 1–14.

³⁶ Heru Arya Nanda, "Analisis Faktor-Faktor Penyebab Meningkatnya Dispensasi Nikah Di Pengadilan Agama Tembilangan Setelah Ditetapkannya Undang-Undang Nomor 16 Tahun 2019 Tentang Kenaikan Batas Usia Perkawinan" (Universitas Islam Riau, 2022).

4) Economy and Education

Economic factors and education are related, either because the economy is weak,³⁷ so children cannot continue their education and choose to marry. or vice versa due to low education resulting in a weak economy.

5) Local Customs

Indonesia is no stranger to local customs based on research that traditional rules can be a cause of early marriage. This happens if teenagers or families who commit early marriage do not have the economic, cultural and social capital that can prevent this from happening.³⁸

d. Negative Impact

The negative impact of early marriage can occur from various aspects, including:

1. Impact on mother and child:

- a) Especially due to pregnancy out of wedlock, this threatens the lives of the mother and child in her womb with a higher risk of death for children aged 1 year and under.
- b) The risk of miscarriage, especially for women aged 15-19
- c) Teenage pregnancy carries risks such as obstetric fistula, infection, anemia, bleeding and eclampsia

³⁷ Umi Habibah, "Tinjauan Kompilasi Hukum Islam Terhadap Permohonan Dispensasi Nikah Dibawah Umur" 4, no. 3 (2023): 646–61.

³⁸ Sri Handayani, Syarifah Nuraini, and Rozana Ika Agustiya, "Faktor-Faktor Penyebab Pernikahan Dini Di Beberapa Etnis Indonesia," 2021, 265–74.

- d) Teenage pregnancy also increases the risk of fetal abnormalities, pelvic abnormalities, strength disorders when pushing and others
- e) It has an impact on the baby, such as the possibility that the baby will be premature, or physically disabled because the young mother's hormones are not yet stable and she gets stressed easily.³⁹

2. Impact on education:

- a. Dropout from school

3. Impact on Economy and Social:

- a. A young man must be responsible for earning a living
- b. lose his social circle

4. Impact on Family:

- a. Divorce carries a higher risk
- b. Domestic violence.

e. The Solution

Some solutions related to preventing early marriage include:

- a. Increasing women's education and empowerment. If women's education is higher, it is hoped that they will become more health literate. So you can decide whether to postpone marriage or get pregnant.
- b. Adapting to the norms and rules that apply in society
- c. Increase knowledge related to reproductive health, including: Knowledge that women can get pregnant with just one sexual intercourse, the transmission of HIV/AIDS can be reduced if they have sexual relations with a partner who does not have a partner and use a

³⁹ Dini Fadilah, "Tinjauan Dampak Pernikahan Dini Dari Berbagai Aspek" 14, no. 2 (2021): 88–94.

condom, have comprehensive knowledge about HIV/AIDS, know one or more PMS symptoms in men and women and knowing the location of adolescent reproductive health information and counseling service providers.⁴⁰

2. Perma Number 5 of 2019

a. History

According to KBBI, Perma is a Supreme Court Regulation (Perma) is a form of regulation aimed at all levels of certain courts that contain provisions of a legal nature to judicial proceedings. Based on the attachment to the decision of the Chairman of the Supreme Court of the Republic of Indonesia, Perma is a regulation containing procedural law provisions.

Prior to the promulgation of Perma No. 5 of 2019, the courts did not have a comprehensive agreement in resolving marriage dispensation cases because there was no specific rule that clearly regulated what provisions could be used as grounds for granting marriage dispensation. The procedure for filling out a marriage dispensation application is the same as for any other application. The procedure is set out in Book II of the Guidelines for the Implementation of the Duties and Procedures of the Religious Courts. Prospective husband and wife who are not yet 19 or 16 years of age who wish to marry must apply for marriage dispensation by the parents of the prospective husband/wife to the Religious Court or Sharia Court. other procedures are the same as applications in other courts. Unlike after the

⁴⁰ “Pencegahan Pernikahan Dini Sebagai Upaya Menurunkan Angka Kematian Ibu,” *Kanal Pengetahuan*, n.d., <https://kanalpengetahuan.fk.ugm.ac.id/pencegahan-pernikahan-dini-sebagai-upaya-menurunkan-angka-kematian-ibu/>.

existence of Perma No. 5/2019, the existence of this Perma provides a legal umbrella that can be used in adjudicating marriage dispensation cases.⁴¹

The presence of Perma Number 5 2019 emphasizes the best interests of children and with reason. In women, reproductive health in particular is a consideration in child marriage. According to WHO, teenage pregnancy is a global phenomenon with well-known causes and serious health, social and economic impacts on individuals, families and society.⁴²

Perma Number 5 of 2019 is presented as a guideline for adjudicating requests for marriage dispensation, which is the embodiment of the idea of protecting the entire Indonesian nation and all of Indonesia's blood, advancing general welfare, making the nation's life intelligent and participating in implementing world order based on independence, eternal peace and social justice. The function of the rule of law is as a means to realize and achieve the four goals of the state. In this way, the state is not trapped as "rule-driven" but rather is based on the rule of law, namely "mission-driven."⁴³

b. Content

The following are the principles and objectives in article 2 and article 3 of Perma Number 5 of 2019. The judge judges the marriage dispensation based on the principle;

- a. The best interests of the child
- b. The right to life and development of children
- c. Respect for children's opinions

⁴¹ Bagya Agung Prabowo, "Pertimbangan Hakim Dalam Penetapan Dispensasi Perkawinan Dini Akibat Hamil Di Luar Nikah Pada Pengadilan Agama Bantul" 20, no. 2 (2013): 300–317.

⁴² WHO, "Adolescent Pregnancy," 2023, <https://www.who.int/news-room/fact-sheets/detail/adolescent-pregnancy>.

⁴³ Hibrawan, "Implementasi Perma Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin Sebagai Bentuk Perlindungan Kepentingan Anak."

- d. Respect for human dignity
- e. Non-discrimination
- f. Gender equality
- g. Equality before the law
- h. Justice
- i. Benefits and
- j. Legal certainty.⁴⁴

The guidelines for adjudicating marriage dispensations aim to;

- a. Applying the principles as intended in article 2 Perma Number 5 of 2019
- b. Ensure the implementation of a justice system that protects children's rights
- c. Increase parental responsibility in preventing child marriage
- d. Identify whether or not there is coercion that is the background for applying for a marriage dispensation
- e. Realizing the standardization of the process of adjudicating marriage dispensation applications in court.⁴⁵

3. Maqashid Sharia

Maqashid Sharia has a very important position in formulating Islamic law. The concept of *maqashid sharia* was previously part of *ushul fiqh*, which has now been transformed into a scientific discussion that has become a topic in defining the objectives of Islamic law which was born from *ushul fiqh* in carrying out legal *istinbath*.⁴⁶

Etymologically, Maqashid Sharia comes from two words *al-maqashid* and *al-sharia*. Maqashid is the plural of *maqshud*, *qasd*, *maqshd* or *qushud* which comes from *qashada yaqhusu*. Which has the meaning of going towards a direction, goal, middle, fair and not going beyond limits. Meanwhile, Sharia in terms of terminology is *al-nushush al-muqaddasah* (sacred texts) from the Qur'an and as-Sunnah which are *mutawwatir*, not yet interfered with by human thought. In terms

⁴⁴ Mahkamah Agung RI, "Peraturan Mahkamah Agung RI No. 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin," *Peraturan Mahkamah Agung RI No. 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin*, 2019.

⁴⁵ RI.

⁴⁶ Said, "Dispensasi Perkawinan Hamil Di Luar Nikah Pada Pengadilan Agama Parigi Menurut Undang-Undang No. 16 Tahun 2019 (Suatu Analisis Maqasid Syari'ah)."

of terminology, Maqashid Sharia are the values and meanings that are set as goals and will be realized by Allah SWT which are researched by ulama, mujtahid from Sharia texts.⁴⁷

In the book *al-Muwafaqat fi ushul al-syari'ah* by Syatibi, he was a figure of *ushul fiqh* reformer who lived in the 8th century Hijriyah, in the content of Maqashid Sharia, Sharia was established for human benefit, the main aim of which is to protect and fight for three categories of law, the aim is that the benefit of Muslims is realized in the best way because God acts for the good of his servants.⁴⁸

- 1) *Al-Maqashid ad-Daruriyat* in language means everything that constitutes the existence of human life which must exist for the benefit of humanity. This benefit includes 5 things to protect religion, soul, property and reason. Maintaining religion by obeying Allah's commands and upholding Islamic law, such as prayer, fasting, zakat and alms. Protecting the soul, Allah forbids any actions that damage the soul such as killing other people, or committing suicide. And Allah commands us to do things that nourish the soul, such as eating, drinking, maintaining health. Protecting offspring, Allah forbids his servants from approaching adultery, let alone committing adultery, and Allah forbids punishing people who accuse them of committing adultery and cannot provide evidence. Allah commands to have a legal marriage. Protecting reason, Allah forbade humans to drink something intoxicating such as wine and all actions that damage reason, instead, Allah ordered humans to think about Allah's creation and seek knowledge.

⁴⁷ Moh Toriquddin, "TEORI MAQÂSHID SYARÎ ' AH PERSPEKTIF AL-SYATIBI," 2010.

⁴⁸ Muhammad Mawardi Djalaludin, "Pemikiran Abu Is Ha q Al-Sy at Ibi Dalam Kitab Al-Muwafaq a T" 4, no. 2 (2015): 289–300.

- 2) *Al-Maqasid al-Hajiyyat*, are all human needs to obtain an easy life and avoid difficulties (*musyaqqat*). The absence of the *hajiyyat* aspect does not cause the existence of human life to be damaged because the main principle of this *hajiyyat* aspect is to eliminate difficulties and lighten the burden of *taklif* and make it easier for humans to worship Allah SWT, *muamalat*, and *uqubat* (criminal). For example, people who commit murder accidentally are obliged to pay a fine.
- 3) *Al-Maqasid at-Tahsiniyat*, namely everything appropriate and appropriate, following reason and customs and avoiding everything that is reprehensible following common sense. In essence, *tahsiniyat* is everything that has good value (*makarim al-akhlaq*), meaning that if this aspect is not realized then the existence of human life will not be threatened by chaos. such as if the *daruriyat* aspect is not realized and it will also not bring difficulties such as not fulfilling the *hajiyyat* aspect. However, if this aspect is absent, it will give rise to a condition that is less than harmonious in terms of common sense, custom, violates propriety, and lowers personal and societal dignity.

Based on the description above, it can be said that the main discussion in Maqashid Sharia is wisdom and *illat* which is established as a law. *Illat* is a certain characteristic that is clear and can be known objectively (*zahir*) which determines the existence of law, while wisdom is something that is the aim or purpose of the law in the form of benefit for humans. *Maslahah* can generally be achieved in two ways⁴⁹ :

⁴⁹ Said, "Dispensasi Perkawinan Hamil Di Luar Nikah Pada Pengadilan Agama Parigi Menurut Undang-Undang No. 16 Tahun 2019 (Suatu Analisis Maqasid Syari'ah)."

- a. *Jalb al-manafi*, embodies benefits, goodness and pleasure for humans which is called *jalb al-manafi*. These benefits can be felt directly or indirectly.
- b. *Dar'al mafasid*, avoiding or preventing damage and evil which is used as a standard in determining the good and bad (benefits and *mafsadah*) of something done is what is a basic need for human life. The needs for human life are at various levels, namely primary, secondary and tertiary needs.

The concept of Maqhasid Sharia is not the main factor that determines the birth of legal products but acts as a tool of control and social engineering to realize the benefit of human affairs. More than that, Maqhasid Sharia for judges can provide a philosophical dimension as a consideration for each case they face, which will be included in the decision product created through *ijtihad*.

CHAPTER III

METHODOLOGY

According to oxford dictionary methodology is a set of methods and principles used to perform a particular activity. Steven Dukeshire & Jennifer Thurlow (2010) state that Research is a systematic way to collect data and present the results. According to Creswell (2014) states that the research method is a process of activities in the form of data collection, analysis and interpretation related to research objectives. Then according to Sugiyono (2022) states that, the research method is a scientific way to get data with specific purposes and uses. There are four key words that must be considered, namely, scientific methods, data, objectives, certain uses. The scientific method is that research activities are based on scientific characteristics, namely rational, empirical, and systematic. Rational means that research activities are carried out in ways that make sense, so that they are affordable by human reasoning. Rational research is research that uses theory.⁵⁰

A. Type of Research and Approaches

The type of research used in this research is field research. This research is qualitative research which requires data from the research object. In this research, the author uses an empirical juridical approach, namely research carried out directly in the field to find out the actual problems that occur, which will then be connected to applicable laws and regulations and existing legal theories.⁵¹

⁵⁰ Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif Dan R&D*, Cetakan Ke (Anggota Ikatan Penerbit Indonesia (IKAPI), 2022).

⁵¹ Suharsimi Arikunto, *Prosedur Penelitian Suatu Pendekatan Praktik* (Jakarta: Rineka Cipta, 2010).

B. Research Location

The research location will be carried out at the Sleman Class 1A Religious Court which is located in the Sleman Regional Government Complex, Jalan Parasamya, Beran, Tridadi, Sleman District, DI Yogyakarta. The author chose the Sleman Religious Court Class 1A because it is the court in DIY that has the highest dispensation cases.

C. Research Informants

The informant for this research is the sole judge in the marriage dispensation case in ruling number 369/PDT.P/2023/PA.SMN. He is H. Asri, M.H who is a judge of the Sleman religious court who tries the marriage dispensation case in decision 369/PDT.P/2023/PA.SMN.

D. Technique of Informant Determination

Informants in qualitative research use purposive sampling technique, which is a method of determining informants who are determined deliberately based on certain criteria or considerations.⁵² In this research, the informant was addressed to the judge who decided on dispensation case Number 369/PDT.P/2023/PA.SMN.

E. Technique of Data Collection

Data collection techniques are an important step in research, the goal is to get data. Without knowing the data collection technique, the researcher will not meet the specified data standards.⁵³

1. Interview

⁵² Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif Dan R&D*.

⁵³ Sugiyono.

This is a preliminary study to find problems that must be researched. The author interviews the religious court judge who directly tries the marriage dispensation case, he is H. Asri, M.H who is a judge of the Sleman religious court who tries the marriage dispensation case in ruling number 369/PDT.P/2023/PA.SMN.

2. Literature Study

Literature study is a data collection technique carried out by the author by analyzing previous research, which is needed to provide a basis or foundation. This secondary data collection is obtained from supporting data such as documents, journals, news reports, books and books so that it can assist the author in analyzing this research.

3. Documesntation

Next is a documentation method, namely collecting additional data from related documents to strengthen data in research namely, ruling Number 369/PDT.P/2023/PA.SMN.

F. Data Validity

In determining the validity of the data the author uses triangulation techniques. The triangulation method is a method of collecting existing information and sources. If triangulation is used in research, the researcher has collected information and tested the reliability of the information.⁵⁴ With this, the author obtained data according to the information obtained during interviews with informants.

⁵⁴ Andarusni Alfansyur and Mariyani, "Seni Mengelola Data : Penerapan Triangulasi Teknik , Sumber Dan Waktu Pada Penelitian Pendidikan Sosial," *HISTORIS: Jurnal Kajian, Penelitian & Pengembangan Pendidikan Sejarah* 5, no. 2 (2020): 146–50.

G. Technique of Data Analysis

Data analysis is a method used to process a collection of data or a group of data to obtain information. Qualitative data analysis methods are methods used to process or process data. According to Miles and Huberman, the qualitative data analysis process is carried out in three stages. It is:

1. Data reduction

The first stage in analyzing qualitative data is data reduction. The data reduction stage is the stage of reducing or simplifying data to suit needs and of course, makes it easier to obtain information.

2. Data Display

After completing the reduction stage, we enter the data presentation or data display stage. As the name suggests, at this stage the researcher can present data that has been reduced or simplified at the previous stage.

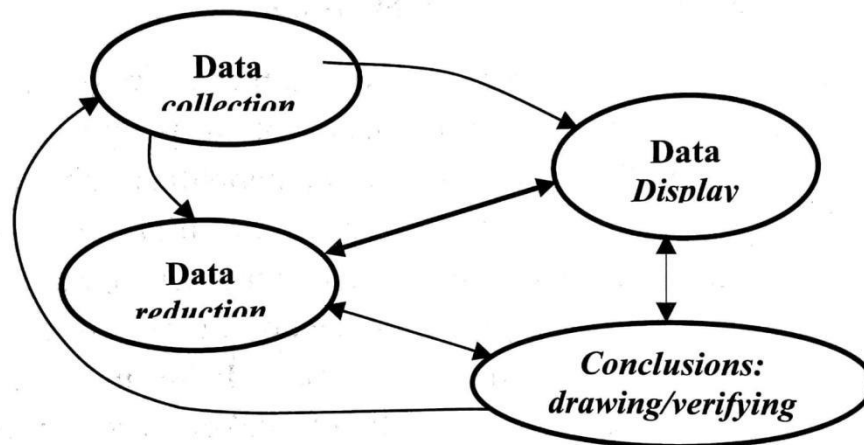
The data presentation process is needed in qualitative data analysis to be able to present or display data neatly, systematically, arranged in a certain relationship pattern, orderly, and so on. So this data is no longer raw data but rather presents information.

3. Draw conclusions

The next stage drawing conclusions. So that the data that has been compiled and grouped is then presented using a technique or pattern and conclusions can be drawn.

This conclusion becomes information that can be presented in a research report and placed in the closing section. Namely in the conclusion section, so that readers of the research report can also find the conclusion.⁵⁵

⁵⁵ Ahmad Rijali, "Analisis Data Kualitatif Ahmad Rijali UIN Antasari Banjarmasin" 17, no. 33 (2018): 81–95.



Picture 3.1. Technic of Data Analyze

(Source: Sugiyono, 2022)⁵⁶

⁵⁶ Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif Dan R&D*.

CHAPTER IV

RESULT AND DISCUSSION

A. Description of Sleman Religious Court Class 1A

1. History and Location of Sleman Religious Court Class 1A

Religious Courts have existed in the Yogyakarta sultanate era, religious courts since Sultan Agung with the name Surambi Court. Then since the Dutch East Indies era legal services in the field of religion regarding marriage issues for the *Ngayogyokarto* Sultanate area (Special Region of Yogyakarta). Centered in one religious court, namely the Yogyakarta Religious Court. Until 1961.

In 1945 the Indonesian people increasingly had increasing needs in the field of legal services, including religious legal services, especially family law that fostered marriage problems. In order to improve the service of religious law governing the issue of marriage, the government based on the Decree of the Minister of Religion of the Republic of Indonesia Number 61 of 1961 dated July 25, 1961 which came into force on August 1, 1961 regulates the Establishment of the Yogyakarta Religious Court Branch Office.

1. Wonosari, for Region Level II Gunung Kidul.
2. Wates, for District Level II Kulon Progo.
3. Bantul, for the second level region of Bantul.
4. Sleman, for Regional Level II Sleman

Thus it can be concluded that the Basic Request for Class IB Sleman Religious Court is based on the Decree of the Minister of Religious Affairs of the Republic of Indonesia Number 61 of 1961 dated 2 January 1961.

Previously the Sleman Religious Court building was located at Jalan Candi Gebang Number 1, Sleman City telephone 0274 868201 post code 55511. The building was built in 1976 on a land area of 800 m² with the right of use and a building area of 72 m² through the Sleman Regional Government DIP budget. Then in 1980 a rehabilitation/expansion of 296 m² was carried out based on the 1978 State Budget at a cost of Rp. 6,694,000, - carried out by CV Budi Utama so that the entire land was 800 m² and the building was 368 m². Then the Sleman Religious Court built a new building in 2006, which is located on Jalan Parasamya, Beran Village, Tridadi District, Sleman Regency.⁵⁷

2. Jurisdiction of Sleman Religious Court

Geographically, Sleman Regency is located between 110° 33' 00" and 110° 13' 00" East Longitude, 7° 34' 51" and 7° 47' 30" South Latitude. Sleman Regency is bordered to the north by Boyolali Regency, Central Java Province, to the east by Klaten Regency, Central Java Province, to the west by Kulon Progo Regency, Yogyakarta Province and Magelang Regency, Central Java Province and to the south by Yogyakarta City, Bantul Regency and Gunung Kidul Regency, Yogyakarta Province.

The area of Sleman Regency is 57,482 hectares or 574.82 km² or about 18% of the area of the Special Province of Jogjakarta 3,185.80 km², with the farthest distance North - South 32 km, East - West 35 km.

⁵⁷ Tim Redaksi PA Sleman, "Sejarah Pengadilan Agama Sleman," 2020, <https://www.pa-slemankab.go.id/article/sejarah>.

Thus the administrative jurisdiction of the Sleman Religious Court consists of 17 Kapanewon, 86 Kalurahan, and 1,212 Dusun.⁵⁸

Table 4.1: Sub-districts in the Sleman Religious Court

| Jurisdiction Sleman Religious Court | | |
|--|--------------|------------------------|
| No | Sub-district | Number of Sub-district |
| 1 | Berbah | 4 |
| 2 | Cangkringan | 5 |
| 3 | Depok | 3 |
| 4 | Gamping | 5 |
| 5 | Godean | 7 |
| 6 | Kalasan | 4 |
| 7 | Minggir | 5 |
| 8 | Mlati | 5 |
| 9 | Moyudan | 4 |
| 10 | Ngaglik | 6 |
| 11 | Ngemplak | 5 |
| 12 | Pakem | 5 |
| 13 | Prambanan | 6 |
| 14 | Seyegan | 5 |
| 15 | Sleman | 5 |
| 16 | Tempel | 8 |
| 17 | Turi | 9 |

3. Vision and Mission

An institution certainly has a goal to be achieved, therefore the vision and mission are important things that exist in the institution itself, namely the vision is something that is achieved while the mission is an activity to achieve something. The vision and mission of the Sleman Religious Court is the vision

⁵⁸ Tim Redaksi PA Sleman, "Wilayah Yurisdiksi," 2022, <https://www.pa-slemankab.go.id/article/wilayah-yurisdiksi>.

"The realization of the Supreme Sleman Religious Court"⁵⁹ and the mission, namely:

- a. Maintain the independence of the Sleman Religious Court free from interference from other parties.
- b. Improve the professionalism of the Sleman Religious Court apparatus in providing fair legal services to justice seekers.
- c. Improve the quality of leadership of the Sleman Religious Court.
- d. Implementing a Quality Assurance System in the management of the Sleman Religious Court that is modern, credible and transparent.⁶⁰

4. Absolute Competence

According to Law No. 7 of 1989, the duties and authority of the Religious Courts are to examine, decide, and adjudicate cases at the first instance between people of the Islamic faith.

Meanwhile, the scope of absolute competence in the Religious Courts is regulated in Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts. 7 of 1989 concerning Religious Courts as follows:

- a. Marriage
- b. Inheritance
- c. Wasiat
- d. Grant
- e. Waqf
- f. Zakat
- g. Infaq
- h. Shadaqah
- i. Sharia Economy.⁶¹

⁵⁹ Tim Redaksi PA Sleman, "Visi Dan Misi Pengadilan," 2020, <https://www.pa-slemankab.go.id/article/visi-dan-misi-pengadilan>.

⁶⁰ Sleman.

⁶¹ "Undang-Undang (UU) Nomor 7 Tahun 1989 Tentang Peradilan Agama," *NBER Working Paper Series* 58, no. 58 (1989): 99–104, <https://www.unhcr.org/publications/manuals/4d9352319/unhcr-protection-training-manual-european-border-entry-officials-2-legal.html?query=excom> 1989.

5. Organizational Structure of Sleman Religious Court Class 1A

Table 4.2: Organizational Structure Data

| STUCTURE ORGANIZATION RELIGIOUS COURT 1A SLEMAN | | |
|--|---|--|
| Head | : | Drs. H. Tahrir |
| Deputy Head | : | Khoiriyah Roihan, S.Ag., M.H. |
| Judge | : | Tukimin, S.H., M.S.I. |
| | | Dra. Hj. Faidhiyatul Indah |
| | | Drs. H. Nurrudin, S.H., M.S.I. |
| | | Hj. Juharni, S.H., M.H. |
| | | Drs. Yusuf, S.H., M.S.I. |
| | | Drs. H. Asri, M.H. |
| | | Drs. Sapari, MSI. |
| | | Dr. Drs. Mudara, MSI. |
| | | Drs. H. Barwanto, S.H., M.H. |
| | | Dra. Sri Sangadatun, M.H. |
| | | Drs. Khotibul Umam |
| | | Drs. H. Husin, M.H. |
| | | Dra. Hj. Ufik Nur Arifah Hidayati, MSI. |
| | | Dra. Hj. Nafilah, M.H. |
| | | Adhayani Saleng Pagesongan, S. Ag., M. H. |
| Clerk | : | Danny Heryoulyawanti, S.H., M.S.I. |
| Junior Legal Registrar | : | Siti Haryanti, S.H., M.S.I. |
| Application Junior Registrar | : | Drs. H Muslih, S.H., M.H. |
| Junior Lawsuit Registrar | : | Endang Winarni, S.H., M.H. |
| Substitute Registrar | : | Suranto, S.H. |
| | | Dra. Lilik Mahsun, S.H., M.H. |
| | | Nathalina Sri Ariyanti, S.H., M.H. |
| | | Yusran Idehamsyah, S.Ag. |
| | | Miftahul Hasanah, S.H. |
| | | Dwi Wiwik Subiarti, S.Sy., M.H. |
| | | Muhammad Najib, S.H.I., S.H., M.H. |
| | | Elfira Hakim, S.E., S.H. |
| | | Ratna Khuzaemah, S.H.I. |
| Bailiff | : | Salimah Ali |
| | | Hj. Nafingatun, S.Ag. |
| | | Irwan Setyawan, S.Kom. |
| | | Lia Ratna Sari, S.H. |
| Substitute Bailiff | : | Thresia Methawati, S.H. |
| | | Ayu Febriyanti, S.E. |

| | | |
|--|---|--------------------------------------|
| Secretary | : | Rr. Arum Fitriana Rohmah, S.H., M.H. |
| Head of Sub Division of Planning, Technology, Information and Planning | : | Fuad Tansyauddin, S.E., M.M. |
| Head of Sub Division of Personnel, Organization and Administration | : | Mya Shita Rini, S.E., S.H. |
| Head of General and Financial Subdivision | : | Lily Yuslianti, S.E., M.M. |

B. Judge's considerations in granting a marriage dispensation based on Perma no. 5 of 2019 regarding ruling number 369/PDT.P/2023/PA.SMN

The birth of Supreme Court Regulation (Perma) no. 5 of 2019 concerning the Guidelines for Adjudicating Marriage Dispensation Applications was due to the change of Law Number 1 of 1974 to Law Number 16 of 2019 concerning the minimum age of marriage in Indonesia. The existence of Perma No. 5/2019 essentially aims to ensure the implementation of a judicial system that protects children's rights, identify whether or not there is coercion behind the application for dispensation of child marriage, standardize the judicial process for marriage dispensation, and increase parental responsibility to prevent child marriage. Sleman Religious Court is a religious court that handles the most marriage dispensations compared to other religious courts in Yogyakarta, the author will present the results of an interview conducted on January 24th, 2024 with Judge Asri.

a. Marriage Dispensation at Sleman Religious Court

Based on the results of interviews with Sleman Religious Court judge that the marriage dispensation cases that occur in the Sleman Religious Court are running effectively, with the age limit for marriage from 16 years old to 19 years old, this makes children who will enter into marriage before

the age of 19 not only get the blessing of their parents but must go through the religious court so that it can be seriously considered.

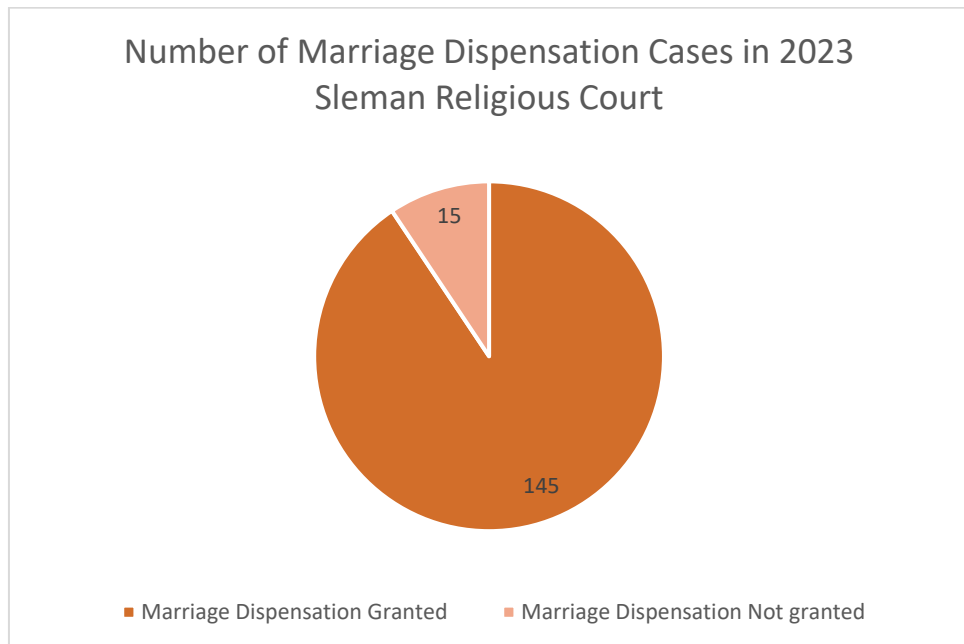


Diagram 4.1 Number of Marriage Dispensation Cases in 2023

(Source: Aplikasi Informasi Berperkara di Pengadilan Agama Sleman
(Sidilan) 2023)

The diagram above shows that the marriage dispensation cases submitted to the Sleman court counted 145 applicants who were granted and 15 applicants who were not granted.

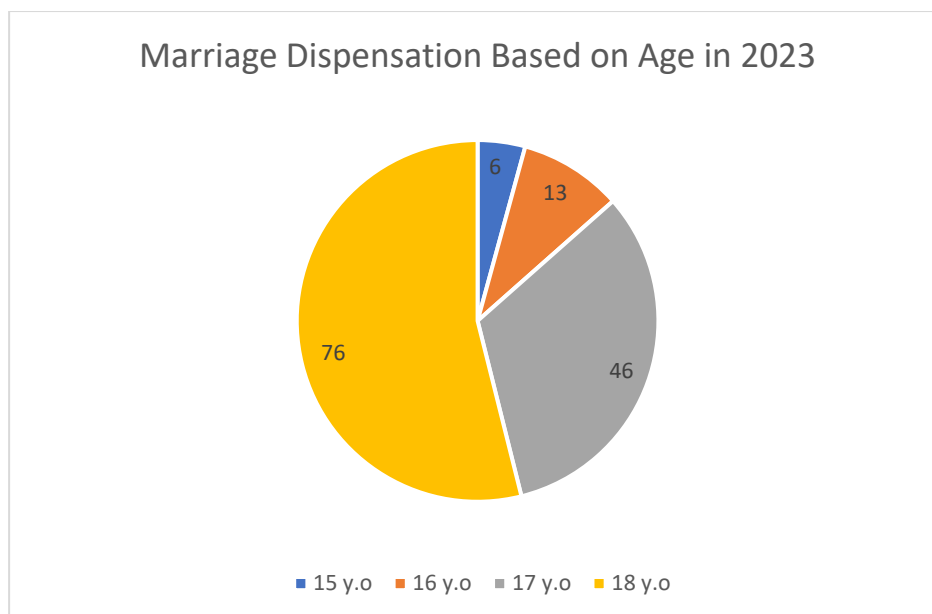


Diagram 4.2 Marriage Dispensation Based on Age in 2023

(Source: Aplikasi Informasi Berperkara di Pengadilan Agama Sleman
(Sidilan) 2023)

Based on the diagram above, it can be seen that there were 76 applicants aged 18 years, 46 applicants aged 17 and 13 applicants aged 16 and there were 6 applicants who were still 15 years old. Furthermore, the table below explains in detail the age and reasons for the applicants who applied for dispensation of marriage at the Sleman Religious Court from all sub-districts in Sleman.

Table 4.3: Table of Marriage Dispensation Data for Each District in Sleman

| NO | KECAMATAN | JML | ALASAN PENGAJUAN | | | | | UMUR | | | | |
|----|-------------|-----|------------------|----|---|----|---|------|----|----|----|----|
| | | | H | MZ | A | PB | E | 14 | 15 | 16 | 17 | 18 |
| 1 | Berbah | 8 | 6 | 1 | 0 | 0 | 0 | 1 | 1 | 1 | 2 | 3 |
| 2 | Cangkringan | 9 | 8 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 3 | 4 |
| 3 | Depok | 9 | 9 | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 4 | 3 |
| 4 | Gamping | 8 | 4 | 3 | 0 | 0 | 0 | 0 | 0 | 1 | 2 | 5 |
| 5 | Godean | 0 | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 5 |
| 6 | Kalasan | 0 | 3 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 1 |
| 7 | Minggir | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 8 | Mlati | 21 | 18 | 3 | 0 | 0 | 0 | 0 | 1 | 1 | 8 | 11 |

| | | | | | | | | | | | | |
|----|-------------|-----|-----|----|---|---|---|---|---|----|----|----|
| 9 | Moyudan | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 |
| 10 | Ngaglik | 5 | 1 | 4 | 0 | 0 | 0 | 1 | 0 | 1 | 1 | 2 |
| 11 | Ngemplak | 10 | 9 | 1 | 0 | 0 | 0 | 1 | 2 | 1 | 1 | 5 |
| 12 | Pakem | 6 | 4 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | 2 |
| 13 | Prambanan | 9 | 5 | 2 | 0 | 0 | 0 | 0 | 0 | 1 | 2 | 6 |
| 14 | Seyegan | 10 | 9 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 3 | 6 |
| 15 | Sleman | 12 | 11 | 1 | 0 | 0 | 0 | 0 | 0 | 2 | 4 | 6 |
| 16 | Tempel | 8 | 7 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 8 |
| 17 | Turi | 11 | 7 | 4 | 0 | 0 | 0 | 0 | 0 | 2 | 4 | 5 |
| 18 | Luar Sleman | 6 | 5 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 3 |
| | Jumlah | 145 | 115 | 24 | 0 | 0 | 0 | 4 | 6 | 13 | 46 | 76 |

*Keterangan

H : Hamil (Getting Pregnant)

MZ : Menghindari Zina (Avoiding Zina)

A : Adat/Budaya (Custom/Culture)

PB : Pergaulan Bebas (Promiscuity)

E : Ekonomi (Economy)

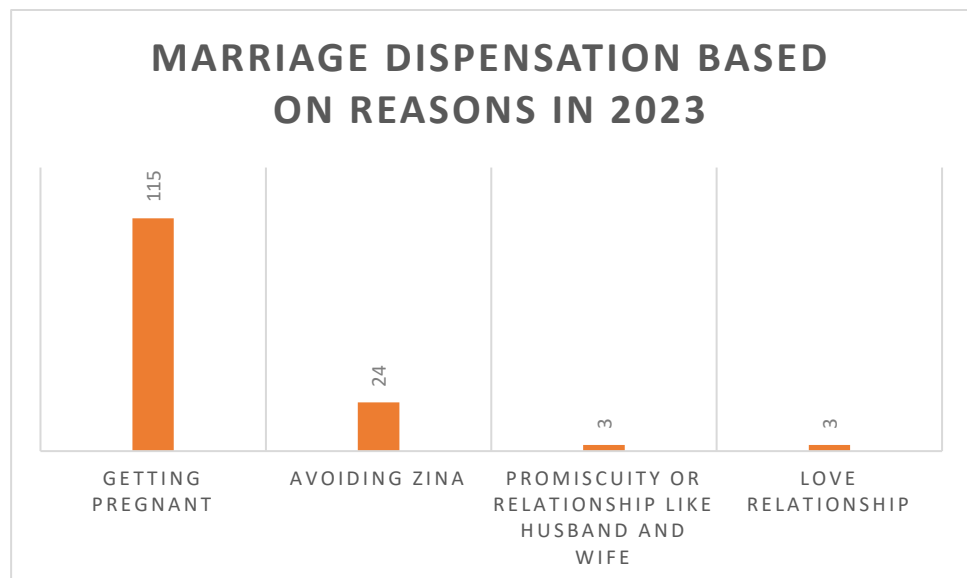


Diagram 4.3 Marriage Dispensation Based on Reasons in 2023

(Source: Aplikasi Informasi Berperkara di Pengadilan Agama Sleman
(Sidilan) 2023)

It can be concluded that the most common applicant for marriage dispensation is pregnant outside of marriage. Based on the interview with judge Asri that the consequences of pregnancy outside of marriage are a problem that really needs special attention not only from the government and religious courts but the main role in preventing early marriage is from the family, namely the role of parents in educating their children.

b. Reasons for Granting the Decision on Marriage Dispensation in Ruling 369/PDT.P/2023/PA.SMN

1. Age Difference between Male and Female Parties

On the case in ruling number 369/PDT.P/2023/PA.SMN, it explains that the applicant's child is still 16 years and 1 month old while her husband is 20 years old. In this age difference, it is the judge's consideration in granting dispensation to marry even though the female party has not reached this age, but the male party has reached the age at which marriage is permitted. However, there are other considerations considered by the judge that if the dispensation is not granted, waiting for the woman to reach an age that is ready for marriage, this can be worrying because if it is not granted the man and the woman are afraid that they will commit other acts prohibited by religion, this is also considered because the woman has given birth to a daughter.

2. Marriage by Accident

Having relations with husband and wife before marriage in Islam is an act prohibited by religion. Based on case 369/PDT.P/2023/PA.SMN,

it was explained that the applicant had relations with husband and wife before marriage. Of course, having relations like husband and wife is caused because they have been dating for too long, namely from 2020 until finally giving birth to a child. In this case the judge considered that if it was not granted it was feared that there would be other acts of adultery, besides that the two applicants had been advised by the judge to get married after they reached the age of 19 but the male applicant insisted on immediately wanting to marry his future wife. In the Interview it was also stated that the judge's opinion regarding this case was that the dispensation of marriage that occurred due to pregnancy outside of marriage was a serious problem, namely that if it was not granted, the applicant would increasingly do things that were prohibited by religion.

3. Considering Children's Rights

Marriage dispensation ruling no. 369/PDT.P/2023/PA.SMN, it is explained that the judge granted dispensation of marriage, namely listening to the opinion of the child as stated in Perma no. 5 of 2019 article 2, it is stated that the judge in adjudicating a marriage dispensation case must respect the opinion of a child. In this case, it is not based on parental coercion, because if it is based on parental coercion, this can violate a child's human rights.

c. Application of Perma No. 5 of 2019 to Decision 369/PDT.P/2023/PA.SMN

Table 4.4: Application of Perma No. 5 of 2019 to Ruling 369/PDT.P/2023/PA.SMN.

| | | |
|----|--|--|
| No | Perma No. 5 of 2019 | Application of Perma No. 5 of 2019 to Decision 369/PDT.P/2023/PA.SMN |
| 1. | Article 1 paragraph (11) states the use of a single judge. | In this decision a single judge has been applied. |
| 2. | <p>Article 5 Paragraph (1) states that the administrative requirements in filing an application</p> <p>Marriage Dispensation are:</p> <ul style="list-style-type: none"> a. application letter b. photocopies of the Identity Cards of both Parents/Guardians parents/guardians c. photocopy of Family Card d. photocopy of Identity Card or Identity Card of the child and or birth certificate of the child e. photocopy of Identity Card or Child Identity Card and/or | <p>The applicant has provided the administrative requirements as mentioned in Article 5. These included a photocopy of the applicant's identity card, the birth certificate of the applicant's child, a photocopy of the applicant's diploma, a refusal letter from the Religious Affairs Office, and a photocopy of the applicant's health certificate.</p> |

| | | |
|----|--|--|
| | <p>birth certificate of prospective husband.</p> <p>child and/or birth certificate of the prospective husband/wife; and</p> <p>f. photocopy of the child's last education certificate and/or certificate of still in school from the child's school.</p> | |
| 3. | <p>Article 10 paragraph (1) states that the applicant at the trial must present the child for whom the dispensation is sought, the prospective husband/wife and the parents/guardians of the prospective wife/husband (besan).</p> | <p>In the decision, it was stated that the child for whom the marriage dispensation was sought and the prospective husband were present at the trial along with the prospective husband's parents.</p> |
| 4. | <p>Article 12 paragraph (1) states that the judge in the trial must provide advice to the applicant, child, prospective husband/wife and parents/guardians of the prospective husband/wife.</p> <p>Parents/Guardians of Prospective Husband/Wife.</p> | <p>In this decision, it is written that the judge has given advice to the parties regarding the risks that will occur in relation to education, economy, psychology and reproduction of children.</p> |

| | | |
|----|---|---|
| 5. | <p>Article 13 paragraph (1) Judge must hear testimony:</p> <ol style="list-style-type: none"> The child for whom the Marriage Dispensation is sought The prospective Husband/wife for whom the Marriage Dispensation is sought The parents/guardians of the child for whom the Marriage Dispensation is sought and The parents/guardians of the prospective Husband/wife. | <p>In this decision the judge has heard testimony from each of the parties concerned.</p> |
|----|---|---|

C. Marriage Dispensation According to Maqashid Sharia Based on Ruling Number 369/PDT.P/2023/PA.SMN

In Maqashid Sharia, marriage is one of the sunnah that can maintain five basic things, namely the maintenance of religion (*hifz din*), soul (*hifz nafs*), offspring (*hifz nasl*), and intellect (*hifz aql*). The maintenance of religion and offspring is the main focus of the law of marriage. Marriage is a forum that unites two human beings who have legal legality to build a family based on the almighty God.

According to *kaidah fiqhiyyah* :

تصرف الامام على الرعية منوط بالمصلحة

This means: "The policy of the imam/government for the people must be based on *maslahah*."

This rule provides a basis for the government, with any system must be based on a benefit for all levels of society. This rule is based on the words of Allah subhanahu wa ta'ala:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ ۗ إِنَّ اللَّهَ نَعِيمًا يَعِظُكُمْ بِهِ ۗ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

“Indeed, Allah commands you to return trusts to their rightful owners and when you judge between people, judge with fairness. What a noble commandment from Allah to you! Surely Allah is All-Hearing, All-Seeing.” (An-Nisa’: 58).⁶²

The regulation of marriage dispensation passed by the Indonesian government is based on benefit. One of the applications of maqashid sharia is the existence of marriage dispensation which is a policy of the Indonesian government to achieve the benefit of society. Dispensation is a community solution in a state of urgency. The marriage dispensation that applies in Indonesia is a combination of Indonesian law and Islamic law. Therefore, dispensation of marriage has legal legality both from formal, material and Islamic law.

Based on the author's interview with the judge of the Sleman Religious Court, Asri said that the judge's consideration in deciding the dispensation of marriage is based on the aspect of benefit or *mashalahah*. In marriage dispensation case number 369/PDT.P/2023/PA.SMN, it is explained that the man and his wife-to-be got married early due to pregnancy outside of marriage. According to the judge said that the problem of pregnancy outside of marriage is a very big problem besides that the child of the applicant has been born, so that if it is not granted it is feared that it will cause greater harm.

a. Maqashid sharia according to Imam Syatibi's perspective

⁶² Tim Penerjemah Al-Quran UII, “Qur’an Karim Dan Terjemahan Artinya” (Yogyakarta: UII Press, 2023), 154.

Imam Syatibi provides a view of maqashid sharia which is divided into 3 namely:

1. Primary Needs (*Dharuriyyah*)

Dharuriyyah is a need that must exist in order to realize the good of the world hereafter, if it is not there it will cause damage. In case no. 349/PDT.P/PA.SMN, marriage dispensation was granted because of pregnancy outside of marriage. So this decision, if seen, maintains the benefits described by Imam Syatibi, namely:

- Preserving offspring (*Hifzh an-nashl*)

The marriage dispensation given is to maintain the benefit of the baby in the womb so that the lineage is clear who the father and mother are. In the Qur'an surat al-ahzab verse 4-5

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِنْ قَلْبَيْنِ فِي جَوْفِهِ وَمَا جَعَلَ أَرْوَاجَكُمْ اللَّائِي تُظَاهِرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ذَلِكَ قَوْلُكُمْ بِأَفْوَاهِكُمْ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ (4) اذْعُوهُمْ لِآبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَاِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا (5)

*“Allah does not place two hearts in any person’s chest. Nor does He regard your wives as ‘unlawful for you like’ your real mothers, ‘even’ if you say they are.1 Nor does He regard your adopted children as your real children.2 These are only your baseless assertions. But Allah declares the truth, and He ‘alone’ guides to the ‘Right’ Way (4) Let your adopted children keep their family names. That is more just in the sight of Allah. But if you do not know their fathers, then they are ‘simply’ your fellow believers and close associates. There is no blame on you for what you do by mistake, but ‘only’ for what you do intentionally. And Allah is All-Forgiving, Most Merciful (5)”*⁶³

⁶³ Tim Penerjemah Al-Quran UII, “Qur’an Karim Dan Terjemahan Artinya” (Yogyakarta: UII Press, 2023), 744.

In this case the baby born is a baby girl, therefore the guardianship must be to the biological father, in this case a man must also provide responsibility to his future wife.

2. Secondary Needs (*hajiyyat*)

Hajiyyat is a need that is needed after *daruriyyah*. *Hajiyyat* can provide convenience in the life of a married couple later so that it can keep away from difficulties and distress. In the case of marriage dispensation case no 349/PDT.P/PA.SMN, a man already has a job. So that if married off later, the needs of *hajiyyat* can be fulfilled because the male party already has the assets to support his woman.

3. Tertiary Needs (*Tahsiniyat*)

In perma number 5 of 2019 article 16 j explained about adjudicating marriage dispensation, it can be ascertained that parents are willing to take responsibility for the economic, social, health and education problems of their children. In this primary need (*Tahsiniyyat*) is a perfection for *dharuriyyat* and *hajiyyat*. Therefore, the readiness of parents to be responsible for their children when they are married is the perfection of the marriage dispensation decision decided by the judge. Based on the marriage dispensation case no 349/PDT.P/PA.SMN, parents are willing to take responsibility for their children's economic, social, health and educational problems.

Based on the description above, it can be said that the subject matter in Maqashid Sharia is wisdom and *illat* which is determined as a law. *Illat* is a certain characteristic that is clear and can be known objectively (*zahir*) which determines the existence of the law, while wisdom is

something that becomes the intention or purpose of the law in the form of benefit for humans. *Maslahah* can generally be achieved in two ways:

1. *Jalb al-manafi*, realizing benefits, goodness and pleasure for humans called *jalb al-manafi*. These benefits can be felt directly or indirectly. In this decision 369/PDT.P/2023/PA.SMN was granted in order to achieve the aspect of expediency, namely making it good for both husband and wife who are expected in the future to become a family in accordance with Islamic religious law.
2. *Dar'al mafasid*, avoiding or preventing damage and ugliness that is used as a benchmark in determining the good and bad (benefits and *mafsadah*) of something that is done is a basic need in human life. The needs of human life have various levels, namely primary, secondary and tertiary needs. Therefore, the dispensation of marriage in decision 369/PDT.P/2023/PA.SMN is to avoid bad things because if the two of them are not married or wait for the woman to reach the age of 19, it is feared that it will lead to other bad actions.

b. Maqashid sharia according to Jasser Auda's perspective

The method used by Jasser Auda in conducting this study is based on two theories, namely *maqasid sharia* theory (the purpose of Islamic law) and the System Approach.

1. *Maqasid sharia* is positioned as a philosophical and methodological foundation for evaluating traditional and contemporary legal conceptions of Islamic law. Therefore, *maqasid sharia* is positioned as a philosophy of Islamic law, for that the determination of Islamic law must be based on *maqashid sharia* as its main goal.

2. The systems approach used by Jasser Auda includes six interrelated features, namely cognitive systems, wholeness, openness, hierarchy or interrelated levels, multidimensionality, and purposefulness.

Based on the marriage dispensation case in ruling number 369/PDT.P/2023/PA.SMN, first, based on Jasser Auda's Maqashid Sharia which gives permission to a married couple because they are pregnant outside of marriage, the judge's consideration has the characteristics of a systems approach theory such as cognitive nature, openness, integrity, hierarchy, multidimensionality and purpose. in giving the judge's consideration so that the results provide legal certainty. This is evidenced by several considerations such as the readiness of prospective applicants which can be seen from the physical, psychological, social, economic and religious aspects. The granting of marriage dispensation to pregnant couples outside of marriage is a form of deep thinking because it looks at children who are pregnant, and children who are being conceived. This shows that the granting of marriage dispensation has a good purpose and is beneficial for everyone.

CHAPTER V

CONCLUSION AND SUGGESTION

A. Conclusion

Based on the results of the author's discussion of “Judge's Considerations In Deciding The Case Of Marriage Dispensation Based Upon Perma Number 5 Of 2019 And Maqasid Sharia (Analysis Of Ruling Number 369/PDT.P/2023/PA.SMN)”, as an answer to the problem formulation it can be concluded as follows:

1. Marriage Dispensation based on Perma No. 5 analysis of ruling number 369/PDT.P/2023/PA.SMN.

The existence of Perma No. 5 of 2019 which essentially aims to ensure the implementation of a judicial system that protects children's rights, identify whether or not there is coercion behind an application for dispensation of child marriage, standardize the judicial process for marriage dispensation, and increase responsibility. parents to prevent child marriage. Based on the case of marriage dispensation in ruling number 369/PDT.P/2023/PA.SMN, the judge of the Sleman Religious Court has considered children's rights, namely by listening to the child's opinion as stated in Perma no. 5 of 2019 article 2, it is stated that judges in adjudicating marriage dispensation cases must respect the opinion of a child. In this case, it is not based on parental coercion, because if it is based on parental coercion, this can violate a child's human rights.

2. Marriage Dispensation based on Maqashid Sharia analysis of ruling number 369/PDT.P/2023/PA.SMN.

The regulation of marriage dispensation passed by the Indonesian government is based on benefit. One of the applications of maqashid sharia is

the existence of marriage dispensation which is a policy of the Indonesian government to achieve the benefit of society. Dispensation is a community solution in a state of urgency. The judge of the Sleman religious court said that the judge's consideration in deciding the marriage dispensation was based on the aspect of benefit or *mashalahah*. In marriage dispensation case number 369/PDT.P/2023/PA.SMN it is explained that the man and his wife-to-be got married early due to pregnancy outside of marriage.

It can be concluded that the judge of the Sleman Religious Court is of the opinion that early marriage due to pregnancy outside of marriage is granted because it is a *mashlahah* as stated by Imam Syatibi, namely:

1. Primary Needs (*Dharuriyyah*), namely Keeping offspring (*Hifzh an-nashl*)
The marriage dispensation given is to maintain the benefit of the baby in the womb so that his lineage is clear.
2. Secondary Needs (*Hajiyyat*), in the case of marriage dispensation case no 349/PDT.P/PA.SMN, a man already has a job. So that if married off later, the needs of *hajiyyat* can be fulfilled because the male party already has the assets to support his woman.
3. Tertiary Needs (*Tahsiniyat*), based on the marriage dispensation case no 349/PDT.P/PA.SMN that parents are willing to take responsibility for their children's economic, social, health and educational problems.

Maslahah can generally be achieved in two ways:

1. *Jalb al-manafi*, in this decision 369/PDT.P/2023/PA.SMN was granted in order to achieve the aspect of expediency, namely making it good for both husband and wife.

2. *Dar'al mafasid*, in decision 369/PDT.P/2023/PA.SMN, namely to avoid badness because it is feared that it will bring other bad actions if not married immediately.

B. Suggestion

The following are some suggestions from the author based on the results of the research that has been carried out, the following suggestions can be new knowledge and learning for certain interested parties.

1. For religious courts in general, as well as class 1A sleman religious courts, in order to cooperate with other parties such as the KUA to reduce the high rate of early marriage. Not only that, but also through school teachers who deal directly with teenagers, especially those under the age of 19, in order to educate them about the dangers of early marriage. And the most important thing is for their parents at home to continue to be aware of their children regarding promiscuity which can lead to early marriage. For judges who directly handle this marriage dispensation case to better consider the best decision for the child so that the child's haka can be fulfilled instead of being neglected.
2. For further research, in order to expand the discussion related to this marriage dispensation, it is not only located in religious courts but can be in other agencies.

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APPENDIX

1. Ruling Number 369/PDT.P/2023/PA.SMN

Picture 5.1 ruling number 369/PDT.P/2023/PA.SMN



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PENETAPAN
Nomor 369/Pdt.P/2023/PA.Smn

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA

PENGADILAN AGAMA SLEMAN

Memeriksa dan mengadili perkara perdata agama pada tingkat pertama telah menjatuhkan penetapan dalam perkara Dispensasi Kawin yang diajukan;

XXXXXXXXXXXX, lahir di Sleman 31-12-1975, umur 48 tahun, agama Islam, pendidikan terakhir SMP, pekerjaan Buruh tani, tempat tinggal di Dusun XXXXXXXX. Kapanewon Sleman, Kabupaten Sleman, sebagai Pemohon I;

XXXXXXXXXXXX, lahir di Sleman 10-05-1977, umur 46 tahun, agama Islam, Pekerjaan mengurus rumah tangga, Pendidikan Sekolah Lanjutan Tingkat Pertama, tempat kediaman di Dusun XXXXXXXX. Kapanewon Sleman, Kabupaten Sleman, sebagai Pemohon II;

Pengadilan Agama tersebut;
Telah mempelajari berkas perkara;
Telah mendengar keterangan para Pemohon, anak dan Calon suami anak para Pemohon;
Telah memeriksa alat-alat bukti di persidangan;

DUDUK PERKARA

Bahwa, Pemohon dalam surat permohonannya tanggal 21 September 2023 yang didaftarkan di Kepaniteraan Pengadilan Agama Sleman, Nomor 369/Pdt.P/2023/PA.Smn, tanggal 21 September 2023, dengan dalil-dalil pada pokoknya sebagai berikut:

1. Bahwa Para Pemohon hendak menikahkan anak kandung Para Pemohon:

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Halaman 1



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XXXXXXXXXXXX, NIK. 3404135308070001, No.Hp. -, lahir di Sleman
13-08-2007, umur 16 tahun 1 bulan, agama Islam,
pendidikan terakhir SMK Kelas 2, pekerjaan belum
bekerja, tempat tinggal di Dusun XXXXXXXX.
Kapanewon Sleman, Kabupaten Sleman;

dengan calon suaminya :

XXXXXXXXXXXX, NIK. 3404132602030001, No.Hp. -, lahir di Sleman
26-02-2003, umur 20 tahun, agama Islam, pendidikan
terakhir SMP, pekerjaan Belum bekerja, tempat tinggal di
Dusun XXXXXXXX, Kapanewon Sleman, Kabupaten
Sleman;

yang akan dilaksanakan dan dicatatkan di hadapan Pegawai Pencatat
Nikah Kantor Urusan Agama Kapanewon Sleman, Kabupaten Sleman;

2. Bahwa syarat-syarat untuk melaksanakan pernikahan tersebut baik
menurut ketentuan hukum Islam maupun peraturan perundang-undangan
yang berlaku telah terpenuhi kecuali syarat usia bagi anak Para Pemohon
belum mencapai umur 19 tahun, dan karenanya maka maksud tersebut
telah ditolak oleh Kantor Urusan Agama Kapanewon Sleman, Kabupaten
Sleman dengan Surat Nomor: B-433/Kua.12.04.13/PW.01/8/2023;

3. Bahwa pernikahan tersebut sangat mendesak untuk tetap
dilaksanakan karena keduanya telah berkenalan sejak tahun 2020,
hubungan keduanya sudah sedemikian eratny hingga anak Para
Pemohon (sudah melahirkan anak pada 27 Juni 2023 jenis kelamin
perempuan) oleh karena itu Para Pemohon sangat khawatir akan terjadi
perbuatan yang jauh dilarang oleh ketentuan hukum Islam apabila tidak
segera dinikahkan;

4. Bahwa antara anak Para Pemohon dan calon suaminya tersebut tidak
ada larangan untuk melakukan pernikahan;

5. Bahwa anak Para Pemohon berstatus perawan, dan telah aqil baligh,
serta sudah siap untuk menjadi seorang istri dan/atau ibu rumah tangga.
Begitupun calon suaminya sudah siap pula untuk menjadi seorang suami

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dan/atau kepala keluarga serta belum bekerja, akan tetapi keluarga Para Pemohon sanggup membiayai anak Para Pemohon hingga mandiri;

6. Bahwa keluarga Para Pemohon dan orang tua calon suami anak Para Pemohon telah merestui rencana pernikahan tersebut dan tidak ada pihak ketiga lainnya yang keberatan atas berlangsungnya pernikahan tersebut;

7. Para Pemohon sanggup membayar seluruh biaya yang timbul akibat perkara ini;

Berdasarkan hal-hal tersebut di atas, Para Pemohon mohon agar Ketua Pengadilan Agama Sleman segera memeriksa dan mengadili perkara ini, selanjutnya menjatuhkan penetapan yang amarnya berbunyi sebagai berikut :

Primair:

1. Mengabulkan permohonan Para Pemohon;
2. Menetapkan, memberikan dispensasi kepada anak Para Pemohon yang bernama (XXXXXXXXXXXXXX) untuk menikah dengan calon suami yang bernama (XXXXXXXXXXXXXX) di Kantor Urusan Agama Kapanewon Sleman, Kabupaten Sleman;
3. Membebaskan biaya perkara sesuai peraturan yang berlaku;

Subsidiar:

Atau menjatuhkan penetapan lain yang seadil-adilnya;

Bahwa, pada hari sidang yang telah ditetapkan para Pemohon telah datang menghadap ke muka sidang;

Bahwa, hakim telah menasehati para Pemohon untuk berpikir kembali, tetapi para Pemohon tetap pada dalil-dalil permohonannya untuk mengajukan permohonan Dispensasi Kawin;

Bahwa, Hakim telah memberikan nasehat untuk memastikan orang tua, anak, calon mempelai serta orang tua/wali calon mempelai, agar memahami resiko perkawinan, terkait dengan;

- a. Kemungkinan berhentinya pendidikan bagi anak;
- b. Keberlanjutan anak dalam menempuh wajib belajar 12 tahun;
- c. Belum siapnya organ reproduksi anak;
- d. Dampak ekonomi, sosial dan psikologis bagi anak;

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Dicetak oleh

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Halaman 3



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e. Potensi perselisihan dan kekerasan dalam rumah tangga;

Bahwa, selanjutnya dimulai pemeriksaan dengan membacakan surat permohonan para Pemohon yang maksud dan isinya tetap dipertahankan oleh para Pemohon;

Bahwa, telah didengar keterangan calon mempelai wanita bernama XXXXXXXXXXXXX, memberikan keterangan sebagai berikut:

- Bahwa benar Ia adalah anak kandung Para Pemohon dan saat ini masih berumur 16 tahun 1 bulan;
- Bahwa Benar Ia ingin menikah dengan laki-laki bernama XXXXXXXXXXXXX, karena sudah saling mencintai;
- Bahwa orang tua saya sudah merestui hubungan saya dengan XXXXXXXXXXXXX demikian juga orang tuanya
- Bahwa Ia sudah kenal dan berpacaran dengan XXXXXXXXXXXXX sejak tahun 2020;
- Bahwa Ia sudah siap menjadi istri yang baik;;
- Bahwa Ia sudah siap mengasuh anak dan melayani suami;
- Bahwa selama menjalin hubungan cinta dengan calon suami tidak pernah melakukan hubungan terlarang;
- Bahwa Ia mau menikah dengan XXXXXXXXXXXXX meskipun dibawah umur karena untuk beribadah dan agar terhindar dari perbuatan terlarang;

Bahwa, telah didengar keterangan calon mempelai laki-laki bernama XXXXXXXXXXXXX, memberikan keterangan sebagai berikut:

- Bahwa benar Ia telah menjalin hubungan cinta (berpacaran) dengan anak Para Pemohon bernama Naini Nur Arifah;
- Bahwa ia telah menjalin hubungan cinta dengan anak Para Pemohon sudah sangat dekat sejak tahun 2020;
- Bahwa rencana pernikahan ini atas keinginan sendiri dan tidak ada paksaan dari orang lain;
- Bahwa orang tua sudah merestui hubungan saya dengan XXXXXXXXXXXXX, demikian juga para Pemohon;
- Bahwa ia sudah siap menjadi suami yang bertanggung jawab;

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- Bahwa ia belum bekerja tapi orang tua sudah bersedia dan sanggup membiayai anak para Pemohon hingga mandiri;

- Bahwa tidak ada larangan untuk menikah saya jejak calon istri perawan;

Bahwa, Para Pemohon telah menghadirkan kedua orang tua kandung calon mempelai pria yang bernama Suroto Roto Yitno bin Kromorejo, selanjutnya memberikan keterangan pada pokoknya sebagai berikut:

- Bahwa benar ia adalah orang tua kandung XXXXXXXXXXXXX calon suami anak Para Pemohon;

- Bahwa benar anak saya menjalin hubungan dengan anak Para Pemohon yang bernama XXXXXXXXXXXXX;

- Bahwa benar anak XXXXXXXXXXXXX telah menjalin hubungan dengan anak para Pemohon yang bernama XXXXXXXXXXXXX sejak tahun 2020;

- Bahwa sudah melamar anak para Pemohon dan lamaran sudah diterima;

- Bahwa antara anaknya dan anak Para Pemohon tidak ada hubungan darah, nasab atau sesusuan yang dapat menghalangi pernikahan;

- Bahwa ia merestui pernikahan antara keduanya dan siap membimbing;

Bahwa, untuk menguatkan dalil-dalil permohonannya, para Pemohon telah mengajukan bukti-bukti berupa;

A. Surat;

1. Fotokopi Kartu Tanda Penduduk NIK 3404130112750004, an. XXXXXXXXXXXX tanggal 10-12-2018, yang dikeluarkan oleh Dina Kependudukan Dan Catatan Sipil Kabupaten Sleman, telah bermaterai dan telah dinazegelen serta dicocokkan dengan aslinya terbukti sesuai, oleh Hakim diberi kode (bukti P-1);

2. Fotokopi Kartu Tanda Penduduk NIK: 3404135005770006, an. XXXXXXXX, tanggal 03-06-2012, yang dikeluarkan oleh Dinas Kependudukan Dan Catatan Sipil Kabupaten Sleman, telah

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Dicetak

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bermaterai dan telah dinazegelen serta dicocokkan dengan aslinya terbukti sesuai, oleh Hakim diberi kode (bukti P-2);

3. Fotokopi Kutipan Akta Nikah Nomor : 248/12/VI/2001, an. XXXXXXXXX, tanggal 9-7-2001, yang dikeluarkan oleh Kantor Urusan Agama Kapanewon Slman Kabupaten Sleman, telah bermaterai dan telah dinazegelen serta dicocokkan dengan aslinya terbukti sesuai, oleh Hakim diberi kode (bukti P-3);

4. Fotokopi Kartu keluarga Nomor : 3404131502052056, an. XXXXXX tanggal 06-12-2018, telah bermaterai dan telah dinazegelen serta dicocokkan dengan aslinya terbukti sesuai, oleh Hakim diberi kode (bukti P-4);

5. Fotokopi Kartu Tanda Penduduk NIK : 3404135308070001, an. Cahaya Rindang Sari, tanggal 22-02-2018, telah bermaterai dan telah dinazegelen serta dicocokkan dengan aslinya terbukti sesuai, oleh Hakim diberi kode (bukti P-5);

6. Fotokopi Kartu Tanda Penduduk NIK : 3404132602030001, an. XXXXXXXXXXX, tanggal 05-01-2021, telah bermaterai dan telah dinazegelen serta dicocokkan dengan aslinya terbukti sesuai, oleh Hakim diberi kode (bukti P-6);

7. Fotokopi Akta Kelahiran Nomor : 3404-LT-17022015-0025, an. XXXXXXXXXXX, tanggal tujuh belas Februari dua ribu lima belas, yang dikeluarkan oleh Kantor Dinas Kependudukan Dan Catatan Sipil Kabupaten Sleman, telah bermaterai dan telah dinazegelen serta dicocokkan dengan aslinya terbukti sesuai, oleh Hakim diberi kode (bukti P-7);

8. Fotokopy Akta Kelahiran Nomor : 1626/R/2009, an. XXXXXXXXXXX, tanggal delapan belas Februari dua ribu sembilan, yang dikeluarkan oleh Dinas Kependudukan dan Catatan Sipil Kabupaten Sleman, telah bermaterai dan telah dinazegelen serta dicocokkan dengan aslinya terbukti sesuai, oleh Hakim diberi kode (bukti P-8);

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9. Fotokopi Ijazah Sekolah Menengah Pertama Tahun Pelajaran 2021 /2022 Nomor -, an. XXXXXXXXXXXX, tanggal 16 Junii 2022, yang dikeluarkan oleh Kepala SMP Insan Cendekia, telah bermaterai dan telah dinazegelen serta dicocokkan dengan aslinya terbukti sesuai, oleh Hakim diberi kode (bukti P-9);

10. Fotokopi Ijazah Sekolah Menengah Pertama Tahun Pelajaran 2019/2020 Nomor -, an. XXXXXXXXXXXXXX, tangga 10 Juli 2020, yang dikeluarkan oleh Kepala Sekolah SMP Insan Cendekia Yogyakarta, telah bermaterai dan telah dinazegelen serta dicocokkan dengan aslinya terbukti sesuai, oleh Hakim diberi kode (bukti P-10);

11. Fotokopi Penolakan Pernikahan dari KUA Kapanewon Gamping Nomor: B-433/Kua.12.04.13/PW.01/08/2023, tanggal 08 Agustus 2023, telah bermaterai dan telah dinazegelen, oleh Hakim diberi kode (bukti P-11);

12. Surat Keterangan Pemeriksaan kesehatan Calon Pengantin Nomor 441/674/PuskSlm/2023, an. XXXXXXXXXXXX yang dikeluarkan oleh PUSKESMAS Sleman, tertanggal 9 Agustus 2023, yang telah dimeterai dan dinazegelen Pos, serta dicocokkan dengan aslinya terbukti sesuai, oleh Hakim diberi kode (bukti P-12);

13. Fotokopi Surat Keterangan Pemeriksaan kesehatan Calon Pengantin Nomor 441/672/PuskSlm/2023, an. XXXXXXXXXXXXXX, yang dikeluarkan oleh PUSKESMAS Sleman, tertanggal 9 Agustus 2023, yang telah dimeterai dan dinazegelen Pos, serta dicocokkan dengan aslinya terbukti sesuai, oleh Hakim diberi kode (bukti P-13);

B. Saksi;

1.-----
XXXXXXXXXXXX, lahir 31 Desember 1957, Agama Islam, Pendidikan Tidak Ada, Pekerjaan buruh, tempat tinggal di XXXXXXXXXXXX, Kecamatan Kapanewon Sleman, Kabupaten Sleman, dibawah sumpah memberikan keterangan sebagai berikut:

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- Bahwa Kenal dengan para Pemohon dan anak para Pemohon sebagai ayah kandung Pemohon I;
- Bahwa tujuan Pemohon menghadap di persidangan ini adalah Pemohon hendak menikahkan anaknya yang bernama XXXXXXXXXXXX karena ditolak oleh KUA;
- Bahwa anak para Pemohon masih kurang dari ketentuan peraturan perundangan yang berlaku yakni kurang dari umur 19 tahun;
- Bahwa umur anak para Pemohon baru berumur 16 tahun 1 bulan;
- Bahwa XXXXXXXXXXXX dan XXXXXXXXXXXX telah menjalin hubungan cinta sejak tahun 2020 dan sudah melakukan hubungan layaknya suami istri dan dikaruniai satu orang anak perempuan;
- Bahwa anak para Pemohon sudah dilamar oleh calon suaminya dan lamaran tersebut telah diterima oleh pihak para Pemohon;
- Bahwa calon suami anak para Pemohon bernama XXXXXXXXXXXX;
- Bahwa Antara anak Pemohon dan calon suami anak para Pemohon tidak ada hubungan darah maupun hubungan sesusuan;
- Bahwa anak para Pemohon tidak sedang dalam pinangan orang lain;
- Bahwa rencana pernikahan anak Pemohon dan calon suami anak Pemohon tidak dibawah paksaan atau tekanan dari pihak manapun;
- Bahwa orang tua XXXXXXXXXXXX bersedia dan sanggup untuk membiayai atau mencukupi kebutuhan rumah tangga;
- Bahwa cecara Fisik dan mental keduanya sudah mampu untuk melangsungkan pernikahan;

2.-----
XXXXXXXXXXXX, lahir 09 April 1954, Agama Islam, Pendidikan Tidak Ada, Pekerjaan buruh, tempat tinggal di Gawas, RT03, RW037,

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Dicetak

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Kelurahan Pondowoharjo, Kecamatan Kapanewon Sleman, Kabupaten Sleman, dibawah sumpah memberikan keterangan sebagai berikut:

- Bahwa Kenal dengan para Pemohon dan anak para Pemohon sebagai tetangga Para Pemohon;
- Bahwa tujuan Pemohon menghadap di persidangan ini adalah Pemohon hendak menikahkan anaknya yang bernama XXXXXXXXXXXX karena ditolak oleh KUA;
- Bahwa anak para Pemohon masih kurang dari ketentuan peraturan perundangan yang berlaku yakni kurang dari umur 19 tahun;
- Bahwa umur anak para Pemohon baru berumur 16 tahun 1 bulan;
- Bahwa XXXXXXXXXXXX dan XXXXXXXXXXXX telah menjalin hubungan cinta sejak tahun 2020 dan sudah melakukan hubungan layaknya suami istri dan dikaruniai satu orang anak perempuan;
- Bahwa anak para Pemohon sudah dilamar oleh calon suaminya dan lamaran tersebut telah diterima oleh pihak para Pemohon;
- Bahwa calon suami anak para Pemohon bernama XXXXXXXXXXXX;
- Bahwa Antara anak Pemohon dan calon suami anak para Pemohon tidak ada hubungan darah maupun hubungan sesusuan;
- Bahwa anak para Pemohon tidak sedang dalam pinangan orang lain;
- Bahwa rencana pernikahan anak Pemohon dan calon suami anak Pemohon tidak dibawah paksaan atau tekanan dari pihak manapun;
- Bahwa orang tua XXXXXXXXXXXX bersedia dan sanggup untuk membiayai atau mencukupi kebutuhan rumah tangga;
- Bahwa cecara Fisik dan mental keduanya sudah mampu untuk melangsungkan pernikahan;

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Selanjutnya untuk singkatnya uraian penetapan ini, maka semua hal yang termuat dalam Berita Acara Sidang ini merupakan bagian yang tak terpisahkan dari penetapan ini;

PERTIMBANGAN HUKUM

Menimbang, bahwa maksud dan tujuan permohonan para Pemohon adalah sebagaimana terurai di atas;

Menimbang, bahwa yang menjadi alasan Para Pemohon mengajukan permohonan Dispensasi Kawin adalah semua syarat untuk melakukan pernikahan sudah terpenuhi, kecuali syarat umur yang belum memenuhi usia batas minimal perkawinan 19 tahun, karena anak Para Pemohon belum cukup umur dan calon suami anak Para Pemohon sudah cukup umur untuk menikah;

Menimbang, bahwa Hakim pemeriksa perkara telah memeriksa kelengkapan persyaratan administratif, sebagaimana diatur dalam ketentuan Pasal 5 ayat 1 Perma Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin, sehingga secara administratif dapat diterima dan dilanjutkan untuk pemeriksaan pokok perkara;

Menimbang, bahwa Hakim pemeriksa perkara telah berusaha menasehati Para Pemohon, anak Para Pemohon, calon suami anak Para Pemohon, orang tua kandung calon suami anak Para Pemohon sebagaimana diamanatkan oleh Pasal 12 (2) Peraturan Mahkamah Agung Nomor 5 tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin, dan mengingat segala resiko yang timbul akibat Dispensasi Kawin namun tidak berhasil dan Para Pemohon tetap pada permohonannya;

Menimbang, bahwa permohonan Para Pemohon tersebut sesuai dengan ketentuan Pasal 7 ayat (2) Undang-Undang Nomor 1 Tahun 1974 yang diperbaharui dengan Pasal 7 ayat (1) Undang-Undang Nomor 16 Tahun 2019 dan Peraturan Mahkamah Agung Republik Indonesia Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin sehingga dapat diterima untuk diperiksa lebih lanjut dan diberikan penetapannya;

Menimbang, bahwa Hakim pemeriksa perkara telah mendengarkan pihak-pihak meliputi, ayah dan ibu kandung (dalam hal ini Para Pemohon),

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calon suami, dan orangtuanya, yang dihadirkan oleh Para Pemohon di muka sidang, maka sesuai ketentuan Pasal 10 dan 13 Perma Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin, pemeriksaan perkara ini dapat dilanjutkan;

Menimbang, bahwa terhadap keterangan Para Pemohon, anak Para Pemohon/calon istri, calon suami anak Para Pemohon dan orangtuanya, Hakim pemeriksa perkara dapat menemukan fakta sebagai berikut;

- Bahwa Para Pemohon akan menikahkan anaknya yang bernama XXXXXXXXXXXXX dengan calon suami yang bernama XXXXXXXXXXXXX;
- Rencana Pernikahan anak Para Pemohon dengan calon suaminya tidak adanya paksaan psikis, fisik, seksual atau ekonomi terhadap anak dan atau keluarga untuk kawin atau mengawinkan anak;
- Bahwa anak Para Pemohon baru berusia 16 tahun 1 bulan dan calon suaminya berusia 20 tahun;
- Bahwa anak Para Pemohon sudah lulus di Sekolah Tingkat pertama dan calon suaminya sudah lulus di Sekolah Tingkat Pertama;
- Bahwa Para Pemohon berusaha keras menasihati dan memberikan pandangan kepada anaknya tentang rencana pernikahannya namun anak Para Pemohon tetap bersikeras untuk segera menikah dengan calon suaminya;
- Bahwa anak Para Pemohon benar-benar sudah siap untuk menikah dengan calon suaminya dan siap menjadi istri yang baik;
- Bahwa anak Para Pemohon dan calon suaminya sudah saling kenal, saling mencintai sejak tahun 2020 dan hubungan keduanya sudah dikaruniai satu orang anak dan sangat menghawatirkan kalau kembali melakukan hubungan badan;
- Bahwa anak Para Pemohon dengan calon suami adalah orang lain serta tidak ada larangan untuk kawin kecuali terkait umurnya yang belum mencapai 19 tahun, saat ini kondisinya sehat;
- Bahwa Para Pemohon dan orang tua calon suami anak Para Pemohon siap dan bertanggungjawab untuk membimbing dan membantu terkait den

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gan masalah ekonomi, sosial, kesehatan anak Para Pemohon dan calon suami anak Para Pemohon;

Menimbang, bahwa terkait hal-hal yang telah didalilkan oleh Para Pemohon, berdasarkan Pasal 163 HIR jo. Pasal 1685 KUH Perdata, Para Pemohon berkewajiban untuk membuktikan hal tersebut;

Menimbang, bahwa untuk membuktikan dalil-dalil permohonannya, Para Pemohon telah mengajukan alat bukti surat serta 2 orang saksi;

Menimbang, bahwa dalam memperkuat maksud permohonannya, Para Pemohon telah mengajukan bukti-bukti surat yang bertanda P.1 s/d P.13, hal ini sesuai dengan ketentuan dalam Pasal 165 dan 167 HIR dan 1867-1894 KUH-Perdata;

Menimbang, bahwa bukti-bukti diberi tanda P.1 s/d. P.13, sesuai dengan aslinya, bermeterai cukup dan telah *dinazegelen*, sehingga bukti-bukti tersebut dapat diterima sebagai alat bukti berdasarkan Pasal 165 HIR jo. Pasal 1868 KUH-Perdata jo. Undang-Undang Nomor 10 Tahun 2020 tentang Bea Meterai;

Menimbang, bahwa perkara ini termasuk bidang perkawinan, dan berdasarkan Bukti P.1, P.2, P.5 dan P.6 (Fotokopi Kartu Tanda Penduduk Para Pemohon, anak Para Pemohon dan calon suami anak Para Pemohon) bukti tersebut telah memenuhi syarat formil dan materil suatu akta otentik, dan telah memenuhi batas minimal pembuktian, sehingga bukti P.1, P.2, P.5 dan P.6 tersebut bersifat sempurna dan memiliki kekuatan pembuktian yang mengikat, sehingga terbukti Para Pemohon, anak Para Pemohon serta calon suami anak Para Pemohon berdomisili di wilayah hukum Pengadilan Agama Sleman, ketentuan Pasal 49 ayat (1) huruf a Undang-Undang Nomor 7 Tahun 1989 sebagaimana telah diubah dengan Undang-Undang Nomor 3 Tahun 2006 dan perubahan kedua dengan Undang-Undang Nomor 50 Tahun 2009, Pengadilan Agama Sleman berwenang untuk memeriksa, memutus, dan menyelesaikan perkara ini;

Menimbang, berdasarkan bahwa bukti P.3 (Fotokopi Kutipan Akta Nikah Para Pemohon) yang merupakan akta otentik dan telah bermeterai cukup dan cocok dengan aslinya, isi bukti tersebut menerangkan hubungan hukum antara Para Pemohon sebagai pasangan suami isteri sah, bukti tersebut telah

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memenuhi syarat formal dan materiil, serta mempunyai kekuatan pembuktian yang sempurna dan mengikat

Menimbang, berdasarkan bahwa bukti P.4 (Fotokopi Kartu keluarga) yang merupakan akta otentik dan telah bermeterai cukup dan cocok dengan aslinya, isi bukti tersebut menerangkan kedudukan Pemohon I sebagai kepala rumah tangga dan Pemohon II sebagai isteri serta Cahya Rindang Sari sebagai anak, untuk itu harus dinyatakan bahwa Para Pemohon dengan Cahya Rindang Sari memiliki hubungan keluarga;

Menimbang, bahwa bukti P.7 (Fotokopi Kutipan Akte kelahiran) atas nama Cahya Rindang Sari yang merupakan akta otentik dan telah bermeterai cukup dan cocok dengan aslinya, isi bukti tersebut membuktikan anak tersebut adalah anak kandung dari Para Pemohon lahir pada tanggal 13-08-2007, bukti tersebut telah memenuhi syarat formal dan materiil, serta mempunyai kekuatan pembuktian yang sempurna dan mengikat berdasarkan Pasal 6 ayat (1) Peraturan Mahkamah Agung Republik Indonesia Nomor 5 Tahun 2016 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin, Para Pemohon yang mempunyai hubungan hukum sebagai orang tua dan anak kandung berkualitas sebagai pihak dalam perkara ini;

Menimbang, bahwa bukti P.8 (Fotokopi Kutipan Akte kelahiran atas nama Saiful Anwar /calon mempelai laki-laki) yang merupakan akta otentik dan telah bermeterai cukup dan cocok dengan aslinya, isi bukti tersebut membuktikan anak bernama Dedek Prasetya Eka Putra /calon mempelai laki-laki lahir 26 Februari 2003 saat ini berumur 20 tahun sehingga telah cukup baginya untuk melakukan perkawinan dan memenuhi batas usia minimal untuk menikah;

Menimbang, bahwa bukti P.9 menerangkan anak Para Pemohon telah Lulus dari Sekolah Menengah Pertama pada tahun 2022 dan P.10 menerangkan Saiful Anwar /calon suaminya telah Lulus dari Sekolah Menengah Pertama pada tahun 2020. Atas bukti P.9 dan P.10 dikeluarkan oleh pejabat yang berwenang untuk itu oleh karenanya telah memenuhi syarat formil dan materiil suatu akta autentik serta batas minimal pembuktian suatu akta autentik, sehingga bukti tersebut bersifat sempurna dan memiliki

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kekuatan pembuktian yang mengikat. Oleh karena itu harus dinyatakan terbukti pendidikan terakhir anak Para Pemohon yang diajukan permohonan dispensasi nikahnya adalah lulus dari Sekolah Menengah Pertama sehingga terbukti bahwa anak Para Pemohon telah menyelesaikan kewajiban belajar di Sekolah Tingkat Pertama, sedangkan calon suami terbukti telah lulus Sekolah Menengah Pertama;

Menimbang, bahwa berdasarkan bukti P.11 kehendak menikah anak Para Pemohon telah dilaporkan ke Kantor Urusan Agama Kapanewon Gamping, Kabupaten Sleman namun mendapatkan penolakan karena kurang umur untuk menikah, kemudian Para pemohon mengajukan permohonan Dispensasi Nikah membuktikan bahwa Para pemohon telah melalui proses yang benar atas kehendak menikahkan anaknya tersebut;

Menimbang, bahwa bukti P.12 dan P.13 berupa Surat Keterangan kesehatan anak Para Pemohon dan Calon suaminya membuktikan bahwa anak Para Pemohon dan calon suaminya telah melakukan pemeriksaan kesehatan dan pemeriksaan terkait psikologis, bukti tersebut dibuat oleh pejabat yang berwenang dan merupakan bukti otentik secara formil dan materil serta telah terpenuhi batas minimal pembuktian, serta mempunyai relevansi terhadap pokok perkara sebagaimana diatur dalam Pasal 15 huruf d Perma Nomor 5 Tahun 2019 tentang Pedoman Mengadili Perkara Dispensasi Kawin, maka terbukti calon pasangan suami istri telah melakukan tes kesehatan dan dinyatakan sehat jasmani dan rohani;

Menimbang, bahwa untuk memperkuat dalil permohonannya tersebut, Para Pemohon mengajukan alat bukti saksi, hal ini telah sesuai dengan ketentuan Pasal 168 HIR;

Menimbang, bahwa sebelum memberikan keterangan, saksi-saksi Para Pemohon telah bersumpah menurut tata cara agamanya, hal ini telah sesuai dengan ketentuan Pasal 147 HIR;

Menimbang, bahwa 2 (dua) orang saksi yang dihadirkan oleh Para Pemohon tidak ada halangan bertindak sebagai saksi, hal tersebut telah sesuai dengan ketentuan Pasal 145 HIR dan masing masing saksi tersebut telah diperiksa satu persatu oleh Hakim, sesuai dengan ketentuan Pasal 144 HIR,

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sehingga memenuhi syarat formil maupun materiil suatu kesaksian. Oleh karena itu keterangan saksi-saksi tersebut dapat diterima sebagai alat bukti yang mempunyai nilai kekuatan pembuktian;

Menimbang, bahwa Para Pemohon telah menghadirkan dua orang saksi yang menerangkan kenal dengan Para Pemohon dan anak Para Pemohon dan benar anak Para Pemohon telah menjalani hubungan cinta dengan XXXXXXXXXXXXXXX yang sudah sangat dekat, saat ini anak Para Pemohon sudah lulus Sekolah Tingkat Pertama dan calon mempelai juga sudah lulus Sekolah Menengah Pertama dan rencana perkawinan ini tidak ada paksaan dari pihak manapun, kedua calon mempelai tidak ada halangan untuk menikah kecuaki karena syarat umur yang kurang dibawah 19 tahun bagi anak Para Pemohon;

Menimbang, bahwa berdasarkan keterangan Para Pemohon, anak Para Pemohon, calon suami anak Para Pemohon, orang tua calon suami anak Para Pemohon serta 2 (dua) orang saksi, dapat ditemukan fakta sebagai berikut, bahwa:

- Bahwa Para pemohon hendak menikahkan anaknya bernama XXXXXXXXXXXXXXX dengan XXXXXXXXXXXXXXX, namun usia anak Para Pemohon belum mencapai batas usia maksimal perkawinan;
- Bahwa XXXXXXXXXXXXXXX dengan XXXXXXXXXXXXXXX, tidak adan paksaan psikis, fisik, seksual atau ekonomi terhadap anak dan atau keluarga untuk kawin atau mengawinkan anak;
- Bahwa XXXXXXXXXXXXXXX baru berusia 16 tahun 1 bulan, dan XXXXXXXXXXXXXXX berusia 20 tahun;
- Bahwa Para Pemohon dan calon besan berusaha keras menasihati dan memberikan pandangan kepada anak Para Pemohon dan calon suaminya supaya menunda rencana pernikahannya hingga umur yang diperbolehkan menikah namun anak Para Pemohon dan calon suaminya tetap bersikeras untuk segera menikah;
- Bahwa XXXXXXXXXXXXXXX dengan XXXXXXXXXXXXXXX, benar-benar sudah siap untuk menikah dan menjadi pasangan suami istri yang baik;

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- Bahwa Anak Para Pemohon dan calon suaminya sudah saling kenal, saling mencintai dan sudah sangat erat hubungan keduanya dan sudah mempunyai satu orang anak dari hubungan mereka berdua serta sudah mengawatirkan;
- Bahwa anak Para Pemohon dengan calon suami adalah orang lain serta tidak ada larangan untuk kawin kecuali terkait umurnya yang belum mencapai 19 tahun;
- Bahwa Para Pemohon dan orang tua calon suami anak Para Pemohon, sudah sepakat untuk segera menikahkan keduanya, siap dan bertanggungjawab untuk membimbing dan membantu terkait dengan masalah ekonomi, sosial, kesehatan anak Para Pemohon dan calon isteri anak Para Pemohon;

Menimbang, bahwa berdasarkan fakta-fakta tersebut di atas terbukti bahwa calon mempelai laki-laki dan calon mempelai wanita tidak ada larangan menurut agama Islam maupun Undang-Undang dan peraturan yang berlaku serta mampu dan sanggup untuk melangsungkan pernikahan;

Menimbang, bahwa anak Para Pemohon, masih berstatus sebagai "anak" menurut Pasal 1 Ayat (1) Undang-Undang Perlindungan Anak. Pasal 26 Ayat (c) Undang-Undang Perlindungan Anak menentukan bahwa orang tua berkewajiban dan bertanggungjawab untuk "mencegah terjadinya perkawinan pada usia anak-anak". Apakah Para Pemohon dan calon besan sebagai orang tua telah melakukan kewajibannya memberikan perlindungan kepada anaknya dengan mencegah terjadinya perkawinan pada usia anak-anak? Dalam hal ini keterangan Para Pemohon bahwa mereka telah memberikan nasehat kepada anaknya tersebut untuk tidak melakukan perkawinan pada usia muda, tetapi anak Para Pemohon tetap memaksakan kehendaknya untuk segera menikah dengan berdalih bahwa khawatir akan terjadi hal-hal yang dilarang oleh agama apabila tidak segera menikah;

Menimbang, bahwa sehubungan dengan ketentuan Pasal 10, 16 huruf (b) dan Pasal 24 Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak yang telah diubah dengan Undang-Undang Nomor 35 Tahun 2014, bahwa setiap anak berhak menyatakan dan didengar pendapatnya, berhak

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untuk memperoleh kebebasan sesuai dengan hukum, serta Negara dan Pemerintah harus menjamin anak untuk menggunakan haknya itu, dalam hal ini Hakim Pemeriksa perkara telah mendengar keterangan anak Para Pemohon dan calon suaminya dalam persidangan yang menerangkan akan menikah karena telah saling mencintai, hubungan keduanya sudah sangat dekat dan sudah melakukan hubungan layaknya suami istri, sudah anak satu sehingga sangat menghawatirkan terjadinya hubungan yang terlarang kembali, dan keduanya merasa telah dewasa baik secara fisik dan mental serta mampu untuk membina rumah tangga dengan calon suaminya itu dalam perkawinan yang sah. Bahwa kehendak untuk menikah tersebut adalah atas kehendak sendiri tidak dipaksa oleh orang tuanya atau pihak lain, bahkan tetap ingin segera menikah;

Menimbang bahwa kekhawatiran Para Pemohon atas keselamatan anaknya dan kemungkinan akan terjadi hal-hal yang tidak diinginkan serta timbulnya kemadharatan yang lebih besar hal-hal yang dilarang Agama dan menjaga kehormatan diri dan keluarganya dari terjatuh pada kerusakan seksual dapat dipandang beralasan sesuai dengan hadis Nabi yang diriwayatkan oleh Imam al-Bukhari dalam kitab Mughnii Muhtaj III : 125, yang berbunyi :

يا معشر الشباب من استطاع منكم الباءة فليتزوج فإنه أغض للنصر وأحصن للفرج ومن لم يستطع فعليه بالصوم فإنه له وجاء

"wahai Para pemuda, siapa di antara kalian memiliki kesanggupan menikah, hendaklah menikah, karena menikah itu sangat mampu menundukkan pandangan dan menjaga kemaluan, dan bagi siapa yang belum sanggup, hendaklah berpuasa, karena puasa itu merupakan perisai baginya"

Menimbang, bahwa anak Para Pemohon belum cukup umur untuk melangsungkan perkawinan dan telah dijelaskan oleh Hakim risiko dan dampak yang bisa terjadi akibat pernikahan dini yaitu tentang kemungkinan berhentinya pendidikan bagi anak, belum siapnya organ reproduksi anak, dan dampak ekonomi, sosial serta psikologis bagi anak dan potensi perselisihan dan kekerasan dalam rumah tangga;

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Dikatakan

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Menimbang, bahwa anak Para Pemohon diatas belum cukup umur untuk melakukan pernikahan berdasarkan ketentuan pasal 7 ayat (1) dan (2) Undang-undang Nomor 16 Tahun 2019 Tentang Perubahan atas Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan yang selengkapnya berbunyi sebagai berikut:

Pasal 7

1. *Perkawinan hanya diizinkan apabila pria dan wanita sudah mencapai umur 19 (sembilan belas) tahun.*
2. *Dalam hal terjadi penyimpangan terhadap ketentuan umur sebagaimana dimaksud pada ayat (1), orang tua pihak pria dan/atau orang tua pihak wanita dapat meminta dispensasi kepada Pengadilan dengan alasan sangat mendesak disertai bukti-bukti pendukung yang cukup.*

Menimbang, bahwa berdasarkan ketentuan tersebut di atas seseorang yang hendak melangsungkan perkawinan sedangkan ia belum cukup umur (19 tahun) dapat diberikan dispensasi oleh Pengadilan;

Menimbang, bahwa hukum telah menentukan usia perkawinan baik untuk pria maupun wanita adalah 19 tahun, usia tersebut semata-mata untuk menjaga kesehatan suami isteri dan untuk kemaslahatan keluarga sehingga apabila kedua calon mempelai belum mencapai cukup umur sebagaimana dimaksudkan diatas hukum dapat memberikan dispensasi nikah sepanjang kedua calon mempelai telah dipandang mempunyai kemampuan, kesehatan, kesanggupan serta kesiapan lahir dan batin untuk melangsungkan pernikahan, oleh karena itu Hakim akan mempertimbangkan hal-hal sebagai berikut:

- Tentang alasan sosial dan ekonomi;
- Tentang alasan kesehatan anak;
- Tentang alasan pendidikan anak;
- Tentang kepentingan terbaik bagi anak;

Menimbang, bahwa mengenai alasan ekonomi, bahwa calon suami anak Para Pemohon sudah bekerja. Disamping itu telah dijanjikan oleh Allah SWT. dalam al-Qur'an surat an-Nur ayat 32, orang yang sudah menemukan

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pasanganya dan layak untuk menikah agar segera dinikahkan, jika mereka tidak mempunyai penghasilan atau miskin maka Allah SWT akan memberi kecukupan sebagaimana firman-Nya yang berbunyi:

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

Artinya: *Dan kawinkanlah orang-orang sendirian diantara kamu, dan orang-orang yang layak (berkawin) dari hamba hamba sahayamu yang lelaki dan hamba-hamba sahayamu yang perempuan. Jika mereka miskin Allah akan memampukan mereka dengan kurnianya. Dan Allah Maha Luas pemberiannya lagi Maha Mengetahui. (Q.S : An Nur : 32).*

Menimbang, bahwa tentang alasan kesehatan berdasarkan bukti P.12 hingga P.13 membuktikan calon mempelai adalah sehat jasmani dan rohani serta kedua calon mempelai di depan persidangan telah diminta keterangan dan menyatakan telah siap lahir batin, untuk menikah. Mereka juga menyatakan mampu dan sangat berkeinginan dan sanggup untuk melanjutkan hubungannya dalam jenjang pernikahan serta membina rumah tangga yang bahagia, anak Para Pemohon dengan calon pasangannya sudah lama saling mengenal secara intensif dan mereka saling mencintai dan menyayangi, dengan demikian anak Para Pemohon telah mengetahui atas rencana pernikahan ini bahkan mereka sendiri yang menghendaki pernikahan ini, Hakim menilai anak Para Pemohon adalah sehat baik secara fisik maupun mental, telah matang, pantas dan layak serta mampu untuk untuk menikah dan menjalani hidup berumah tangga;

Menimbang, bahwa adapun mengenai frasa *'alasan sangat mendesak'* yang disebut dalam Pasal 7 Ayat (2) Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, selain tidak memiliki spesifikasi yang rinci kecuali penjelasan yang menyatakan "keadaan tidak ada pilihan lain dan sangat terpaksa harus dilangsungkan perkawinan", sesungguhnya tidak boleh dimaknai secara

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kontradiktif dengan prinsip dasar, falsafah, dan Paradigma fikih (hukum Islam) yang hidup dalam pengaturan usia kawin itu sendiri, sebagaimana telah dipertimbangkan di atas;

Menimbang, bahwa mengenai alasan kepentingan terbaik untuk anak, rencana pernikahan ini atas kehendak kedua anak (calon pengantin) tanpa adanya paksaan dari orang lain, keduanya telah siap secara fisik dan mental untuk membangun rumah tangga dan calon suami telah mempunyai penghasilan tetap dan bertekad untuk bertanggungjawab terhadap istri dan anaknya kelak;

Menimbang, bahwa Hakim berpendapat, ketentuan usia kawin yang diatur dalam Undang-Undang Perkawinan, merupakan upaya luhur Negara dalam rangka menjamin kualitas perkawinan sekaligus kualitas generasi bangsa yang akan datang. Sudah seyogianya, dalam keadaan yang normal, warga Negara hanya diperkenankan melakukan perkawinan jika telah mencapai usia kawin yang ditentukan undang-undang Negara. Sementara bagi warga Negara yang terlanjur dan/atau terpaksa harus menyimpangi ketentuan usia kawin, harus terlebih dahulu mendapat penilaian Negara dalam hal ini pengadilan yang berwenang, lewat jalur permohonan dispensasi kawin, sebagaimana yang sedang ditempuh oleh Para Pemohon dalam perkara a quo. Maka iktikad baik Para Pemohon dengan mengindahkan aturan Negara sedemikian ini, telah menunjukkan adanya kesadaran dan ketaatan hukum yang sudah seharusnya mendapatkan penghargaan pula dari Negara dengan cara memberikan jalan keluar yang proporsional lewat produk pengadilan yang solutif bagi Para Pemohon;

Menimbang, bahwa dengan tetap mengedepankan substansi pokok Perma Nomor 5 Tahun 2019, dan ketentuan perundang-undangan mengenai batas usia kawin dan perlindungan anak, serta menimbang keadaan psikologis anak Para Pemohon yang telah dikaruniai anak diluar nikah dan ia menyadari akan perbuatannya itu sebagai kesalahan dan ingin bertaubat bersama pasangannya itu, dan mengungkapkan kehendaknya yang mandiri untuk menikah, bukan karena paksaan atau tekanan siapapun, di sisi lain ia telah dinyatakan sehat dan memenuhi syarat kesehatan untuk itu, maka Pengadilan

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Diketahui

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berpendapat bahwa permohonan Para Pemohon agar anak Para Pemohon yang bernama XXXXXXXXXXXX tersebut diberi dispensasi menikah dengan seorang laki-laki bernama XXXXXXXXXXXX, telah menunjukkan adanya alasan yang cukup, yang dikuatkan pula oleh kesiapan fisik, mental, latar belakang pendidikan, dan ekonomi, serta dukungan psikis-sosial dari keluarga dan masyarakat. Maka mengingat Pasal 28B Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, bahwa Negara menjamin hak setiap orang untuk membentuk keluarga dan melanjutkan keturunan melalui perkawinan yang sah, sementara kehendak pernikahan anak Para Pemohon tersebut tidak ternyata mengandung halangan syar'i yang fundamental;

Menimbang, bahwa berdasarkan pertimbangan-pertimbangan tersebut diatas, ternyata Para Pemohon berhasil membuktikan seluruh dalil-dalil permohonannya, dengan demikian permohonan Para Pemohon sebagaimana Petitem Surat Permohonan angka 2 dapat dikabulkan, dengan diktum sebagaimana dalam amar penetapan ini;

Menimbang, bahwa karena perkara *a quo* masuk bidang perkawinan, maka berdasarkan Pasal 89 ayat (1) Undang-Undang Nomor 7 Tahun 1989 sebagaimana telah diubah dengan Undang-Undang Nomor 3 Tahun 2006 dan perubahan kedua dengan Undang-Undang Nomor 50 Tahun 2009, biaya perkara harus dibebankan kepada Para Pemohon;

Mengingat semua pasal dalam peraturan perundang-undangan dan hukum islam yang berkaitan dengan perkara ini;

MENETAPKAN

1. Mengabulkan permohonan Para Pemohon;
2. Menetapkan, memberikan dispensasi kepada anak Para Pemohon bernama (XXXXXXXXXXXX) untuk dinikahkan dengan calon suaminya bernama (XXXXXXXXXXXX) di Kantor Urusan Agama Kapanewon Sleman, Kabupaten Sleman;
3. Membebankan kepada Para Pemohon untuk membayar biaya perkara sejumlah Rp345.000,00 (tiga ratus empat puluh lima ribu rupiah);

Demikianlah ditetapkan dan diucapkan dalam sidang terbuka untuk umum pada hari Jumat, tanggal 29 September 2023 Masehi bertepatan

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Dicetak oleh

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dengan tanggal 13 Rabi'ul Awal 1445 Hijriah oleh Drs. H. Asri, M.H., sebagai Hakim Tunggal yang ditunjuk oleh Ketua Pengadilan Agama Sleman berdasarkan PERMA Nomor 5 tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin, didampingi oleh H. Suranto, SH., sebagai Panitera Pengganti serta dihadiri Para Pemohon;

Panitera Pengganti

Hakim,

H. Suranto, SH.

Drs. H. Asri, M.H.

Rincian Biaya Perkara

| | | | |
|---|-------------------------------|------|------------|
| 1 | PNBP | | |
| | a. Pendaftaran | : Rp | 30.000,00 |
| | b. Panggilan Pertama Pemohon | : Rp | 10.000,00 |
| | c. Panggilan Pertama Termohon | : Rp | 10.000,00 |
| | d. Redaksi | : Rp | 10.000,00 |
| 2 | Proses | : Rp | 75.000,00 |
| 3 | Panggilan | : Rp | 200.000,00 |
| 4 | Materai | : Rp | 10.000,00 |
| | Jumlah | : Rp | 345.000,00 |

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2. Reseach Permission Letter

Picture 5.2 Research Permission Letter

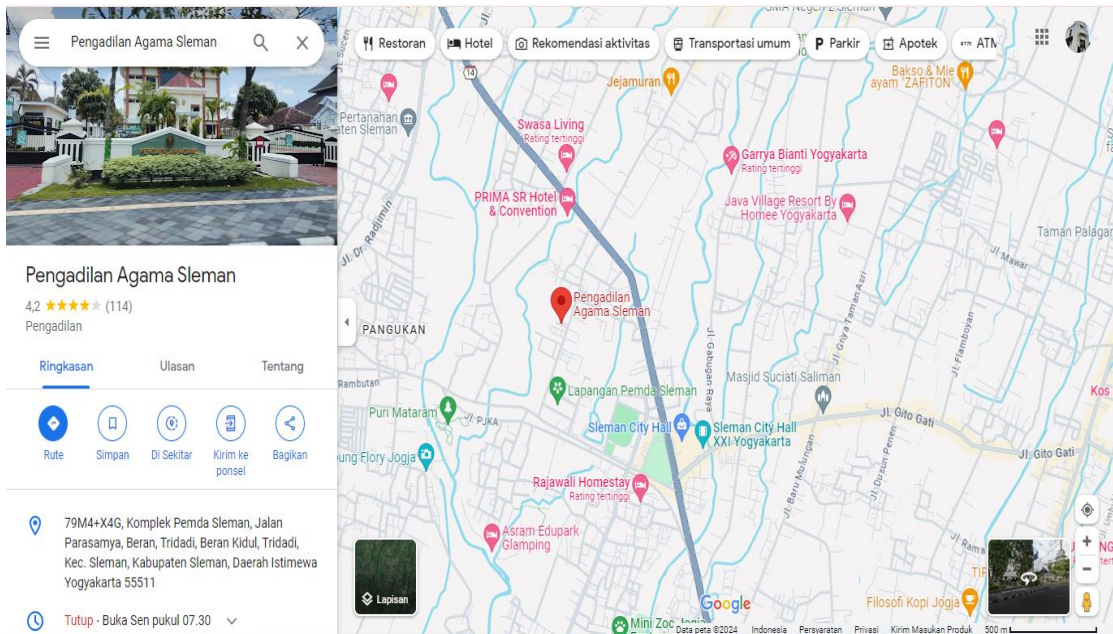


3. Interview Documentation



Picture 5.3 Interview with Bapak H. Asri, M.H, Rabu, 24th January 2024

4. Maps of Religious Court 1A Sleman



Picture 5.4 Maps of Religious Court 1A Sleman

5. Interview Questions

1. What do you think about the minimum age of marriage of 19 years old at the Sleman Religious Court?
2. What is the cause of most applications for dispensation of marriage at the Sleman Religious Court?
3. Is there anything in particular that a judge considers to grant dispensation of marriage based on Perma no 5 of 2019?
4. What is your view on the application of Perma no.5 of 2019?
5. What is the basis for Maqashid sharia in considering applications for dispensation of marriage?

CURRICULUM VITAE

- Name : Regita Hikmatul Fadhilah
- Place and Date of Birth : Cirebon, 18th of August 2001
- Gender : Female
- Address : Desa Bobos Blok 4 RT 004/008 Kec. Dukupuntang Kab. Cirebon
45652
- Email : gita.rehifa18@gmail.com
- Educational Background : 1. TKQ Al-Muawwanah Jakarta Barat (2006-2007)
2. MI Al-Ishlah Bobos (2007-2013)
3. SMPIT Pesantren Al-Hikmah Cirebon (2013-2016)
4. MAPK Al-Hikmah 2 Brebes (2016-2020)
5. Universitas Islam Indonesia (2020-2024)
- Organizational History : UII Ayo Mengajar (2021-2022)
- Internship/work experience : 1. PA Sleman (Legal Practice) (2023)
2. KUA Ngaglik (Internship) (2023)
3. Part Time Student of UII Library Directorate (2024)