



Juridical analysis of religious court decisions regarding the granting of marriage dispensation

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ABSTRACT

This research is a Juridical Analysis Study of the Religious Court's Decision regarding the granting of Marriage Dispensation (Review of the Decision of the Sungguminasa Religious Court Decision No. 13/Pdt.P/2015/PA.Sgm. concerning the Granting of Marriage Dispensation) the main issue is how the causes of the parties applying for marriage dispensation at the Sungguminasa Religious Court. This research was conducted to find out the causes of the parties applying for dispensation of marriage, the view of Islamic law on underage marriages, and the juridical analysis of the decision of the Religious Court regarding granting dispensation for marriage. This study uses field research methods (field research), also called qualitative research, starting with data collection through interviews and documentation. The data obtained were collected and analyzed qualitatively. The results of the research show that based on Marriage Law Number 16 of 2019, marriage is only permitted if a man and a woman have reached the age of 19. However, when underage marriages are forced to be carried out due to pressure and benefit factors, the court provides conditions that the complainant must meet to obtain a dispensation from the panel of judges. The conditions that must be met are formal requirements starting from the requirements administration, as stipulated in the administrative requirements for applying for a marriage dispensation, up to the conditions for applying for said dispensation.

Keywords: Marriage dispensation; Sungguminasa religious court

1. INTRODUCTION

The development of Islamic law (Islamic marriage law) in several countries began in the nineteenth century, when Islamic law began to come into contact with Western/European law, when the process of modernizing Islamic law took place through

taqnin (compilation of Islamic law through a statutory system). Enforced in Islamic law so that clerical ikhtilaf in law does not occur in the trial process in court because the statutory system can eliminate ikhtilaf (Hukm al-Hakim Yarfa'u al-Khilaf), and the existence of legislation in Islamic law will be more provide legal certainty and minimize disparities (differences) in decisions.¹

Within the scope of the marriage of Allah SWT. has arranged and determined the pair of each of every human being. as the word of Allah SWT. in QS. ar-Rum (30): 21.

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً
إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ ﴿٣١﴾

*"And one of His signs is that He created for you spouses from among yourselves so that you may find comfort in them. And He has placed between you compassion and mercy. Indeed, these are signs for people who reflect."*²

Islamic marriage law in the doctrine of the clergy (*Aqwal al-ulama*), as an interpretation of the main sources of the Al-Qur'an and As-Sunnah (Al-hadith), allows for many opinions (*Taghayuru'al-ahkam bi taghayuri al-azma wa al akwal wa al ahwal*/changes in law caused by changing times, opinions and social conditions). So naturally, in a country, there are differences in the application of the law because sociological and anthropological conditions influence it, and the school of *fiqh* used in that country is different from other countries.³

Islamic marriage law applies in a country (becomes positive law), then Islamic law becomes a source of material (substance) minutes of proceedings in court or becomes applied law in courts that is binding and forces judges to apply it in the judicial process, as well as being a guideline for making officials (PPN) and is binding and unifying for the Indonesian Muslim community.

Indonesia's positive law regulates marriage as contained in the Marriage Law, Law no. 1 of 1974 concerning marriage in Article 1 defines marriage as a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on Belief in the One Almighty God.⁴

Meanwhile, in the Compilation of Islamic Law, the notion of marriage, which in this case is used in the context of the basics of marriage, is formulated slightly differently from what was agreed in Law No. 1 of 1974. Article 2 of the compilation states that marriage,

¹Mardani, *Hukum Perkawinaan Islam* (Cet. I ; Yogyakarta: Graha Ilmu, 2011) Dikutip di sampul buku.

²Kementerian Agama RI, *Al-Qur'an dan Terjemahnya* (Surabaya: Halim, 2013), h. 406.

³Mardani, *Hukum Perkawinaan Islam*, Dikutip di sampul buku.

⁴Abd. Shomad, *Hukum Islam* (Cet. II; Jakarta: Kencana, 2012) h. 206.

according to Islamic law, is a very strong contract or *mittsaaqa ghooliidhan* to obey Allah's commands and carry them out in worship.⁵

Pruning the freedom of children's rights in obtaining the right to live as teenagers who have the potential to grow, develop, and have the potential to be positive according to what is outlined by Religion. If the child is still young, it can be said that violence and discrimination against children are explained in Article 81, paragraph 2 of Law No. 23 of 2002, where it is clear that parents are obliged to prevent marriage at a young age.

For prospective brides who have not reached the age of 19, they must obtain permission from their parents as stipulated in Article 6, paragraphs 2, 3, 4, and 5 of Law No. 1 of 1974. In this case, the compilation of Islamic law seems to provide the same rules as the marriage law.⁶

In the people of South Sulawesi (Sulsel), especially in Gowa Regency, marriage underage is a common thing, while in the law on marriage, as Law Number 16 of 2019, Marriage is only permitted if a man and a woman have reached the age of 19.

2. METHODS

The research entitled Juridical Analysis of the Purusan of the Religious Courts regarding the Granting of Marriage Dispensation uses a type of field research called qualitative research to clarify the compatibility between theory and facts in the field. Also, obtain a systematic, factual, and accurate description of the facts. This qualitative research is research whose findings are not obtained from statistical procedures or other calculation forms. This field of qualitative research focuses on the data collection results from the specified informants.⁷

The research that will be carried out is by using primary data regarding Juridical Analysis of the Religious Court's Decision regarding the granting of Marriage Dispensation (Review of the Decision of the Sungguminasa Religious Court's Decision Number 13/Pdt.P/2015/PA.Sgm. concerning the Granting of Marriage Dispensation) at the Sungguminasa Religious Court.

In this case, the researcher obtained the data by way of direct interviews as well as a review of the literature and documents related to the problem under study. Research intends to understand the phenomenon experienced by research subjects, such as behavior, perceptions, motivation, etc. In this case, the researcher interacts directly with the respondent to capture and reflect carefully on what the respondent is saying and doing.⁸

⁵Abdurahman, *Kompilasi Hukum Islam* (Cet. IV; Jakarta: Akapress, 2010) h. 67.

⁶Mardani, *Hukum Perkawinan Islam* (Cet. I; Yogyakarta: Graha Ilmu, 2011) h. 99.

⁷Lexy J. Moleong, *Metodologi Penelitian Kualitatif* (Cet. XIV; Bandung: PT Rosda Karya, 2005), h. 26.

⁸Suharsimi Arikunto, *Prosedur Penelitian Suatu Pendekatan Praktek* (Cet. I; Jakarta: PT. Asdi Mahasatya, 2006), h. 14-15.

The nature and approach of this research are descriptive-analytic, which describes in full how the analysis approach used in this research is temporary. The data sources used include primary data and secondary data. Primary data is data obtained through direct research in the field to obtain data related to the problem under study. The researcher obtained data by listening, following the trial process, and conducting structured interviews with judges, using a list of questions that had been prepared beforehand, then recording the results of the interviews and reviewing the data on cases of underage marriages. While secondary data include:

- a. Primary legal material, Marriage Law Law no. 1 year 1974
- b. Secondary legal materials include research results, books on marriage, decisions on the outcome of underage marriages, laws, legal dictionaries, fiqh books, scientific articles, and others.

The data collection techniques used in this research include the following methods:

1. Study documents, namely searching for and studying documents related to the problem the author is researching.
2. Interview by conducting questions and answers orally, in writing, and in a structured way using a list of questions prepared in advance by several informants. In this case, the researcher interviewed judges at the Sungguminasa Religious Court and other respondents when necessary.
3. Observation, namely systematic observation, and recording of the symptoms that appear on the research object.⁹ This observation method was used to collect data on the Juridical Analysis of the Religious Court's Decision regarding the granting of Marriage Dispensation (Review of the Sungguminasa Religious Court Decision No. 13/Pdt.P/2015/PA.Sgm. concerning the Granting of Marriage Dispensation) at the Sungguminasa Religious Court.

Processing and analyzing data is carried out immediately after the researcher leaves the field because most of the concentration to analyze and interpret the data is poured on the stage after the field research.¹⁰ Several efforts are usually carried out in processing and analyzing data, including:

1. Editing or editing, namely checking the list of questions that data collectors have submitted. In re-examining the data obtained, things must be considered: completeness, readability of writing, clarity of meaning, suitability of meaning, and linkage with one another to determine whether the data is good enough and understandable and can be prepared for the following process.

⁹Hadari Nawawi, *Metode Penelitian Bidang Sosial* (Yogyakarta; Gajah Mada University Press, 1993), h. 100.

¹⁰Burhan Ashshofa, *Metode Penelitian Hukum* (Jakarta: Rineka Cipta, 2004), h. 66.

2. Classifying, namely classifying the data obtained so that it is easier to read the data according to needs. In this case, the researcher works to classify the data obtained based on the variables according to the researcher's wants.
3. Verifying, namely re-checking the data and information obtained from the field, so that its validity can be guaranteed. This step was carried out, among others, by submitting the interview results to the informant to ensure the correctness and suitability of the data or readjusting the materials used as references for analysis, such as legal materials in the form of an analysis of underage marriage laws and laws.
4. Analyzing data so the raw data can be more easily understood. In this analysis stage, the researcher tries to solve the problems contained in the problem formulation by connecting the data obtained from primary data, namely the results of interviews with respondents, and secondary data in the form of books, judge appointments, laws, and so on.
5. Concluding, namely concluding, previously processed data. In this last step, the researcher concludes a collection of data that has gone through the previous stages carefully, especially in answering the problems in the formulation.¹¹

The data analysis technique used in this research is to use the interview analysis method, which is qualitative, namely research whose object is not in the form of numbers. It also uses an inductive thinking method by analyzing data from facts or conditions in the field, in this case, at the Sungguminasa Religious Court. Conclusions are drawn based on the law, which is the basis.

3. RESULTS AND DISCUSSION

1. Views of Islamic Law on the Granting of Marriage Dispensation

The Panel of Judges, in granting dispensation to the complainant, gave consideration, that is, looking at the status of those who are not husband and wife but live like husband and wife, the panel of judges considered their benefit, granted the request, with the consideration that instead of continuing to commit adultery, it would be better to marry them off.

Vice versa, the panel of judges also sees the negative impact. If there are more negative impacts, the panel of judges does not immediately grant it because marriages that are still childish will impact offspring; mothers who give birth very young will be prone to the baby's condition. Usually, the unborn baby will be born prematurely.

From the results of interviews with the judges, it can be seen that the Juridical Analysis of the Religious Court's Decision regarding the Granting of Marriage

¹¹Cholid Narbuko dan Abu Achmadi, *Metodologi Penelitian* (Jakarta: PT. Bumi Aksara, 2007) h. 153.

Dispensation (Review of the Sungguminasa Religious Court's Decision Number 13/Pdt.P/2015/PA.Sgm. concerning the Granting of Marriage Dispensation) is as follows:

1. Clarify the application submitted
2. An application made by the procedure
3. Fulfillment of pillars and requirements for filing dispensation
4. Strong evidence in court
5. Common good
6. The principle of justice and legal expediency

Based on the interview results, it can be briefly concluded that the Juridical Analysis of the Religious Court's Decision regarding the Granting of Marriage Dispensation (Review of the Decision of the Sungguminasa Religious Court Decision Number 13/Pdt.P/2015/PA.Sgm. concerning the Granting of Marriage Dispensation) is when the application it is clear, the application submitted is by the procedure, the pillars and conditions for applying for dispensation are fulfilled, strong evidence, mutual benefit and consideration of the principle of legal expediency in determining the marriage dispensation.

2. The reasons for the parties applying for a marriage dispensation at the Sungguminasa Gowa Religious Court

Law No. 1 of 1974 concerning marriage adheres to the principle that prospective husbands and prospective wives must be mentally and physically mature to be able to enter into a marriage, with the intention that the goals of marriage can be adequately realized without ending in divorce and to produce excellent and healthy offspring.

Therefore, Marriage Law Number 16 of 2019 shows Marriage is only permitted if a man and a woman have reached the age of 19. In the case of keeping Article 7 paragraph (1) of the marriage law regarding the age limit for marriage, this article may request a dispensation from the court or other officials appointed by both the male and female parents.

However, in general, people still practice underage marriages, so in maintaining the principles of religious benefit and human benefit in general, the courts provide special (dispensation) for those who marry underage who meet the requirements for filing dispensation, which aims to maintain family status, especially offspring or children to be born.

Gowa Regency is an area where there are still acts or treatment of underage marriages, who secretly marry at the Office of Religious Affairs (KUA). Still, the Office of Religious Affairs (KUA) refuses due to insufficient age.

3. Juridical Analysis of the Decision of the Religious Court regarding the granting of Marriage Dispensation

The Marriage Law Number 16 of 2019 reads that marriage is only permitted if a man and a woman have reached the age of 19. In the case of deviations from Article 7 paragraph (1) regarding the age limit for marriage, this article may request dispensation from the court or other officials appointed by both the male and female parents.

Even though this law has been socialized to the public regarding the age limit for marriage, the people of Gowa still have underage marriages, who secretly marry at the Office of Religious Affairs (KUA) even though the KUA still rejects this because the age limit is not sufficient and directs them to submit dispensation to the court concerned, in analyzing the dispensation report that goes to the court.

In connection with the existence of a marriage dispensation case that was entered at the Sungguminasa Religious Court, the researcher wants to know how the juridical analysis of the Religious Court's decision regarding granting marriage dispensation is. The results of interviews that researchers conducted to find out a juridical analysis of the decision of the Religious Court regarding granting a marriage dispensation at the Sungguminasa Religious Court.

Interview with the Judge of the Sungguminasa Gowa Religious Court (Mr. Muhamad Anwar Umar, S.Ag.)

a. Analysis of underage marriages and granting of marriage dispensation

In this article, marriage can only be permitted if the man is 19 (nineteen) years old and the woman is 19 (nineteen) years old; therefore, the marriage can be carried out within that age limit, but on the other hand, there is an exception in Article 7 paragraph (2) dispensation applies in marriage if the man is not yet 19 (nineteen) years old and the woman is 19 (nineteen) years old.

The problem now is whether the court wants to grant a dispensation or not because judges are given freedom according to Article 5 of the Judicial Law No. 4, which was amended to become Law No. 8 of 2009, which reads: paragraph (1) "The court tries the prosecution without discriminating against people. Paragraph (2) courts help seekers of justice overcome all obstacles to reach simple and low-cost courts. In Article 16, the court may not refuse to examine try because the law does not exist or is unclear, but is obliged to examine and try him.

b. The judge's considerations in granting a marriage dispensation

The considerations made by the court in this case are the panel of judges, namely looking at the principle of legal certainty, the benefit of law, and legal justice. The theory of this principle is a theory that has been applied in the world of law. Legal certainty is a

guarantee that a law must be implemented in a good and proper manner. Certainty is essentially the main goal of the law.

An example of legal certainty is a thief's sentence of 5 years, meaning that a thief cannot be punished above or below 5 years. Likewise, with the dispensation, people who marry must be 19 (nineteen) years old for men and 19 (nineteen) years for women. This is a legal certainty. The law provides certainty that when there is an underage marriage, a dispensation must be given by the court or other appointed official.

When someone submits a dispensation, it must first be understood what the problem is so that someone applies for a dispensation. Besides looking at the age limit for marriage, the court also looks at the Child Protection Law, No. 23 of 2002, which was later revised in 2004, and the court also saw other regulations regarding child exploitation because in human rights (HAM) it is not permissible to exploit children. Children who should still have time to play are forced to marry only because of pressure from other parties.

c. Grant of marriage dispensation and its relation to Child Exploitation

The Religious Court is a formal institution, and if the dispensation application meets the formal dispensation requirements, the court will consider granting the request. One of the formal requirements is that the child is underage and the parents want to marry off their child to avoid slander. The child is already pregnant, and sexual harassment.

If the reasons are proven (formal evidence), the court will grant the request for dispensation, and vice versa. The court will not grant the request if the applicant's conditions are not proven (formal evidence). This is also the rule of law that applies to civil cases. What is fulfilled is formal evidence. In contrast to criminal cases, what is fulfilled is material evidence.

d. *Maslahah mursalah* granting of marriage dispensation

Judges are part of the legislative body, namely legislators, in making laws. This cannot be separated from three principles: the principle of legal certainty, the principle of legal justice, and the principle of legal expediency. In the process of making the law, the law must fulfill the following matters:

- 1) The law must not give rise to multiple interpretations because it will not provide legal certainty when it has multiple interpretations.
- 2) Laws that are made must be enforceable, not counterproductive. Everyone can implement them regularly, there is no overlap, and there should be no discrimination.
- 3) The law must grow and develop from the community itself, for example, the tradition of the people of South Sulawesi that is not written, namely customary *sirri*

(shame). Therefore, the panel of judges can grant the request for dispensation if this consideration has many benefits and vice versa. Dispensation for marriage, on the other hand, deals with children who are not old enough (childish), so the court is faced with whether to prioritize benefits or be trapped by written rules. Still, when we return to legal theory, judges are given the authority to make laws.

e. The reason the panel of judges granted the request for marriage dispensation

The most substantial reason for the panel of judges to grant marriage dispensation is whether the reporting case is urgent. If it is urgent, the panel of judges will consider granting the request by measuring it, namely, whether there has been sexual harassment pregnancy out of wedlock. If it's just dating or consensual, the judges will consider not granting it, considering the child's human rights. The court refuses to complete the report for reporters who come to the Religious Court to apply for marital dispensation with married status (married by a local Imam) without a dispensation permit.

f. Between the customs of the people of Gowa (sirri) and court law

Sungguminasa Gowa Religious Court, every report that comes in must still pay attention to the laws that live in society, related to the expert's statement complements the reader, what he conveyed by the person concerned, indeed for the community area here, the tendency to solve problems using violence, but it also has to be seen whether those methods are adopted by the community or not, in maintaining the legal status they maintain, a cultured, civilized society they will choose, a more favorable choice.

The people of South Sulawesi have experienced quite a large, quite advanced civilization because before, things like this were resolved using violence. Still, people no longer use these methods. This proves that the people of South Sulawesi have experienced a shift in values and progress in civilization. What is better is that violent problem-solving methods are no longer used. They prefer family methods, even though they must also deal with other laws, such as child maintenance, age limits, and the National Commission on Human Rights.

g. Factors leading to underage marriage

Most dispensation reports that came to the Sungguminasa Religious Court were not urgent; for example, the reasons for reports that were not urgent were the length of the relationship, length of courtship, and avoiding slander. In a report like this, the court categorizes it as not urgent.

The causes of underage marriage are always included in every discharge report, and the most common causes are:

- 1) Close relationship
- 2) Have been dating for a long time

- 3) The prospective husband already has a job/income
- 4) Avoid slander
- 5) Avoiding embarrassment from other people's stories
- 6) Invitations have been sent out
- 7) The application already exists

Interview with the Judge of the Sungguminasa Religious Court (Mr. Dr. Mukhtaruddin, S.HI., M.HI.)

a. Reasons The judge granted the marriage dispensation

In granting or rejecting the application for dispensation, the panel of judges first looks at the conditions and whether the prospective husband or wife can fulfill his obligations as a husband as well as a wife; as a husband, his obligation is to provide a living, then the panel of judges looks at whether the applicant specifically the prospective husband has a productive job, has robust physical health, as well as a wife, can she carry out her obligations as a wife, namely providing spiritual support to her husband, besides fulfilling the above requirements the applicant also fulfills the administrative requirements for applying for a dispensation, for example, a rejection letter from the Office of Religious Affairs (KUA), birth certificates and other things that have been regulated in the requirements for applying for a marriage dispensation.

The panel of judges also saw other considerations, such as if the dispensation report contains the potential for conflict; for example, the man doesn't have a job, but the woman is already pregnant, in this condition, the decision issued by the panel of judges no longer looks at the suitability requirements of the prospective husband, but the panel of judges the judge considers the principle of benefit more because by granting the request for dispensation it will be able to reduce conflicts between their families.

b. Consideration of the Benefits and Disadvantages of Marriage Dispensation

The acceptance or rejection of the dispensation by the Sungguminasa Religious Court in considering its benefits and harms is to use the Maqashidusy Shari'ah law, including:

- 1) Islamic Protection of Religion (Hizhun Din)

If the applicant's request is granted by marriage, can it impact the benefit of their religion? With the applicant's grant (Dispensation), the applicant is free from adultery, meaning they are legally husband and wife.

2) Islamic protection of life (Hizhun Nafs)

If the applicant is granted marriage, his life will be safe, but conversely, if he is not married, his life will be lost, especially on the husband's side, especially if the woman is already pregnant first.

3) Islamic guard against reason (Hizhun al-Akl)

If the dispensation is not granted, then the child will experience stress disorder; meanwhile, when the child is married, he will bear the costs of supporting his family, while at the same time, the child is still small and cannot work as hard as a father at the home ladder.

4) Islamic protection of property (Hizhun Maal)

If the request (Dispensation) is granted, the family can bear all the costs of the marriage that will be carried out; if the family is able, then the court will consider it.

5) Islamic protection of offspring (Hizhun Nasab)

Does the granting of the applicant (Dispensation) not give birth to generations who are disabled? Because in medical science, children who marry at a very young age impact their offspring, namely children who are born are usually born prematurely. The last consideration is the benefit of the people (social), whether by not granting the applicant (Dispensation) there will be divisions between groups, for example, between sub-districts, between tribes, or between local communities.

In granting/rejecting the Dispensation by the explanation above, the court, in this case, the panel of judges, considers the benefits and harms; if the benefit is more significant, then the applicant (Dispensation) is granted, and vice versa, if the harm is more significant, the panel of judges rejects the request for the dispensation.

c. Factors causing underage marriages

In receiving reports on dispensation for marriage, the main factor applying for dispensation for underage marriages is because the woman is already pregnant; if she does not get pregnant first, then they have had intercourse and are caught; the court rarely accepts reports filing for dispensation, the woman asks for dispensation just because want to marry young, because society in general already has awareness before carrying out marriages, by giving standards to prospective husbands or wives, they must have education, must have a job, but because they have already had intercourse and the woman is declared pregnant, instead of bearing the shame, the panel of judges granted the request.

Interview with Sungguminasa Religious Court Judge (Mr. Ahmad Jamil, S.Ag)

a. The judge's considerations in granting the request for marriage dispensation

The panel of judges in granting the request for dispensation of marriage prefers the reporter who is already pregnant first; in the report that is submitted to obtain a dispensation from marriage from the court with non-pregnant status, the court gives advice first with consideration that the complainant (prospective wife) is not pregnant, not old enough, continuing school, mentally not ready, thinking not ready, not ready to be a mother/father. In court data with cases like this, many complainants followed the court's advice and decided not to continue marrying until they were old enough according to the marriage law.

b. Constraints of the panel of judges in deciding cases of marriage dispensation

In holding a marriage dispensation trial, all parties must be present, starting from the applicant's parents, prospective wife and husband, witnesses, and others as stipulated in the requirements for the presence of a marriage dispensation reporter, the presence of part of the prospective bride's family indicates coercion those who wish to make a dispensation are the result of coercion from their parents, and if there is an element of coercion in the request for dispensation, the panel of judges rejects the request.

In the marriage dispensation report, sometimes witnesses present at the dispensation trial reinforce by stating that the witness has never met the complainant (prospective husband/wife) because in marriage rules apply, the prospective wife must honestly state that she is ready to marry, if there is an element coercion, the reported dispensation was rejected by the panel of judges. And vice versa, if both of their parents come to report carefully to apply for a dispensation because their children are consensual and often go out together instead of causing slander, the panel of judges considers granting it.

c. The view of Islamic law on the granting of a marriage dispensation.

The panel of judges, in granting dispensation to the complainant, gave consideration, that is, looking at the status of those who are not husband and wife but live like husband and wife, the panel of judges considered the benefit for them, granted the request, with the consideration that instead of continuing to commit adultery, it would be better to marry them off.

Vice versa, the panel of judges also sees the negative impact; if there are more negative impacts, then the panel of judges does not immediately grant it because marriages that are still childish will have an impact on offspring, mothers who give birth at a very young age will be prone to the condition of the baby. Usually, the unborn baby will be born prematurely.

From the results of interviews with the judges, it can be seen that the Juridical Analysis of the Religious Court's Decision regarding the Granting of Marriage Dispensation (Review of the Sungguminasa Religious Court's Decision Number 13/Pdt.P/2015/PA.Sgm. concerning the Granting of Marriage Dispensation) is as follows:

1. Clarify the application submitted
2. An application made by the procedure
3. Fulfillment of pillars and requirements for filing dispensation
4. Strong evidence in court
5. Common good
6. The principle of justice and legal expediency

Based on the interview results, it can be briefly concluded that the Juridical Analysis of the Religious Court's Decision regarding the Granting of Marriage Dispensation (Review of the Decision of the Sungguminasa Religious Court Decision Number 13/Pdt.P/2015/PA.Sgm. concerning the Granting of Marriage Dispensation) is when the application it is clear, the application submitted is by the procedure, the pillars and conditions for applying for dispensation are fulfilled, strong evidence, mutual benefit and consideration of the principle of legal expediency in determining the marriage dispensation.

Regarding the marriage law above, the age limit for marriage has been determined by law, namely 19 (nineteen) years for men and 16 (sixteen) years for women. Every man or woman may not carry out a marriage when the age has not reached the specified age, and when forced to marry, the Office of Religious Affairs (KUA) will not marry.) for women, the law still classifies them as children, as in the marriage law Article 81 paragraph (2) Law No. 23 of 2002, "a child is someone who is not yet 18 (eighteen) years old and is categorized as a child, also including a child who is still in the womb, if a marriage is entered into, it is said to be underage marriage".

However, when underage marriages are forced to be carried out due to pressure and benefit factors, the court provides conditions that the complainant must meet to obtain a dispensation from the panel of judges; the conditions that must be met are formal requirements starting from the requirements administration, as stipulated in the administrative requirements for applying for a marriage dispensation up to the conditions for applying for said dispensation.

In applying for a marriage dispensation at the Sungguminasa Religious Court, several considerations for the panel of judges in granting the request for dispensation include:

1. The application submitted is by procedures and is supported by solid evidence, so the panel of judges can grant the request for dispensation if it sees that the formal requirements for the application are met; an example of a formal requirement is a

birth certificate indicating that the complainant is still underage, rejection from the affairs office Religion (KUA).

2. The report is very urgent; how to determine whether the report is urgent or not, namely by way of whether there has been harassment, pregnant first if it is urgent, then the panel of judges will consider granting the request; if it is just dating or consensual, then the panel of judges will consider whether did not grant the request.
3. Benefit, in the sense that the panel of judges grants a marriage dispensation request because it considers the principle of benefit; for example, for a marriage dispensation reporter who brings pregnancy status first, the panel of judges grants a grant in considering the status of the child being conceived, must clarify the status of the father before birth.

According to the applicable law, the panel of judges granting the dispensation of marriage violates other laws, such as the child protection law. A person under the age of 18, according to the child protection law, is still classified as a child who, when the panel of judges grants the dispensation of underage marriage, the court eliminates children's rights, such as the child's right to enjoy education, the right to play and the right to freedom as a child.

However, the court, in this case, the panel of judges, considered granting the request for a marriage dispensation to the complainant because it saw the benefits and harm that occurred when the applicant was not granted.

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Abdul Salam

Interview with:

The Judges of Religious Courts of Sungguminasa (Muhamad Anwar Umar, S.Ag., Dr. Mukhtaruddin, S.HI., M. HI., and Ahmad Jamil, S.Ag.)