



## **SPECIAL REASONS FOR JUDGES IN GRANTING MARRIAGE DISPENSATION ON THE BASIS OF NON-URGENT REASONS (Case Study of Indonesian Religious Court Stipulations)**

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### ***Abstract***

The amendment to Article 7 of Law No. 16/2019 on Marriage, particularly Article 7 section (2), does not provide a specification of urgent reasons for applying to the Court for dispensation to marry. This condition gives Judges the flexibility to grant dispensation to marry on non-urgent grounds, as well as providing leeway for parents in their main role of preventing child marriage. The main problem to be discussed is related to the reasons for Judges to grant marriage dispensation on the basis of non-urgent reasons. The research method is normative law, which produces descriptive data in the form of written information. The data analyzed is secondary data, with a Legislation approach from PERMA Number 5 of 2019 and case studies from the 2023 determination of the Religious Courts in Indonesia. The results showed that the urgent reason is only in two situations, namely: the prospective wife is pregnant outside of marriage and has had relations as husband and wife between the two, but in fact the Judge in adjudicating marriage dispensation does not necessarily apply urgent reasons, but there are special reasons for the Judge which are used as the basis for granting marriage dispensation on a non-urgent basis.

**Keywords:** *Judge's Special Reason, Marriage Dispensation, Child Marriage.*

### **A. Introduction**

Based on the amendment to Article 7 section (2) of the Marriage Law, it can be seen that no specific explanation is given regarding the reasons that must be fulfilled by the applicant to apply for marriage dispensation to the Court, which has an impact on uncertainty and the absence of

specific restrictions on parents who will apply for marriage dispensation for prospective brides or grooms who are still not of age, because they only know that there are



laws governing this matter<sup>1</sup>. This age limit for marriage is part of the government's aim to reduce marriage problems such as child marriage<sup>2</sup>. This is also in line with Article 1 of Law Number 1 Year 1974 concerning Marriage aims "to form a happy and lasting family based on the belief in God Almighty".

To fill the uncertainty about the urgent reasons referred to in Article 7 section (2) of Law No.16/2019. In 2019, the Supreme Court Regulation issued PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications. But in fact, in the PERMA there is also no clear and specific explanation of the meaning of the phrase "urgent reasons" in Article 7 section (2) of the Marriage Law, so that there are often multiple interpretations for Judges in interpreting these urgent

reasons, which has an impact on the continued occurrence of requests for dispensation of marriage for various reasons which results in uncertainty in the determination of dispensation of marriage among Judges due to the diversity of marriage dispensation decisions.

As in the research of Tania Ariska Putri and Umar Haris Sanjaya, it was found that the parameters of the urgent reasons granted by the judge in the application for dispensation of marriage were: first, there was a pregnancy outside of marriage for the protection of the status of the child being conceived. Second, parents know that their children have had sex as a form of responsibility for the actions they have taken. Third, being caught committing adultery by the community for a form of learning so that the same thing does not

<sup>1</sup> Usman, R. (2006). *Aspek-aspek Hukum Perorangan dan Kekeluargaan di Indonesia*. Jakarta: Sinar Grafika, hlm. 275.

<sup>2</sup> Fuad, A. M. (2016). Ketentuan Batas Minimal Usia Kawin: Sejarah, Implikasi Penetapan Undang-Undang Perkawinan. *PETITA*, 1, 20, hlm. 42.



happen again. Fourth, the close relationship between the two children, have prepared, have reached puberty to avoid worries for the parents of the male and female parties. Based on these facts, the context of the best interests of the child in interpreting urgent reasons is used to tighten the system of administrative requirements in applying for marriage dispensation, as supporting evidence stating that the marriage is carried out because there is no other choice, child marriage must be carried out<sup>3</sup>. In fact, after 3 (three) years of the enactment of the PERMA, it turns out that the Judges are not fully guided by the meaning of the urgent reasons in the PERMA, resulting in many determinations being granted outside the parameters of the reasons. urgent. If the Government does not

play a decisive role, it can lead to neglect of the Marriage Law which results in the regulation losing the force of law<sup>4</sup>. Because basically marriages conducted with underage brides bring a lot of *mudharat* and not a few end in separation<sup>5</sup>.

This explanation is supported by the fact that there are still many decisions containing the granting of marriage dispensation on the basis of non-urgent reasons, which this study proves by providing facts in the form of 20 decisions of marriage dispensation applications granted by Judges outside the parameters of urgent reasons that occur in Indonesia due to the absence of specific reason parameters for Judges in interpreting the same urgent reasons, because the urgent reasons that should be given by

<sup>3</sup> Lubis, L. (2021). Dispensasi Kawin Jelang Dua Tahun Pasca Perubahan Undang – Undang Perkawinan. *Law Jurnal*, 2(1), 1-9, hlm. 8.

<sup>4</sup> Muntamah, A. L., Latifiani, D., & Arifin, R. (2019). Pernikahan dini di Indonesia: Faktor dan peran

pemerintah (Perspektif penegakan dan perlindungan hukum bagi anak). *Widya Yuridika: Jurnal Hukum*, 2(1), hlm. 1-12.

<sup>5</sup> Mardi Candra. (2018). *Aspek Perlindungan Anak Indonesia*, Jakarta: Kencana, hlm. 3.



Judges are only 2 (two) conditions as in the parameters of previous research, namely, the prospective wife is pregnant outside of marriage and both have had conjugal relations.

**Table 1. Data on the decision to grant dispensation to marry on the basis of non-urgent reasons.**

Determination	Close Relationship	Public Pressure	Preparing for marriage
20	18	1	1

So that from the background that the author has described above, the author finds a contradiction between the meaning of urgent reasons in PERMA Number 5 of 2019 and the interpretation of the Judge regarding the application of urgent reasons in determining marriage dispensation. The author also finds that the Judge seems very easy to grant dispensation of marriage to applications for dispensation of marriage

outside of serious urgency factors that require the Judge to grant dispensation of marriage as an emergency exit. There is uncertainty for the Judge in adjudicating the dispensation of marriage, especially in the application for dispensation of marriage which is only based on parental concerns, this phenomenon is triggered because there is a Law related to the granting of dispensation of marriage but it does not clearly and specifically explain the reasons and conditions for granting dispensation of marriage. The existence of confusion for judges in determining marriage dispensation on the basis of non-urgent reasons is also a problem, because there is no standardization for judges to grant or refuse marriage dispensation.

The researcher's interest in conducting this research is because some previous authors only discussed general matters such as the interpretation of marriage dispensation for minors, judges' consideration of the



conditions of pregnancy outside of marriage, the impact of granting marriage dispensation and the role of Judges in preventing child marriage. Meanwhile, this research needs to be conducted to examine whether the granting of dispensation to marry by the Judges of the 20 determinations is really urgent so that it is necessary to grant dispensation to marry, or whether there are other reasons underlying the Judges to grant dispensation to marry on the basis of non-urgent reasons.

## B. Problem Statement

Through the description of the background above, then the author tries to formulate the problems that will be discussed in the research as follows:

1. How is the reason for the Judge to grant dispensation to marry in circumstances that are not urgent to marry a child?

2. Can an application for dispensation to marry in non-urgent circumstances be granted?.

## C. Research Objectives

The purpose of the research is an affirmation of the formulation of the problem to be studied.

## D. Research Methods

This research was conducted using a legal normative method, which uses a *statute approach* and *case approach*. With the research data sources used, namely secondary data sources obtained from primary, secondary, and tertiary legal materials. As for secondary data collection techniques by focusing on *library research* by collecting data through laws and regulations, literature, articles, and various other types of official documents related to the focus of the research being conducted. In this study, it discusses the existence of special reasons that must be fulfilled by the



Judge to grant marriage dispensation the basis of non- urgent reasons..

## **E. Research Results and Discussion**

### **1. Judges Reasons for Granting Dispensation to Marry on the Basis of No Urgent Reasons**

Based on the Recapitulation of Data on Types of Marriage Dispensation Cases for Religious Courts, there are still 52394 requests for dispensation of marriage<sup>6</sup>, it can be concluded that requests for dispensation of marriage in Indonesia still occur frequently, this is a form of lack of public awareness about the risks of child marriage, but other things are also influenced by the legal considerations made by the Judge in determining the application for dispensation of marriage, resulting in legal leniency. In particular, changes have occurred in Article 7 of Law Number 16 of 2019 concerning

Amendments to Law Number 1 of 1974 concerning Marriage, regarding the addition of articles and phrases related to the regulation of marriage dispensation.

The most significant change is found in Article 7 of the Marriage Law, namely, Article 7 Section (1) regarding the age limit rules for someone who intends to marry, which previously had a difference in the age limit between the prospective bride, being 16 years old, while the prospective groom was 19 years old. Following the amendment, the age limit between them became the same, set at 19 years old. Furthermore, Article 7 Section (2) does not explicitly outline urgent reasons for applying for marriage dispensation, which potentially impacts the judicial process of dispensation granted by the Judge. Consequently, granting marriage

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<sup>6</sup> Iwan Kartiwan. (2022) . *Koordinasi dan Perjanjian Kerjasama dengan Dinas Kesehatan*. Diakses 17 November 2023 dari

<https://badilag.mahkamahagung.go.id/pengumuman-elektronik/pengumuman-elektronik/koordinasi-dan-perjanjian-kerjasama-dengan-dinas-kesehatan-22-4>.



dispensation without specific and stringent rules can hinder efforts to increase the marriage age limit, aimed at minimizing child marriages<sup>7</sup>.

In 2019, the Supreme Court (MA) issued technical guidelines for handling marriage dispensation cases which are contained in Supreme Court Regulation (PERMA) Number 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Petitions. One of the objectives of this PERMA is to ensure that the process of marriage dispensation in the Court is carried out by tightening the Judges in adjudicating marriage dispensation, so that there is a standardization of decisions for Judges throughout Indonesia. So that PERMA Number 5 of 2019 has a position as a special

rule issued, namely as a more specific regulation (*lex specialis*)<sup>8</sup>.

The situation related to adjudicating marriage dispensation that does not have standardization regarding the clarity of the rules in the Judges' consideration of adjudicating marriage dispensation cases, either in the form of regulations contained in the new Marriage Law or in PERMA Number 5 of 2019, creates a legal gap and can result in various different interpretations among Judges in adjudicating marriage dispensation applications. Consequently, the differing interpretations among judges regarding the phrase "urgent reasons" become a significant issue, legitimizing underage marriage through the judicial system.

Referring to Article 7 Section (2) of the Marriage Law, the reasons provided by the

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<sup>7</sup> Kurniawan, M. B., & Refiasari, D. (2022). Penafsiran Makna Alasan Sangat Mendesak dalam Penolakan Permohonan Dispensasi Kawin. *Jurnal Yudisial*, 15(1), hlm. 92.

<sup>8</sup> Huda, N. (2011). *Hukum tata negara Indonesia*. Jakarta : Raja Grafindo Persada, hlm. 71.



petitioner to the Judge must be substantiated and presented as factual evidence explaining the circumstances that compel the petitioner's child to enter into child marriage. Because the reason from the applicant has a strong basis for the Judge to determine granted or denied the application for dispensation of marriage<sup>9</sup>. Therefore, in proving the application for dispensation of marriage, apart from the urgent reasons in the form of the prospective wife being pregnant outside of marriage and the two of them having relations as husband and wife, the Judge must tighten the granting of dispensation marriage and must not hesitate to reject the application for dispensation of marriage, with considerations that use the perspective of the best interests of the child, which aims to protect the rights of children in accordance with Law Number

35 of 2014 on Child Protection and the mandate of PERMA Number 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Applications.

Clarity is needed regarding the specific reasons that form the basis for the Judge's consideration in granting dispensation to marry on the basis of non-urgency. As previously conducted by researchers, the author can quote an explanation from Tania Ariska regarding several categories of urgent reasons that lead to the approval of a marriage dispensation by the Judge, which can be used as an urgent parameter, namely: (1) pregnant outside of marriage (2) being caught in a sexual relationship (3) being accused of adultery by society (4) there is a close relationship (5) preparing for marriage (Putri TA, 2023: 13). So, from these parameters,

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<sup>9</sup> Atikasari, H., Nugrahenib, P. D., & Latifiani, D. (2020). Efek Kausal Pada Aturan Permohonan Dispensasi Kawin. *Jurnal Hukum*, 17(1), hlm. 233.



things that can be used as urgent reasons there are only 2 (two) conditions, namely, pregnant outside of marriage and being caught in a sexual relationship.

However, in fact, in the decision that the author analyzes, there is no role of parents who should be the main prevention for their children to carry out child marriage. This is shown because it is the parents who apply for dispensation for their child's marriage only on the grounds that they are worried that the applicant's child will commit acts that deviate from religious norms, have prepared a wedding date, or are afraid that if their child's relationship if left unchecked will cause slander or become a family disgrace. This phenomenon is in accordance with There is an assumption that parents play a dominant role in child marriage, especially for girls<sup>10</sup>.

Based on this, it proves that parents do not fulfill their obligations as stipulated by Article 26 Section (1) number 3 of Law Number 35 of 2014 on Child Protection , which emphasizes that parents have the duty and responsibility to nurture, care for, educate, and protect their children. In addition, parents should assist their children in growing according to their abilities, interests, and talents while preventing child marriage. Consequently, the Judge must tighten the scrutiny when adjudicating dispensation requests for non-urgent reasons.

In this situation, the role of Judges is crucial to reduce the increase in the number of child marriages through marriage dispensation in Indonesia. Therefore, Judges should ensure that their legal considerations are in line with the main objectives of the

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<sup>10</sup> Astuty, S. Y. (2013). Faktor-faktor Penyebab Terjadinya Perkawinan Usia Muda Dikalangan

Remaja di Desa Tembung Kecamatan Percut Sei Tuan Kabupaten Deli Serdang. *Welfare StatE*, 2(1), hlm. 7.



Marriage Law Perkawinan<sup>11</sup>, among others, to reduce the rate of child marriage and the negative impacts arising from child marriage. This is because UNICEF data states that the fact that the birth of a baby from a mother who is under the age of 20 has almost twice the risk of dying, compared to the birth of a baby from a mother whose age is 20-29. With this, it should be very important for the judge to substantially explore the urgency of marriage, especially child marriage (UNICEF, 2015).

The following are the decisions submitted to the religious courts with the granting of dispensation to marry on the basis of non-urgent reasons in Indonesia.

Based on the analysis that has been carried out by the author through 20 stipulation The dispensation of marriage in

2023 shows that the dispensation of marriage granted by the Judge on the basis of reasons is not urgent. All of the reasons submitted by the Applicant, only show parental concerns such as, relationships that will only cause problems, and deviate from religious norms, legal norms or norms of decency. This is because the absence of a specific explanation of "urgent reasons" in the Marriage Law provides a loophole for parents to apply to the Court for dispensation to marry their children on the basis of non-urgent reasons.

Therefore, it is important to know that there are criteria that regulate and explain specifically to interpret the phrase "urgent reasons" by the Judge in granting marriage dispensation on the basis of non-urgency, as was done by previous researchers which the author can quote Tania Ariska's explanation.

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<sup>11</sup> Sanjaya, U. H. (2015). Keadilan hukum pada pertimbangan hakim dalam memutus hak asuh anak. *Yuridika*, 30 (2), hlm. 356.



So according to the analysis of the 20 decisions above, it was found that there were 4 (four) criteria that were always fulfilled and prioritized by the Judge to be used as a basis for consideration in granting marriage dispensation on the basis of non-urgent reasons to be used as special reasons by the Judge, namely:

1. The applicant's child already has an ID card (KTP)

Based on the author's analysis regarding the granting of dispensation to marry on the basis of non-urgent reasons, the judge prioritizes the minimum age of 17 years, the applicant's children are required to have an ID card (KTP) even though the minimum age of 17 years does not automatically indicate that they are considered adults. However, by having a KTP, they can act alone in carrying out legal

actions<sup>12</sup>. The Judge's special reason is also based on the consideration of prioritizing the fulfillment of basic education for children as stated in Article 6 paragraph (1) of Law Number 20 of 2003 concerning the National Education System, that every citizen with an age range of seven to fifteen years has the obligation to attend basic education.

2. The prospective wife must show a letter of recommendation from a health worker.

This refers to Article 15 of PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Cases, which states that Judges in determining marriage dispensation cases are given the option to "may" request recommendations from health personnel from various parties such as psychologists, doctors/midwives, professional social workers, women and

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<sup>12</sup> Dharma, A. D. S. (2015). Keberagaman pengaturan batas usia dewasa seseorang untuk melakukan

perbuatan hukum dalam peraturan perundang-undangan di Indonesia. *Repertorium* , 2(2), hlm. 169.



child protection centers, and child protection commissions. In line with the issuance of the circular letter of the Religious Courts Agency (Number 2449/DjA/HM.00/4/2022 dated April 22, 2022)<sup>13</sup>, discussing coordination and cooperation with the Health Office. Because women tend to have a higher risk of certain health problems, such as violence and sexually transmitted infections, including HIV and AIDS<sup>14</sup>. If the applicant is unable to include and prove the physical, psychological and health readiness (uterus) of the prospective wife by attaching a Health Certificate, the Judge will refuse the marriage dispensation submitted by the applicant. So physical and mental preparation before

marriage is important, especially for the prospective wife<sup>15</sup>.

3. The prospective husband must be employed and have an income.

According to Sonya Britt, a family studies expert and director of the Personal Financial Planning Program, financial conflict can be one of the stronger factors in predicting divorce compared to other marital conflicts<sup>16</sup>. So, when a couple is unable to manage their financial needs, this can lead to There are many problems, especially when they have to be independent after leaving parental support. Financial readiness greatly affects the harmony of the household that the two couples will build, so in the application for dispensation of marriage it is mandatory

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<sup>13</sup> Iwan Kartiwan. (2022). *Koordinasi dan Perjanjian Kerjasama dengan Dinas Kesehatan*. Diakses 17 November 2023 dari <https://badilag.mahkamahagung.go.id/pengumuman-elektronik/pengumuman-elektronik/koordinasi-dan-perjanjian-kerjasama-dengan-dinas-kesehatan-22-4>.

<sup>14</sup> Rohman, H. (2017). Batas Usia Ideal Pernikahan Perspektif Maqasid Shariah. *Journal of Islamic Studies and Humanities*, 1(1), hlm. 85.

<sup>15</sup> Nasution, K., & Perdata, H. (2013). *Islam Indonesia Dan Perbandingan Hukum Perkawinan di Dunia Muslim: Dengan Pendekatan Integratif Interkonektif*. Yogyakarta: ACAdEMIA+ TAZZAFA, hlm. 158.

<sup>16</sup> Dew, J., Britt, S., & Huston, S. (2012). Examining the relationship between financial issues and divorce. *Family Relations*, 61(4), 615-628.



to include a Certificate of Income for the prospective husband. So if in the application for dispensation of marriage the prospective husband does not work or has no income, the Judge is obliged to refuse the dispensation of marriage submitted by the applicant.

4. The age difference between the two was not too great and there was no indication of coercion to get married.

Household problems such as disharmony, infidelity, and domestic violence often arise because the gap in needs, expectations, and understanding between couples can significantly exacerbate these dynamics<sup>17</sup>. In addition, research from Emory University concluded that a large age difference is prone to divorce, such as couples who have an age gap of 10 years are

39% likely to separate, while for an age gap of 20 years, the probability of separation is even higher at 95%<sup>18</sup>. Based on this, age difference is also one of the important requirements in building a marriage, because marriage partners who have a large age difference are on average less harmonious because there are a lot of problems that arise such as economic problems, differences of opinion that cause misunderstandings, emotions that are still unstable, and the interference of parents in their children's household affairs. If there is an application for dispensation of marriage where the prospective bride and groom have a very large age difference, the Judge is obliged to dig deeper into the background of the application for dispensation of marriage by

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<sup>17</sup> Zaldi. (2013). Disfungsi Pasangan Suami – Istri Usia Muda dan Dampak yang Ditimbulkan Studi di Kecamatan Tebas Kabupaten Sambas. *Jurnal Program Magister Ilmu Sosial Universitas Tanjungpura* , 1(1), hlm. 7.

<sup>18</sup> Linda Hasibuan. (2023) . *Jarak Usia Ideal Pasangan agar Hubungan Langgeng Menurut Ahli*, Diakses 17 November 2023 dari <https://www.cnbcindonesia.com/lifestyle/20230605112748-33-442982/jarak-usia-ideal-pasangan-agar-hubungan-langgeng-menurut-ahli>.



the Applicant, if there is an element of compulsion, the application for dispensation of marriage should be rejected.

It can be concluded that the judges in granting marriage dispensation did not strictly apply the urgent grounds, as they set four specific criteria for dispensation on non-urgent grounds: First, the applicant's child must have an ID card. Second, the wife-to-be must present a letter of recommendation from a health worker. Third, the husband-to-be must be employed and have an income. Fourth, the age difference between the two is not too far and there is no indication of coercion to get married

## **2. The Judge's Considerations in Adjudicating Requests for Marriage Dispensation Based on Non-Urgent Reasons**

The Judge's considerations in this context centered on prioritizing the principles

set forth in Article 2 of PERMA Number 5 of 2019 on Guidelines for Adjudicating Applications for Marriage Dispensation. It can be concluded that the role of Judges in the judiciary is very important, because the existence of a Judge aims to make his considerations reflect the principles of justice, expediency, and legal certainty that are of value. Even in situations where there is a clash of choices for Judges between justice, expediency, and legal certainty, Judges must prioritize the value of justice (Syamsudin, 2014: 18-33). Justice that reflects the dimensions of *justice* based on moral values (*moral justice*) and justice in accordance with the community's view of what is fair<sup>19</sup>.

Therefore, in issuing a marriage dispensation decision, the Judge must be guided by Supreme Court Regulation Number 5 of 2019 on Guidelines for

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<sup>19</sup> Sutyoso, B. (2006). Metode penemuan hukum. Yogyakarta: UII Press, HLM. 5-6.



Adjudicating Applications for Marriage Dispensation Cases, which includes: (a) adherence to the principles in Article 2; (b) encouraging parents to take full responsibility for preventing child marriages; (c) ensuring the establishment of a judicial system that prioritizes children's rights; (d) providing standardized procedures for Judges to adjudicate marriage dispensation applications; (e) identifying whether coercion elements underpin the submission of the marriage dispensation application (Sholikhin, 2023).

In the context of granting marriage dispensation on the basis of non-urgent reasons by the Judge, it becomes a loophole to legalize marriage at the age of a child, because Article 6 paragraph (2) of Law Number 16 of 2019 concerning Marriage

explicitly stipulates that the legal age for a person to marry if both have reached the age of 21 years. It is often found that the granting of marriage dispensation by Judges on the basis of non-urgent reasons, gives the impression of legalizing underage marriage and seems to facilitate the marriage process. Referring to the amendment to Article 7 Section (2) of the Marriage Law, related to deviations from the age provisions as referred to in Article 7 Section (1). So it is very important to involve all parties in reducing child marriage, especially through the role of parental responsibility<sup>20</sup>.

This is what encourages Judges in adjudicating marriage dispensation to be careful and prudent, not only prioritizing the formal truth, but Judges also need to explore a case substantively. Because with the

<sup>20</sup> Ilma, M. (2020). Regulasi dispensasi dalam penguatan aturan batas usia kawin bagi anak pasca lahirnya UU No. 16 Tahun 2019. *AL-MANHAJ*:

*Jurnal Hukum dan Pranata Sosial Islam*, 2(2), HLM. 164.



consideration of Judges who only prioritize the formal truth of the marriage dispensation, it is feared that if it is still forced to carry out child marriage without any very urgent reasons, it can result in a lack of harmony in the household and even the potential for divorce due to a lack of emotional maturity at an unstable age, while the success of a marriage is very dependent on the emotional maturity of both the husband and wife.

Related to the submission of marriage dispensation requests on non-urgent grounds, the applicant often emphasizes that the two prospective brides and grooms are in love with each other or have been dating for a long time, are engaged, and have prepared a wedding party<sup>21</sup>. This is not in accordance with the purpose of marriage as stated in the Compilation of Islamic Law, namely a great

contract or *mitsaqan ghalidzan*, which means that carrying out marriage is an act of worship, because of which human perfection will be tested. This is proven With the author's analysis, which shows that in the determination of marriage dispensation, there are still many reasons for the Judge to grant marriage dispensations such as fears of free sex or violations of religious and social norms, as well as a close relationship between the two children and have been engaged and have even prepared for marriage.

The use of special reasons by judges, which consists of 4 formal criteria that have been described, is deemed inappropriate if it continues to be used outside of 2 (two) conditions of urgent reasons, namely being pregnant outside of marriage and having

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<sup>21</sup> Lubis, L. (2021). Dispensasi Kawin Jelang Dua Tahun Pasca Perubahan Undang – Undang Perkawinan. *Law Jurnal*, 2(1), 1-9, hlm. 4.



husband and wife relations, so that the granting of dispensation to marry on the basis of urgent reasons based on the special reasons of this Judge can be said to have violated the rules that have a legal basis, namely Article 7 Section (2) of the Marriage Law which clearly states that dispensation to marry can only be requested if there are very urgent reasons. So that the granting of marriage dispensation continues to be carried out on the basis that it is not urgent, it is the same as the Judge has ignored the age limit formulated by the Law<sup>22</sup>.

Emphasis on the context of "very urgent reasons" really needs to be prioritized for Judges to explore substantially, because with a deeper exploration of the facts in accordance with the principles stated in Law Number 48 of 2009 on Judicial Power, it can

be a consideration for Judges to provide a determination without hesitation. Judges must also be firm in adjudicating marriage dispensation, if they do not fulfill 2 (two) very urgent conditions such as the condition of being pregnant outside of marriage and the two of them have had intercourse is considered a condition without other alternatives, then the judge must reject the applicant's application for marriage dispensation.

The following is an example of a decision that applies the Judge's special reasons for granting dispensation to marry on the basis of non-urgent reasons.

Based on the evidence table above, it shows that the Judge in adjudicating the application for dispensation of marriage on the basis of non-urgent reasons fulfills 4

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<sup>22</sup> Lubis, L. (2021). Dispensasi Kawin Jelang Dua Tahun Pasca Perubahan Undang – Undang Perkawinan. *Law Jurnal*, 2(1), 1-9, hlm. 5.



criteria that can be used as special reasons for the Judge in granting dispensation of marriage that has been submitted in Court. The fulfillment of this special reason for the Judge is considered to be deviating from the Marriage Law, because it is different from the purpose of PERMA Number 5 of 2019, which is to tighten the Judge in adjudicating marriage dispensation. In addition, judges also need to Considering that child marriage is very vulnerable to occur and the involvement of the parents of the bride-to-be who encourage their children to marry, this situation tends to be a significant age difference between the bride and groom<sup>23</sup>. So that in situations like this, the role of the Judge is very crucial to reduce the increase in

the number of child marriages through marriage dispensation in Indonesia.

Therefore, the granting of marriage dispensation by judges on non-urgent grounds merely reflects the application of the concept of benefit, which emphasizes the importance of avoiding madharat in decision-making by judges. However, it is important to note that the concept of 'avoiding harm' (*madharat* or *mafsadat*)<sup>24</sup> must be applied strictly, especially in non-urgent circumstances. Because the interpretation of urgency is only in 2 (two) conditions, namely, when a person has become pregnant outside of marriage or being caught in a sexual relationship responsibility<sup>25</sup>. If the concept of benefit is applied to reasons that are not urgent, even though they meet the

<sup>23</sup> Erulkar, A. (2013). Early marriage, marital relations and intimate partner violence in Ethiopia. *International perspectives on sexual and reproductive health*, 39 (1), hlm. 6-13.

<sup>24</sup> Horii, H. (2020). Legal reasoning for legitimation of child marriage in West Java: accommodation of local norms at Islamic courts and the paradox of child

protection. *Journal of Human Rights Practice*, 12(3), hlm. 512.

<sup>25</sup> Ilma, M. (2020). Regulasi dispensasi dalam penguatan aturan batas usia kawin bagi anak pasca lahirnya UU No. 16 Tahun 2019. *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam*, 2(2), hlm. 133-166.



four criteria for special reasons for judges, this can open a gap for judges to support child marriage.

The assertiveness of the judge in refusing marriage dispensation on the basis of non-urgent reasons can function as a means of preventing child marriage, which will have an impact on applicants who previously intended to apply for marriage dispensation to rethink<sup>26</sup>. Because the existence of 4 criteria that can be used as special reasons for judges in granting marriage dispensation on the basis of non-urgent reasons, is only a fulfillment related to formal matters, but there is no substantial independence, so the judge must be firm in deciding to refuse marriage dispensation, which is submitted by the applicant in the form of a marriage dispensation application

## F. Closing/Conclusion

Based on the explanation above, it can be concluded that the Judge in adjudicating marriage dispensation does not necessarily apply urgent reasons in accordance with the Marriage Law, this is considered inappropriate because the judge only prioritizes formal truth, does not explore the substance, which is proven that the Judge only bases it on the fulfillment of the Judge's special reasons which consist of 4 criteria, namely: *First*, the applicant's child already has an ID card. *Second*, the prospective wife must have a letter of recommendation from a health worker. *Third*, the prospective husband must work and have an income. *Fourth*, the age difference between the two is not very far and there is no indication of coercion to get married. Where the 4 (four) criteria that can be used as special reasons for judges in granting dispensation to marry on

<sup>26</sup> Husni, A., & Mustofa, L. (2023). Ambiguitas Norma dan Problem Teknikalitas Dispensasi Kawin pada

Peradilan Agama di Indonesia. *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum*, 21(1), hlm. 42-60.



the basis of non-urgent reasons, are only formal fulfillment, but the substantial independence does not exist, so the judge must be firm in preventing the marriage submitted by the applicant in the form of a marriage dispensation application. Because the granting of marriage dispensation must be applied selectively and on target. Therefore, if the Judge grants marriage dispensation on the basis of non-urgent reasons, it will become a loophole to legalize marriage at a child's age, which is not in harmony and in line with the main objectives of the Marriage Law.

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