

## Application for Marriage Dispensation for Minors Based on Law no. 16 of 2019 concerning Marriage and the Compilation of Islamic Law (Analysis of Religious Court Determination Number 79/Pdt.P/2018/PA.Msb)

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**ABSTRACT:** Prevention of marriage at a young age becomes difficult to implement with the existence of a marriage dispensation in the Religious Courts. If you see the permissibility of carrying out child marriages, this certainly raises a question mark about the legal certainty given by the judge. The purpose of this research is to find out the legal certainty of an underage marriage dispensation application in accordance with the principles of marriage and KHI and to find out the Islamic view of the Marriage Law on Court Decree No.79/Pdt.P/2018/PA.Msb The research method is descriptive normative. The data was obtained from a literature study. The results of this study are that the legal certainty of judges is not in line with the fundamental of marriage according to the law but in line with the fundamental of marriage according to Islamic law, so in deciding the request for dispensation of marriage the judge is more inclined to the fundamental of Islamic law.

**Keywords:** Underage Marriage, Dispensation Marriage, KHI



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## INTRODUCTION

Marriage (González Alcántara, 2020; Owen & Probert, 2019; Salonen, 2014; Sarich et al., 2016) is a basic right that every human being has as a nature given by God Almighty. Humans have the right to channel their biological desires to have offspring. Marriage is carried out by both partners who are ready and old enough. In Article 330 of the Civil Code:

*"Those who are immature are those who have not reached the age of 21 (twenty one) years and have not previously married."*

Meanwhile, the child protection law states that "a child is someone who is not yet 18 (eighteen) years old". Marriage (Husna et al., 2022a, 2022b; Kunardi & Muzamil, n.d.; Marzuki et al., 2021a; Yuni, 2021) affects the aspects of social life, therefore the terms of marriage are regulated.

This law was created for the sake of realizing the benefit, order and social harmony in the lives of citizens. Indonesia itself has laws that regulate marriage, namely Law no. 1 of 1974 concerning Marriage. The conditions for marriage can be seen in Article 6 and Article 7 paragraph (1) of Law

no. 1 of 1974. One of the things in Article 7 paragraph (1) is that marriage is only permitted if it is limited to a court or other official, appointed by both the parents of the man and the woman.

Underage marriages (Das, 2021; Imron, 2013; Saidon et al., 2017; Umrah, 2023a, 2023b) still often occur in rural areas where there is still minimal knowledge about the dangers of marrying at a very early age, they are very vulnerable to causing various damage to the life of the household they form, so that it can result in not achieving the goal of marriage to create a healthy family. eternal and happy well without ending in divorce. Even from a medical perspective, underage marriage (Barkah et al., 2023; Frier, 2021; Iswarini, 2015; Marzuki et al., 2021b; Prettitore, 2015) has a negative impact on both the mother and the child who will be born. Several articles also mention the dangers of early marriage which can cause physical and mental disorders. Therefore, marriage at an early age should be avoided because it has bad effects. According to Ahmad Kamil, child protection is a form of accountability for parents, families, communities, government and the state in the form of a series of activities carried out consistently *continual* to protect children's rights.

Preventing child marriages has become difficult to implement with the existence of marriage dispensations in the Religious Courts. If you look at the ability to carry out marriages at a child's age, this certainly raises questions about the legal certainty provided by judges.

In this case there is a case regarding marriage dispensation which is registered at the Registrar's Office of the District Religious Court. Masamba Number 79/Pdt.P/2018/PA.Msb. Whereas the Petitioners with their petition letter dated May 2 2018, stated the following matters:

Because the applicant's child is only 13 years and 5 months old, and therefore this intention has been rejected by the District Religious Affairs Office. West Malangke, North Luwu Regency, with Letter Number B-047/KUA.21.11.05/PW-01/IV/2018;

1. That the applicant wanted to marry her child to her future husband because she was afraid that undesirable things would happen to their increasingly close relationship, especially since her future husband often came to the applicant's house.
2. That the families of both parties had met and discussed the aims and objectives of marrying the applicant's child to her future husband and no one had any objections.
3. That the applicant's child is ready to become a housewife and likewise her future husband is ready to become head of the household.

Based on the matters above, we request that the District Religious Court. Masamba. The panel of judges appointed to immediately examine and adjudicate this case will then hand down a decision which is as follows:

1. Granting the Applicant's application
2. Giving dispensation to the Petitioner's child to marry her future husband
3. Charge court costs according to law

## **METHOD**

The type of research used in this research is descriptive research. Qualitative research is research that aims to identify, using various natural methods, phenomena, especially natural contexts, from the experiences of research subjects. Characteristics of Qualitative Research The data collected is in the form of words, pictures and numbers. Therefore, research reports contain data excerpts that describe the report.

Descriptive research is limited to trying to present problems or situations as they are, so that they only reveal facts. Descriptive research aims to accurately describe the characteristics of individuals, symptom conditions, or certain groups, or to determine whether there is a relationship between symptoms and other symptoms in society. Findings are underlined by an objective description of the current state of the object under investigation. In this research, researchers often use theories and hypotheses. Research is carried out in stages to collect data, draw conclusions and make suggestions.

The researcher's location in this research is the library, books and journals. This location is a source of information that will later obtain accurate data for this research. Apart from that, the author also looks for references to governing laws such as the Marriage Law and regulations that are relevant to the research that the author is researching.

## **RESULT AND DISCUSSION**

### **Analyze Penetapan Agama Pages**

#### **A. Position Case**

The case discussed in this research is a marriage dispensation case for a minor. Based on a letter registered at the clerk's office of the Masamba Religious Court with Number 79/Pdt.P/2018/PA.Msb dated 2 May 2018. That Arifin bin Basri, aged 52 years, works as a farmer, address is Panimbu Hamlet, Polejiwa Village, West Malangke District, North Luwu Regency, acting as the biological father representing his biological child in the name of Fitriani bint Arifin, aged 13 years 5 months, Muslim, hereinafter referred to as the Petitioner, submitted a request for marriage dispensation for his biological child with the following arguments;

1. Whereas, the Petitioner wanted to marry his biological daughter (Fitriani bint Arifin) to a man named Madding bin Isa (aged 34 years).
2. That, the conditions for carrying out the marriage, both according to the provisions of Islamic Law and the applicable laws and regulations, have been fulfilled except that the age requirement for the Petitioner's child has not reached the age of 16 years.
3. Whereas, the Petitioner's biological child (Fitriani bint Arifin) is still under the age for marriage, namely 13 years and 5 months old (1 December 2004), therefore the Petitioner is the biological parent who filed this petition.

4. Whereas, the Petitioner wanted to immediately marry her child to her future husband because she was afraid that undesirable things would happen to their increasingly close relationship, especially since her future husband often came to the Petitioner's house.
5. That, the parents and families of both parties had met and discussed the aims and objectives of marrying the Petitioner's child to her future husband and no one had any objections.
6. That, the Petitioner's child is ready to become a housewife and likewise her future husband is ready to become head of the household.

To strengthen the grounds of his application, Arifin as the Applicant has also submitted evidence of letters, such as:

- a. Photocopy of Resident Identity Card in the name of the Applicant
- b. Photocopy of Family Card in the Applicant's name
- c. Photocopy of marriage rejection letter in the name of the applicant's child number B-047/KUA.21.11.05/PW-01/IV/2018 issued on April 27 2018

Whereas apart from the documentary evidence, the applicant has presented two witnesses who have given separate statements under oath, namely; Asnawi bin Sibe (cousin of the Petitioner), hereinafter referred to as Witness I; and Amirullah bin Hamid (the Petitioner's neighbor), hereinafter referred to as Witness II.

Based on the above matters, the Petitioner then requests an order which reads as follows:

1. Granting the Applicant's application
2. Gave dispensation to the Petitioner's child named (Fitrianibinti Arifin)
3. Charge court costs according to law

For these reasons, the judge is of the opinion that marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal household based on the belief in the Almighty God, therefore every marriage must fulfill the requirements determined by law. . The judge was also of the opinion that, based on the facts mentioned above, the applicant's child's marriage plans only lacked one requirement, namely the age requirement for the prospective wife to be at least 16 years old. Meanwhile, in the provisions of Islamic law, the minimum age limit for the prospective bride and groom is not a condition for marriage. Based on the considerations above, the applicant's request for marriage dispensation was granted.

Judges in carrying out their profession have an ethical system that is able to create work discipline and provide a set of values that serve as guidelines for judges in completing their functions and carrying out their profession. The Code of Ethics and Code of Conduct for Judges serves as a guide to moral priorities for judges, both when carrying out their professional duties and in social relations outside of the office. Judges, as individuals who have a moral obligation to interact with their social community, are also bound by ethical norms and customary adaptations that apply in the social order of society.

The judge's obligation to maintain the honor and behavior of judges as determined in statutory regulations must be implemented concretely and consistently both in carrying out their judicial duties and outside of their judicial duties, because this is closely related to efforts to enforce law and justice. Therefore, judges must always maintain and maintain their honor in carrying out the functions of the court.

The judge's honor is seen from the decisions he makes and the underlying considerations, or the entire decision-making process which is not only based on statutory regulations, but also a sense of justice and wisdom in society. In carrying out their duties and functions, judges are obliged to maintain the independence of the judiciary. Judges must have integrity and a personality that is beyond reproach, honest, fair, professional and experienced in the legal field.

The basis for a judge's considerations are various things that form the basis and influence the judge in deciding or giving a determination. Determination of a case is a court decision on a petition case (*volunteer*), for example determination in cases of marriage dispensation, marriage license, guardianship, polygamy, guardianship, marriage laws, and so on. Determination is not true justice (*jurisdiction voluntaria*). Because in the determination there is only the applicant and there are no legal opponents. In determining, the judge does not use the word "adjudicate", but simply uses the word "determine".

In deciding a case, the most important thing is the legal explanation of the facts revealed in the process. Therefore, judges must study the legal values and sense of justice that exist in society. Sources of law, which can be laws and implementing regulations. unwritten law (common law), legal science and teachings or teachings of experts. This is stated in article 28 paragraph 1 of law number 4 of 2004 concerning judicial power.

According to the Judicial Power Law, the judge's considerations are the judge's thoughts or opinions in making a decision by looking at things that can mitigate or aggravate the perpetrator. Each judge is obliged to submit written considerations or opinions regarding the case being examined and this becomes an inseparable part of the decision.

A judge is the personification of a judicial institution. In making a decision on a case, apart from being required to have intellectual abilities, a judge must also have high morals and integrity so that he is expected to reflect a sense of justice, guarantee legal certainty and be able to provide benefits to society. Based on Article 53 of the Judicial Power Law, it reads:

- 1) In examining and deciding cases, judges are responsible for the determinations and decisions they make.
- 2) The determination and decision as intended in paragraph (1) must contain the judge's legal considerations which are based on appropriate and correct legal reasons and grounds.

This is the legal basis for a judge in carrying out his duties in deciding a case, that it must be based on various considerations that can be accepted by all parties and not deviate from existing legal rules, which are called legal considerations or legal reasoning.

A person who wants to file a marriage dispensation application, as stated in Law No. 16 of 2019 Regarding Changes to Law No. 1 Year 1974 on Marriage Article 7 paragraph (2):

"In the event of a deviation from paragraph (1) of this article, you can request dispensation from the Court or another official, appointed by both parents of the man or woman."

Before the Chairman of the Assembly makes a determination, the Chairman of the Assembly has considerations as to whether the request for dispensation can be granted or not. The basis for the Panel of Judges' considerations is as follows:

*First*, Applicant. The Panel of Judges during the trial will examine whether the person who submitted the case requesting dispensation has the right to file the case requesting dispensation or not. In this case, the applicant has the right to apply for a marriage dispensation because the prospective bride's age is still under 19 years, so it was rejected by the KUA. *Second*, reason. At the hearing, the Panel of Judges asked the reasons for the applicant's child, then the Panel of Judges examined the reasons for the applicant's child with the applicant in his application letter. Whether the reasons for the applicant's child and the applicant are similar or not. *Third*, whether there is a ban on marriage or not. For prospective husbands and prospective wives who want to get married, whether there are obstacles or not, as regulated in the Marriage Law. *Fourth*, benefits and harms. When two people fall in love, and have sexual intercourse outside of marriage that causes pregnancy, then the Court will grant the application for dispensation.

Because it is feared that if one does not get married, sin will increase and a private marriage will occur which will disrupt the legal processes that will follow or disrupt the legal rights of the child born according to the law. Apart from that, society will insult and ostracize women who are pregnant without a husband. In daily practice, judges face a very dilemmatic problem when a marriage dispensation application is submitted. On the one hand, as a judicial institution, it must enforce the law. However, on the other hand, it collides with the fact: like it or not, you have to get married. If this is the case then judges tend to be guided by the adage: "prioritizing benefit and avoiding harm". The consequences of the judge's attitude ultimately tend to be exploited by some members of society, to have biological relations that cause pregnancy, and then apply for dispensation to the court.

Law Number 1 of 1974 and Government Regulation Number 9 of 1975 do not clearly regulate what can be used as a reason for granting a marriage dispensation. Therefore, each situation in each case of requesting a marriage dispensation will be considered by the Panel of Judges during the examination at trial. If the court is forced to reject the application, it means that marriage dispensation cannot be granted. As a result, the marriage could not be carried out due to lack of requirements. The matters that determine whether a marriage dispensation can be granted or not are not only based on juridical grounds, but also based on considerations or other important reasons, such as the judge's beliefs. Applications for marriage dispensation for minors can be submitted to the District Court for applicants who are not Muslim or to the Religious Court for applicants who are Muslim. Applications for marriage dispensation must be accompanied by a letter of introduction from or acknowledged by the local Subdistrict Head/Village Head provided that the requirements are met. After receiving a cover letter, the applicant comes to court with a

written application regarding marriage dispensation which contains the reasons for the request and is accompanied by evidence and requirements for submitting an application for marriage dispensation.

Regulations regarding marriage dispensations according to Law Number 1 of 1974 can be concluded from the provisions of Article 7 paragraph (1) and paragraph (2), namely that marriage is only permitted if the man has reached the age of 19 years and the woman has reached the age of 16 years. However, over time and keeping up with the times, the government has changed the marriage age limit for men and women to be the same, namely 19 years for both. If there are deviations, you can ask for dispensation from the court or other official appointed by both the male and female parents. The age limit determined by Law Number 1 of 1974 to be able to enter into a marriage is based on physical maturity (physical) and spiritual maturity, so it is hoped that a man and woman at this age limit are able to understand the consequences of entering into a marriage and have the responsibility to can build a happy family, as expected by Law Number 1 of 1974 concerning Marriage. When examining a case, the judge is tasked with constituting (constating), qualifying (qualifying) and then constituting (constituting). Consolidating means that the judge must assess whether the events or facts stated by the parties actually happened. This can only be done through proof. Proving it means logically considering the truth of a fact or event based on valid evidence and according to applicable evidentiary law.

In this evidence, the parties provide sufficient grounds for the judge examining the case in question to provide certainty regarding the truth of the events presented. Facts are circumstances, events or actions that occur (performed) in the dimensions of space and time. A fact can be said to be proven if it is known when, where and how it happened. For example, regarding the issue of marriage dispensation, the truth that needs to be sought is whether the person really wants to marry underage based on the reasons and evidence included in the application for dispensation submitted by their parents to the Religious Court. Concretely, in giving a decision, the judge must not leave the legal corridor that regulates the issue being litigated. The judge's determination will become legal certainty and have binding force for implementation, because the judge's determination is the judge's statement which is stated in written form and pronounced by the judge in a trial open to the public, as a result of the case examination. When wanting to impose a decision, the judge has considerations. In the author's opinion, judges' considerations are classified into two, namely: First, legal considerations. Legal considerations here mean that when the judge makes a decision, the decision must be in accordance with the legal arguments and evidence presented. The evidence usually required by law is:

- a. Documentary evidence, including:
  - 1) photocopy of Birth Certificate in the name of the applicant's child issued by the Village/Subdistrict Head;
  - 2) Notification letter of Refusal to Entertain a Marriage (Model N-9) issued by the Office of Religious Affairs;

- b. Witness evidence. The witness evidence usually presented by the judge in a trial is two people. Because in this case it is a case of requesting a marriage dispensation, the presence of witnesses is only necessary.

In his judgment, the judge is also based on Islamic Law. As for the basis of his consideration is: "Rejecting mafsadah should take precedence over attracting benefits". In principle, every person is not allowed to cause any harm, whether serious or light, to himself or to others. In principle, harm should be removed, but in removing the harm, it must not cause other harm, whether light or heavier. However, if the harm cannot be removed except by causing other harm, then it is necessary to choose harm that is relatively lighter than what will happen. According to the judge's perception, the harm is to fear that if not married it will add to the sin and there will be a marriage under the hand that will mess up the legal processes that will happen next or mess up the legal rights of the child born to him according to the law. Second, consideration of social justice. Marriage is often considered as an alternative solution for solving social problems that will occur, which is to marry a child who is already pregnant first to cover up the shame.

## **B. Author's Analysis**

1. Legal Certainty Applications for Marriage Dispensation for Minors Are in Accordance with the Principles of Law no. 16 of 2019 concerning Marriage and KHI

Marriage is something that every human being in the world looks forward to. Buikan marriage only unites men and women, but also both families. When a man and woman want to get married, they register their marriage application with the KUA (Religious Affairs Office). Where they definitely know the requirements for submitting a marriage application. Such as material requirements and formal requirements, when one of the marriage requirements has not been fulfilled, the KUA will not grant a marriage permit to the prospective bride and groom. One of them is the prospective bride and groom who are not yet old enough to get married. Based on Article 7 paragraph (1) of Law no. 16 of 2016, the marriage age limit for men and women is 19 years. Then continue with paragraph (2), when one or both of them have not reached the marriageable age limit, it is recommended to submit a request for marriage dispensation at the Religious Court. However, the judge also cannot immediately grant their request for a marriage dispensation. The judge must examine the documents attached by the applicant/prospective bride and groom, listen to the reasons for the prospective bride and groom, listen to the statements of witnesses brought by the prospective bride and groom. The judge also tries to give advice to the prospective bride and groom, what they will face after marriage, whether they are ready for all the responsibilities they will take on. After that, the judge gave consideration to the documentary evidence and statements of the prospective bride and groom as well as witnesses. In his considerations, the judge also referred to the principles or principles of marriage according to the applicable law. The principles or principles of marriage in Law no. 16 of 2019 concerning Amendments to Law no. 1 of 1974 concerning Marriage:

- a. Religion determines the validity of a marriage
- b. Marriage aims to form a happy and permanent family
- c. Open monogamy
- d. Prospective husband and wife must be mature in body and soul



- e. Makes divorce difficult
- f. The rights and obligations of husband and wife are balanced

If the judge's legal certainty is not in accordance with the marriage principles in Law no. 16 of 2019, will have a negative impact on prospective brides and grooms who are still minors who at their age should still have basic child rights such as the right to protection from violence and discrimination, children's civil rights, health rights, education rights and children's social rights. .

In case No.79/Pdt.P/2018/PA.Msb, the age of the prospective wife was still very underage, namely 13 years 5 months. Those who should still have the rights that the author mentioned above. Judging from the prospective wife who is still very young, her body and soul are still immature which can affect her physical and mental health. Pregnancy at an early age is very risky for experiencing various complications that endanger the mother and fetus, for the fetus the possible risks are premature birth, stunting, or low birth weight. In mothers, birth at a young age carries the risk of causing preeclampsia or anemia, if not treated it can cause serious complications such as eclampsia which has fatal consequences and even death in the mother and baby. Marriage at a young age carries a higher risk of experiencing mental disorders, be it anxiety disorders, stress or depression. This is caused by unpreparedness in carrying out the burdens and responsibilities received as husband and wife. Households in young couples are at risk of domestic violence, because their emotions are not yet stable enough compared to people aged 25 years and over who tend to have stable emotions. Women who marry young are more vulnerable to experiencing sexual violence from their partners. Not only health problems, but also couples who marry young are unable to face various problems and burdens of life, especially economic problems, in this case it generally occurs for men who are not mentally ready to earn income or a living and are not ready to play the role of husband and father. .

Psychological maturity is a very important aspect to maintain the continuity of a marriage. Therefore, it is very important to pay attention to the marriage age limit. The ideal age for women to marry is 21 years and for men is 25 years. This age is considered good for running a household, mature biologically and psychologically and able to think and act maturely in dealing with any household problems.

Thus, the legal certainty that the judge gave in case No. 79/Pdt.P/2018/PA.Msb is not in accordance with the principles of marriage according to Law no. 16 of 2019. As explained in Article 7 paragraph (1), the age limit for marriage is 19 years for both men and women.

In the view of Islamic law, marriage is a form of worship carried out by believers to avoid immoral acts. In accordance with Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law, it is explained that marriage according to Islamic Law is a marriage, namely a very strong contract to obey Allah's commands and doing so is an act of worship.

In Islam there are no explicit provisions regarding the age limit for marriage. According to Islamic Sharia, the age of eligibility for marriage is the age of ability to act and receive rights (*abliyatul ada' wa al-wujub*) as husband and wife. Islam does not determine an age limit but regulates the age of puberty to be ready to accept the burden of Islamic law.

According to the Compilation of Islamic Law, it is explained in Article 2 paragraph (1) that marriage is valid if it is carried out according to Islamic Law. Then it is explained again in Article

15 that in order to achieve the benefit of the family and household, marriage may only be carried out by prospective bride and groom who have reached the age in accordance with the provisions in Article 7 of Law no. 16 of 2019, namely for men and women aged at least 19 years.

In case no. 79/Pdt.P/2018/PA.Msb the judge decided to grant the marriage dispensation because if the judge did not grant the request, there were concerns that the child would be at risk of violating religious and social norms or avoiding adultery. The ease with which requests for marriage dispensation are granted can also be caused by several things, including urgent situations, such as the girl being pregnant, the child being at risk or having had sexual relations, or the child and their partner already loving each other. However, if the request is granted, the age of the prospective bride and groom cannot yet be said to be mature and it is feared that they will still not be able to carry out their responsibilities as a husband or wife.

Based on the explanation above, the judge's legal certainty regarding case no. 79/Pdt.P/2018/PA.Msb is actually not appropriate when referring to the explanation of Article 15 of the Compilation of Islamic Law. However, Islamic Law explains the principles of marriage, namely:

- a. Marriage is based on and to uphold God's law
- b. The marriage bond is forever
- c. The husband is the head of the family, the wife is the housewife, each is responsible.

Thus, based on the above principles, the judge's legal certainty can be said to be in line with the principles of marriage according to Islamic law. For the sake of benefit and to uphold God's law, the judge decided to grant the request for a marriage dispensation even though the prospective bride was still very underage. This is done so that the prospective bride and groom do not do things that are prohibited by norms and religion.

## 2. Islamic Views on Marriage Law on Determination No.79/Pdt.P/2018/PA.Msb

Marriage, or what is called marriage in Islamic law, is one of the principles and necessities of life in society. Islam views marriage not only as a noble way to get married and have children, but also as a door between one tribe or community and another tribe or nation, as Allah SWT says in His word QS. Al-Hujurat (49) : (13) as follows:

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

*"O mankind, indeed We created you from a male and a female and made you into nations and tribes so that you may know each other. Indeed, the most noble among you in the eyes of God is the most pious among you. Indeed, Allah is All-Knowing and All-Knowing."*

Marriage is a new life, very different from the life before marriage. In a marriage there are two different people who come from families with different customs. After marriage, all of each other's true qualities are revealed within them. It is very important for a person to prepare themselves to be tolerant of all their partner's shortcomings. Likewise, care must be taken to properly

communicate thoughts and feelings to your partner, so that domestic life is not affected by negative emotions.

A sense of responsibility is also needed in marriage to fulfill each other's rights and obligations. So that each family member not only demands his rights, but first tries to fulfill his obligations. Getting married is a sign that we combine our lives for happiness in this world and the hereafter. Therefore, cooperation and mutual support in all matters is very important. Get involved in children's education. Marriage is also a way to continue learning about life. When someone enters the world of marriage, they learn to be part of a life team. When someone has children, they learn how to raise them well. Parents often have to force themselves to change bad habits so that their children don't copy them. When children reach adulthood, parents learn to be friends with their children, becoming part of a life team that actively turns the wheel of life.

The law on the origin of marriage is sunnah, namely if a man or woman has the intention to marry and is capable (both physically and spiritually), while he can still control his desires (lusts). However, this sunnah law can change to become obligatory, makruh, permissible and haram, according to the conditions and circumstances of each couple who will get married. Carrying out a marriage is legally obligatory, for people who have the will and ability to get married and are worried that they will fall into the act of adultery if they don't get married, then the law of carrying out a marriage for that person is obligatory.

Carrying out a marriage is haram, for a person who does not have the desire and does not have the ability and responsibility to carry out obligations in the household so that if he marries he and his wife will be abandoned, then the law of carrying out a marriage for that person is haram.

Carrying out a marriage which is legally makruh for a person who has the ability to carry out the marriage also has the ability to restrain himself so that he does not allow himself to slip into committing adultery if he does not marry. It's just that this person doesn't have a strong desire to be able to fulfill the obligations of husband and wife well.

Carrying out a marriage is legally permissible, for people who have the ability to do so, but if they don't do it, they don't have to worry about committing adultery and if they do, they won't abandon their wife. This person's marriage is only based on fulfilling pleasure, not with the aim of maintaining the honor of their religion and building a prosperous family. This permissible law is also aimed at people whose incentives and obstacles to marriage are the same, thus giving rise to doubts in the person who will carry out the marriage, such as having the desire but not yet the ability, having the ability to do so but not having a strong will.

Therefore, prospective brides and grooms must prepare themselves first before getting married, one of which is physical, emotional and economic preparation. Regarding physical and mental preparation before entering marriage, the Al-Qur'an has given a signal regarding this in the QS. An-Nur (24) : (32) as follows:

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

عَلِيمٌ

*"And marry those who are single among you, and those who are eligible (to marry) from your male servants and your female servants. If they are poor, God will enable them with His grace. And God is All-Wide (His gifts) and All-Knowing."*

The verse above is by Allah SWT. addressed to His servants who are physically and materially capable and who are not yet married to get married immediately.

Therefore, a person's physical and financial ability to get married is emphasized along with their efforts in finding a good potential partner. Healthy physical readiness is equally important for men and women. This is related to the purpose of marriage, namely having children. Anyone who is in an unhealthy physical condition, for example impotent, or has had a degenerative disease such as diabetes mellitus, should prepare for their own health, for example through a healthy lifestyle. For women, sexual readiness is also very important to prepare. The rapid physical changes of the fetus during pregnancy require the pregnant mother's ability to maintain health by controlling the condition of the genitals and ensuring adequate nutrition during pregnancy so that the health of the mother and fetus is well maintained.

Apart from that, psychological skills are also highly emphasized before getting married. This is implied in the QS. Al-Baqarah (2) : (223) as follows:

نِسَاؤُكُمْ حَرْثٌ لَكُمْ فَأْتُوا حَرْثَكُمْ أَنْتُمْ شِئْتُمْ ۖ وَقَدِّمُوا لِأَنْفُسِكُمْ ۚ وَاتَّقُوا اللَّهَ وَأَعْلَمُوا أَنَّكُمْ مُلْقَوَةٌ ۚ وَبَشِّرِ الْمُؤْمِنِينَ

*"Your wives are your farm, so come to your farm whenever and in the way you like. And prioritize what is good for you. Fear God and know that you will meet him later. And give glad tidings to the believers."*

This verse can be interpreted broadly, not only covering matters relating to husband and wife relationships, but also covering all matters relating to husband and wife relationships in the household. Furthermore, if this verse is interpreted broadly, then couples must be able to treat their partners well by following Islamic teachings in relating and interacting with their partners. This is of course closely related to the spiritual or psychological maturity of each partner, including their maturity and knowledge about the complexities of marriage. Psychological capability also consists of the mental and emotional readiness of both partners.

Mental readiness is very important for men. This is because the husband is the priest and head of the family. As a family leader, a man must be able to organize his family to work together to achieve family goals. Meanwhile, emotional readiness is more important for women. Women tend to be better at reading verbal and non-verbal emotional cues than men and express their emotions better, which makes women on average more empathetic than men.

Financial readiness is more important for men to carry out their duties as husbands as heads of the family who are responsible for the needs of their family members. It is also important for

women to be financially prepared. A woman's financial readiness is to have a job that can help her husband increase the family income. Role readiness is also no less important in women's preparation because it relates to the wife's more domestic responsibilities, such as doing housework, accompanying her husband, and caring for children.

Islamic law generally contains five principles; namely protection of religion, protection of life, descendants, property and reason. Of these five universal Islamic values, one of them is the religion of protecting the lineage of descendants. Therefore, according to Sheikh Ibrahim, in order for the family lineage to be well maintained, permitted sexual relations must have religious legality. In fact, you also have to pay attention to various aspects before marriage, especially maturity, which is very important in leading a happy married life.

In Islam, there is no age limit for marriage. There are no provisions regarding the minimum or maximum limit for someone to get married. If someone has reached the age of puberty, then it is possible for that person to get married. Because the age of puberty is synonymous with a person's maturity. In fact, Islam looks at benefit or goodness, according to Imam Jalaludin Sayuthi, there are three things that should not be postponed, namely praying when the time comes, if there is a corpse in the middle of the house, and when a daughter is asked to marry. If someone is going to fall into the valley of sin or adultery then early marriage must be done. For example, because of the promiscuity of today's teenagers due to the influence of films and the internet, pregnancies occur, they are forced to marry early. However, if there is no problem, it is as good as marriage to reach the age of maturity because a husband and wife will bear the burden of the household both morally and materially, so the prospective bride and groom are required to reach the age of maturity for marriage, a minimum of 18 years for women and 21 years for men.

According to Quraish Shihab, based on a religious perspective according to the Sunnah of the Prophet and also in the Holy Qur'an, no one sets an age limit for prospective brides, what is stated in the Qur'an and Sunnah is only the purpose of marriage. According to Shihab, regarding puberty, according to him, it is seen from one's physical readiness but also a person's mental readiness. So actually 16 years old and 19 years old are still too young.

Islamic expert Ibnu Syubromah stated that religion prohibits early marriage (marriage before puberty). According to him, the highest value of marriage is fulfilling biological needs and perpetuating offspring. Meanwhile, these two things are not found in children who have not yet reached puberty. He places more emphasis on the main purpose of marriage (Djubaidah, n.d.; Mursyid & Yusuf, 2022; Rahiem, 2021; Suriyati, 2022; Van Raemdonck, 2023; Wantu et al., 2021), whether the purpose of marriage can be realized if the child is still small or under the term adult, and also whether the person concerned can fulfill their obligations as a husband/wife. Thus, the requirement for marriage is not just to have reached puberty, but also to have spiritual abilities, and especially the ability to be responsible for meeting the needs of the family, especially for the future husband. Understand this problem from existing historical, sociological and cultural aspects. So in responding to the marriage of Rasulullah Saw with 'Aisyah r.a (who was 6 years old at that time) which is confirmed in the Hadith of Muslim History:

*"It was narrated to me by Yahya bin Yahya, Ishaq bin Ibrahim, Abu Bakar bin Abi Syaibah and Abu Karib. Yahya and Ishaq have said: Narrated to us and al-Akhrani said: Narrated to me Abu Mu'awiyah from Al-A'masyi from ak Aswad Daru 'Aishah radbiallahu 'anha said: Rasulullah Shallallahu 'Alaihi Wasallam married me when I was 6 years old and lived with me when I was 9 years old and he died when I was 18 years old." (HR Muslim)*

Ibnu Syubromah considered this to be a special provision for Rasulullah Saw which was not usually imitated. This opinion was underlined by Quraishy Shihab as an interpreter who stated that the Prophet's marriage would not be the same as that of us ordinary humans, therefore it is not appropriate for ordinary humans to equate themselves with the Prophet, especially at the age of marriage.

Some scholars have different opinions regarding the age of puberty. According to Shafi'iyah and hanbilah scholars, boys and girls are considered mature when they reach the age of 15 years. Meanwhile, according to Hanafiyah scholars, boys are considered mature at the age of 17 years and girls at the age of 18 years. In contrast to the Hanafiyah ulama, according to the Imamiyyah ulama, boys are considered mature when they are 15 years old and girls are 9 years old. The majority of scholars are of the opinion that marrying minors is permissible. Explained in Surah At-Talaq (65): (4)

وَالَّذِي يَتَسَنَّ مِنَ الْمَحِيضِ مِنْ تَسَانُكُمُ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةُ أَشْهُرٍ وَالَّذِي لَمْ يَحِضْنَ وَأُولُو الْأَرْحَامِ أَجَلُهُمْ أَنْ يَضَعْنَ حَمْلَهُنَّ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مِنْ أَمْرِهِ يُسْرًا

*"And the women who are no longer menstruating (menopause) among your women, if you are in doubt (about the period of their iddah), then their period of iddah is three months; and so are women who do not menstruate. And women who are pregnant, their iddah time is until they give birth. And whoever fears God, God will make it easy for him in his affairs."*

From the verse above it can be concluded that Allah has stated that the iddah period for a woman who does not menstruate is three months. Iddah itself occurs because of a divorce case, either due to divorce or the death of her husband. So iddah exists because of marriage. The dilalatul iltizam (logical indication) of this verse is that women who have not menstruated can marry. So the scholars do not set a maximum or minimum limit for marriage. From this it can be concluded that this proposition is valid and shows that it is permissible to marry a woman who has not yet reached puberty. Then the verse above was also interpreted by Al-Baghawi:

*"The women who haven't menstruated mean they are little girls who haven't menstruated (before puberty). The iddah period (if she is divorced) is also three months."*

In the case of (Gümüş et al., 2023; Hu et al., 2020), whether it is termed before menstruation, some scholars have agreed that a father who marries his minor daughter is legally valid as long as the marriage is carried out in accordance with the terms and principles of marriage in Islam.

From the explanation above, the author draws the conclusion, why in decision No.79/Pdt.P/2018/PA.Msb did the Judge grant the applicant's request? This is because according to the Islamic view the law of marriage for women who are still underage is permissible. The

exception is for men because men have a greater responsibility to support their family and wife so it is more advisable to marry when the man already has an income or job. In this case, the prospective bride is still underage according to positive law, namely 13 years and 5 months. However, according to the Islamic view, the prospective bride can be said to be an adult, judging from her puberty age and from the statement that the prospective bride is ready to take responsibility as a wife. Meanwhile, the prospective groom is an adult and is able to support his family and wife. So the law for marriage for them is permissible (it is not recommended to marry immediately but there is also no prohibition or recommendation to end it) in other words it is permissible.

## **CONCLUSION**

In Based on the results of the research and discussion that have been presented, the following conclusions can be obtained:

1. The legal certainty given by the judge regarding decision No.79/Pdt.P/2018/PA.Msb, is not in accordance with the principles of marriage that exist in the law, but the judge prioritizes the principles of marriage that exist in Islamic law itself. and prioritizing the concept of *maslahah*, namely consideration of goodness and rejecting damage in society and efforts to prevent harm. In case no. 79/Pdt.P/2018/PA.Msb the judge decided to grant the marriage dispensation because if the judge did not grant the request, there were concerns that the child would be at risk of violating religious and social norms or avoiding adultery.
2. In Islam there is no regulation regarding the age limit for marriage. The age of marriage in Islamic legal thought is only required to have reached puberty between the prospective bride and groom, including the terms and conditions of marriage. Some scholars are of the opinion that marriage is *sunnah*, but this *sunnah* law can change to become obligatory, *makruh*, permissible and haram, according to the conditions and circumstances of each couple who will get married. Meanwhile, in the case of stipulation No.79/Pdt.P/2018/PA.Msb, the prospective groom who is much older will marry a girl who is still underage according to the law. According to the Islamic view, this is permissible and in this condition, according to the opinion of several scholars, the marriage law for them is permissible (it is not recommended to get married immediately but there is also no prohibition or recommendation to end it) in other words, it is permissible.

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