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Marriage Dispensation on the Grounds of Engagement: A Study of the Decision of the Mahkamah Syar'iyyah Sigli City from the Perspective of Islamic Law and Child Protection Policy

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Abstrak

Penelitian ini menganalisis pertimbangan hakim dalam menetapkan dispensasi perkawinan dengan alasan telah bertunangan di Mahkamah Syar'iyah Kota Sigli pada 2022–2024. Menggunakan pendekatan kasus dan perundang-undangan dalam kerangka yuridis normatif, temuan menunjukkan bahwa hakim mempertimbangkan adanya pertunangan, kesiapan pasangan secara fisik dan mental, serta dukungan keluarga. Prinsip fikih "mencegah kerusakan lebih utama daripada meraih manfaat" menjadi dasar utama putusan, sejalan dengan pendekatan maslahat dalam hukum keluarga Islam. Namun dari perspektif kebijakan perlindungan anak, praktik ini masih menyisakan potensi risiko terhadap hak-hak anak, terutama dalam aspek pendidikan dan perlindungan dari pernikahan dini. Disimpulkan bahwa dispensasi kawin dikabulkan atas dasar kemaslahatan, namun perlu keseimbangan dengan prinsip perlindungan anak yang lebih ketat.

Kata Kunci: Dispensasi Kawin; Pertunangan; Hukum Keluarga Islam; Perlindungan Anak; Mahkamah Syar'iyah.

Abstract

This study analyzes the legal considerations used by judges in granting marriage dispensation based on engagement at the Mahkamah Syar'iyah (Sharia Court) of Kota Sigli during the period 2022–2024. Using a case approach and statutory approach within a normative juridical framework, the findings show that judges considered the existence of an engagement, the physical and mental readiness of the couple, and family support. The Islamic legal principle "preventing harm takes precedence over attaining benefit" served as the main basis for the ruling, aligning with the concept of maslahah (public interest) in Islamic family law. However, from the perspective of child protection policy, this practice still carries potential risks to children's rights, especially in terms of education and protection from early marriage. It is concluded that the dispensation was granted based on maslahah, but it needs to be balanced with stricter adherence to child protection principles.

Keywords: *Marriage Dispensation; Engagement; Islamic Family Law; Child Protection; Mahkamah Syar'iyah.*

INTRODUCTION

Marriage aims to realize a family that is harmonious, lasting, and filled with tranquility, love, and affection (*sakīnah, mawaddah, wa rahmah*). To build such a family, comprehensive readiness is required from both prospective spouses, in financial, physical, and mental aspects. In an effort to ensure this readiness, the Indonesian government has established provisions regarding the minimum age for marriage through Article 7 paragraphs (1) and (2) of Law Number 1 of 1974 (Nabil et al., 2025).

The establishment of a minimum age for marriage in legislation is a preventive measure taken by the government to reduce potential negative impacts, such as high birth rates, an increase in maternal and infant mortality cases, and a surge in divorce rates (Jumriati, 2022; Pacifique & Herizal, 2022). Maturity in navigating marital life in terms of physical and biological, social and economic, emotional and responsible aspects, as well as mindset, life values, and religious aspects plays a crucial role in building the conviction to achieve happiness and well-being within the family (Hasan Basri, 1999).

The establishment of a minimum age for marriage can create the potential for deviation, known as underage marriage. A marriage is categorized as underage if a male or female marries before reaching the age of 19. In such cases, an application for a marriage dispensation must be submitted to a judge at the local Syar'iyah Court as a condition for the legality of the marriage (Ajarul Aswad et al., 2024). A dispensation is an exception to the provisions of legal regulations or laws that should formally apply. Thus, a marriage dispensation is an exception to the provision of Article 7 paragraph (1) of Law No. 1 of 1974 concerning the minimum age limit for marriage for prospective brides and grooms who have not yet reached the minimum age, due to certain reasons or circumstances. (Zulkifli & Jimmy, 2012)

In accordance with the provisions of Article 7 paragraph (1) of Law Number 16 of 2019, as an amendment to Law Number 1 of 1974, it is stated that a marriage is only permitted if both prospective spouses, male and female, have reached a minimum age of 19 years. This provision is reinforced in Article 15 paragraph (1) of the Compilation of Islamic Law (KHI), which states that for the benefit of the family and household, a marriage can only be conducted by prospective spouses who have met the age limit as stipulated in Article 7 of Law No. 1 of 1974, which is at least 19 years old. This provision contains important principles in guaranteeing the noble objectives of marriage, such as

the principles of voluntariness, family involvement, and the maturity of the prospective couple. Physical and mental maturity are crucial factors because a high degree of maturity and responsibility is greatly needed in fostering a strong and harmonious household (Nur Fauziah & Aminata, 2020).

Regarding the case examination process, the Supreme Court of the Republic of Indonesia has issued Supreme Court Regulation (PERMA) Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation. This regulation provides comprehensive guidance on the principles that must be observed in handling marriage dispensation cases, including the requirements that must be met and the parties authorized to submit such applications to the court. Furthermore, this regulation also outlines the important aspects that must be considered by judges in deciding on a dispensation application, whether to reject or grant it.

Since the enactment of Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation, all aspects related to the examination and decision-making process for marriage dispensation applications must follow the provisions in said regulation. This includes the principles and tenets that must serve as a guide, the requirements and procedures for filing an application, the mechanism for case examination by the judge, and the considerations that form the basis for determining whether the application will be granted or denied (Al Hasan, 2021).

This Supreme Court Regulation affirms that granting permission for a child to marry must not be done arbitrarily (Elvina & Rezeki, 2024). Every judge's decision must be based on and guided by the established principles, which must be argumentatively elaborated in the legal considerations. The implementation of this obligation is reflected in the rule requiring judges to ensure that the parents, the child, the prospective spouse, and the parents or guardians of the prospective spouse understand the risks of marrying at a young age (Khairani & Rahmi, 2024). These risks include the potential for the child's education to be discontinued, the unpreparedness of the female's reproductive organs, economic, social, and psychological impacts, as well as the potential for conflict and domestic violence. If this stage is ignored by the judge or is not included in their legal considerations, then the verdict rendered by the panel of judges is considered null and void by law (Nurhadi, 2022).

Based on the provisions in this Supreme Court Regulation, the parents are the only party with legal standing to file an application for a marriage dispensation for their child. All parties involved in the child's marriage plan, including the child, the prospective husband or wife, and their respective parents, must be present at the hearing. If, after three court sessions, the applicant fails to present them, the dispensation application must be declared inadmissible. This regulation also stipulates that the judge has an obligation to hear the testimony of the child for whom the dispensation is sought, their prospective spouse, the child's parents or guardians, and the prospective spouse's parents or guardians (if they are also underage). All such testimonies must be recorded and taken into consideration in the decision. If the judge fails to carry out this obligation, the resulting decision becomes null and void by law (Syafruddin et al., 2022).

This provision reflects the implementation of the principle of "respect for the child's opinion," where, in practice, a judge is even permitted to hear the child's testimony without the parents' presence, or to examine the child separately. Thus, in marriage dispensation cases, the child is no longer positioned merely as an object, but as a subject whose opinion and voice have legal value in the examination process (Al Hasan, 2021). There are several reasons commonly used as grounds for filing a marriage dispensation application at the Syar'iyah Court, including not yet meeting the minimum age for marriage, being engaged, having pre-marital sexual relations or an out-of-wedlock pregnancy, the prospective husband's plans to move away, a long courtship period, or a close relationship between the prospective couple that raises concerns it could lead them to acts contrary to religious teachings or applicable laws (Al Shahnaz, 2024).

Based on the decisions issued by the judges of the Sigli City Syar'iyah Court from 2022-2024, there were 252 marriage dispensation application cases: 86 cases in 2022, 93 cases in 2023, and 74 cases in 2024. Of all these dispensation applications, the most frequent reason cited was "already engaged." In adjudicating and deciding on marriage dispensation cases based on the reason of being engaged, the judges of the Sigli City Syar'iyah Court generally use formal and material considerations.

Based on the explanation above, the author wishes to examine more deeply the legal considerations used as a basis by the judges of the Sigli City Syar'iyah Court in formulating decisions on marriage dispensation applications due to engagement from 2022-2024. The author intends to study in greater depth whether these considerations are

sufficiently strong when viewed from the perspective of the procedural law applicable within the Religious Judiciary, with the title: "The Determination of Marriage Dispensation on the Grounds of Engagement (A Study at the Sigli City Syar'iyah Court)".

METHODS

This research uses a case approach, which is an approach conducted by analyzing and examining cases to be used as a guide for legal problems in resolving legal matters. In this approach, several cases are studied as references for a legal issue. When using the case approach, the researcher must understand the *ratio decidendi*, which are the legal reasons used by the Judge to arrive at their decision (Marzuki, 2005). This study will analyze three decisions of the Sigli City Syar'iyyah Court regarding the determination of marriage dispensation on the grounds of being engaged.

Furthermore, the author also uses a statute approach. This approach is carried out by examining all laws and regulations related to the legal issue being discussed (researched) (Muhaimin, 2020). The legislation used includes Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 concerning Marriage and the Compilation of Islamic Law (KHI). The type of research conducted by the researcher is normative juridical research, which is a study conducted by analyzing, observing, and examining legal materials obtained from both primary and secondary sources.

The data source used in this study is secondary data. In this case, the author's data source is copies of the decisions from the Sigli City Syar'iyah Court concerning the determination of marriage dispensation on the grounds of being engaged. The primary legal materials the author refers to involve examining three decisions from the Sigli City Syar'iyyah Court regarding the determination of marriage dispensation on the grounds of being engaged, namely Decision Number 671/Pdt.P/2022/MS-Sgi, Decision Number 234/Pdt.P/2023/MS-Sgi, and Decision Number 240/Pdt.P/2024/MS-Sgi. In addition, the author also considers the legal norms governing polygamy in the form of the Compilation of Islamic Law (KHI).

The secondary legal materials used by the author in this research are articles; here, the author uses articles related to polygamy. Then, books; here, the author uses books on Civil Law and Indonesian Marriage Law, which the author then focuses on polygamy. The data analysis technique in this study is carried out by collecting and examining all

the primary and secondary legal materials obtained. After the materials are clarified, they are connected with relevant sections as found in the literature, so that a conclusion can be drawn from the research findings.

RESULTS AND DISCUSSION

Overview of the Syar'iyyah Court of Sigli City

In this section, the author should be able to resolve or provide explanations to the question stated in the introduction. Summarize the collected data and the analysis performed on those data relevant to the discourse that is to follow. Report the data in sufficient detail to justify your conclusions. The Sigli Syar'iyah Court Class I-B is a first-level judicial institution that exercises judicial power for the Muslim justice-seeking community, especially in handling certain civil cases. Its authority is based on the provisions of Law Number 7 of 1989, which has been amended by Law Number 3 of 2006 and Law Number 50 of 2009.

This institution operates under the jurisdiction of the Aceh Syar'iyah Court. The Sigli Syar'iyah Court Class I-B is one of the parts of the Aceh Syar'iyah Court which is located on the Ring Road-Blang Paseh, Sigli, Pidie Regency. The institution has jurisdiction in the Pidie Regency area, which includes 23 sub-districts. In detail, the jurisdiction of the Sigli Syar'iyah Court Class I-B includes Sigli, Pidie, Simpang Tiga, Indra Jaya, Pekan Baro, Delima, Grong-grong, Batee, Kembang Tanjong, Mutiara Timur, Mutiara, Padang Tiji, Mila, Sakti, Glumpang Tiga, Glumpang Baro, Titeu, Keumala, Tiro/Truseb, Muara Tiga, Tangse, Mane, and Geumpang.

Legal Considerations Used by Judges at the Syar'iyyah Court of Sigli City in Determining the Case of Application for Marriage Dispensation on the Grounds of Engagement

Based on Law Number 3 of 2006 and Law Number 50 of 2009 concerning Religious Courts, it is stated that the Religious Court has the duty and authority to examine, adjudicate, and resolve cases at the first level involving parties who are Muslim. The scope of authority includes cases in the fields of marriage, inheritance, wills, grants, waqf, zakat, infaq, alms, and cases related to the sharia economy. (Hasbi Hasan, 2010). In handling the case of the application for marriage dispensation on the grounds that it

has been settled in the Syar'iyyah Court of Sigli City, the judge has several legal considerations that must be taken carefully, considering that the marriage dispensation is an exception to the minimum age provisions that have been regulated in the law. A more detailed explanation will be described by the author as follows:

Decision Number 671/Pdt.P/2022/MS-Sgi

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This application for marriage dispensation was filed by the applicants who are domiciled within the jurisdiction of the Sigli Syar'iyah Court. Based on the provisions in Article 49 letter (a) number 3 of Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989 on the Religious Judiciary, the Sigli Syar'iyah Court has absolute and relative authority to examine and rule on this application. In accordance with Article 7 of Law Number 16 of 2019, marriage is only permitted if the man and woman have reached the age of 19. However, if there is a very urgent condition supported by sufficient evidence, the parents of the prospective spouse who is underage may file an application for marriage dispensation with the court.

In this case, the applicants filed for marriage dispensation because their daughter wishes to be married to her prospective husband. However, the application for marriage registration was rejected by the Office of Religious Affairs (KUA) of Kuta Alam District, Banda Aceh City, because their daughter had not yet reached the age of 19. Therefore, the applicants felt it necessary to file for marriage dispensation at the Sigli Syar'iyyah Court. During the hearing process, the panel of judges heard direct testimony from the applicants' biological daughter, her prospective husband, and a witness named Mursalin, who is the biological father of the daughter's male cousin.

Based on the various pieces of evidence submitted, the Panel of Judges established a number of legal facts in the hearing: that the parents of the child in question plan to marry off their daughter even though she is still below the minimum age limit set by law. This decision was made because there was an agreement between their family and the family of the prospective groom to hold the wedding in the near future. Currently, their daughter is only 18 years old, while her prospective husband is 27 years old. The two have been engaged and have a serious and loving relationship. They have also personally

agreed to proceed to marriage. In their relationship, there are no blood ties or milk kinship that would be an impediment to marriage.

Furthermore, the family believes that their daughter is physically and mentally ready to enter into married life. Her prospective husband is also considered sufficiently mature and responsible, as he is employed and has a steady income that can support a household. Although the testimony from the prospective husband's grandmother is not legally considered valid evidence, the Panel of Judges still considered this statement as additional information (presumptive evidence) that could help in understanding the facts behind this application. The plan for the marriage between the applicants' daughter and her prospective husband arose from the voluntary desire of both parties, without any pressure or coercion from anyone. Both sets of parents of the prospective couple have also given their full support to this plan. As a form of seriousness and responsibility, they have stated their willingness to guide and guarantee the well-being of their children, in terms of economy, social life, health, and education.

This marriage plan is considered to have taken into account the principle of protection and the best interests of the child, as stated in Article 31 paragraph (1) letter a of Law Number 35 of 2014 concerning Child Protection and Article 3 of the Convention on the Rights of the Child, which was ratified by the United Nations on November 20, 1989. This consideration is also in accordance with an Islamic legal principle, namely that preventing harm (*mudharat*) should be prioritized over obtaining benefit (*maslahat*), as stated in the *fiqh* maxim:

درأ لمفاصد مقدم على لجلب لمصلح

Meaning: Rejecting the goodwill takes precedence over attracting the benefit

From the previous description, it can be concluded that the desire of the petitioners to immediately marry their children is not only to prevent the occurrence of fitnah in the community, but also to provide peace and inner peace for their children. This hope is in line with the values contained in the Qur'an Surah Ar-Ruum verse 21, which emphasizes the importance of sakinah (peace) in marriage, and in accordance with Article 1 of Law Number 1 of 1974 concerning Marriage. Based on all the considerations that have been submitted previously, the Panel of Judges is of the view that the application submitted by the applicants is not contradictory and does not violate the provisions of the law or laws

and regulations applicable in marriage matters. Therefore, the application is considered worthy of being granted.

Decision Number 234/Pdt.P/2023/MS-SGI

(https://drive.google.com/file/d/1IA8W0cJxMj83h4XxA1HrCNtVsTGh3zC0/view**)**

To fulfill the provisions of Article 12 paragraphs (1) and (2) of the Supreme Court of the Republic of Indonesia Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, the Panel of Judges has provided advice to the applicants regarding the risks of early-age marriage. The advice covered the negative impacts that may arise in aspects of education, health (especially the readiness of reproductive organs), psychological and mental conditions, socio-cultural factors, the economy, and the potential for conflict and domestic violence. The judge also recommended that the marriage be postponed until the child reaches the appropriate age as stipulated in the legislation. However, this recommendation was unable to change the applicants' decision.

This application for marriage dispensation was filed because the applicants' daughter plans to marry before meeting the minimum age limit as established by law. Based on the provisions of Article 7 paragraph (2) of Law Number 1 of 1974, as updated by Law Number 16 of 2019, as well as Article 49 paragraph (1) letter a and paragraph (2) of Law Number 7 of 1989, as amended by Law Number 3 of 2006 and finally by Law Number 50 of 2009, this case falls within the absolute jurisdiction of the Religious Court. The examination process was also conducted by a single judge in accordance with Article 1 paragraph (11) of the Supreme Court of the Republic of Indonesia Regulation Number 5 of 2019.

Article 7 paragraph (2) of Law Number 1 of 1974 stipulates that the parents of a prospective spouse who has not yet reached the minimum age can apply for a marriage dispensation from the court. In this case, the application was filed by the parents of the prospective bride. Therefore, the applicants are considered to have a legal basis and legitimate interest to file this application, so it can be seriously considered by the court.
The main reason for filing this application is because the applicants' daughter, Nayla Assyura, has a strong enough emotional bond with her prospective husband. This relationship is considered difficult to separate. Furthermore, the prospective husband's

family has made a formal marriage proposal, and wedding preparations, including setting a date, have also been made. Thus, the applicants hope that the marriage can be conducted soon, even though their daughter's age is still below the minimum age requirement for marriage.

From the testimony given by the applicants, their daughter, the prospective husband, and the prospective husband's male cousin, and reinforced by written evidence submitted in the hearing, the Panel of Judges found a number of relevant legal facts related to this application: that Nayla Assyura, the daughter of the applicant couple, is not yet 19 years old, which is the minimum age to marry according to applicable law. Since May 2023, Nayla has been in a close relationship with a man who is now her prospective husband. Currently, Nayla is also no longer continuing her formal education.

The relationship between Nayla and her prospective husband has been intense and close, based on mutual love, making them difficult to separate. They have even planned a specific date to get married. Nayla is also fully aware of and consents to this plan without any pressure, coercion, or influence in any form—be it physical, psychological, sexual, or economic—on herself or her family. Mentally and physically, Nayla stated that she is ready to undertake the role of a wife and homemaker. She is also aware of the responsibilities she will bear in married life. Meanwhile, her prospective husband is currently employed as an active member of the Indonesian Army (TNI AD) with a steady income of around five million rupiah per month.

Both Nayla's parents and the prospective husband's family have stated their readiness to support and be responsible for the livelihood of this couple's household. This support covers various important aspects, such as the economy, social life, health, and education. The entire families from both sides also welcome this marriage plan and show a commitment to continue guiding and nurturing the couple after they are officially married. Marriage is a physical and spiritual bond between a man and a woman with the aim of forming a happy and eternal family, based on the Belief in the One and Only God. Therefore, every marriage must fulfill the legal requirements as stipulated in the applicable laws and regulations.

Based on the facts revealed in the hearing, the marriage plan between the applicants' daughter and her prospective husband has essentially met all the necessary legal elements. The only obstacle is the age of the applicants' daughter, who has not yet

reached the minimum limit of 19 years as stipulated in Article 7 paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019. Thus, to conduct the marriage legally, a marriage dispensation from the court is required. Furthermore, other requirements as stated in Article 6 of the Marriage Law regarding parental consent have been met, and there are no blood relations, milk kinship, or other marriage impediments as regulated in Article 8 of the same law.

The establishment of a minimum age of 19 by law is not merely an administrative requirement, but rather a measure of the physical and mental maturity of the prospective spouses, so they are able to build a household responsibly, maintain reproductive health, and guarantee the future of their offspring. However, in this case, the Panel of Judges assessed that the applicants' daughter has shown physical and spiritual readiness to marry. Therefore, the application for marriage dispensation is deemed worthy of consideration from a legal standpoint.

Furthermore, it was revealed in the hearing that a close and loving emotional bond has been established between the applicants' daughter and her prospective husband, and they have agreed to advance their relationship to marriage. Given that the relationship is difficult to separate, and to avoid potential slander and other negative social impacts—especially since the wedding date has been set—the solemnization of the marriage is considered the best step. This situation meets the criteria of a "very urgent reason" as intended in Article 7 paragraph (2) of Law Number 16 of 2019 and its explanation, because there is no other choice but to proceed with the marriage immediately.

This marriage is also being undertaken based on the sincere will of both prospective spouses, without pressure or coercion, whether physical, psychological, or economic, from any party. The plan has even received the full support of the parents from each side. As a form of joint responsibility and commitment, both families have stated their readiness to accompany and guarantee the well-being of the prospective couple, including in economic, social, health, and educational aspects after marriage. Thus, this marriage plan has taken into account the principle of *the best interest of the child*, as stated in Article 26 paragraph (1) letter a of Law Number 35 of 2014 concerning Child Protection, as amended by Law Number 17 of 2016.

All the above considerations are also in line with one of the *fiqh* maxims used as a basis for the judge's consideration, which is:

الامكان بقدر يدفع الضرر

Meaning: Confusion must be avoided as much as possible.

لمصلح لجلب على مقدم لمفاصد درأ

Meaning: That avoiding mafsadat must be prioritized over coveting benefits;

In the view of Islamic law, marriage is an obligation for someone who has a strong desire to build a husband-wife relationship. The purpose is to protect oneself from behavior that contradicts Sharia. Therefore, if the marriage dispensation application filed by the applicants is not granted, it is feared that actions deviating from religious norms will arise. Furthermore, the date for the wedding ceremony has been set, and the prospective groom is considered ready both physically and spiritually, and has sufficient financial ability to bear the responsibility of marriage.

The applicants' desire to have their child marry soon also aims for their child to obtain peace and tranquility in life within a legitimate marital bond. This objective is in line with the values contained in the Qur'an, Surah Ar-Rum, verse 21, and is also in accordance with the provisions of Article 1 of Law Number 1 of 1974 concerning Marriage, which affirms that marriage is a physical and spiritual bond between a man and a woman to form a happy and eternal family. Based on all the considerations that have been previously presented, the applicants' request as stated in points 1 and 2 of the petition is deemed to be legally well-founded. Therefore, the application should be granted, namely by giving a marriage dispensation to the applicants' daughter to marry her prospective husband.

Decision Number 240/Pdt.P/2024/MS-Sgi

(https://drive.google.com/file/d/1WOwqVDCr3FiCvqPuy8vyFS-PvUJXc0ab/view**)**

The application for marriage dispensation filed by the applicants at the Sigli Syar'iyah Court was based on a rejection from the Office of Religious Affairs (KUA) of Tiro/Truseb District. The rejection occurred because the applicants' daughter, Aida, had not yet reached the minimum age of 19 as stipulated in Article 7 paragraph (2) of Law Number 16 of 2019 concerning the amendment to Law Number 1 of 1974 on Marriage. Therefore, the applicants are considered a party with legal interest to file this application.

From all the considerations presented, it is known that the only requirement for the marriage that has not been met is the age of the applicants' daughter, which has not

yet reached the minimum limit as required by law. Aida and Makruf have known each other, were in a relationship as a romantic couple, then got engaged, and finally agreed to marry. Their marriage plan has received the approval of both families and has also been registered at the Office of Religious Affairs of Pidie District.

Referring to Article 7 paragraph (1) of Law Number 1 of 1974 as amended by Law Number 16 of 2019, the prospective groom and bride must be at least 19 years old. However, in the hearing, although Aida's age had not yet met this provision, she demonstrated maturity and seriousness about marrying her prospective husband, Makruf bin Abdul Gani. The concerns expressed by the applicants were also considered reasonable. The romantic relationship that had progressed to the stage of engagement, as well as the proximity of Aida's and Makruf's residences, made supervision by the families difficult. This raised concerns about the possibility of actions occurring that are not in accordance with Islamic Sharia.

Based on all these matters, the Panel of Judges deemed that the marriage dispensation application filed was worthy of being granted so that the planned marriage of the applicants' daughter could be legally conducted. This decision also aims to avoid potential violations of legal norms and Islamic religious values. As part of the consideration, the Judge presented one of the *fiqh* maxims that served as a basis for the decision-making, which is:

لمصلح لجلب على مقدم لمفاصد درأ

Meaning: "Rejecting the occurrence of mafsadat is prioritized over attracting benefits"

Based on the descriptions that have been explained earlier, the Panel of Judges concluded that the marriage plan between the applicants' children and her future husband was in an urgent condition to be carried out immediately. Taking into account the urgency and underlying reasons, the application for marriage dispensation submitted by the applicants is considered worthy of grant.

Islamic Family Law Review of the Determination of Marriage Dispensation by Judges on the Grounds of Engagement

From the perspective of Islamic family law, a marriage dispensation is a form of legal leniency granted in an emergency condition when a prospective spouse has not yet reached the minimum age stipulated by legislation (Iqbal & Rabiah, 2020). In the Indonesian context, Article 7 paragraph (1) of Law Number 16 of 2019 stipulates that the minimum age to enter into marriage is 19 years for both men and women. However, paragraph (2) of that article provides an opportunity for parents or guardians to apply for a dispensation from the Religious Court if there is an urgent reason.

One of the reasons frequently submitted is that the child is already engaged to a prospective partner. In Islamic law, an engagement or *khitbah* is merely a form of promise and seriousness to marry, but it is not legally binding under Sharia law in the way a marriage contract (*akad nikah*) is. Therefore, the reason of being engaged cannot be the primary basis for granting a marriage dispensation, as it does not indicate an emergency or a real threat that would justify an underage marriage (Miratul Firdausi et al., 2024).

Islamic family law positions marriage as a sacred bond aimed at forming a family that is tranquil, loving, and compassionate (*sakinah, mawaddah, wa rahmah*). To achieve this goal, prospective spouses must be ready physically, mentally, emotionally, and economically. Granting a dispensation without thorough consideration will only open up the potential for harm, such as an increase in divorce rates, domestic violence, and disruption to the child's education and future. (Muhammad Fadhil, 2024)

Within the framework of the objectives of Sharia (*maqashid sharia*), Islam emphasizes the importance of protecting life (*hifz al-nafs*), intellect (*hifz al-'aql*), and lineage (*hifz al-nasl*), all of which can be threatened if a marriage is conducted in a state of unreadiness. Therefore, a judge in a marriage dispensation case must be careful and wise, and must base their decision on the principle of public benefit (*kemaslahatan*). The sole reason of being engaged is not strong enough under Islamic law to be the basis for granting a dispensation, unless it is accompanied by a genuinely urgent condition that is proven objectively through medical, psychological, or social considerations. (Hasbullah, 2024)

Thus, the granting of a marriage dispensation by a judge must adhere to the principle of child protection and uphold the values of justice and public benefit as

mandated in Islamic family law (Mansari & Rizkal, 2021). A review from the perspective of Islamic Family Law on the granting of marriage dispensation by a judge on the grounds of engagement reveals a legal approach that considers social, psychological, and the best interests of the prospective spouses. (Udin Pasondong, 2022)

Based on the analysis of several decisions from the Sigli Syar'iyah Court, namely Decision No. 671/Pdt.P/2022/MS-Sgi, No. 234/Pdt.P/2023/MS-Sgi, and No. 240/Pdt.P/2024/MS-Sgi, it can be concluded that the judges granted the marriage dispensation applications even though the prospective bride had not yet reached the minimum age of 19 as stipulated in Article 7 paragraph (1) of Law Number 1 of 1974, which was amended by Law Number 16 of 2019.

The main reason submitted by the parents in these applications was that their daughter had already been formally engaged by the male party, and both families had agreed to the marriage plan. In fact, the date for the marriage contract ceremony had already been set. In the view of Islamic family law, although an engagement does not have formally binding legal force, socially and morally, it is considered the beginning of a serious commitment towards marriage. Therefore, the existence of this engagement was deemed important in the judges' considerations.

The judges perceived that if the dispensation application were rejected, various negative impacts or harms (*mafsadat*) could arise, such as slander (*fitnah*) in the community, a relationship that does not comply with Sharia, and psychological distress for the child concerned. Therefore, the judges prioritized the *fiqh* principle of "*dar' al-mafāsid muqaddam 'alā jalb al-maṣāliḥ*," which means that preventing harm takes precedence over acquiring benefits. In this context, avoiding harm was seen as more important than merely adhering to the minimum age requirement.

Furthermore, the judges also considered the prospective couple's readiness, both physical and mental, the support from the extended families of both sides, the absence of a *mahram* relationship between them, and the family's economic and social conditions, which were deemed capable and stable. All these aspects formed the basis for the decision-making process to ensure that the resulting marriage would proceed well and not cause problems in the future.

From the perspective of Islamic law, as explained in Surah Ar-Rum, verse 21, marriage is a means to achieve inner peace (*sakinah*), affection (*mawaddah*), and sincere

compassion (*rahmah*). In the current social context, when a couple is already bound by an engagement, their relationship is difficult to separate, and there are concerns about violations of religious and social norms, the judge is given the authority to grant a dispensation as a form of protection for the child and to safeguard the greater good. (Akhmad Ikhsanuddin et al., 2024)

This shows that in Islamic family law, consideration of social conditions and the moral values that exist within the community is very important. Law enforcement is not only oriented towards formal rules but also pays attention to social reality, in order to create justice and mutual benefit. (Andi Ariani et al., 2020). According to the author's analysis, the Sigli Syar'iyyah Court's decision to permit a marriage dispensation even though the prospective bride had not reached the age of 19—in line with Surah An-Nisa, verse 6, which means "And if they have reached the age of marriage and you perceive in them sound judgment (rusyd), then release their property to them"—shows that the judge does not view the rules rigidly but also considers the real conditions on the ground. When the prospective couple is already engaged, the families have agreed, and the wedding date is set, postponement or rejection could create new problems. This proves that law can also adapt to the situation of the community.

In the author's opinion, the judges' reasoning of prioritizing the prevention of harm (*mafsadat*) over the pursuit of benefits is a wise step. In this case, denying the dispensation could cause the child to experience distress or even enter into a relationship that is not in accordance with religious teachings. By granting permission, the judge seeks to protect the child's honor, preserve their peace of mind, and prevent undesirable outcomes. The author also sees that marriage at a young age still carries the risk of a lack of mental, physical, or economic readiness. Therefore, even after a dispensation is granted, the role of parents, teachers, and religious figures is crucial in guiding and mentoring them. The state must also continue to provide education and maintain firm age limits as a long-term protection for children so they are not easily married off too early without thorough preparation.

Child Protection Policy Perspective

The granting of marriage dispensation to a child who has not yet reached the minimum age as stipulated in legislation is not only an issue of family law but also a

serious challenge in the implementation of child protection policy. The child protection policy perspective demands that every legal action concerning a child always considers the best interests of the child as a primary principle (UNICEF, 2020). In national law, this is affirmed in Law Number 35 of 2014 concerning Child Protection, specifically Article 26 paragraph (1) letter c, which states that parents are obliged to prevent marriage at a young age. Meanwhile, Article 1 number 1 of the same law defines a child as an individual who has not yet reached the age of 18, including a child in the womb (Ministry of Women's Empowerment and Child Protection, 2019).

Internationally, this principle is reinforced by the Convention on the Rights of the Child (CRC), which was ratified by Indonesia through Presidential Decree Number 36 of 1990. The convention states that in all actions concerning children, whether undertaken by social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration (United Nations, 1989). In the context of legal practice, the Supreme Court, through Supreme Court Regulation (PERMA) Number 5 of 2019, has established technical and substantive guidelines for adjudicating marriage dispensation applications. This regulation emphasizes the importance of the child's direct involvement in the hearing and the judge's obligation to ensure that the child, parents, and prospective spouse understand the risks of early marriage, such as dropping out of school, psychological and reproductive unpreparedness, economic exploitation, and domestic violence (Nurhadi, 2022).

Unfortunately, based on this study, the reason of "engagement" used as the basis for marriage dispensation applications at the Sigli City Syar'iyah Court is often not accompanied by an in-depth analysis of psychological readiness or the protection of the child's rights. This creates the potential for child protection policies to be neglected, as social or cultural pressure is made the primary consideration, rather than the best interests of the child.

From the perspective of Islamic law, although marriage is permitted from the age of puberty (*baligh*), contemporary Islamic scholars emphasize the importance of public welfare (*al-maṣlaḥah*) and the principles of the objectives of Sharia (*maqāṣid al-syarī'ah*), especially in preserving life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), and the continuity of a healthy and high-quality lineage (Athailah, 2022). Therefore, the granting

of permission to marry should not only be based on formal legal compliance but also on the consideration of holistic child protection

CONCLUSION

The legal reasoning used by judges at the Sigli City Syar'iyah Court in granting marriage dispensation applications on the grounds of engagement during the 2022–2024 period demonstrates an approach that integrates formal legal, social, religious, and psychological aspects. The judges assess that the status of an engagement and the setting of a wedding date can be sufficiently strong reasons for a dispensation to be granted, especially if the couple's relationship is already closely intertwined and emotionally difficult to separate. This consideration is reinforced by the prospective couple's mental, physical, and economic readiness, as well as the full support of both sets of parents. In many cases, the prospective wife is no longer attending school, and the prospective husband is already employed with a steady income.

However, when viewed from the perspective of child protection policy, this kind of approach requires deeper criticism. Law Number 35 of 2014 and the Convention on the Rights of the Child (1989) affirm that the best interests of the child must be the primary consideration in every legal decision concerning a child. Although judges consider that granting a dispensation is a form of protection to prevent the violation of religious or social norms, allowing a child to marry still poses risks to their fundamental rights, such as the right to education, psychological development, and protection from domestic violence (UNICEF, 2020; Tiffani, 2021).

The *fiqh* (Islamic jurisprudence) principle used by the judges, *dar'u al-mafāsid muqaddam 'ala jalb al-maṣāliḥ* (preventing harm takes precedence over acquiring benefits), is indeed relevant in the community's moral and social context. However, when applied without being balanced against the universal principles of child protection, there is a potential for violating children's rights, which contradicts the spirit of the Child Protection Law and Supreme Court Regulation (PERMA) No. 5 of 2019. Thus, although the judges' approach is based on public benefit and is a response to social realities, an evaluation is needed to ensure that dispensation decisions are truly based on a comprehensive consideration of the child's readiness and not merely on social pressure or cultural norms.

Therefore, it can be concluded that the legal reasoning provided by the Sigli City Syar'iyah Court in marriage dispensation cases contains elements of protection but still leaves room for criticism when viewed from the perspective of child protection policy. This perspective emphasizes the need to prioritize the substantive, long-term rights of the child over short-term social or cultural compromises.

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