

**JUDGES' CONSIDERATIONS IN DISAPPROVING MARRIAGE
DISPENSATION DUE TO PREMARITAL PREGNANCY BASED ON
SADD AL-DZARI'AH PERSPECTIVE
(Study of Determination Number 85/Pdt.P/2023/PA.Pn)**

THESIS

BY :

MUHAMMAD ADNAN ROSADI

SIN 200201110162



ISLAMIC FAMILY LAW DEPARTMENT

SYARIAH FACULTY

STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM

MALANG

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STATEMENT OF THE AUTHENTICITY

In the name of Allah.

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled :

**JUDGES' CONSIDERATIONS IN DISAPPROVING MARRIAGE
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Is truly a writer's original work that can be legally justified. If this thesis is proven to result in duplication or plagiarism from another scientific work, it as a precondition of degree will be stated legally invalid.

Malang, 7th of May 2024

Author



Muhammad Adnan Rosadi
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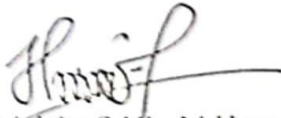
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JUDGES' CONSIDERATIONS IN DISAPPROVING MARRIAGE DISPENSATION DUE TO PREMARITAL PREGNANCY BASED ON *SADD AL-DZARI'AH* PERSPECTIVE (Study of Determination Number 85/Pdt.P/2023/PA.Pn)

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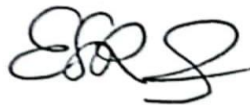


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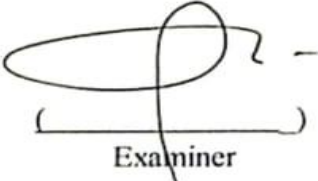

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JUDGES' CONSIDERATIONS IN DISAPPROVING MARRIAGE DISPENSATION DUE TO PREMARITAL PREGNANCY BASED ON *SADD AL-DZARI'AH* PERSPECTIVE (Study of Determination Number 85/Pdt.P/2023/PA.Pn)

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MOTTO

ثَلَاثَةٌ حَقٌّ عَلَى اللَّهِ تَعَالَى عَوْنُهُمْ : الْمُجَاهِدُ فِي سَبِيلِ اللَّهِ وَ الْمُكَاتِبُ

الَّذِي يُرِيدُ الْأَدَاءَ وَالنَّكَاحُ الَّذِي يُرِيدُ الْعَفَافَ

“Ada tiga golongan manusia yang berhak mendapatkan pertolongan Allah SWT, yakni seorang yang berjihad di jalan Allah, budak yang ingin merdeka dari tuannya (dengan tebusan) , dan seorang yang menikah karena ingin memelihara kehormatannya,”

“There are three groups of people who have the right to receive the help of Allah SWT, namely someone who strives in the way of Allah, a servant who redeems himself to be free, and someone who marries because he wants to maintain his honor.”

(HR. Tirmidzi 1579).

ACKNOWLEDGEMENT

Alhamdulillahirabbil'alamin, all praise be to Allah SWT who has given Grace and guidance so that a thesis entitled "Judges' Considerations In Disapproving Marriage Dispensation Due To Premarital Pregnancy Based On Sadd Al-Dzari'ah Perspective (Study Of Determination Number 85/Pdt.P/2023/PA.Pn) can be completed. Shalawat and greetings may always be conveyed to our lord the Prophet Muhammad SAW who has guided us from the era of jahiliyah to the era full of knowledge that we feel today, hopefully one day we will get his syafa'at on the last day. Amien.

For all the teaching, guidance / direction, and service assistance that has been provided, with all humility the author expresses his incomparable gratitude to:

1. Prof. Dr. Zainuddin, MA. as the Rector of Maulana Malik Ibrahim State Islamic University Malang.
2. Prof. Dr. Sudirman, MA, CAHRM. As the Dean of the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang.
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4. Prof. Dr. Hj. Umi Sumbulah, M.Ag as the author's guardian lecturer while studying at the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang. The author would like to thank her for providing guidance, advice and motivation while the author was studying

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6. All lecturers and staff of the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang who have provided knowledge and assistance to the author. *Jazaakumullah ahsanal jazaa'*.
7. Mr.Marjoan and Mrs. Nurhasanah as the author's parents, Mrs. Sri Mardiana, S.Pd. as the author's older sister and not forgetting Khairul Faizin and Husaini Al-Fajri as the author's younger brother who never stopped providing prayers, enthusiasm, advice, and motivation both in moral and material form from the beginning of the lecture until the completion of the author's undergraduate study period. May the steps of the father and mother always be shaded by the pleasure of Allah SWT.
8. My beloved friends ICP HKI 2020, ZEVOGENT, DIAMICBLE who have never tired of accompanying, directing, supporting, and encouraging the author since the beginning of the lecture period hopefully forever. May blessings and success always be with you all.
9. Finally, the author, Muhammad Adnan Rosadi for all his hard work, smart work, and enthusiasm to never give up in working on this thesis. This is just beginning, let's fight on to the next step.

With the completion of this thesis report, it is hoped that the knowledge we have gained during college can provide charitable benefits for life in this world and

the hereafter. As a human being who is never free from mistakes, the author really hopes for an apology

Malang, 7th of May 2024

Author,

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TRANSLITERATION GUIDENCE

Transliteration is the transfer of Arabic script into Indonesian (*Latin*) writing, not Arabic translation into Indonesian. Included in this category are Arabic names from Arabs, while Arabic names from nations other than Arabic are written as the spelling of the national language, or as written in the reference book. Writing the title of the book in the footnotes and bibliography, still use the provisions of this transliteration.

A. Consonant

The list of Arabic letters and their transliteration into Latin letters can be seen on the following page:

Arab	Latin	Arab	Latin
أ	‘	ط	t
ب	B	ظ	z
ت	T	ع	‘
ث	Th	غ	Gh
ج	J	ف	F
ح	h	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	Dh	م	M
ر	R	ن	N
ز	Z	و	W
س	S	ه	H
ش	Sh	ء	‘
ص	s	ي	Y
ض	d		

Hamzah (ء) at the beginning of a word follows its vowel without any sign.

If the hamzah (ء) is located in the middle or at the end, it is written with a sign (‘).

B. Vocal

Arabic vocals, like Indonesian vocals, consist of single vocals or monoftongs and double vocals or diphthongs. Single Arabic vocals whose symbols are signs or harakat, the transliteration is as follows:

Arabic letters	Name	Latin	Name
أَ	Fathah	A	A
إِ	Kasrah	I	I
أُ	Ḍammah	U	U

Arabic double vocals whose symbols are a combination of harakat and letters, transliterated in the form of a combination of letters, namely:

Sign	Name	Latin	Nama
أَيَّ	Fathah dan ya	Ai	A and I
أَوَّ	Fathah dan wau	Iu	A and U

Example:

كَيْفَ : *kaifa*

هَوَّلَ : *haulā*

C. Maddah

Maddah or long vowels whose symbols are harakat and letters, transliterated in the form of letters and signs, namely:

Harakat and Letter	Name	Letter and Sign	Name
آَ	Fathah and alif or ya	Ā	a and line above
يَ	Kasrah or ya	Ī	i and line above
وُ	Ḍammah and wau	Ū	u and line above

Example:

مَاتَا : *mātā*

رَمَى : *ramā*

قِيلَ : *qīla*

يَمُوتُ : *yamūtu*

D. Ta Marbūṭah

There are two transliterations for ta marbūṭah, namely: ta marbūṭah which is alive or received fathah, kasrah, and ḍammah, is transliterated as [t]. Whereas the ta marbūṭah which is dead or has the letter sukun, is transliterated as [h].

If the word ending in ta marbūṭah is followed by a word that uses the article al- and the two words are read separately, then ta marbūṭah is transliterated with ha (h). Example:

رَوْضَةُ الْأَطْفَالِ : *rauḍah al-atfāl*

الْمَدِينَةُ الْفَاضِلَةُ : *al-madīnah al-fāḍilah*

الْحِكْمَةُ : *al-ḥikmah*

E. Syaddah (*Tasydīd*)

Syaddah or *tasydīd* which in the Arabic writing system is symbolized by a *tasydīd* sign (ّ), in this transliteration is symbolized by a repetition of letters (double consonants) marked with a *syaddah*. Example:

رَبَّنَا : *rabbanā*

نَجَّيْنَا : *najjainā*

الْحَقُّ : *al-ḥaqq*

الْحَجُّ : *al-ḥajj*

نُعِمُّ : *nu''ima*

عَدُوُّ : *'aduwwu*

If letter ع with *tasydīd* at the end of a word and preceded by a letter with the letter kasrah (ِ), then it is transliterated like the letters *maddah* (ī). Example:

عَلِيٌّ : *'Alī* (not *'Aliyy* or *'Aly*)

عَرَبِيٌّ : *'Arabī* (not *'Arabiyy* or *'Araby*)

F. Auxiliary verb

The article of faith in the Arabic writing system is symbolized by the letter ال (alif lam ma'arifah). In this transliteration guideline, the Auxiliary verb of clothing is transliterated as usual, al-, both when it is followed by shamsiah letters and qamariah letters. The Auxiliary Verb does not follow the sound of the letter directly following it. The article is written separately from the word that follows it and is connected with a horizontal line (-). For example:

الشَّمْسُ : *al-syamsu* (bukan *asy-syamsu*)

الزَّلْزَلَةُ : *al-zalزالah* (bukan *az-zalزالah*)

الفَلْسَفَةُ : *al-falsafah*

الْبِلَادُ : *al-bilādu*

G. Hamzah

The rule of transliterating hamzah letters into apostrophes (') only applies to hamzahs located in the middle and end of words. However, if the hamzah is located at the beginning of the word, it is not symbolized, because in Arabic writing it is an alif. For example:

تَأْمُرُونَ : *ta'murūna*

النَّوْءُ : *al-nau'*

شَيْءٌ : *syai'un*

أُمِرْتُ : *umirtu*

H. Writing Arabic Words Commonly Used in Bahasa

Arabic words, terms or sentences that are transliterated are words, terms or sentences that have not been standardized in Indonesian. Words, terms or sentences that are already common and part of the Indonesian language treasury, or are often written in Indonesian writing, are no longer written according to the above

transliteration method. For example, the words Quran (from al-Qur'ān), sunnah, hadith, special and general. However, when these words are part of a series of Arabic texts, they must be transliterated as a whole.:

Fī zilāl al-Qur'ān

Al-Sunnah qabl al-tadwīn

Al-'Ibārāt Fī 'Umūm al-Lafẓ lā bi khuṣūṣ al-sabab

I. Lafẓ Al-Jalālah (الله)

The word “Allah” preceded by particles such as jarr and other letters or as muḍāf ilaih (nominal phrase), is transliterated without the letter hamzah. Example:

دِينُ اللَّهِ : *dīnullāh*

As for the ta marbūṭah at the end of a word that is based on lafẓ al-jalālah, it is transliterated with the letter [t]. Example:

هُمْ فِي رَحْمَةِ اللَّهِ : *hum fī raḥmatillāh*

J. Capital Letters

Although the Arabic writing system does not recognize capital letters (All Caps), in transliteration the letters are subject to the provisions on the use of capital letters based on the applicable Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write the initial letter of proper names (person, place, month) and the first letter at the beginning of a sentence. When a proper name is preceded by the article (al-), the initial letter of the proper name is written in capital letters, not the initial letter of the article. If it is located at the beginning of a sentence, then the letter A of the article is capitalized (Al-). The same provision also applies to the initial letter of the title of the reference preceded by the article al-,

both when it is written in the text and in the reference notes (CK, DP, CDK, and DR). Example:

*Wa mā Muḥammadun illā rasūl, Inna awwala baitin wuḍi ‘a linnāsi lallaẓī bi
Bakkata mubārakan, Syahru Ramaḍān al-laẓī unzila fīh al-Qur’ān*

Naṣīr al-Dīn al-Ṭūs Abū Naṣr al-Farābī, Al-Gazālī, Al-Munqiz min al-Ḍalāl

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ABSTRAK

Muhammad Adnan Rosadi, NIM 200201110162,2024. **Pertimbangan Hakim dalam Menolak Dispensasi Kawin Karena Hamil Di Luar Nikah Perspektif *Sadd Al-Dzariah* (Studi Penetapan Nomor 85/Pdt.P/2023/PA.Pn)** Skripsi. Program Studi Hukum Keluarga Islam. Fakultas Syariah. Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing : Siti Zulaicha, S.HI.,M.Hum dan Dr. Suparmi,M.Pd

Kata Kunci : Pertimbangan Hakim, Dispensasi Kawin, *Sadd Al-Dzariah*

Perkara dispensasi kawin merupakan kewenangan absolut dalam bidang perkawinan dari Pengadilan Agama. Permohonan dispensasi kawin banyak diajukan para pihak disebabkan oleh beberapa hal seperti calon pengantin perempuan dalam keadaan hamil di luar nikah. Penting bagi hakim yang menyelesaikan perkara ini memutuskan dengan melihat beberapa aspek salah satunya adalah dampak yang akan terjadi jika permohonan tersebut diterima atau ditolak. Permohonan yang diajukan bisa dikabulkan karena kesesuaian dengan keadaan setelahnya begitu pula jika permohonan tersebut mendapat penolakan.

Penelitian ini merupakan penelitian hukum normatif, dengan menggunakan pendekatan kasus dan konseptual. Sumber data yang digunakan adalah sumber data sekunder yang terbagi menjadi tiga bahan hukum yakni primer, sekunder dan tersier. Sementara dalam proses pengolahan data memakai teknik edit, klasifikasi, verifikasi, analisis, dan kesimpulan.

Hasil penelitian ini menunjukkan Pertimbangan hakim dalam menolak permohonan dispensasi kawin nomor 85/Pdt.P/2023/PA.Pn melalui pertimbangan Yuridis dan Non-yuridis. Pertimbangan yang digunakan dalam penetapan Hakim tersebut sudah sesuai dengan konsep *Sadd Al-Dzari'ah* yang menimbulkan dampak positif, diantaranya mencegah perilaku seks bebas yang merajalela dan terjadinya potensi kekerasan dalam rumah tangga, karena penetapan Hakim tersebut sebagai *Sadd Al-Dzari'ah* atau menutup jalan yang berupa kebolehan kedua calon mempelai untuk melangsungkan pernikahan. Walaupun demikian, penundaan perkawinan tersebut akan menjadikan anak dalam kandungan calon istri tidak dapat dinasabkan dengan bapak biologisnya.

ABSTRACT

Muhammad Adnan Rosadi, SIN 200201110162, 2024, **Judges Considerations In Disapproving Marriage Dispensation Due To Premarital Pregnancy Based On *Sadd Al-Dzari'ah* Perspective (Study Of Determination Number 85/Pdt.P/2023/PA.Pn** Thesis. Islamic Family Law Department. Sharia Faculty. Maulana Malik Ibrahim State Islamic University, Malang. Supervisor : Siti Zulaicha, S.HI.,M.Hum and Dr. Suparmi,M.Pd

Keywords : Judges Consideration, Marriage Dispensation, *Sadd Al-Dzariah*,

Marriage dispensation matters are the absolute authority in the field of marriage from the Religious Courts. Many parties submit applications for marriage dispensation due to several reasons, such as the prospective bride being pregnant out of wedlock. It is important for the judge who resolves this case to decide by looking at several aspects, one of which is the impact that will occur if the application is accepted or rejected. The application submitted can be granted because it is compatible with the subsequent circumstances, as well as if the application is disapproved.

This research is normative legal research, using a case and conceptual approach. The data source used is a secondary data source which is divided into three legal materials, namely primary, secondary and tertiary. Meanwhile, the data processing process uses editing, classification, verification, analysis and conclusion techniques.

The results of this research show the consideration of the judge in disapproving the application for marriage dispensation number 85/Pdt.P/2023/PA.Pn through Juridicial and Non-judicial considerations. The considerations used in the judge's considerations are in line with the *Sadd al-Dzari'ah* concept which has a positive impact, including preventing sexual freedom behavior and the occurrence of potential domestic violence, because the considerations of such a judge as *Sadd Al-Dzari'ah* or closing the way that is the ability of both prospective brides to succeed in marriage. Even so, the delay in marriage will make the child in the womb of the future wife unreasonable to his biological father .

ملخص البحث

محمد عدنان رشدي. رقم القيد. 200201110162. اعتبارات القاضي في رفض الإغفاء من الزواج بسبب الحمل غير المتزوج من وجهة نظر سدِّ الدرائع (دراسة التحديد رقم 85 / PA.Pn/2023/Pdt.P). بحث الرسالة. شعبة الأحوال الشخصية، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج. المشرفة: ستي زليخا، الماجستير وسوبرمي، الماجستير

الكلمات الرئيسية: نظر القاضي، عقد الزواج، سدِّ الدرائع

تعتبر مسائل عقد الزواج هي السلطة المطلقة في مجال الزواج من المحاكم الشرعية. تقدم العديد من الأطراف طلبات للإغفاء من الزواج لعدة أسباب، مثل أن تكون العروس المرتقبة حاملاً خارج إطار الزواج. ومن المهم للقاضي الذي يفصل في هذه القضية أن يقرر من خلال النظر في عدة جوانب، أحدها هو التأثير الذي سيحدث في حالة قبول الطلب أو رفضه. يمكن الموافقة على الطلب المقدم لأنه متوافق مع الظروف اللاحقة، وكذلك في حالة رفض الطلب

هذا البحث هو بحث قانوني معياري، باستخدام الحالة والنهج المفاهيمي. مصدر البيانات المستخدم هو مصدر بيانات ثانوي وينقسم إلى ثلاث مواد قانونية، وهي الأولية والثانوية والثالثية. وفي الوقت نفسه، تستخدم عملية معالجة البيانات تقنيات التحرير والتصنيف والتحقق والتحليل والاستنتاج

وتظهر نتائج هذا البحث أن نظر القاضي في رفض طلب الإغفاء من كان مبنياً على اعتبارات قانونية وغير 85/Pdt.P/2023/PA.Pn الزواج رقم قضائية. وتتوافق الاعتبارات المستخدمة في تحديد القاضي مع مفهوم سدِّ الدزريعة الذي له أثر إيجابي، بما في ذلك منع تفشي السلوك الجنسي واحتمالات العنف الأسري، لأن تعيين القاضي كسدِّ الدزريعة أو إغلاق المسار الذي يشكل

قدرة العروس والعريس على الزواج. ومع ذلك، فإن تأجيل الزواج يعني أن الطفل في رحم الزوجة المرتقبة لا يمكن أن يولد من جديد مع والده البيولوجي.

CHAPTER I

INTRODUCTION

A. Background Of the Study

Justice is the granting of justice by an institution that has the duty to receive, examine, judge, and settle matters brought to it. Justice is given by all judges, whether it be a judge alone, or by the assembly, to all those who seek justice. With the authority of a judge as a justice, then the judge has such an important role in a court of law.¹

The religious court is one of the perpetrators of the power of the judiciary used in the interests of the people to seek justice especially for those who have Islamic religion with certain matters.² The religious courts have the main duty to examine, settle, and settle certain matters between persons of Islamic religion in the field of marriage, inheritance, wills, grants carried out in accordance with Islamic law, wakaf, zakat, infaq, shadaqah, and Shariah economy according to the rules of article 49 of the Law No. 3 of 2006.³

The jurisdiction of the religious courts in matters of marriage is in relation to polygamy license, marriage dispensation, divorce and divorce, livelihoods of iddah and mut'ah, guardians of adhol, and joint property. It is the absolute jurisdiction of the religious courts in the form of a volunteer. It is divided into two categories: a voluntary and a contentious. A voluntary is a form of an application without an opponent and its legal product is a

¹ Susanto Susanto, Muhamad Iqbal, dan Wawan Supriyatna, "Menciptakan Sistem Peradilan Efisien Dengan Sistem E-Court Pada Pengadilan Negeri dan Pengadilan Agama Se-Tangerang Raya," (*Jurnal Cendekia Hukum*) 6, no. 1 (September 30, 2020): 105, <https://doi.org/10.33760/jch.v6i1.287>.

² Saharuddin A. Tappu, Kairuddin Karim, dan Muh Akbar Fhad Syahril, *Hukum Acara Peradilan Agama* (Eureka Media Aksara, 2023), 18.

³ Imam Sukadi and Erfaniah Zuhriah, "The Legal Policy of Judicial Power: The Idea of Implementation of Small Claim Courts in Religious Courts," *De Jure: Jurnal Hukum Dan Syari'ah* 13, no. 1 (July 1, 2021): 4.

settlement. In the meantime, a contentious matter is a form of a lawsuit or there is a dispute in it and the product of the decision is a verdict.

Dispensation of spouses is one of the issues of marriage dealt with by the Religious Court. Since divorce due to minor marriage makes this matter deserves more attention and special regulation. Basic Law of 1945 through article 7, paragraph (1) of Law No. 16 of 2019 amending Act No. 1 of 1974 on marriage stating that marriage is permitted only when a man and a woman have reached the age of 19.⁴ Although the age limit for marriage has been introduced, it is still common to find underage couples who wish to marry for a variety of reasons. The Marriage Act has anticipated the marriage of minors by imposing a marital dispensation as provided for in Article 7, paragraph (2) of Act No. 16 of 2019 on Amendment of Law No. 1 of 1974 on Marriage. The sentence also explains the very urgent reasons accompanied by sufficient supporting evidence as an absolute condition for the application for a marital dispensation to be submitted to the court.

The Religious Court of Painan is one of the religious courts with the most cases dealing in the area of Padang Religious High Court, this can be seen from the data of the number of cases decided in each year. In 2020, the total cases decided is 846 decisions; in 2021, the total matters decided is 731 decisions; by 2022, the total case decided is as many as 788 decisions; last year, in 2023, the total issues decided as 894 decisions. For the case of

⁴ Undang-Undang Nomor 16 Tahun 2019 tentang perkawinan.

marriage dispensation in 2023, the Painan Religious Court has ruled out 50 cases with content to be accepted and some to be rejected.⁵

One of the matters established by the Religious Court of Painan is the Determination Number 85/Pdt.P/2023/PA.Pn concerning the application for dispensation of spouses on the grounds of pregnancy outside of marriage. In such a decree, there is a case of dispensing of marriages between the children of the applicants who have the status of a prospective wife aged 18 years and 4 months and the prosecutor's husband who is 27 years old in the Court of Religious Painan.⁶ Another reason for submitting this application is that the two prospective groom have been in a relationship for three years and as a result of the relationship, the prospect's wife was pregnant before the marriage took place. The children of the applicants who are under age and the condition of him who is at age two with the age of pregnancy one month may convince the judge of consideration to grant a marriage dispensation. Another thing that could be expected to be considered by the judge is to create a new opportunity with the marriage under hand so that it raises a new polemic in the social life of the Islamic community in Indonesia, it will have a bad impact on the child born later.⁷

The judge in the decision of the matter he is dealing with has many

⁵ Pengadilan Agama Painan, Mahkamah Agung Republik Indonesia, accessed December 30, 2023, <https://pa-painan.go.id/laporan-akta-cerai/>.

⁶ Bab II Pasal 7 ayat 1 Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan.

⁷ “Penetapan Pengadilan Agama Painan Nomor 85/Pdt.P/2023/PA.Pn, 2 Agustus 2023, accessed 26 Januari 2024, <https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pa-painan/tahunjenis/upload/tahun/2023/page/17.html>.

considerations, among them about which aspect is more arousing concern or will cause concern. The judge's assembly has advised the petitioners and the two prospective brides to marry, but the parties remain on their petition for marriage. Of course the judge continued the process and when on the day of the trial the judges rejected the application for marriage dispensation so that both couples could not continue the marriage process at the local Office of Religious Affairs.

Limiting the age of marriage is a very important thing because the measure of maturity will determine the mature mental preparation to build a household armor. If we look at it from a social perspective, underage marriages may reduce family harmony because of the level of emotional instability between husbands and wives that can lose self-control in solving problems within the family.⁸ In Islamic law there is no age limit for marriage. Islamic law has established that a boy or a girl is deemed legitimate to enter into marriage when they have reached the age or better known as the term Baligh. With this term, a boy or a girl will pass through certain stages towards the said age of sufficiency. The criterion for a man is when he has had a wet dream that he can only feel on his own while for a woman is marked by the occurrence of Haidh (menstruasi). According to Rasyid Ridha, the phrase Baligh shows that a person's age to marry is until dreaming which means that

⁸ Nanda Syah Putri, "Analisis Perbandingan Pertimbangan Hakim Dalam Menetapkan Dispensasi Kawin (Studi Putusan Nomor: 524/Pdt.P/2020/PA.Sor dan Putusan Nomor: 352/Pdt.P/2021/MS.Sgi)" (other, UIN Ar-Raniry Banda Aceh, 2023), 4, <https://repository.ar-raniry.ac.id/id/eprint/26973/>.

at this time or age a person has been able to have children and give offspring so that his heart is moved to carry on the marriage.⁹ He was also charged with the law of religion, as the duty of worship, and of prayer, and was enforced *hudud*.

Islamic law through fiqh by using *Sadd Al-Dzari'ah* method is a method used in achieving a good goal by closing the path that brings harm or damage. In this case *Sadd Al-Dzari'ah* is the determinant of whether the path is good or bad. That is, everything that is good or permitted but can lead to harm, then will be bad or forbidden. It is a dishonor for men and women who are young and want to marry, so that the use of the marriage is not harmful, and it is forbidden.¹⁰

The determination of the Painan Religious Court is interesting for review and re-examination, given the emergency faced by the applicants' children who have been pregnant for a month. The situation will get more complicated as her stomach grows bigger, which could ultimately result in contempt for the family of the applicant's children and her prospective husband. The Islamic law as a teaching brought by the Prophet has also regulated the marriage of pregnant women outside of marriage, whether with their biological or non-biological father, which is contained in some fiqh books, some that allows to marry women who are pregnant outside marriage

⁹ Moh Hatta, "Batasan Usia Perkawinan Dalam Perspektif Ulama Klasik Dan Kontemporer," *Al-Qānūn: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 19, no. 1 (2016): 70.

¹⁰ Husni Fuaddi, "Saddu Dzari'ah Dalam Perspektif Hukum Islam," *Ahkam: Jurnal Syariah Dan Hukum* 4, No. 1 (December 27, 2023): 18.

and there are also scholars that strictly prohibit marriage.¹¹

This is more interesting to be studied in more detail in this study by analyzing the judgment of the Assembly of Judges of the Painan Religious Court in refusing to grant marriage dispensation to the children of applicants who are under age and in urgent circumstances that will be analyzed using Ushul Fiqih theory related to *Sadd Al-Dzari'ah*.

B. Problem of the Study

Based on the background of the problem above, the following statement of problem can be describe:

1. How is judges consideration in disapproving marriage dispensation in case Number 85/Pdt.P/2023/PA.Pn?
2. How is the analysis of the judges consideration in disapproving marriage dispensation in case Number 85/Pdt.P/2023/PA.Pn in the perspective of *Sadd Al-Dzari'ah*?

C. Objective of the Study

Based on the problem formulation above, the objective of the Study can be outlined as follows:

1. To know and describe the judge's consideration in disapproving marriage dispensation in case number 85/Pdt.P/2023/PA.Pn.
2. To find out and analyze the judge's consideration in disapproving

¹¹ Sirman Dahwal and Dimas Dwi Arso, "Studi Tentang Teori-Teori Hukum Islam Yang Berhubungan Dan Mendukung Keberadaan Peradilan Agama Di Indonesia," *Al Ijarah : Jurnal Pemerintahan Dan Politik Islam* 8, no. 1 (April 30, 2023): 119, <https://doi.org/10.29300/imr.v8i1.8035>.

marriage dispensation in case number 85/Pdt.P/2023/PA.Pn in the perspective of *Sadd Al-Dzariah*.

D. Significance of the Study Research

Based on the research objectives above, the significance of the study can be described as follows:

1. From a theoretical perspective, this research is expected to be able to develop insights into science and become a source of discussion and reference for the general public, especially students of the Faculty of Shari'ah. In addition, this research is expected to be able to make a valuable contribution to the development of knowledge, especially in the context of judges' considerations regarding the disapproving of marriage dispensation.
2. Practically, the results of this study are expected to be able to provide positive thoughts for researchers and the public in general regarding the judge's consideration in disapproving applications for dispensation of marriage due to premarital pregnancy. In addition, the results of this study are expected to provide valuable information and input for future research that wants to explore further in the same field.

E. Definition of Key Terms

Definition of key terms aims to provide an explanation of the research variables contained in the research title. The following researchers will display several terms that require explanation, namely:

1. Judges Considerations

Judge consideration is a stage where the panel of judges examines and considers the facts that arise during the trial. The judge's consideration is one of the crucial aspects to determine justice and legal certainty in a judge's decision. In addition, this consideration also brings benefits to the parties concerned.

2. Premarital Pregnancy

Premarital Pregnancy refers to a sexual act that occurs before a formal bond based on religion and state (akad). Pregnancy that occurs before the formal bond (akad) is considered a form of radical sexual activity or adultery.

3. *Sadd Al-Dzari'ah*

According to the term of Islamic jurists, *Sadd Al-Dzari'ah* is something that intermediates towards actions that are forbidden or legalized. In this case, the legal provisions imposed on *Sadd Al-Dzari'ah* always follow the legal provisions contained in the action that is the target.

F. Research Method

The research method is a way to solve problems or a way to develop science using scientific methods. Research methods are regularly arranged methods or techniques used by a researcher to collect data in conducting research that is tailored to the subject or object to be studied.¹²

¹² Ade Lestari, Azmi Fitriasia, and Ofianto Ofianto, "Metodologi Ilmu Pengetahuan : Kuantitatif Dan Kualitatif Dalam Bentuk Implementasi," *Jurnal Pendidikan Dan Konseling (JPDK)* 4, no. 6 (December 5, 2022): 8559, <https://doi.org/10.31004/jpdk.v4i6.9710>.

The following is the research method that the author used:

1. Type of Research

The type of research used is normative legal research. In addition to normative research because the author analyzes using one of the sources of Islamic law establishment, *Sadd Al-Dzari'ah*, which is taken from the library sources related to the discussion in this research. Normative research used by the author in this study to provide in-depth analysis regarding the determination issued by the Painan Religious Court on the rejection of the application for marriage dispensation to the children of applicants who have been pregnant outside of marriage. In this study, the judge's considerations in the decision of the case are analyzed using the *Sadd Al-Dzari'ah* perspective.

2. Research Approach.

The research approaches used are *case* approach and *conceptual* approach. The case approach is carried out by examining cases related to the issue at hand that have become court decisions and have permanent legal force. The main study in the case approach is the *ratio decidendi* or *reasoning*, namely the court's consideration to arrive at the determination, which in this study is Determination Number 85/Pdt.P/2023/PA.Pn concerning marriage dispensation. The conceptual approach in legal research stems from the views and doctrines that have developed in legal science. In this study, the

conceptual approach used is the doctrine of ushul Fiqh scholars, namely Ibn Qayyim Al-Jauziyah regarding *Sadd Al-Dzari'ah*. This conceptual approach is important because understanding the views or doctrines that develop in legal science can be a foothold for building legal arguments when resolving the legal issues at hand. Views or doctrines will clarify ideas by providing legal notions, legal concepts, and legal principles that are relevant to the problem, especially in Islamic law.

3. Data Sources

The data sources used in this research are secondary data sources. Secondary data is data obtained through books, books, and other important documents and contains reinforcing information that is continuous with the topic of discussion of researchers. Secondary data is divided into 3 legal materials, namely primary, secondary, and tertiary legal materials.

a. Primary Legal Materials

Primary legal material is data obtained directly from the first source determined. Primary legal material in this research is a copy of the determination of case number 85/Pdt.P/2023/PA.Pn.

b. Secondary Legal Materials

This secondary legal material complements the primary legal material. Secondary legal materials used by researchers in this study are in the form of literature, documents and other sources related to the focus of this research, books related to law, sources of Islamic

law, opinions of Fiqh scholars, fiqh books, laws and regulations, scientific journals, theses and previous theses that are linear with the discussion in this study. Examples such as the book entitled “Eksistensi Sadd adz-Dzari’ah Dalam Ushul Fiqh: Kajian Pemikiran Ibnu Qayyim al-Jauziyyah (w.751 H/1350 M)”

c. Tertiary Legal Materials

Tertiary legal materials are supporting materials that provide completeness in explanations that may not be found in primary and tertiary legal materials such as the Big Indonesian Dictionary (KBBI), *websites*, and mass media in accordance with the topic of discussion.

4. Data Collection

Data Collection in this research was carried out through *library research*. Literature study involves identification to find sources that provide factual information or personal or expert opinions on research questions. By reviewing literature on books related to law, sources of Islamic law, opinions of fiqh scholars, fiqh books, laws and regulations, scientific journals, theses and previous theses that are linear with the discussion in this study.

5. Data Analysis

Researchers process the data that has been collected to facilitate the analysis data. Researchers use stages in analyzing data,

including data checking (editing), data grouping (classifying), data verification (verifying), data analysis (analyzing), and making conclusions (concluding).

a. Data Checking (Editing)

Data checking is the process of checking and adjusting the data used to make it easier for researchers to analyze. At this stage, researchers correct the data that has been obtained and ensure that it is in accordance with the problems that will be discussed in the study.

b. Classifying

In the data grouping process, researchers try to collect the data obtained earlier and select the type of data. This research uses secondary data which is divided into 3 legal materials. Researchers categorize data according to the legal materials used. The grouping of data is carried out by researchers to make it easier to answer the formulation of predetermined problems, namely how the judge's consideration in rejecting the marriage dispensation case and how the judge's consideration when viewed from the perspective of Sadd Adz-Dzari'ah.

c. Data Verification (Verifying)

At this stage, the researcher rechecks the data that has been obtained and proves its truth and guarantees the validity of the data collected. Data verification is carried out by looking at the legal sources used that are valid and there is legality in the ratification of

these legal sources.

d. Data Analysis (Analyzing)

In this research, data analysis is a very important part to do. Because through analysis, the data obtained will provide its main benefit in solving this research problem to achieve the ultimate goal of the research.

e. Concluding

This process is the ultimate goal of the research. After the researcher processes the related data, then a conclusion is drawn to solve the problems in this study.

6. Analysis of legal materials

Analysis of legal materials involves thinking about words that describe various aspects or characteristics of a problem, organizing the facts and then forming them. In this research, the author uses an analytical descriptive method to analyze legal materials. This method is used in order to be able to understand and provide a clear picture of the problems related to the content of this research. Analysis is used so that the author can organize this research in a systematic form so that it reaches the core of the problem and obtains the correct research results. The analysis used in this study is the perspective of *Sadd Al-Dzari'ah* on the disapproving of marriage dispensation due to premarital pregnancy in Determination Number 85/Pdt.P/2023/PA.Pn.

G. Previous Research

From the results of the search on Scientific Papers related to this research, there are a number of related and relevant discussions. The previous research used is as follows:

First, a thesis prepared by Hadi Saputra from Raden Intan Lampung State Islamic University, Faculty of Sharia with the title " Analisis Yuridis Pertimbangan Hakim Tentang Pemberian Dispensasi Nikah Bagi Anak Yang Hamil Di Luar Nikah Pada Pengadilan Agama Tanjung Karang (Studi Putusan No. 137/Pdt.P/2021/PA.Tnk)". Year 2022. The thesis analyzes the juridical considerations of judges who grant marriage dispensation due to pregnancy. The result of the thesis research is that the judge's consideration of granting marriage dispensation due to pregnancy and parental concerns is juridically not contrary to positive law. The thesis has similarities and differences with the author's research, the similarity is in terms of analyzing the judge's consideration in the religious court's decision on dispensation of marriage on the grounds of pregnancy outside of marriage, while the differences are: First, the object of the thesis research uses a decision issued by the Tanjung Karang Religious Court Number 137/Pdt.P/2021/PA.Tnk, while the author's research uses a decision issued by the Painan Religious Court Number 85/Pdt.P/2023/PA.Pn; second, the verdict in the thesis is to grant the applicant's application, while the verdict of the author's research is to reject the applicant's application; third, the type of thesis research uses empirical research or field research with a juridical approach in its analysis,

while the type of research of the author is normative research with an analysis of the perspective of Islamic law.¹³

Second, a thesis prepared by Wire Sentane from the Mataram State Islamic University, Faculty of Sharia with the title "Analisis Alasan Hakim Menolak Permohonan Dispensasi Kawin Di Pengadilan Agama Praya Kelas 1B" in 2022. The thesis analyzes the reasons why the judge rejected the application for dispensation of marriage at the Praya Religious Court. The result of the thesis research is that the reason the judge refuses marriage dispensation is because minors who want to get married do not get a recommendation from the DP3AP2KB office of Central Lombok Regency.¹⁴ The thesis has similarities and differences with the author's research, the similarities are in terms of analyzing the reasons and considerations of the judge in rejecting the application for dispensation of marriage, while the difference is that the reasons for applying for marriage dispensation in the object of the thesis research vary, namely because the prospective groom brings the prospective bride to the groom's family home for more than one week and with the reason of avoiding bad actions. Meanwhile, in this study the reason for applying for dispensation of marriage is because the applicant's child is pregnant.

¹³ Hadi Saputra, "Analisis Yuridis Pertimbangan Hakim Tentang Pemberian Dispensasi Nikah Bagi Anak Yang Hamil Di Luar Nikah Pada Pengadilan Agama Tanjung Karang (Studi Putusan No. 137/Pdt.P/2021/PA.Tnk)," (Undergraduate thesis Universitas Islam Negeri Raden Intan Lampung, no. 137, 2022), <http://repository.radenintan.ac.id/21153/>.

¹⁴ Wire Sentane, "Analisis Alasan Hakim Menolak Permohonan Dispensasi Kawin Di Pengadilan Agama Praya Kelas 1B" (undergraduate thesis, UIN Mataram, 2022), <http://etheses.uinmataram.ac.id/3572/>.

Third, a thesis prepared by Arin Rozika Jamil from the Faculty of Islamic Sciences, Islamic University of Indonesia with the title " Tinjauan Hukum Islam Atas Putusan Hakim Dalam Menerima Permohonan Dispensasi Kawin Di Bawah Umur (Studi Di Pengadilan Agama Klaten)" Year 2023. The thesis discusses the reasons for granting dispensation to marry under age with the terms and conditions that have been applied based on legal explanations and governing laws. The result of the research conducted by the researcher is that the reason for the granting of the application for dispensation of marriage by the panel of judges is due to several reasons including pregnancy outside of marriage, too long dating, and the desire to have a partner at an early age.¹⁵ This thesis has similarities and differences with this research. The similarity is that the case is a marriage dispensation case due to pregnancy outside of marriage and the analysis knife uses Islamic law using the Sadd Adz-Dzariah method. The difference with this study is in the ruling used in previous studies, namely the Panel of Judges granted the petitioners' request by granting dispensation of marriage. Then, previous research used a type of field or empirical research by setting its study at the Klaten Religious Court.

Fourth, a journal compiled by Hanisa Amalia, Muhtadi, H. Soerya Tisnanta and Hamsiri in *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* with the title "Dispensation of Marriage for the Reason of

¹⁵ Arin Rozika Jamil, "Tinjauan Hukum Islam Atas Putusan Hakim Dalam Menerima Permohonan Dispensasi Kawin Di Bawah Umur (Studi Di Pengadilan Agama Klaten)" (Undergraduate Thesis, Universitas Islam Indonesia, 2023), <https://dspace.uui.ac.id/handle/123456789/45221>.

Pregnancy Based on Law Number 16 of 2019 and Interpretation of Religious Court Judges" Year 2022. The journal discusses the interpretation of judges granting applications for dispensation to marry because of pregnancy outside of marriage in terms of the Marriage Law. The result of the journal research is that the judge's interpretation of the pregnant condition is an emergency condition so that the marriage must be carried out immediately with consideration of the best interests and benefits of the child. The journal has similarities and differences with the author's research, the similarity is in terms of explaining the judge's consideration of the marriage dispensation case on the grounds of pregnancy outside of marriage, while the difference is that the journal uses a *statue approach* research approach which is linked to the Marriage Law, while the author's research uses a *case approach* research approach and is linked to Islamic law.¹⁶

Fifth, a journal compiled by Lilis Rahmawati and Any Ismayati in ICCoLaSS: *International Collaboration Conference on Law, Sharia and Society* with the title "Dispensasi Kawin Karena Alasan Hamil Berdasarkan Undang-Undang Nomor 16 Tahun 2019 dan Interpretasi Hakim Pengadilan Agama" Year 2022. The journal discusses the judge's consideration in deciding marriage dispensation due to pregnancy outside of marriage and knowing the review of Law Number 35 of 2014 concerning Child Protection of the marriage dispensation. The result of the journal research is that the

¹⁶ Hanisa Amalia et al., "Dispensasi Kawin Karena Alasan Hamil Berdasarkan Undang-Undang Nomor 16 Tahun 2019 dan Interpretasi Hakim Pengadilan Agama," *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 3, no. 2 (December 28, 2022): 56–72, <https://doi.org/10.24042/el-izdiwaj.v3i2.14741>.

granting of dispensation to marry due to pregnancy outside of marriage is categorized as an urgent situation that will provide legal certainty for the child to be born. The journal has similarities and differences with the author's research, the similarity is in terms of explaining the judge's consideration in deciding marriage dispensation due to pregnancy outside of marriage, while the difference is that the journal uses a type of field research, while the author's research uses normative legal research. Then, the analysis knife from the journal uses the perspective of the Child Protection Law, while the author's research uses the perspective of Islamic law.¹⁷

¹⁷ Lilis Rahmawati and Any Ismayawati, "Implementation Constitution Protection Child On Minor Marriages Resulting From Pregnancy Marriages Out Of Wedding (Case Study In Pa Kudus)," *ICCoLaSS: International Collaboration Conference on Law, Sharia and Society* 1 (2022).

Table Similarities and Difference's Research

No	Previous Research	Equation	The Difference
1.	Hadi Saputra's thesis from Raden Intan Lampung State Islamic University, Faculty of Sharia in 2022 with the title " Analisis Yuridis Pertimbangan Hakim Tentang Pemberian Dispensasi Nikah Bagi Anak Yang Hamil Di Luar Nikah Pada Pengadilan Agama Tanjung Karang (Studi Putusan No. 137/Pdt.P/2021/PA.Tnk)".	Analysis of judges' considerations in the Religious Court's decision on dispensation to marry on the grounds of pregnancy outside marriage.	The verdict in the previous study was to grant the applicant's application, while in this study the verdict was to reject the applicant's application. And the type of research used by previous research is field or empirical research with a juridical approach, while this research uses normative research with analysis using Islamic law.
2.	Thesis by Wire Sentane from Mataram State Islamic University, Faculty of Sharia in 2022 with the title " Analisis Alasan Hakim Menolak Permohonan Dispensasi Kawin Di Pengadilan Agama Praya Kelas 1B".	Analysis of the reasons and considerations of judges in rejecting applications for dispensation of marriage.	In the previous research object, the reasons for applying for marriage dispensation varied, including because the prospective groom brought the prospective bride to the groom's family home for more than one week and on the grounds of avoiding bad behavior, while in this study the reason for applying for marriage dispensation was because the applicants' child was pregnant.
3.	Arin Rozika Jamil's thesis from the faculty of Islamic Sciences, Islamic University of Indonesia with the title " Tinjauan Hukum Islam Atas Putusan Hakim Dalam Menerima Permohonan Dispensasi Kawin Di Bawah	The case studied and the analysis knife using the Sadd Adz-Dzari'ah perspective.	The ruling grants the petitioners' request and the type of research that uses field or empirical research.

	Umur (Studi Di Pengadilan Agama Klaten)" in 2023.		
4.	Journal of Hanisa Amalia, Muhtadi, H. Soerya Tisnanta and Hamsiri in 2022 in El-Izdiwaj: <i>Indonesian Journal of Civil and Islamic Family Law</i> with the title "Dispensasi Kawin Karena Alasan Hamil Berdasarkan Undang-Undang Nomor 16 Tahun 2019 dan Interpretasi Hakim Pengadilan Agama”.	Both explain the judge's consideration of the case of dispensation to marry on the grounds of pregnancy outside of marriage.	The type of approach used in previous research used a <i>statue approach research</i> approach which was linked to the Marriage Law, while the author's research used a <i>case approach research</i> approach and was linked to Islamic law.
5.	Journal of Lilis Rahmawati and Any Ismayati in 2022 in ICCoLaSS: <i>International Collaboration Conference on Law, Sharia and Society</i> with the title "Implementation of the Child Protection Law Against Underage Marriage as a Result of Pregnancy Outside of Marriage (Case Study at PA Kudus)"	Both explain the judge's consideration in deciding dispensation for marriage due to pregnancy outside marriage.	The type of research in previous studies used empirical research, while this study used normative legal research. And the Knife of Analysis in previous studies used the perspective of the Child Protection Law, while this study used the perspective of Islamic law.

H. Systematic Discussion

In an effort to direct the direction of the discussion in this study, the author has designed a writing systematic into four chapters, where each chapter consists of relevant sub-chapters. The systematic discussion is described as follows:

Chapter I Introductions.

This chapter contains the background of the study, problem of the study, objective of the study, significance of the study, previous research, research methods, and systematic discussion.

Chapter II Literatur Review.

In this chapter contains the theoretical basis that will be used as a material in the analysis of the problems that are studied, including the Judges of the Court of Religion, Dispensation of Marriage and *Sadd Al-Dzari'ah* with presented comprehensively

Chapter III Research Results and Analysis

In this chapter the author will describe in a comprehensive way the results of the research carried out in order to answer the formula of the problems that have been written and covered in them.

- a. General overview of the judges' considerations in disapproving the case of dispensation marriage due to premarital pregnancy in determination number 85/Pdt.P/2023/Pa.Pn
- b. The judges' considerations in disapproving the case of dispensation marriage due to premarital pregnancy in determination number 85/Pdt.P/2023/Pa.Pn in *Sadd Al-Dzari'ah* Perspective

Chapter IV Closing

That contains conclusions and a brief explanation of the issues discussed presented in the form of bullet points. In this chapter, there are also suggestions that contain academic suggestions for institutions and researchers.

CHAPTER II

LITERATURE REVIEW

A. Religious Court Judge

1. Judge's Authority

In the constitutional system of the Unitary State of the Republic of Indonesia, the position of judges has its own place. In the third amendment of the 1945 Constitution, Article 24 Paragraph 1 explains that judicial power is an independent power to administer justice to uphold law and justice. Furthermore, paragraph 2 states that judicial power is exercised by the Supreme Court and other judicial bodies under it in the general court, religious court, military court, state administrative court, and by a constitutional court.¹⁸

Law No. 48/2009 on judicial power also strengthens the position of judges, which emphasizes that judicial power is an independent power to administer justice in order to uphold law and justice. Courts within the religious judiciary have the duty and authority to accept, examine, adjudicate and resolve civil cases, especially for people who are Muslims, namely in cases of marriage, divorce, inheritance and waqf. Courts within the religious judiciary consist of religious courts that examine and decide cases at the first level, and religious high courts that examine and decide

¹⁸ Yesi Imelda and Sandy Wijaya, "Analisis Kewenangan Dan Putusan Mahkamah Konstitusi Dalam Amandemen Ketiga Undang-Undang Dasar 1945 Dalam Perspektif Siyasah," *Medina-Te : Jurnal Studi Islam* 17, no. 1 (2021): 54.

cases at the appellate level.¹⁹

Meanwhile, regarding the function of the judge, namely organizing justice or trial and upholding the real truth of what is stated and demanded by the parties without exceeding or reducing it, especially those related to civil cases, while in criminal cases, namely seeking the real truth absolutely not limited to what has been done by the defendant, but also from it must be investigated from the background of the defendant's actions.²⁰ This means that the judge pursues the material truth absolutely and completely.

2. Judge's Consideration

Judge's consideration is one of the most important aspects in realizing the value of a judge's decision which contains justice (*ex aequo et bono*) and determines legal clarity. On the other hand, it also provides benefits to interested parties, therefore the judge's consideration must be considered carefully, accurately, and carefully so that the case can be resolved.²¹ The judge's consideration is an opinion that is used as a reference to design the consideration of the panel of judges before the panel of judges provides a legal analysis which will function to provide a

¹⁹ Dachran Busthami, "Kekuasaan Kehakiman Dalam Perspektif Negara Hukum Di Indonesia," *Masalah-Masalah Hukum* 46, no. 4 (October 30, 2017): 337.

²⁰ Andi Suherman, "Implementasi Independensi Hakim Dalam Pelaksanaan Kekuasaan Kehakiman," *Sign Jurnal Hukum* 1, no. 1 (September 27, 2019): 44, <https://doi.org/10.37276/sjh.v1i1.29>.

²¹ Habibul Umam Taquiuddin, "Penalaran Hukum (Legal Reasoning) Dalam Putusan Hakim," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 1, no. 2 (March 24, 2019): 192, <https://doi.org/10.58258/jisip.v1i2.343>.

decision to the litigants. The judge's consideration can also be interpreted as the judge's activity to provide consideration of the formal and material aspects of a lawsuit or petition which includes the authority of the court to examine the case, legal standing (legal capacity) of the plaintiff in the case, the relationship between the plaintiff and the defendant, to the legal reasoning (legal consideration of the judge) to accept or reject or maybe the case cannot be accepted.²²

Wiryo Kusumo gives an opinion, considerations or what are also commonly called *considerans* are a basis for a judge's decision or an argument for a panel of judges to give a decision in cases. If the legal opinion is incorrect and inappropriate (proper), it can be considered that the decision is not correct and there is no justice so that it can be canceled in the future.²³ The judge's consideration occupies a high position in a decision made by the judge, so the more careful and precise the considerations used by the judge in the decision will provide a reflection of the extent of the value of justice contained in a judge who produces the decision.²⁴ Law Number 48 of 2009 concerning judicial power states that the judge's consideration is a reflection or thought or opinion of the judge

²² Mustika Anggraeni Dwi Kurnia and Ahdiana Yuni Lestari, "Pertimbangan Hakim Terkait Penolakan Permohonan Poligami," *Media of Law and Sharia* 4, no. 1 (December 31, 2022): 5.

²³ Syafrizal Syafrizal, "Perancangan Aplikasi Kamus Istilah Hukum Dengan Menerapkan Algoritma Not So Naive Berbasis Android," *Informasi Dan Teknologi Ilmiah (INTI)* 7, no. 1 (December 26, 2019): 58.

²⁴ Khusnul Khofifah and Yusron Marzuki, "Ratio Decidendi Putusan Nomor 99/Pid.Sus/2022/Pn.Png Terhadap Perkara Tindak Pidana Narkotika Golongan I Bagi Diri Sendiri," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 3, no. 1 (February 14, 2023): 1040, <https://doi.org/10.53363/bureau.v3i1.283>.

to give a decision by looking at various things that can cause the decision to be accepted or rejected.²⁵ Each panel of judges must provide a written submission of considerations regarding the case being handled and become an inseparable part of the decision.²⁶

The judge's guidance on what he decides must be based on theory and the possibility of deep research as a result of his written decision at the theoretical and practical levels, research on the consequences of the decision is one of the struggles so that the law can be achieved with certainty. Judges as law enforcement officers can make a decision a measure of legal certainty. In the 1945 Constitution, judicial power is found in Chapter IX Articles 24 and 25 and as explained above, Law Number 48 of 2009. In the provisions of the 1945 Constitution, judicial power is independent, which means it is free from the participation of parties outside the court. Then, Article 24 paragraph (2) of the 1945 Constitution emphasizes that judicial power is exercised by the Supreme Court and the judicial institutions under it within the scope of the Religious Courts, General Courts, State Administrative Courts, State Administrative Courts, and the Constitutional Court.²⁷

In essence, the judge's consideration should also contain the

²⁵ Lila Maitza and Ahmad Wahidi, "Implementasi Surat Edaran Gubernur Jawa Timur Nomor 474.14/810/109.5/2021 Dalam Menanggulangi Meningkatnya Dispensasi Kawin," *Sakina: Journal of Family Studies* 6, no. 2 (June 16, 2022): 6, <https://doi.org/10.18860/jfs.v6i2.1813>.

²⁶ Undang-Undang Nomor 48 Tahun 2009.

²⁷ Z. A. Sangadji M.H S. H., *Kompetensi Badan Peradilan Umum dan Peradilan Tata Usaha Negara* (Citra Aditya Bakti, 2003), 16.

following aspects:²⁸

- a. The crux of the matter and the aspects that are legalized or the arguments that are not challenged.
- b. There is a juridical analysis of the verdict on matters relating to all the facts or truths proven at trial.
- c. The existence of all parts of the Plaintiff's petition must be considered/adjudicated one by one so that the judge can draw conclusions about whether or not the claim is proven and whether or not it can be granted in the ruling.

B. Marriage Dispensation

According to the language, marriage dispensation is divided into 2 words, namely dispensation and marriage. Dispensation means an exception from the rules due to special considerations or a freedom from obligations or prohibitions. Meanwhile, marriage or marriage is something that binds two people together which is carried out according to legal provisions and religious norms.²⁹ Roihan A. Rasyid provides an understanding of marriage dispensation in terminology. According to him, dispensation of marriage is a relief granted by the Religious Court to parties who want to get married but are constrained by age issues, namely 19 years old and do not get permission from the local

²⁸ Fitriyani and Sudirman L, "Pertimbangan Hakim Dalam Penetapan Dispensasi Kawin (Tinjauan Aspek Filosofis, Yuridis, dan Sosiologis): Diskripsi kasus dan Pertimbangan Hakim dalam Penetapan Dispensasi Kawin di Pengadilan Agama Bogor," *Al-Mizan (e-Journal)* 19, no. 1 (June 25, 2023): 111, <https://doi.org/10.30603/am.v19i1.3294>.

²⁹ Muhammad Sofyan, Syamsu Madyan, and Humaidi Kaha, "Perma No 5 Tahun 2019 Tentang Dispensasi Kawin Dan Korelasinya Dengan Perceraian Di Kabupaten Banyuwangi," *Jurnal Hikmatina* 5, no. 3 (July 18, 2023): 3.

Religious Affairs Office.³⁰ An application for dispensation of marriage is usually submitted by the parents of the parties as guardians of their future marriage to the nearest religious court in their area due to the refusal of the Religious Affairs Office to marry a couple who are not of legal age. Dispensation of marriage is also often referred to as permission to marry a prospective bride and groom who are not of legal age and is the authority of the religious court when viewed in terms of competence.

Marriage dispensation in religious courts has a purpose, namely as a form of seeking legal protection to approve the marriage of minors, which means that this marriage dispensation is a concession given by the Religious Court to prospective brides who are not old enough to still be able to officially marry.³¹ This marriage dispensation is also an option for parties who are still underage to marry, which later the decision made by the judge whether to accept or reject will depend heavily on the testimony of the applicants, the bride and groom, witnesses and the reasons for submitting this application whether it is in accordance with the provisions to convince the judge to consider his decision.

In the age of the Prophet SAW., the dispensation of marriage was granted with the permission of a married guardian whose daughter was under the age of age, and there was also the name of a guardian who married his

³⁰ Ilham Ilham, Gasim Yamani, and Sidik Sidik, "Problems In The Implementation of Early Marriage in The Religious Affairs Office (Kua) of Mamosalato Sub-District, North Morowali District (Analysis Of Law No 1 Of 1974) on Marriage And Islamic Law).," *Proceeding of International Conference on Islamic and Interdisciplinary Studies* 2 (September 2, 2023): 475.

³¹ Mila Muliani, "Penolakan Permohonan Dispensasi Perkawinan Di Pengadilan Agama Samarinda: Analisis Yuridis Dan Hukum Islam," *Fenomena* 14, no. 2 (2022): 95, <https://doi.org/10.21093/fj.v14i2.6925>.

daughter who was at an early age under the marriage without the consent of the child. This marriage permit was granted by Abu Bakar As-Siddik when the Prophet wanted to marry Aisyah RA, who was nine years old at the time. At that time, since Siti Aisyah was still a little girl, what was performed was a marriage. While the marriage was held two years later and during those two years the Prophet did not gather with Aisha. Regarding the age limitation of marriage, the Islamic Shariah gives a signal by looking at the ability. Ability here is the ability to cope with the problems of the post-marriage life, such as providing children and wives with a fair living or the ability in regulating the emotional level of self-control and for a wife to be able to take on the task of building a household armor. At that time, Siti Aisyah was a woman who was very fast growing and developing physically due to the hot weather factor common to the Arabs. The signs of his height and happiness have since been visible in his daily behavior and movements. Surely not without purpose, because behind the marriages there is a secret that will show the excellence of his strategy: *Political and Social Motives* in spreading the teachings of Islam.³²

C. Premarital Pregnancy

1. Premarital Pregnancy Definition

Pregnancy is a fetus containing in the uterus because the egg cells are fertilized by spermatozoa. Pregnancy and childbirth are normally the

³² Aisyah Tidjani, "Aisyah Binti Abu Bakar Ra : Wanita Istimewa Yang Melampaui Zamannya," *Dirosat: Journal of Islamic Studies* 1, no. 1 (October 30, 2016): 36, <https://doi.org/10.28944/dirosat.v1i1.6>.

worship of the majority of women. In general, pregnancy is a condition in which a woman has a growing fetus in her body, the human pregnancies range from 40 weeks or 9 months, counted from the beginning of the last menstrual period to delivery.³³

In the complete Indonesian dictionary, pregnancy outside of marriage consists of three vocabulary namely pregnant, which means pregnant. Pra means before done. Marriage is a bonding between a man and a woman, in the presence of a certain group of men, who are guided by a woman's guardian.

Unmarried pregnancy or Premarital Pregnancy is something that is difficult for society to accept, and of course it is not only causing and provoking shame to the family, it will also defile the family's great name, and from the side of religion and belief of any kind is not justified. Offenders of extra-marital pregnancies are dominated by teenagers. This phase is a transitional period in which adolescents tend to find their own identity so that in everyday behavior can end to good or bad depending on the personality of each adolescent. Adolescent behavior is influenced by some internal adolescent factors such as knowledge, attitude, personality, and external adolescent elements such as the environment in which he/she is located.

³³ Nur Afifah Yulia Muchibba And Fransiscus Xaverius Sri Sadewo, "Fenomena Kehamilan Diluar Nikah Pada Usia Dini," *Paradigma* 7, no. 3 (July 29, 2019): 6, <https://ejournal.unesa.ac.id>.

From the explanation above, it can be drawn a red thread that extra-marital pregnancy is something that is caused by sexual behavior before the existence of a legitimate marriage, starting from mutual interest between the opposite sexes to dating, coupling and ending intimacy between men and women..

2. Premarital Pregnancy based on Al-Qur'an

On the religious and cultural side of society, unmarried pregnancies are hard to accept. In Islam, adultery is a great sin. Even in the days of the ancient prophets, adulterers will be punished or stoned, or stabbed to death. As Allah says in QS Al-Isra verses 32 :

وَلَا تَقْرَبُوا الزَّوْجَىٰ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

.Do not approach the Zina, for it is an abomination and an evil way.

The above verse emphasizes the command to avoid adultery because adultery is a very big sin and the most disliked act of Allah. This act is included in the major sins because it can damage the structure of social life in society. The Qur'an through this verse tries to protect humans from this heinous act to maintain their honor as the most perfect creature of God. In addition, avoiding adultery also means maintaining the health and purity of the human reproductive organs and avoiding genital diseases that are very dangerous.

3. Premarital Pregnancy Causal Factors

Premarital pregnancy occurs, not only because of free marriage, but also because of the weakness of faith in each individual. Therefore, to anticipate such abominations, deep religious education and awareness of the law are increasingly needed for each individual.

According to Suratno, the cause of extra-marital pregnancy is the same as the occurrence of adultery. The cause factor is divided into two: internal factors and external factors.³⁴

a. Internal Factors

Humans have an instinctive desire for the opposite. If the desire for sexual intercourse is so great, it can defeat his common sense and his emotional state. That is, if the common senses and moral convictions are not strong enough to control the chaos of the sexual desire, then it is not impossible for man to get into adultery by committing intimate acts while not on the path of legal marriage.

It can happen to those who do not have a strong foundation of faith and a weak moral conviction. Especially when this condition occurs to people who have the extrovert type (orang yang lebih mementingkan hal-hal lahiriyah). Because it's about attitudes, then

³⁴ Suratno Suratno, "Menjembatani Antara Norma Agama Dan Realitas Sosial (Studi Kasus Tentang Dampak Sosial Kehamilan Diluar Nikah Pada Individu Muslim Di Banjarsari, Surakarta Pada Masa Covid 19)," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 1 (2023): 13, <https://doi.org/10.37680/almanhaj.v5i1.2859>.

people who have extroverted attitudes must have a stronger and deeper understanding of religion accompanied by stronger, more intense religious life..

b. External Factors

The external factor that drives human beings to commit adultery is the social condition that tolerates free marriage between men and women. The customs that used to be taboo on free marriage between men and women, now the situation is becoming looser.

The social condition of the situation, the media atmosphere of pornography has served as a stimulant and an incentive to extrovert human beings who have a wild lust for their opponents who do not have strong faith and moral control to avoid acts that violate religious laws and customs based on religious morality so that it will lead to sexual intercourse outside of legal marriage or fornication.

Besides, the introduction of a Western culture that legalizes free sex is also one of the social conditions that influence the occurrence of extra-marital pregnancies. Like the nightclubs or discos that are common in the western world, it triggered free socializing among teenagers. The friction between men and women is inevitable, because they often drink alcohol until they lose consciousness. This is indeed an abomination and a prohibition of God, for it is a great punishment.

4. Ordinary Opinion On The Marriage Of Premarital Pregnancy Woman.

Premarital pregnancy is prohibited in Indonesia and is a taboo thing and in Islam is regarded as adultery. Extra-marital pregnancy is an act or behavior that should follow the norms of Islamic law. If there is an out-of-marriage pregnancy, it will be embarrassing for a group of perpetrators and even affect the larger family. In this way, a couple who commits adultery to cause an unmarried pregnancy must marry quickly, in order to preserve the good name of their families.

In the view of fiqh, the scholars have a variety of different views on the marriage of a woman who is pregnant due to adultery, some explicitly deny or prohibit it, while others emphasize more careful handling of the problem. In accordance with the attitudes and opinions of the scholars, the Islamic legal order maintains how the boundaries of association in social life, social boundaries in the public sphere are friendly and provide harmony and security. Adhering to the Islamic legal order will create and shape peace in society.

It is a marriage with a woman who is pregnant without having been married before, whether it is by a man who has conceived her, or by one who does not conceive her. Here are the differences of opinion among scholars about marrying pregnant women because of adultery:³⁵

³⁵ Yoga Andika Pratama, "Perkawinan Akibat Hamil Di Luar Nikah Dalam Perspektif Hukum Islam Dan Kuh Perdata," *Dinamika* 30, no. 1 (February 2, 2024): 7.

First of all, according to the Hanafis, it is valid for a man to marry a woman whom he has impregnated, on the grounds that women who are pregnant because of adultery are not included in the group of women who are forbidden to marry.

Secondly, the Shafi'i scholars are of the opinion that it is valid to marry a woman who is pregnant due to adultery, regardless of whether the man who marries her is the man who impregnated her or the man who did not impregnate her. This is because women who are pregnant because of adultery are not included in the group of women who are forbidden or forbidden to marry. They are also of the view that the marriage contract is valid, and the one who marries her is allowed to have intercourse with her regardless of whether she is pregnant or not.

Thirdly, in the view of the Malikiyyah scholars, a woman who commits adultery, regardless of whether it was intentional or by reason of rape, whether she is pregnant or not, is obliged to do istibra. For a woman who is free or freed and not pregnant, istibra is three menstrual periods, while for a slave woman, istibra is sufficient for one period, but if she is pregnant, whether a freed person or a slave woman, istibra is until she gives birth. Therefore, the Malikiyyah scholars see that it is not valid to marry a woman who is pregnant because of adultery, even if the man who marries her is the one who impregnated her, more so than the man who did not impregnate her. However, if the marriage contract is to be done while the bride is pregnant, then the marriage contract is invalid and must be

annulled.

Fourthly, the Hanbalis are of the view that it is not valid to marry a woman who, if it is known, has committed adultery, either with the man with whom she committed adultery or with a man with whom she did not commit adultery, unless the woman has fulfilled two conditions, to be precise: first, her 'iddah period has passed. If she is pregnant, her 'iddah ends when she gives birth to the child she is carrying. If the marriage contract is done during pregnancy, then the marriage contract is not valid. Then secondly, she has repented from the prohibited act, namely Zina.

Judging from the description above, it can be concluded that in the perspective of the four imams, there are two categories. The first is Imam Hanafi and Imam Shafi'i allow the marriage of pregnant women. While the second, Imam Malik and Imam Ahmad bin Hanbal who do not allow or prohibit. Then, according to positive law, a pregnant woman can marry the person who impregnates her.

D. Early Marriage

1. Definition of Early Marriage

Marriage is a bond to establish a family relationship between a man and a woman with the aim of achieving happiness and harmony. The definition of early marriage is a marriage performed by someone who is still under the age specified in Law Number 16 of 2019, namely the age of the bride and groom has reached 19 years. In terms of applicable law, this age has been allowed to

marry, but when viewed from a psychological perspective, this age is a vulnerable age in undergoing marriage. Because marriage requires maturity in running it. The age that is considered mature is in adulthood, namely the age of 21 (twenty-one) years. In the view of psychology, age under 21 (twenty-one) years is an improper marriage period and is called early marriage. The age that has not reached maturity is adolescence.

Early marriage is a marriage entered into by a person who essentially lacks maturity both biologically, psychologically and socio-economically.³⁶ Therefore, it can be concluded that early marriage is a marriage that occurs in adolescence (underage) which in essence the marriage should not have occurred because the age of the bride and groom is not yet mature to carry out a marriage. Early marriage is immature in every way, psychologically immature, healthy, and economically immature.

Religion and the state are at odds over the meaning of early marriage. Marriages that are performed past the minimum limit of the Marriage Law are not legally valid. The term early marriage according to the state is limited by age. Meanwhile, in the eyes of religion, early marriage is a marriage entered into by a person who has not reached puberty.

³⁶ Bq Nova Handayani, "Hubungan Pengetahuan Remaja Putri Tentang Pendewasaan Usia Perkawinan Dengan Resiko Pernikahan Dini Di SMAN 2 Manggelewa Kabupaten Dompus," *Prima: Jurnal Ilmiah Ilmu Kesehatan* 9, No. 1 (December 14, 2023): 34, <https://doi.org/10.47506/15y9g774>.

2. Factors Affecting Early Marriage

There are two factors that cause early marriage among adolescents, namely the cause of the child and from outside the child.³⁷

a. Education Factor

The role of children's education plays a big role. If a child drops out of school at compulsory school age, and then fills time with work. By this time the child feels independent enough to support themselves. The same is true if the dropout is unemployed. In the void of time without work, they end up doing things that are not productive. One of them is having a relationship with the opposite sex, which if out of control leads to pregnancy outside of marriage.

b. Premarital Pregnancy Factor

In many cases, if the girl is already pregnant, the parents tend to marry off the children. Even though the girl's parents do not agree with the prospective son-in-law, but because of the girl's pregnancy, the parents are forced to marry off the girl. In fact, there are also girls who basically do not love their future husbands, but because they are already pregnant, they are forced to apply for dispensation to marry.

These are all very dilemmatic matters. Both for the girl, the parents and even the judge. Because in these conditions, it is clear that the marriage that will be carried out is no longer the marriage as mandated by law and even religion.

³⁷ Elisabeth Putri Lahitani Tampubolon, "Permasalahan Perkawinan Dini di Indonesia," *Jurnal Indonesia Sosial Sains* 2, no. 05 (May 21, 2021): 6, <https://doi.org/10.59141/jiss.v2i05.279>.

Because it is already imagined before the eyes, the hue of this girl's marriage in the future. A marriage that is carried out based on love alone is likely to falter in the future, especially if the marriage is based on coercion..

c. Understanding of Religion Factor

Understanding religion by learning the teachings of Allah and His Messenger is very important. Both to parents and to their children. With this understanding, if unwanted things happen to children later, they can be processed as well as possible. The regulation of the minimum age of marriage is also worthy of attention. Sometimes, parents insist on marrying minors because of adultery even though the child could have waited until the age of 19 first. Procedurally, you can apply for dispensation to marry to the Religious Court with the right reasons as well. Parents' religious guidance to children is one of the considerations taken by the judge in deciding whether the application is accepted or rejected.

d. Economic Factor

Economic difficulties are also a cause of early marriage. The low economic level causes many parents to think that marrying off children will reduce the burden on family life so that many people marry off their children even though they are not old enough to get married. Low economic level is a problem that causes unwanted things to happen, such as domestic violence.

e. Customs and Cultural Factors

In some parts of Indonesia, there is still some understanding of

arranged marriage. Where the girl has been matched by her parents since she was a child. And will be married off as soon as the child experiences menstruation. Whereas generally girls start menstruating at the age of 12 years. So it is certain that the child will be married off at the age of 12, far below the minimum age of marriage mandated by the law.

E. *Sadd Al-Dzari'ah*

The Islamic Shariah is always giving wisdom and goodness to all mankind. His teachings of righteousness, mercy, loving kindness, and courtesy have lived in the hearts of the practising people. Therefore, Ibn Qayyim al-Jauziyah believes that everything that disregards the sense of justice, utility, compassion, and charity is not part of Islam.

Among the many concepts of Islamic Shariah used to formulate a certain law that is generally not mentioned in Nash is the concept of Sadd Adz-Dzari'ah. This concept exists and is used as a basis for establishing Islamic law that remains based on the Qur'an and Hadiths which has definitely set the path of the purpose of a mukallaf to do good behavior and avoid bad deeds.³⁸

1. *Sadd Al-Dzari'ah* Definition.

Sadd al-Dzari'ah is derived from two words: Sadd which means obstacle and Al-Dzariah which means way or intermediary. Sadd is translated as a way or way to a certain thing. Next, al-Dzariah is

³⁸ Yat Rospia Brata, "Aspek Hukum Islam Dalam Kebudayaan Sunda," *Jurnal Ilmiah Galuh Justisi* 6, no. 1 (March 1, 2018): 4, <https://doi.org/10.25157/jigj.v6i1.1236>.

linguistically:

الوسيلة التي يتوصل بها إلى الشيء سواء كان حسيا أو معنوي

“A path that leads to something, in a sense or meaning, good or bad.”

In Ushul Fiqih, al-dzariah means something that is a medium and a way to reach something related to the law of Shara, whether it is illegal or lawful and for those who go to obedience or authority.³⁹ This is what the scholars then judge that Al-Zariah contains a neutral connotation without giving further judgment on the results of the deeds. This is the general understanding, Ibn Qayyim then formulated the definition of Dzari'ah.:

مَا كَانَ وَسِيلَةً وَطَرِيقًا إِلَى الشَّيْءِ

“Everything is an intermediary and a way to something.”

Thus, he believes that the limitation of the understanding of Al-Dzari'ah is something that is mediated towards the purpose of the act prohibited or validated by the provisions of the law that became the main law. Therefore, according to him, the comprehension of al-Dzariah of a general nature can contain two meanings, namely, the first, the forbidden, which is called Sadd Al-Dzari'ah, and the second is the demanded to be carried out, that is

³⁹ Zaenul Mahmudi and Thariqul Khaira, “The Judge’s Decision on Rejection of Polygamous Marriage Proposal in Sadd Adz-Dzari’ah Perspective,” *Sakina: Journal of Family Studies* 6, no. 3 (2022): 6, <http://urj.uin-malang.ac.id/index.php/jfs/article/view/1966>.

commonly called Fath Al-Dzari'ah.

Wahbah Zuhaili group Al-Dzari'ah into two kinds:

- a. *Sadd Al-Dzari'ah* is a way used for something bad or contains something bad.
- b. *Fath Al-dzari'ah* is a way used for a good thing.

Sadd al-Dzari'ah is a combination of two words in the form of mudhaf–mudhaf ilaih consisting of the word sad and al-dzri'ah. The first word comes from the word sadda ya suddu, which means to close. Those who seek to shut down the path of destruction And the word al-dzari'ah means is a way.

The Sadd al-Dzari'ah is one of the arguments among the scholars, which means that even if the Qur'an does not state explicitly about the law of a deed, because the deed is a conclusion of an deed that is clearly forbidden, then it is a guidance of the law that the judgment is as the law stipulated by the Qur'an against the principal deed.

Ibn Qayyim al-Jauziyah further explains that the concept of *Sadd al-Dzariah* has the conception that a sinful deed in the beginning, if done will have an impact on the damage or the punishment, then it can be determined that the deed is contrary to the Shari'at even though the person does not intend to do the harm.

The concept is a preventive action of a person, in which the law originates from an act which is initially blurred, but its conduct can cause

damage or an act that is prohibited then the law becomes illegal. Therefore, Wahbah Az-Zuhaili is in the same mind with Ibn Qayyim Al-Jauziyah who defines *Sadd Al-Dzari'ah* as the prohibition or denial of anything that can cause harm to occur in order to prevent harm and danger.

From the explanation above we can conclude that *Sadd al-Dzari'ah* is an act committed by someone who previously contained equipment but ended in damage. That's mean, it's understandable that this method is more of a method that deals with the impact of an act. If a deed is a lawful thing, it is permissible. But if it affects something that is forbidden, such as harm or corruption, then it is unlawful, and it is prohibited.⁴⁰

2. Basics Commanded of *Sadd Al-Dzari'ah*

Al-Qur'an surah Al-An'am chapter 108:

بِغَيْرِ ۙ وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا

عِلْمًا ۚ

Meaning: “*And do not worship that which they worshipped besides Allah, for they will surrender unknowingly*”.

From the verse above, Ibn Qayyim Al-Jauziyah explains that Allah forbids Muslims to revile the gods of the polytheists. Because even

⁴⁰ Muksana Pasaribu, “Maslahat Dan Perkembangannya Sebagai Dasar Penetapan Hukum Islam,” *Jurnal Justitia: Jurnal Ilmu Hukum dan Humaniora* 1, no. 04 (July 27, 2016): 350, <https://doi.org/10.31604/justitia.v1i04.%p>.

though it aims to exalt Allah SWT, reviling the god of the polytheists will have an impact on reviling the God of the Muslims, namely Allah SWT, so that it will cause harm. Therefore, guarding against actions that will cause damage, namely by refusing to revile the gods of the polytheists, takes precedence over the bad effects later. A valuable lesson from this verse is that it warns Muslims that avoiding harm (prohibition) takes precedence over doing permissible things.⁴¹

The Hadith of the Prophet Muhammad Saw. which is related to the concept of Sadd Adz-Dzari'ah is as follows:

عنهما أَنَّ رَسُولَ اللَّهِ رَضِيَ اللَّهُ وَعَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو بْنِ الْعَاصِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: “مِنَ الْكَبَائِرِ: شَتْمُ الرَّجُلِ وَالِدَيْهِ” قِيلَ: وَهَلْ يَسُبُّ الرَّجُلُ وَالِدَيْهِ؟ قَالَ: “نَعَمْ، يَسُبُّ أَبَا الرَّجُلِ، فَيَسُبُّ الرَّجُلَ أَبَاهُ، وَيَسُبُّ أُمَّهُ، فَيَسُبُّ أُمَّهُ.” مُتَّفَقٌ عَلَيْهِ.

Abdullāh ibn Amr ibn Ash reported that Rasulullah said: “Among the major sins is that a man abuses his parents.” The Prophet was asked. “Does anyone abuse his parents?” Rasulullah said: “Yes, a man abuses another man's father, and the other man abuses his father. And he abuses another man's mother, and the other man abuses his mother as well.” (H.R.Bukhāri and Muslim)

⁴¹ Haris Hidayatulloh and Miftakhul Janah, “Dispensasi Nikah di Bawah Umur dalam Hukum Islam,” *Jurnal Hukum Keluarga Islam* 5, no. 1 (September 27, 2020): 36.

Ibn Qayyim al-Jauziyah gives an explanation of the hadith above that the Prophet has classified a man who denounces and denounced the parents of other men by equating as denouncing and denying the parents themselves even though he did not intend to denounce both his own parents.

3. Types of *Sadd Adz-Dzari'ah*

Ibn Qayyim al-Jauziyah divided into four levels of Adz-Dzari'ah and from the four of them must be made a precaution (sadd) so that it does not cause harm to those who do because of a forbidden thing or sin. The subdivision is as follows:

- a. Al-dzariah as a means or medium that causes damage.

It is clear that acts that clearly and apparently lead to damage must be prevented and abandoned. But in the first part, it is not included in the Al-Dzari'ah, but more than that has been forbidden in the Islamic Qur'an. For example, drinking alcohol, which has been prohibited from the beginning of the Quran, because it can cause the drinker to become drunk and unconscious in a certain time.

- b. Al-Dzari'ah as a means that can be used but must be followed with the intention that leads to bad deeds.

In this second part, Ibn Qayyim explains that all actions that are permissible to do depend on the intention that is made in

doing something. This means that an action that is permissible to do, when it has a bad purpose and leads to damage, then the action is no longer permissible but becomes something that is prohibited.

- c. *Al-Dzari'ah* as a means that can be used but must be followed by intentions that lead to bad actions, if the action is done it will cause more harm and even more harm than the benefits it gets.

The core of the discussion in this third part, Ibn Qayyim's opinion explains that *Al-Dzari'ah* as a means that if done turns out that the damage that will be caused is more than the benefits that will be obtained. Thus, this action leads to actions that are prohibited as the initial concept of *Sadd Al-Dzari'ah*.

- d. *Al-Dzari'ah* as a means that is permissible to use and sometimes leads to damage (prohibited actions), but its benefits far outweigh the damage it will cause at any time.

In this fourth part, Ibn Qayyim looks at the conclusion or final value of an action. When the action leads to a result that is *mudharat* then it is certainly prohibited, but when the action leads to benefit or *kemashlah*, then the action remains a highly recommended thing.

4. Requirements of *Sadd Al-Dzariah*

The requirements of *Sadd Adz-Dzari'ah* are not directly mentioned by the scholar Ibn Qayyim *Al-Jauziyah* in carrying out this

concept. However, there are some possible conditions resulting from the division of various kinds of Sadd Adz-Dzari'ah from his works. The following is an explanation of the conditions of Sadd Adz-Dzari'ah:⁴²

- a. The action that is done causes greater harm than the benefit that will be obtained. That is, it can apply the concept of Sadd Al-Dzari'ah if it is clear that the actions taken lead to more harm than the benefits that will be caused, so that these actions become prohibited things to do in the application of the Sadd Al-Dzari'ah Concept.
- b. Actions that may be done based on the concept of Sadd Adz-Dzari'ah, should not be done repeatedly. The explanation of the second condition implies that it is permissible to do an action that has greater mashlahat than the harm caused. However, we must pay attention to the ultimate cause that will be obtained, because what is forbidden to avoid sin is lighter than what is forbidden because the purpose is not good.
- c. Sadd al-Dzari'ah rules should not conflict with Nash Shar'i. Clearly, the concept of Sadd al-Dzari'ah must still refer to Nash Shar'i. So when the rule of Sadd Al-Dzari'ah contradicts Nash Shar'i, the effort made in obtaining the rule of Sadd al-dzari'ah becomes null and void.

Sadd al-Dzari'ah as one of the methods in determining Islamic law,

⁴² Hifdhotul Munawaroh, "Sadd Al- Dzari'at Dan Aplikasinya Pada Permasalahan Fiqih Kontemporer," *Ijtihad* 12, no. 1 (April 10, 2018): 65, <https://doi.org/10.21111/ijtihad.v12i1.2584>.

in its application always relies on the concept of maslahah with its various varieties. This method is more impressed preventive, because everything that initially contains the meaning of permissible (mubah) becomes prohibited (haram) because the consequences of the action there are indications that lead to mafsadat in terms of its type.

CHAPTER III

RESEARCH FINDINGS AND DISCUSSION

A. The Judges Considerations In Disapproving Marriage Dispensation At Determination Number 85/Pdt.P/2023/PA.Pn.

The judge's consideration is one of the important aspects in determining to realize the values of a judge's decision with content that has justice (*ex aequo et bono*) and the decision has clear legal certainty as well. In addition, the usefulness for the parties concerned makes this consideration of the panel of judges must be accepted properly, carefully, and carefully. If judges do not respond like that, then it could be that a religious court decision or determination that departs from the consideration of the panel of judges can be canceled and withdrawn by the highest court, namely the Supreme Court.

Legal certainty in the Religious Courts has a role in maintaining justice and stability in Islamic law. Aspects of legal certainty in the Religious Courts include the protection of individual rights, including the right to be considered fairly without discrimination. Legal certainty for Islamic societies helps to create a stable legal environment, where individuals can feel secure and confident that their rights are protected, and where justice can be effectively achieved. It also supports sustainable social, economic and political development in Islamic societies. Islamic society with the existence of legal certainty makes society more orderly and knows the benefits in the implementation and practice of law. The law was created for humans, therefore the practice of the law contains

benefits or functions that are good for society. With the existence of law, the community becomes more secure in life and reduces unrest within the community.

1. The identity of the parties at Determination Number 85/Pdt.P/2023/PA.Pn

The Painan Religious Court has examined and tried civil cases at trial at the first level, the single judge has given a determination in the case of dispensation of marriage with case number 85/Pdt.P/2023/PA.Pn which is used as the object of the researcher's research. The application for dispensation of marriage was registered with the Painan Religious Court Registrar on July 6, 2023. The parties involved in this case include Applicant I and Applicant II, hereinafter referred to as the Applicants with Applicant I place and date of birth in Padang Pariaman, April 14, 1973, Muslim, farmer, living and residing in South Pesisir Regency, West Sumatra Province and Applicant II place and date of birth in Labuhan Tanjak on January 15, 1985, Muslim, work taking care of the household and residing in South Pesisir Regency, West Sumatra Province. Furthermore, the Plaintiffs' child who wants to get married to a man named Prospective Husband, aged 18 years and 3 months, Muslim, not yet working and residing in Pesisir Selatan Regency, West Sumatra Province. Then, the Prospective Husband's date of birth in Muara Kandis July 14, 1996, religion Islam, occupation fisherman and resides in Pesisir Selatan Regency, West Sumatra Province. Furthermore, the Birth Mother of the Prospective Husband, date of birth in

Muara Kandis, January 02, 1957, Muslim, occupation taking care of the household residing in South Pesisir Regency, West Sumatra Province.

2. Essence of the Case at Determination Number 85/Pdt.P/2023/PA.Pn

In their statements, the Plaintiffs had notified their intention to marry to the marriage registration officer of the religious affairs office of the Linggo Sari Baganti sub-district of Pesisir Selatan district but the local officer refused to allow and record the marriage on the grounds that the marriage could be carried out by completing the requirements of a marriage dispensation determination letter from the Painan religious court because the prospective wife or child of the Plaintiffs was under 19 years of age. The Plaintiffs intend to apply for dispensation to marry the Plaintiffs' children because they have stopped school and have had a close relationship or dating with the Prospective Husband for approximately 3 years and then agreed to decide to carry out the marriage so that seeing their association if prohibited, the applicants are worried that there will be actions that violate religious and customary norms if they are not married immediately. The applicants also stated that the prospective husband was able and willing to be responsible for meeting the household needs of the prospective wife or child of the applicants because he worked as a fisherman with an income of Rp. 1,000,000 (one million rupiah) per month.

The Plaintiffs presented the Plaintiffs' child who testified that she applied for dispensation to marry because her relationship with her husband-to-be was so close that she had twice had intercourse as husband and wife

and now she was one month pregnant as a result of the relationship and the family had no objection to the marriage plan. The applicants also presented the prospective husband who confirmed that he and the applicants' child had had intimate relations as husband and wife. Furthermore, the applicants also presented the husband-to-be's birth mother who testified that she did not know whether or not her son (the husband-to-be) had had intercourse with the applicants' son. She also testified that the marriage had been approved by her family and the applicants.

Based on these matters, the applicants requested the head of the Painan Religious Court through the judge examining and deciding this case to make a decision, namely granting the applicants' request and granting permission to marry or marriage dispensation to the applicants' child to marry the applicants' child's prospective husband. Because even though the judge had advised all parties involved, the petitioners persisted in their request to marry off their child.

3. The Judges Consideration at Determination Number 85/Pdt.P/2023/PA.Pn

Based on the determination of the marriage dispensation case Number 85/Pdt.P/2023/PA.Pn, the judge's consideration can be seen in two aspects of consideration, namely juridical considerations and non-juridical considerations, as follows:

a. Juridical Considerations

Juridical considerations in the determination of the Painan Religious Court Number 85/Pdt.P/2023/PA.Pn are the overall content of the judge's considerations relating to applicable laws and regulations..

- 1) In the authority to hear the case of the parties, the judge is based on Article 49 paragraph 2 of Law Number 7 of 1989 concerning Religious Courts as amended by Law Number 3 of 2006 and the second amendment to Law Number 50 of 2009 which reads: “The field of marriage as referred to in paragraph (1) letter a is matters regulated in or based on the applicable law regarding marriage” then this case is purely the absolute authority of the Religious Court.
- 2) In terms of legal standing or the right to apply to the court, the judge cited the provisions of Article 7 paragraph 2 of Law Number 1 of 1974 concerning marriage as amended by Law Number 16 of 2019 which reads: “In the event of a deviation from the age provisions as referred to in paragraph (1), the parents of the male party and/or the parents of the female party may request dispensation to the Court on very urgent grounds accompanied by sufficient supporting evidence”. That a marriage can only be entered into by the prospective bride and groom who have reached the minimum age for marriage, but if there is a deviation from this regulation, then they can apply for dispensation of marriage to the court by the parents of the parties as has been submitted by the petitioners a quo. The Plaintiffs are interested parties in this case (*persona standi in*

yudicio) so that the applicants have the right (legal standing) to submit an application for dispensation of marriage a quo.

- 3) The judge also used the provisions of the Regulation of the Supreme Court of the Republic of Indonesia No. 5 of 2019 on the procedure for adjudicating applications for Dispensation of Marriage, namely in Articles 10, 12, 14 and 15, respectively.

Article 10 paragraph (1) : On the day of the first hearing, the

Applicant shall be required to present: a. The child for whom the application for Dispensation of Marriage is made. b. The prospective husband/wife. c. The parents/guardians of the prospective husband/wife. The prospective husband/wife. c. The parents/guardians of the prospective husband/wife. d. The parents/guardians of the prospective husband/wife.

Article 12 Paragraph (1): The trial judge shall give advice to the applicant, the child, the prospective spouse and the parents/guardians of the prospective spouse.

Paragraph (2): The advice given by the Judge is to ensure that the parents, children, prospective spouse and parents/guardians of the prospective spouse understand the risks of marriage, in relation to: a. the possibility of cessation of education for the child; b. the continuation of the child in taking the compulsory 12 years of education; c. the unpreparedness of the child's reproductive organs; d. the

economic, social and psychological impact on the child; and
e. the potential for domestic disputes and violence.

Article 14: In court examination, the judge identifies: a. the child proposed in the petition knows and agrees to the marriage plan; b. the psychological condition, health and readiness of the child to enter into marriage and build a household life; and c. psychological, physical, sexual or economic coercion of the child and/or family to marry or marry the child.

Article 15 Point D : In investigating the child for whom Marriage Dispensation is sought, the judge may request recommendations from a psychologist or doctor/midwife, professional social worker, social welfare worker, Integrated Service Center for the Protection of Women and Children (P2TP2A), Indonesian/Regional Child Protection Commission (KPAI/KPAD).

Regarding one of the judge's considerations, namely using the Supreme Court Regulation of the Republic of Indonesia, all articles were in accordance with the provisions of the regulation, both by the judge who resolved the case and the relevant parties. In accordance with Article 10, the applicants were present on the day of the hearing that had been set and had presented the applicants' child, the applicants' child's prospective husband, and the parents of the applicants' child's prospective husband. In accordance with Article 12, at the time of the

examination, the judge had advised the petitioners, the petitioners' children, the petitioners' children's prospective husbands, and the parents of the petitioners' children's prospective husbands about the risks of marriage and its impact on children in terms of education, health, psychological, social, cultural, economic issues, potential disputes and domestic violence, so that the parties were advised to postpone the marriage, but to no avail.

The use of Article 14 of Perma Number 5 of 2019 is that the Judge has identified the knowledge and consent of the applicant's child regarding the marriage plan, the child's psychological condition, health, and readiness to enter into marriage and build a household life, as well as identifying physical, psychological, sexual and economic coercion against children and families to marry or marry children as described in the sitting of the case. Furthermore, based on Article 15 of Perma Number 5 of 2019, the Judge has also read a certificate from the social service, women's empowerment and child protection of the southern coastal district and a certificate from the UPT puskesmas air haji, whose material will be considered together with the evidence submitted by the Plaintiffs..

- 4) Compilation of Islamic Law Article 53 paragraph (1) and Article 80 paragraph (2).

Article 53 paragraph 1 KHI: “A pregnant woman outside of marriage can be married to the man who impregnates her”. Article 80 paragraph

2 KHI: “The husband is obliged to protect his wife and provide all the necessities of household life in accordance with his ability”.

During the investigation of the case conducted by the judge, Article 53 paragraph 1 KHI was indeed used by the judge as a consideration, but it did not correspond with the ruling, namely that this article tends to be full of risks if applied to the community because it can cause free sexual behavior to become more rampant. With regard to Article 80 paragraph 2 KHI, the judge considered that with the pregnancy experienced by the applicant's child, the prospective husband of the applicant's child could not protect and educate the family that he would build later on.

Based on the explanations of the juridical basis, the author analyzes that the Plaintiffs who apply for marriage dispensation have met the criteria stipulated in the Marriage Law including Law Number 50 of 2009 and Law Number 16 of 2019. For the Painan Religious Court, it is appropriate to handle this application in accordance with the absolute authority of the Religious Court. For Judges based on the Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning the mechanism for adjudicating applications for dispensation of marriage, article by article has been fulfilled during the examination during the trial.

Although the judge did not agree with the statement of the Compilation of Islamic Law Article 53 paragraph 1, the author analyzes based on Article 1866 of the Civil Code/ Article 164 of the HIR concerning

evidence, which states that the evidence recognized in civil cases consists of written evidence, witness evidence, testimony, confessions and oaths. The child of the applicant admitted that she was pregnant but there was no written document or witness testimony to corroborate the pregnancy. Therefore, the author considers that the judge considered based on the code of civil procedure and it was appropriate to reject the application for dispensation of marriage by the applicants. Furthermore, the author analyzes that the judge's consideration of using KHI Article 80 paragraph 2 for prospective husbands is to better interpret the essence of marriage according to Islam in order to build a family that is Sakinah, Mawaddah and Warohmah for their small family in the future.

b. Non-judicial considerations

Non-judicial considerations are considerations that are not directly related to formal law, but can influence decision making or problem solving in various contexts. The following are the non-judicial considerations of the Painan Religious Court Judge in Determination Number 85/Pdt.P/2023/PA.Pn:

- 1) In the wider community, free sexual behavior has become increasingly rampant, as described by various studies so that free sexual behavior that occurs in the midst of society must be eradicated with all positive and constitutional efforts, including by refusing to give permission to marry prospective married couples who are not of age who are proven to have committed adultery before applying for marriage dispensation to the

Religious Court..

- 2) The fact that someone has committed zina shows that the person concerned has very weak spiritual and emotional stability, and such a person is believed to be unable to marry and carry out duties in the household properly in order to achieve the intended marital goals. In addition, zina is a major sin that is highly hated by Allah SWT.
- 3) Although the children of the Plaintiffs and their prospective husbands admitted their readiness to enter into marriage and no family members objected, the judge considered that this did not necessarily guarantee the readiness of the children of the Plaintiffs and their prospective husbands to enter into marriage for the benefit of marriage and the household, especially since the marriage plan between the children of the Plaintiffs and their prospective husbands was based on the reason that the children of the Plaintiffs and their prospective husbands had already had intimate relations as husband and wife.
- 4) The facts at the court hearing, the judge considered that the maslahat that the Plaintiffs wanted to take by immediately marrying off the Plaintiffs' children was to maintain the social status of the Plaintiffs' children who had had intimate relations as husband and wife with the prospective husband of the Plaintiffs' children, and on the other hand the judge considered that by giving permission for the Plaintiffs to marry off the Plaintiffs' children under the age limit for marriage, it would lead to several mafsadat such as the opportunity for discord and even domestic

violence due to the lack of mental, spiritual and economic readiness of the prospective husband and wife.⁴³

- 5) Although the marriage plan is carried out without coercion, the Judge is of the opinion that the Plaintiffs' child, currently aged 18 years and 4 months, is not yet eligible to be granted dispensation to be able to enter into marriage, because the Plaintiffs' child is deemed not yet capable enough to take responsibility as a wife, because in building a household, physical / mental and physical maturity is needed to navigate a household ark which is full of challenges, which, according to the Judge, is contrary to the important aspects that must be considered carefully in examining marriage dispensation cases, namely the potential possibility of domestic violence due to mental immaturity which determines the readiness of the prospective bride and groom, and is also not in line with the principles that must be put forward in granting marriage dispensation cases, namely paying attention to the best interests of the child.
- 6) Marriage is an instinctive human right that must be guaranteed and protected, that marriage is a necessity that cannot be prohibited and hindered by anyone as long as the marriage is carried out in accordance with Islamic sharia and applicable legal rules. marriage is not only to create a sakinah, mawaddah, and rahmah family, but also to realize the benefits of the world and the hereafter, as a form of Maqasid Sharia, to

⁴³ "Penetapan Pengadilan Agama Painan Nomor 85/Pdt.P/2023/PA.Pn," 2 Agustus 2023, accessed May 6, 2024, <https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/painan/tahunjenis/upload/tahun/2023/page/27.html>.

protect each other's religion, soul, mind, property and offspring of both spouses.

- 7) Although the children of the Plaintiffs have expressed their opinion to enter into marriage, based on the above considerations, the Judge considers that marriage is not the best solution to save the future of the children a quo, the role of parents is needed in accompanying, educating, guiding and supervising and preparing children to face life.

From the above considerations, the author analyzes that the judge looked at various aspects of life. As among them is the aspect of religion, the adultery committed by the applicants' children with the applicants' children's future husbands shows a lack of religious learning embedded in them. The role of parents in guiding their children is very much needed, especially for the children of the applicants, especially since they had decided to quit school at a very young age. In addition, adultery is a grave sin that is hated by Allah SWT. even in His Word in Surah Al-Isra verse 32 Allah has forbidden to approach this abominable act let alone do it.

In the social aspect, the author analyzes the judge's consideration in this decision putting forward the impact that will occur if the dispensation application is granted, both in the community and the small family that will be formed from the marriage. The existence of marriage dispensation for children who want to marry underage because they are premarital pregnant is a solution to contemporary problems in Islamic society today because it maintains the status of the child who will be born later, but also opens up

great opportunities for religious irregularities in the form of free sex in society. The rejection of marriage dispensation applications is one of the preventive efforts to reduce these crimes.

Based on the humanity aspect, marriage is a right for all citizens. However, the readiness to build a household after marriage in oneself is more preferable because marriage is something sacred both from a religious and state perspective. Postponing marriage for the reason of preparing all kinds of needs such as mental, psychological, economic, and others will presumably have a greater chance of realizing a family that is Sakinah, Mawaddah, and Rahmah.

Table of Judges Considerations

No	Juridicial	No.	Non-Juridicial
1	Law Number 50 of 2009 concerning adjudicating the parties.	1	Free sexual behavior has become increasingly rampant.
2	Article 7 paragraph 2 of Law Number 1 of 1974 concerning marriage.	2	Adultery committed shows very weak spiritual and emotional stability.
3	Regulation of the Supreme Court of the Republic of Indonesia No. 5 of 2019 on the procedure for adjudicating marriage	3	The readiness of the prospective husband is not a guarantee to maintain the integrity of the household.

	dispensation cases.		
4	Compilation of Islamic Law Article 53 paragraph (1) and Article 80 paragraph (2).	4	Allowing marriage will lead to several mafsadat such as opportunities for discord and even domestic violence.
		5	The children of the Plaintiffs are not considered capable enough to build a household which requires physical maturity or body and soul.
		6	Marriage is not only to create a sakinah, mawaddah and rahmah family, but also to realize the benefits of the world and the hereafter.
		7	The role of parents is needed in accompanying, guiding and supervising and preparing their children to face life in the future.

**B. The Judge's Consideration In Disapproving Marriage Dispensation
Due To Premarital Pregnancy at Determination Number
85/Pdt.P/2023/PA.Pn. Based On *Sadd Al-Dzari'ah* Perspective**

Dispensation of marriage is established due to the regulation of the minimum age of marriage because the meaning of dispensation is relief for the inability to comply with the minimum age of marriage set by law. It can be said

that the minimum age limit for marriage and the provision of marriage dispensation are two interrelated aspects. So that examining marriage dispensation means also examining the provisions of the minimum age limit for marriage. Discussions on this issue always raise the question of whether it is important to set an age limit for marriage even though the Qur'an and Hadith do not explicitly mention it. Setting the minimum age limit for marriage is one of the efforts to minimize the occurrence of early marriage, considering the adverse effects that often occur due to marriage at a young age, making this effort an approach by applying clear *ijtihad* to produce clear Islamic legal products as well. The existence of the minimum age limit for marriage is an effort to build the quality of prospective husbands and wives.⁴⁴ In the perspective of *Sadd Adz-Dzari'ah*, marriages that are held at a relatively young age contain fatal risks for the sustainability of the household, where mentally and intellectually men and women are not yet mature to take on household responsibilities.

The case of marriage dispensation to realize underage marriage is a complex problem, therefore in a consideration of the application for marriage dispensation in the Religious Court, the Judge as the court has the authority to decide the case so that all considerations are formulated from various points of view, including considerations that are seen sharia, juridical, sociological, psychological conditions, and not forgotten from the health aspect.⁴⁵ In

⁴⁴ Agus Khotibul Umam and Citra Widyasari S, "Dispensasi Nikah Di Indonesia Perspektif Sadd Adz-Dzari'ah," *Al-'Adalah : Jurnal Syariah Dan Hukum Islam* 8, no. 2 (December 24, 2023): 200, <https://doi.org/10.31538/adlh.v8i2.3986>.

⁴⁵ Nurdhin Baroroh, "Metamorfosis 'Illat Hukum' Dalam Sadd Adz-Dzari'ah Dan Fath Adz-Dzariah (Sebuah Kajian Perbandingan)," *Al-Mazaahib: Jurnal Perbandingan Hukum* 5, no. 2 (March 1, 2018): 290, <https://doi.org/10.14421/al-mazaahib.v5i2.1426>.

considering applications for dispensation of marriage, Religious Court Judges also need to formulate a consideration of the objectives of Islamic sharia both in terms of existence (*janibu al-wujud*) in the form of orders, and in terms of absence (*janibu al-'adm*) with the existence of a prohibition.

Sadd Al-Dzari'ah as one of the alternative concepts that humans can use in trying to formulate Islamic law is a method to achieve the goal of benefit in Islamic sharia. Ibn Qayyim Al-Jauziyah discussed that *Sadd Al-Dzariah* is one of the four basic laws in Islam. Islamic law itself contains commands and prohibitions. Commands in Islamic law are divided into two things, namely the objectivity or purpose of setting a command and the means or media to reach the goal of the command. Meanwhile, the prohibition is also divided into two things, namely something that is prohibited because it has the potential to damage or create chaos and something that is prohibited because it becomes a path and cause to things that can damage. Therefore, *Sadd Al-Dzariah* is the concept of preventing something that is prohibited in religion, which is one of the four foundations of Islamic law.

Judges in hearing an application for dispensation of marriage, do not always accept or grant the application. In granting an application for dispensation of marriage, the Religious Court considers the application based on reasons from a Shari'ah, juridical, sociological perspective, with the following information if:⁴⁶

⁴⁶ Fasihuddin Arafat, "Kehujjahan Sadd Ad-Dzari'ah Dalam Penundaan Kehamilan Pada Masa Pandemi Covid-19," *Masadir: Jurnal Hukum Islam* 2, no. 2 (2022): 518.

1. The respondent's children, if male, they have a decent job and sufficient income, if female, they have mastered the basics of carrying out household duties..
2. The parties of the prospective bride and groom have agreed to the marriage.
3. During the court proceedings, it was found that the two had been in such close contact that there were indications that if they were not married off, things could happen that are prohibited in Islamic law, and therefore could damage the structure of good social life in the community.
4. The prospective bride and groom are not prohibited from marrying by shar'i law.

Regarding the consideration of the Religious Court Judge when disapproving the application for dispensation of marriage, namely when the Judge does not find the legal facts that form the basis for the application for dispensation of marriage that are based on shar'i, juridical, and sociological reasons for the application to be accepted. The decision regarding the application for dispensation of marriage must be taken by considering the possibility of the least harm compared to other harms. As mentioned in the following fiqh rules:

إذا تعارض مفسداتن روعي أعظمها ضررا بارتكاب أخفهما

“If two harms are confronted, avoid the greater of the two harms by choosing the lesser of the two”

From the various aspects of consideration described above, judges also

need to see and consider the concept of *Sadd Al-Dzariah* to provide a ruling on the application for marriage dispensation because the rules for limiting the age for marriage have not been explicitly stated in Nash. The concept of *Sadd Al-Dzari'ah* contained in the rules of fiqh and used as a legal consideration in determining is “disapproving harm (damage) takes precedence over taking advantage”. The concept of *Sadd Al-Dzari'ah* becomes a concept of legal discovery that focuses on the impact that will be caused by an act for the sake of the benefits that will be achieved.

In the case of an application for dispensation of marriage, the Painan Religious Court through Determination Number 85/Pdt.P/2023/Pa.Pn has rejected the application of the applicant who applied for dispensation of marriage for their child who was still 18 years and 4 months old and according to the confession of the prospective wife (the applicant's child) stated that she was 1 month pregnant. In deciding the application, the judge has considered the various aspects that the author has described in the previous chapter.

Before discussing the analysis of *Sadd Al-Dzari'ah* in marriage dispensation, because this case is a civil case, it would be nice if the author wanted to look a little at the civil procedural law used by the Judge who gave the decision. The confession by the applicant's child who mentioned before the Judge that she was pregnant was not necessarily mentioned in the Judge's consideration in the copy of the decision. If we are guided by the provisions in the Law, the confession is one of the tools used as evidence, namely in Article 164 HIR or Article 1866 of the Civil Code which states that in civil procedure

law there are 5 kinds of valid evidence, namely letters, witnesses, testimony, confessions, and oaths.⁴⁷

A confession expressed by one of the parties does not always contain the truth. The content of a confession may contain true information or untrue information. A person may make a confession to limit the length of litigation in the Religious Court even though the things he confesses are not true, or even the confession is intended to increase the acceptance of his petition. Therefore, it can be said that a confession is an expression of the will of the confessor. Although it is the will of the confessor, in the eyes of the law, the confession has legal consequences..

R. Subekti said that a confession made in court or in front of a judge is perfect evidence of who has done it, either alone or through the intermediary of a person authorized by him. The point is that the judge must consider the arguments that have been recognized as true to be the next consideration in deciding the case.⁴⁸ A confession that is binding and perfect evidence is a confession made during a trial in front of a judge. Confessions made before the judge may not be withdrawn unless it can be proven that the confession that has been expressed has a matter of oversight regarding the things that actually happened. So in essence, that the person who has confessed can only cancel his confession if he can prove that his confession is a mistake on the facts.

⁴⁷ “JDIH Mahkamah Agung RI,” accessed May 1, 2024, <https://jdih.mahkamahagung.go.id/legal-product/kitab-undang-undang-hukum-perdata/detail>.

⁴⁸ R. Subekti, “Hukum pembuktian, 16, accessed April 30, 2024, <https://cir.nii.ac.jp/crid/1130000797387156224>.

Based on this description, according to the author's analysis, a confession that is binding and perfect evidence is a confession made before a judge or during a trial. The confession expressed before the judge is by the litigant or someone authorized by him. The confession made before the judge, may not be withdrawn unless it can be proven that the confession has been made as a result of a mistake regarding the things that happened. So the confession made in court has complete evidentiary power against the person who made it, and is decisive evidence. Therefore, if one of the parties confesses, the judge considers the confession to be true, and this will have the effect of not needing to prove further about the claim that has been recognized earlier. The child of the applicants who claimed to be one month pregnant based on the author's analysis that the judge believed in the truth expressed so that some of the considerations contained in the decision were based on the confession by the child of the applicants.

Among the judge's considerations in rejecting the applicants' application was that rejecting the application was one of the efforts in tackling the high level of free sexual behavior that resulted in acts that violated the syar'i rules, namely adultery. Then, the judge also considered that although the reasons for submitting a dispensation application to be granted were quite complete, namely that the two parties had agreed to marry, had a close relationship, and there were no obstacles to marriage, the zina that had been committed made the readiness to carry out household duties for both of them through the judge's view was not considered capable in the future.

Based on the analysis, the author uses the concept of *Sadd Al-Dzariah* as explained by Ibn Qayyim Al-Jauziyah about the requirements of *Sadd Al-Dzariah*, namely “the harm that is likely to arise from a permissible action is really clear and greater than the benefit it will bring”. Ibn Qayyim explained in this requirement that Al-Dzari'ah is a means that can be used and is not followed by an intention (purpose) that leads to actions that are not in line with sharia, but if the action is carried out it will cause more harm, even the harm is greater than the benefit. The rejection of the application for dispensation of marriage by the judge is a means to overcome the increase in free sexual acts that lead to zina (harm). In fact, the act of adultery that has been committed by the applicant's child with her prospective husband has clearly and convincingly deviated from sharia in the form of harm (mafsadah) through the recognition of the prospective wife, so that the refusal of the judge through this consideration is believed to be in accordance with the requirements of the concept of *Sadd Al-Dzariah* Ibn Qayyim Al-Jauziyah.

The next consideration is that if this application is granted, one of the mafsadat that will be caused is the potential for domestic violence due to mental and spiritual unpreparedness. The prospective husband did state that he was ready to undergo a household ark, but in fact what happened was that together with the prospective wife, they had had intercourse as husband and wife, so they were considered unable to become the head of the household who could guide his wife and children in the future. Based on the concept of *Sadd Al-Dzari'ah*, things that will happen in the future and have the potential to cause mischief

must be rejected. Hadith of the Prophet Muhammad Saw. which reads:

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ أَلَا كُتُّكُمْ رَاعٍ وَكُلُّكُمْ مَسْئُولٌ عَنْ رَعِيَّتِهِ فَإِلِمَامٌ الَّذِي عَلَى النَّاسِ رَاعٍ وَهُوَ مَسْئُولٌ عَنْ رَعِيَّتِهِ وَالرَّجُلُ رَاعٍ عَلَى أَهْلِ بَيْتِهِ وَهُوَ مَسْئُولٌ عَنْ رَعِيَّتِهِ وَالْمَرْأَةُ رَاعِيَةٌ عَلَى أَهْلِ بَيْتِ زَوْجِهَا وَوَلَدِهِ وَهِيَ مَسْئُولَةٌ عَنْهُمْ وَعَبْدُ الرَّجُلِ رَاعٍ عَلَى مَالِ سَيِّدِهِ وَهُوَ مَسْئُولٌ عَنْهُ أَلَا فَكُلُّكُمْ رَاعٍ وَكُلُّكُمْ مَسْئُولٌ عَنْ رَعِيَّتِهِ

Meaning : *“Know that each of you is a leader, and each of you will be held accountable for those you lead. The ruler who leads the people he will be held accountable for those he leads, every head of a family is the leader of his family members and he is held accountable for those he leads, and the wife is the leader of the family of her husband's house and also her children, and she will be held accountable for them, and one's slave is also the leader of his master's property and will be held accountable for it. Know that each of you is responsible for the one you lead.”* (H.R. Bukhari).

The hadith about leadership above states that the responsibility as a leader for something he leads is very large. Likewise, being a leader in a family is required to make his wife and children a pious and pious person who understands religious knowledge. The incident that occurred between the prospective husband and the prospective wife in the case was due to a lack of spiritual readiness between the two so that the judge considered that the prospective husband was not yet able to lead his family. The author believes that

although the husband-to-be is clearly older than the wife-to-be, which makes his mind clearer, it does not necessarily mean that he has a religious education. In addition, the readiness of religious knowledge in marriage must also be understood by both prospective brides, especially for prospective priests in the family, so that in this case the author is in line with the judge's consideration by looking at the impact that might occur such as domestic violence which leads to the breakup of marriage ties or divorce.

At the time of the court hearing, the husband-to-be stated that he was willing to support and provide for his future wife. The husband-to-be is a fisherman and claims to have an income of Rp.1,000,000.00 (one million rupiah) per month. Regarding the right to maintenance for wives and children, both during marriage and after divorce, it can be said that it is sufficient to protect the interests of women. Article 34 paragraph 1 of Law Number 1 of 1974 concerning Marriage, states that: The husband is obliged to protect his wife and provide all the necessities of domestic life according to his ability. This means that the husband is fully obliged to provide for his family (children and wife). According to the provisions of Article 34 paragraph 1 of the Marriage Law, both the maintenance of the wife and children are the responsibility of the husband or father of the children. However, in some cases, wives who are given the responsibility of managing all the needs of the family sometimes find it very difficult to get the right to maintenance from their husbands, either because of their poverty or because of the attitude of the husband who uses maintenance as a tool to assert his power as a husband. As a result, many wives are forced to

face a situation that they never imagined before, especially for those who have never worked. In situations where the husband leaves the family without any news, the situation is even more difficult because in addition to the lack of clarity about his marital status, the husband can no longer be found or traced to his place of residence.

In accordance with the concept of *Sadd Adz-Dzari'ah*, this fact then the author analyzes that indeed the law states that *nafkah* is in accordance with the husband's ability, but in the case above the fisherman's profession cannot guarantee that this figure will be consistent and sufficient to support the future wife and children. In addition, weather conditions cannot be predicted in accordance with expectations, which is seen from the conditions in some Indonesian sea waters. The condition of the tides also affects the working hours of the fishermen, even though Pesisir Selatan Regency is an area that has great potential in producing marine products. Therefore, the author considers that this figure can be said to be small and not able to provide for his future wife and children. The author is also worried that the uncertainty of income obtained by the prospective husband will cause economic problems for their household life. This is because economic problems are the main problem that causes divorce in Indonesia.

In general, *Sadd Al-Dzari'ah* prioritizes avoiding *madharat* over taking *maslahat*. Recognition of *Dzari'ah* is basically a means. That is, something that becomes a way for what is forbidden or what is legalized, so the law of the means is determined according to what it is aimed at. Clearly, actions that lead

to permissible are permissible, actions that lead to haram are haram, and actions that mediate the implementation of mandatory actions are mandatory.

In principle, Sadd Al-Dzari'ah does not only look at individual intentions and intentions, but also looks at public benefits and rejects generalized mischief. In relation to this research, the Painan Religious Court Judge rejected the Marriage Dispensation application because the madharat caused would be greater if the application was granted. Although if the application is rejected it will also have some negative impacts on the survival of the parties involved, as follows:

1. The status and Nasab of the unborn child is unclear.

Based on the confession of the applicant's child, she was in the middle of her second pregnancy or one month pregnant. Of course, when she gives birth, her child's status will be unnatural because the mother did not enter into a legal marriage bond. Such a child is called an unmarried child, namely a child born to a woman, while the woman is not in a legal marriage with the man who has intercourse with her.

Children categorized as adulterous children have legal consequences in the form of: (1) No nasab relationship with the father, but only with the mother and the mother's family. In this case the father has no obligation to provide maintenance to the child, but biologically remains as his child. It can be said that the relationship that occurs is not a legal relationship but only a human relationship. (2) They do not inherit from their father, because the legal

relationship is only with the mother. This can be understood because one of the pillars and conditions for being able to inherit from each other is the existence of a legal relationship with the heir. (3) The father cannot be a marriage guardian for a child outside of marriage.

The fact that there are children born outside of a legal marriage must be understood as a whole, looking not only at the actions of the parents but also concerning the children who are born. However, the majority of scholars have explicitly stated that children born out of wedlock cannot be related to their biological father. This provision has become a legal agreement of the scholars. Nevertheless, this does not mean that the man who is the biological father can simply abandon the child who is believed to have come from his seed. There is still a humanitarian side that the father can give to the child, even though by shar'i law it does not have nasab. So, morally, the father has an obligation to provide for the needs of the child, because religion does not justify the neglect of children.

2. Increase The Potential For Siri Marriage

One of the causes of the high rate of early marriage is because the application for dispensation of marriage is not accepted by the Religious Court, so that automatically the Office of Religious Affairs as a marriage registration institution cannot marry off the parties where there is an underage bride-to-be. There are many cases of pregnancy outside of marriage due to very free association. In this case, it is the woman who is in the spotlight in the midst of

society, especially to her family. In getting around this, many parents or maybe their children prefer to have a siri marriage because by keeping quiet, at least not many people know what has happened. Therefore, most of those who experience cases of pregnancy outside of marriage prefer siri marriage as a way out with the aim of keeping the "secret" and in essence it is a family secret. With this, it will also maintain people's views on the image or image of their own family.

In the perspective of Islamic law, a marriage is said to be valid if the terms and conditions of the parties are fulfilled, and in Islamic law, precisely in the terms and conditions, it is not stated that the marriage must be recorded. The criteria are that there are conditions, namely ijab, qabul, two brides and witnesses. The legality in this religion is the step for the community to continue to marry without going through the local Religious Affairs Office (KUA).

3. Destroying the order of society in social life

Premarital Pregnancy is considered a family disgrace. Disgrace is a blemish or an unfavorable condition about a person if it is known by others it will create shame, this shame leads to negative psychological effects if it is spread. The disgrace here is when parents have a daughter who is pregnant outside of marriage due to her behavior and becomes the subject of talk and negative news from the surrounding environment, before the pregnancy is known, the teenager will be married off. Therefore, to cover up the pregnancy, parents decide to immediately marry off their child to the man who has

impregnated her. With the occurrence of pregnancy outside of marriage, the couple is required to marry immediately to protect the family from greater disgrace.

Based on this information, the three aspects above are indeed important to consider, for example the condition of the unborn child and the social structure of society in the form of *nikah siri* and bullying against perpetrators of pregnancy outside of marriage. According to the author's analysis, these three aspects can still be overcome and one of them also has a greater risk than the benefit to be taken.

The status of a child who is conceived when it is born later in civil law, the position of a child who has the status of a child born outside of marriage has several legal consequences attached to it. He has the right to know the origin. Marriage in Islam has the aim of having offspring, so that children born have the status of legitimate children who have a father and mother. According to Article 103 of the Compilation of Islamic Law, the origin of the child can be known by proof of birth certificate or other evidence. If there is no birth certificate or other evidence, the Religious Court can issue a determination on the origin of the child after a thorough examination based on valid evidence. Based on the decree of the Religious Court, the birth registration agency within the jurisdiction of the Religious Court issues a birth certificate for the child concerned. Extra-marital children are entitled to a birth certificate as an identity of their citizenship and to know their origins. However, unlike a legitimate child where the father's name is included in the birth certificate, an unmarried child

does not have the father's name included. This is understandable because before the law the child was born from an extramarital marriage, not recorded so that he cannot show a marriage certificate as proof of his parents' marriage.

About the impact of formal juridical losses on nikah siri, including underhand marriage is not valid, even though the marriage is carried out according to the rules of religion and their respective beliefs. However, the marriage has no legal protection as long as it is not registered at the Office of Religious Affairs and the Civil Registry Office. If a child is born from an unregistered marriage, then the child is civilly responsible only for the mother and has no relationship with the father and cannot ask for his responsibility. The child does not even get inheritance from the father.

If analyzed further, the impact of this siri marriage has almost no significant impact or impact on men or in a married position, namely the husband, in this case the husband benefits a lot, such as the husband has freedom when he has the intention or desire to remarry because it has been explained that the status of this siri marriage is not recognized by law, then the husband can avoid even not at all providing maintenance which should be an obligation given to the wife and children, and the husband will not be bothered with the management of inheritance and property gono gini. This should be a consideration for those who will marry siri, especially for the women.

Then, regarding the disgrace that families get if they do not marry immediately. The role of parents in fostering, guiding and supervising their

children is very important. Religious teaching about association with the opposite sex is one of the weapons to overcome adultery accidents committed. The education taken is also an indicator of the success of tackling free sexual behavior. Therefore, parents as the first education of children in the family should be obliged to provide sufficient spiritual intake for children before they step into adolescence which is full of turmoil regarding their emotional and mental stability. Adolescence as a transition period to adulthood is vulnerable to damage if it is not properly prepared by its parents. The postponement of marriage by setting a mandatory age for marriage has been reviewed in order to prepare all aspects for prospective brides who want to get married. So that there are no more incidents of early marriage, out-of-wedlock pregnancies, diseases due to free sex, making parental attention very vital is needed in this case..

Based on the explanation above, the consequences arising from the postponement of marriage with the rejection of the dispensation application do have some bad effects or madharat, but not all of them will have this impact, only the possibilities that will occur to these things. then based on the analysis of Sadd Al- Dzari'ah, the Judge's consideration in the determination Number 85/Pdt.P/2023/PA.Pn is in accordance with the concept of Sadd Al-Dzari'ah, which is to facilitate the achievement of benefit or the far possibility of damage or avoid the possibility of sinful acts. An act that becomes an intermediary (Al-Dzari'ah) to a damage must be prevented or closed. This action falls under the category of Dzari'ah that leads to prohibited actions according to most. This means that if the Dhariz'ah is not avoided, it will often lead to the continuation

of the prohibited act.

Table of implications of the judge's determination from the perspective of

Sadd Al-Dzari'ah

NO.	IF DISAPPOVING	IF ACCEPTED
1	Prevention of the rampant phenomenon of free sex	Safeguarding the status of children in the womb
2	Minimizing domestic violence (KDRT)	Avoiding sirri marriage
3	Countermeasures against divorce due to economic problems	Balance of social life of the community (not becoming a disgrace)

One of the functions of the existence of law is to eliminate narrowness in human life.⁴⁹ However, this cannot necessarily be done without a cause. In Islam this is called the aspect of Sabab (cause). Sabab is divided into two types, namely causes that are beyond the limits of human ability where this cause is the absolute power of Allah such as the change of day to night, and causes that are within the limits of human ability. Causes that are within human limits are further divided into two views, namely in the view of taklifi law and the view of

⁴⁹ Sri Warjiyati, *Memahami dasar Ilmu Hukum: konsep dasar ilmu hukum* (Prenadamedia Group (Divisi Kencana) Jakarta, 2018), 7, <http://repository.uinsa.ac.id/id/eprint/1300/>.

wad'i law.

According to the author, when this marriage dispensation is included in the aspect of cause, which is when parents want to marry off their children at an early age by applying for marriage dispensation in the Religious Court, this is a cause that is still within the limits of human ability, meaning that parents have the ability to prevent it, moreover there are legal provisions that regulate it both taklifi and wad'i. from this aspect, parents who apply for marriage dispensation should be returned to taklifi law first and then to wad'i law with a note when in taklifi law there is no clarity. Regarding dispensation of marriage, it is clear that in taklifi law there are provisions that regulate it even though the law is considered less relevant to the circumstances of Indonesian society, especially those who are pregnant first. This is because, without these sanctions, it is feared that the function of law as a means of preventing an offense will not be implemented.

In Law Number 1 of 1974 concerning Marriage, this indirectly provides opportunities for teenagers to get married, because there are no restrictions and sanctions included in the marriage law. So that there is nothing for the perpetrators to worry about even though this can harm themselves. It is feared that this marriage law will become an indirect legality tool regarding the permissibility of adultery and pregnancy outside of marriage to enter into marriage at the age of adolescence.

If Law Number 1 of 1974 concerning Marriage is used as a legality tool

to legalize zina and pregnancy outside of marriage to enter into marriage at a young age, then this is contrary to the rules of Islamic law:

الضررُ يُزال

meaning: hazards must be eliminated

The meaning of this rule is that it is obligatory to eliminate harm, although the sentence is expressed in normative form, but what is meant is the emphasis on the obligation to eliminate harm. Harm is a form of injustice and is forbidden according to Islamic law. If this is the case, then it is obligatory to prevent harm from occurring, and if it does occur, it is obligatory to remove it.

CHAPTER IV

CONCLUSIONS AND SUGGESTIONS

A. Conclusions

Based on the research findings on Judges Consideration in disapproving marriage dispensation due to premarital pregnancy in Painan Religious Court, conclusions as follows :

1. Consideration of the Painan Religious Court Judge in rejecting the application for dispensation of marriage number 85/Pdt.P/2023/PA.Pn based on juridical and non-juridical considerations. Juridical considerations include Marriage Law Number 16 of 2019, Supreme Court Regulation Number 5 of 2019, and the Compilation of Islamic Law. Meanwhile, the non-juridical considerations include rampant free sex behavior, mental unpreparedness of the prospective husband and wife, and more harm that will occur if the application is granted.
2. The considerations used in the Judge's decision are in accordance with the concept of Sadd Al-Dzari'ah which has a positive impact, including preventing the potential for domestic violence, because the Judge's decision is Sadd Al-Dzari'ah or closes the way in the form of the ability of the two prospective brides to enter into marriage. However, the postponement of the marriage will make the child in the womb of the prospective wife unable to be related to his biological father..

B. Suggestions

1. For Judges, it is expected that in rejecting an application for Dispensation of Marriage due to pregnancy outside of marriage, it is better to consider the impact on the unborn child as a whole to minimize the possibility of unwanted things happening in domestic life. And in determining the application for Dispensation of Marriage, it would be better if the Judge tightens the reasons for applying for Dispensation of Marriage, so that the purpose of raising the marriage age limit is realized as mandated by Law No. 16 of 2019, namely in article 7 paragraph 1.
2. For the community, it is hoped that they should provide maximum supervision to their children in order to avoid acts that violate religious and moral norms. Because the family is the most important role in the development of children both physically and mentally.
3. For the younger generation, it is expected that as the next generation of the nation, young people should be eager to learn and pursue the highest level of education. Avoiding the bad influence of the environment in order to avoid the practice of early marriage and thinking and preparing carefully before getting married so that later there will be no regrets.
4. For future researches, it is hope to conduct more intensive research, for example with different types of research and other points of view in order to provide broader insights for readers.

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APPENDIXES

COPY OF DETERMINATION

PENETAPAN Nomor 85/Pdt.P/2023/PA.Pn

DEMI KEADILAN BERDASARKAN KETUHANAN YANG MAHA ESA

PENGADILAN AGAMA PAINAN

Memeriksa dan mengadili perkara perdata agama pada tingkat pertama dalam sidang Hakim telah menjatuhkan penetapan atas permohonan Dispensasi Kawin yang diajukan oleh:

1. PEMOHON I, NIK XXXX, tempat dan tanggal lahir, Padang Pariaman, 14 April 1973, agama Islam, pendidikan terakhir sekolah dasar, pekerjaan petani, bertempat tinggal di Kabupaten Pesisir Selatan, Provinsi Sumatera Barat, dalam hal ini menggunakan domisili elektronik dengan alamat pos XXXX dan layanan perpesan pada akun Whatsapp nomor XXXX, sebagai Pemohon I;
2. PEMOHON II, NIK XXXX, tempat dan tanggal lahir, Labuhan Tanjak, 15 Januari 1985, agama Islam, pendidikan terakhir sekolah dasar, pekerjaan mengurus rumah tangga, bertempat tinggal di Kabupaten Pesisir Selatan, Provinsi Sumatera Barat, dalam hal ini menggunakan domisili elektronik dengan alamat pos el XXXX, dan layanan perpesan pada akun Whatsapp nomor XXXX, sebagai Pemohon II. selanjutnya Pemohon I dan Pemohon II disebut sebagai Para Pemohon;

DUDUK PERKARA

Bahwa Para Pemohon dalam surat permohonannya tanggal 06 Juli 2023 telah mengajukan permohonan Dispensasi Kawin yang telah terdaftar di kepaniteraan Pengadilan Agama Painan dengan Nomor 85/Pdt.P/2022/PA.Pn tanggal 06 Juli 2023 dengan dalil-dalil pada pokoknya sebagai berikut:

1. Bahwa Pemohon I dan Pemohon II adalah orang tua kandung dari seorang anak yang bernama ANAK PARA PEMOHON, NIK XXXX, tempat dan tanggal lahir, 23 Maret 2005 (18 tahun 3 bulan), agama Islam, pendidikan terakhir sekolah lanjutan tingkat pertama, pekerjaan belum bekerja, bertempat tinggal di Kabupaten Pesisir Selatan, Provinsi Sumatera Barat;
2. Bahwa anak kandung Pemohon I dan Pemohon II bernama ANAK PARA PEMOHON bermaksud akan melangsungkan perkawinan dengan seorang laki-laki yang bernama CALON SUAMI, NIK XXXX, tempat dan tanggal lahir, Muara Kandis, 14 Juli 1996, agama Islam, pendidikan terakhir sekolah lanjutan tingkat pertama, pekerjaan nelayan, bertempat tinggal di Kabupaten Pesisir Selatan, Provinsi Sumatera Barat;

3. Bahwa CALON SUAMI adalah anak kandung dari IBU KANDUNG CALON SUAMI, NIK XXXX, tempat dan tanggal lahir, Muara Kandis, 02 Januari 1957, agama Islam, pendidikan terakhir sekolah dasar, pekerjaan mengurus rumah tangga, bertempat tinggal di Kabupaten Pesisir Selatan, Provinsi Sumatera Barat dengan seorang laki-laki yang bernama AYAH KANDUNG CALON SUAMI, yang telah meninggal dunia pada hari Selasa, tanggal 11 Mei 1997 dikarenakan kecelakaan, hal ini sesuai dengan Surat Keterangan Kematian Nomor XXXX yang di keluarkan oleh Kantor wali Nagari Muara Kandis Punggasan, Kecamatan Linggo Sari Baganti, Kabupaten Pesisir Selatan, Provinsi Sumatera Barat pada tanggal 27 Juni 2023;
4. Bahwa Pemohon I dan Pemohon II telah memberitahukan kehendak ingin melangsungkan perkawinan kepada Pegawai Pencatat Nikah Kantor Urusan Agama Kecamatan Linggo Sari Baganti, Kabupaten Pesisir Selatan, namun pegawai tersebut menolak untuk mencatat peristiwa perkawinan itu sebagaimana surat pemberitahuan kekurangan syarat/penolakan perkawinan Nomor B-217/Kua.03.1.8/Pw.01/6/2023 tertanggal 22 Juni 2023 dengan alasan pernikahan dapat dilaksanakan dengan melengkapi persyaratan surat putusan/penetapan dispensasi kawin dari pengadilan agama pailan dikarenakan umur calon istri (ANAK PARA PEMOHON) dibawah 19 tahun;
5. Bahwa antara anak Pemohon I dan Pemohon II dengan calon suaminya tidak mempunyai hubungan darah, semenda, sesusuan, dan halangan perkawinan lain, baik menurut hukum Islam, peraturan yang berlaku, maupun hukum adat setempat;
6. Bahwa anak kandung Pemohon I dan Pemohon II yang bernama ANAK PARA PEMOHON tidak sedang berada dalam pinangan laki-laki lain, dan Pemohon I sebagai ayah kandung dari ANAK PARA PEMOHON bersedia untuk menjadi wali dalam pernikahan tersebut;
7. Bahwa anak kandung Pemohon I dan Pemohon II dengan calon suaminya telah mengetahui dan menyetujui perkawinan tersebut dan mereka ingin melangsungkan perkawinan atas dasar keinginan sendiri tanpa ada paksaan dari pihak lain, baik secara psikis, fisik, ekonomi maupun seksual;
8. Bahwa anak kandung Pemohon I dan Pemohon II tidak sedang menjalani pendidikan formal di sekolah dan berstatus pendidikan terakhir sekolah lanjutan tingkat pertama setelah memutuskan untuk berhenti sekolah di SMA Negeri 1 Linggo Sari Baganti hal ini sesuai dengan Surat Keterangan yang terlampir;
9. Bahwa alasan Pemohon I dan Pemohon II bermaksud mengajukan permohonan dispensasi kawin terhadap anak kandung Pemohon I dan Pemohon II (ANAK PARA PEMOHON) adalah karena anak Pemohon I dan Pemohon II telah berhenti sekolah dan telah memiliki hubungan dekat (berpacaran) dengan CALON SUAMI kurang lebih 3 (tiga) tahun dan kemudian mereka sepakat memutuskan untuk melaksanakan pernikahan, sehingga melihat pergaulan mereka apabila di larang Pemohon I dan Pemohon II merasa khawatir akan terjadi perbuatan yang melanggar norma agama dan adat apabila tidak segera di nikahkan;

10. Bahwa anak kandung Pemohon I dan Pemohon II dengan calon suaminya sudah siap secara fisik dan mental untuk melangsungkan perkawinan dan membangun kehidupan rumah tangga;

11. Bahwa anak kandung Pemohon I dan Pemohon II (CALON SUAMI) selaku calon suami telah bekerja nelayan dengan penghasilan sebesar Rp. 1.000.000 (satu juta rupiah) perbulan, dan CALON SUAMI selaku calon suami dapat dan bersedia untuk bertanggung jawab untuk memenuhi kebutuhan rumah tangga dengan ANAK PARA PEMOHON nantinya;

12. Bahwa Pemohon I dan Pemohon II beserta pihak keluarga telah berusaha menasehati dan memberikan pandangan agar dapat menunda pernikahan sampai umur 19 tahun akan tetapi anak kandung Pemohon I dan Pemohon II (ANAK PARA PEMOHON) dengan calon suaminya CALON SUAMI tetap bersikeras pada keinginannya untuk menikah;

13. Bahwa Pemohon I dan Pemohon II selaku orang tua bersedia untuk tetap bertanggung jawab terkait dengan ekonomi, sosial, kesehatan, pendidikan, dan membantu anak dalam mengurus rumah tangga hingga mereka mandiri;

14. Bahwa anak Pemohon I dan Pemohon II (ANAK PARA PEMOHON) dengan CALON SUAMI dalam kondisi sehat hal ini sesuai dengan Surat Keterangan Kesehatan Catin Nomor XXXX yang dikeluarkan oleh UPT. Dinas Kesehatan Puskesmas Air Haji, Kecamatan Linggo Sari Baganti tertanggal 27 Juni 2023;

15. Bahwa untuk melaksanakan pernikahan nantinya Pemohon I dan Pemohon II (ANAK PARA PEMOHON) dengan suaminya CALON SUAMI telah mendapatkan dispensasi dari Dinas Sosial, Pemberdayaan Perempuan dan Perlindungan Anak Kabupaten Pesisir Selatan sebagaimana Surat Keterangan Dispensasi Kawin Nomor XXXX tertanggal 05 Juli 2023;

16. Bahwa oleh karena anak kandung Pemohon I dan Pemohon II masih belum cukup umur untuk menikah, maka Pemohon I dan Pemohon II memohon agar diberikan dispensasi terhadap anak kandung Pemohon I dan Pemohon II (ANAK PARA PEMOHON) dengan seorang laki-laki yang bernama CALON SUAMI untuk melakukan perkawinan tersebut;

17. Bahwa untuk memenuhi persyaratan administrasi permohonan dispensasi kawin berdasarkan pada Pasal 5 (1) Peraturan Mahkamah Agung RI Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin, maka Pemohon I dan Pemohon II telah melampirkan persyaratan administrasi sebagai berikut;

17.1 Surat Permohonan

17.2 Foto copy kartu tanda penduduk Pemohon I dan Pemohon II

17.3 Foto copy kartu tanda penduduk anak yang di bawah umur

17.4 Foto copy akta kelahiran anak yang di bawah umur

17.5 Foto copy kartu keluarga Pemohon I dan Pemohon II

17.6 Foto copy ijazah anak di bawah umur

17.7 Foto copy kartu tanda penduduk calon mertua

17.8 Foto copy kartu tanda penduduk calon suami

17.9 Foto copy kartu keluarga calon mertua

17.10 Foto copy akta kelahiran calon suami

17.11 Foto copy ijazah calon suami

17.12 Surat Penolakan dari Kantor Urusan Agama Kecamatan Linggo Sari Baganti;

17.13 Surat asli rekomendasi dispensasi dari Dinas Sosial, Pemberdayaan Perempuan dan Perlindungan Anak Kabupaten Pesisir Selatan

17.14 Surat asli keterangan kesehatan dari puskesmas

18. Bahwa berdasarkan hal-hal tersebut diatas, Pemohon I dan Pemohon II dalam penyelesaian perkara ini bersedia untuk membayar segala biaya yang timbul sesuai dengan ketentuan yang berlaku;

Berdasarkan alasan-alasan tersebut diatas, Pemohon I dan Pemohon II mohon kepada Ketua Pengadilan Agama Painan Cq. Majelis Hakim yang memeriksa dan memutus perkara ini dengan memberikan penetapan sebagai berikut:

PRIMER :

1. Mengabulkan permohonan Pemohon I dan Pemohon II;
2. Memberikan dispensasi kepada anak kandung Pemohon I dan Pemohon II bernama ANAK PARA PEMOHON untuk melaksanakan perkawinan dengan seorang laki-laki yang bernama CALON SUAMI;
3. Membebaskan kepada Pemohon I dan Pemohon II untuk membayar biaya perkara sesuai dengan ketentuan yang berlaku;

SUBSIDER : Atau apabila Pengadilan Agama Painan berpendapat lain, mohon penetapan yang seadil-adilnya;

Bahwa pada hari sidang yang telah ditetapkan, Para Pemohon datang menghadap ke persidangan;

Bahwa Hakim telah memberikan nasihat kepada Para Pemohon mengenai risiko perkawinan yang akan dilakukan dan dampaknya terhadap anak dalam masalah pendidikan, kesehatan, di antaranya kesiapan organ reproduksi, psikologis, psikis, sosial, budaya, ekonomi, dan potensi perselisihan dan kekerasan dalam rumah tangga sehingga kepada Para Pemohon disarankan menunda menikahkannya hingga anak tersebut mencapai batas minimum usia menikah

sebagaimana ketentuan Undang-Undang Perkawinan yaitu 19 tahun, akan tetapi Para Pemohon tetap pada pendiriannya dan permohonan dispensasi kawinnya;

Bahwa kemudian dibacakan surat permohonan Para Pemohon, yang pada pokoknya tujuan dan isinya tetap dipertahankan oleh Para Pemohon;

Bahwa, Para Pemohon telah menghadirkan anaknya yang dimintakan dispensasi nikah, yang bernama ANAK PARA PEMOHON, NIK XXXX, tempat dan tanggal lahir, 23 Maret 2005 (18 tahun 3 bulan), agama Islam, Pendidikan terakhir sekolah lanjutan tingkat pertama, pekerjaan belum bekerja, bertempat tinggal di Kabupaten Pesisir Selatan, Provinsi Sumatera Barat;

Bahwa Hakim menasihati anak agar memahami risiko perkawinan di bawah umur terkait dengan kemungkinan berhentinya pendidikan bagi anak, keberlanjutan anak dalam menempuh wajib belajar 12 tahun, belum siapnya organ reproduksi anak, dampak ekonomi, sosial, dan psikologis bagi anak serta potensi perselisihan dan kekerasan dalam rumah tangga sehingga anak disarankan untuk menunda rencana perkawinan dan menunggu sampai ia memenuhi batas usia perkawinan, namun anak menyatakan tetap dengan keinginan untuk segera melangsungkan perkawinan tersebut;

Bahwa atas pertanyaan Hakim, anak Para Pemohon tersebut telah memberikan keterangan sebagai berikut:

- Bahwa saya kenal dengan Para Pemohon karena Para Pemohon adalah ayah dan ibu kandung saya;
- Bahwa Saya dihadirkan ke persidangan ini untuk dimintai keterangan tentang permohonan dispensasi kawin yang diajukan oleh Para Pemohon agar saya dengan seorang laki-laki bernama CALON SUAMI dapat melangsungkan perkawinan di hadapan Pegawai Pencatat Nikah (PPN) Kantor Urusan Agama Kecamatan Linggo Sari Baganti Kabupaten Pesisir Selatan;
- Bahwa Saya telah sepakat untuk mengajukan permohonan dispensasi kawin tersebut;
- Bahwa Saya mengetahui dan menyetujui rencana perkawinan tersebut;
- Bahwa Saya ingin melangsungkan perkawinan atas dasar keinginan sendiri dan tidak ada paksaan dari keluarga atau pihak lain;
- Bahwa Saya mengajukan permohonan dispensasi kawin ke Pengadilan Agama Painan karena saya dan CALON SUAMI ingin segera melangsungkan perkawinan dengan alasan kami telah berpacaran selama ±3 (tiga) tahun;
- Bahwa hubungan kami sudah sangat erat bahkan kami sudah pernah dua kali melakukan hubungan intim layaknya suami istri dan sekarang saya dalam keadaan hamil 1 (satu) bulan akibat hubungan tersebut;
- Bahwa Saya dan calon suami tidak mempunyai hubungan darah, semenda, sesusuan, dan halangan perkawinan lain, baik menurut hukum Islam, peraturan yang berlaku, maupun hukum adat setempat

- Bahwa Saya selaku calon istri tidak sedang berada dalam pinangan orang lain hingga saat ini;
- Bahwa Saya merasa siap untuk melangsungkan perkawinan dan membangun kehidupan rumah tangga serta saling bertanggung jawab sebagai suami istri, baik secara fisik maupun mental;
- Bahwa Para Pemohon telah memberitahukan kehendak ingin melangsungkan perkawinan kepada pegawai pencatat nikah KUA setempat, namun PPN menolak untuk mencatat peristiwa perkawinan tersebut;
- Bahwa Pegawai Pencatat Nikah setempat menolak untuk mencatat peristiwa perkawinan tersebut karena saya belum memenuhi syarat batas minimal usia perkawinan;
- Bahwa Saya tidak lagi menjalani pendidikan formal di sekolah setelah berhenti sekolah di SMA Negeri 1 Linggo Sari Baganti pada bulan Maret 2023 dan pendidikan terakhir saya hanya di sekolah lanjutan tingkat pertama;
- Bahwa Saya tidak pernah menderita atau mengalami penyakit menular;
- Bahwa Saya mengetahui tujuan dan maksud perkawinan, yaitu untuk membentuk keluarga;
- Bahwa Saya tidak bekerja dan tidak pula memiliki penghasilan;
- Bahwa Saya tidak pernah mendapatkan tindakan kekerasan atau tekanan dari calon suami;
- Bahwa Calon suami saya bekerja sebagai nelayan dengan penghasilan lebih kurang sejumlah Rp. 1.000.000 (satu juta rupiah) perbulan;
- Bahwa Tidak ada keluarga yang keberatan atas rencana perkawinan tersebut;

Bahwa Para Pemohon juga telah menghadirkan calon suami anak Para Pemohon yang bernama CALON SUAMI, NIK XXXX, tempat dan tanggal lahir, Muara Kandis, 14 Juli 1996, agama Islam, pendidikan terakhir sekolah lanjutan tingkat pertama, pekerjaan nelayan, bertempat tinggal di Kabupaten Pesisir Selatan, Provinsi Sumatera Barat;

Bahwa Hakim menasihati calon suami anak agar memahami risiko perkawinan di bawah umur terkait dengan kemungkinan berhentinya Pendidikan bagi anak, keberlanjutan anak dalam menempuh wajib belajar 12 tahun, belum siapnya organ reproduksi anak, dampak ekonomi, sosial, dan psikologis bagi anak serta potensi perselisihan dan kekerasan dalam rumah tangga sehingga calon suami anak disarankan untuk menunda rencana perkawinan dan menunggu sampai anak memenuhi batas usia perkawinan, namun calon suami anak menyatakan tetap dengan keinginan untuk segera melangsungkan perkawinan tersebut;

Bahwa atas pertanyaan Hakim, Calon Suami anak Para Pemohon tersebut telah memberikan keterangan sebagai berikut:

- Bahwa Saya kenal dengan Para Pemohon
- Bahwa Saya kenal dengan ANAK PARA PEMOHON karena ia adalah anak kandung dari Para Pemohon;

- Bahwa Saya dihadirkan oleh Para Pemohon untuk dimintai keterangan tentang permohonan dispensasi kawin yang diajukan agar saya dengan anak Para Pemohon bernama ANAK PARA PEMOHON dapat melangsungkan perkawinan di hadapan Pegawai Pencatat Nikah (PPN) Kantor Urusan Agama Kecamatan Linggo Sari Baganti Kabupaten Pesisir Selatan; Bahwa Saya mengetahui dan menyetujui rencana perkawinan tersebut;
- Bahwa Saya ingin melangsungkan perkawinan atas keinginan sendiri dan tidak ada paksaan dari keluarga atau pihak lain;
- Bahwa Saya dan anak Para Pemohon ingin segera melangsungkan perkawinan karena saya dan anak Para Pemohon telah berpacaran selama ± 3 (tiga) tahun;
- Bahwa hubungan kami sudah sangat erat bahkan kami pernah melakukan hubungan intim layaknya suami istri;
- Bahwa Saya dengan anak Para Pemohon tidak mempunyai hubungan darah, semenda, sesusuan, dan halangan perkawinan lain, baik menurut hukum Islam, peraturan yang berlaku, maupun hukum adat setempat;
- Bahwa Para Pemohon telah memberitahukan kehendak ingin melangsungkan perkawinan kepada Pegawai Pencatat Nikah Kantor Urusan Agama setempat, namun pegawai KUA menolak untuk mencatat peristiwa perkawinan tersebut;
- Bahwa Pegawai Pencatat Nikah setempat menolak untuk mencatat peristiwa perkawinan tersebut karena anak Para Pemohon masih berumur ± 18 (tujuh belas) tahun sehingga tidak memenuhi syarat batas minimal usia perkawinan;
- Bahwa Saya tidak pernah menderita penyakit yang menular;
- Bahwa Saya tidak pernah melakukan kekerasan secara fisik atau psikis terhadap anak Para Pemohon;
- Bahwa Saya siap secara fisik dan mental untuk melangsungkan perkawinan dan membangun kehidupan rumah tangga serta saling bertanggung jawab sebagai suami istri;
- Bahwa Saya mengetahui hak dan kewajiban suami istri dalam rumah tangga;
- Bahwa Saya saat ini bekerja sebagai nelayan dengan penghasilan sejumlah Rp. 1.000.000 (satu juta rupiah) perbulan;
- Bahwa Tidak ada keluarga yang keberatan atas rencana perkawinan tersebut;

Bahwa Para Pemohon juga telah menghadirkan ibu kandung calon suami anak Para Pemohon yang bernama IBU KANDUNG CALON SUAMI, NIK XXXX, tempat dan tanggal lahir, Muara Kandis, 02 Januari 1957, agama Islam, pendidikan terakhir sekolah dasar, pekerjaan mengurus rumah tangga, bertempat tinggal di Kabupaten Pesisir Selatan, Provinsi Sumatera Barat;

Bahwa Hakim menasihati ibu kandung calon suami agar memahami risiko perkawinan di bawah umur terkait dengan kemungkinan berhentinya pendidikan bagi anak, keberlanjutan anak dalam menempuh wajib belajar 12 tahun, belum

siapnya organ reproduksi anak, dampak ekonomi, sosial, dan psikologis bagi anak, serta potensi perselisihan dan kekerasan dalam rumah tangga sehingga ibu kandung calon suami disarankan untuk menunda rencana perkawinan tersebut dan menunggu sampai anak Para Pemohon memenuhi batas usia perkawinan, namun ibu kandung calon suami menyatakan tetap dengan keinginan untuk segera melangsungkan perkawinan tersebut

Bahwa atas pertanyaan Hakim ibu kandung calon suami anak Para Pemohon memberikan keterangan pada pokoknya sebagai berikut:

- Bahwa Saya kenal dengan Para Pemohon;
- Bahwa Saya dihadirkan oleh Para Pemohon terkait dengan permohonan dispensasi kawin yang diajukan agar anak Para Pemohon bernama ANAK dan anak saya bernama CALON SUAMI dapat melangsungkan perkawinan di hadapan Pegawai Pencatat Nikah Kantor Urusan Agama setempat;
- Bahwa suami saya (AYAH KANDUNG CALON SUAMI) atau ayah kandung dari CALON SUAMI sudah meninggal dunia sejak tahun 1997;
- Bahwa Rencana perkawinan itu sudah disampaikan dan didaftarkan kepada Pegawai Pencatat Nikah setempat, namun mereka menolak untuk mencatatkan peristiwa perkawinan tersebut;
- Bahwa Pegawai Pencatat Nikah setempat menolak untuk mencatatkan rencana peristiwa perkawinan itu karena usia anak Para Pemohon masih 18 (delapan belas) tahun sehingga belum memenuhi batas usia perkawinan dan pihak KUA bersedia mencatatkannya setelah ada penetapan dispensasi kawin dari Pengadilan Agama Painan;
- Bahwa Saya dan keluarga telah berusaha untuk menasihati dan memberikan pandangan kepada anak saya agar menunda rencana perkawinan hingga usia anak Para Pemohon cukup 19 (sembilan belas) tahun, namun ia tetap dengan keinginannya untuk segera menikahi anak Para Pemohon;
- Bahwa Anak saya ingin melangsungkan perkawinan atas dasar keinginan sendiri dan tidak ada paksaan dari keluarga atau pihak lain;
- Bahwa Anak saya ingin segera melangsungkan perkawinan dengan anak Para Pemohon karena mereka telah berpacaran selama ± 2 (dua) tahun dan hubungan mereka sudah sangat erat serta sangat sulit untuk dipisahkan sehingga mereka khawatir akan melakukan perbuatan maksiat apabila tidak segera menikah
- Bahwa saya tidak mengetahui apakah Anak saya dan anak para Pemohon pernah melakukan hubungan intim layaknya suami istri atau tidak;
- Bahwa Rencana perkawinan tersebut sudah disetujui oleh kedua belah pihak keluarga;
- Bahwa Anak saya dan anak Para Pemohon tidak mempunyai hubungan darah, semenda, susunan dan halangan perkawinan lain, baik menurut hukum Islam, peraturan yang berlaku, maupun hukum adat setempat;

- Bahwa Anak Para Pemohon tidak sedang berada dalam pinangan lakilaki lain hingga saat ini;
- Bahwa Tidak ada pihak lain yang mengajukan keberatan atau menggugat rencana perkawinan tersebut;
- Bahwa Anak saya dan anak Para Pemohon mengakui telah matang secara fisik dan mental untuk melangsungkan perkawinan dan membangun kehidupan rumah tangga;
- Bahwa Anak saya bekerja sebagai nelayan tapi saya kurang mengetahui mengenai penghasilannya secara pasti;
- Bahwa Jumlah penghasilan tersebut cukup untuk memenuhi kebutuhan rumah tangga;
- Bahwa Saya bersedia untuk membantu mereka dalam mengurus rumah tangga dan mencukupi kebutuhan sehari-hari hingga mereka mandiri;

Bahwa untuk menguatkan dalil-dalil permohonannya Para Pemohon telah mengajukan bukti-bukti sebagai berikut:

A. Bukti Surat

1. Fotokopi Kartu Tanda Penduduk Elektronik Kabupaten Pesisir Selatan NIK XXXX, tanggal 27 Juni 2012 atas nama Pemohon I. Bukti surat tersebut telah di-nazagelen, telah diperiksa, dan telah dicocokkan oleh Hakim dengan dokumen aslinya dan dokumen yang diunggah pada Sistem Informasi Pengadilan yang ternyata cocok. Selanjutnya, dibubuhi tanggal dan diparaf oleh Hakim serta diberi kode P.1;

2. Fotokopi Kartu Tanda Penduduk Elektronik Kabupaten Pesisir Selatan NIK XXXX, tanggal 7 Juli 2012 atas nama Pemohon II. Bukti surat tersebut telah di-nazagelen, telah diperiksa, dan telah dicocokkan oleh Hakim dengan dokumen aslinya dan dokumen yang diunggah pada Sistem Informasi Pengadilan yang ternyata cocok. Selanjutnya, dibubuhi tanggal dan diparaf oleh Hakim serta diberi kode P.2;

3. Fotokopi Kartu Tanda Penduduk Elektronik Kabupaten Pesisir Selatan NIK XXXX, tanggal 25 Agustus 2022 atas nama anak. Para Pemohon. Bukti surat tersebut telah di-nazagelen, telah diperiksa, dan telah dicocokkan oleh Hakim dengan dokumen aslinya dan dokumen yang diunggah pada Sistem Informasi Pengadilan yang ternyata cocok. Selanjutnya, dibubuhi tanggal dan diparaf oleh Hakim serta diberi kode P.3;

4. Fotokopi Kartu keluarga Nomor XXXX tanggal 21 Desember 2020 dengan nama kepala keluarga Pemohon I yang diterbitkan oleh Kepala Dinas Kependudukan dan Pencatatan Sipil Kabupaten Pesisir Selatan. Bukti surat tersebut telah di-nazagelen, telah diperiksa, dan telah dicocokkan oleh Hakim dengan dokumen aslinya dan dokumen yang diunggah pada Sistem Informasi Pengadilan yang ternyata cocok. Selanjutnya, dibubuhi tanggal dan diparaf oleh Hakim serta diberi kode P.4;

5. Fotokopi Kutipan Akta Kelahiran Nomor XXXX tanggal 4 April 2014 atas nama anak para Pemohon yang diterbitkan oleh Kepala Dinas Kependudukan dan Pencatatan Sipil Kabupaten Pesisir Selatan. Bukti surat tersebut telah di-nazagelen, telah diperiksa, dan telah dicocokkan oleh Hakim dengan dokumen aslinya dan dokumen yang diunggah pada Sistem Informasi Pengadilan yang ternyata cocok. Selanjutnya, dibubuhi tanggal dan diparaf oleh Hakim serta diberi kode P.5;

6. Fotokopi Ijazah Nomor XXXX tanggal 4 Juni 2021 yang diterbitkan oleh Kepala Madrasah Tsanawiyah Negeri 5 Pesisir Selatan, Kabupaten Pesisir Selatan. Bukti surat tersebut telah di-nazagelen, telah diperiksa, dan telah dicocokkan oleh Hakim dengan dokumen aslinya dan dokumen yang diunggah pada Sistem Informasi Pengadilan yang ternyata cocok. Selanjutnya, dibubuhi tanggal dan diparaf oleh Hakim serta diberi kode P.6;

7. Fotokopi Kartu Tanda Penduduk Elektronik Kabupaten Pesisir Selatan NIK XXXX, tanggal 17 September 2021 atas nama CALON SUAMI (calon suami). Bukti surat tersebut telah di-nazagelen, telah diperiksa, dan telah dicocokkan oleh Hakim dengan dokumen aslinya dan dokumen yang diunggah pada Sistem Informasi Pengadilan yang ternyata cocok. Selanjutnya, dibubuhi tanggal dan diparaf oleh Hakim serta diberi kode P.7;

8. Fotokopi Kartu keluarga Nomor XXXX tanggal 3 September 2018 dengan nama kepala keluarga ibu kandung calon suami anak yang diterbitkan oleh Kepala Dinas Kependudukan dan Pencatatan Sipil Kota Padang. Bukti surat tersebut telah di-nazagelen, telah diperiksa, dan telah dicocokkan oleh Hakim dengan dokumen aslinya dan dokumen yang diunggah pada Sistem Informasi Pengadilan yang ternyata cocok. Selanjutnya, dibubuhi tanggal dan diparaf oleh Hakim serta diberi kode P.8;

9. Fotokopi Ijazah Nomor XXXX tanggal 2 Juni 2012 yang diterbitkan oleh Kepala Madrasah Tsanawiyah Negeri Punggasan, Kabupaten Pesisir Selatan atas nama calon suami. Bukti surat tersebut telah dinazagelen, telah diperiksa, dan telah dicocokkan oleh Hakim dengan dokumen aslinya dan dokumen yang diunggah pada Sistem Informasi Pengadilan yang ternyata cocok. Selanjutnya, dibubuhi tanggal dan diparaf oleh Hakim serta diberi kode P.9;

10. Fotokopi keterangan kematian atas nama AYAH KANDUNG CALON SUAMI yang diterbitkan oleh Wali Nagari Muara Kandis Punggasan . Bukti surat tersebut telah di-nazagelen, telah diperiksa, dan telah dicocokkan oleh Hakim dengan dokumen aslinya dan dokumen yang diunggah pada Sistem Informasi Pengadilan yang ternyata cocok. Selanjutnya, dibubuhi tanggal dan diparaf oleh Hakim serta diberi kode P.10;

B. Bukti Saksi

1.SAKSI I, NIK XXXX, tempat/tanggal lahir, Labuhan Tanjak, 18 Februari 1993, agama Islam, pendidikan terakhir Sekolah Dasar, pekerjaan petani,tempat, Kabupaten Pesisir Selatan, Provinsi Sumatera Barat adalah anak para Pemohon, di

bawah sumpah telah menerangkan hal-hal yang pada pokoknya adalah sebagai berikut:

- Bahwa saksi kenal dengan Para Pemohon dan anak Para Pemohon (ANAK PARA PEMOHON);
- Bahwa saksi kenal dengan calon suami anak para Pemohon;
- Bahwa saksi mengetahui rencana pernikahan anak Para Pemohon dengan calon suaminya yang bernama CALON SUAMI;
- Bahwa anak Para Pemohon dan calon suaminya mempunyai hubungan dekat sejak 2 (dua) tahun yang lalu;
- Bahwa sekarang anak Para Pemohon dalam keadaan hamil;
- Bahwa anak para Pemohon telah mengetahui dan menyetujui rencana perkawinan itu bahkan perkawinan tersebut atas dasar keinginan anak para Pemohon sendiri dan tidak ada paksaan dari keluarga atau pihak lain;
- Bahwa keluarga kedua belah pihak telah merestui rencana pernikahan mereka dan siap membantu mereka secara moril dan materil dalam menjalani hidup berumah tangga nanti;
- Bahwa saksi mengetahui bahwa perkawinan antara anak para Pemohon dan calon suaminya, harus segera dilaksanakan karena anak para Pemohon dan calon suaminya pernah melakukan hubungan intim layaknya suami istri;
- Bahwa anak para Pemohon dan calon suaminya tidak terikat perkawinan dengan orang lain;
- Bahwa anak para Pemohon (ANAK PARA PEMOHON tidak mempunyai hubungan darah, hubungan susuan dan hubungan lain yang menghalangi pernikahan dengan calon suaminya (CALON SUAMI);
- Bahwa Pemohon I sebagai wali nikah ANAK PARA PEMOHON telah menyatakan bersedia menjadi wali nikah dan bersedia menikahkan anak para Pemohon dengan CALON SUAMI;
- Bahwa anak para Pemohon dan calon suaminya sekarang tidak dalam keadaan menempuh pendidikan;
- Bahwa tidak ada pihak lain yang mengajukan keberatan atau menggugat rencana pernikahan tersebut;
- Bahwa anak para Pemohon (ANAK PARA PEMOHON) tidak sedang dalam lamaran pria lain;
- Bahwa calon suami dari anak para Pemohon bekerja sebagai nelayan, dengan penghasilan lebih kurang Rp2.000.000,00 (dua juta rupiah) perbulannya;

2.SAKSI II, NIK XXXX, tempat/tanggal lahir, Muara Kandis/ 1 Juli 1972, agama Islam, pendidikan terakhir Sekolah Lanjutan Tingkat Atas, pekerjaan petani, tempat tinggal di Kabupaten Pesisir Selatan, Provinsi Sumatera Barat, adalah kakak kandung calon suami Pemohon, di bawah sumpah telah menerangkan hal-hal yang pada pokoknya adalah sebagai berikut :

- Bahwa saksi kenal dengan Para Pemohon dan anak Para Pemohon (ANAK PARA PEMOHON);
- Bahwa ayah kandung saksi yang juga merupakan ayah kandung calon suami anak para Pemohon, sudah lama meninggal dunia;
- Bahwa saksi mengetahui rencana pernikahan anak Para Pemohon dengan calon suaminya (CALON SUAMI);
- Bahwa para Pemohon telah memberitahukan kehendaknya, namun Pegawai Pencatat Nikah Kantor Urusan Agama setempat menolak untuk mencatat peristiwa perkawinan tersebut karena anak para Pemohon belum memenuhi syarat batas minimal usia perkawinan;
- Bahwa perkawinan tersebut atas dasar keinginan anak para Pemohon sendiri dengan calon suaminya dan tidak ada paksaan dari keluarga atau pihak lain;
- Bahwa keluarga kedua belah pihak telah merestui rencana pernikahan mereka dan siap membantu mereka secara moril dan materil dalam menjalani hidup berumah tangga nanti;
- Bahwa sepengetahuan saksi anak Para Pemohon dan calon suaminya mempunyai hubungan dekat sejak 5 (lima) bulan terakhir;
- Bahwa anak para Pemohon (ANAK PARA PEMOHON) tidak mempunyai hubungan darah, hubungan sesusuan dan hubungan lain yang menghalangi pernikahan dengan calon suaminya (CALON SUAMI);
- Bahwa tidak ada pihak lain yang mengajukan keberatan atau menggugat rencana pernikahan tersebut;
- Bahwa anak para Pemohon (ANAK PARA PEMOHON) tidak sedang dalam lamaran pria lain;-
- Bahwa saksi tidak mengetahui apakah anak para pemohon sekarang dalam keadaan hamil atau tidak;
- Bahwa Pemohon I sebagai wali nikah ANAK PARA PEMOHON telah menyatakan bersedia menjadi wali nikah dan bersedia menikahnya dengan CALON SUAMI;
- Bahwa anak para Pemohon tidak sedang menempuh pendidikan;
- Bahwa calon suami dari anak para Pemohon (CALON SUAMI) bekerja sebagai nelayan dengan penghasilan Rp50.000,00 (lima puluh ribu rupiah) perbulan;

Bahwa kemudian Para Pemohon telah menyatakan tidak mengajukan bukti lagi dan menyampaikan kesimpulan yang pada pokoknya tetap pada dalildalil permohonannya dan memohon agar Hakim menjatuhkan penetapan;

Bahwa untuk mempersingkat uraian penetapan ini cukup ditunjuk segala hal yang telah termuat dalam berita acara persidangan perkara yang dianggap sebagai satu kesatuan tak terpisahkan dalam penetapan ini;

PERTIMBANGAN HUKUM

Menimbang, bahwa maksud dan tujuan permohonan Para Pemohon adalah sebagaimana tersebut di atas;

Kewenangan Mengadili

Menimbang, bahwa Para Pemohon beragama Islam dan bermaksud menikahkan anaknya, tetapi mendapat penolakan dari KUA setempat dengan alasan anak yang akan dinikahkan Para Pemohon tersebut belum mencapai batas minimal umur untuk menikah yaitu 19 tahun (vide Pasal 7 ayat (1) Undang-Undang Nomor 16 tahun 2019 tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan), karenanya Para Pemohon mengajukan permohonan Dispensasi Kawin kepada Pengadilan Agama Painan, maka berdasarkan Pasal 7 ayat 2 Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan sebagaimana telah diubah dengan Undang-Undang Nomor 16 Tahun 2019 jo. Pasal 49 ayat 1 huruf a dan Pasal 49 ayat 2 Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama sebagaimana diubah dengan Undang-Undang Nomor 3 Tahun 2006 dan perubahan kedua dengan Undang-Undang Nomor 50 Tahun 2009, Maka perkara ini menjadi wewenang absolut Pengadilan Agama;

Legal Standing

Menimbang, bahwa Para Pemohon mengaku sebagai orang tua kandung dari seorang anak yang bernama ANAK PARA PEMOHON, NIK XXXX, tempat dan tanggal lahir, 23 Maret 2005, umur 18 tahun 4 bulan, yang akan dinikahkan dengan calon suaminya yang bernama CALON SUAMI, akan tetapi kehendak untuk melangsungkan pernikahan tersebut ditolak oleh Kantor Urusan Agama Kecamatan setempat, karena anak yang bernama ANAK PARA PEMOHON tersebut belum mencapai batas minimal umur untuk menikah, yaitu 19 Tahun (vide Pasal 7 ayat (1) Undang-Undang Nomor 16 tahun 2019 tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan). Bahwa suatu perkawinan hanya dapat dilangsungkan oleh pihak calon mempelai yang akan menikah telah mencapai batas minimal umur untuk menikah, tetapi apabila terjadi penyimpangan atas aturan tersebut, maka dapat mengajukan upaya Dispensasi Kawin kepada Pengadilan oleh kedua orang tua pihak (vide Pasal 7 ayat (2) Undang-Undang Nomor 16 tahun 2019 tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan) sebagaimana yang diajukan oleh Para Pemohon a quo, maka berdasarkan ketentuan Pasal 7 ayat 2 Undang-Undang Nomor 1 tahun 1974 Tentang Perkawinan yang telah diubah dengan Undang-Undang Nomor 16 tahun 2019, Pengadilan menilai Para Pemohon merupakan pihak yang berkepentingan dalam perkara ini (persona standi in iudicio) sehingga Para Pemohon mempunyai hak (legal standing) untuk mengajukan permohonan Dispensasi Kawin a quo;

Kehadiran Para Pemohon

Menimbang, bahwa pada hari sidang yang telah ditetapkan, Para Pemohon telah hadir di persidangan dan telah menghadirkan anak Para Pemohon, calon suami anak Para Pemohon, dan orang tua calon suami anak Para Pemohon, sehingga telah memenuhi ketentuan Pasal 10 Peraturan Mahkamah Agung Republik Indonesia Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin;

Pemeriksaan yang Harus Dilakukan

Menimbang, bahwa dalam persidangan Hakim telah menasihati Para Pemohon, anak Para Pemohon, calon suami anak Para Pemohon, dan orang tua calon suami anak Para Pemohon mengenai risiko perkawinan yang akan dilakukan dan dampaknya terhadap anak dalam masalah pendidikan (diantaranya tidak berlanjutnya pendidikan bagi anak), masalah kesehatan (diantaranya belum siapnya organ reproduksi anak, kemungkinan anak yang dilahirkan mengalami stunting), masalah psikologis, sosial, budaya, ekonomi, potensi perselisihan dan kekerasan dalam rumah tangga, sehingga Para Pihak disarankan untuk menunda pernikahan sampai anak mencapai usia minimal untuk melakukan pernikahan, akan tetapi tidak berhasil, sehingga persidangan telah memenuhi ketentuan Pasal 12 Peraturan Mahkamah Agung Republik Indonesia Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin;

Menimbang, bahwa Hakim telah mendengarkan keterangan Para Pemohon, anak Para Pemohon, calon suami anak Para Pemohon, dan orang tua calon suami anak Para Pemohon di persidangan, sehingga telah memenuhi ketentuan Pasal 7 ayat (3) Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan Jo. Mahkamah Agung Republik Indonesia Pasal 13 Peraturan Mahkamah Agung Republik Indonesia Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin;

Menimbang, bahwa dalam persidangan Hakim juga telah mengidentifikasi mengenai pengetahuan dan persetujuan anak Para Pemohon mengenai rencana perkawinan, kondisi psikologis, kesehatan, dan kesiapan anak untuk melangsungkan perkawinan dan membangun kehidupan rumah tangga, serta mengidentifikasi mengenai paksaan fisik, psikis, seksual dan atau ekonomi terhadap anak dan atau keluarga untuk kawin atau mengawinkan anak sebagaimana diuraikan dalam duduk perkara, sehingga telah memenuhi Pasal 14 Peraturan Mahkamah Agung Republik Indonesia Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin;

Menimbang, bahwa Hakim juga telah membaca surat keterangan dari Dinas Sosial, Pemberdayaan Perempuan dan Perlindungan Anak Kabupaten Pesisir Selatan dan surat keterangan dari UPT Puskesmas Air Haji, yang materinya akan dipertimbangkan bersama-sama dengan pertimbangan bukti yang diajukan Para Pemohon, sehingga telah memenuhi Pasal 15 Peraturan Mahkamah Agung Republik Indonesia Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin;

Pokok Perkara

Menimbang, bahwa permohonan Para Pemohon didasarkan atas dalil yang pada pokoknya bahwa Para Pemohon ingin menikahkan anaknya yang bernama ANAK PARA PEMOHON dengan calon suaminya yang bernama CALON SUAMI, tetapi keinginan Para Pemohon tersebut mendapatkan penolakan dari Kantor Urusan Agama Kecamatan setempat dengan alasan anak Para Pemohon belum mencapai batas minimal umur untuk menikah, bahwa antara anak Para Pemohon

dengan calon suaminya tidak mempunyai hubungan darah, semenda, sesusuan, dan halangan perkawinan lain, baik menurut hukum Islam, peraturan yang berlaku, maupun hukum adat setempat, bahwa anak kandung Para Pemohon tidak sedang berada dalam pinangan lakilaki lain, bahwa Pemohon I sebagai ayah kandung bersedia menjadi wali dalam pernikahan tersebut, bahwa anak kandung Para Pemohon dengan calon suaminya telah mengetahui dan menyetujui perkawinan tersebut dan mereka ingin melangsungkan perkawinan atas dasar keinginan sendiri tanpa ada paksaan dari pihak lain, baik secara psikis, fisik, ekonomi maupun seksual, bahwa anak kandung Para Pemohon tidak sedang menjalani pendidikan formal di sekolah, karena anak kandung Para Pemohon tidak ingin lagi melanjutkan pendidikannya di SMA Negeri 1 Linggo Sari Baganti, bahwa anak Para Pemohon dan calon suaminya memiliki hubungan yang sangat dekat (berpacaran) kurang lebih 3 (tiga) tahun apalagi anak kandung Para Pemohon bersikeras untuk tidak melanjutkan pendidikannya sehingga Para Pemohon merasa khawatir jika terjadi perbuatan yang tidak sesuai dengan syariat agama maupun hukum adat yang berlaku, bahwa anak kandung Para Pemohon dengan calon suaminya sudah siap secara fisik dan mental untuk melangsungkan perkawinan dan membangun kehidupan rumah tangga, bahwa calon suami anak Para Pemohon sudah bekerja sebagai nelayan dengan penghasilan sebesar Rp1.000.000,00 (satu juta rupiah) perbulannya dana bersedia untuk bertanggung jawab untuk memenuhi kebutuhan rumah tangga dengan anak Para Pemohon nantinya, bahwa Para Pemohon beserta pihak keluarga telah berusaha menasehati dan memberikan pandangan agar dapat menunda pernikahan sampai umur 19 tahun akan tetapi anak kandung Para Pemohon dengan calon suaminya tetap bersikeras pada keinginannya untuk menikah, bahwa Para Pemohon selaku orang tua bersedia untuk tetap bertanggung jawab terkait dengan ekonomi, sosial, kesehatan, pendidikan, dan membantu anak dalam mengurus rumah tangga hingga mereka mandiri, sehingga Para Pemohon mengajukan permohonan kepada Pengadilan agar dapat mengabulkan Dispensasi Kawin a quo;

Analisis Pembuktian

Menimbang, bahwa untuk menguatkan dalil-dalil permohonannya, Para Pemohon di persidangan telah mengajukan alat bukti tertulis dan alat bukti saksi, alat bukti mana sepanjang ada relevansinya dengan perkara a quo akan dipertimbangkan;

Menimbang, bahwa alat bukti tertulis yang diajukan oleh Para Pemohon yang diberi tanda P.1, P.2, P.3, P.4, P.5, P.6, P.7, P.8 dan P.9 adalah Fotokopi Akta Autentik, alat bukti tertulis mana telah bermeterai cukup dan bercap stempel pos (nazegelen), diperlihatkan aslinya di depan persidangan, kemudian oleh Hakim dicocokkan dengan aslinya, dan ternyata sesuai dengan aslinya, dengan demikian alat bukti tertulis P.1, P.2, P.3, P.4, P.5, P.6, P.7, P.8 dan P.9 tersebut telah memenuhi syarat formil alat bukti akta autentik sesuai ketentuan Pasal 285 R.Bg. Jo. Pasal 1888 KUHPerdato jo. Pasal 3 Undang-Undang Nomor 10 Tahun 2020 tentang Bea Meterai. Oleh karena itu, alat bukti tertulis P.1, P.2, P.3, P.4, P.5, P.6, P.7, P.8 dan P.9 dapat diterima dan dipertimbangkan;

Menimbang, bahwa alat bukti tertulis yang diajukan oleh Para Pemohon yang diberi tanda P.10 adalah Fotokopi surat keterangan kematian atas nama ayah kandung calon suami, alat bukti tertulis mana telah bermeterai cukup dan bercap stempel pos (nazegelen), diperlihatkan aslinya di depan persidangan, kemudian oleh Hakim dicocokkan dengan aslinya, dan ternyata sesuai dengan aslinya, bukti surat tersebut merupakan surat lain yang bukan akta yang dapat menjadi bukti permulaan sesuai ketentuan Pasal 286 RBg dan dikuatkan dengan keterangan dua orang saksi di persidangan;

Menimbang, bahwa bukti P.1 menerangkan nama Nasril sebagai Pemohon I dengan identitasnya. Dengan demikian, bukti P.1 telah memenuhi syarat materil suatu akta autentik. Oleh karena bukti P.1 telah memenuhi syarat formil dan materil suatu akta autentik, serta tidak dibantah dan dibuktikan kepalsuannya, sehingga bukti P.1 tersebut bersifat sempurna dan memiliki kekuatan pembuktian yang mengikat. Oleh karena itu harus dinyatakan terbukti identitas Pemohon I adalah benar sebagaimana isi dari bukti P.1 tersebut;

Menimbang, bahwa bukti P.2 menerangkan nama Yusliani sebagai Pemohon II dengan identitasnya. Dengan demikian, bukti P.2 telah memenuhi syarat materil suatu akta autentik. Oleh karena bukti P.2 telah memenuhi syarat formil dan materil suatu akta autentik, serta tidak dibantah dan dibuktikan kepalsuannya, sehingga bukti P.2 tersebut bersifat sempurna dan memiliki kekuatan pembuktian yang mengikat. Oleh karena itu harus dinyatakan terbukti identitas Pemohon II adalah benar sebagaimana isi dari bukti P.2 tersebut;

Menimbang, bahwa bukti P.3 menerangkan nama ANAK sebagai anak Para Pemohon dengan identitasnya. Dengan demikian, bukti P.3 telah memenuhi syarat formil dan materil suatu akta autentik, serta tidak dibantah dan dibuktikan kepalsuannya, sehingga bukti P.3 tersebut bersifat sempurna dan memiliki kekuatan pembuktian yang mengikat. Oleh karena itu harus dinyatakan terbukti identitas anak Para Pemohon adalah benar sebagaimana isi dari bukti P.3 tersebut;

Menimbang, bahwa bukti P.4 menerangkan keluarga dengan kepala keluarga nama Nasril dengan anggota keluarga di antaranya Yusliani sebagai istri dan ANAK sebagai anak. Dengan demikian, bukti P.4 telah memenuhi syarat materil suatu akta autentik. Oleh karena bukti P.4 telah memenuhi syarat formil dan materil suatu akta autentik, serta tidak dibantah dan dibuktikan kepalsuannya, sehingga bukti P.4 tersebut bersifat sempurna dan memiliki kekuatan pembuktian yang mengikat. Oleh karena itu harus dinyatakan terbukti identitas keluarga Nasril dengan anggota keluarga dan identitasnya adalah benar sebagaimana isi dari bukti P.4 tersebut;

Menimbang, bahwa bukti P.5 menerangkan bahwa di Labuhan Tanjak pada tanggal 23 Maret 2005 telah lahir ANAK anak kedua perempuan dari ayah Nasril dan ibu Yusliani. Dengan demikian, bukti P.5 telah memenuhi syarat materil suatu akta autentik. Oleh karena bukti P.5 telah memenuhi syarat formil dan materil suatu akta autentik, serta tidak dibantah dan dibuktikan kepalsuannya, sehingga bukti

P.5 tersebut bersifat sempurna dan memiliki kekuatan pembuktian yang mengikat. Oleh karena itu harus dinyatakan terbukti bahwa ANAK adalah anak kandung dari pasangan Pemohon I (Nasril) dan Pemohon II (Yusliani);

Menimbang, bahwa bukti P.6 menerangkan nama ANAK, tempat tanggal lahir Labuhan Tanjak, 23 Maret 2005, nama orang tua Nasril, Lulus dari Madrasah Tsanawiyah Negeri 5 Pesisir Selatan pada tahun ajaran 2020/2021. Dengan demikian, bukti P.6 telah memenuhi syarat materil suatu akta autentik. Oleh karena bukti P.6 telah memenuhi syarat formil dan materil suatu akta autentik, serta tidak dibantah dan dibuktikan kepalsuannya, sehingga bukti P.6 tersebut bersifat sempurna dan memiliki kekuatan pembuktian yang mengikat. Oleh karena itu harus dinyatakan ANAK (anak Para Pemohon) terakhir pernah duduk di bangku pendidikan tingkat Madrasah Tsanawiyah;

Menimbang, bahwa bukti P.7 menerangkan nama CALON SUAMI sebagai calon suami anak Para Pemohon dengan identitasnya. Dengan demikian, bukti P.7 telah memenuhi syarat materil suatu akta autentik. Oleh karena bukti P.7 telah memenuhi syarat formil dan materil suatu akta autentik, serta tidak dibantah dan dibuktikan kepalsuannya, sehingga bukti P.7 tersebut bersifat sempurna dan memiliki kekuatan pembuktian yang mengikat. Oleh karena itu harus dinyatakan terbukti identitas calon suami anak Para Pemohon adalah benar sebagaimana isi dari bukti P.7 tersebut;

Menimbang, bahwa bukti P.8 menerangkan keluarga dengan kepala keluarga nama Igus dengan anggota keluarga di antaranya CALON SUAMI sebagai anak. Dengan demikian, bukti P.8 telah memenuhi syarat materil suatu akta autentik. Oleh karena bukti P.8 telah memenuhi syarat formil dan materil suatu akta autentik, serta tidak dibantah dan dibuktikan kepalsuannya, sehingga bukti P.8 tersebut bersifat sempurna dan memiliki kekuatan pembuktian yang mengikat. Oleh karena itu harus dinyatakan terbukti identitas keluarga Igus dengan anggota keluarga dan identitasnya adalah benar sebagaimana isi dari bukti P.8 tersebut;

Menimbang, bahwa bukti P.9 menerangkan nama CALON SUAMI, tempat tanggal lahir Muara Kandis, 14 Juli 1996, nama orang tua AYAH KANDUNG CALON SUAMI, Lulus dari Madrasah Tsanawiyah Negeri Punggasan pada tahun ajaran 2011/2012. Dengan demikian, bukti P.9 telah memenuhi syarat materil suatu akta autentik. Oleh karena bukti P.9 telah memenuhi syarat formil dan materil suatu akta autentik, serta tidak dibantah dan dibuktikan kepalsuannya, sehingga bukti P.9 tersebut bersifat sempurna dan memiliki kekuatan pembuktian yang mengikat. Oleh karena itu harus dinyatakan CALON SUAMI (calon suami anak Para Pemohon) terakhir pernah duduk di bangku pendidikan tingkat Madrasah Tsanawiyah;

Menimbang, bahwa bukti P.10 menerangkan bahwa seseorang yang bernama AYAH KANDUNG CALON SUAMI, tempat tanggal lahir, Muara Kandis 01 Juli 1940 telah meninggal dunia pada tanggal 11 Mei 1997 dikuatkan dengan keterangan saksi, maka ditemukan fakta bahwa seseorang yang bernama AYAH KANDUNG CALON SUAMI telah meninggal dunia;

Menimbang, bahwa berdasarkan bukti tertulis P.1, P.2, P.3, P.4, dan P.5 Hakim menilai terbukti Para Pemohon adalah orang tua dari ANAK PARA PEMOHON yang lahir di Labuhan Tanjak, 23 Maret 2005, umur 18 tahun 3 bulan. Berdasarkan bukti-bukti tersebut, maka dalil-dalil posita Para Pemohon yang berkaitan mengenai hal-hal tersebut patutlah dinyatakan terbukti. Bukti tersebut sekaligus menegaskan kompetensi Pengadilan Agama Painan sebagai Pengadilan yang berwenang menerima, memeriksa dan mengadili perkara a quo;

Menimbang, bahwa oleh karena anak Para Pemohon yang Bernama ANAK PARA PEMOHON belum memenuhi batas umur untuk melangsungkan pernikahan sesuai dengan aturan perundang-undangan dan telah ditolak permohonan kehendak perkawinannya oleh Kantor Urusan Agama yang berwenang mencatatkan, maka Para Pemohon sebagai orang tua kandung dapat mengajukan dispensasi kawin sebagaimana ketentuan Pasal 7 ayat (2) Undang-Undang nomor 16 tahun 2019 tentang perubahan Undang-Undang nomor 1 tahun 1974 tentang perkawinan. Hal ini sekaligus menegaskan legal standing (persona in judicio) Para Pemohon sebagai dalam perkara a quo;

Menimbang, bahwa selain alat-alat bukti tertulis di atas, untuk menguatkan dalil-dalil permohonannya, Para Pemohon juga telah menghadirkan dua orang saksi yang memberikan keterangan sebagaimana diuraikan dalam duduk perkara;

Menimbang, bahwa saksi-saksi yang diajukan Para Pemohon keduanya sudah dewasa, berakal sehat, dan sebelum memberikan keterangannya telah disumpah terlebih dahulu, oleh karenanya kedua saksi tersebut memenuhi syarat formil sebagai saksi sebagaimana diatur dalam Pasal 172 ayat (1) angka 4 R.Bg.;

Menimbang, bahwa keterangan saksi 1 dan saksi 2 Para Pemohon adalah keterangan yang bersesuaian dan berkaitan serta berhubungan antara satu dengan yang lain, oleh karena itu keterangan dua orang saksi tersebut memenuhi Pasal 308 R.Bg. dan Pasal 309 R.Bg. sehingga telah memenuhi syarat materiil alat bukti Saksi, yang materinya dipertimbangkan sebagai berikut;

Menimbang, bahwa berdasarkan bukti tertulis P.7 dan P.8 yang dihubungkan dengan keterangan Para Pemohon, anak Para Pemohon, calon suami anak Para Pemohon, orang tua calon suami anak Para Pemohon dan keterangan saksi-saksi Para Pemohon, terbukti bahwa calon suami anak Para Pemohon bernama CALON SUAMI, saat ini telah berumur 27 tahun, beragama Islam, tidak memiliki hubungan darah, sesusuan, atau hubungan semenda dengan anak Para Pemohon serta tidak terikat perkawinan dengan siapapun, oleh karenanya calon suami anak Para Pemohon tersebut tidak memiliki halangan untuk menikah dengan anak Para Pemohon;

Menimbang, bahwa berdasarkan bukti P.6 dihubungkan dengan keterangan Para Pemohon, anak Para Pemohon, calon suami anak Para Pemohon, orang tua calon suami anak Para Pemohon dan keterangan saksi saksi Para Pemohon, terbukti bahwa anak Para Pemohon terakhir sekolah pada tingkat Madrasah Tsanawiyah;

Menimbang, bahwa berdasarkan keterangan Para Pemohon, anak Para Pemohon, calon suami anak Para Pemohon, orang tua calon suami anak Para Pemohon dan keterangan saksi-saksi Para Pemohon, dihubungkan dengan surat keterangan UPT Puskesmas Air Haji terbukti bahwa anak Para Pemohon dalam keadaan sehat;

Menimbang, bahwa berdasarkan keterangan Para Pemohon, anak Para Pemohon, calon suami anak Para Pemohon, orang tua calon suami anak Para Pemohon dan keterangan saksi-saksi Para Pemohon, terbukti bahwa calon suami anak Para Pemohon saat ini bekerja sebagai Nelayan dengan penghasilan rata-rata setidaknya sebesar Rp1.000.000,00 (satu juta rupiah) perbulannya;

Menimbang, bahwa berdasarkan keterangan anak Para Pemohon dan calon suami anak Para Pemohon terbukti bahwa anak Para Pemohon dan suaminya ingin melakukan perkawinan karena kehendaknya masing-masing serta tanpa dipaksa oleh siapapun termasuk kedua orang tua mereka, serta keduanya telah kuat keinginannya untuk menikah serta merasa telah siap fisik maupun psikis untuk menjadi pasangan suami istri;

Menimbang, bahwa berdasarkan keterangan Para Pemohon, anak Para Pemohon, calon suami anak Para Pemohon, orang tua calon suami anak Para Pemohon dan keterangan saksi-saksi Para Pemohon, terbukti bahwa anak Para Pemohon dan calon suaminya, berstatus perawan dan jejak, karena keduanya belum pernah menikah sebelumnya. Terbukti pula anak Para Pemohon dengan calon suaminya tidak memiliki hubungan darah maupun sesusuan, tidak sedang terikat perkawinan dengan siapapun, serta tidak ada larangan untuk melakukan perkawinan di antara keduanya. Para Pemohon dan orang tua calon suami anak Para Pemohon telah pula merestui rencana pernikahan keduanya, serta tidak ada orang lain yang keberatan dengan perkawinan keduanya. Berdasarkan hal-hal tersebut, dalil-dalil posita berkenaan dengan hal-hal tersebut patutlah dinyatakan terbukti;

Menimbang, bahwa berdasarkan keterangan Para Pemohon, anak Para Pemohon, calon suami anak Pemohon, orang tua calon suami anak Para Pemohon dan keterangan saksi-saksi Para Pemohon terbukti bahwa alasan Para Pemohon mengajukan dispensasi kawin adalah karena hubungan anak Para Pemohon yang telah terjalin dengan sangat eratnya selama setidaknya 3 (tiga) tahun. Baik Para Pemohon maupun orangtua calon suami anak Para Pemohon merasa khawatir jika pernikahan anak-anak mereka tidak segera dilakukan keduanya akan lebih jauh melakukan perbuatan yang melanggar norma-norma agama dan norma kesusilaan yang berlaku di masyarakat;

Menimbang, bahwa berdasarkan keterangan anak Para Pemohon dan calon suami anak Para Pemohon, dihubungkan dengan keterangan saksi-saksi dan keterangan Para Pemohon dan orang tua calon suami anak Para Pemohon, Hakim menilai bahwa terbukti anak Para Pemohon yang diajukan dalam permohonan perkara a quo telah mengetahui dan menyetujui rencana perkawinan tersebut, dan terbukti kehendak perkawinan tersebut memang muncul dari anak Para Pemohon dan calon suami anak Para Pemohon, tanpa adanya paksaan baik berbentuk psikis, fisik, dan seksual dari siapapun, dan tanpa adanya relasi kuasa serta tidak terbukti

adanya unsur transaksional atau motif ekonomi dari rencana perkawinan anak Para Pemohon dan calon suami anak Para Pemohon a quo, sebagaimana kehendak Pasal 14 Peraturan Mahkamah Agung Republik Indonesia Nomor 5 Tahun 2019 tentang Pedoman Mengadili Permohonan Dispensasi Kawin;

Menimbang, bahwa berdasarkan keterangan anak Para Pemohon, calon suami anak Para Pemohon, dihubungkan dengan keterangan saksi-saksi dan keterangan Para Pemohon dan orang tua calon suami anak Para Pemohon, serta Surat Keterangan dari Dinas Sosial Pemberdayaan Perempuan dan Anak Kabupaten Pesisir Selatan, Hakim menilai bahwa terbukti kehendak anak Para Pemohon dan calon suami anak Para Pemohon untuk menikah didasarkan pada keyakinan dari anak Para Pemohon dan calon suami anak Para Pemohon namun dengan catatan bahwa anak Para Pemohon dalam keadaan hamil;

Menimbang, bahwa berdasarkan bukti-bukti tersebut di atas dihubungkan dengan dalil-dalil permohonan Para Pemohon, keterangan anak Para Pemohon, calon suami anak Para Pemohon dan calon besan Para Pemohon dipersidangan, maka Hakim menemukan fakta-fakta yuridis yang telah dikonstatir sebagai berikut:

- Bahwa anak Para Pemohon yang bernama ANAK PARA PEMOHON telah berhubungan sangat dekat dengan calon suaminya bernama CALON SUAMI dan bahkan pernah melakukan hubungan intim layaknya suami istri sehingga pihak keluarga telah sepakat untuk menikahkan keduanya;
- Bahwa anak Para Pemohon yang bernama ANAK PARA PEMOHON yang saat ini baru berumur 18 tahun 4 bulan;
- Bahwa antara ANAK PARA PEMOHON dengan calon suaminya Bernama CALON SUAMI tidak mempunyai hubungan darah, sesusuan atau hubungan lain yang menghalangi perkawinan, baik secara agama maupun adat setempat;
- Bahwa anak Para Pemohon bernama ANAK PARA PEMOHON telah datang dan melapor ke Pegawai Pencatat Nikah Kantor Urusan Agama Kecamatan Linggo Sari Baganti guna mencatatkan pernikahannya dengan CALON SUAMI, namun ternyata kehendak pernikahan yang diajukan tersebut tidak memenuhi persyaratan dan karenanya pihak Kantor Urusan Agama tersebut menolak untuk mencatatkan pernikahan antara ANAK PARA PEMOHON dengan CALON SUAMI dengan alasan calon istri atas nama ANAK PARA PEMOHON belum cukup umur;
- Bahwa Pemohon I sebagai ayah kandung ANAK PARA PEMOHON sebagai wali nikah telah menyatakan kesediaannya menjadi wali nikah dalam rencana pernikahan anak Para Pemohon tersebut, dan anak Para Pemohon saat ini tidak sedang lamaran pria lain;
- Bahwa anak Para Pemohon ANAK PARA PEMOHON dan calon suaminya bernama CALON SUAMI menikah atas dasar kemauan mereka sendiri dan tidak ada paksaan dari pihak lain;
- Bahwa pihak keluarga kedua belah pihak telah merestui pernikahan anak Para Pemohon dengan calon suaminya;

- Bahwa beda usia antara anak Para Pemohon dengan calon suaminya terpaut sekitar 8 (delapan) tahun.
- Bahwa pihak keluarga kedua belah pihak bersedia untuk membantu dan membimbing anak-anak mereka dalam rumah tangga;

Menimbang, bahwa terhadap fakta-fakta tersebut di atas, oleh Hakim akan dipertimbangkan sebagai berikut;

Menimbang, bahwa perkawinan merupakan ikatan lahir batin seorang laki-laki dan perempuan sebagai suami istri untuk membentuk rumah tangga yang bahagia dan kekal berdasarkan Ketuhanan Yang Maha Esa, oleh karena itu setiap perkawinan harus memenuhi syarat yang ditentukan oleh hukum dan memiliki dimensi tujuan perkawinan;

Menimbang bahwa untuk mencapai tujuan perkawinan tersebut, sejalan dengan disyaratkannya kemampuan untuk dibolehkannya seseorang untuk menikah, sebagaimana sabda Rasulullah SAW:

يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ، فَإِنَّهُ أَغْضُ لِلْبَصْرِ، وَأَحْصَنُ لِلْفَرْجِ، وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ وَجَاءٌ

Artinya : “Wahai para pemuda barang siapa yang sudah mampu untuk menikah hendaklah segera menikah, karena yang demikian itu bisa menjaga mata untuk tidak melihat kepada yang dilarang dan bisa menjaga kehormatan, maka barang siapa yang belum mampu untuk menikah hendaklah berpuasa karena sesungguhnya puasa itu adalah benteng baginya.” (HR Bukhari).

Menimbang, bahwa yang dimaksud dengan kemampuan di dalam hadits atas bukan semata-mata kemampuan untuk melakukan hubungan suami istri, tetapi jauh lebih penting dari itu adalah kemampuan spiritual dan emosional maupun kemampuan ekonomi untuk menjalankan tugas-tugas di dalam suatu rumah tangga. Lemahnya kekuatan spiritual dan emosional maupun kemampuan ekonomi seseorang akan menyebabkan rumah tangga yang dibangun sangat rentan berakhir dengan kekerasan dalam rumah tangga bahkan perceraian;

Menimbang, bahwa di dalam persidangan ANAK (anak para Pemohon) dan CALON SUAMI (calon suami anak para Pemohon) mengaku telah melakukan perbuatan zina, hal mana perbuatan zina merupakan perbuatan dosa besar yang sangat dibenci oleh Allah SWT;

Menimbang, bahwa di tengah-tengah masyarakat, perilaku seks bebas sudah semakin merajalela, seperti digambarkan oleh berbagai riset sehingga perilaku seks bebas yang terjadi di tengah-tengah masyarakat itu harus dibasmi dengan segala upaya yang positif dan konstitusional termasuk dengan menolak memberi izin untuk menikah kepada calon pasangan suami istri yang belum cukup umur yang terbukti telah terlebih dahulu melakukan perbuatan zina sebelum mengajukan permohonan dispensasi nikah ke Pengadilan Agama;

Menimbang bahwa fakta bahwa seseorang telah melakukan perbuatan zina menunjukkan bahwa yang bersangkutan memiliki stabilitas sprititual dan

emosional yang sangat lemah, dan orang seperti itu diyakini belum mampu menikah dan menjalankan tugas di dalam rumah tangga dengan baik demi mencapai tujuan perkawinan yang dicitakan;

Menimbang, bahwa meskipun anak para Pemohon dan calon suami mengakui kesiapan untuk melangsungkan pernikahan serta tidak ada pihak keluarga yang keberatan, hakim menilai bahwa hal tersebut tidak serta merta menjamin kesiapan anak para Pemohon dan calon suami anak para Pemohon) untuk melangsungkan pernikahan demi kemaslahatan pernikahan dan rumah tangga, apalagi rencana pernikahan antara anak para Pemohon dan calon suami anak para Pemohon didasari atas alasan anak para pemohon dengan calon suami anak para Pemohon sudah pernah melakukan hubungan intim layaknya suami istri;

Menimbang, bahwa meskipun pada saat pemeriksaan di persidangan, anak para Pemohon telah menyatakan siap untuk menikah, tanpa paksaan psikis, seksual, dan/atau ekonomi terhadapnya dan keluarga, namun Hakim memandang anak a quo dan calon suami belum menunjukkan kesungguhan, kesanggupan dan kelayakan untuk menjalankan kehidupan berumah tangga; Hakim memandang calon suami belum sepenuhnya mampu untuk menjadi kepala rumah tangga, termasuk dalam membimbing dan memberi Pendidikan agama kepada Istrinya, sebagaimana ketentuan Pasal 80 ayat (2) Kompilasi Hukum Islam, serta sesuai dengan firman Allah dalam Al-Qur'an surat At-Tahrim ayat 6:

يَا أَيُّهَا الَّذِينَ آمَنُوا قُوا أَنفُسَكُمْ وَأَهْلِيكُمْ نَارًا وَقُودُهَا النَّاسُ وَالْحِجَارَةُ عَلَيْهَا مَلَائِكَةٌ غِلَاظٌ شِدَادٌ لَا يَعْصُونَ اللَّهَ مَا أَمَرَهُمْ وَيَفْعَلُونَ مَا يُؤْمَرُونَ

Artinya : “Wahai orang-orang yang beriman! Peliharalah dirimu dan keluargamu dari api neraka yang bahan bakarnya adalah manusia dan batu; penjaganya malaikat-malaikat yang kasar, dan keras, yang tidak durhaka kepada Allah terhadap apa yang Dia perintahkan kepada mereka dan selalu mengerjakan apa yang diperintahkan”

Menimbang, bahwa hukum melangsungkan perkawinan pada dasarnya bergantung pada keadaan masing-masing calon mempelai; perkawinan dapat bersifat wajib, sunnah bahkan di lain sisi, perkawinan dapat bersifat haram;

Menimbang, bahwa membiarkan seseorang yang secara nyata belum mampu menikah tetap menikah merupakan sesuatu yang sangat berisiko mengakibatkan terjadinya berbagai mudarat dalam kehidupan rumah tangga anak para Pemohon, padahal di dalam Islam segala mudarat itu harus diupayakan untuk dihindari;

Menimbang, bahwa berdasarkan fakta di persidangan, hakim menilai bahwa maslahat yang ingin diambil oleh para Pemohon dengan segera menikahkan anak para Pemohon adalah untuk menjaga status sosial anak para Pemohon yang telah melakukan hubungan intim layaknya suami istri dengan calon suami anak para Pemohon, dan di sisi lain hakim menilai dengan memberikan izin bagi para Pemohon untuk menikahkan anak para Pemohon di bawah batas usia perkawinan, akan menimbulkan beberapa mafsadat seperti peluang terjadinya

perselisihan bahkan kekerasan dalam rumah tangga akibat belum adanya kesiapan mental, spiritual maupun ekonomi calon suami dan istri;

Menimbang, bahwa meskipun di dalam Kompilasi Hukum Islam Pasal 53 ayat (1) dinyatakan bahwa seorang wanita hamil di luar nikah, dapat dikawinkan dengan pria yang menghamilinya, akan tetapi aturan ini diyakini memiliki banyak risiko apabila diterapkan di tengah-tengah masyarakat Indonesia hari ini yang cenderung semakin permisif terhadap perilaku seks bebas yang menyebabkan terjadinya perzinahan;

Menimbang, bahwa di dalam berbagai literatur fiqh yang diambil alih menjadi pertimbangan hakim dalam penetapan ini, ditemukan bahwa banyak ulama sesungguhnya berpendapat bahwa pernikahan yang dilakukan oleh wanita hamil hukumnya haram. Para ulama dari kalangan mazhab Hanbali dan Maliki berpendapat bahwa haram hukumnya dilakukan pernikahan antara seorang wanita yang hamil akibat zina dengan seorang laki-laki, baik laki-laki itu adalah yang menzinai wanita tersebut maupun dengan laki-laki yang tidak menzinai wanita tersebut. Di antara dalil yang dipakai oleh para ulama tersebut adalah hadits Rasul,

لَا تَوَطَأُ حَامِلًا حَتَّى تَضَع

“Wanita hamil tidak boleh diajak berhubungan sampai dia melahirkan.” (HR. Abu Daud, Ad-Darimi, dan disahihkan Al-Albani)

Dari hadits ini dipahami bahwa yang dimaksud dengan berhubungan dalam hadits di atas adalah menikah, karena salah satu aktivitas yang terpenting yang dilakukan oleh orang yang menikah adalah melakukan hubungan suami istri dan perbuatan itu dilarang oleh Rasulullah untuk dilakukan atas seorang wanita yang sedang hamil. Artinya, dilarang menikahi wanita yang sedang hamil;

Menimbang, bahwa selain alasan di atas, pernikahan yang dilakukan oleh seorang laki-laki dengan seorang wanita yang telah dihamilinya di luar nikah juga berpotensi besar menyebabkan terjadi lagi pelanggaran lain yaitu penisbatan nasab anak kepada ayah biologis yang telah secara tegas dilarang oleh Rasulullah sebagaimana hadits yang berbunyi:

قَضَى النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّ مَنْ كَانَ مِنْ أُمَّةٍ لَمْ يَمْلِكْهَا ، أَوْ مِنْ حُرَّةٍ عَاهَرَ بِهَا فَإِنَّهُ لَا يَلْحَقُ بِهِ وَلَا يَرِثُ

Nabi shallallahu ‘alaihi wa sallam memutuskan bahwa anak dari hasil hubungan dengan budak yang tidak dia miliki, atau hasil zina dengan wanita merdeka tidak dinasabkan ke bapak biologisnya dan tidak mewarisinya. (HR. Ahmad, Abu Daud)

Di dalam kehidupan di tengah-tengah masyarakat, sering terjadi bahwa anak dari hasil perzinahan tetap dinasabkan kepada ayah biologisnya meskipun hal ini secara syariat jelas dilarang. Menyatakan pernikahan Pemohon I dan Pemohon II sah membuka peluang Pemohon I dan Pemohon II tidak akan berterus-terang kepada

anak Pemohon I dan Pemohon II bahwa anak tersebut tidak bernasab kepada Pemohon I melainkan hanya bernasab kepada Pemohon II.

Menimbang, bahwa menolak terjadinya hal-hal yang berisiko harus didahulukan daripada keinginan untuk meraih kemaslahatan sebagaimana kaidah fiqhiyyah yang tercantum dalam kitab al-Bayan Jilid II hal. 38, yang diambil alih menjadi pendapat hakim yang berbunyi:

دَرْءُ الْمَقَاسِدِ أَوْلَى مِنْ جَلْبِ الْمَصَالِحِ

Artinya: "Menolak kerusakan didahulukan dari pada menarik kemaslahatan".

Menimbang, bahwa in casu meskipun rencana perkawinan dilakukan tanpa adanya paksaan, akan tetapi Hakim berpendapat anak para Pemohon, saat ini masih berusia 18 tahun 4 bulan (belum berumur 19 tahun), kepadanya belum layak diberikan dispensasi untuk dapat melangsungkan perkawinan, dikarenakan anak para Pemohon tersebut dipandang belum cukup mampu untuk bertanggung jawab sebagai seorang istri, karena dalam membina rumah tangga diperlukan kematangan fisik/jiwa dan raga untuk mengarungi bahtera rumah tangga yang penuh dengan tantangan, hal mana menurut Hakim bertentangan dengan aspek penting yang harus diperhatikan secara seksama dalam pemeriksaan perkara dispensasi kawin, yaitu potensi kemungkinan kekerasan dalam rumah tangga akibat ketidakmatangan mental yang menentukan kesiapan calon mempelai, dan juga tidak sejalan dengan prinsip yang harus dikedepankan dalam mengabdikan perkara dispensasi kawin, yakni memperhatikan kepentingan terbaik bagi anak (best interest of the child);

Menimbang, bahwa perkawinan adalah hak asasi manusia yang bersifat naluriah yang harus dijamin dan dilindungi, bahwa perkawinan adalah kebutuhan yang tidak dapat dilarang dan dihalang-halangi oleh siapapun selama perkawinan tersebut dilaksanakan sesuai dengan syari'at Islam dan kaidah hukum yang berlaku; bahwa perkawinan tidak hanya untuk menciptakan keluarga sakinah, mawaddah, dan rahmah, namun juga mewujudkan kemaslahatan dunia dan akhirat, sebagai bentuk maqasid syariah, untuk saling melindungi agama, jiwa, pikiran, harta dan keturunan kedua pasangan;

Menimbang, bahwa meskipun anak para Pemohon telah menyampaikan pendapatnya untuk melangsungkan perkawinan, namun berdasarkan pertimbangan-pertimbangan di atas, Hakim menilai bahwa perkawinan bukan merupakan solusi terbaik untuk menyelamatkan masa depan anak a quo, peran orang tua sangat dibutuhkan dalam mendampingi, mendidik, membimbing dan mengawasi serta mempersiapkan anak untuk menghadapi kehidupan;

Menimbang, bahwa berdasarkan pertimbangan-pertimbangan tersebut di atas, Hakim berkesimpulan bahwa permohonan Para Pemohon patut dinyatakan ditolak;

Menimbang, bahwa oleh karena perkara ini termasuk dalam bidang perkawinan, maka berdasarkan ketentuan Pasal 89 ayat (1) Undang-Undang Nomor 7 Tahun

1989 yang telah diubah dengan Undang-Undang Nomor 3 Tahun 2006 dan perubahan kedua dengan Undang-Undang Nomor 50 Tahun 2009 maka semua biaya yang timbul dalam perkara ini dibebankan kepada Para Pemohon;

Mengingat semua peraturan perundang-undangan yang berlaku serta dalil-dalil hukum Islam yang berhubungan dengan perkara ini;

MENETAPKAN

1. Menolak permohonan Para Pemohon;
2. Membebankan kepada Para Pemohon untuk membayar biaya perkara sejumlah Rp120.000,00 (seratus dua puluh ribu rupiah);

Demikian penetapan ini ditetapkan pada hari Selasa tanggal 2 Agustus 2023 Masehi, bertepatan dengan tanggal 15 Muharram 1445 Hijriyah, oleh Deza Emira, S.H sebagai Hakim, penetapan tersebut diucapkan dalam sidang terbuka untuk umum, dan disampaikan kepada Para Pemohon melalui Sistem Informasi Pengadilan pada hari itu juga oleh Hakim tersebut dan dibantu oleh Nurmeli, S.H sebagai Panitera Pengganti serta dihadiri oleh Para Pemohon secara elektronik.

TTD
Hakim

TTD.
Panitera Pengganti

Deza Emira, S.H.

Nurmeli, S.H.

Perincian biaya perkara:

- | | |
|----------------------------------|----------------|
| a. Pendaftaran | : Rp 30.000,00 |
| b. Panggilan pertama PI dan P II | : Rp 20.000,00 |
| c. Redaksi | : Rp 10.000,00 |
| d. Proses | : Rp 50.000,00 |
| e. Panggilan | : Rp 0,00 |
| f. Meterai | : Rp10.000,00 |

Jumlah : Rp 120.000,00

Book

**Eksistensi Sadd adz-Dzari'ah Dalam Ushul Fiqh:
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No	Date	Subject of Consultation	Signature
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2.	November 11, 2023	Revision of Proposal	
3.	January 24, 2024	Proposal ACC	
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8.	May 6, 2024	Thesis Bahasa ACC	
9.	May 6, 2024	Translation Consultation to English	
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Malang, 7th of May 2024

Acknowledged by,

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