

Legal Assessment Of Marriage Dispensation Applications: Insights From The Painan Religious Court

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Abstract: This study investigates the judicial considerations behind the granting and rejection of marriage dispensation applications due to out-of-wedlock pregnancies at the Religious Court of Painan. The research aims to explore the reasoning used by judges both in approving and denying such requests, providing insight into the legal, philosophical, and sociological foundations that inform these decisions.

The study employs an empirical juridical approach with a qualitative method. Primary data sources include interviews with two judges who have adjudicated marriage dispensation cases at the Painan Religious Court, as well as official court decisions. Data analysis was conducted through the techniques of data reduction, data display, and conclusion drawing/verification, while data triangulation was used to ensure validity.

The findings reveal that in Case No. 49/Pdt.P/2021/PA.Pn (Decision I), the judge granted the dispensation based on several considerations. Philosophically, the judge emphasized the child's consent and evaluated the minor's physical and psychological maturity. Juridically, there were no legal impediments to marriage. Sociologically, the judge considered the social implications of an out-of-wedlock pregnancy and concluded that immediate marriage was necessary to prevent public unrest and protect the child's dignity. The decision was also grounded in the principle of maslahah (public interest), suggesting that delaying the marriage could lead to greater harm.

Conversely, in Case No. 66/Pdt.P/2022/PA.Pn (Decision II), the judge rejected the application. Philosophically, the judge noted that the adolescent's involvement in premarital sex reflected emotional and spiritual immaturity, deeming the individual unfit for marriage. Juridically, the child was still of compulsory school age and not yet eligible for dispensation, as early childbirth carries high health risks. Moreover, permitting the marriage could lead to further legal complications, including issues of lineage (nasab). Sociologically, the judge argued that rejecting the request served as a preventive measure against increasing promiscuity among adolescents. From the perspective of maqāṣid al-sharī'ah, the rejection was seen as an effort to uphold ḥifẓ al-nafs (protection of life), education rights, psychological well-being, and clarity of lineage.

These findings highlight the nuanced and multifaceted approach of the judiciary in balancing legal norms, social realities, and Islamic legal objectives when adjudicating sensitive family matters.

Abstrak: Permasalahan Pokok dalam penelitian ini adalah apa pertimbangan hakim Pengadilan Agama Painan mengabulkan permohonan dispensasi kawin karena hamil di luar nikah dan apa pertimbangan Hakim Pengadilan Agama Painan menolak permohonan Dispensasi Kawin karena hamil di luar nikah. Tujuan penelitian adalah untuk mengetahui pertimbangan-pertimbangan hakim Pengadilan Agama Painan dalam mengabulkan dan

juga menolak permohonan dispensasi kawin karena hamil di luar nikah. Jenis penelitian yang digunakan adalah yuridis empiris, dengan memakai metode kualitatif. Sumber data dalam penelitian ini adalah dua orang hakim yang memeriksa perkara Dispensasi Kawin di Pengadilan Agama Painan serta salinan putusan perkara Dispensasi Kawin Pengadilan Agama Painan. Teknik analisis data dalam penelitian ini reduksi data (data reduction), penyajian data (data display), dan penarikan kesimpulan (Conclusions/Verifikasi). Teknik penjamin keabsahan data yang digunakan triangulasi data. Hasil dari penelitian ini adalah Pertimbangan Hakim dalam mengabulkan permohonan Dispensasi Kawin karena Telah Hamil diluar nikah yaitu dapat dilihat pada Penetapan No. 49/Pdt.P/2021/PA.Pn (Penetapan I). Dalam pertimbangan filosofis nya hakim mempertimbangkan bahwa pernikahan tersebut harus atas persetujuan anak, kemudian meskipun usia anak belum memenuhi batas diizinkannya untuk menikah namun hakim menilai anak telah mampu dari segi kemampuan fisik, psikisnya. Dalam pertimbangan yuridis hakim menilai anak para pemohon tidak memiliki halangan untuk menikah. Serta dalam pertimbangan sosiologis, hakim menilai kondisi anak pemohon yang telah hamil di luar nikah, apabila tidak segera di nikahkan akan menimbulkan keresahan di tengah-tengah masyarakat, dan tentu saksi sosial akan diterima. Dengan menggunakan prinsip mashlahat sehingga hakim memandang hal ini merupakan kondisi mendesak bagi anak pemohon untuk segera dinikahkan. Apabila fakta-fakta tersebut dibiarkan dengan alasan belum memenuhi batas usia minimal menikah, maka dikhawatirkan akan menimbulkan dampak negatif yang lebih besar. Pertimbangan Hakim dalam menolak permohonan Dispensasi Kawin karena Telah Hamil diluar nikah yaitu, pada perkara Nomor 66/Pdt.P/2022/PA.Pn (Penetapan II). Dari segi aspek filosofis hakim menilai anak belum mampu untuk menikah karena seseorang telah melakukan perbuatan zina menunjukkan lemahnya stabilitas spiritual dan emosional anak. Selain itu usia anak yang masih 15 tahun belum layak diberikan dispensasi perkawinan, karena melahirkan sebelum usia 15 tahun memiliki resiko lima kali lebih besar untuk meninggal. Dalam pertimbangan yuridis, Hakim cenderung menolak permohonan apabila anak masih dalam usia wajib belajar, karena haknya dalam pendidikan belum terpenuhi. Dan Hakim juga menilai pernikahan yang dilakukan oleh seorang laki-laki dengan seorang Wanita yang telah hamil di luar nikah, berpotensi memunculkan pelanggaran yang lain, seperti kerancuan nashab. Dalam pertimbangan sosiologis hakim, penolakan permohonan ini sebagai suatu bentuk upaya menurunkan perilaku seks bebas akibat kenalan remaja. Penolakan permohonan dispensasi kawin ini apabila dilihat dari segi maqashid syariah nya, banyak mudhorat yang dapat dihindari, seperti kelanjutan pendidikan anak, kondisi kesehatan dan psikologis anak, kemudian juga menghindari daripada kerancuan nashab bagi anak yang akan lahir, ini merupakan salah satu usaha hakim untuk menjaga jiwa atau disebut dengan hifdz nafs

Keywords: Marriage dispensation, Out-of-Wedlock Pregnancy, Judicial Considerations, *Maqashid al Syariah*

Introduction

The phenomenon of marriage dispensation in various Religious Courts in Indonesia is intrinsically linked to the statutory provisions on the minimum legal age for marriage. In the jurisdiction of the Painan Religious Court, underage marriage remains a significant issue, as evidenced by the number of marriage dispensation cases registered in recent years. Based on data obtained by the researcher, there were a total of 113 marriage dispensation cases filed between 2021 and 2023 at the Painan Religious Court. A detailed breakdown is presented below:

Table 1.1
Marriage Dispensation Cases at the Painan Religious Court (2021–2023)

Year	Total Cases	Granted	Rejected	No Verdict	Withdrawn	Dismissed
2021	36	28	4	-	1	3
2022	49	37	9	1	1	1
2023	27	16	4	4	1	2

Source: Annual Reports and SIPP Data, Painan Religious Court

These figures reveal that both approvals and rejections occur in marriage dispensation cases. Among those granted by judges, the most common reasons include preventing fornication (*zinā*) and addressing pregnancies out of wedlock. Conversely, the rejections are often based on grounds such as pregnancy out of wedlock, poor economic conditions, or concerns about promiscuity.

The legal foundation for marriage dispensation is established in Law No. 16 of 2019, which amends Law No. 1 of 1974 on Marriage. This amendment raised the minimum legal marriage age to 19 years for both men and women, as stipulated in Article 7, Paragraph 1: "Marriage is only permitted if the man and the woman have reached the age of 19 (nineteen) years."

This change represents a normative enhancement aimed at ensuring psychological and physical maturity prior to marriage, thereby supporting the broader objectives of marriage: to establish a stable family and produce healthy, high-quality offspring (Sitorus, 2020; Disemadi et al., 2020).

Furthermore, Article 7, Paragraph 2 provides an exception: "In the event of deviations from paragraph (1), a dispensation may be requested from the Court or other designated authorities by the parents of the prospective bride or groom, with urgent reasons supported by sufficient evidence."

This provision allows judicial discretion to permit marriage below the statutory age under exceptional circumstances, particularly when a delay would result in greater harm. Supporting evidence is a mandatory requirement for such applications (Hasan, 2023).

In addition, the Supreme Court Regulation (PERMA) No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Petitions provides clearer procedural standards. It emphasizes the court's role as a gatekeeper, ensuring that the best interests of the child are protected and that child marriages are not legitimized without due scrutiny (Luthfiyah, 2023).

Several previous studies have explored various aspects of marriage dispensation, such as legislative frameworks (Wibowo et al., 2022; Kamarusdiana & Sofia, 2020), urgent grounds for application (Kurniawan & Refiasari, 2022; Fadhlil & Warman, 2021), and judges' considerations in decision-making (Rohmatzzuhriyah et al., 2022; Murtadho & Hakim, 2023; Amalia et al., 2022; Ramadhani, 2024; Maulana, 2022; Mahmud, 2019; Supandi, 2023).

However, existing literature does not specifically address the divergence in judicial reasoning in cases of out-of-wedlock pregnancy within the Painan Religious Court—where some petitions are granted, while others are rejected under similar circumstances.

This study aims to fill that gap by addressing the following research questions:

What are the considerations of the Painan Religious Court judges in granting marriage dispensation petitions due to out-of-wedlock pregnancy?

What are the considerations of the Painan Religious Court judges in rejecting such petitions?

In light of this, the researcher has chosen to further explore this issue through an academic inquiry entitled: "Judicial Considerations in Ruling on Marriage Dispensation Petitions at the Painan Religious Court."

Theory of Judicial Authority

According to Law No. 48 of 2009 on Judicial Power, Article 1 defines judicial authority as an independent state power responsible for administering justice to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia. This ensures the realization of the rule of law within the Republic of Indonesia. The term independent here refers to the judiciary being autonomous from executive and legislative powers – free from any external interference.

However, judicial independence does not imply that the judiciary may act arbitrarily without oversight. In judicial proceedings, general procedural principles must be upheld, following constitutional and statutory norms (Sormin et al., 2023, p. 36). Judges are also mandated to explore, follow, and understand the prevailing legal values and sense of justice in society, as stipulated in Article 5 paragraph (1) of Law No. 48 of 2009:

"Judges and constitutional judges shall be obliged to explore, follow, and understand the legal values and sense of justice that lives within society."

This highlights the necessity for judges to remain responsive to social developments and to exercise their discretion critically and wisely in interpreting the law.

Theory of Judicial Consideration

Judicial considerations are central to producing verdicts that reflect justice, legal certainty, and societal benefit. Thus, judges must deliberate carefully, taking into account philosophical, juridical, and sociological dimensions (Haris, 2018; Fitriyani, 2022, p. 84).

- Philosophical Consideration:

Philosophical considerations are rooted in the pursuit of truth and justice. The function of a judge extends beyond enforcing the law to delivering justice. From the perspective of legal philosophy, justice can be approached both procedurally (based on positive law) and substantively (based on societal values). Thus, judges should interpret laws not only textually but also philosophically (Darmadi, 1998; Fitriyani, 2022).

- Juridical Consideration:

Juridical considerations require judges to apply and interpret existing laws accurately in resolving cases. Judges must assess whether the application of law leads to fairness, utility, and legal certainty (Rifai, 2010; Fitriyani, 2022, p. 86).

- Sociological Consideration:

This dimension calls for judges to be attuned to cultural and social norms. Since law exists to serve humanity, its enforcement should not cause social unrest. Judges must perform their duties with sensitivity and professionalism to deliver justice aligned with public expectations (Mertokusomo & Pitlo, 1993; Fitriyani, 2022, p. 87).

Theory of Marriage to a Pregnant Woman in Islamic Jurisprudence

Marriage to a pregnant woman outside of wedlock—whether the man is the father or not—has elicited varying views among Islamic jurists:

- Hanafī School:

Permits marriage to a woman pregnant by zina (illicit intercourse), but the husband must not engage in marital relations until after childbirth (Az-Zuhaili, 2010; Sayyid Sabiq, 1983).

- Mālikī School:

Declares such marriages invalid (*fasid*) if contracted before the woman completes a waiting period (three menstrual cycles or three months), to ensure separation from prior unlawful intercourse (Az-Zuhaili, 2010). The prohibition is based on hadiths that emphasize lineage purity.

- Shāfi‘ī School:

Allows marriage to a woman pregnant by zina, based on the general permissibility stated in the Qur'an (Q.S. al-Nisā': 24), and considers the act of marriage lawful regardless of the cause of pregnancy (Ahmad, 2017, p. 107).

- Hanbalī School:

Prohibits such marriage unless two conditions are met: (1) the woman has completed the waiting period (e.g., childbirth if pregnant); and (2) she has repented from zina (Az-Zuhaili, 2010, p. 146).

Theory of Marriage Dispensation

Dispensation, as defined in Sudarsono's *Legal Dictionary*, refers to an exception to a general rule under specific circumstances. A *marriage dispensation* is judicial permission granted to underage individuals to marry based on urgent and acceptable reasons.

Legally, the foundation for dispensation is provided in **Law No. 1 of 1974 on Marriage**, amended by **Law No. 16 of 2019**, which sets the minimum marriage age at **19 years** for both males and females. However, Article 7 paragraph (2) allows for an exception:

"In the event of deviation from paragraph (1), the parents of the prospective bride or groom may request dispensation from the Court for urgent reasons supported by sufficient evidence."

This serves as a legal accommodation to prevent greater harm in urgent cases, such as out-of-wedlock pregnancy. The **Supreme Court Regulation (PERMA) No. 5 of 2019** further guides judges in handling such requests with heightened scrutiny, prioritizing the child's best interest and aiming to reduce child marriages (Luthfiyah, 2023, p. 6).

The **Compilation of Islamic Law (KHI)** also addresses marriage age in **Article 15(2)**, stipulating parental consent for those under 21. It emphasizes marriage at a minimum of 19 years for men and 16 for women to ensure family welfare and child development.

Free Social Interaction Among Adolescents

Unrestricted or “free” social interaction among adolescents has become an increasingly concerning phenomenon in modern society. It refers to social behavior in which adolescents engage in romantic or sexual activities without the bounds of marriage or serious commitment. A notable consequence of such behavior is its association with nightlife and entertainment, which often includes drug use. These risky behaviors can lead to the spread of sexually transmitted infections (STIs), including HIV/AIDS, and may negatively impact various aspects of an adolescent’s life.

This social trend among youth warrants serious attention due to its implications for their moral and behavioral development. As the future of a nation lies in the hands of its youth, their quality and direction will significantly influence the country’s progress or decline (Government of Kulon Progo Regency, 2018).

Method

This study employs an empirical juridical approach, which involves examining the applicable legal norms and how they are implemented in practice within society. The research adopts a qualitative method to gain an in-depth understanding of the judicial considerations in marriage dispensation cases.

The primary data sources consist of two judges who adjudicated marriage dispensation cases at the Painan Religious Court, along with copies of the court’s rulings on those cases. The data analysis techniques applied in this study include data reduction, data display, and conclusion drawing/verification. To ensure the validity of the data, this research utilizes data triangulation, which involves cross-verifying data from multiple sources to enhance the credibility and reliability of the findings.

Results and Discussion

Judicial Considerations of the Painan Religious Court in Approving and Rejecting Marriage Dispensation Applications Due to Out-of-Wedlock Pregnancy

Judicial Considerations in Approving Marriage Dispensation Due to Out-of-Wedlock Pregnancy

1. Philosophical Considerations

In Decision Number 47/Pdt.P/2021/PA.Pn (hereinafter referred to as Decision I), the judges based their ruling on several philosophical grounds:

a. Consent of the Minor

The judges noted that the minor involved, the child of the applicants, had expressed willingness to enter into marriage of her own free will, without coercion from any party. The court interpreted this as a sign of her autonomy in deciding her future.

b. Age and Readiness of the Minor

Although the child was only 17 years and 9 months old, the judges evaluated her physical and psychological maturity. With support from her parents and strong

personal intention to become a wife, the child was deemed sufficiently prepared to assume marital responsibilities.

2. Juridical Considerations

Under Indonesian Marriage Law (Law No. 1 of 1974) and the Compilation of Islamic Law (KHI), specifically Articles 8, 39, and 40, the court verified that there were no legal impediments to the marriage, whether religious or civil. Given these facts, the judge granted the dispensation application.

3. Sociological Considerations

The court considered that the minor had been engaged in repeated sexual relations with her intended spouse, resulting in a pregnancy estimated to be 35 weeks along. Delaying the marriage could have serious social consequences, including public scandal and psychological distress for the family. The judge, therefore, viewed this situation as an urgent condition (darurat) necessitating immediate marriage in order to preserve social harmony and prevent further moral degradation. This aligned with the Islamic legal principle of maslahah (public interest).

According to Law Number 16 of 2019 and the Supreme Court Regulation (PERMA) Number 5 of 2019, marriage dispensation is defined as a legal authorization issued by a court permitting individuals under the age of 19 to marry. Article 7 of Law No. 16 of 2019 on Marriage provides a legal mechanism for individuals who wish to enter into marriage before reaching the minimum legal age. Applications for such dispensations are generally submitted on the basis of compelling and urgent reasons that make postponement of the marriage infeasible.

The court's judicial discretion in each case of marriage dispensation varies, depending on the unique circumstances of the applicants. Judges, as guardians of justice and law, do not grant dispensations indiscriminately; they are bound to assess whether the application is supported by strong, urgent grounds and complies with existing statutory regulations. This includes cases where the request is based on pregnancy out of wedlock, such as the one submitted to the Religious Court of Painan.

In granting the marriage dispensation in Decision No. 47/Pdt.P/2021/PA.Pn, the judge carefully considered the matter from three key perspectives: philosophical, juridical, and sociological.

From a philosophical standpoint, the court emphasized the importance of respecting the child's will. In line with Article 14(1) of PERMA No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Applications, the judge highlighted the child's willingness to marry without coercion as a critical factor. Though the petitioner's daughter was only 17 years and 9 months old, the judge assessed her physical, psychological, and emotional preparedness. The court found that, with parental support and commitment from both parties, the minor had demonstrated sufficient readiness to enter marriage.

Moreover, the juridical perspective of the court was grounded in statutory provisions, including Article 8 of Law No. 1 of 1974 and Articles 39–40 of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI). These laws regulate the legal impediments to marriage, such as blood relations or existing marital ties. Since the court found no such legal barriers in this

case, the primary obstacle was the petitioner's age—which was just shy of the legal threshold. However, the absence of other impediments reinforced the argument that a legal exception could be made.

From a sociological perspective, the court considered the broader social implications. The pregnancy had already reached 35 weeks gestation, and delaying the marriage would likely result in social stigma not only for the girl but also her entire family. In the local Minangkabau context—where the customary philosophy of adat basandi syarak, syarak basandi Kitabullah (custom is founded on Islamic law) is deeply rooted—public morality and religious norms are highly valued. Therefore, the judge viewed the situation as urgent and determined that the marriage should proceed to prevent greater social harm.

This reasoning aligns with the principle of *mashlahat* (public benefit) in Islamic legal theory, particularly the legal maxim:

دفع المضار مقدم على جلب المنافع

"Preventing harm takes precedence over acquiring benefit."

This legal principle underpinned the judge's decision to grant the marriage dispensation: it was deemed necessary to avoid greater harm, including prolonged social stigmatization and potential violations of Islamic ethical norms.

Comparative jurisprudence from other religious courts, such as the Bantul Religious Court, supports this approach. In a similar case, judges granted a marriage dispensation on the grounds that an unmarried, pregnant woman would face social ostracism and long-term harm to her and her child's well-being (Prabowo, 2013).

In conclusion, the judge's ruling reflects a holistic consideration of the case, weighing statutory provisions, local sociocultural realities, and Islamic legal ethics. While the primary reason for granting the dispensation was the pregnancy outside of wedlock, the court's decision was further shaped by its commitment to minimizing harm and ensuring legal and moral accountability. Such rulings illustrate how the judiciary balances legal norms with societal values in navigating complex family law issues.

Judicial Considerations of the Painan Religious Court in Rejecting the Marriage Dispensation Application Due to Out-of-Wedlock Pregnancy

1. Philosophical Considerations

In Decision Number 66/Pdt.P/2022/PA.Pn (hereinafter referred to as Decision II), the judges presented several philosophical grounds as the basis for rejecting the application for a marriage dispensation, particularly emphasizing the psychological and ethical maturity of the minor involved.

a. Assessment of the Minor's Capacity and Readiness

The judge considered the fact that the applicant's child admitted to having committed *zina* (fornication), which is a grave violation in Islamic law. This confession indicated a lack of spiritual stability and emotional maturity. From a philosophical standpoint, such behavior demonstrated that the child was not yet prepared to assume the responsibilities of married life, including managing a

household and fulfilling marital duties. The judge emphasized that marriage requires not only legal capacity but also inner moral and emotional readiness, which was deemed lacking in this case.

b. Age and Maturity of the Minor

Although the child claimed that her decision to marry was not made under duress, the judge determined that, at the age of 15, she had not reached the minimum legal or moral age required to enter into marriage responsibly. Marriage, according to the court, is not simply a legal act but a life commitment requiring sufficient psychological and physical maturity. Furthermore, the judge noted a significant age gap of ten years between the minor and her prospective husband, which could result in an unequal marital relationship and pose risks related to power imbalance, manipulation, or coercion in the future.

2. Juridical Considerations

a. Legal Concerns over Lineage Confusion (Nashab)

One of the central juridical concerns raised by the judge was the potential for misattributing the lineage (*nashab*) of the unborn child. In Islamic law, it is explicitly forbidden to attribute the lineage of a child conceived through fornication to the biological father if the couple is not legally married at the time of conception. Allowing a marriage under such conditions could lead to further violations of Islamic legal principles, especially regarding inheritance, guardianship, and identity. The judge viewed this as a serious legal risk that outweighed the perceived benefits of granting the marriage dispensation.

b. Educational Background and Marital Readiness

The court also considered the educational level of both the minor and her prospective spouse. Both individuals had only completed elementary education and had not pursued any formal education beyond that level. This factor raised concerns about their preparedness to maintain a stable marriage, especially in terms of financial management, communication, and conflict resolution. The judge highlighted the link between low educational attainment and higher rates of domestic conflict and divorce, which further supported the rejection of the application.

3. Sociological Considerations

From a sociological perspective, the judge expressed concern over the rising prevalence of premarital sexual behavior among adolescents. This pattern reflects a broader shift in social norms that, if left unaddressed, could lead to the normalization of practices contrary to both legal and religious values. In many communities, there remains a tendency to attribute children born out of wedlock to their biological fathers, even though this is clearly prohibited in Islamic law. The judge emphasized that rejecting the application was intended not only to enforce legal norms but also to serve as a deterrent against the growing phenomenon of free sex among youth. The rejection thus aimed to preserve social order, uphold religious teachings, and promote responsible behavior among adolescents.

In the exercise of judicial authority, a judge is endowed with the discretion to render rulings that are both independent and firmly grounded in statutory law. This judicial independence is evident in **Case No. 66/Pdt.P/2022/PA.Pn**, in which the Religious Court of Painan rejected a petition for marriage dispensation – despite the fact that the female minor

involved was pregnant out of wedlock. This decision, although seemingly contrary to common assumptions, was based on a comprehensive assessment of legal, philosophical, and sociological factors presented during trial.

While Article 53(1) of the **Compilation of Islamic Law (KHI)** provides that a pregnant woman may lawfully marry the man responsible for the pregnancy, the court in this case found that the application did not meet the urgent and compelling criteria required for a dispensation. The court emphasized that judicial discretion is not simply to legalize early marriage in the face of social pressure but rather to protect broader legal and ethical interests.

Health and Psychological Considerations

From a public health perspective, the **National Population and Family Planning Board (BKKBN)** classifies pregnancies under the age of 20 as high-risk. The petitioner was only 15 years old, an age at which pregnancy presents significantly elevated risks of maternal mortality, morbidity, preterm birth, and complications such as low birth weight and hemorrhaging. Medical studies have shown that girls who give birth before age 18 face 50% higher risks of severe health outcomes, and giving birth before 15 years old increases the risk of death fivefold compared to mothers over 20.

Psychologically, adolescents aged 15 are in a critical developmental stage. According to psychologist Bimo Walgito, adolescence is marked by emotional volatility and physical immaturity. Marrying at this age places severe strain on both physical readiness and emotional stability. In this case, the judge found that the girl's involvement in premarital sexual activity demonstrated a lack of spiritual and emotional maturity, rendering her unfit for marriage responsibilities.

Educational Rights and Legal Obligations

The judge also based their **juridical considerations** on the fact that the girl was still within Indonesia's compulsory education age. Article 7(2) of Law No. 20/2003 on the National Education System and Article 49 of Law No. 35/2014 on Child Protection obligate parents and the state to ensure the fulfillment of a child's right to basic education. Article 9(1) of Government Regulation No. 47/2008 on Compulsory Education further reinforces this duty by mandating free access to education. Granting a marriage dispensation to someone still of school age would, therefore, violate her right to continued education.

Religious Norms and Jurisprudential Diversity

Although Article 53(1) of KHI allows a pregnant woman to marry the man responsible for the pregnancy, the judge noted that this provision is **permissive, not mandatory**. In light of rising permissiveness toward premarital sexual behavior in contemporary society, the court viewed this provision as one that must be applied cautiously.

The judge referenced classical Islamic jurisprudence (**fiqh**) to support their decision, particularly the opinions of the **Hanbali and Maliki schools**, which prohibit the marriage of a pregnant woman to either the man responsible for the pregnancy or another man. This restriction is based on hadiths such as:

"A pregnant woman shall not be sexually approached until she gives birth, and a non-pregnant woman shall not be approached until she has completed a menstrual cycle." (Reported by Ad-Darimi)

Furthermore, from a **legal standpoint on lineage (nasab)**, the judge warned of the serious implications of assigning paternity to a child conceived out of wedlock. Citing the hadith:

"The child is not to be attributed to the adulterer, nor does he inherit from him." (Reported by Ahmad and Abu Dawud)

Assigning such paternity could violate Islamic inheritance rules and create future complications regarding **marriage guardianship (wali)** and legal inheritance. Thus, the judge exercised caution to avoid causing broader social and legal disruption.

Sociological Dimensions

From a sociological perspective, the judge viewed this ruling as a **corrective social measure**. In communities where premarital pregnancy is increasingly normalized, granting dispensations in such cases risks **legitimizing premarital sex** and encouraging moral decline. Rejecting the petition was seen as a proactive effort to deter reckless sexual behavior and preserve social ethics, particularly within a society that still adheres strongly to religious and customary norms.

This aligns with the Islamic legal maxim:

"دَرْءُ الْمَفَაدِيدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ"
"Preventing harm takes precedence over achieving benefit."

Thus, the rejection was based on the principle that **mitigating harm (mafsadah)** must take precedence over potential benefits (maslahah), especially when the perceived urgency of marriage does not meet a threshold of true necessity.

Comparative Judicial Practice

The decision of the Religious Court of Painan is not unique. A similar judgment was handed down by the Religious Court of Tulungagung in Decision No. 0168/Pdt.P/2018/PA.TA, where the court denied a marriage dispensation for a 15-year-old girl, ruling that **pregnancy alone does not constitute sufficient urgency** to justify early marriage (Elpina, 2024).

Conclusion

Based on the discussions presented in the previous chapters, this study arrives at two principal conclusions:

1. Judicial Considerations in Granting Marriage Dispensation Due to Out-of-Wedlock Pregnancy

The findings of this research indicate that the judge's considerations in granting a marriage dispensation due to pregnancy out of wedlock are reflected in Case Decision No. 49/Pdt.P/2021/PA.Pn (Decision I).

- From a philosophical perspective, the judge emphasized that marriage must be based on the genuine consent of the child. Although the child had not yet reached the legal minimum age for marriage, the judge evaluated her physical

and psychological maturity and concluded that she possessed sufficient capability to enter into marriage.

- From a juridical perspective, the judge found no legal or religious impediments to the marriage.
- From a sociological perspective, the judge considered that the girl's pregnancy out of wedlock could lead to social unrest within the community if not immediately addressed through marriage. Given these circumstances, the judge deemed the situation as urgent (*darurat*) and invoked the principle of *maslahah* (public interest) as justification. The marriage was thus permitted to prevent greater societal harm and protect the dignity of the parties involved. The decision was rooted in the consideration that ignoring the existing facts—under the pretext of the girl's age—could result in more severe negative consequences.

2. Judicial Considerations in Rejecting Marriage Dispensation Due to Out-of-Wedlock Pregnancy

The judge's rationale for rejecting the marriage dispensation petition in Case No. 66/Pdt.P/2022/PA.Pn (Decision II) centered on the following:

- From a philosophical standpoint, the judge concluded that the petitioner lacked the emotional and spiritual maturity required for marriage. The child's admission to having committed zina (premarital sexual relations) was perceived as indicative of weak self-control and instability. Furthermore, the girl was only 15 years old, and medical data shows that giving birth before this age carries a fivefold increase in maternal mortality risk.
- From a juridical standpoint, the judge emphasized that the child was still within the age of compulsory education, and thus her right to schooling had not been fulfilled. Moreover, the judge highlighted the risk of further legal and moral complications, such as the ambiguity of the child's lineage (*nasab*), if the marriage were to be granted.
- From a sociological standpoint, the judge considered the broader societal impact, particularly the normalization of premarital sexual behavior among adolescents. By denying the petition, the court intended to uphold social norms and discourage sexual promiscuity. This rejection also aligns with the Islamic legal objective (*maqāṣid al-shari‘ah*) of preventing harm (*mafsadah*) and preserving human dignity and life (*hifz al-nafs*). The decision underscores the judiciary's role in mitigating broader societal harms, protecting children's rights, and preventing legal ambiguities associated with unregistered lineage.

In conclusion, this study reveals that the granting or rejection of marriage dispensation petitions in cases involving pregnancy out of wedlock is not solely determined by the existence of pregnancy but depends significantly on judicial interpretation of individual case facts through the lenses of philosophical, juridical, and sociological considerations. These decisions are made with careful reference to both national law and Islamic legal principles to ensure the best possible outcome for the minor involved and the broader community.

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