

## **Testing the Legitimacy of Marriage Dispensation Determination: a Perspective of the Theory of Legality By Philipus M. Hadjon**

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### **Abstract**

*This study aims to analyze the validity of the determination related to marriage dispensation applications in the realm of state administrative law. In addition, to evaluate the implementation of the "very urgent reasons" and "sufficient supporting evidence" clauses in the court's determination, as well as to provide recommendations for judges to be more consistent in considering the psychological health aspects of children as stipulated in PERMA Number 5 of 2019. The research method used is normative with a legislative approach, a conceptual approach and a case approach, with secondary data that will be analyzed prescriptively. This study concludes that Judges as government officials must act within the framework of the principle of legality to ensure that every decision taken is legally valid and protect the best interests of children in accordance with broader legal objectives by applying the general principles of good governance (AUPB) in exercising their authority. Based on the analysis of the determination above, it can be seen that the three determinations of the marriage dispensation application are based on the reason of "love". However, these reasons do not meet the elements of very urgent reasons, especially the four determinations are also not accompanied by sufficient evidence, namely evidence that supports the very urgent reason for the marriage, so that the granting of an application for marriage dispensation is not in accordance with the provisions of Article 7 Paragraph (2) of the Marriage Law and does not meet the aspects of substance and procedure in the theory of validity of Philipus M. Hadjon. Therefore, it is necessary to amend Article 7 Paragraph (2) of the Marriage Law and PERMA Number 5 of 2019 related to the obligation to attach evidence of physical and psychological health officially in order to realize a consistent determination in the application for marriage dispensation*

**Keywords:** *Urgent Reasons, Supporting Evidence, Marriage Dispensation, Validity of Judge's Determination*

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## **INTRODUCTION**

The right to form a family through legal marriage is one of the Human Rights guaranteed in the constitution. There are consequences for the state for the basic obligations, namely respect, protection, and fulfillment of these rights. In terms of child protection and ensuring that human rights are fulfilled, requests for marriage dispensation have topped the list of the most pressing legal issues in Indonesia. There is a provision in the "Marriage Law (Article 7 Paragraph 2)" that allows people to marry at a younger age than the legal provisions, but only in cases where there are "very urgent reasons" and "sufficient evidence" to support it. The right to form a family through legal marriage is one of the Human Rights guaranteed in the constitution. There are consequences for the state for the basic obligations, namely respect, protection, and fulfillment of these rights. In terms of child protection and ensuring that human rights are fulfilled, requests for marriage dispensation have topped the list of the most pressing legal issues in Indonesia. There is a provision in the "Marriage Law (Article 7 Paragraph 2)" that allows people to marry at a younger age than the legal provisions, but only in cases where there are "very urgent reasons" and "sufficient evidence" to support it. However, given the many interpretations of the two verses, the large number of marriage dispensations each year indicates that both laws can be violated. Therefore, the number of underage brides continues to increase. In 2023, there were 25.52 million cases of child marriage worldwide, placing Indonesia in 4th place based on data from UNICEF. The marriage dispensation basically states that underage marriages may not be carried

out, unless there are circumstances that cause state administrative officials to grant permission in the form of a dispensation at the request of the parties.

Thus, the role of the state is seen in the matter of marriage dispensation as the party that grants permission to deviate from the provisions of the minimum age limit for marriage. So, the state can still register marriages carried out by men and women under the age of 19. This is due to the fact that marriage registration is an administrative goal in national and state life that helps realize more organized community management. Marriage registration does not guarantee that the marriage will be legally recognized, but marriage registration serves to formalize the marriage. Therefore, in order to provide legality to marriage and at the same time reduce the number of underage marriages, the role of the state in providing marriage dispensations must be stricter both in terms of law and its implementation.

Previous studies, such as those conducted by Fathullah (2021) and Desi Anggriani (2019), highlighted the aspect of Islamic law and the relationship between marriage dispensation and the protection of children's rights. However, these studies have not discussed much about the role of judges as government officials who must comply with the AUPB from the perspective of state administrative law. Furthermore, the implications of multiple interpretations of the clauses "very urgent reasons" and "sufficient supporting evidence" have not been widely discussed, especially regarding how this can lead to inconsistencies in judicial practice and violations of children's rights that must be protected. In this context, this study will critically examine how judges use their authority to assess whether love reasons can be considered "very urgent reasons" concentrating on how the implementation of laws relating to marriage dispensation can lead to various interpretations in reality, and how this impacts child safety in accordance with the requirements of relevant laws and regulations. Based on the Law on State Administration, judges as government officials must exercise their authority by considering the general principles of good governance (AUPB), including the obligation to consider sufficient evidence in each application.

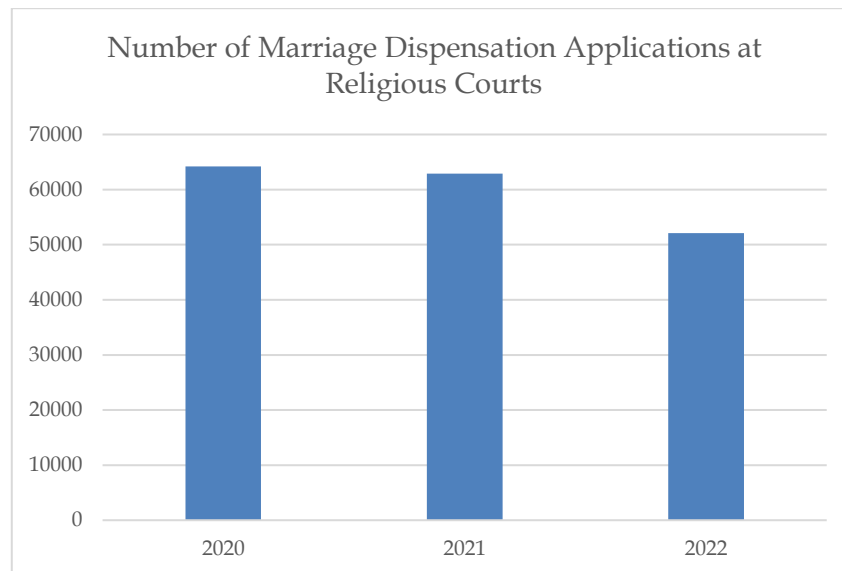
## RESEARCH METHODS

This study uses a normative method using a conceptual approach, a case approach, and a statutory approach. To apply the statutory approach, one must examine the applicable national laws, such as the "Government Administration Law (30 of 2014), Amendments to the Marriage Law (16 of 2019), Supreme Court Regulation (5 of 2019)" concerning Guidelines for Adjudicating Marriage Dispensation Applications, and similar regulations. Studying the theoretical framework for legal principles, such as Philipus M. Hadjon's theory of validity, is at the heart of the conceptual method. A case study that examines how decisions on marriage dispensation applications use psychological condition factors and the clauses of "sufficient supporting evidence" and "very urgent reasons". At the same time, secondary data, such as case law, scientific articles, and applicable theories, are used in this investigation. and decisions on marriage dispensation applications. Then, the data is analyzed prescriptively, not only focusing on the discussion of the judge's authority as a government official, but also conducting an in-depth analysis of the case to determine the application of the clauses "very urgent reasons", "sufficient supporting evidence" and considering mental health when making an assessment of a marriage dispensation application.

## RESULT AND DISCUSSION

### Validity of the Determination in Adjudicating Marriage Dispensation Applications

The phenomenon of child marriage can have long-term consequences for the education, health, and welfare of children, especially girls. This places judges in an important position as government officials who must decide whether the marriage dispensation application is worthy of being granted, in accordance with applicable laws and regulations. Parents of the male or female partner can submit a dispensation application to the court in accordance with Article 7 Paragraph (2) of the Marriage Law, which gives judges the authority to adjudicate such cases.



Sumber: Direktorat Jenderal Badan Peradilan Agama

As evidenced by statistical data provided by the Directorate General of Religious Courts, the number of applications for marriage dispensation decreased from 2020 to 2022, reaching 52,095 applications in 2022. Despite the significant decrease, this figure is still considered excessive. Although the data only covers Religious Courts, it is quite representative of the data on applications for marriage dispensation at the District Court. Meanwhile, data for 2023-2024 is not yet available because it is in the recapitulation process.

Judges as government officials who are given the authority to decide on applications for marriage dispensation have the responsibility to ensure that the application meets clear legal standards, especially regarding the interpretation of the clauses "very urgent reasons" and "sufficient supporting evidence." However, multiple interpretations of the two clauses often trigger legal uncertainty in the judge's decision, which can ultimately threaten children's rights. On the one hand, the "Government Administration Law (Law No. 30 of 2014)" states that judges are required to carry out their responsibilities in accordance with the principles of good governance. The guidelines provided by "Supreme Court Regulation No. 5 of 2019 (hereinafter referred to as PERMA No. 5 of 2019)" for adjudicating applications for marriage dispensation also emphasize the importance of considering the physical and mental health of children, although judges' decisions often fail to do so.

The authority to grant marriage dispensation is regulated in "Article 7 paragraph (2) of the Marriage Law". According to this provision, an application for marriage dispensation can be submitted to the District Court or Religious Court, with the presence of "very urgent reasons" and "sufficient supporting evidence." It is assumed that judges, as the parties authorized to decide on the application, will base their decisions on the principles of good administration in addition

to formal legal considerations. Therefore, the freedom of judges in exercising judicial authority is not absolute, because their decisions must uphold the law and reflect justice based on Pancasila, not just subjective justice.

By using Philipus M. Hadjon's theory of legality, which states that the three main components of the principle of legality in government actions or decisions are authority, procedure, and substance, we can conduct a comprehensive analysis of the decision-making process related to applications for marriage dispensation. Praesumptio iustae causa, which is often known as the legality of government actions, is based on the principle of authority and the process that ultimately gives rise to formal legality. Meanwhile, substance becomes the basis for realizing material legality. If one of the three components of legality is not fulfilled, then the government's actions or decisions can be considered legally flawed. These three elements are the main pillars of the principle of legality that determine the validity of a decision or administrative action taken by government officials, including judges. A more comprehensive explanation of these three elements is as follows:

### **1. Authority**

Authority is the power given to public officials, in this case judges, to make decisions based on the law. According to Philipus M. Hadjon, authority is a fundamental aspect in the principle of legality, where government actions or decisions are only valid if carried out by authorized officials. The authority of judges to process applications for marriage dispensation is specifically regulated in "Article 7 Paragraph (2) of the Marriage Law". According to this article, the court has the authority to grant marriage dispensation, but only in cases where there are strong and sufficient reasons. In applications for marriage dispensation, judges have the authority regulated by "PERMA Number 5 of 2019" to accept and determine whether the application is worthy of being granted. Judges cannot make decisions that exceed the provisions of applicable law, because the limits of their authority have been strictly regulated by law. This means that judges can only decide cases that are within the scope of their authority and in accordance with the provisions of applicable law, as regulated in "Article 6 Paragraph (2) letter h of the State Administration Law". If a judge takes action beyond the limits of authority regulated by law, then the resulting decision can be declared legally flawed (null and void). For example, if a judge grants a marriage dispensation request without a truly urgent reason or without sufficient supporting evidence, the legality of the action can be questioned. Judges must ensure that their authority is used in accordance with the objectives of legal protection for minors.

### **2. Procedure**

The second principle of legality is the need to follow the proper process. Officials in the public sector are required to comply with certain formalities when carrying out their duties in accordance with the law. Flaws in the formal legitimacy of a government action can arise from deviations from protocol, according to Philipus M. Hadjon. In the context of a marriage dispensation application, judges must follow the procedures stipulated by law, including the procedure for examining evidence and the reasons submitted by the applicant.

Judges must exercise their authority by following the procedures that have been set, starting from the stages of receiving the application, examining evidence, to the decision-making process. In the "Government Administration Law and PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications", the procedures that must be followed by judges include examining documents and considering various factors, including considering the psychological health of the child to be married. If these procedures are ignored, then the judge's decision is not only

procedurally flawed but can also be considered to violate applicable legal principles. For this reason, it is the duty of judges to ensure that the trial is carried out in accordance with all applicable procedures. However, in practice it is often found that this aspect is ignored or not clearly stated in the judge's final decision. This indicates that there is inconsistency in the application of procedures that should be the basis for decision making.

### **3. Substance**

Substance is the third element of legality that emphasizes the content or material of the decision. According to Hadjon, the substance of a decision must be in accordance with the objectives of the law and the principles of justice. When deciding on a marriage dispensation, the substance of the decision must reflect legal protection for children, especially when determining whether the marriage is in the best interests of the child or is merely a means to achieve goals for parents or older prospective brides and grooms. Article 7 Paragraph (2) of the Marriage Law requires "very urgent reasons" as justification for granting a marriage dispensation request. However, this phrase opens up a very broad and often multi-interpretable interpretation. In some cases, reasons such as "love" or "long relationship" are submitted as urgent reasons, but without clear supporting evidence, these reasons can be considered insufficient to meet the standards of substantial legality. The substance of the judge's decision must be based on objective facts and clear evidence, not just on subjective narratives submitted by the applicants. For example, if the reason of "love" is used as the basis for submitting a marriage dispensation without any strong consideration of the psychological impact or other pressing social factors, the decision has the potential to violate the principle of substantive legality. In addition, ignoring psychological health considerations as stipulated in PERMA Number 5 of 2019 can also indicate substantial defects in the decision. Furthermore, in adjudicating a marriage dispensation application, the application of the AUPB is an essential thing that must be carried out by the judge to ensure that the decision taken is not only based on formal regulations, but also in accordance with the principles of good and just governance. The AUPB, as stipulated in Article 10 of the Law on State Administration, serves as a guideline for every administrative decision made by government officials, including judges in their function as government officials. Several principles that are very relevant in the context of the marriage dispensation court are legal certainty, impartiality, and accuracy.

#### **a. Principle of Legal Certainty**

Judges must base their decisions on transparent and unambiguous laws and regulations to uphold the concept of legal certainty. In the case of a marriage dispensation application, the judge's decision must be based "on Article 7 Paragraph (2) of the Marriage Law", which requires that a marriage dispensation can only be granted if there is a "very urgent reason" and is accompanied by "sufficient supporting evidence." Legal certainty requires that the decision taken must be predictable and have a clear basis, so as not to cause confusion or injustice to the parties involved. The judge must objectively assess whether the reasons put forward by the applicant, such as "love" or a long-standing relationship, are strong legal justification. In this case, legal certainty also includes the application of consistent standards in deciding similar cases, so that decisions do not depend solely on the subjective interpretation of the judge.

#### **b. Principle of Impartiality**

The principle of impartiality is a fundamental principle in every decision-making by government officials, including judges. This principle requires judges to make fair decisions and not be influenced by external factors, such as pressure from society, the

interests of certain parties, or personal relationships behind the application. The personal desire to prevent adultery or "love" are common reasons given by applicants for marriage dispensation. Judges must be able to separate themselves from the emotional or social aspects that may be attached to the case and focus on objective legal assessment. Impartiality means that judges must not show bias or give priority to the interests of one party, but must assess each application based on the facts and evidence presented.

c. Principle of Accuracy

The principle of due diligence requires judges to make a careful assessment of every aspect of the application submitted. The information provided in the application for marriage dispensation must be thoroughly reviewed by the court, which must determine whether the evidence truly supports the statement of "very urgent reasons". In addition, the court must also consider how their decision can affect people in the long term, especially those most vulnerable involved in these cases, namely children. When deciding on an application for marriage dispensation, the court must consider the mental health of the minor child concerned "PERMA No. 5 of 2019". The principle of due diligence requires that judges do not ignore these important aspects and conduct a thorough analysis before making a decision. For example, although the reason "love" is often put forward as the basis for the application, the judge must consider whether the reason is supported by sufficient evidence and does not conflict with the best interests of the child.

Therefore, the application of AUPB in adjudicating applications for marriage dispensation does not only function as a technical guideline, but also as a tool to ensure that the decisions taken reflect justice, legal certainty, and protection of children's rights. Judges are required to act objectively, transparently and wisely, so that the decisions taken not only meet legal requirements, but also take into account the social and psychological implications for the parties involved.

4. Judge's considerations

Taking into account the following Fiqhiyah Principles, the Judge in the Decision "185/Pdt.P/2024/PA.Smp" has determined that the marriage of the Applicant's child with her prospective husband must be carried out immediately so as not to cause harm:

"Rejecting harm takes precedence over taking good"

درء المفساد مقدم على جلب المصالح

In the Determination "0229/Pdt.P/2024/PA.Pas", the Judge has the same view, indicating that the marriage of the Applicant's child with her prospective husband has increased from hajjiyat (secondary need) to "daruriyah" (urgent) and needs to be carried out without delay. The following is a quote from the hadith of the Prophet SAW, as narrated in Sunan Ibnu Majah Juz I, page 736:

لا ضرر ولا ضرار

"You must not cause harm and cause harm to each other"

Furthermore, on page 62 of Qaidah Fiqhiyah al-Ashbah wan Nazhair, it is stated :

درء المفساد مقدم على جلب المصالح

"Refusing harm takes precedence over taking good"

In the Determination "34/Pdt.P/2024/PN.Ptk", the Judge is of the opinion that the a quo application is in accordance with the provisions of Article 7 Paragraph (2) of the Marriage

Law by considering that the age of 18 years is considered ready in terms of reproductive organs.

## **5. Determination**

For children who applied for dispensation in the Determination “185/Pdt.P/2024/PA.Smp, 0229/Pdt.P/2024/PA.Pas, and 34/Pdt.P/2024/PN.Ptk”, in essence the court granted the application. The Marriage Law stipulates that courts must apply clear and consistent criteria when resolving applications for marriage dispensation. This is especially true when interpreting the terms "very urgent reasons" and "sufficient supporting evidence" as outlined in "Article 7 Paragraph (2)" of the law. Although the regulation has established a legally binding framework, practical considerations show that the regulation leaves much room for interpretation, which in turn opens the door to competing readings and, ultimately, different decisions in various cases. This is because each court gives different weight to the applicant's context and evidence due to the flexibility inherent in the article.

### **a. Multiple interpretations of "Very Urgent Reasons"**

One of the main issues that often arise in marriage dispensation applications is the interpretation of "very urgent reasons." Due to the lack of clarity regarding the meaning of "urgent reasons" in this provision, it is up to each judge to determine the level of urgency in each case. Reasons such as "love" or the desire to avoid adultery are often submitted as very urgent reasons, but these reasons do not necessarily meet objective legal standards. For example, in some cases, the reason for love may be considered urgent by the applicant because of a long-standing relationship or because of social pressure to get married immediately. However, from a legal perspective, love is not an urgent reason if it is not supported by evidence that immediate marriage is necessary to protect certain legal rights or interests, such as threats to mental or physical health. Judges must avoid decisions that are based solely on social pressure or the applicant's personal desires without considering the long-term impact.

### **b. Challenges in Assessing “Sufficient Supporting Evidence”**

In addition, the standard regarding "sufficient supporting evidence" is also often a source of multiple interpretations. Article 7 Paragraph (2) of Law Number 16 of 2019 requires applicants to include evidence supporting the claim of urgent reasons, but the law does not provide a specific definition of the type or amount of evidence that is considered sufficient. This gives judges broad room to assess the sufficiency of evidence, but also opens up the opportunity for significant differences in assessment. For example, in cases where the reason "love" is submitted as the basis for the application, what evidence can be considered sufficient to support the claim? If love is interpreted as a deep emotional relationship, is a statement from a partner or family sufficient to prove the existence of urgent reasons? Or, is stronger evidence, such as psychological testimony regarding the serious emotional impact if the marriage is postponed, required? Judges must be very careful in evaluating this kind of evidence, because being too lenient in accepting evidence can lead to abuse of legal provisions. Clear and objective standards in assessing the sufficiency of evidence are important to ensure that the judge's decision is not only based on feelings of empathy or compassion for the applicant, but also on valid and measurable facts. Judges should evaluate evidence by considering its impact on the most vulnerable parties in the process, such as minors, whose rights must be protected in accordance with applicable law. Consistency in the judge's decision in interpreting "very urgent reasons" and "sufficient supporting evidence" is very important to realize the objectives of the law. In order to reduce this inconsistency, judges need to refer to the principle of legal

certainty as stipulated in Article 10 of Law Number 30 of 2014, which requires that every decision be based on clear rules and applied consistently. This can be achieved by developing more specific standards of interpretation in the context of marriage dispensation applications, for example through more detailed technical guidelines or jurisprudential guidelines that can be used by judges as a reference in deciding similar cases. In addition, the application of the principles of accuracy and impartiality also plays an important role in ensuring that every decision taken is truly based on sufficient evidence and reasons that can be legally accounted for.

Overall, the multiple interpretations of the clauses "very urgent reasons" and "sufficient supporting evidence" require a more careful and objective approach from judges in deciding on applications for marriage dispensation. With clearer and more consistent standards, it is hoped that the decisions taken will be fairer, more targeted, and in accordance with the objectives of legal protection for minors who are the main subjects in this case.

Thus, based on the analysis of the determinations above, it can be seen that the three determinations of the application for marriage dispensation are based on the reason of "love". However, this reason does not fulfill the element of a very urgent reason, especially since the three determinations are also not accompanied by sufficient evidence, namely evidence that supports the very urgent reasons for the marriage to take place. The three determinations are also not accompanied by sufficient evidence, namely evidence that supports the very urgent reasons for the marriage to take place. Of the three determinations above, only 1 determination attaches evidence of health (physical) and there are 2 determinations that do not attach evidence of physical or psychological health. Furthermore, it can be concluded that the ambiguity of the norms on the clauses "very urgent reasons" and "sufficient supporting evidence" causes multiple interpretations that have an impact on inconsistency in the judge's determination

## CONCLUSION

Judges as government officials must act within the framework of the principle of legality to ensure that every decision taken is legally valid and protects the best interests of children in accordance with the broader objectives of the law by applying the general principles of good governance (AUPB) in exercising their authority. The determination of marriage dispensation does not meet the substantive and procedural aspects of the validity test based on the theory of validity by Philipus M. Hadjon. This is because, in substance, it is based on the reason of "love". However, this reason does not meet the element of a very urgent reason, especially since the three determinations are also not accompanied by sufficient evidence, namely evidence supporting the very urgent reason for the marriage to take place. Of the three determinations above, only 1 determination attaches evidence of a health certificate (physical) and there are 2 determinations that do not attach evidence of physical or psychological health.

It can be concluded that the ambiguity of the norms regarding the clauses "very urgent reasons" and "sufficient supporting evidence" has implications for the granting of a marriage dispensation application even though it does not meet the urgent reasons and evidence as stated in Article 7 Paragraph (2) of the Marriage Law. In addition, it also causes multiple interpretations and inconsistencies in the judge's determination. Therefore, it is necessary to amend Article 7 Paragraph (2) of the Marriage Law and PERMA Number 5 of 2019 relating to the obligation to attach official evidence of physical and psychological health in order to realize consistent determinations in applications for marriage dispensation

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