

The Pattern of Settlement of Marriage Dispensation Cases Based on the Maslahah Perspective

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Abstract

This research aims to analyze the use of the maslahah murrees method as a pattern for resolving marriage dispensation cases so that Sharia laws can resolve them. Sharia laws can determine them. This qualitative research is based on interview data, and the researcher plays an active role so that the research results can answer the problem formulation. The data sources in this research use primary data and secondary data. The source of informants in this research is that the government believes that the head of the Bone Regency religious affairs office, the Judge of the Bone Regency Religious Court and several experts have sufficient knowledge of the concept of maslahah. The research results show that the judge's consideration is the most critical aspect in determining a decision that contains legal certainty, justice, and benefits for the parties concerned. Meanwhile, judging from the Maslahah Murlah, the granting of marriage dispensation is by the aim and purpose, namely to provide benefits to the prospective husband and wife and to keep them away from adultery, which is prohibited by religion.

I. Introduction

Child marriage is still a problem in developing countries. The United Nations Population Fund (UNFPA) predicts that there will still be one hundred million women married under 18 in the next decade. UNFPA data shows that underage marriage often occurs in sub-Saharan Africa, South Asia, the Middle East and North Africa (Kidman, 2017). In several other countries, the model of underage marriage still often occurs (Kamanda, 2018), including in Indonesia, where the model of marriage at an early age is still found (Handayani, 2023). Even in certain areas, it has become a tradition. The existence of their marriage is often hidden and away from the attention of the outside community.

The Expertise Agency Research Center in 2021 showed that there was an increase in the number of child marriages during the Covid-19 pandemic (Handayani, 2023); this finding is supported by 34,000 marriage dispensation requests submitted to the Religious Courts from January to June 2020, of which 97% granted (metadata.co.id, 16 September 2020). This figure has increased from 2019, namely 23,126 marriage dispensation cases. The PPPA Ministry noted that until June 2020 the number of child marriages had increased to 24 thousand during the pandemic (voice.com, 2020). The province of South Sulawesi (Sulsel) is said to be in 14th place as the province in Indonesia with the highest early marriage, namely 9.23% (Tribunews.com, 2023). In Bone Regency, the rate of child marriage is still quite high, with 463 people applying for dispensation in the last three years (detik.com, 2023).

Research (Putri, 2022) shows that child marriage in South Sulawesi Province is caused by household welfare, the living environment and the socio-economic conditions of the community. Other research states that increasing early childhood marriages requires strengthening the religious affairs office (Nessa & Mustafa, 2023). Various research states that economic and cultural factors, low levels of education, and religious doctrine cause underage marriage. Meanwhile, Ratna Batara Munti and Hindun Anisah assessed that the marriage dispensation contributed to the number of underage marriages because the law opened up opportunities for deviation from the minimum age limit provisions. Marital irregularities as regulated in Article 7 paragraph (2) of Law Number 1 of 1974 concerning Marriage.

The marriage dispensation is indeed legitimized by Law Number 1 of 1974 concerning Marriage. Article 7 paragraph (1) states that the age limit stipulated in Article 7 paragraph (1), namely 16 years for women and 19 years for men, can be deviated from. Marriage dispensation is also the absolute competence of the Religious Courts as regulated in Article 49 of Law Number 3 of 2006 jo. Law Number

50 of 2009 concerning Religious Courts. However, the absence of essential criteria or guidelines in deciding dispensation cases often gives rise to adverse reactions from several groups.

Moreover, the panel of judges was impressed that they quickly granted the marriage dispensation request by returning to existing fiqh texts. This article explains the judge's authority to decide on his initiative in marriage dispensation cases without being bound by specific laws and their limitations. The pattern of resolving marriage dispensation cases is often practised by judges, who formulate an indicator that can be guided by the panel of judges in deciding marriage dispensation cases.

Maslahah mursalah is a legal method considering benefits such as general access and unlimited, unbounded interests. In other words, maslahah mursalah is an interest that is freely decided but is still tied to the fundamental concept of sharia (Jamaluddin et al., 2023a; Masruchi, 2023). Maslahah muslahah is a very effective method of law enforcement in responding to and providing solutions, as was done by the prophet Muhammad, his companions, tabi'in, and the ulama. The discussion of maslahah murrees is critical because it can be said that maslahah mursalah is the foundation for building Islamic religious law, which is intended for the benefit of humanity as servants of God in matters of life in this world and the hereafter (Setiawati & Hartati, n.d.; Suleman et al., 2023). Maslahah mursalah is a method of establishing a very effective law that responds, responds, and provides solutions, as was done by the Prophet Muhammad, his companions, tabi'in, and the ulama (mujtahid). Although some scholars have yet to accept this estimate method, the majority of the ulama can accept this estimate method under stringent conditions.

2. Research Method

The type of research is field research; this research takes primary data from the field, which is studied intensively and accompanied by analysis and retesting of all data or information that has been collected. Regarding implementation, the research directly interacted with judges at the Watampone City Religious Court, Bone Regency, Indonesia. This research uses primary data and secondary data. Research using primary data sources requires data or information from the first source or respondent. Research using secondary data sources uses materials that are not from the first source as a means of obtaining data. This research took place at the Watampone City Religious Court, Bone Regency. The research time is August-September 2023. Data collection techniques are carried out through interviews and documentation activities. Data analysis in qualitative research is carried out during and after data collection within a certain period. According to Miles and Huberman, qualitative data analysis is an analysis process that consists of four activity streams that co-occur, namely data collection, data reduction, data display and drawing conclusions or verification.

3. Results and Discussion

Based on empirical world phenomena, it shows that in all aspects of human life, situations often occur that have not been accommodated by law (general norms), so the birth of *takhṣiṣ* law is a necessity that will answer these complicated problems. The law must be able to respond to all problems that occur in society. In this way, the principle of "*lex specialis derogate legi generali*" was born, that specific laws override general laws, and the principle of "*ius curia novit*" that judges are assumed to know the law. Therefore, there is no reason that there are legal problems in society that cannot be examined and tried in court, for example, child marriage, because very urgent circumstances prevent the implementation of the marriage from being postponed any longer.

The application for marriage dispensation is a voluntary matter and is one of the cases that falls within the absolute competence of the Religious Courts. The application for marriage dispensation in the form of *takhṣiṣ* (specialization/exception) is a solution to the complicated problem faced by the Islamic community in Bone Regency to register their marriage so that the marriage is legal or valid according to state law. The *takhṣiṣ* or exception in question is that marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years (Article 7 paragraph (1)). Therefore, if one or both of the prospective bride and groom have not reached the age of 19 (nineteen) years, then his application for marriage registration will be rejected by the District Religious Affairs Office, whatever the reason unless he obtains permission or a Marriage Dispensation from the Religious Court.

Based on this, the District Religious Affairs Office will reject marriages where the bride and groom are under 19. Underage marriages can only be accepted or registered at the District Religious Affairs Office by obtaining permission from the Religious Court through a Marriage Dispensation application. Article I paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage states that Article 7 paragraph (2) (which has been amended) reads: in the event of a deviation from the age provisions as referred to in paragraph (1), the man's parents and the woman's parents can ask the court for dispensation for very urgent reasons accompanied by sufficient supporting evidence.

As the number of cases requesting Marriage Dispensation became more and more complex, the Republic of Indonesia Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications was born. Therefore, resolving marriage dispensation cases becomes more accessible and in line with the principle of flexibility, which is that justice is carried out quickly and cheaply. The article in paragraph (4) of Law Number 48 of 2009 concerning Judicial Pojudicial power states, "trials are carried out simply, quickly and at low cost".

1. Procedures for Applying for Marriage Dispensation

a) Submission of Application for Marriage Dispensation

The competence of the Religious Courts is only in civil cases, divided into substantive voluntary cases. A contentious case is a case that contains a dispute, referred to as a LAWSUIT from now on. In contrast, a voluntary case is a case that does not contain a dispute, from now on referred to as an APPLICATION, one of which is an Application for Marriage Dispensation. Submission of an Application for Marriage Dispensation is carried out like any other case, namely through Table 1 (case registration), where you have previously paid the down payment of the case fee through the designated Bank. 6 Application for Marriage Dispensation is simpler than cases involving disputes. Simplicity is meant because only one party is examined through evidence. If the applicant can bring in all the parties who will be asked for information (the child being requested, the prospective bride/groom, and the prospective bride and groom's parents), the case can be resolved quickly. The judge only needs to carefully check the truth of the position so there is no element of manipulation, especially towards the parties mentioned. The Marriage Dispensation is an Islamic civil case filed voluntarily (Petition). According to Yahya Harahap, the characteristics of volunteering are as follows:

- 1) The problem is purely one-sided interests. This means that the problem the applicant is asking to be resolved is purely related to the applicant's interests and has no connection to other people's interests.
- 2) The problem raised is not a dispute with other parties;
- 3) Ex-parte or unilateral, no other person or third party is drawn as an opponent (Tamba, 2019).

The application for marriage dispensation must be prepared by considering the characteristics of the volunteer case, both in the identity of the parties, the posita and the petition petitum. The identity of the parties in the Marriage Dispensation application is only one party, namely the Petitioner; there is no Respondent. This is to the characteristics of volunteer cases that Marriage Dispensation is a request for unilateral interests or involving only one party in legal matters.

The application for Marriage Dispensation shows that this case is a case that is addressed to personal interests to obtain permission to carry out a marriage specifically because this situation is not tolerated by positive law, which in the marriage law is referred to as deviation. The word deviation can be interpreted as a violation if you look closely. Therefore, if the request for dispensation is granted, it means legalizing the violation, but because it brings more benefits, the regulations and the judge's decision allow it.

Based on Article 6 point (1) of the Republic of Indonesia Supreme Court Regulation Number 5 of 2019, the party seated as the Petitioner in the Marriage Dispensation

application is the parent of the child for whom the Marriage Dispensation is requested. The parents in question are the biological father and mother. If the parents are divorced, the application for marriage dispensation is still submitted by both parents or by one of the parents who has custody of the child based on a court decision. If one of the parents has died or their place of residence is unknown, then the application is submitted by one of the parents. If both have died, the application is submitted by the person appointed as the child's guardian. Parents or guardians of children who cannot do so can be represented by a proxy based on a power of attorney (Article 6 points 2 to 5 of the Republic of Indonesia Supreme Court Regulation Number 5 of 2019).

The posita or fundamental of the petition for Marriage Dispensation must contain the legal basis and events that form the basis of the petition, which includes and explains the legal relationship (*rechtsverhouding*) between the applicant and the requested legal issue. Therefore, the posita should consist of two parts, namely (1) a part that describes the event or event that occurred so that the applicant applies for a marriage dispensation and (2) a part that explains the law and the existence of rights or legal relationships that form the basis. Juridical rather than petition. According to Article 7 paragraph (2) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, the application for marriage dispensation is a form of deviation from the provisions on the minimum age limit for marriage (19 years) so that the application for marriage dispensation must include very urgent reasons used as the basis for the request and accompanied by sufficient supporting evidence.

Currently, the core of the petition for Marriage Dispensation at the Watampone Religious Court is only those who are pregnant. Therefore, the posita is made in such a way that the entire chronology is directed towards the occurrence of pregnancy, and the most decisive of all is a certificate from a doctor who collaborates with the Bone Regency Women's Empowerment and Child Protection Service. Supposedly, that does not lead to pregnancy and will be rejected at the case registration place. Based on the explanation of the article, the word "deviation" from the minimum age of marriage (the age of one of the two prospective brides and grooms is less than 19 years) means that the application can only be made by submitting an application for dispensation from marriage by the parents of one or both parties of the prospective bride and groom, if the male and female are under 19 (nineteen) years of age. The meaning of the application must contain "very urgent reasons" that the application for Marriage Dispensation must explain events or occurrences that describe a situation where there is no other choice. The marriage needs to take place. Therefore, several things that must be contained and described clearly, systematically and coherently in the posita or fundamentals of the petition for Marriage Dispensation are:

- 1) Explanation of the identity of the applicant's biological child who will be married but is underage and also the identity of the prospective husband or future wife of the applicant's biological child;
- 2) According to the provisions of Islamic law and applicable laws and regulations, an explanation regarding the conditions for carrying out the marriage has been fulfilled, except that the age requirement for the Petitioner's child has yet to reach the age of 19.
- 3) The explanation is that there is no prohibition on marriage between the applicant's child and his future husband or wife.
- 4) The explanation is that the child submitted in the application knows and agrees to the marriage plan, and there is no forced marriage.
- 5) Explanation of the psychological condition, health and readiness of the applicant's children to enter into marriage and build a home life; for example, the applicant's children are ready and understand their respective rights and obligations. Women know the rights and obligations of a wife and housewife, and men are ready to become a husband and head of the household, as well as an explanation of their work and income.
- 6) Explanation that the applicant's family and the parents of the prospective husband/wife of the applicant's child have approved the marriage plan, and there are no other third parties who have any objections to the continuation of the marriage;
- 7) An explanation of why the marriage must be carried out so urgently even though the child is not yet old enough contains the main points of events or events that describe a situation where there is no other choice. The marriage must be carried out (Tamba, 2019).

Based on the explanation regarding *posita*, when it touched on child protection and benefits, it can be understood that the presentation is coherent and chronological regarding legal events regarding the urgent circumstances for the marriage of someone whose age has not yet reached the minimum age limit for marriage. The benefit is to avoid manipulation that leads to actions that damage the child's future. Therefore, judges carefully analyze the chronology of legal events in the *posita* and the relationship between the *posita* and the evidence presented at trial. This is done to realize child protection and benefit the state and religion, especially for married couples and the extended families of both husband and wife.

Based on this, when viewed from the perspective of *maslahah*, then it falls under *al-Maṣlaḥah al-Ḍarūriyah*, namely benefits related to primary/basic human needs (Jamaluddin et al., 2023b; Tajrid, 2021) because protection of the child's future is a form of caring for offspring and property, which is included in *al-maṣāliḥ al-khamsah* (Gebara, 2015; Nur et al., 2021). It could also include *al-Maṣlaḥah al-*

Hajiyah because the existence of the marriage dispensation is to perfect the main benefit (primary) and to maintain and maintain basic human needs (Jamaluddin et al., 2023b); in other words, the benefit needed to overcome various difficulties faced.

The petite or demands in the application for Marriage Dispensation must be a declarative request (a concise and explicit statement) and must not contain a petite that is condemnation (a decision that can be implemented by punishing the losing party); the petite must be detailed one by one regarding the matters involved. The applicant desires the petitum to be determined by the court, and the petitum cannot only be compositur or ex aequo et bono, meaning that the petitum must be detailed to be enumerative. A petite, which only takes the form of asking for justice, is not permitted. An example of a petition for Marriage Dispensation that is commonly used in judicial practice is:

- 1) Grant the Petitioner's request;
- 2) Decide to give dispensation to the Petitioner's child named to marry
- 3) Charge case fees to the Petitioner according to applicable legal provisions (Permana & Fanani, 2019).

b) Competence (Authority to Judge)

Applications for Marriage Dispensation must be submitted to the competent court or according to its competence, and the courts authorized to hear Marriage Dispensation cases are the Religious Court for those who are Muslim and the District Court for those of a religion other than Islam. The object of the request for Dispensation that the researchers studied was for Muslim people. Therefore, the study in this dissertation is only limited to the process of proceedings in the Religious Courts. Suppose there are religious differences between the child and the parents/guardians. In that case, a request for Marriage Dispensation is submitted to the court by the child's religion (Article 7 PERMA Number 5 of 2019). Suppose prospective husband and wife are under the age of marriage (not yet 19). In that case, the application for Marriage Dispensation for each prospective husband and prospective wife is submitted to the same court where one of the parents/guardians of the prospective husband is domiciled. or the future wife (Article 8 PERMA Number 5 of 2019) (Permana & Fanani, 2019)

The most common application for Marriage Dispensation is because one of the prospective bride and groom has yet to reach the minimum age of marriage (19 years). However, sometimes, the bride and groom have yet to reach the minimum age for marriage; in situations like this, both must apply for a Marriage Dispensation, and both must obtain permission, or both requests must be granted. If only one of the prospective bride and groom is accepted, then, of course, the marriage still cannot take place.

c) Administrative Requirements

The application for Marriage Dispensation has several conditions that must be met as stated in Article 5 of PERMA Number 5 of 2019 and the provisions of Article 7 paragraph (2) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage are as follows:

- 1) Application letter, if the identity of the party, posita and petite of the application letter do not meet the qualifications for a good and correct Marriage Dispensation application as explained above, then based on Article 119 HIR/143 RBG, the court gives instructions to the Petitioner to make improvements so that it complies with the formal requirements and excellent and correct application materials;
- 2) Photocopy of the identity cards of both parents/guardians
- 3) Photocopy of family card
- 4) Photocopy of the child's identity card or child's identity card and the child's birth certificate;
- 5) Photocopy of identity card or child's identity card and birth certificate of prospective husband or wife; And
- 6) Photocopy of the child's last educational certificate and school certificate from the child's school;
- 7) A certificate from a health worker (doctor or midwife) supporting the parents' statement that the marriage must take place. This requirement is to fulfil the provisions of Article 7 paragraph (2) of Law Number 16 of 2019, which confirms that the application for Marriage Dispensation must be accompanied by sufficient supporting evidence, and what is meant by sufficient evidence in the explanation of this article is a certificate which proves that the age of the bride and groom is still below the provisions of the applicable laws and regulations, and a certificate from a health worker supporting the parents' statement that the marriage must take place.
- 8) A statement of commitment from the child's parents which confirms the parent's commitment to taking responsibility for the child's economic, social, health and education issues. This requirement is to fulfil the provisions of Article 7 paragraph (2) of Law Number 16 of 2019 and Article 16 letter j of PERMA Number 5 of 2019. By the provisions of written evidence, all administrative requirements must be sufficiently stamped and certified by the POS Office. The original must be shown to the judge during the trial to be checked with the original so that the written evidence can formally be accepted as evidence based on Article 1888 of the Civil Code and Article 2 paragraph (3) of Law Number 13 of 1985 concerning Customs Stamp Duty and Article 2 paragraph (1) of

Government Regulation Number 24 of 2000 concerning Changes in Stamp Duty Rates and the amount of the Limit on the Nominal Price Subject to Stamp Duty.

These certificates are authentic evidence that is very influential in reaching the minimum threshold of proof that mining whether or not the request for marriage is a dispensation. A certificate from medical personnel and a statement of parents' willingness and responsibility to handle all household needs until their child's household is independent have been included in the recommendations issued by the Bone Regency Women's Empowerment and Child Protection Service. The court clerk must ensure that all administrative requirements are complete before the application is registered and after paying the down payment of court fees. If the files are not complete, the Registrar will return the Marriage Dispensation application to the applicant to complete (Article 9 PERMA Number 5 of 2019).

2. Procedures for Checking Marriage Dispensations

a) Single Judge and Trial Attributes

The judge who examines Marriage Dispensation cases is a single judge (Article 1, paragraph 11 of Supreme Court Regulation Number 5 of 2019). This provision is an exception to the general principle that the trial must be a panel as in Article 11 paragraph 1 of Law Number 48 of 2009 concerning Judicial Power, that the Court examines, hears and decides cases with a panel of at least 3 (three) judges, except the law dictates otherwise. The implementation of Article 1 paragraph 11 of Supreme Court Regulation Number 5 of 2019 by the Watampone Religious Court, namely the appointment of a single judge to resolve cases involving requests for marriage dispensation, is a form of child protection implemented by the Watampone Religious Court.

The head of the court, in appointing a single judge to adjudicate the Marriage Dispensation application, must pay attention to the judge's classification, that the judge already has a decree from the Chairman of the Supreme Court as a Juvenile Judge, has attended training and technical guidance regarding women in conflict with the law or the judge has been certified in the Juvenile Criminal Justice system. or have experience adjudicating applications for Marriage Dispensation. Through a single judge accompanied by the necessary knowledge and experience, it is hoped that children requesting dispensation will not be pressured and can convey their case honestly and openly so that protection can be carried out optimally by the court.

Based on this, if there is no judge in a court who has the intended classification, then the head of the court can appoint a judge to adjudicate the request for Marriage Dispensation (Article 20 PERMA Number 5 of 2019). The provisions of Article 11 paragraphs (1) and (2) PERMA Number 5 of 2019 emphasize that the judge in the trial, when asking questions or seeking information from children

who are applying for Marriage Dispensation or to prospective wives/husbands who are still in the child category (under 19 years of age), then the judge must use language and methods that are easy for children to understand and comprehend.

Judges and Registrars, when examining children, namely children who are applying for Marriage Dispensation or prospective wives/husbands who are still categorized as children, do not need to wear court attributes in the form of togas and ties for judges and suits for substitute clerks. This aims to ensure that children do not feel pressured and burdened so that they can provide information in a relaxed and accurate manner. The substitute judge and clerk release the trial attributes only when the examined person is a child. However, when the judge examines the applicant or the child's parents, parents/guardians of the prospective husband/wife, and the prospective husband/wife who is an adult (not a child) as well as witnesses witness, the judge continues to use the trial attributes as usual. This implementation is also the attitude and seriousness of the Supreme Court of the Republic of Indonesia, which the Watampone Religious Court implements in realizing child protection efforts, especially for children who are about to enter into marriage.

In carrying out the investigation of the facts of the trial by examining the child who requested Dispensation, the judge made a serious effort to create a conducive atmosphere. It is hoped that this atmosphere will ensure that the child being examined can provide an accurate statement so that the judge's decision can benefit the child's household in the future, as well as embodying the principle of "the best interests of the child". Realizing the "best interests of children" is a great benefit and a form of child protection. This benefit is al-Maṣlaḥah al-Hājiyah because it enhances and facilitates the judge's examination because the child feels free and not pressured.

b) Parties who must be present

Article 10 of PERMA Number 5 of 2019 regulates that at the first hearing, the Petitioner is required to present several parties for questioning, namely: (1) The child for whom the Marriage Dispensation is being requested, (2) The prospective husband/wife, (3) The parent/guardian future husband/wife. If the Petitioner cannot present these parties on the day of the first hearing, the Judge postpones the trial and orders the Petitioner to present these parties at the second hearing. If the Petitioner cannot present these parties on the day of the second hearing, the Judge will postpone the trial again and order the Petitioner to present these parties at the third hearing. If the Petitioner cannot present these parties on the third hearing day, then the Marriage Dispensation application cannot be accepted (Article 10 PERMA Number 5 of 2019).

So, the presence of these parties is imperative (order/command), so the Petitioner must present them at the trial by allowing them to adjourn the third trial. The presence of these parties can be on a different hearing day. For example, at the first hearing, the person who can attend to hear their statement is the child whose Marriage Dispensation is being requested. Then, at the second hearing, the person who can attend is the prospective husband/wife, and on the third day, those present are the parents/guardians of the prospective husband/wife. , unequal attendance at the same trial like this is permitted and does not violate the law. This is a form of benefit to realize the principle of flexibility, namely making it easier for the applicant to prove the arguments for their request, which will benefit the child who will be married off. Suppose the Petitioner is absent at the first hearing. In that case, the Judge adjourns the trial and summons the Petitioner legally and adequately. After being legally and properly summoned, suppose the Petitioner still needs a legally justified reason on the day of the second hearing. In that case, the Marriage Dispensation application is declared invalid.

c) Judge's Advisory

Article 12 of PERMA Number 5 of 2019 explains that the single judge in the trial of Marriage Dispensation cases must provide advice to several parties. This advice is imperative (order) and must be carried out. The marriage disposition determination will be null and void even if the judge does not provide advice. The advice given by the judge must also be considered when deciding/determining marriage dispensation. The parties whom the judge must give advice are the prospective husband/wife. The advice given by the Judge aims to ensure that parents, children, prospective husbands/wives and parents/guardians of prospective husbands/wives understand the risks that child marriage will pose related to:

- a) Possible cessation of education for children;
- b) Continuity of children in completing 12 years of compulsory education;
- c) The child's reproductive organs are not yet ready;
- d) Economic, social and psychological impacts on children; And
- e) Potential for disputes and domestic violence.

The Judge must convey These five things clearly to the parties who must be given advice. Apart from being included in the minutes of the trial, the judge's advice must also be considered in determining the Marriage Dispensation. Therefore, every judge who hears a marriage dispensation case must master the five materials related to the judge's advice so that it can be carried out optimally to ensure that the parties receiving the advice understand and are aware of and prepare themselves if the risk in question occurs. The first and foremost advice is regarding "Education" because education determines a child's future; school or education is a child's fundamental right that must be fulfilled, and the negative

impact of child marriage is related to the enormous potential for stopping or breaking off a child's education or school. During the trial, children requesting dispensation are asked questions to determine whether they still want to continue their education. If there is a strong indication that the child wants to continue their education, then the request is generally rejected at the Watampone Religious Court.

Advice about education is fundamental (primary) in life and human life because, with it, they can achieve benefits in this world and the hereafter. Empirically, it has been proven that if a community or nation's education is weak, it is easy for various problems and downturns or crises to arise in various aspects of life. Therefore, by postponing marriage and improving your education, you will give birth to a happy family in this world and the hereafter. The following advice is advice regarding "Health". The judge makes optimal efforts to make the applicant, especially the prospective bride, aware of the readiness of the child's reproductive organs. When the reproductive organs are not ready, it is hazardous that the danger of pregnancy will arise; this danger will affect not only the mother but also the baby in her womb. A pregnant person who is still in the child age category often ends up dying, including the child she is carrying. After the judge had advised on the importance of age maturity and reproductive health, the judge then advised on the importance of strengthening the family economy. In the Dispensation Examination, the Judge tried to understand the parties that in building a household, it is not only enough to have capital of love, but also a well-established economy is needed. Married men have the first and foremost responsibility, namely providing support for their wives and children and meeting household needs. If the economy is not ready or a prospective husband does not have a job and sufficient income, if his partner does not respond wisely, this will cause disputes and quarrels.

Regarding the social and psychological impact of marriage at a childhood age, several things that judges can convey in their advice include that marriage at a childhood age will set a bad precedent in society (Aliyah et al., 2023; John et al., 2019; Perdana et al., 2023; John et al., 2019; Perdana et al., 2023; al., 2021) , underage marriage has the potential to give birth to new poverty (De Groot et al., 2018; Otoo-Oyortey & Pobi, 2003) . The impact of underage marriage is that children can no longer express themselves and think according to their age because they are required to carry out their obligations and responsibilities as husband and wife. Due to the potential for disputes and domestic violence in child marriages, the judge explained that domestic life is not as easy as imagined; many obstacles, opposition and obstacles can arise in the course of a household. Therefore, prospective husbands and prospective wives must be ready/mature physically and mentally, economically, socially and psychologically, and ready from

a health perspective. If it is not mature or not ready or one of them is not ready, it will trigger disputes and violence in the household, which, if not resolved, will lead to divorce. Based on the elaboration and explanation of Article 12 of PERMA Number 5 of 2019 relating to the judge's advice to parties in Marriage Dispensation cases, namely:

- 1) Education/compulsory education 12 years;
- 2) Reproduction health;
- 3) Economic, social and psychological for children; And
- 4) Potential for Disputes and Domestic Violence.

d) Case Examination and Evidence

The next stage of resolving Marriage Dispensation cases in the religious courts after the Judge's advisory agenda to the Petitioner, the Judge then reads the Petitioner's Petition Letter; if the Petitioner maintains the contents and there are no changes, then the Judge continues the examination of the case by listening to statements from several parties (Permana & Fanani, 2019). Several parties whose statements must be heard by the Judge in the examination of the Marriage Dispensation case are:

- 1) Children for whom Marriage Dispensation is requested;
- 2) Prospective husband/wife who is requested for Marriage Dispensation;
- 3) Parents/guardians of children for whom Marriage Dispensation is requested;
And
- 4) Parents/guardians of prospective husband/wife.

The judge must consider the parties' statements when determining the marriage dispensation. The decision will be null and void if the judge does not implement this provision (Article 13 of Perma Number 5 of 2019). When exploring the statements of these parties, the Judge identified the following matters:

- a) The child submitted in the application knows and agrees to the marriage plan;
- b) The child's psychological condition, health and readiness to enter into marriage and build a home life And
- c) Psychological, physical, sexual or economic coercion against children and families to marry or marry off children.

The next stage of the examination process is that the Judge must obtain information from the parties that the marriage between the Petitioner's child and the prospective husband/wife has no relationship that prevents them from getting married, either by blood or consanguinity and is not being proposed to by someone else and there are no other obstacles. Both related to the terms and conditions of marriage and administrative requirements, except that the

prospective bride and groom have yet to reach the age of 19 years. When the Judge examines and explores the information of the child who is requesting Marriage Dispensation, the Judge can:

- 1) Hearing children's statements without the presence of parents;
- 2) Hearing the child's statement via remote audio-visual communication examination at the local court or elsewhere;
- 3) Suggest that a Companion accompany the child;
- 4) Ask for recommendations from a Psychologist or Doctor/Midwife, Professional Social Worker,
- 5) Social Welfare Workers, Integrated Service Center for the Protection of Women and Children (P2TP2A), Indonesian/Regional Child Protection Commission (KPAI/KPAD); And
- 6) Bringing a translator/person who usually communicates with children, if needed.

Based on Article 16 of PERMA Number 5 of 2019, in examining applications for Marriage Dispensation, Judges must pay attention to the best interests of the child by:

- 1) Study carefully and carefully the Petitioner's petition;
- 2) Examining the legal position of the Petitioner;
- 3) Explore the background and reasons for child marriage;
- 4) Explore information regarding whether there are obstacles to marriage;
- 5) Explore information related to the child's understanding and consent to be married off;
- 6) Pay attention to the age difference between children and future husband/wife;
- 7) Hearing statements from the applicant, children, prospective husband/wife and parents/guardians of the prospective husband/wife;
- 8) Pay attention to the psychological, sociological, cultural, educational, health and economic conditions of children and parents based on recommendations from psychologists, doctors/midwives, professional social workers, social welfare workers, integrated service centres for the protection of women and children (P2TP2A) or the Indonesian Child Protection Commission /Regional (KPAI/KPAD);
- 9) Pay attention to whether or not there are elements of psychological, physical, sexual and economic coercion, And
- 10) Ensure parents' commitment to taking responsibility for their children's economic, social, health and education issues.

Based on Supreme Court Regulation Number 5 of 2019, in examining and proving a Marriage Dispensation application, all provisions of civil procedural law remain in

effect as long as they are not explicitly regulated in the regulation. Therefore, the legal provisions of evidence in civil cases regarding general principles of evidence, types of evidence, minimum limits of evidence and strength of evidence remain in effect and serve as guidelines for the Judge in analyzing the evidence presented by the Petitioner. The legal principles of evidence must be fully implemented when examining and resolving applications. Ignoring the application of the law of evidence in examining applications can have very fatal consequences. Suppose written evidence and statements from the parties whose statements must be heard by the Judge during the examination of the Marriage Dispensation case need to be revised. In that case, evidence from witnesses can be supplemented. Even if necessary, the Judge can bring in expert witnesses, for example, psychologists, doctors/midwives, professional social workers, social welfare workers, Integrated Service Centers for the Protection of Women and Children (P2TP2A) or the Indonesian/Regional Child Protection Commission (KPAI/KPAD).

- 1) Meanwhile, the Watampone Religious Court only uses recommendations from P2TP2A. This recommendation is sufficient because it has undergone a doctor's examination and counselling guidance (Permana & Fanani, 2019). According to Yahya Harahap, there are several principles of the application examination process that must be considered, namely:
- 2) The examination process is ex-parte. In principle, the ex-parte process is simple: only hearing the statement of the applicant or his attorney in connection with the application, examining the documentary evidence or witnesses submitted by the applicant, and there is no replication or duplicate stage. What was examined at the trial was only the Petitioner's statement and evidence. The ex-parte process only requires the court to examine the applicant's information and evidence. The examination consistently takes place. This means that there will be no objections from other parties in the examination process.
- 3) The enforcement of all the principles of the trial is acceptable. In the ex-parte application examination process, all the principles of trial examination were not upheld. However, it has not been wholly removed either.

Several principles that must continue to be upheld include (1) the principle of judicial independence, namely that no one must influence anyone and there must be no directives from any party; and (2) the principle of fair trial, namely that it is not arbitrary (arbitrary), the examination is by the principle of due process of law (by the provisions of applicable procedural law), and provides a reasonable opportunity (to give an appropriate opportunity) to the Petitioner to defend and defend its interests. Some principles that do not need to be applied include:

1. The principle of audi et alteram partem (listen to the other side) means that the judge must listen to both parties, not only one side. Therefore, it is impossible in the ex-parte process to apply the principle of hearing the opposing party's answer because there is no opponent (defendant). Therefore, the principle of

hearing the other side is not relevant in the application process. In resolving applications, it is impossible to uphold the principle that both sides must be heard before a decision is given. Because to make a decision or determination that is heard solely by the applicant And

2. The principle of providing equal opportunities, this principle cannot be enforced because there is only one party, namely the Petitioner. Resolving Marriage Dispensation cases at the Watampone Religious Court is based on the principle of "Best Interests of the Child" by tightening examination and registration of applications. Examination of Marriage Dispensation cases at trial is carried out based on Supreme Court Regulation Number 5 of 2019, 44, including:

- 1) Single Judge and Trial Attributes

Examination of Marriage Dispensation cases is carried out by a Single Judge (not a Panel). When examining, the judge and clerk accompanying the court wear regular clothes. This is done so that the requested child feels free and not pressured so that the information provided can be accurate. Examining Marriage Dispensation cases with a Single Judge based on Perma Number 5 of 2019 can mean that Marriage Dispensation cases fall into the category of simple cases that only need to be examined by one judge. Although on the other hand, the issue of child marriage is a severe state problem, so it involves all components of the nation in dealing with it. It is even included in the national development program. Examining Marriage Dispensation cases with a Single Judge and stripping away the attributes of judges and clerks when viewed from a *maslahah* perspective then falls into the category of *al-Maṣlaḥah al-Mu'tabarah*. There are many verses and hadith that tell us to help and save people from injustice, such as forced action (exploitation), maintaining offspring because early marriage has the potential to give birth to abnormal children, as well as preventing lies and other unjust acts.

- 2) The parties who must be present include:

1. The child for whom Marriage Dispensation is being requested,
2. The prospective husband/wife,
3. Both parents/guardians of the prospective husband and prospective wife.
This is done to ensure the readiness of the bride and groom and the willingness and readiness of their parents to help them when they get married.

- 3) The judge's advice regarding the risks and dangers of child marriage and that they be patient in waiting to reach the age of majority. This advice is imperative (order) and must be carried out. The marriage disposition determination will be null and void even if the judge does not provide advice. Advisory includes:

1. The possibility of stopping education for children;
2. Continuity of children in completing 12 years of compulsory education;

3. The child's reproductive organs are not yet ready;
 4. Economic, social and psychological impacts on children; And
 5. Potential for disputes and domestic violence.
- 4) Case Examination and Evidence
- The examination began with reading the application letter, after which the judge heard statements from several parties, including:
- a) Children who are requesting Dispensation
 - b) Prospective husband/wife who is requesting Dispensation
 - c) Parents/guardians of children who are requesting dispensation
 - d) Parents/guardians of prospective husband/wife.

When the Judge examines and explores the information of the child who is requesting Marriage Dispensation, the Judge can:

- a) Hearing children's statements without the presence of parents;
- b) Hearing the child's statement via remote audio-visual communication examination at the local court or elsewhere;
- c) Suggest that a Companion accompany the child;
- d) Request recommendations from the Integrated Service Center for the Protection of Women and Children And
- e) Bringing a translator/person who usually communicates with children, if needed.

This settlement procedure is very appropriate because it can avoid legal smuggling so that the legal objectives of justice, certainty and benefit can be realized. Certainty is interpreted as meaning that the decision issued by the Watampone Religious Court provides certainty that the child being petitioned for is really in a very urgent situation so that he can be married, or conversely that the child is not in an urgent situation so that the marriage must be postponed until the minimum age of marriage (19 years) is reached. If legal smuggling occurs, it can result in child exploitation and loss of children's rights. When viewed from the benefit aspect, this situation falls into the Al-Maslahah al-Mu'tabarah category.

4. Conclusion

Based on the description above, the state prohibits marriage under 19 for men and 16 years for women. However, this limit can be circumvented by requesting a marriage dispensation. Ideally, dispensational rules are accompanied by essential criteria or indicators used as guidelines for rejecting or granting requests. However, Article 7, paragraph (2) of the Marriage Law needs to provide clear boundaries. So that the panel of judges has room to act and decide on its initiative; however, it still pays attention to statutory regulations, a sense of justice, expediency and the local wisdom of the community. Completion of Marriage Dispensation at the Watampone City Religious Court based on the principle of maslahah is by the Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning Guidelines for Adjudicating Applications for

Marriage Dispensation, determining Judges in adjudicating Marriage Dispensation cases based on the principle of the best interests of the child, the child's right to life and growth and development. , respect for children's opinions, human dignity, non-discrimination, gender equality, equality before the law, justice, benefit and legal certainty.

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