

**THE EXISTENCE OF THE MARRIAGE DISPENSATION IN
MAJENE RELIGIOUS COURT
(Study of *Maqasid Shari'ah*)**

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Abstract: This field research provides an overview and factual and explains the various relationships of all the data obtained. This research was conducted in Majene and precisely in the working area of the Majene Religious Court. The study is based on an application for marriage dispensation. Instruments used are researchers, observation, interview, and documentation data. The judge's consideration in granting or rejecting the application for marriage dispensation at the Majene Religious Court is the completeness of the administration at the time of applying for marriage dispensation following Perma No. 5 of 2019, and there is no pro; there on marriage as in Article 8 of Law No. 1 of 1974 concerning Marriage, while still taking into account the aspects of benefit and mudharatan arising from the granting of the application for marriage dispensation.

Keywords: Existence; Mating Dispensation; Religious Courts

I. INTRODUCTION

Islam has five basic principles by which Islam regulates the lives of its adherents, following the provisions of the law as stated in the Qur'an and Sunnah. One of the most important teachings in Islam is how to build a household between a man and a woman through the institution of marriage, which is expected to be the basic foundation of the structure of society. So important is the teaching on marriage that in the Qur'an, there are several verses, either directly or indirectly speaking about the issue of marriage.¹

The Qur'an is the kalam of Allah handed down by Gabriel to the Prophet Muhammad to serve as a guide for human life. The Qur'an (Islamic scripture book)

¹Ahmad Kosasih, *Human Rights in an Islamic Perspective: Unveiling the Similarities and Differences Between Islam and the West* (Jakarta: Salemba Diniyah, 2003), p. 88.

gives instructions and advice on how people can live in a safe and happy world and what they can do to prepare for the afterlife. Marriage was a practice advocated by the Prophet Muhammad and included his sunnah. Marriage is a relationship between two individuals who want to be in a happy and lasting union to form a complete family.

God gives orders to man to form and build families. The wisdom is to realize that life and life are continuous and that man lives in harmony with his natural state. He is carried out by people who are mentally and spiritually capable of building a home.²

In Islam, the purpose of marriage is to create a *sakinah* family, *mawaddah warahmah*, as God says in QS Ar-Rum/30:21.

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

Translation:

"Among the signs of His (greatness) is that He created pairs for you from your (kind of) self so that you may feel at peace with him. He made among you a sense of love and affection. Indeed, in such a thing, there are signs (of the greatness of God) for the thinking people."³

The above verse commands His servant to marry. Getting married is worship and has benefits or wisdom. One of the pearls of wisdom of marriage is that they will have help from God because the person maintains chastity and stays away from sin.

The purpose of marriage is to avoid sexual intercourse outside of marriage. Men naturally arouse their sexual desire when they reach the stage of puberty. The balance in *Fikufu* for men is characterized by nocturnal emission, seminal discharge from the male during sleep as a sign that he begins to enter puberty. The woman's body deforms during pouring, and acne begins to appear. It indicates that libido has started to increase. Islam believes in monogamy or the principle that only one person can marry at a time. Monogamy means that a man marries only one woman, and each marriage must be performed once and for all. Polygamy is allowed by law, but it must be agreed upon by everyone who wants to have a polygamous marriage. Divorce is not prohibited by religion but should be the ultimate solution to any problems.

²M. Quraish Shihab, *Tafsir al Misbah*, (Cet IV; Jakarta: Lentera Hati, 2005), p. 335.

³Ministry of Religious Affairs of the Republic of Indonesia, *the Qur'an and Its Translation* (Bandung: PT Cordoba International-Indonesia, 2018), p. 406.

Today, domestic rifts or marital failures have distorted marriage into a synthetic form of secular practice. Today, marriage is defined as simply a "linguistic institution" of biologically naturalized. Many marriages or domestic life in Indonesia occur under mental error because marriage is no longer built on a responsible attitude. Indonesia's Marriage Law states that people can marry when they reach a certain age and are considered mature enough to bear marital responsibilities. Maturity as a parameter for being able to get married has apparent the birth of differences of opinion that manifest in the issue of whether or not the age of marriage is determined.⁴

After 45 years, one of 1974's about marriage was finally refreshed. Article 7 paragraph (1) initially stated that the minimum age for women to marry was 16 years. It was later changed by increasing it to 19 years, the equivalent of a man. This amendment accommodates the Constitutional Court Decision No. 22/PUU-XV/2017 Application for the examination of Article 7(1) because it is considered unconstitutional and discriminatory. The amendment is formally regulated in Law No. 1. Amendments to Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 regarding marriage, released on October 15, 2019. The government hopes that the amendments to the Marriage Law can reduce the number of underage marriages.⁵

The Supreme Court of the Republic of Indonesia issued Regulation No. May 2019 concerning Guidelines for The Trial of Marriage Law, because the admission procedure until the stage of reviewing marriage registration applications that are much longer than pre-legal examinations, early marriage and divorce rates at the young level is to press for publication. Marriage at a young age is only part of the social reality facing society today. Teenagers consider getting married at a young age away from sexual intrusive before marriage. Some people do this out of necessity because they were born out of wedlock. Marriage is not the solution to life's problems. Marriage is a courtship institution that must be carefully prepared.⁶

The House has approved the increase in the marriage age of women of Representatives through Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. The marriage age limit for both men and women is 19 years old. If they are under age must apply for marriage to the court.

⁴Andi Sjamsu Alam, *The Ideal Age for Marriage, An Ikhtisar Realizing the Sakinah Family* (Jakarta: Kencana, 2006), p. 48.

⁵Mughniatul Ilma, "Dispensation Regulation in Strengthening marriage age limit rules for children after the birth of Law No. 16 of 2019", *Al-Manhaj* 2, No.2 (2020) : p. 41

⁶M. Zamroni, *Legal Principles of Marriage Registration in Indonesia*, (Jakarta: Media Sahabat Cendekia), p. 28.

Letter of release. This increase in the age of marriage has an impact on religious courts, namely the increase in cases of marriage dispensation. The increase in the marriage age limit for the bride and groom does not discourage people's intention to marry off minors because the provision is not rigid because the law still. After all, underage couples enter into marital ties. The judge must respond judiciously by considering all the reasons put forward as the repercussions that may arise if granted dispensation. Judges must be proactive in exploring various legal facts and social realities in the cases they handle.⁷

The issuance then of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. The Supreme Court of the Republic of Indonesia regulates the procedures for implementing the application for marriage dispensation within the Supreme Court with the issuance of the Supreme Court Regulation of the Republic of Indonesia Number 5 Of 2019 on Guidelines for Adjudicating Marriage Dispensations. It is to reduce early marriage and divorce rates at a young age with the admission procedure until the examination stage of the application for marriage dispensation, which is quite long compared to the examination before the Act was issued.⁸

Marriage age is one of the most important factors for maintaining a marriage. Meanwhile, sometimes the age of the bride-to-be is relatively young. A person's age will determine whether or not they are mature enough to act. Nevertheless, of course, there is another consideration, because there is still someone young but able to think and wiser than his elders. Marriage at a young age is only part of the postmodern society's social reality for teenagers. Marriage at a young age is considered a way to avoid promiscuous sex. Some do it because they are forced and because of that of wedlock. This opinion may have some truth, but getting married is undoubtedly more than just certainly tried as an answer to life's challenges. Marriage is a lifetime promise. The lifetime needs to be careful.

The House of Representatives has passed the increase in the marriage age for women through Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning marriage, where the marriage age limit for women and men is 19 years, if it is less than 19 years old, they must apply for a marriage dispensation in court. This increase in the age of marriage has an impact on religious courts, namely the increasing rise in marriage dispensation cases. The increase in the marriage age limit for the bride-to-be does not discourage the public's intention to marry off their

⁷Mushlih et al, "Dispensation of Marriage of Minors According to the Marriage Law: A Study on Religious Courts in the West Sulawesi Region", *Lex Generalis* 2, No.2 : (2021), p. 447.

⁸M. Zamroni, *Legal Principles of Marriage Registration in Indonesia*, (Jakarta: Media Sahabat Cendekia), p. 28.

underage children, and this is because the provision is not rigid. After all, the law still allows underage couples to enter marriage bonds.⁹

The occurrence of marriage at the age limit ultimately impacts the marriage's wedding negative physical and psychic impact on the perpetrator of Early Marriage. Physically, the reproductive organs of adolescents are not ready to carry out one of the reproductive tasks, namely pregnancy and childbirth. Various complications of pregnancy and childbirth are more at risk of occurring at an early age. Psychologically, adolescents are still in the stage of finding their identity, unable to take responsibility for others, let alone become parents. It will increase the risk of conflicts in the household. Marriage at an early age involves the bride and groom's spouses, who are physically and psychologically unprepared and mature to build a homeland so that it is still very prone to turmoil and disputes that can result in divorce.¹⁰

The rate of applications for marriage dispensation in the Majene Religious Court every year has increased in quantity, and one of the contributing factors is early marriage. Based on data from the Majene Religious Court, two years before the enactment of Law Number. 16 Of 2019, changes to Law Number 1 of 1974 concerning Marriage applications for marriage dispensation have increased by around 83 cases until mid-October 2019. After the enactment of Law Number 16 of 2019, amendments to Law Number 1 of 1974 concerning marriage, about 146 patients were reached in October 2021.¹¹ It is due to several factors: parental / family factors, religious understanding, economy, customs, education, juvenile delinquency, and test tubes. On the other hand, the culture of the Majene people often results in high early marriage.

The judge must respond wisely, considering all the reasons put forward and the implications of the exceptions. Judges must be proactive in investigating the various legal facts and social realities of the case being handled. Judges as law enforcement agencies have a strategic position to continue to socialize the dangers of marriage for minors, and judges are very firm in issuing marriage conditions.

This situation certainly requires serious steps from local governments to try to anticipate the adverse impacts that will be caused by early marriage. The government has been active in socializing the benefits and dangers of early marriage. Local governments should detect new problems arising from the high rate of young

⁹Mushlih et al, "Dispensation of Marriage of Minors According to the Marriage Law: A Study on Religious Courts in the West Sulawesi Region", *Lex Generalis* 2, No.2 : (2021), p. 447.

¹⁰Yekti Satriyandari et al, *Textbook of Reproductive Health for Early Marriage Mau or Malu* (Yogyakarta: Unisa), p. 3.

¹¹Majene District Religious Court Marriage Dispensation Application Data 2017-2021.

marriages, such as increasing unemployment, poverty, and disruption of peace in society, as well as preventive efforts to minimize the occurrence of early marriage. The implementation of Law Number 16 of 2019 amendments to Law Number 1 of 1974 concerning Marriage is carried out to prove the maximum application of the marriage age limit and consider aspects of spousal benefit and community survival. Therefore, this research plan focuses on "How the Existence of Marriage Dispensation in the Majene Religious Court (Study of *Maqasid Shari'ah*).

II. THEORETICAL REVIEW

Review of Marriage Dispensations Legal Considerations in The Determination of Marriage Dispensations

The Supreme Court also took the issue of this dispensation seriously. The Supreme Court specifically issued technical guidelines for handling marriage dispensation cases in the form of Supreme Court Regulation (PERMA) No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications which was enacted on November 21, 2019. One of the purposes of the creation of this guideline is to ensure the standardization of the process of adjudicating marriage dispensation in courts. It is intended so that with standardization, judges are severe and careful in examining dispensation cases following existing guidelines.¹²

Several points of legal considerations must be present in the determination of marriage dispensation after the existence of Law Number 16 of 2019 and Perma 5 of 2019, namely:

- a. Consideration of the judge's advisor to the Petitioner, Child, Prospective Spouse/Wife, and Parent/Guardian of the Husband/Wife Calom to understand the risks of marriage related to the possibility of cessation of education for the child, the continuity of the child in pursuing compulsory education 12 years, the unpreparedness of the child's reproductive organs; the economy; social and psychological impacts for the child; and the potential for domestic disputes and violence.¹³
- b. The judge had already heard the testimony of the child requested by the Marriage Dispensation; prospective spouses ordered for Marriage Dispensation; the

¹²Mughniatul Ilma, "Dispensation Regulation in Strengthening the Marriage Age Limit Rules for Children After the Birth of Law No. 16 of 2019", *Al-Manhaj* 2, no.2 (2020), p. 151.

¹³Supreme Court Regulation No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Article 12.

- parent/guardian of the child re-asked for marriage dispensation; and the parents/guardians of the pro future use/wife.¹⁴
- c. Consideration of the child submitted in the application knowing and approving the marriage plan. Consideration of the psychological condition of the child's health and readiness to enter into marriage and build a domestic life; and review of the presence or absence of psychic, physical, sexual, or economic coercion on the child and family to marry or marry a child.¹⁵
 - d. Considerations about the protection and best interests of children as stipulated in laws and regulations and laws are not written in the form of legal values, local wisdom, and a sense of justice that lives in society; and international conventions or treaties relating to the protection of children.¹⁶
 - e. Consider the urgent reasons, i.e., the absence of other options and the force to have to be married. The consideration of such reasons is accompanied by sufficient evidence, i.e., a certificate proving that the age of the bride and groom is still under the provisions of the law and letters from health workers supporting the parents' statement that the marriage is very urgent to be carried out.¹⁷
 - f. The consideration of the marriage of the Petitioner's child to the prospective spouse has no relationship that prevents marriage, either a blood relationship or a one-sided relationship. It is not on another person's loan, and there is no other hindrance related to the terms and conditions of marriage or administrative requirements unless only the bride and groom have not reached the age of 19 years.¹⁸
 - g. Consideration of the analysis of the Petitioner's evidence and its evidentiary power.
 - h. Consideration of the formulation of legal facts based on the statements of the applicant, the applicant's children, the prospective spouse and the parents/guardians of the prospective husband/wife, the evidence of letters, and the testimony of witnesses that conflict with each other.

¹⁴Supreme Court Regulation No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Article 13.

¹⁵Peraturan Mahkamah Agung Nomor 5 Tahun 2019 Tentang Pedoman Mengadili Dispensasi Kawin Pasal 14.

¹⁶Supreme Court Regulation No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Article 17.

¹⁷Republic of Indonesia, Law Number 16 of 2019 Article 7 paragraph 2.

¹⁸Republic of Indonesia, Law Number 1 of 1974 amends Law Number 16 of 2019 concerning Marriage Articles 6,7 and 8.

- i. Legal considerations on Maslahat and mudarat as well as provisions of Islamic Law or jurisprudence on the rules of marriage age and marriage dispensation.
- j. Legal considerations about one-by-one applications for marriage dispensation whether granted in whole, granted in part and rejected in part or rejected in part or rejected in whole.¹⁹

The religious judiciary, to grant marriage dispensation to children who are not yet 19 years old, makes religious justice judges must understand well and correctly the philosophical aspects, provisions of norms, and practice of procedural law regarding marriage dispensation and provide decisions that are fair and oriented towards the protection and best interests of the child.

III. RESEARCH METHODOLOGY

This research is *field research* where this research provides an overview and factual and explains the various relationships of all the data obtained. This research will be conducted in Majene Religious Court. The study is based on an application for marriage dispensation in the Majene Religious Court. The research instruments used are researchers, observation guidelines, interview guidelines, and documentation data.

IV. RESULT AND DISCUSSION

A. Case Description of marriage Dispensation Application in Majena Religious Court

With the revision of Marriage Law No. 16 of 2019, applications for marriage dispensation are increasingly prevalent, and the minimum age limit for marriage between men and women is 19 years. From the judge's point of view, it must maintain the intention of the law, namely from various circles, to prevent the occurrence of early marriage with all its consequences. On the other hand, the concern for this case is not only focused on the humanitarian point of view of the two brides-to-be, who are not responsible to anyone and humiliate during their pregnancy. The stigma of the Majene community also believes that children will be successful and proud if they get married soon. Some people are still married to their children from an early age but are grateful that they will soon find a partner and lose their responsibilities. The factors influencing the judge's consideration in granting the application for a marriage dispensation in the Majene Religious Court and based on the number of cases in the Majene Religious Court can be seen in the following table:

Table 1.1 Majene Religious Court Case Data

¹⁹Asnawi Natsir, *Civil Procedural Law (Theory, Practice, and Problems in General Courts and Religious Courts)*, (Yogyakarta: UII Press, 2019) p. 310.

No	Year	Number Of Case
1	2018	43 Case
2	2019	34 Case
3	2020	84 Case
4	2021	59 Case

Source: Majene Religious Court Website

In 2018, one case was rejected. In the ruling, the judge did not approve the decision of the marriage allocation request, requiring the Petitioner to marry his minor when he was 18 while his future wife was 19. Regardless of the applicant's reasons for marrying his child, it was because he was worried that the provisions of Islamic Law would temporarily prohibit the Act, and the applicant's children were not old enough to marry within the provisions of the applicable law. As for a reason for applying for marriage, the exemption is because the applicant's child and his future wife have been dating for one year. However, the judge rejected the request because there was no "urgent reason" for Marriage Number 1 of 1974 on Marriage.

In 2019, one application for marriage dispensation was revoked because the future wife was 18 years old and the future husband was 19 years old because she had been married continuously and had been five months pregnant. In this case, the judge had no more reason to consider the Petitioner's application. The judge advised the Petitioner to wait for his future wife until he was 19 and apply for a marriage certificate.

In 2020 the case was dismissed because the Petitioner did not appear at the hearing, and the Majene Religious Court had been duly summoned. His absence did not appear to be due to a valid obstruction, and in this case, the judge found that the Petitioner did not file with seriousness to know the case.

In 2021, there were three cases in which the administrative completeness file was ineligible and rejected because there was no very urgent reason to be granted. The applicant's child and the candidate are both minors. That is the reason. The application for dispensation by the Petitioner feared that his son would violate the provisions of Islamic Law. The judge advised the parents, and the child that they needed to educate their children and understand the association correctly, rather than marry so quickly.

Couples who get married in middle and high school age are within perfect reach with problems caused by maturity, believing they still lack understanding. The lack of education leads to a lack of knowledge in family management and children's education because their parents' education greatly influences their children's education. The Majene District Government is very concerned about the number of minors married as it will increase the number of children leaving school.

The factors behind the application for marriage dispensation are very diverse. However, most of them are influenced by the common understanding of education for children's future. The cultural influence of the Majene people, the factors of promiscuity that cause pregnancy outside of marriage, and the reasons for socioeconomic factors and legitimacy are concerned about the emergence of slander. It was submitted by Mrs. Chief Justice majene that:

"The marriage dispensation filed in the Majene Religious Court has several causes, namely the wishes of parents and future husbands and wives, fear of slander, promiscuity, low understanding of education, economic problems, and getting pregnant outside of marriage. It is influenced because the culture of the community will be embarrassed if the child is too late to get married; on the contrary, it is a matter of pride to see his child carry out marriage quickly with a man of the parents' choice, regardless of the age of the child who is still very young. Another thing with the development of the times is that it is easier for a person to establish a relationship, and the freer the relationship between the opposite sex is so that parents feel worried that there will be slander or get pregnant outside of marriage so that they quickly marry their relatively young children according to the provisions of the applicable law."²⁰

From the results of interviews conducted by researchers regarding the factors of applying for a marriage dispensation at the Majene Religious Court. It was also explained by the judge of the Majene Religious Court, Mrs. Nur Annisa, that this was also influenced by the development of an increasingly advanced era, especially in terms of technology to make it easier for people in various ways, the following is the explanation of Mrs. Judge of the Majene Religious Court:

"Nowadays, it is increasingly sophisticated, especially technology, making it easier for anyone, including children, to access everything easily and quickly. Suppose there is no parental supervision, lack of religious understanding, an unsupportive environment and friends, and not fortified with positive things. In that case, these children will certainly be easily affected and enter promiscuity, negatively impacting the child."²¹

This part of Addition explanation from the Clerk of the Majene Religious Court:

²⁰Nurul Hidayatit, (43 Tahun), Ketua Pengadilan Agama Majene, *Wawancara*, Majene 5 Januari 2022.

²¹Nurul Annisa (28 Years Old), Judge of the Majene Religious Court, *Interview*, Majene January 5, 2022.

"The promiscuity factor also greatly influences minors to enter into marriage. In this case, parents must continue to play an active role in reminding and supervising their children to remain in a positive environment for their future."²²

The reasons for applying for the marriage dispensation are:

1. Factor *Married by Accident* (MBA)

Several cases in Majene District were filed with the Majene Religious Court to obtain marriage exemptions because the two children (male and female) have a biological relationship like husband and wife. In this situation, the girl's parents are forced to marry their child immediately. The girl's parents understood that the family was about to get married because the child was no longer a virgin and the action was a shame for the family.

This is in line with the explanation of Mrs. Chief Justice of the Majene Religious Court that:

"The people of Majene are looking for a solution to marry off minors. The People of Majene want to get married immediately because they worry their children will violate their rights. Pregnancy legitimacy is the dominant factor in applying for a marriage exemption in the Majene Religious Court. It is also an urgent reason based on Article 7 Paragraph 2 of Law Number 16 of 2019."²³

The same was also conveyed by Mrs. Deputy Chairman of the Majene Religious Court

"There is also another case that the girl does not love her future husband, but because she is already pregnant, she is forced to apply for a marriage dispensation."²⁴

Similarly, Mr. Registrar of the Majene Religious Court said that:

"Getting pregnant out of wedlock because of promiscuity. There is also the Petitioner who has determined the date of marriage and filed an application for marriage dispensation in court."²⁵

The Petitioner, in this case, the parents said that:

²²M. Fauzan (55 Years Old), Clerk of the Majene Religious Court, *Interview*, Majene, January 13, 2022.

²³Nurul Hidayatit, (43 Years Old), Chairman of the Majene Religious Court, *Interview*, Majene January 5, 2022.

²⁴Syamsidar, (39 Years Old), Mrs. Deputy Speaker of the Majene Religious Court, *Interview*, Majene January 5, 2022.

²⁵M.Fauzan (55 Years Old), Clerk of the Majene Religious Court, *Interview*, Majene January 13, 2022.

"My future child's wife was about to give birth. At first, I did not know because I thought her gestational age was about five months. Suddenly I was called by my son's future wife for tonight and immediately married before faith because my future child's wife was about to give birth."²⁶

The son of the Petitioner who pleaded for dispensation said that:

"Yes, it is true that I have had a relationship like a married couple and have been pregnant for three months, and my future husband has been dating me for the past two years."²⁷

There must be substantial evidence to corroborate the judge's argument for a future wife who has become pregnant out of wedlock. It was explained by Mrs. Deputy Chairman of the Majene Religious Court:

"There must be a certificate of visum. Nevertheless, in majene, there is no tool to detect this. So we ask for a certificate from a doctor, or it is included with the obstetrics control book."²⁸

Most reasons for the application for marriage dispensation are because the bride-to-be has become pregnant first. If the condition is already so, then the only way out taken by the parents is to marry off the child because the baby in the womb of the bride-to-be must be clear about her identity. Without a legal marriage, the child who will be born later becomes unclear in status and is likely to have a negative impact that will harm the child in the future.

2. Factor Of low Education

Education is one of the factors causing the application for marriage dispensation; the low level of education and knowledge of parents, children, and society causes a tendency to marry underage children. As stated by Mrs. Chief Justice of the Majene Religious Court:

"The understanding of the importance of knowledge related to the impact or consequences of underage marriage, if I see it here, is still low, especially for people far from urban areas. So there is a need for massive socialization related to the impact or consequences of underage marriage."²⁹

Understanding the essence of marriage shows that some still do not understand the rights and obligations of wives and husbands, and people's

²⁶Bustan (42 Years Old), Fisherman, *Interview*, Majene January 15, 2022.

²⁷Annisa , (18 Years Old), Self-Employed, *Interview*, Majene January 13, 2022.

²⁸Syamsidar, (39 Years Old), Mrs. Deputy Speaker of the Majene Religious Court, *Interview*, Majene January 5, 2022.

²⁹Nurul Hidayatit, (43 Years Old), Chairman of the Majene Religious Court, *Interview*, Majene January 5, 2022.

knowledge of the minimum age limit is still lacking. It is stated by one of the parties of the underage wife-to-be that:

"I still do not understand what the rights and obligations between husband and wife are in the household, which I understand that marriage is about bringing men and women together in a marital bond."³⁰

Further explained by the Petitioner's parents:

"The minimum age limit for marrying a child. I do not understand very well. I know that I married my son because I wanted to see my son happy."³¹

Religious education is also indispensable from an early age because it will be the primary basis for forming a child's personality. Education is an integral part of life, both personally and socially. Religious education aims to increase piety to Allah SWT. and form morals to improve morals, clean souls of moral ideals, and high morals. The lack of religious education is due to one of the factors, namely the lack of religious education in the family, from parents who do not give enthusiasm about education to children so they can easily fall into promiscuity.

3. Economic Factors

The weak economic condition of the community causes parents to be unable to send their children to higher education levels, and parents think that marrying their children even though they are underage is one solution to ease the economic burden on the family. This is in line with what Mrs. Deputy Chairman of the Majene Religious Court said:

"Economic factors are also limitations to meeting children's future needs; therefore, some parents want their children to get married quickly to ease the economic burden on the family. Even though we know that many scholarships or grants are intended for school children whose economy is low."³²

This is why the Petitioner (the parent) so that marrying his child even though the law is not allowed it, so the parents requested dispensation from the court after receiving a refusal from the local Office of Religious Affairs (KUA).

4. Promiscuity Factors

Associations among adolescents that cross the line and are not monitored by parents can cause inappropriate behavior. Such a free association among adolescents can cause getting married at a young age, resulting in an extramarital pregnancy that the child has already felt. Adolescent associations that cannot be restricted and not prohibited by parents are becoming increasingly high in the incidence of marriage at

³⁰Saskia (16 Years Old), Self-Employed, *Interview*, Majene January 13, 2022.

³¹Muslimin (60 Years Old) Farmer, Majene Interview January 13, 2022.

³²Syamsidar, (39 Years Old), Mrs. Deputy Speaker of the Majene Religious Court, *Interview*, Majene January 5, 2022.

a young age. The freer the association of children makes marriage higher at a young age.

To overcome this, the action that parents can take is to make the impression that they can come to terms with their child's choice. Thus parents can still supervise their children's activities and relationships passively. It is in line with what was explained by Mrs. Deputy Chairman of the Majene Religious Court:

"It is never too late to deal with a teenager who looks (off the hook) because, at this age, friends are everything to the child and are very easily influenced by their peers. Including in terms of child household development. Parents have a massive role in the continuity of marrying off their children. Parents should be by their side. Whether it prevents not carrying out early marriage or when entering adulthood. Parents should always provide guidance, even accompanying them to solve their domestic problems.³³

There is something to note when parents overstrain the child; the fear will happen is that the child will not be able to develop independently and will try to rid himself of the restraints of the parents. Even the child will feel annoyed with his privacy. In the end, the child will feel uncomfortable and be closed to his parents. On the other hand, if the parent is too liberating, the freed child does not feel the pressure of what the restrained child feels, so the urge to rebel tends to be smaller than the restrained child. For this reason, parents must try to stay passively involved but not seem to interfere.

5. Cultural Factors (Traditions)

Cultural factors also influence the application for marriage dispensation in the Majene Religious Court. Some people have a principle, belief, or understanding that if a girl is asking for/ proposing, joy is sustenance. Majene people will feel very proud if their children get their soul mates quickly because there is always a sense of anxiety and fear if their daughters are late in marriage. The public also believes that if his application is rejected, then he is afraid that no one will propose to his child again after the application is rejected. As submitted by the Petitioner party:

"We as a parent, sometimes it is difficult to refuse a man's proposal because he is worried that no one will want to propose to our child in the future."³⁴

Society is very concerned about the views of its environment and neighbors, which will be a byword. If the child is applied for, the marriage will be moved without considering the age limit of the marriage; however, some parents who already understand education dare to reject the application. The maturity of a married

³³Syamsidar, (39 Years Old), Deputy Chairman of the Majene Religious Court, *Interview*, Majene January 5, 2022.

³⁴Dasman (54 Years Old), Mason, *Interview*, Majene, January 14, 2022.

couple largely determines the quality of a household in entering a relationship because their unpreparedness can harm the future.

According to researchers, cultural factors or customs contribute to marriage at an early age. It is due to a mistaken understanding of a part of society. Parents do this because they see the events that happened a few years ago, where they and their families went through their own lives, namely getting married at an early age and or at a minimum age, and the marriage did not cause problems. Parents should have to understand that the conditions of the past and the present are very different.

B. Maqasid Shari'a Review of the Judge's Consideration in the determination of the application for Marriage Dispensation in the Majene Religious Court

From an Islamic law perspective, there is no definite explanation of the age limit for marriage for men and women. There is an Islamic legal theory that can formulate the age limit based on a universal, integral and comprehensive understanding, namely the *Shari'a Maqasid theory*, an Islamic legal theory that not only looks at the textuality of the Quran and sunnah in formulating a law; however, it also looks at other factors in the form of the purpose and purpose of enacting the law. The Marriage Law adheres to the principle that the prospective husband and wife must have matured their physical soul to be able to carry out the marriage in order to realize the purpose of marriage properly and be able to get good and healthy offspring.

Underage marriage cannot be carried out only considering achieving the sole purpose. Merely the protection of the other *maqasids* is neglected. Everything depends on the value of the benefit and the element of impurity in it. The elements of *maslahah* (positive impact) and *mafsadat* (negative impact) in underage marriages must be considered carefully—some advantages and disadvantages.

The judge in giving considerations related to granting or rejecting the application for marriage dispensation is based on the principles of *maqasid shari'ah*, especially the principle of *hifz al nasl* (nurturing offspring), where this principle attaches importance to the principle of the best interests of the child because the person applying for the marriage dispensation is a minor and is feared to have an impact on the offspring. The basis for his consideration is in the rules of *fiqh*.

درء امفاسد مقدم على جلب امصاحل

Means: "Rejecting the omnipresence takes precedence over achieving the benefit."

According to this rule, if there is a *mafsadat* and its *maslahat*, then the *mafsadat* must be eliminated because it can spread everywhere and cause a larger *mafsadat*. In the case of this marriage dispensation, which includes a child who has violated the provisions of the laws and regulations governing the minimum age for the implementation of marriage, and his *maslahat* by issuing or granting the

determination of the application for marriage dispensation so that there is no damage to the mother and child if a mother has given birth.

This was stated by Mrs. Chairman of the Majene Religious Court:

"When a child is married under the age who is not too ready to marry, it will impact unqualified offspring, and the child's psychology will also be disturbed."³⁵

A nurturing offspring is a form of benefit both temporal and *ukebrawi* is aimed at ensuring the survival of human beings from generation to generation. Therefore, sharia sees the importance of instincts for humans to be adventurous, and sharia regulates the maintenance of offspring. The Qur'an also provides for family law which includes a family-building order based on a valid marriage. Islam considers the issue of heredity and the child's rights in the soul very important.

Islam guarantees the honor of human beings by paying enormous attention that can be used to specialize in their human rights. this protection is very clearly seen in the severe sanctions imposed on the matter of adultery, the destruction of the honor of others. Islam also protects the hope of pitting, spying, and denouncing by using bad calls and other protections that intersect with honor and glory human. Among the forms of protection provided is to provide threats to sin-makers with a painful torment in the doomsday.

However, underage marriage cannot simply be banned just because it is seen in it has the potential to have negative repercussions. Mafsadat and maslahat must be measured on their respective grade considerations, namely, the level of *dharuriyah*, *hajjyah*, and *tahsiniyah*. The level of dharuriyah must take precedence over hajjyah and tahsiniyah, which hajjyah from tahsiniyah. Specific contexts of early marriage may be the best option when it is believed definitively to save a person from adultery or extramarital sexual intercourse (*if al-nasl*). However, in practice, it has the potential to give birth to another mafsadat, but the mafsadat is not up to the level of dharuri, while keeping the public from adultery is *dharuri* however, if there are no urgent conditions or reasons for dharuri then early marriage should be avoided.

The judge's consideration has a good purpose: to avoid committing adultery so that he has nurtured offspring. However, to realize the benefit is not only (*hifz al-nasl*). Nevertheless, the other five elements must be fulfilled. This is in line with the submission of Mrs. Chief Justice of the Majene Religious Court:

"Child marriage has many negative impacts or mudharat/mafsadat for children's growth and development. Three things are closely related to the consequences of the marriage dispensation, namely protecting the soul,

³⁵Nurul Hidayatit, (43 Years Old), Chairman of the Majene Religious Court, *Interview*, January 13, 2022.

offspring, and reason. If it is not in line with religious objectives while the Marriage Law states that marriage is valid if it is carried out according to religious norms, then the purpose of marriage is difficult to realize."³⁶

Underage marriage is seen from the principle of Maqasid sharia (*hifz al-aql*) that the child who performs the marriage by quitting school or dropping out of school will lead to a low level of knowledge chosen. Therefore, marriage will seize the opportunity for someone who studies and develops their minds. Gaining knowledge in school is also a mental formation of a person. There were additions in family law, the rights, and obligations of husbands and wives, domestic violence, and other family law values.

From the implementation of marriage, minors will cause legal consequences, including being considered an adult or legally capable, children born after the implementation of child marriage have legal status, and children born from the implementation of child marriage give rise to civil relations with marital property. In addition, if there is a pregnancy, it will bring significant risks to the mother and child, such as miscarriage, or if the child is born safely, there is a possibility of having poor health.

The judge's marriage dispensation should not go out of the law's corridors governing the matter at issue in question. The determination of the judge will be a legal certainty and has the power to be binding for its execution because the judge's determination is a statement of the judge expressed in written form and pronounced by the judge in a hearing open to the public, as a result of the examination of the case. When it comes to imposing an injunction, the judge has considerations.

The judge considers the value of expediency and efficacy before setting. Not to doubt the legal certainty and function of the age limit, but as a form of minimizing the adverse consequences of underage marriage due to lack of maturity. A marriage dispensation is a solution to certain factors or reasons to continue getting marriage permits in the eyes of national law not to aggravate these factors or reasons further. The panel of judges is expected to pay more attention to the three objectives of the law, namely justice, expediency, and certainty, to have a fair and more helpful verdict for the applicant so that there is no injustice, let alone causing damage (*mafsadah*) to someone.

The marriage dispensation can only be granted if, based on the facts of the law, it is evident in sharing aspects of both shari'a, juridical, sociological, psychological, and health. The marriage is carried out if it is very urgent to realize the purpose of Islamic law, which is to maintain the safety of descendants. Maintaining

³⁶Syamsidar, (39 Years Old), Mrs. Deputy Speaker of the Majene Religious Court, *Interview*, Majene January 5, 2022.

the continuity of this offspring is part of the *sharia maqasid* which occupies the primary position. This urgency is expected to be maintained in terms of sustainability; the offspring also needs to be considered.

Some of the solutions offered as a result of analysis in research are as follows:

- a. It is necessary to have Integrated Legal Counseling (PHT) by the Majene Religious Court, which is carried out massively, and there is a synergy between the Majene Regency Government, namely:
 1. Ministry of Religious Affairs of Majene Regency
 2. The Office of Women's Empowerment and Child Protection of Majene Regency.
 3. Majene District Health Office.
 4. BKKBN Majene Regency.
- b. Involving religious leaders, community leaders, Community Organizations, or Non-Governmental Organizations (NGOs) in counseling the community.
- c. The government's attention is to improving people's welfare because one of the causes of early marriage or the minimum age of marriage is educational factors and economic factors in a family.

The importance of strengthening understanding and the role of the family /parents in preventing early marriage is to give the knowledge about the effect on our children because the family is the last bastion of this prevention.

C. CLOSING

The factors behind the application for marriage dispensation in the Majene Religious Court are low education, cultural factors, promiscuity, economy, and pregnancy outside marriage. The most significant contributing factor to marriage dispensation is low education, partly due to the cultural and promiscuous elements that pervade the majene district. The Majene community still lacks its understanding regarding the essence of marriage, especially for children who have not reached the minimum age limit. There are more negative impacts and consequences caused by children who marry minors because they are not yet mature enough to undergo the household ark, so on the grounds of applying for marriage dispensation in the Majene Religious Court, it is more dominant because of the *Marriage By Accident* factor. With the change in the age limit for women, which is equated with the age of marriage of men, there are more and more cases of marriage dispensation.

The judge's consideration in granting or rejecting the application for marriage dispensation at the Majene Religious Court is the completeness of the administration at the time of applying for marriage dispensation following Perma No. 5 of 2019; there is no prohibition on marriage as in Article 8 of Law No. 1 of 1974 concerning

Marriage, while still taking into account the aspects of benefit and mudharatan arising from the granting of the application for marriage dispensation.

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