

Analysis of Reasons for Filing Marriage Dispensation Post Amendment to The Marriage Law Number 01 of 1974 by Law Number 16 of 2019

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ABSTRACT

The regulation change to the dispensation of marriage following the difference in the limiting age of marriage in Law Number 16 of 2019 is due to concerns over the increasing cases of underage marriages. This study aims to describe the procedures and considerations of judges regarding the reasons for filing a marriage dispensation case at the Tolitoli Religious Court and explain the relevance of maqasid sharia and sociological jurisprudence to the reasons for filing a marriage dispensation at the Tolitoli Religious Court. The research method used is qualitative research with a case study approach as an instrument in the research design and data collection through field research. The results of this research explain that legal considerations and considerations of community justice became the reason for the Tolitoli Religious Court judges when explaining the procedure and the reasons for filing a marriage dispensation case at the Tolitoli Religious Court and realizing protection for children both in terms of benefit and instruments of social change and reducing the prevalence of child marriage in Tolitoli Regency as a form of relevance between maqashid sharia and sociological jurisprudence towards marriage dispensation. The judge's consideration in granting the request for a marriage dispensation, either reviewed through maqashid shariah or sociological jurisprudence, needs to be studied more deeply so that the results of the decision from the application can help to realize a household life that is *sakinah*, *mawaddah*, and *rahmah* because marriage is not only for oneself but also for other people called family.

ARTICLE INFORMATION

Keywords:

Marriage dispensation, post amendment, marriage law

1. Introduction

Law Number 16 of 2019, as a result of the revision of Law Number 1 of 1974 concerning marriage, suggests specifically emphasizing the application of a marriage dispensation to the court with urgent reasons accompanied by sufficient supporting evidence. As the amendment to Article 7 reads as follows:

1) Marriage is only permitted if a man and a woman have reached the age of 19 (nineteen) years old.

2) In case of a deviation from the age requirement, as referred to in paragraph 1, the parents of the man and the parents of the woman may request a dispensation from the court with urgent reasons accompanied by sufficient supporting evidence.

3) The granting of dispensation by the court, as referred to in paragraph (2), is obligatory to hear the opinions of both candidates who will marriage (Government of the Republic of Indonesia, 2019)

Following the amended minimum age limit for marriage, one of the things that were changed in the Marriage Law Number 16 of 2019 is related to marriage dispensation. The change in regulation has resulted in the dispensation for marriage following this change in the age of marriage because the increase in the minimum age for marriage will cause men and women who wish to get married but do not meet the minimum age requirements to take advantage of the dispensation as a legal loophole. Therefore, legislators do not want dispensation, which should aim to provide exceptions under certain conditions, used as a legal loophole to violate the minimum age requirement for marriage (Trisadini Prasastinah Usanti et al., 2021).

The increase in the minimum age limit for entering into marriage and the inclusion of provisions that provide opportunities for deviations from these provisions, on the other hand, seems to imply the less assertive attitude of the state, bearing in mind that the granting of

marriage dispensation is intended as a form of effort to protect in the context of preventing marriages under age. However, the law itself does not include sanctions or punishments for couples who marry at a young age. As a result, the practice of underage marriages will continue because a child can still marry even if they are under the minimum age if he gets a marriage dispensation issued by the Religious Court (Sonny Dewi Judiasih et al., 2019).

The Religious Courts have simultaneously used the latest Marriage Law after experiencing changes. Likewise, the Tolitoli Religious Court, in implementing the granting of a marriage dispensation, must be based on the Marriage Law Number 16 of 2019 amendment to the Marriage Law Number 1 of 1974. As one of the first-level judicial branches, the Tolitoli Religious Court has carried out its duties and authorities to examine, decide and resolve first-level cases in matters of marriage, one of which is the case of an application for marriage dispensation. In the marriage dispensation case, the researchers found that the application for marriage dispensation at the Tolitoli Religious Court had fluctuated since the amendment to the marriage law was enacted. According to the data obtained during preliminary observations, the requests for dispensation from marriage received at the Tolitoli Religious Court from 2019 to 2021

2. Literature Review

1.1. Definition of Marriage Dispensation

Dispensation is an exception to rules in general in certain situations (of an exceptional nature) towards a prohibition and an obligation or an exception from an authority (R. Subekti dan R. Tjitrosoedibio, 1996). Another definition for dispensation is the decision-making of government officials, which causes a statutory regulation becomes no longer be enforced for a specific case. Dispensation aims to break through obstacles in a particular topic by setting aside

normally prohibited prohibitions (Khayatudin, 2012). Marriage dispensation is given by the court to the prospective bridegroom who is not old enough to marry, for men who have not reached 19 years of age and for women who have not reached 16 years of age, and parents as the parties who have the right to apply for marriage dispensation for their children to the Court (Roihan A. Rasyid, 1998). Marriage dispensation is a form of deviation from marriage law, which becomes part of the family law system. In marriage law, this is known as the principle of selectivity in which someone intends to determine whether a particular person is allowed to be married so that they must be more selective in choosing a partner (Mohammad Idris Ramulya, 2002).

Supreme Court Regulation number 5 of 2019 explains that parents or guardians have the right to file a marriage dispensation case. The judge in the trial is obliged to hear the statement of the prospective husband/wife being requested for marriage dispensation. This is an absolute requirement for a marriage dispensation examination which might cause it to be null and void. An application for a marriage dispensation violates the minimum age limit for marriage, so the application must contain urgent reasons and be accompanied by sufficient and convincing supporting evidence. The article's explanation of the word "deviation" is a form of exception to the generally applicable legal provisions. The meaning of the application for marriage dispensation must contain urgent reasons because the marriage dispensation is an "emergency exit" in which the party who is applying for it must describe the emergency with no other choice so that the marriage must be carried out immediately, such as the condition of the prospective wife in a state of pregnancy (Syeh Sarip Hadaiyatullah dan Nurul Huda, 2020).

1.2. The Concept of Marriage Dispensation before and after Law Revision

SF. Marbun and Moh. Mahfud M.D. state that a dispensation is an act that causes a statutory regulation to become invalid due to several particular matters and fulfills certain conditions stipulated by the relevant law (SF. Marbun dan Moh. Mahfud M.D, 2011). The regulations governing the dispensation of marriage before the revision of Law Number 1

the Year 1974 stipulated the following age requirements for marriage:

a. Article 6 paragraph (2), a person under 21 (twenty-one years old) must obtain permission from both parents.

b. Article 7 paragraph (1), marriage is only permitted if the man is 19 (nineteen) years old and the woman is 16 (sixteen) years old.

c. Article 47 paragraph (1), children who have not reached the age of 18 (eighteen) years old or have never been married are under the supervision of their parents as long as their powers are not revoked.

d. Article 50 paragraph (1), a child who is not yet 18 (eighteen) years old or has never been married, who is not under parental authority, is under the authority of a guardian.

The central norms related to marriage dispensation in Law Number 16 of 2019 are to be allowed to marry when men and women have reached the age of 19 and the need for parental consent when they have not reached the age of 21. Before granting a dispensation, the court (the examining judge) must listen to the opinions of the prospective bride and groom. The marriage can be carried out if they comply with statutory provisions. Underage marriages often impact social life, causing legal problems (Rini Apriyani, 2012).

The pros and cons of underage marriage is an issue of controversy in society, especially the issue of the minimum age limit for a child to marry. The intersection of two legal systems, Sharia law, and national law, is inevitable because both regulate marriage and children's rights as parties in a marriage. Determining the age of marriage is seen as an effort of the government to reduce the problem of underage child marriage. Imprint E. Cammack expressed this in an article entitled "Islamic Law in Indonesia's New Order" (Euis Nurlaelawati, 2010).

As a follow-up to the revised marriage age mandated by Law Number 16 of 2019, the Supreme Court issued Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Trialing Applications for Marriage Dispensation. The judge in determining the marriage dispensation must be based on Articles 2 and 3 of Supreme Court Regulation Number 5 of 2019, which states that: The basis for the judge

to decide on the application for marriage dispensation is based on the principles: the best interests of the child, the right to life and child development, respect for the opinion of the child, respect for human dignity and worth, non-discrimination, gender equality, equality before the law, justice, benefits, and legal certainty. While the objectives of enacting Supreme Court Regulation Number 5 of 2019 are: Implementing the principles referred to in Article 2, guaranteeing the implementation of a justice system that protects children's rights, increasing parental responsibility in the context of preventing child marriage, identifying whether or not coercion exists behind the application for dispensation of marriage and realizing the standardization of the process of adjudicating applications for marriage dispensation in court.

The court plays a vital role in granting dispensation for marriage, and the judge is the subject. A judge must scrutinize more strictly and only efficiently accept applications for marriage dispensation submitted with good reason. It should be noted that the court may refuse due to consideration of the maturity age of the bride and groom. However, it remains within the limits of the judge's independence in processing cases. The strength of proof is the capital of the power of a judge's decision because certainty will be obtained in the judge's decision (Mukti Arto, 2003).

The government has issued regulations to complicate underage marriages. However, the fact is that the judiciary, both the Religious Courts and the District Courts, have made a significant contribution to the occurrence of underage marriage cases because they are the final gate of the filtering layer of efforts to prevent underage marriages. Regulations regarding the age limit for marriage are regulated in Law Number 1 of 1974 concerning marriage, amended by Law Number 16 of 2019, Compilation of Islamic Law and Regulation of the Supreme Court of the Republic of Indonesia Number 20 of 2019 concerning Marriage Registration. The minimum age requirement to enter a marriage can be violated by applying for a marriage dispensation in court. The increase in requests for marriage dispensation is generally due to the increasing amount of early marriage, but it is restricted by national law regarding the

age limit for marriage. As a result, to obtain legality as stipulated in the Marriage Law (UUP), submitting a marriage dispensation application for those who wish to enter into an underage marriage is a legal step that must be taken (Levana Safira, 2021).

The Marriage Law (UUP) in Article 7 mandates efforts to complicate underage marriages by requiring the parties or prospective bride and groom to obtain a dispensation from the court as a condition for carrying out underage marriages. However, in the end, it boils down to the reality of the dynamics of life in society. On the part of judges, they do not have many choices to consider when faced with the situation of the prospective bride and her family (Djoko Prakoso dan I Ketut Murtika, 1987).

It is contained in Article 7, paragraph 2 of the Marriage Law, which states that the problem regarding the limited age of marriage is that when married under the age of 19, a request for dispensation can be requested to the court or other officials submitted by both parents of the man and woman while still considering the precautions and urgent reasons accompanied by sufficient evidence. This marriage dispensation arrangement can be interpreted as a legal policy to annul deviations that occur in society to obtain a solution when underage children enter into marriage. This means that Article 7 paragraph (2) still opens up an interpretation of the possibility of marriage before the age of 19 by applying for a marriage dispensation (Muhammad Habibi, Miftakhul Marwa, 2021).

2.3 *The Concept of Restricting the Age of Marriage*

Determination of the age limit for marriage is aimed at the benefit and favor of the bride and groom. To ensure the achievement of this goal, the principle of limiting the age of marriage is stipulated as stated in the general elucidation of Law No. 1 of 1974 concerning Marriage Number 4 (d) that the main principle in the policy of limiting the age of marriage is about the mental and physical maturity of the bride and groom, which is intended so that each marriage can be a good marriage and produce healthy offspring; not just a matter of age. Because of this, apart from setting restrictions on the minimum age for marriage, policymakers also provide room for underage marriages to be carried out through

Marriage Dispensation based on the provisions of Article 7 Paragraph (2) previously described (Musyarrofa Rahmawati, et.al., 2018).

Regarding the age limit for marriage related to the marriage dispensation in the justice system, especially for the prospective bridegrooms who do not meet the legal requirements for marriage age. Based on Supreme Court Regulation No. 5 of 2019, the Dispensation of the Religious Courts is a stipulation in the form of dispensation for prospective underage bridegrooms to marry as an exception to the limitation of marriage age. The court, through the Panel of Judges, controls the main principle of the policy of limiting the age of marriage and then assesses, weighs, and decides whether a person is physically and mentally mature enough to carry out a marriage despite the underage so that he can realize the goals of marriage well without ending in divorce and get excellent and healthy offspring (Syeh Sarip Hadaiyatullah, dan Nurul Huda, 2020).

The marriage age limit that has been conceptualized in the policy results in the form of a law also has a good impact on the health of the bride and groom. From the health side, women in her sixteen years of age are very vulnerable to the risk of health problems when undergoing marriage, both in the context of husband and wife sexual relations or during the process of pregnancy and childbirth. Dr. Fransisca Handy stated that at least there are five health consequences of pregnancy under the age of 18, which are considered as a woman's unpreparedness for pregnancy, from the mother's mental health, infectious diseases, pregnancy disorders, childbirth problems, to the health of the baby she gives birth to (Nahdiyanti et al., 2021).

Based on the legal considerations above, the need to determine the age limit for marriage, especially for women, is relatively adjusted to the development of various aspects, from health to socio-economic factors. No guarantee increasing the age limit for marriage for women from sixteen to eighteen years will further reduce the divorce rate, overcome health problems, and minimize other social issues. It does not infer that there is no need to make any efforts, especially preventive measures, to prevent the occurrence of child marriage which is feared will cause

various problems, which according to the court, are concrete problems that occur not purely due to the mere age aspect. Suppose it is desired to change the marriage age limit for women. In that case, this can be attempted through a legislative review process in the scope of legislators (DPR) to determine the ideal minimum age limit for prospective bridegrooms, especially for future brides (Hasanain Haikal dan Abdul Hadi, 2026).

2.4 Restrictions on the Age of Marriage in Law

Article 6 paragraph (2) of the Marriage Law number 1 of 1974 has stated to marry someone under 21 (twenty-one) years old must obtain permission from their parents (RI Supreme Court, 2016). Based on some of the descriptions regarding the age limit for marriage above, this research used the age limit according to law number 16 of 2019 amendments to law number 1 of 1974 concerning marriage. Therefore, the underage marriage to be applied for the determination of marriage dispensation refers to the provisions of law number 1 of 1974, which was explicitly revised in Article 7 paragraph (1) concerning the age limit for marriage initially allowed man age of 19 (nineteen) and woman age of 16 (sixteen), was later revised in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, that a person can get married at the age of 19 (nineteen) for both men and women.

Law Number 23 of 2002 concerning Child Protection emphasizes that the responsibilities of parents, families, communities, government, and the state are a series of activities carried out regularly and continuously to protect children's rights (Law of the Republic of Indonesia Number 23 of 2002). The action aims to create the best life for children. Efforts to protect children must be carried out as early as possible, from when the fetus is in the womb until the child is 18 (Mardi Candra, 2018). The child protection law is positioned as a legal protection to provide child protection based on non-discriminatory principles. However, if the child is already married, the legal guardian is to get rights as a child, namely the child's fundamental rights. The basic rights obtained by a married child include the right to live, grow, develop, and participate, as well as the right to be protected from all forms

of violence and discrimination (Moch. Fahrur Risqy, 2015).

Marrying too early, both physically and mentally, can cause problems in the future because the prospective husband and wife do not know the psychology of marriage. Also, the child's mental readiness has not been formed so that when a problem occurs, there is a potential for disputes and quarrels with the partner, even worse to the point of divorcing. The marriage law has set a limit on the age of marriage. Still, the law also provides for the possibility of deviating from this age limit, and this deviation is called a marriage dispensation, provided that there must be a very urgent reason (A. Zuhdi Muhdlor, 1995).

The existence of a minimum age limit for marriage is a form of legal protection for children. The health, welfare, and future of children must be safeguarded. This will not happen if underage marriages are still common. Given that early marriages are prone to domestic violence, sexual violence, and divorce (B. Rini Heryanti, 2021).

3. Methodology

This research uses qualitative research by selecting field research for obtaining data and case studies as the research approach. The focus is to describe a research process with something in general where there are cases that have implications for problems and obstacles. The purpose of choosing this research design is that the researchers can explain the issues that they want to examine regarding the reasons put forward in the marriage dispensation at the Tolitoli Religious Court after the amendment of the marriage law from Law Number 01 of 1974 to Law Number 16 2019 and explaining the relevance of research theory.

The data collection techniques were through three techniques. They were: the observation technique through direct observation of the researcher on some initial data at the research location; the interview technique, specifically in-depth semi-structured interview; and the documentation technique, to match the results of observations and interviews with documents relevant to the research focus. This

research utilized data analysis techniques in three ways, namely data reduction, presentation, and data verification techniques, then the final part of the data analysis technique by drawing conclusions based on the findings and verifying the data by interpreting each symptom obtained from the field and noting the regularities to get the complete configuration.

The author also uses a cultural anthropological approach. This approach states that religion is not studied or researched by itself but is examined by relating it to other aspects. The research design is a qualitative research design with an ethnographic approach. The ethnographic approach is a method that has the vision of studying and understanding a culture directly. The research location is in Sukamaju Village, South Batui District, Banggai Regency.

Data sources are primary data and secondary data. Data was gathered through direct, in-depth interviews and written material analysis^{1,2}. The interviews were conducted with the community figures and local citizens. The data, then, was analyzed through data reduction, data presentation, and verification. From the data analysis, the researchers built themes by categorizing the data according to its similarities. The researcher also checks the validity of the data through the verification of , the data from different sources.

4. Results and Discussion

4.1 Procedures and Considerations of Judges towards the Reasons for Submitting a Marriage Dispensation

Regarding the procedure of marriage dispensation in the Religious Courts, it can be referred to as legal discovery. This is not because

¹ Rusli, R., & Nurdin, N. (2021). Understanding Indonesia millennia Ulama online knowledge acquisition and use in daily fatwa making habits. *Education and Information Technologies*. doi:10.1007/s10639-021-10779-7

²Rusli, R., Hasyim, M. S., & Nurdin, N. (2021). A New Islamic Knowledge Production And Fatwa Rulings: How Indonesia's Young Muslim Scholars Interact With Online Sources. *Journal of Indonesian Islam*, 14(2), 499-518.

there are no regulations. Still, Article 7 Paragraph 2 of the Marriage Law does not regulate what is referred to as deviation, so the judge must determine the meaning of deviation. Before submitting a marriage dispensation at the Tolitoli Religious Court, it is necessary to consider the requirements. According to the results of an interview with Mrs. Rika Purnamasari, who served as a recipient of complaints at the Tolitoli Religious Court, she stated that:

Starting a trial, of course, several requirements need to be met when registering a case. Likewise, the marriage dispensation case was submitted as a form of application in this court.

Considering the explanations mentioned, it can be understood that the marriage dispensation submitted to the court was due to the existence of a marriage age limit in Law Number 1 of 1974, amended to Law Number 16 of 2019 concerning Marriage. The marriage will be conducted if the Religious Court grants the application for a marriage dispensation through a trial process. Regarding the marriage dispensation trial process at the Tolitoli Religious Court, it can be explained as follows:

a. The procedure for applying for a marriage dispensation filed at a religious court is required to go through several stages, namely:

The process for applying is the same as filing a lawsuit. The following is the procedure for bringing a case to the Religious Court:

1) Pre-table (*prameja*)

Before applying, the applicant should visit the *prameja* to get an explanation of how to handle a case and make an application letter. At *prameja*, applicants can also ask for help preparing the applicant letter.

2) Table I

After the application letter is made, it must be signed and submitted to the Registrar's Office of Application in Table I. Here the applicant will receive information regarding the amount of the nominal down payment that must be paid in

fulfilling the case fee, and the Power of Attorney to Pay that must be made. The nominal amount of the down payment fee can be estimated to be sufficient to settle cases. This is based on Article 193 RBg / Article 182 paragraph (1) HIR / Article 90 paragraph (1) UUPA, which includes:

a) Registrar fees and stamp duty fees.

b) Expenses for examination, expert witnesses, interpreters and oath fees.

c) Local examination fees and other judge's actions.

d) The costs of summons, notices, and other matters relating to that case by court order.

People who can't afford it are still allowed to sue for free or free of charge by attaching a certificate from the local Lurah/Village Head, which has been approved by the Camat (sub-district head), explaining the financial condition. The down payment for court costs is calculated at Rp. 0.00 and stated in SKUM for those who can't afford it.

3) Cashier Applicant

From Table I, Applicants are then directed to the cashier applicant by handing over the application letter and SKUM to the cashier. Then the cashier will take the money and record it in the court costs journal, sign and give the case number and 'paid off' sign to the SKUM. Finally, he will return the application letter and SKUM to the applicant.

4) Table II

From the cashier, the applicants are directed to Table II to submit the application letter and SKUM for which the case fee has been paid. Table II will be on duty and explain the next process. Table II served for:

a) Numbering the application letter according to the number given by the cashier. The Desk II officer affixes his initials as a sign that it has been registered.

b) Submitting one application letter that has been registered along with one copy of SKUM to the applicant.

After receiving the case file, the chairman of the panel of judges or the single judge assigned examines it as part of the process of settling the case for a marriage dispensation application at the Religious Courts. The day, date, and time of the case trial are determined, and the parties must be summoned to appear on the day. The parties are allowed to prepare evidence for the trial. The court clerks are usually given evidence from the officer in charge of checking the conditions of the marriage dispensation before the trial. The parties to the case are summoned to the courtroom after the trial is opened and declared open to the public by the panel chairperson or the single judge who presides over the proceedings.

Furthermore, the panel chairman or the single judge advises the Petitioner and the prospective bridegroom by outlining the reasons and consequences of underage marriage and suggesting that the marriage be postponed. If the advice is unsuccessful, the application submitted and registered by the applicant at the Religious Court Registrar is read out by the panel chairman or the single judge. Then, the judge asks the applicant and the prospective bridegroom, a series of questions, to begin the examination. The applicant then submits documentary evidence, which is examined further by the panel chairman or single judge. The evidence submitted is:

a) A copy of the birth certificate in the name of the applicant's child issued by the village/kelurahan head and given to the chairman of the panel or single judge who will be coded P.1.

b) The Office of Religious Affairs issued a letter of notification of refusal to marry model N-9.

The evidence above is a small part of the evidence submitted during the trial to apply for a marriage dispensation in general. Other evidence can be found on the decision sheets issued by the Tolitoli Religious Court.

After the evidence has been fulfilled, the panel chairman or the single judge takes a

suspension in the trial. All applicants are welcome to leave the courtroom when the trial is suspended. After the suspension of the trial is lifted, the applicants are again summoned into the courtroom to hear the stipulation in the verdict to be read out.

Judges are specifically prohibited from deviating from the legal parameters governing the problem in question when deciding. Because the judge's decision is a statement outlined in writing and stated by the judge in an open trial due to a case examination, it will become a legal certainty and must be implemented. When making a decision, a judge sees the appropriate considerations taken as follows:

a. Legal Considerations

The point is that all decisions made by judges are based on the legal evidence submitted at trial. Some of the requirements as evidence in legal considerations stipulated in the law are documentary evidence which can be referred to as written evidence consisting of proof in the form of a copy of the birth certificate issued by the Village Head and a Notification Letter of Refusal to Proceed with Marriage (Model N-9) issued by the Office of Religious Affairs. Then, the evidence from witnesses is unwritten as supporting evidence for the application to be granted. Pieces of evidence that originate from witnesses usually ordered by the judge to be presented in court are two people. However, because the application for dispensation from marriage is a voluntary request, witnesses may only be present if needed during the trial.

It cannot be denied that the judge's decision is also based on Islamic law, which stipulates that avoiding harm is prioritized over bringing good and that evil must be eliminated. In other words, under Islamic law, no human being is permitted to harm himself or others, minor or severe. Any loss should be made up for in theory, but doing so should not result in additional losses being incurred, no matter how minor or severe. Selecting a loss that is

significantly less severe than what has already been incurred is necessary if the original injury cannot be eliminated without incurring another loss. The judge considers that if they are not allowed to get married, it will result in sin, and an unregistered marriage will disrupt legal procedures or the legal rights of the children she gave birth to.

b. Community Justice Considerations

Judges have independence and authority as executors of justice in carrying out their duties. In the process, the judges are not influenced by any organization because they are only responsible to the law and the judicial system. Furthermore, in making a decision, the judges must consider all the findings produced during the trial. These findings should all be considered for further consideration to establish the law. Not all cases are covered by the law. Therefore, the judge must investigate and find the best law regarding the cases the original law has yet to cover. Judges use instruments to learn relevant facts about the case to be decided, evaluate the available evidence, use the analysis findings to decide on the law, and apply it to the problem at hand.

Most of the area of Tolitoli Regency is rural. A pair of teenagers of the opposite sex who often gather together will become the target of gossip from their neighbors and the community. The parents will be worried and choose to marry off their children to prevent gossip. Lack of parental supervision and religious education significantly contribute to promiscuity, leading many children to request marriage dispensation. This explanation is following the information provided by Mr. Sofyan Najamuddin:

Because through marriage, the wrong perception of society can be avoided, especially the emergence of slander.

Mr. Arifuddin's statement supports that the marriage dispensation should be granted:

Because it is a solution for people who wants to marry off their children, especially those who are pressured due to promiscuity.

A judge at the Tolitoli Court who handled the marriage dispensation case explained that the factors applying to marriage dispensation in the Religious Courts were classified into two types, preventive and curative aspects. Apart from these reasons, there were also factors of the parents of the prospective husband and wife. To reduce the family's financial burden and low level of education, both bride and groom intend to do underage marriage.

According to the statement of Mr. Ali Akbarul Falah as Deputy Chairperson of the Tolitoli Religious Court:

One way to support restrictions on early marriage is through the Religious Courts, which are expected to be able to stop underage marriage through the decision on a request for marriage dispensation.

However, the Tolitoli Religious Court has accepted all applications for marriage dispensation submitted for various reasons and points of view.

4.2 *The Relevance of Maqashid Shariah and Sociological Jurisprudence to the Reasons for Filing Marriage Dispensation at the Tolitoli Religious Court*

The relevance of settling the marriage dispensation case at the Tolitoli Religious Court is seen from the maqashid shariah theories formulated by Imam Asy-Syathib. In determining whether to grant a marriage dispensation, the judge considers the *maslahah dharuriyyah*, or benefits related to the present and safeguarding the religion (*ad-Din*), maintaining the spirit (*al-Nafs*), keeping the mind (*al-'Aql*), maintaining offspring (*an-Nasl*), and maintaining property (*al-Mal*) (Usman Betawi, 2018). In addition, *Maslahah Hajjiah* is something that someone needs to make life easier and remove obstacles to maintain the five elements mentioned above. Pregnancy out of wedlock or other circumstances may require marriage dispensation.

The primary purpose of granting a marriage dispensation is to protect those guilty of marrying too young because of adultery or already pregnant, hoping it will change their lives. The decision of the Tolitoli Religious Court, with file number 159/Pdt.P/2022/PA. Tli, the judge, has granted the case request. As the man's father, the applicant wants his son to marry at 18 and 1 months, with his prospective wife, who is 16 years old and 9 months old. He hoped that prohibited acts by religion would occur if the marriage was carried out immediately because the applicant's child had been engaged for more than one year. Previously, the applicant tried to register his child's marriage at the Religious Affairs Office but was unsuccessful because the child had yet to reach the legal age of marriage. Then, the applicant submits a marriage dispensation application to the Tolitoli Religious Court. According to Law Number 16 of 2019 Amendment to Law Number 1 of 1974 Concerning Marriage, which states that "marriage is only permitted if the male and female parties reach the age of 19", this is following Article 7 paragraph (1) and (2). If there are deviations from paragraph (1) of this article, the parents of the man or woman can ask for dispensation from the court or other officials.

The judge uses the fiqh rule, "*dar-ul mafasid muqoddamun 'ala jalbil al-mas a lih*" to determine whether the application for a marriage dispensation can be approved. This rule states that avoiding harm (mafsadah) must take precedence over seeking benefit (maslahah). Because the applicant's child and prospective partner have been in a relationship for a long time and have decided to start a family, and cannot separate. There will be additional violations of syar'i law and even more significant losses for both of them. To avoid criticism from society, the marriage should be carried out immediately.

The relevance of settling the marriage dispensation case at the Tolitoli Religious Court is seen from the theory of justice according to Roscoe Pound that the law is called an instrument of social engineering by the balance of interests, which describes it that way (Yulianto Syahyu dan Diana Fitriana, 2021). The background and motivation behind the wish of the applicant's child to marry as soon as possible,

as well as the psychological, sociological, cultural, educational, health, and economic conditions of the child and parents, have all been considered by the judge in making his decision to grant a marriage dispensation. The judge has also confirmed that both parents have agreed to assume responsibility for their children's financial, social, health, and educational needs. The marriage dispensation stipulated for the social impact on the surrounding environment has received legal considerations from the judge. By including these requirements, the law has the potential to be used as an instrument for social change and to reduce the prevalence of child marriage in Tolitoli. The legal problems that occur in the community, especially the people in Tolitoli Regency, are expected to be able to bring about social change. Pound revealed that the efforts that must be implemented to bring about social change stem from the essence of law, in which one of the efforts offered by Pound is to give judges the flexibility to use reason in deciding a case, such as the case of marriage dispensation. It is hoped that the demands will still pay attention to the interests of the litigants to expect justice from the results of the judge's decision (Bernard L. Tanya et al., 2019).

5. Conclusion

First, the procedure for filing a marriage dispensation at the Tolitoli Religious Court considers several policies that have been issued by the court, such as procedures for fulfilling administrative requirements and the requirements for being a witness. The judge's consideration of the reasons for filing a marriage dispensation at the Tolitoli Religious Court is based on legal concerns and reviews of justice for the community. The three components of a good judge's decision-making process are legal clarity, fairness, and public benefit. Supreme Court Regulation Number 5 of 2019, Compilation of Islamic Law, Marriage Law, and Regulation of the Minister of Religion Number 11 of 2007 concerning Marriage Registration, all used by judges to decide applications for marriage dispensation. The consideration of the Tolitoli Religious Court judge regarding community justice is based on the judge's examination of the applicant's physical and psychological suitability

to become parents and their financial situation. The judge's basis for rejecting the request for a marriage dispensation is that the candidate needs to be financially, intellectually, or physically able to marry, and there is no urgent need. Before deciding to grant or reject the request for dispensation, the court considers all aspects of life, such as maturity related to age, health, economy, and other factors, including whether there is an element of coercion in marriage.

Second, the relevance of maqashid sharia and sociological jurisprudence in looking at this case have common aims to realize protection for children in terms of benefits and instruments of social change and reduce the prevalence of child marriage in Tolitoli Regency. The judge's consideration in granting the request for a marriage dispensation reviewed through maqashid shariah and sociological jurisprudence needs to be studied more deeply so that the results of the decision from the application can help to realize a household life that is *sakinah*, *mawaddah*, and *rahmah* because marriage is not only for oneself but also for other people who are called family.

REFERENCES

- Jumat, G. (2023). Tinjauan Hukum Islam Terhadap Hak Perempuan Dalam Memilih Pasangan Hidup. *Comparativa: Jurnal Ilmiah Perbandingan Mazhab dan Hukum*, 4(2), 169-193.
- Nurdin, N., & Pettalongi, S. S. (2022). Interpretive case study to understand online communication in an e-tendering project implementation. *Jurnal Manajemen Komunikasi*, 7(1), 39-54.
- Nurdin, N., & Pettalongi, S. S. (2022). Menggunakan Paradigma Studi Kasus Kualitatif Interpretatif Online dan Offline Untuk Memahami Efektivitas Penerapan E-Procurement. *Coopetition: Jurnal Ilmiah Manajemen*, 13(2), 155-168.
- Rizal, Muhammad, Pettalongi, Sagaf S., Hamka, Hamka, Adhar, Sandhi, & Deeteng, Asman. (2023). Reconstruction of Religious Education Policy through Regional Regulations of Palu City. *INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY RESEARCH AND ANALYSIS*, 06(09), 3950-3957.
- Rusli, Rusli, Hasyim, Muhammad Syarif, & Nurdin, Nurdin. (2021). A New Islamic Knowledge Production And Fatwa Rulings: How Indonesia's Young Muslim Scholars Interact With Online Sources. *Journal of Indonesian Islam*, 14(2), 499-518.
- Rusli, Rusli, & Nurdin, Nurdin. (2021). Understanding Indonesia millennial Ulama online knowledge acquisition and use in daily fatwa making habits. *Education and Information Technologies*. doi:10.1007/s10639-021-10779-7
- Rusli, Rusli, & Nurdin, Nurdin. (2022). Understanding Indonesia millennial Ulama online knowledge acquisition and use in daily fatwa making habits. *Education and Information Technologies*, 27(3), 4117-4140. doi:10.1007/s10639-021-10779-7
- Santoso, Fandi Nur Cahyo, Nurdin, Nurdin, & Pettalongi, Adawiyah. (2022). *Implications of the Implementation of Multicultural-Based Islamic Education in SMA Negeri 4 and SMKN 1 Poso*. Paper presented at the Proceeding of International Conference on Islamic and Interdisciplinary Studies, Palu.
- Yamani, Gasim, & Nurdin, Nurdin. (2023). A Living Quran Exploration of Tawassul Practices in Palu City: A Shortcut or a winding road to God's Grace? *Al Quds: Jurnal Studi Alquran dan Hadis*, 7(2), 385-396.
- Yin, Robert K. (2011). *Qualitative Research From Start to Finish*. New York: The Guilford Press.