

JUDGE'S CONSIDERATIONS FOR MARRIAGE DISPENSATION AT THE SIDENRENG RAPPANG RELIGIOUS COURT (SOCIO-JURIDICAL ANALYSIS)

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Abstract

Requests for dispensation of marriage at the Sidenreng Rappang Religious Court have increased from year to year, and in 2019 there were 222 cases. describe the development of mating dispensation. (2). Analyzing the background to the marriage dispensation application, and (3). Describe and analyze the judge's consideration of the intent of the Marriage Law in article 7 paragraph (2) of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974, because the intention of deviation is not explained, so a separate interpretation is needed from the Judge. And how the Judge in his considerations must prioritize and guarantee the best interests of the childfulfilled, so as to suppress early marriage.

This type of research is descriptive qualitative, the research location is at the Sidenreng Rappang Religious Court, for primary data sources, namely copies of decisions, marriage laws, Judges, Registrars and Justice Seekers and secondary data sources, namely from Annual Report documents and LKjIP Court case data Religion Sidenreng Rappang, several books as references. To solve the problems in this thesis the author uses the theory of judges' considerations (Mukti Arto 2007), this is also supported by the maqashid al-Syariah theory to parse Islamic law against requests for dispensation of marriage.

Based on the results of this study, the authors formulated conclusions (1). The dispensation for marriage at the Sidenreng Rappang Religious Court has always increased from year to year and in 2019 experienced a very sharp increase. (2). The background is cultural, educational, economic, environmental and pregnant outside of marriage. (3). Juridical analysis of the legal considerations of the judges of the Religious Court of Sidenreng Rappang regarding dispensation of marriage examines article 7 of the Marriage Law Number 16 of 2019, guided by PERMA Number 5 of 2019 as a guideline for adjudicating applications for dispensation of marriage, and based on fiqhi principles and paying attention to maaqashid al-Syariah. It turned out that it ignored several administrative requirements that could support the judge's considerations in realizing and guaranteeing the best interests of the child.

Keywords: Consideration of Judges, Marriage Dispensation, Socio-Juridical Analysis.

1. INTRODUCTION

The State and Government set a minimum age limit for a person to marry because they have an interest as well as an obligation to oversee and direct marriage as a social institution that protects and at the same time elevates the dignity of women in Indonesia, to provide protection and to ensure that marriages can run well, are healthy and maintain their longevity.

- (1) Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years.
- (2) In the event of deviation from paragraph (1) of this article, you may request dispensation from the court or other official appointed by both the male and female parents.¹

Article 7 of Law number 1 of 1974 contains several principles, to maintain the health of husband and wife and offspring, to guarantee the lofty ideals of marriage, namely the principle of voluntary, family participation and maturity of the prospective bride and groom (physical and mental maturity of the bride and groom).²

This provision is then reaffirmed in the Compilation of Islamic Law (KHI) Article 15 paragraph (1). The birth of Law Number 16 of 2019 concerning Amendments to RI Law Number 1 of 1974 concerning Marriage has given a new direction to marriage law in Indonesia. This marriage age limit was later amended, where the age of marriage that is permissible for marriage is 19 years for both grooms and brides. This change is considered phenomenal, because in addition to the change having a major impact on the marriage regulations, this change has also occurred in a family law rule that has been in force in Indonesia since 44 years ago, namely since the birth of the Republic of Indonesia Law Number 1 of 1974.

¹http://Hukum.unsrat.ac.id/uu/uu_1_74.htm, Law Number 1 of 1974 concerning Marriage, p.2.

²Mufidah, Contemporary Gender Issues in Family Law, (Malang: UIN-MALIKI PRESS, 2010), p.63.

Applications for marriage dispensation at the Sidenreng Rappang Religious Court throughout 2019 granted 220 requests for marriage dispensation and rejected 2, seems to often reap criticism from various circles. The Religious Courts are considered insensitive to the family planning program, the Religious Courts are agents of early marriage, and a number of other similar sneers. In such conditions the judge's considerations must still maintain the intent of the law, namely so that early marriage does not occur with all the bad consequences that arise. The judge must consider and guarantee that his decision is in the best interests of the child. On the other hand, the Judge also considered the cultural factors of the Bugis community in general and in particular the Sidenreng Rappang community, where some of them still marry their children at an early age, which is a form of gratitude because their responsibilities are ending soon. because their children quickly get the provision of a mate and invitations have been circulated so that the culture of siri is one of the judges' considerations in making decisions, and others (for example), but also from legal certainty, a sense of justice and expediency. The change in the age of marriage in the Marriage Law Number 16 of 2019 has further increased the number of requests for dispensation from marriage at the Sidenreng Rappang Religious Court.

1. Theoretical Analysis of Marriage Dispensation

a. Judge's Consideration

Law as a means of regulating the interests of society with all its duties and functions must be upheld, therefore officials or institutions are needed to oversee the implementation or enforcement of the law. In the general explanation of law number 48 of 2009 concerning judicial power. Described in the 1945 Constitution Article 24 paragraph (1) states that "judicial power is an independent power to administer justice in order to uphold law and justice". The judge in examining a case also requires evidence, where the results of the evidence can be taken into consideration by the judge in deciding the case. Proof is the most important stage in every examination during a trial, proof aims to obtain certainty that an event/fact that has been submitted actually happened, its truth can be proven in order to obtain a correct and fair judge's decision. According to

Mukti Arto, in essence the judge's consideration should also contain the following matters:

- 1) Main issues and things that are recognized or arguments that are not denied.
- 2) There is a juridical analysis of the decision in all aspects concerning all the facts/things that were proven in the trial.
- 3) There are all parts of the petitum of the plaintiff that must be considered/tried individually so that the judge can draw conclusions about whether or not the evidence and whether the claim can be granted/not in the verdict.³

The judge's considerations will be contained in the decision, and a good decision is a decision that fulfills the three elements of aspects in a balanced manner, namely as follows:

- 1) Legal certainty, the law must be implemented and strictly enforced for every concrete event and there must be no deviation. Legal certainty provides protection to the public from arbitrariness from other parties.
- 2) Justice, the law is binding on everyone and does not discriminate between conditions, status or actions that humans commit.
- 3) Benefits

b. The Basic Concept of Marriage

1) Definition of Marriage

Marriage in the Qur'an the word na-ka-ha implies marriage as in QS An-Nisa`/4:3.

وإن خفتن ألا تعدلوا فواحدة أو ما ملكت أيمانكم ذلك أدنى ألا تعدلوا
وإن خفتن ألا تعدلوا فواحدة أو ما ملكت أيمانكم ذلك أدنى ألا تعدلوا

Translation:

"And if you are afraid that you will not be able to do justice to (the rights of) orphaned women (if you marry them), then marry (other) women you like: two, three or four. then if you are afraid that you will not be able to act fairly, then (marry) only one".

Likewise, the word zawa-ja in the Qur'an means marriage.

According to the Shari'at, marriage also means contract, while the meaning

³Mukti Arto, Practice of Civil Cases, p.141.

of sexual intercourse is only a metaphor. The argument for this opinion is the many definitions of marriage contained in the Qur'an and al-Hadith as a contract. In fact it is said, that marriage is not mentioned in the Qur'an but is interpreted as a contract. However, according to the valid opinion, the actual meaning of marriage is a contract, while wathi' is a figurative meaning or majaz.⁴

c. Marriage Purpose

As Muhammad Abu Ishrah, a fiqh scholar, defines marriage as:

عَقْدٌ يُفِيدُ حَلَّ عَشْرَةِ بَيْنِ الرَّجُلِ وَالْمَرْأَةِ وَتَعَاوُنِهِمَا وَيَجِدُ مَالِكِلَ يَهُمَا مِنْ حُقُوقٍ
وَمَا عَلَيْهِ مِنْ واجِبَاتٍ.

"Marriage is a contract that provides legal benefits for the permissibility of having family relations (husband and wife) between a man and a woman and holding mutual help and providing limits on the rights of the owner and the fulfillment of each other's obligations".

The purpose of marriage according to Islam is as follows: (1). To fulfill the demands of basic human instincts. (2). To fortify noble morals, and (3). To uphold an Islamic household.

a. Terms and Pillars of Marriage

Ahmad Rofik in his book Islamic Law in Indonesia states that the conditions for the marriage are:

- i. Prospective groom, (2) Prospective bride, (3) Marriage guardian, (4) Witness marriage and (5) Ijab Qabul.
- b. Marriage Procedures according to the Marriage Law are regulated in article (10) and article (11).

2) Marriage Dispensation

a. Definition of Marriage Dispensation

Marriage dispensation means relief from an age limit in carrying out a bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on belief in the One Supreme God.

b. Marriage Age Limit According to Fiqh

⁴Mizbah, Fiqh, (Jakarta: Azzam Library, 2016, cet.1), h. 36.

In Islam there is no age limit in carrying out marriage but Islam only shows the signs, in this case also Islamic scientists have different opinions about these signs. The Qur'an concretely does not specify an age limit for those who will get married. Limits are only given based on the qualities that must be married by them as the word of Allah swt. in QS An-Nisa'/4:6.

دَفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ Amen

Translation:

“And test the orphans until they are old enough to marry. Then if in your opinion they are smart (good at maintaining wealth) then give them their wealth ”.

c. Marriage Age According to the Marriage Law

The age of marriage is regulated in the Marriage Law number 1 of 1974 and the revision of the Marriage Law number 16 of 2019 in article 7, namely the age of men and women is 19 years

2. METHOD

This type of research is field research. This research takes primary data from the field which is studied intensively accompanied by analysis and re-examination of all data or information that has been collected.

This research focuses on the natural paradigm or naturalistic paradigm. That is, this research assumes that empirical facts occur in a socio-cultural context that are interrelated to one another, therefore every social phenomenon is expressed holistically. This naturalistic paradigm illustrates that the behavior and meaning adopted by the people of Sidenreng Rappang can only be understood through an analysis of the natural environment (natural setting). This paradigm will give birth to a study of the Sidenreng Rappang community as one of the non-human instruments that is difficult to use flexibly to capture these various realities and interactions.

3. RESULTS AND DISCUSSION

Development of a Marriage Dispensation Application at the Sidenreng Rappang Religious Court. Throughout 2019 the Sidenreng Rappang Religious Court has granted 222 requests for dispensation from marriage and rejected 2

cases as of 31 December 2019⁵. From the results of the meeting between the Religious Court and the Sidenreng Rappang Regency Government, according to the invitation number: 094/3117/DPMDPPA, dated June 24 2019 regarding the meeting in the context of reducing the number of child marriages. And the results of the meeting, that the dispensation of marriage in Sidenreng Rappang Regency is included in the top five in South Sulawesi.⁶ So that the Religious Courts often reap criticism from various circles.

According to data recorded at the Sidenreng Rappang Religious Court over a period of one year, namely in 2016, there were 91 cases of marriage dispensation requests, in 2017 there were 93 cases of marriage dispensation requests, or an increase of 2.1%, in 2018 there were 100 cases or an increase of 7.5% and in 2019 there were 224 cases. The increase in cases reached 124%.⁷ Requests for marriage dispensation have increased from year to year. The increase in the number of dispensations for marriage is also due to the revision of the Marriage Law number 16 of 2019, namely the minimum age for marriage between men and women is 19 years.

1. Analysis of the factors behind the application for a marriage dispensation at the Sidenreng Rappang Religious Court

From the data obtained by the researcher in his research at the Sidenreng Rappang Religious Court, regarding the marital dispensation submitted at the Sidenreng Rappang Religious Court, there are several factors underlying the application for marriage dispensation at the Sidenreng Rappang Religious Court in 2019, namely:

a. Cultural Factors

The community will be proud if their children quickly find their match, because there is always a feeling of anxiety and fear when their daughters marry late. This is the case with the application for dispensation for marriage Number: 184/Pdt.P/2019/PA.Sidrap an. Cica Ibrahim bint

⁵Registrar of the Sidenreng Rappang Religious Court, Report on the Petition, the Sidenreng Rappang Religious Court. (on the SIPP Application and Case Statistics). 2020 year

⁶Religious Court Coordination Meeting with PEMDA.

⁷Archive of Case Data Reports of the Sidenreng Rappang Religious Court, Petition Case Reports, Sidenreng Rappang Religious Court. (on the SIPP Application and Case Statistics). 2020 year

Ibrahim, the results of the interview provided the following information: In the case of requesting dispensation for marriage with Number: 184/Pdt.P/2019/PA. Sidrap, is a petitioner with a decision rejected, because in the trial process Herlina gave information that in essence she was not willing to carry out the marriage and from a mental point of view she was not yet able to because she was too young, but because the parents' wishes asked to be fulfilled so the applicant's child complied.⁸

1) Economic Factors and Educational Factors

The increasing number of young marriages and requests for requests for dispensation at the Sidenreng Rappang Religious Court are increasing from year to year. think that marrying off their children is one of the solutions to lighten the burden of family life.

2) Environmental factor

In the case of a marriage dispensation application submitted at the Sidenreng Rappang Religious Court, one of the factors is that parents always feel worried about their children because of an unhealthy social environment. Dating is not something foreign to young people, including children. As a result of association in the children's environment, it affects the mindset and life of children, this is the case in the application for dispensation from marriage Number: 322/Pdt.P/2019/PA. Sidrap, due to environmental influences, was willing to sacrifice his schooling and asked for a dispensation from marriage, according to the results of an interview with the applicant, Mr. Salahuddin Rahman.

“Actually I don't want to marry my daughter yet, but because I have been in a relationship with her boyfriend for a long time, it's been two years and I often visit the woman's house, so the girl's parents feel worried and ashamed of the neighbors for being the object of gossip. So that the women's parents had a deliberation and asked the male parents' willingness to marry their children immediately, to avoid slander. And the children totally agree even though the age of the man is still under the provisions of the law, and while he is still in high school/vocational school and is willing to drop out of school in the hope that he will continue his parents' business. Actually both of them are not mentally ready to live a

⁸Cica Ibrahim, Petitioner of Marriage Dispensation, Interview, January 2, 2021.

household. However, it is the decision of both the woman's and the man's parents to get married as soon as possible.⁹

3) Pregnancy Factors Outside of Marriage

The factor of pregnancies outside of marriage that occurred and became the cause of the people of Sidenreng Rappang requesting dispensation of marriage even though the number was small, it cannot be denied that this factor was one of the causes of the application for dispensation of marriage at the Religious Court of Sidenreng Rappang. As the results of an interview with the judge, Mrs. Sitti Musyayyadah, stated:

“The marriage dispensation case that occurred at the Sidenreng Rappang Religious Court, due to the factor of getting pregnant out of wedlock is very low, compared to the Kendari, Barru, Parepare Religious Courts. Almost all requests for dispensation from marriage are submitted due to pregnancy, while in Sidenreng Rappang, the cultural influence is very strong, due to parents' desire to see their children marry quickly, economic and educational factors.¹⁰

Likewise with the statement of Hilma Ismail's mother:

“The number of requests for dispensation from marriage due to pregnancy out of wedlock at the Sidenreng Rappang Religious Court was far fewer, compared to the Religious Courts where I previously served, including the Religious Courts in Irian and Jenepono, all those who applied for dispensation from marriage due to pregnancy out of wedlock, were different from the dispensation case married at the Sidenreng Rappang Religious Court, Bugis cultural factors dominate, partly due to educational factors, and the influence of social media.¹¹

⁹Salahuddin Rahman, Petitioner of Marriage Dispensation, Interview, January 2, 2021.

¹⁰Sitti Musyayyadah, Judge of the Sidenreng Rappang Religious Court, Interview, January 28, 2021.

¹¹Hilmah Ismail, Judge of the Sidenreng Rappang Religious Court, Interview, January 28, 2021.

2. Considerations of Judges and Legal Basis in Determining Marriage Dispensation Decisions at the Sidenreng Rappang Religious Court

a. Definition and Basis for Legal Considerations

Concrete legal considerations must be set forth as an analysis, argumentation, opinion and conclusion of the judge.¹² Legal considerations are one of the most important aspects in determining the realization of the value of a judge's decision which contains justice, legal certainty and benefit for the applicant or seeker of justice. In order to achieve or realize the purpose of the law, the judge in legal considerations should contain the following matters:

a. The main issue of the argument

Marriage dispensation cases are civil cases that are filed voluntarily (application), voluntary cases have characteristics that make them different from contentiosa cases (lawsuits). The characteristics of the petition case are as follows:

- 1) The problem is one sided. This means that the problem requested by the applicant to be resolved is only purely related to the interests of the applicant and is not related to the rights and interests of other people.
- 2) The problems raised have no disputes with other parties.
- 3) Is one party or ex-parte. No other person or third party is drawn as a opponent.¹³

b. Juridical Analysis of All Aspects Decisions

In considering the law for determining the marital dispensation, the main legal considerations must be considered as regulated in the PERMA of the Supreme Court of the Republic of Indonesia Number 5 of 2019, namely:

- 1) Considerations regarding the judge's advice to the applicant, children, prospective husband or wife and parents or guardians of

¹²Lilik Mulyadi, *Shifting Perspectives and Practices from the Supreme Court regarding Decisions*, (Bandung: Citra Aditya Bakti, 2009) p.164.

¹³Yahya Harahap, *Civil Procedure Code* (Jakarta: Sinar Graphic, 2008) p.29.

the prospective husband or wife in order to understand the risks of marriage, related to the possibility of stopping education for children, the continuation of children in completing 12 years of compulsory education, the child's reproductive organs are not yet ready, the economic, social and psychological impacts for children, and the potential for disputes and domestic violence.

- 2) Consideration that the judge has heard the statement of the child for whom the marriage dispensation is requested, the prospective husband or wife, the parents or guardians of the child for whom the marriage dispensation is requested.
- 3) Considerations regarding the Child submitted in the application to know and approve the marriage plan; considerations regarding the psychological condition, health and readiness of children to enter into marriage and build a household life; and considerations regarding whether or not there is psychological, physical, sexual or economic coercion against children and/or families to marry or give birth to children.
- 4) Considerations regarding the protection and best interests of children as stipulated in statutory regulations and unwritten laws in the form of legal values, local wisdom, and a sense of justice that lives in society, and conventions and or international agreements related to child protection.
- 5) Consideration of very urgent reasons, namely the situation where there is no choice and it is imperative that the marriage be carried out and considerations regarding this reason are accompanied by sufficient evidence, namely a statement proving that the age of the bride and groom is still under the provisions of the law and a statement from a health worker supporting the parents' statement that the marriage is urgently carried out.
- 6) Consideration regarding the marriage of the applicant's child with the prospective husband or wife, there is no relationship that

prevents marriage, whether blood relations or intercourse and not in the proposal of another person.

- 7) Considerations regarding the analysis of the applicant's evidence and the strength of the evidence.
 - 8) Considerations regarding the formulation of legal facts based on the statements of the applicant, the applicant's children, the prospective husband or wife and the parents or guardians of the prospective husband and wife, documentary evidence and statements of witnesses which are in agreement with each other.
 - 9) Legal considerations regarding *maslahat mursalah*, considering *maqaidu sharia*, as well as provisions of Islamic law or *fiqh* regarding setting the age of marriage and marriage dispensation.¹⁴
- Rules that must also be used as material for analysis by judges in considering the determination of a marriage dispensation application are Law Number 35 of 2014 concerning Child Protection, Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

c. All petitions for marriage dispensation must be considered

All parts of the plaintiff's petition that must be considered or tried individually so that the judge can draw conclusions about the evidence in the trial, whether it can be granted. Example of petition for requesting dispensation from marriage to the Religious Court Number 184/Pdt.P/2019/PA. Sidrap, who was requested by the applicant Cica Ibrahim bint Ibrahim, Cica Ibrahim acted alone as the petitioner because the husband or biological father of the child being asked for a marriage dispensation had died, so as the biological mother of Herlina bint Yaris who applied for her child to be dispensed from marriage at the Sidenreng Rappang Religious Court, as following:

¹⁴Dr. Sugiri Permana, S.Ag., MH and Dr. H. Ahmad Zaenal Fanani, S.HI., MH, *Marriage Dispensation in Family Law in Indonesia, Study of Legal Norms and Practices After the Ratification of Law Number 16 of 2019 and Perma Number 5 of 2019*, (Surabaya: PTA Surabaya, 2019), h. 29-30.

After clearly outlining the circumstances of the request for dispensation from marriage, the applicant requests that the Chairperson of the Sidenreng Rappang Religious Court immediately examine and adjudicate this case, to subsequently issue a stipulation which reads as follows:

- a. Grant the request of the applicant;
- b. Determined to give dispensation from marriage to the applicant's child named Herlina binti Yaris;
- c. Order the headman at the Office of Religious Affairs in Panca Rijang District to carry out the marriage;
- d. Charge legal fees.

After reading the petition of the applicant and hearing the statement of the Petitioner at the Trial, the main problem of the Petitioner's petition is that the applicant requests that a stipulation of dispensation from marriage be granted from the Religious Court to the Petitioner's child named Herlina binti Yaris to be able to marry a man named Saharuddin bin Sennang with the argument and reason that the Petitioner's child has long and intimately been in a love relationship and is about to enter into a marriage but the age of the Petitioner's child (prospective bride) has not yet reached the age limit justified by law, namely not yet 16 (sixteen years old), so that the Office of Religious Affairs in Panca Rijang District, Sidenreng Rappang Regency, refused to marry the two of them with a Letter of Rejection;

Considering, that based on the facts mentioned above the Court is of the opinion that the Rejection of the Office of Religious Affairs of the Panca Rijang District of Sidenreng Rappang is justified in accordance with the provisions of article 7 paragraph (1) of the Marriage Law Number 1 of 1974 article 15 paragraph (1) Compilation of Islamic Law. However, the Petitioner may submit an Application for dispensation to the Religious Court for the deviation mentioned above as further regulated in the articles mentioned above in paragraph (2);

Considering, that based on the Elucidation of Article 49 letter a number 3 of Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning the Religious Courts in absolute competence, the Religious Courts have the authority to examine and decide this case;

Considering, that based on the statement from the Petitioner's child (prospective bride) who stated that she was not mentally ready to build a household, the Panel of Judges was of the opinion that even though the applicant had submitted a marriage rejection letter from the Religious Affairs Office of Panca Rijang District which should have been followed up with a determination of dispensation of marriage however, because the applicant's child does not wish to carry out the marriage under the age of 16 in accordance with the provisions of Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage, the court does not need to issue a stipulation of marital dispensation and thus the applicant's application must be declared rejected.

Considering, that based on Article 89 paragraph (1) of Law Number 7 of 1989 as amended by Law Number 3 of 2006 and Law Number 50 of 2009, all costs incurred in this case are borne by the Petitioners;

In view of all applicable statutory provisions and Islamic law relating to this case;

1. Declare that the Petitioner's Application is rejected;
2. Charge court fees to the Petitioner in the amount of Rp.206,000.- (two hundred and six thousand rupiah)

Thus this decision was handed down in a deliberative meeting of the Panel of Judges and then pronounced in a hearing open to the public on Tuesday 15 October 2019 AD, coinciding with 16 Shafar 1441 H, by the Panel of Judges of the Sidenreng Rappang Religious Court consisting of Ali Hamdi, S.Ag, MH. As Chairman of the Assembly Ali Rasyidi Muhammad, Lc and Hilmah Ismail, S.HI. each as Member

Judge, assisted by H. Muhammad Basyir Makka, SH, MH as Registrar in the presence of the Petitioner.

Based on the determination of the marriage dispensation application mentioned above, it describes how the panel of judges, in examining and adjudicating a case, has considered all petitions one by one, carefully reviewed and examined evidence and legal facts in the trial, in the case of a judge's decision to decide, both in favor and refuse, the judge is obliged to consider all things that can strengthen the decision to be issued. Because a decision and decision of the Court must contain three things, namely Legal Certainty, Justice and Benefit for the community.

However, after the promulgation of PERMA Number 5 of 2019, the marriage dispensation trial was only heard by a single judge. With the condition that the Sidenreng Rappang Religious Court handles cases of requests for dispensation of marriage which is quite high, the Judge in examining and determining the decision for dispensation of marriage sometimes ignores several administrative requirements for the application, such as the applicant not including information from a health worker, absence of assistance or information from the medical team regarding the situation child psychology, does not include a statement of parents' commitment to take responsibility for economic, educational, social and child health problems. And the judge does not require attaching it to the lawsuit, which should be taken into consideration. It turns out that the reason why the Sidenreng Rappang Religious Court,¹⁵

The impact of determining the dispensation of marriage which is concerning, can be seen in the application case number 184/Pdt.P/2019, where the judge's decision is unable to give the power to the child to convince his parents of the desire to remain in school, the judge should not only decide but be able to give a ruling that can be executed by requiring parents' commitment to their responsibility to their children so that they pay more attention to and prioritize the interests of their children, for a better future.

¹⁵Results of the PERMA Coordination and Outreach Meeting Number 5 of 2019.

Marriage dispensation is a leniency or relief given by the Court to prospective husband and wife who have not reached the lowest marriage age limit, namely 19 years for men and 16 years for women to be able to enter into a marriage. In terms of determining whether to grant or reject the judge must consider all things that can strengthen the decision to be issued. Because a decision and decision of the Court must contain three things, namely legal certainty, justice and benefit to society.

Of the several negative impacts regarding marriage dispensation, it turns out that judges sometimes pay less attention so they don't take it as a consideration in determining a marriage dispensation application. The judge in determining only considers a number of things, namely regarding the procedural reasons in which it is related. First, the judge in the trial will examine whether the person filing the application for dispensation from marriage is his parents or not. Because the Petitioner in this case is the parent of a boy or girl. Second, regarding the reasons for filing a marriage dispensation application, the reasons for the marriage dispensation are indeed not regulated in the law, but the judge needs to ask the child and parents the reasons for filing the marriage dispensation whether the reasons for the child and parents are the same or not with the available evidence.

In granting the request for dispensation for marriage, the judge determines that it is also based on fiqhiyāh rules. As for what is usually used by judges in cases of dispensation of marriage according to fiqhiyāh rules are:

درء المفساد مقدم على جلب المصالح

Translation:

"Rejecting harm must take precedence over attracting benefit."

According to this rule, if the mafsada and benefits are seen in a case or benefit, then the mafsada must be eliminated because it can spread everywhere and cause bigger mafsada. In this marriage dispensation case, the mafsada is that a child has violated the provisions of the law governing the minimum limit for the implementation of marriage, namely Article 7 paragraph (1) Law Number 1 of 1974 concerning Marriage, Article 8 Regulation of the Minister of Religion Number 11 Year 2007 concerning

Marriage Registration, and Article 15 of the Compilation of Islamic Law. And the maslahat is by issuing or granting a marriage dispensation request. So that there is no damage to the mother and child when a mother has given birth.

CONCLUSION

Based on the findings, it turns out that cases of requests for dispensation of marriage at the Sidenreng Rappang Religious Court have increased from year to year and even experienced a very sharp increase, from 2016 to 2017 there was an increase of 2.1%, another increase in 2018 of 7.5% and in 2019 the increase was even sharper reaching 124%. Sidenreng Rappang is in the top five in South Sulawesi, in terms of marriage dispensation. And there is a revision of the Marriage Law number 16 of 2019.

Based on the findings of the authors, the increase in requests for dispensation from marriage that occurred at the Sidenreng Rappang Religious Court, turned out to be the main cause of cultural, educational, economic, environmental influences and pregnant before marriage. There is a culture of society that holds the principle that marrying their children the sooner the better is a common thing, the low level of education and the economy of parents also affects the child's mindset, about the influence of education that is not too important by looking at the experience of their parents, there is fear and respect, a child's devotion to parents is very high, so that children will follow their parents' wishes to be married quickly even though they are still young.

The judge of the Religious Court of Sidenreng Rappang in determining the application for dispensation of marriage, taking into account the philosophical aspects of the minimum age limit for marriage, norms and legal practices for dispensation, especially the new provisions contained in the Marriage Law Number 16 of 2019 concerning amendments to the Marriage Law Number 1 of 1974 and Regulations Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning guidelines for adjudicating applications for dispensation of marriage so that the examination of cases and the determination of judges truly protects the best interests and basic rights of children, taking into account moral,

religious, customary and cultural considerations, psychological aspects, health aspects and impacts arising from child marriage. However, in reality, the judge of the Sidenreng Rappang Religious Court in determining the application for a marriage dispensation only paid attention to the formal aspect. Information from the health worker about the psychology of the child and the commitment of the parents are not taken into consideration in making or dropping a marriage dispensation. So that the purpose of the marriage dispensation to protect and pay attention to the best interests of the child is not maximized, the interests of the child must be the main factor in the judge's consideration, so that the judge's determination can truly fulfill the legal principle, namely the judge can provide legal certainty, justice and benefits for the community.

REFERENCES

- Al-Qur'an and its Translation, Ministry of Religion of the Republic of Indonesia Arto, Mukti Arto. 2007; Practice of Civil Cases in Religious Courts, Yogyakarta, Student Library.
- Hope Yahya. Civil Procedure Law. Jakarta: Sinar Graphics, 2008
- Results of the PERMA Coordination and Outreach Meeting Number 5 of 2019
- [Http:// Hukum.unsrat.ac.id/uu/uu_1_74.htm](http://Hukum.unsrat.ac.id/uu/uu_1_74.htm). 2019; Law Number 1 of 1974 concerning Marriage.
- Case Data Report of the Sidenreng Rappang Religious Court, 2020
- Supreme Court of the Republic of Indonesia Directorate General of Religious Courts. 2015; Compilation of Islamic Law: Jakarta.
- Mizbah, Fiqh, Jakarta: Azzam Library, 2016
- Mufidah. 2010; Contemporary Gender Issues in Family Law: Malang. UIN-MALIKI PRESS.
- Mulyadi Lilik. Shifting Perspectives and Practices From the Supreme Court Regarding Decisions: Bandung, Citra Aditya Bakti, 2009.
- Permana Sugiri and Fanani Ahmad Zaenal, Marriage Dispensation in Family Law in Indonesia, Study of Legal Norms and Practices After the Ratification of Law Number 16 of 2019 and PERMA Number 5 of 2019: Surabaya, PTA. Surabaya, 2019