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A JURIDICAL EXAMINATION OF MARRIAGE DISPENSATION AND DIVORCE IN RELIGIOUS COURT; INSIGHTS FROM SADD AL-DZARI'AH

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ABSTRACT
Unraveling the intricate dynamics of marriage dispensations and divorces, this study dives deep into the Sidenreng Rappang Religious Court which is located at South Sulawesi, through the lens of sadd al-dzari'ah. This is a field research study employing a juridical, anthropological, and socio-legal approach. The data analysis utilizes theories of social conflict, law enforcement and sadd al-dzari'ah. Findings indicate that the primary trigger for marriage dispensation applications is premarital pregnancy resulting from free sexual interactions, which neglects children's rights. Law enforcement in cases of divorce following underage marriage reflects justice, certainty, and legal utility without compromising the best interests of underage marriages. The application of sadd al-dzari'ah aims to reduce marriage dispensations and divorces, prioritizing preventive measures and closing opportunities that could harm the future and interests of underage marriages.

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INTRODUCTION

Underage marriage is not an effective solution to address economic and social problems. On the contrary, underage marriage traps children in very critical and concerning situations. Although the national rate of underage marriage decreased to 7.5 percent in 2023, Indonesia still faces numerous cases of underage marriage. Nowadays, hundreds of thousands of children under the age of 18 have married for various reasons, including premarital pregnancies due to free association, family economic conditions, and socio-cultural pressures.[1]

[1]Yoesep Budianto, "Tingginya Angka Perkawinan Usia Anak Di Indonesia, Kompas.Id," 2024.

Legalizing underage marriages can be facilitated through a marriage dispensation granted by a judge's decision in the Religious Court. Judges play a role beyond merely interpreting the law; they also take social behavior into account. Hence, it is essential for judges to meticulously review each application for marriage dispensation. Based on data from marriage dispensation cases in the Religious Court of Sidenreng Rappang over the past five years, there has been a continuous increase as described in table 1, as follow;

Table 1. Reasons for Marriage Dispensation in the Religious Court

Years	Premarital Sex	Culture	Economy	Education
2019	155	25	27	17
2020	601	5	17	8
2021	667	6	15	4
2022	499	4	9	2
2023	440	2	4	2
Total	**2362**	**42**	**72**	**33**

Source*: Marriage dispensation in the Religious Court of Sidenreng Rappang*

In Table 1, it is found that the reason for marriage dispensation due to premarital sex from 2019 to 2023 was 2362 cases, while cultural reasons accounted for 42 cases. Additionally, there were 72 cases of marriage dispensation due to economic reasons, and 33 cases due to low educational levels. On the contrary, divorce due to underage marriage often becomes the main trigger for discord and lack of harmony in family life because of the lack of mental maturity to face various problems that arise in marriage. In fact, divorces in the Religious Court of Sidenreng Rappang have also continued to increase in parallel with the rise in underage marriages, as described in Table 2, as follows;

Table 2. Number of Divorces in the Religious Court

Years	Divorce by talak	Divorce by lawsuit
2019	209	670
2020	162	605
2021	167	654
2022	146	574
2023	185	587
Total	**869**	**3090**

Source*: Divorces in the Religious Court of Sidenreng Rappang*

In the divorce statistics, it is evident that there is a correlation with the effects of underage marriages that received marriage dispensations from the Religious Court of Sidenreng Rappang. Marriage dispensation reflects a situation where couples who have married legally face significant difficulties or obstacles in maintaining the integrity and harmony of their households. This context includes issues such as lack of mental readiness, ongoing conflicts, or incompatibility between underage spouses.

Previous studies have shown that a surge in marriage dispensation applications can be an indicator that many couples are experiencing difficulties in maintaining their marital relationship,

leading them to seek alternative solutions, such as divorce, which they consider the best option.[2] Studies linking family law reform, gender equality, and underage marriage[3] also reveal instances of religious manipulation in the legality of underage marriages.[4] Additionally, studies address the relevance of underage marriage practices to family dynamics, along with the resulting impacts.[5] The research discusses the influence of underage marriage on divorce rates, human rights, legal protection, the implementation of minimum age regulations for marriage, and judicial considerations.[6]

On the other hand, some studies address the high divorce rates in the Religious Court as a form of violence experienced by wives.[7] These studies review marital law concerning divorces outside the court,[8] resolution through negotiation, mediation, litigation, and sometimes through e-court.[9] Compared to previous studies, which focus on these aspects, this research on the controversy between marriage dispensation and divorce in the Religious Court using the perspective of *sadd al-Dzari'ah* is considered very urgent and interesting to pursue, as there has been no similar study. Based on the description, it is urgent and interesting to pursue further study with the controversy of marriage dispensation versus divorce in the Religious Court of Sidenreng Rappang: a *sadd al-dzari'ah* perspective.

METHODS

The type of research used in this study is Field Research, employing a field study approach with juridical, anthropological, and socio-legal perspectives. This research falls under the category of empirical legal studies, analyzing and examining the application of law within society based on facts deemed relevant to the issue of underage marriage. The approach taken is a socio-legal approach. Data and information collection methods in this study include observation, in-depth interviews, and documentation. The research location is the Religious Court of Sidenreng Rappang. Primary data were sourced from judges and clerks, while secondary data were derived from scientific articles and a comparison of judges' decisions in the Religious Court. The data analysis utilized social conflict theory, law enforcement theory, and

[2]Tri Hendra Wahyudi and Juwita Hayyuning Prastiwi, 'Seksualitas Dan Negara: Permasalahan Dispensasi Perkawinan Anak Di Indonesia', Aspirasi: Jurnal Masalah-Masalah Sosial, 13 (2022), 205–255.

[3]Paul Scott Prettitore, "Family Law Reform, Gender Equality, and Underage Marriage: A View from Morocco and Jordan," *The Review of Faith & International Affairs* 13, no. 3 (2015): 32.

[4]Qodariah Barkah et al., "The Manipulation of Religion and The Legalization of Underage Marriages in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 1.

[5]D Q Roziah, "Praktik Perkawinan Di Bawah Umur Di Kabupaten Purwakarta," *Jurnal Riset Hukum Keluarga Islam* (journals.unisba.ac.id, 2022)

[6] D Putra, Z Hasibuan, and R Linur, "Pengaruh Pernikahan Di Bawah Umur Terhadap Tingkat Perceraian Studi Kasus Desa Mompang Julu Kabupaten Mandailing Natal," *TAQNIN: Jurnal Syariah Dan …*, 2023

[7]D Alfiander, "Disparity in the Considerations of Judges in Deciding Divorce Disputes in Religious Courts and District Courts," *Juris: Jurnal Ilmiah Syariah* (download.garuda.kemdikbud.go.id, 2022)

[8]Fikri Fikri et al., "Kontekstualisasi Cerai Talak Dalam Fikih Dan Hukum Nasional Di Indonesia," *Al-Ulum* 19, no. 1 (2019): 151.

[9]I Sujono, "Legal Review of Marriage for Divorced Women Outside the Religious Courts," *International Journal of Islamic Thought and …*, 2022

the theory of *sadd al-dzari'ah* to address issues related to underage marriage.

RESULTS AND DISCUSSION

Judges Views on Marriage Dispensation in the Religious Court of Sidenreng Rappang

With the enactment of Law No. 16 of 2019, which amended Law No. 1 of 1974, the minimum marriage age for both men and women was set at nineteen years. This legislative change aimed to curb underage marriages by raising the minimum age from sixteen to nineteen for women and from nineteen to nineteen for men. The intent behind this measure was to prevent negative impacts on children's futures. However, despite these efforts, the number of marriage dispensation cases has continued to rise, including in Sidenreng Rappang Regency.

The progress of authentic evidence for marriage dispensation applications has shown a continuous increase in the Religious Court of Sidenreng Rappang, as evidenced by data from 2019 to 2023, which shows 2,460 applications received. Of these, 2,410 marriage dispensation applications were granted, while 50 were rejected over the past five years.[10] Since the enactment of Law No. 16 of 2019, there has been a significant increase in marriage dispensation applications in the Religious Court of Sidenreng Rappang. According to data from the Junior Court Clerk of the Religious Court of Sidenreng Rappang, there were 222 applications received in 2019, which increased to 625 applications in 2020, and reached 688 applications in 2021. However, the reality shows a decrease in applications to 511 in 2022, with 414 applications received in 2023.

Marriage dispensation applications are submitted for various reasons influenced by factors such as premarital sex, economic conditions, low levels of education, and socio-cultural influences in Sidenreng Rappang. Judges accept marriage dispensation applications when formal requirements are suitable and can be proven in court, considering aspects of *maslahah* (public interest), juridical, sociological, and philosophical factors. Judges accepted marriage dispensation with the aim of protecting children's rights and preventing *mudharah* (harm) caused by underage marriages. Additionally, judges' considerations can also help minimize potential family conflicts. Judges accepted marriage dispensation with accurate authentic evidence in cases that are genuinely urgent and in situations of necessity for the child, which compel the judge to issue the dispensation order.

The main reason for the increase in child marriages is when a child becomes pregnant out of wedlock as a result of premarital sex.[11] The number of marriage dispensation applications received by the Religious Court of Sidenreng Rappang corresponds with the number of applications approved by the judges. Judges are bound by the fundamental principle in Law No. 1 of 1974 to prevent underage marriages. However, in practice, judges also face the reality that there are several reasons necessitating the acceptance of marriage dispensation. Other considerations by judges include the strong influence of the Siri' cultural tradition in the Bugis community of Sidenreng Rappang. This cultural influence is seen as a success and source of

[10]Junior Registrar (a.k.a Panitera Muda) of the Sidenreng Rappang Religious Court, Report on Cases of Applications at the Sidenreng Rappang Religious Court (in the Annual Report Application) 2019-2023

[11] Joseph Molitoris et al., "Early Childbearing and Child Marriage: An Update," *Studies in Family Planning* 54, no. 3 (2023): 503–21.

pride if a young daughter marries earlier, even if she is still underage. Some members of the Bugis community still adhere to the custom of marrying off their children, even if they are underage, as a way to quickly release responsibility when a suitable match is found. Moreover, if wedding invitations have already been distributed, the Siri' tradition is considered a strong factor for judges in making decisions on marriage dispensation cases.

The tendency to change the minimum age limit can accommodate children's rights, support their development with adequate parental guidance, ensure access to quality education, and reduce the risk of divorce due to insufficient mental and financial readiness for managing household life.[12] According to Law No. 16 of 2019, the minimum age limit for couples intending to marry can be based on considerations of family and household welfare. This can be compared to the Compilation of Islamic Law (KHI), Article 15, Paragraph 1, which emphasizes the importance of physical and mental maturity of prospective spouses in ensuring the success of marriage, preventing divorce, and ensuring the welfare of children born from the marriage.

Social factors play a crucial role in determining the minimum age limit for marriage for both men and women. The high divorce rates often associated with underage marriage are one of the main reasons for setting marriage age limits. Law No. 16 of 2019 details various aspects and consequences related to the marriage age limit. The minimum age is set at 19 years for both men and women, with the principle that emotional and physical maturity is key to achieving a harmonious and loving marriage and preventing divorce.

Under the Supreme Court Regulation No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, Article 11, Paragraphs 1 and 2 stipulate that judges must use language and methods that are easily understood by children during the hearing, and judges and substitute clerks must not wear courtroom attire when questioning children.[13] This measure aims to protect the child's mental and psychological condition, ensuring that the child can provide testimony honestly without feeling intimidated by any party. Law No. 48 of 2009 on Judicial Power, Article 5, states that in adjudicating cases, the most important aspect for judges is the legal conclusions based on the facts revealed in the trial. Therefore, judges must be able to explore and understand the legal values and sense of justice that are prevalent in society.

Underage marriage is a long-standing phenomenon in various Bugis communities, highlighting the challenges and impacts that arise when a child marries at an age still within the minimum marriage age limits. This phenomenon reflects the social, cultural, economic, and policy conditions within specific communities. Such practices may involve children who are not yet physically or mentally mature enough to undertake the significant responsibilities of building a family and managing a household.

Parents wishing to apply for a marriage dispensation must provide compelling reasons supported by additional evidence during the trial. According to Article 7, Paragraph 2 of Law No. 16 of 2019, if there is a deviation from the age requirements as stated in Paragraph 1, the parents of the groom and/or the parents of the bride may request a dispensation from the court

[12] Darmawan Darmawan et al., "Marriage Dispensation and Family Resilience: A Case Study of the Bener Meriah Shariah Court, Aceh Province," *AHKAM: Jurnal Ilmu Syariah* 22, no. 2 (2022).

[13]Supreme Court Regulation (a.k.a Peraturan Mahkamah Agung) No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications

for very urgent reasons, accompanied by sufficient supporting evidence.[14] It facilitates the judges' decision-making on marriage dispensation applications if the reasons and evidence meet the formal requirements in court as very urgent reasons for the child.

The number of marriage dispensation applications submitted to the Religious Court of Sidenreng Rappang consists of couples who have not reached the minimum marriage age limit as stipulated in Law No. 16 of 2019. This increase is explained in Table 3, as follows;[15]

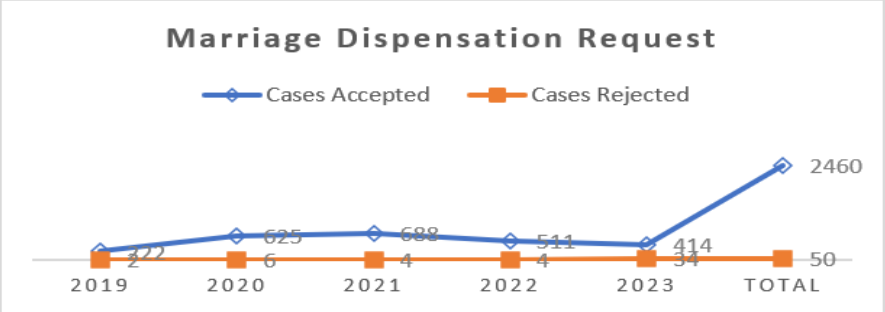
Table 3. The Application for Marriage Dispensation is Accepted and Rejected

No.	Years	Cases Accepted	Cases Rejected
1.	2019	222	2
2.	2020	625	6
3.	2021	688	4
4.	2022	511	4
5.	2023	414	34
Total		**2460**	**50**

Source: *Data from the Religious Court of Sidenreng Rappang*

Marriage dispensation applications, as shown in Table 3, according to the information provided by Shafar Arfah, who serves as the Junior Clerk of the Religious Court of Sidenreng Rappang, are based on annual reports. The data indicates a significant increase in marriage dispensation cases at the Religious Court of Sidenreng Rappang. This increase occurred post the change in the minimum age limit in Law No. 16 of 2019 and was also influenced by the Covid-19 pandemic at that time. Additionally, applications were rejected because judges considered the reasons provided were not categorized as urgent.[16] The data in Table 3 can be illustrated in Graph as follows;

Graphic 1. Cases Accepted and Rejected of marriage dispensation



Source: *Data from the Religious Court of Sidenreng Rappang*

Information explained by Fahmi as a judge at the Religious Court of Sidenreng Rappang during an interview indicates that the reality of marriage dispensations has significantly increased

[14] Article 7, Paragraph (2) of Law No. 1 of 1974 Concerning Amendments to Law No. 16 of 2019 on Marriage.

[15] Data on marriage dispensation cases at the Sidenreng Rappang Religious Court Class IB from 2019-2024

[16] Shafar Arfah, Registrar of the Sidenreng Rappang Religious Court, Interview conducted in Sidenreng Rappang, on May 17, 2024

due to parents applying for dispensations for children who are on average fifteen, sixteen, seventeen, and eighteen years old, and in some cases, even as young as fourteen. Reasons for parents submitting marriage dispensation requests are often rejected by the Office of Religious Affairs, even if the child is pregnant out of wedlock due to promiscuity and has dropped out of school. There are also instances where parents apply for marriage dispensation on the grounds that they have provided dowries or dui menre', there is already an agreement between the two families known as *mappettuada*, and wedding invitations have already been sent out to family, relatives, friends, and the community. However, the reasons provided in these applications are subject to individual assessment by the judge during a traveling court session, especially regarding marriage dispensation for underage couples dressed in traditional attire.[17]

The purpose of marriage dispensation is to ensure that the marriage can be officially recorded. According to Article 2, Paragraph 2 of Law No. 1 of 1974, it is stated that every marriage must be recorded, and registration can only be done if the minimum age requirement is met at the Office of Religious Affairs. One of the requirements for marriage registration is age, as stipulated in Article 7 of Law No. 16 of 2019. This regulation serves as a guideline for marriage registrars to record marriages at the Office of Religious Affairs.[18] On the contrary, in some cases, the refusal to record a marriage is due to the prospective spouse not yet reaching the age of nineteen, leading the parents of the prospective spouse to submit a marriage dispensation request at the Religious Court of Sidenreng Rappang.

According to Syaraswati Nur Awalia, a judge at the Religious Court of Sidenreng Rappang, one of the most complicated reasons for deciding on marriage dispensation requests is to prevent underage marriages, which have negative impacts such as health issues, mental health problems, and domestic violence that are highly vulnerable in such marriages.[19] Article 7, Paragraph 2 of Law No. 16 of 2019, which pertains to urgent reasons, still leaves room for various interpretations. Consequently, there is no detailed explanation of 'what constitutes an urgent reason'. As a result, the judge's subjectivity in deciding on marriage dispensation can determine whether it is accepted or rejected due to the controversy between the child's interests and legal enforcement, Law No. 16 of 2019 is no exception, thus requiring legal interpretation. Law enforcement often involves finding the law, not just applying it. Similarly, judicial decisions should not be rigid in applying the law to concrete cases of underage marriage.

Supreme Court Regulation No. 5 of 2019, in Article 17, includes an additional clause on the 'Best Interests of the Child', which requires judges in deciding on marriage dispensation requests to consider the protection and best interests of the child. They must also take into account unwritten laws that live within society as a form of local wisdom and to achieve justice. In providing legal reasoning, judges are expected to consider very urgent reasons supported by appropriate evidence to minimize potential harm that could result from either granting or denying the marriage dispensation request.

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[17]Fahmi, Judge of the Sidenreng Rappang Religious Court, Interview conducted in Sidenreng Rappang, on May 20, 2024.

[18] A Sultan Sulfian, "The Urgency of Marriage Registration in the Perspective of Indonesian Marriage Law and Islamic Law," *Jurnal Al-Dustur* 6, no. 1 (2023): 72.

[19]Syaraswati Nur Awalia, Judge of the Sidenreng Rappang Religious Court, Interview conducted in Sidenreng Rappang, on May 20, 2024.

An analysis of conflict theory in the context of Law No. 16 of 2019, which tightens the minimum age requirement for marriage, while judges often accept marriage dispensations in the Religious Courts, reflects tension and injustice in the distribution of power in society. Thus, the main objective of changing the age requirement in Law No. 16 of 2019 is to tighten prevention on underage marriage as an effort to protect children's rights. On the other hand, judges who accept marriage dispensation requests consider the reasons of social, economic, and cultural pressures, reflecting the contradiction between formal regulations and social practices in society.

Through conflict theory, answers and solutions can be found for the tension between the state power implementing Law No. 16 of 2019 to protect children's rights and the social power controlled by families adhering to traditional norms and values in society. Meanwhile, judges find themselves in a very difficult position because they must balance between enforcing the law and considering the social and economic context of the families applying for marriage dispensation.

In conflict theory, the approach to economic factors shows that many families encourage underage marriages to reduce financial burdens or improve economic status through marriage. On the other hand, cultural norms in the Sidenreng Rappang community consider underage marriage as acceptable. Therefore, even though Law No. 1 of 1974 has been amended by Law No. 16 of 2019, social practices in the community continue to uphold the tradition of underage marriage.

Conflict theory highlights the social injustice that arises from the clash between children's right to protection and the authority of parents or guardians who have different views on underage marriage. This context creates a conflict between the protection of children's rights and parents' beliefs. Consequently, access to justice within families tends to be better for children with adequate legal resources, making it easier to obtain marriage dispensations, ultimately creating inequality in the application of the minimum marriage age law.

Legal Enforcement of Divorce post Underage Marriage

Underage marriage is highly susceptible to various challenges due to the immaturity of children in terms of emotional control. Underage couples lack the ability to resolve conflicts, which can lead to various household issues potentially resulting in divorce.[20] Many divorce cases occur because the couples involved are still underage and not mature enough physically and mentally to face economic difficulties,[21] which often leads them to file for divorce in the Religious Court. In this context, many divorce cases are found to have a dominant factor that the children have not reached the minimum marriageable age, as seen in the Religious Court of Sidenreng Rappang.

Children should reach the minimum age for marriage, be physically and mentally healthy, have a high level of commitment, and possess the ability to meet life's needs, especially earning a livelihood. This is reflected in the local wisdom of the Sidenreng Rappang community, as expressed in the traditional saying '*iyyapa nak muabbene yakko mulleni makkaluruwi*

[20] Shella Oetharry Gunawan and Syamsul Bahri, "Impacts of Early Childhood Marriage in Indonesia Viewed from Child Protection Laws Perspectives," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 362.

[21] Shilpa Aggarwal et al., "Child Marriage and the Mental Health of Adolescent Girls: A Longitudinal Cohort Study from Uttar Pradesh and Bihar, India," *The Lancet Regional Health-Southeast Asia* 8 (2023).

dapurengnge wakkapitu', which means 'a child should marry only when they can circle the kitchen seven times. The philosophical meaning that can be understood from the traditional saying *ada pappaseng* in accordance with the Law No. 16 of 2019, which states that children who intend to marry must reach the minimum age requirement. The purpose is for them to be more mature and have the readiness to face any challenges and conditions.

The perception in the Sidenreng Rappang community is that if a man and woman have been in a dating relationship, it is better for them to marry to avoid shame and embarrassment for both families. Unfortunately, this effort often clashes with considerations of mental and physical readiness as well as economic difficulties for those who have not yet reached the minimum marriageable age. In reality, the outcome often contradicts the initial purpose of the marriage frequently resulting in divorce after a very short period with the marriage barely lasting.

In the enforcement of divorce laws, judges are expected to provide protection to married couples, even if they are underage. The divorce process involves legal battles, emotional conflicts, and difficult decisions that can have serious psychological effects, such as depression or anxiety, for underage couples. In some divorce cases, there is a belief that they influence societal norms and values, including commitment to marriage and family responsibilities. In the judicial process, judges must ensure that their decisions reflect justice, including for the divorcing couple and the impact on any children born from the marriage. Thus, the divorce law system, through the judicial process, can consider various aspects of the law, justice, and protection for underage couples.

However, judges play an important role in establishing the appropriate law based on decisions that reflect legal certainty. Therefore, judges must also consider legal values such as customary law, which is unwritten and prevalent in society, when making decisions. Legal certainty in a judge's decision is the result of law enforcement based on court facts that are juridically relevant, including in divorce cases involving underage couples.

A judge's decision reflects utility when the judge not only applies the law textually but also ensures that the decision can be practically executed, thereby providing benefits, especially to underage couples. The decision made by the judge must maintain a balance for the couple, instilling full confidence in the enforcement of the law. Every consideration by the judge, through sound reasoning, can resolve cases with legal considerations that align more closely with justice and legal certainty. In principle, the application of the principle of utility means that the judge realizes justice and legal certainty for the interests of society.

The data provided by the Case Registrar at the Religious Court of Sidenreng Rappang shows that the number of divorces post underage marriages from 2019 to 2023 is 168 cases, as illustrated in Table 4, as follows;

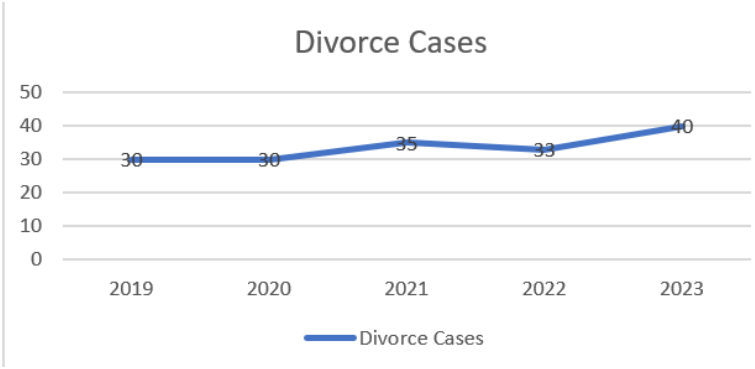
Table 4. Divorce Post Underage Marriage at the Religious Court of Sidenreng Rappang

No.	Years	Divorce Cases
1.	2019	30
2.	2020	30
3.	2021	35
4.	2022	33
5.	2023	40
Total		**168**

Source: *Divorce Report at the Religious Court of Sidenreng Rappang*

Basic on the data of divorce cases of underage marriage at the Religious Court of Sidenreng Rappang in Table 4 can be confirmed in Graphic 2, as follows;

Graphic 2.



Source: *Data divorce cases at the Religious Court of Sidenreng Rappang*

The data in Graphic 2, sourced from Table 4, shows that there were 168 cases of divorce post underage marriages between 2019 and 2023 at the

Religious Court of Sidenreng Rappang. The main causes of these divorces were ongoing disputes, economic issues, and a lack of communication between the spouses. Although the number of divorce cases post underage marriages is not as high as the number of cases for adult couples, the issues remain complex and have significant negative impacts, especially on children. Therefore, comprehensive and continuous efforts are needed for prevention and management to reduce early divorce rates and build strong and prosperous families.

According to Fahmi, when deciding on divorce cases resulting from marriage dispensation, judges must carefully verify the reasons presented by the underage couple, as they may involve issues of mental unpreparedness in facing household problems.[22] Problems within a household often occur and have become a part of family life dynamics, especially when marriage is conducted at the minimum marriageable age, which is still very vulnerable to facing issues. Therefore, 'divorce' often becomes a central issue in the household. Essentially, the factors causing divorce are varied and complex, and they differ in each family.

In making considerations for a decision, especially in the Religious Court, it is crucial to consider the benefit *maslahah* and *mudharah*. A judge's decision must bring benefit and prevent harm. To determine what is beneficial and what is harmful, the judge needs to use intelligence and the ability to analyze carefully, objectively, and based on empirical facts.

Every judge's decision in court must include clear reasons that serve as the legal basis for the judgment. These reasons function as the judge's accountability for their decision to the divorcing parties, the public, the legal community, and higher courts, ensuring that the decision has objective value and reflects justice. In reality, children who marry underage are at a greater risk of being unable to resolve household problems because they are not yet physically, mentally, or emotionally mature enough to handle issues that arise within a household. As a result, many factors contribute to divorce post underage marriage.

On the other hand, a judge's consideration through the perspective of Islamic law can

[22]Fahmi, Judge of the Sidenreng Rappang Religious Court, Interview conducted in Sidenreng Rappang, on May 20, 2024.

serve as a basis for deciding and granting a divorce petition if the reason is infidelity. Although the Compilation of Islamic Law and the teachings from the Qur'an and Hadith do not explicitly mention infidelity, if such a household is maintained and forced to reconcile, the judge may believe that the case of infidelity will cause harm (damage) to the couple.

Thus, in cases involving a third party, the analysis is similar to cases of divorce caused by disharmony. After infidelity or the involvement of a third party, the wife feels pressured and uncomfortable, leading to continuous disputes and arguments within the household. The judge decides to grant the plaintiff's divorce petition because there are sufficient supporting reasons, such as the husband's obligations towards his wife as stipulated in Law No. 1 of 1974, Article 34, Paragraph 1, which states that a husband must protect his wife and provide for the household according to his ability. If the husband fails to fulfill his responsibilities towards his wife, including neglecting and not providing for her, it constitutes a breach of the marriage vows (taklik talak) and becomes a valid reason for the wife to file for divorce.[23]

Divorce caused by continuous disputes and arguments is the primary reason for underage couples. Continuous disputes and arguments can be addressed under Article 116 f of the Compilation of Islamic Law, which states that an inhospitable household can be caused by actions or words such as insulting with harsh language, degrading honor, committing physical violence, encouraging forbidden actions by Allah, unjustified separation of beds, and neglecting the rights and obligations between spouses, especially when they are underage. In situations of continuous disputes and arguments, it is permissible to bring the case to the Religious Court.

Legal enforcement in the context of judges issuing divorce rulings must aim at legal certainty. Judges are obligated to ensure that their rulings are in accordance with the applicable legal regulations. In other words, judges must adhere to the relevant laws and procedures concerning divorce

cases in the Religious Court. Furthermore, judges' rulings must also adhere to the principle of justice. Judges should strive to ensure that their decisions in divorce cases demonstrate justice, legal certainty, and the inherent benefits of the law for both parties. In this context, judges' decisions should include the protection of the rights of underage couples, the well-being of children born from the marriage, and the reduction of emotional and psychological impacts of the divorce.

Through law enforcement, judges' considerations include the social impact of the rulings made in court, as the reasons for divorce are not merely personal matters but also have broad social implications. Therefore, judges need to consider how the rulings they issue affect the broader community, especially for children marrying underage, to provide a deterrent effect, encouraging more caution when deciding to marry at a young age. Moreover, the principle of the best interests of the child is crucial; judges must prioritize the child's welfare, considering their physical, mental, and psychological conditions that may arise in the future.

Contextualization of Sadd Al-Dzari'ah in Marriage Dispensation versus Divorce Post Underage Marriage

The application of *sadd al-dzari'ah* in adjudicating marriage dispensation and divorce

[23] Gozwan Jundan, Siah Khosyi'ah, and Mohamad Sar'an, "Perceraian Usia Tiga Tahun Perkawinan Dari Pasangan Muda," *Jurnal Hukum Keluarga Dan Peradilan Islam* 1, no. 1 (2020): 39–60.

cases involving underage couples should not be based solely on legal regulations judges must also apply Fiqh principles in their decisions. In this context, judges prioritize the principle of preventing harm over achieving benefit.

Islamic law has the primary duty of prioritizing women's rights, ensuring that issues relevant to marriage grant women full authority and rights to choose their spouse for their household. The choice of a partner should reflect women's freedom to ensure their rights are not compromised by cultural or societal traditions, including those within the Bugis community in Sidenreng Rappang. Under Islamic law, women have the right to reject any prospective spouse they deem unsuitable, and there should be no coercion in the marriage process. If a woman does not agree to her prospective spouse, the marriage is considered invalid.

According to Islamic law, there is no specific age requirement for marriage; however, individuals may marry if they have attained physical and psychological maturity. The general conditions set in Islamic law for a person to be eligible for marriage are that they must be of sound mind *(aqil)* and have reached puberty *(baligh)*, along with possessing physical and psychological maturity.

Law No. 16 of 2019 and the Compilation of Islamic Law align with the concept of Ibn Qayyim al-Jawziyyah, which establishes age limits and the requirement of consent from the woman. On the other hand, Ibn Qayyim al-Jawziyyah still permits the practice of underage marriage. However, the maturity of the partners is crucial for maintaining marital integrity. Ibn Qayyim believed that the purpose of enacting laws is to achieve benefit (*maslahah*) and avoid harm (*mafsadah*) for individuals. Therefore, the implementation of laws should be based on maslahah.

Sadd al-Dzari'ah is one of the methods of ijtihad in Islamic law, and the results of this legal reasoning can be used as a source of law. Although its application remains a topic of debate among scholars, the essence of *sadd al-dzari'ah* has been applied by scholars such as Imam Maliki, Hanbali, Shafi'i, and Hanafi.

Judges at the Religious Court of Sidenreng Rappang use the method of *sadd al-dzari'ah* when deciding divorce cases as a basis for marriage dispensation, preferring to avoid harm (*mafsadah*) over achieving benefit (*maslahah*). In this context, the judge's responsibility is essentially to close off any issues that could lead to mafsadat. This is explained in the fiqh principle is *"Idzaa ta'aaradha mafsadataani ruu'iya a'zhamuhumaa biirtikaabi akhaffihimaa"*. It means, "that when faced with two harms, one should avoid the greater harm by choosing the lesser harm between the two".[24]

Based on this fiqh principle, it can serve as a guideline in handling marriage dispensation cases. The principle states that if several benefits cannot be achieved simultaneously, the greater benefit should be prioritized. In this context, it results in additional benefits to more advantageous and preferred matters. The most important issues that arise are that benefits should be accumulated and fully realized. Conversely, if there are several harms (*mafsadah*) that need to be addressed, the lesser harm should be chosen. If the harms can be completely avoided, that is the preferred outcome.

It can be understood that fiqh principles can serve as a reference, guide, and basis for

[24]Agus Khotibul Umam, "Dispensasi Nikah Di Indonesia Perspektif Sadd Adz-Dzari'ah," *Al-'Adalah: Jurnal Syariah Dan Hukum Islam* 8, no. 2 (2023): 187–211.

judges at the Religious Court of Sidenreng Rappang in handling marriage dispensation cases. If two harms (*mafsadah*) occur simultaneously, the judge should compare which is greater and which is lighter in its impact. For example, in a marriage dispensation case involving a child who is pregnant out of wedlock, considering various factors, the judge may grant the marriage dispensation request based on the concrete evidence presented in court. The aim is to avoid greater harm if the marriage is not promptly conducted. The harm in question includes the child born from an out of wedlock relationship lacking a father, which not only affects the couple but also becomes a disgrace for the extended family.

In fact, the three main reasons for the high number of marriage dispensation requests at the Religious Court of Sidenreng Rappang are pregnancy out of wedlock, having a special or romantic relationship, and strict cultural practices within the community. The first reason is pregnancy out of wedlock. Judges may accept or reject the request based on strong evidence presented by the parents. Pregnancy out of wedlock is often cited as a reason for requesting a marriage dispensation, although judges find themselves in a difficult position when considering such requests. Pregnancy out of wedlock is considered an act detested by Allah Swt. because it violates Islamic law, as mentioned in Q.S. Al-Isra' (17); 32 "*Walaa taqrabuz zinaa, innahuu kaana faahisyataw wasaa,a sabiilaa"*. It means, and do not approach adultery; it is indeed a shameful deed and an evil way.[25]

The second reason is having a very close relationship or dating. This concern makes parents worried that their children will increasingly fall into actions contrary to Islamic law. This reason is also frequently cited in marriage dispensation requests. If such relationships are allowed to develop too far, there is a high likelihood that the individuals will be tempted to engage in prohibited actions, which can eventually lead to out-of-wedlock pregnancies, as mentioned earlier. The third reason is the cultural norms of Sidenreng Rappang; most of the community still adheres to the principle that if a man has proposed two or three times to a woman, it is considered unlawful to refuse. This creates a significant concern for parents if their daughter does not marry promptly, even if she is underage.

Judges at the Religious Court of Sidenreng Rappang often consider two types of harm: the harm caused by underage marriage and the harm that would occur if the marriage dispensation request is denied. If the marriage dispensation request is deemed not urgent or if one of the prospective bride or groom is not yet nineteen years old at the time of the application, the request is usually rejected by the judge. The Religious Court advises them to wait until the prospective bride or groom reaches the age of nineteen.

Thus, the judge's decision regarding marriage dispensation requests, whether accepted or rejected, both result in harm. The difference is that if the request is granted, the impact is smaller, such as issues related to matchmaking, economics, and education. Conversely, if the request is denied, the impact is greater, such as out-of-wedlock pregnancies, as the judge considers the status of a child born without a legitimate father and the potential disgrace to the extended family. Therefore, contextualizing sadd al-dzari'ah is considered a solution to minimize marriage dispensation requests at the Religious Court of Sidenreng Rappang. The reason the judge applies *sadd al-dzari'ah* as a method of legal reasoning in Islamic law is to close

[25] Ministry of Religion of the Republic of Indonesia, Al-Qur'an Tajwid and Translation, Jakarta: PT. Suara Agung (2022)

the opportunities for underage marriages. Additionally, the application of *sadd al-dzari'ah* can reduce the number of divorce cases among underage couples at the Religious Court.

Maslahah becomes one of the primary considerations in granting marriage dispensation by ensuring that the judge's decision aligns with the application of legal regulations and does not harm or endanger underage couples in the Bugis Sidenreng Rappang community. The social context indicates that marriage dispensation must take into account and address various social, cultural, and legal aspects. The judge's decision to grant marriage dispensation requires thorough consideration, and the decision must evaluate the potential harm it may cause to the community.

Establishing a minimum marriage age is essential, as it is presumed that individuals at this age possess the physical and mental maturity necessary for married life. The absence of a definitive minimum age for marriage renders the matter *ijtihadiyyah* (subject to interpretation), allowing the state with legal authority to establish a minimum marriage age based on *maslahah* (public interest). According to empirical evidence, the phenomenon of underage marriage has long been practiced in Indonesian society, including in Sidenreng Rappang, with various backgrounds such as high levels of free association, economic issues, low education levels, and strong cultural traditions. Another contributing factor is the support from the parents of those intending to marry.

In addition to handling marriage dispensation cases, judges in deciding divorces post underage marriages also apply the principle of *sadd al-dzari'ah* by considering both *maslahah* (benefit) and *mudharah* for both parties and the wider community. Judges must strive to be as fair as possible in rendering decisions that prioritize public interest. In divorce cases, the party filing the petition must provide relevant evidence in court. Particularly in cases of divorce post underage marriages, in addition to the evidence presented, judges also consider the mental and psychological condition of the child. Judges recognize that many divorces result from underage marriages, where young couples are not yet prepared to handle marital conflicts.

The method of *sadd al-dzari'ah* aims to block or prevent actions that are prohibited, particularly child marriage and the divorce of underage couples. Scholars argue that every action has two aspects: the first is the aspect that encourages the action, and the second is the aspect that is the goal or ultimate outcome (*natijah*) of the action. Efforts can be classified into two conditions if the outcome is positive, then everything leading towards that goal is considered good and recommended. Conversely, if the outcome is negative, then everything leading towards that outcome is considered bad and the action is prohibited.

Sadd al-dzari'ah involves prohibiting certain actions that are essentially permitted to prevent the occurrence of other prohibited actions. For example, in the context of divorce in Islamic law, although it is allowed, this action is not favored by Allah Swt. However, if a marriage results in more harm than benefit, and if its continuation may lead to further prohibited actions, then divorce is considered preferable to continuing the marriage.

Besides economic issues, the psychological and mental condition of underage married couples is often unstable, which can lead to divorce. Their immature emotional state and high levels of selfishness make them less capable of resolving household problems wisely and maturely. The change in status post a divorce in the Religious Court often results in underage couples being unprepared to take on new responsibilities, roles, and obligations after marriage. Divorce should be avoided as it brings more *mudharah* than *maslahah*. According to the principle of *maslahah*, everything should provide *maslahah* and avoid *mudharah*. However,

divorce tends to bring more *mudharah*, especially for couples who already have children. Therefore, the divorce process in court should be made more difficult.[26]

Sadd al-dzari'ah is a concept in Islamic law aimed at preventing actions that could lead to greater harm and damage. For example, even if an action is not explicitly prohibited by law, if it has the potential to cause harm or damage, it can be forbidden to prevent greater harm and damage. The application of *sadd al-dzari'ah* in judicial decisions is expected to be not only legally just but also wise and beneficial for the welfare of the broader community. This is because managing a household is not easy and requires deep consideration from both spouses. The reality in Sidenreng Rappang society shows that many divorces occur because underage marriages fail due to a lack of physical, mental, and financial readiness. Nonetheless, all situations must be faced with patience and fortitude, not with emotion. Divorce is considered a failure to maintain the integrity and harmony of a peaceful, loving, and compassionate household.

The consideration of judges in deciding divorce cases after underage marriages aligns with the concept of *sadd al-dzari'ah*. As enforcers of the law, judges not only adhere to the applicable legal regulations but also place significant importance on considering the aspect of welfare. If a marriage is on the verge of collapse and there is no longer any hope of achieving happiness, peace, harmony, and well-being, then divorce may be considered as a solution, especially if efforts for reconciliation and mediation have been attempted but failed. Although divorce is something despised by Allah Swt. it is permitted if all aspects of welfare have been considered and no other solution is available. This is because, if the household is maintained under such circumstances, it may lead to negative consequences for both parties.

According to Islamic law, there is no legislation that expressly allows for divorce. However, in reality, there are several reasons that may justify divorce, such as a husband failing to fulfill his duties, not providing financial support, engaging in domestic violence, or failing to respect his wife. In such situations, Islamic law does not allow either party to suffer harm in the marriage, thereby granting the right to both spouses to file for divorce in the Religious Court.

The implementation of *sadd al-dzari'ah* in minimizing post-marriage divorces among underage couples can be regulated by granting marriage dispensations. This encourages couples to strive to restore a harmonious, happy, and loving marital relationship before deciding to divorce. Furthermore, judges consider the principle of *maslahah* (public interest) when deciding divorce cases. This principle emphasizes the importance of decisions that benefit all parties involved, including the husband, wife, and children by considering *maslahah*, judges can make more prudent decisions and reduce the instances of marriage dispensations and divorces.

The application of *sadd al-dzari'ah* in efforts to minimize marriage dispensations and divorces after underage marriages does not imply a total rejection of all forms of dispensations and divorces. This principle encourages a reevaluation of policies and practices regarding marriage dispensations and divorces following underage marriages, with a focus on public welfare and reducing potential *mudharah*. Comprehensive education, empowerment, and enforcement of laws regarding underage marriages are key to reducing the number of marriage

[26]Fikri Fikri et al., "Transformation of Maqāṣid Shari 'āh in Divorce Mediation in Religious Courts: Revitalization of the Bugis-Mandar Customs, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 431–54.

dispensations and divorces, thereby ensuring the protection of underage women in marriage.

CONCLUSION

Indeed, it was found that marriage dispensations are directly proportional to divorce cases among underage couples in the Sidenreng Rappang Religious Court. The primary reasons for applying for a marriage dispensation include out-of-wedlock pregnancies and strict cultural norms practiced within the community. Conversely, the rise in divorce cases is mainly attributed to underage couples lacking physical, mental, and financial capability, leading to domestic violence, continuous conflicts, and the inability to meet daily financial needs. The application of sadd al-dzari'ah in minimizing marriage dispensations and divorces after underage marriages implies that judges consider not only legal aspects but also prioritize harm and benefit, thereby reflecting justice, legal certainty, and legal utility for underage couples. This study acknowledges its limitations and recommends future research to explore more complex applications of the law concerning marriage dispensations and divorces among underage couples, considering the ongoing dynamics in legal and social changes.

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