



## **Analysis of The Emergency Reasons in The Application of Marriage Dispensation at The Tenggara Religious Court**

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**Abstract.** The increase of the minimum marriage age is intended to reduce the number of child marriages. However, Article 7 section (2) of the marriage law revision states that marriage dispensation can be requested for emergency reasons if a deviation takes place. Consequently, marriage dispensations in various regions have drastically increased after the revision. Hence, judges' active role is needed to adjudicate this case, including classifying the criteria of emergency reasons and judges' considerations to grant the application of marriage dispensation. This study was normative and empirical legal research, and collected data through documentation and library study. The data source was secondary data in the form of primary legal materials, including Law no. 1 of 1974 concerning marriage, Law no. 16 of 2019 concerning amendments to Law Number 1 of 1974, the Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Cases and Granting Marriage Dispensation, and secondary legal materials including scientific journals and articles. The study approach was a study case, and the data were analyzed by descriptive analysis. This study found that "emergency reasons" as judges' consideration in deciding a marriage dispensation at the Tenggara Religious Court as were: (1) having been in a long period of relationship; (2) an unexpected pregnancy, (3) often going to a date, and (4) living in the same house as the prospective husband.

**Keywords:** Marriage Dispensation, Emergency Reasons, Judges' consideration.

**Abstrak.** Kenaikan batas usia nikah dimaksudkan untuk mengurangi jumlah perkawinan anak, namun faktanya justru sebaliknya, salah satunya adalah keberadaan Pasal 7 ayat (2) yang menyatakan jika terjadi penyimpangan, dapat dimintakan dispensasi kawin dengan alasan sangat mendesak. Tidak heran pasca revisi, pengajuan dispensasi kawin di berbagai daerah melonjak sangat dratis. Untuk itu peran aktif hakim sangat diperlukan dalam mengadili perkara ini, termasuk dalam membatasi apa saja yang masuk kriteria alasan sangat mendesak sehingga mengabulkan permohonan dispensasi kawin. Kajian ini merupakan penelitian hukum normative empiris, dengan jenis penelitian dokumentasi dan studi pustaka, sehingga sumber datanya adalah data skunder dalam bentuk bahan hukum primer di antaranya UU No. 1 tahun 1974, UU No. 16 Tahun 2019 tentang perubahan atas Undang-undang Nomor 1 Tahun 1974, Perma Nomor 5 Tahun 2019 tentang Pedoman Mengadili Perkara Dispensasi Kawin, sedangkan bahan skundernya adalah jurnal-jurnal dan artikel. Tulisan ini didekati dengan pendekatan studi kasus. Data yang ada dianalisis dengan menggunakan deskriptif analisis. Temuan dalam kajian ini adalah yang masuk kategori alasan sangat mendesak sebagai pertimbangan hakim dalam memutus perkara dispensasi kawin di Pengadilan Agama Tenggara adalah (1) sudah lama menjalin hubungan; (2) kehamilan tidak diduga, (3) tinggal serumah dengan calon suami.

**Kata Kunci:** Dispensasi kawin, alasan sangat mendesak, pertimbangan hakim

## Introduction

Every year the application for marriage dispensation increases significantly. Based on Badilag data, in 2018, 13,822 cases of marriage dispensation were handled by the Religious Courts/Sharia Courts throughout Indonesia<sup>1</sup>, while in 2019, the applications jumped to 25,374 cases and 23,126 (91%) of which were granted.<sup>2</sup> The increase of the minimum marriage age (Article 7 section 1 of Law No. 16 of 2019) is expected to reduce the number of child marriages. However, section 2 of the law breaks that hope because there is an opportunity for candidates who do not meet the required minimum marriage age to apply for a marriage dispensation with "emergency reasons" and with supporting data (Article 7 section 2 of Law No. 16 of 2019). Therefore, it is not

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<sup>1</sup> "Laptah Tahun 2018-Fiks.Pdf," Google Docs, 5, accessed on March 19, 2021, [https://drive.google.com/file/d/1cSwPgUpV5pvoT2IXIIZBSfYZ6DbV7zfd/view?usp=sharing&usp=embed\\_facebook](https://drive.google.com/file/d/1cSwPgUpV5pvoT2IXIIZBSfYZ6DbV7zfd/view?usp=sharing&usp=embed_facebook).

<sup>2</sup> "Laptah Ditjen 2019 GFG.Pdf," Google Docs, 5, accessed on March 19, 2021, [https://drive.google.com/file/d/1IcNMBI4deG5PH0vF6w8SH5D\\_ZDYdVGy4/view?usp=sharin&usp=embed\\_facebook](https://drive.google.com/file/d/1IcNMBI4deG5PH0vF6w8SH5D_ZDYdVGy4/view?usp=sharin&usp=embed_facebook).

surprising that after the revision of the minimum marriage age, there was a significant spike in the application for marriage dispensation. According to Badilag data, in 2020, 65,273 marriage dispensations were submitted, and 63,231 were granted (96.87%).<sup>3</sup>

The data explains that due to dispensation, child marriage increasingly gains legitimacy.<sup>4</sup> As a result, it is not surprising if there is a desire from certain parties to abolish the marriage dispensation institution because it is considered as one of the contributing factors to the escalating number of child marriages in Indonesia.<sup>5</sup> Child marriage in Indonesia becomes alarming; UNICEF stated that in 2016 child marriage in Indonesia was ranked 7th in the world, and 2nd in ASEAN after Cambodia.<sup>6</sup> In 2018 Indonesia was in 10<sup>th</sup> position.<sup>7</sup> Regionally, based on data of Central Bureau of Statistic (BPS) of 2019, South Kalimantan was in the first position with about 21.2%, followed by central Kalimantan (20.2%), West Sulawesi (19.2%), West Kalimantan (17.9%), and Southeast Sulawesi (16.6%).<sup>8</sup>

The reason to apply a marriage dispensation is pregnancy (31%), having committed sexual intercourse (16%), being at risk of committing sexual intercourse (4%), loving each other (25%), worrying risk of violating religious norms (21%), and violating social values (8%).<sup>9</sup>

The presence of a marriage dispensation facilitated by the State is a solution to a marriage emergency; however, its existence is considered the

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<sup>3</sup> "Laptah Ditjen 2020.Pdf," Google Docs, 5, accessed on March 19, 2021, [https://drive.google.com/file/d/16wILbVpPWnviFdX57vslkc2CmeMwa5Nr/view?usp=sharing&usp=embed\\_facebook](https://drive.google.com/file/d/16wILbVpPWnviFdX57vslkc2CmeMwa5Nr/view?usp=sharing&usp=embed_facebook).

<sup>4</sup> Haniah Ilhami, "Relevansi Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017 dalam Upaya Mencegah Perkawinan Usia Anak," *Jurnal Konstitusi* 17, no. 2 (August 19, 2020), p. 287, <https://doi.org/10.31078/jk1723>.

<sup>5</sup> [http://harnas.co/2018/04/19/hapus\\_dispensasi\\_pernikahan\\_anak](http://harnas.co/2018/04/19/hapus_dispensasi_pernikahan_anak). Accessed in January 2021

<sup>6</sup> Mughniatul Ilma, "Regulasi Dispensasi Dalam Penguatan Aturan Batas Usia Kawin Bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 2, No. 2 (July 22, 2020), P. 135, <https://doi.org/10.37680/Almanhaj.V2i2.478>.

<sup>7</sup> <http://Child-Marriage-Report-2020,%20puskapa.pdf>, Accessed in January 2021.

<sup>8</sup> "Data Badan Pusat Statistik: Angka Pernikahan Dini Di Kalimantan Selatan Tertinggi Di Indonesia - Health Liputan6.Com," accessed March 10, 2021, <https://www.liputan6.com/health/read/4351605/data-badan-pusat-statistik-angka-pernikahan-dini-di-kalimantan-selatan-tertinggi-di-indonesia>.

<sup>9</sup> "AIPJ2 | Australia Indonesia Partnership for Justice," accessed March 20, 2021, <https://aipj.or.id/pages/publication/analisis-putusan-dispensasi-kawin-di-indonesia>.

legalization of child marriage.<sup>10</sup> In addition, it can also injure the values of implementing child protection due to the negative impacts of which, including early divorce, economic, social, and health.<sup>11</sup> Marriage dispensation will be granted if there is an emergency reason and supporting data (Article 7 section 2). The Regulation of Supreme Court No. 5 of 2019 as the implementing regulation of Law No. 16 of 2019 does not provide a clear standard and indicator about the category of emergency reason. The judge's consideration is a determining factor in granting a marriage dispensation. Therefore, the judge's accuracy and thoroughness are necessary for assessing it, as well as whether the emergency reason is truly urgent or not.

Based on the explanation above, this paper aimed to determine the meaning of "emergency reasons" as a judge's consideration in granting the application for a marriage dispensation at the Tenggara Religious Court. The Tenggara Religious Court was selected because the application for a marriage dispensation there is higher than that at the class 1A religious courts in the East Kalimantan region.

Some researchers have studied marriage dispensation; among them is Mughniatul Ilma, whose study discusses that the increase of minimum marriage age was not followed by strict rules on the limitation of applying for a marriage dispensation. As a result, almost all applications for a marriage dispensation were granted. The results of the study stated that only pregnancy was included in the emergency category, while others were not categorized as an emergency so that they were not necessary to be granted.<sup>12</sup> the following research by Sonny Dwi et al., studying that the increasing minimum marriage age, which is similar between men and women as an effort to minimize the number of child marriages, is not effective, not only due to the government's unpreparedness in anticipating a surge in the increase of the application for marriage dispensation but also the low

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<sup>10</sup> Faiq Tobroni, "Putusan Nomor 74/PUU-XII/2014 dan Standar Konstitusional Dispensasi Perkawinan," *Jurnal Konstitusi* 14, no. 3 (January 9, 2018), p. 574, <https://doi.org/10.31078/jk1436>.

<sup>11</sup> M. Abdussalam Hizbullah, "Eksistensi Dispensasi Perkawinan Terhadap Pelaksanaan Perlindungan Anak Di Indonesia," *Jurnal Hawa : Studi Pengarus Utamaan Gender Dan Anak* 1, no. 2 (December 28, 2019), p. 276–77, <https://doi.org/10.29300/hawapsga.v1i2.2608>. also quoting Muhammad Iqbal and Rabiah, "Penafsiran Dispensasi Perkawinan bagi Anak di Bawah Umur (Analisis Beberapa Putusan Mahkamah Syar'iyah Aceh)," *El-Usrah: Jurnal Hukum Keluarga*, Vol. 3, No. 1, Januari – Juni 2020, ISSN: 2549 – 3132/ E ISSN: 2620 – 8083, p. 111.

<sup>12</sup> Ilma, "Regulasi Dispensasi Dalam Penguatan Aturan Batas Usia Kawin Bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019," p. 135.

awareness of the community to obey these rules.<sup>13</sup> Another study by Faiq Tobroni focuses on Constitutional Court No. 74/PUU-XII/2014, which does not provide a constitutional standard as a consideration in granting marriage dispensation. It indicates that the standard of granting marriage dispensation is an open legal policy that can change at any time according to the needs and conditions of the community.<sup>14</sup> In addition, Emanuel Boputra claimed that the application for marriage dispensation would be granted if there were a reason and evidence; on the other hand, if the reason was not sufficient and the evidence was not strong, it would be rejected. It further emphasized that the granting of dispensation was a form of violating the right of children, thus it was better to eradicate marriage dispensation.<sup>15</sup> Meanwhile, there was no research about the emergency reason as a judge's consideration in granting the application of a marriage dispensation which later on became the background of this study. This discussion focused on the category of emergency reasons and the factors considered by the judge in granting the application for a marriage dispensation at the Tenggara Religious Court.

This research is empirical-normative legal research. The data sources in this study were primary legal materials, including Law no. 1 of 1974 and its amendments, The Regulation of Supreme Court No. 5 of 2019 concerning Guidelines for Adjudicating Applications of Marriage Dispensation, and Determination of Marriage Dispensation. The secondary legal materials were relevant books and journals. The approach in this study was a case approach<sup>16</sup>, which reviewed and analyzed "emergency reasons" as a judge's consideration in granting the application for a marriage dispensation. The collected data were analyzed by using descriptive analysis.

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<sup>13</sup>Sonny Dewi Judiasih, Susilowati Suparto Dajaan, and Bambang Daru Nugroho, "Kontradiksi Antara Dispensasi Kawin Dengan Upaya Meminimalisir Perkawinan Bawah Umur Di Indonesia," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 3, no. 2 (2020), p. 216–17.

<sup>14</sup> Faiq Tobroni, "Putusan Nomor 74/PUU-XII/2014 dan Standar Konstitusional Dispensasi Perkawinan."

<sup>15</sup> Emanuel Boputra, "Diskresi Hukum dalam Pemberian Dispensasi Perkawinan" | *Jurnal Hukum, Politik dan Kekuasaan*, Vol. 1, No. 1 (Agustus 2020) accessed on March 20, 2021, <http://journal.unika.ac.id/index.php/jhpk/article/view/2673>.

<sup>16</sup> Peter Mahmud Marzuki, *Penelitian Hukum, Kencana* (Jakarta, 2005), p. 295.

## Marriage Dispensation after The Revision of The Increase of Minimum Marriage Age

Marriage dispensation is a part of an exemption<sup>17</sup> of Laws on the minimum age of a person to get married.<sup>18</sup> Another definition is that the prospective bridegroom-considered normatively immature to carry out marriages-is free from the obligation to fulfill the minimum of marriage eligibility by obtaining permission from the religious court.<sup>19</sup> Quoting Muhammad Kunardi, Maimunah defines marriage dispensation as an exemption granted for the prospective bridegroom who is ineligible to get married according to positive laws.<sup>20</sup>

Law No. 16 of 2019 concerning on amendment of marriage law article 7 section (1) states that marriage is only permitted if the man and woman have reached the age of 19 years. The increase of the minimum marriage age in that article gives hope to declining the number of child marriages. However, section (2) states that if an exemption on the minimum marriage age occurs, the prospective bridegroom's parents are allowed to apply for marriage dispensation due to emergency reasons and accompanied with supporting evidence. As a result, it is aimed to prevent child marriages.<sup>21</sup>

The explanation emphasized that emergency reason is a situation in which there is no other choice, and the marriage must take place due to critical conditions. Because of unclear boundaries, Judges' interpretation and consideration are necessary. Because interpreting law is the duty of the judge, the judge must interpret due to unobvious law; as a result, one will make a fair decision and provide legal certainty.<sup>22</sup>

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<sup>17</sup>Dalam studi ilmu hukum, setiap asas hukum memiliki sifat instrumental, dalam artian bahwa asas hukum mengakui adanya kemungkinan dan penyimpangan terhadap asas itu sendiri. Dengan adanya penyimpangan, mak. a system hukum menjadi luwes dan tidak kaku, dan dalam system hukum perkawinan di Indonesia, penyimpangan itu dalam bentuk dispensasi kawin. In Haniah Ilhami, "Relevansi Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017 dalam Upaya Mencegah Perkawinan Usia Anak", p. 289.

<sup>18</sup> Hizbullah, "Eksistensi Dispensasi Perkawinan Terhadap Pelaksanaan Perlindungan Anak Di Indonesia," p. 272.

<sup>19</sup> Marilang, "Dispensasi Kawin Anak di Bawah Umur," *Al Daulah : Jurnal Hukum Pidana dan Ketatanegaraan* 7, no. 1 (July 24, 2018), p. 140-52, <https://doi.org/10.24252/ad.v7i1.5383>.

<sup>20</sup> Maimunah, "Dispensasi Nikah Anak Perempuan: Suatu Fenomena Masyarakat Modern dalam Konteks Agama dan Negara," *Syakhsia : Jurnal Hukum Perdata Islam* 21, no. 2 (January 21, 2021), p. 222-23, <https://doi.org/10.37035/syakhsia.v21i2.3843>.

<sup>21</sup> "Konkretisasi Alasan Mendesak Dan Bukti Cukup Dalam Memberikan Dispensasi Perkawinan Bagi Anak Oleh Hakim," accessed in March 10, 2021, <https://www.ms-blangpidie.go.id/148-uncategorised/artikel/720-konkretisasi-alasan-mendesak-dan-bukti-cukup-dalam-memberikan-dispensasi-perkawinan-bagi-anak-oleh-hakim>.

<sup>22</sup>E. Utrecht, *Pengantar dalam Hukum Indoensia* (Jakarta: Ichtiar, 1983), p. 250.

Interpretation is a method of legal interpretation providing a simple and easy-to-understand explanation of law text so that rule scopes can be determined and correlate with facts. The interpretation by the judge is an explanation of laws that the community can implement. Interpretation is intended to apply laws.<sup>23</sup> Methods in interpreting law are grammatical, historical, and sociological interpretation. Firstly, a Grammatical interpretation understands legislation text using understandable language for the people targeted by the legislation. Secondly, a systematic interpretation connects a case with other laws and regulations. Thirdly, a historical interpretation looks at the intention of making these regulations. Finally, sociological interpretation is made by looking at social goals adapted to current social realities.<sup>24</sup>

The research conducted by Mansari et al., stated that emergency reasons as judge's consideration in granting the application for marriage dispensation were; pregnancy, having committed sexual intercourse, being alone with the opposite sex, being caught red-handed by the community, as well as children dropping out of school who are worried to potentially commit religious norms-violating actions.<sup>25</sup>

There is great hope in the revision of minimum age marriage, at least to reduce the number of early marriages, which are quite high in Indonesia. In fact, the revision has actually triggered an increasing number of applications for marriage dispensation. It can be seen from the reports regarding applications for marriage dispensation from various regions.

For instance, at Religious Court in Central Java (Semarang), in Oktober 2019, the applications of marriage dispensation were about 355 cases, and they significantly surged to 1,371 cases (286,2% increase) in late November 2019.<sup>26</sup> Likewise, at Religious Court in Blitar, there were 89 cases of marriage dispensation application from January to October 2019, and those became higher to be 245 cases in December.<sup>27</sup> At the religious court in Ciamis, there were 133

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<sup>23</sup> Abintoro Prakoso, *Penemuan Hukum: Sistem, Metode, Aliran dan Prosedur dalam Menemukan Hukum*, 2016, p. 83, <http://repository.unej.ac.id/handle/123456789/75142>.

<sup>24</sup> Prakoso, p. 115-129.

<sup>25</sup> "Konkretisasi Alasan Mendesak Dan Bukti Cukup Dalam Memberikan Dispensasi Perkawinan Bagi Anak oleh Hakim."

<sup>26</sup> "Pasca Naiknya Batas Umur Perempuan Menikah, Perkara Permohonan Dispensasi Kawin Pada Pengadilan Agama Se Jawa Tengah Naik 286,2% Pada November 2019," accessed March 10, 2021, <https://www.pa-boyolali.go.id/berita-pta/412-pasca-naiknya-batas-umur-perempuan-menikah-perkara-permohonan-dispensasi-kawin-pada-pengadilan-agama-se-jawa-tengah-naik-286-2-pada-november-2019>.

<sup>27</sup> Erliana Riady, "Revisi UU Perkawinan Bikin Permohonan Dispensasi Kawin Naik 300% di Blitar," detiknews, accessed September 25, 2020, <https://news.detik.com/berita-jawa-timur/d-4847608/revisi-uu-perkawinan-bikin-permohonan-dispensasi-kawin-naik-300-di-blitar>.

applications of marriage dispensation in October 2019, and they went up to 317 applications in late December 2019.<sup>28</sup> Meanwhile, the religious court in Kediri only received 15 applications of marriage dispensation, but since the revision, the number of the applications significantly rose to 181 cases, especially from October 2019 to February 2020.<sup>29</sup> The religious court in Wonosari reported that in 2018 there were 77 applications of marriage dispensation, 108 applications in 2019, and the cases drastically increased in 2020 to 231 cases.<sup>30</sup> Sharia Court in Sigli also reported the rise; from January to September, the applications were only 3 cases, while they surged to 22 cases from October to December 2019.<sup>31</sup>

The data above shows that the Marriage Law revision regarding the rise of the minimum marriage age has contributed significantly to the number of applications for marriage dispensation and increased the number of child marriages in Indonesia. The rise of the minimum marriage age is not the main factor of the increasing number of early marriages; other factors follow, including economic factors, online school, and the lack of student activity. The factors create an opportunity for children to commit misconduct. Thus, child marriages have been occurring significantly from early 2020 until now, supported by cultural norms in certain areas.<sup>32</sup>

### Marriage Dispensation at The Tenggara Religious Court

The national and regional data of marriage dispensation growth have been presented above. Here are the data of marriage dispensation growth at three Religious Courts in East Kalimantan according to the total cases.

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<sup>28</sup><https://jabar.tribunnews.com/2020/01/10/belum-cukup-umur-606-pasangan-di-ciamis-meminta-dispensasi-nikah-sejak-tahun-lalu>, accessed on 20 February 2021.

<sup>29</sup> "Dampak Revisi UU Perkawinan, Permohonan Dispensasi Nikah Di Kediri Meningkat - Nusa Daily," accessed March 10, 2021, <https://nusadaily.com/jatim/dampak-revisi-uu-perkawinan-permohonan-dispensasi-nikah-di-kediri-meningkat.html>.

<sup>30</sup> "Angka Pernikahan Dini Di Gunungkidul Kembali Meningkat - Harianjogja.Com," accessed on March 10, 2021, <https://jogjapolitan.harianjogja.com/read/2019/01/14/513/964870/angka-pernikahan-dini-di-gunungkidul-kembali-meningkat>.

<sup>31</sup> fais, "Pasca Revisi UU Perkawinan, Permohonan Dispensasi Nikah Meningkat Di MS Sigli | Mahkamah Syar'iyah Sigli," accessed on March 10, 2021, <https://ms-sigli.go.id/2019/12/23/pasca-revisi-uu-perkawinan-permohonan-dispensasi-nikah-meningkat-dims-sigli/>.

<sup>32</sup> SuaraMerdeka.com, "Mencegah Pernikahan Dini - suaramerdeka.com," August 14, 2020, <https://www.suaramerdeka.com/news/opini/237913-mencegah-pernikahan-dini>.



Table 1: The Data of Marriage Dispensation at The Religious Courts in East Kalimantan

No	Religious Courts	2018		2019		2020	
		Received	Granted	Received	Granted	Received	Granted
1	Samarinda	47	46	100	95	248	248
2	Balikpapan	53	53	85	84	178	177
3	Tenggarong	76	65	101	99	269	261

Source: Report Book of High Court in East Kalimantan year 2018, 2019, and 2020.

The figure shows that for the last three years, the Tenggarong Religious Court, which is a class 1B religious court, has the highest application for dispensation compared to Samarinda and Balikpapan Religious Courts, the 1A Religious Courts.

Tenggarong Religious Court handles a large and geographically unique area.<sup>33</sup> In Tenggarong, there are many transmigration villages; as a result, the number of young marriages is high<sup>34</sup>, and so is the number of marriage dispensation applications. Likewise, the study by Mariyatul Qibtiyah shows that people in rural areas commit more young marriages than in urban areas. Moreover, due to unaffordable education costs, people in rural areas do not continue school and prefer to get married.<sup>35</sup>

Handayani, in her study, explains factors causing women to get married at an early age, as follows: (1) less-educated women are 2.3 more vulnerable to commit early-age marriage than well-educated ones; (2) those living in poor neighborhoods are 2.1 more at risk than those living in conducive one; (3) those who are less educated are 5.4 more vulnerable than those who are well-educated;

<sup>33</sup> Lilik Andaryuni, "The Program of Circuit Isbat Nikah as the Embodiment of Access to Justice in Indonesia," *Mazahib* 17, no. 1 (June 30, 2018), p. 81, <https://doi.org/10.21093/mj.v17i1.1054>.

<sup>34</sup>Zulfiani memilah factor penyebab nikah muda secara internal dan eksternal. Factor internal adalah keinginan dari anak dan orang tua, sementara factor eksternal karena kemiskinan, hamil di luar nikah, putus sekolah, dan pengaruh media social. In Zulfiani, "Kajian Hukum Terhadap Perkawinan Anak Di Bawah Umur Menurut Undang-undang Nomor 1 Tahun 1974," *Jurnal Hukum Samudra Keadilan* 12, no. 2 (September 26, 2017), p. 217.

<sup>35</sup> Mariyatul Qibtiyah, "Faktor yang Mempengaruhi Perkawinan Muda Perempuan," *Jurnal Biometrika dan Kependudukan*, Vol.3, No. 1 (July 2014), p. 54.

(4) women whose parents are unemployed are 7.4 more vulnerable than those whose parents have a regular income.<sup>36</sup>

The Tenggara Religious Court is a class IB court, in 2020, the applications of marriage dispensation were 269, 261 of which were granted. The cases (97%) can be seen in the table below.

Table 2: Total of The Applications of Marriage Dispensation in Tenggara Religious Court in 2020

No	Cases	Total	Percentage (%)
1	Revoked cases	7	2.6
2	Granted cases	261	97
3	Crossed out cases	1	0.4
<b>Total</b>		<b>269</b>	<b>100</b>

Source: POSBAKUM of the Tenggara Religious Court of 2020.

Meanwhile, the reasons for those applications can be seen in the table as follow:

Table 3: The Reasons of The Applications of Marriage Dispensation in Tenggara Religious Court of 2020

No	Reason of Applying	Total	Percentage (%)
1	Pregnancy	85	31.6
2	Having been in a long-period relationship	106	40.6
3	Living in partner's house	2	0.76
4	Often going out together	25	9.6
5	Being matched up	3	1.1
6	<i>Ta'aruf</i> (Islamic term for the action to know each other)	13	4.98
7	Having ever stayed at partner's house	5	1.9
8	Having committed sexual intercourse	2	0.76
9	Frequently visiting partner's house	5	1.9

<sup>36</sup> “Eka Yuli Handayani, Faktor-Faktor yang Berhubungan dengan Pernikahan Usia Dini pada Remaja Putri di Kecamatan Tambusai Utara Kabupaten Rokan Hulu”, *Jurnal Maternity and Neonatal*, 1, no. 5 (2014), p. 203.

10	To support family's economy	2	0.76
11	To avoid adultery	7	2.7
12	Having committed <i>Sirri</i> marriage (Marriage without being registered at The Office of Religious Affairs)	1	0.38
13	Giving birth	2	0.76
14	Others	4	1.45
	<b>Total</b>	<b>269</b>	<b>100</b>

Source: POSBAKUM of the Tenggarong Religious Court of 2020

The table above proves that the pregnancy factor is not the main reason for applying for a marriage dispensation. The first rank is that the couples have been in a relationship for quite a long time. On the other hand, the study by Sonny Dewi Judiasih et al. contrasts that pregnancy is the main reason for applying for a marriage dispensation, followed by poverty/economic factors, parental concerns, and finally dropping out of school.<sup>37</sup> Likewise, the study by Anita at Malang High Court shows that the application for dispensation is caused by an unwanted pregnancy and due to dating.<sup>38</sup>

Based on gender, the highest number of applicants were women of 233 people (86.6%), and the rest were men of 36 people (13.4%). These data further strengthen that early marriage is mostly undergone by women. That is in line with Ana Latifatul's study that shows the number of early marriages for women is three times higher than for men.<sup>39</sup>

The age of the applicants was also various ranging from about 14 to 19-year-old, the details are shown as follows.

Table 4: The age of the applicants of marriage dispensation

No	Age of The Applicants (Year)	Total	Percentage (%)
1	14 – 15	3	1.11
2	15 – 16	16	5.94

<sup>37</sup> Judiasih, Dajaan, and Nugroho, "Kontradiksi Antara Dispensasi Kawin Dengan Upaya Meminimalisir Perkawinan Bawah Umur di Indonesia," p. 216–17.

<sup>38</sup> Ahmad Subekti and Dwi Ari Kurniawati, "Pandangan Hakim Terhadap Dispensasi Pernikahan Anak Di Bawah Umur (Studi Kasus di Pengadilan Agama Kota Malang)", *Hikmatina*, Jurnal Ilmiah Hukum Keluarga, Vol. 2, No. 1 (2020), p. 31.

<sup>39</sup> Ana Latifatul Mumtahanah dkk., "Pernikahan Dini Di Indonesia: Faktor Dan Peran Pemerintah (Perspektif Penegakan Dan Perindungan Hukum Bagi Anak", | *Widya Yuridika: Jurnal Hukum*, Vo. 2, No. 1 (June 2019), p. 4, accessed on March 10, 2021, <http://publishing-widyagama.ac.id/ejournal-v2/index.php/yuridika/article/view/823>.

3	16 – 17	31	11.52
4	17 – 18	82	30.48
5	18 – 19	137	50.92
	<b>Total</b>	<b>269</b>	<b>100</b>

Source: POSBAKUM of Tenggarong Religious Court 2020.

The data explains that the lowest age of the applicants is 14-15 years (1.11%), and the most applicants are between 18-19 years of about 137 applicants (50.92%), followed by those ranging 17-18 years with a total of 82 people (30.48%).

Based on data from the Posbakum of the Tenggarong Religious Court, the educational backgrounds for whom a marriage dispensation is applied are no education of one person (0.37%), with an elementary education of about 49 people (14.5%), 97 people with a junior high school education (36%), and the most with high school education, namely 122 people (45.3%).

In addition, emergency reasons for judges as a basis for consideration in granting marriage dispensation are explained in some examples of the determination of the case at the Tenggarong Religious Court, whether for reasons of pregnancy or not. As previously presented, the pregnancy factor coming from 85 people (31.6%) was the second cause of the dispensation application. In comparison, the main factor was the length of relationship or courtship of around 122 people (40.6%).

### Case I

The dispensation was submitted on October 14, 2020 (563/Pdt.P/2020/PA.Tgr) by Applicant I, A 63-year-old, elementary school education, a farmer, while applicant II (applicant I's wife), 61-year-old, elementary school education, and a farmer too. The applicants would marry off his daughter, an 18-year-and-6-month female, junior high school education, not working, with a prospective husband, 21-year-old male, elementary school education, a farmer. Previously, the application had been applied to the local Religious Affairs Office (KUA) to register the marriage. However, it was rejected because the prospective bride's age was only 18 years and six months, while the other requirements were eligible to get married according to Islamic law. The reason for the proposal was because the bride and groom had been dating for three years, and both parents were worried that they would commit adultery and frequently go out together.

**Case II**

The dispensation was submitted on November 16, 2020 (631/Pdt.P/2020/PA.Tgr) by applicant I, a fisherman, never been in a school, and applicant II (the applicant I's wife), a housewife, and never been in a school. The applicants would marry off their daughter, a 15-year-and-3-month-old unemployed female with elementary school education, with a prospective husband, a 28-year-old male with junior high school education, and a company employee. Previously, it had been submitted to the local KUA to register the marriage. However, it was rejected because the prospective bride's age was only 15 years and three months, while the other requirements were eligible according to Islamic law. The reason for the submission was that the applicant's daughter had been in a relationship with the prospective husband for a year, and she had lived at her prospective husband's house and did not want to return to the applicant's house.

**Case III**

The dispensation was submitted on September 08, 2020 (19/Pdt.P/2020/PA.Tgr) by Applicant I, a farmer with elementary school education, and applicant II (applicant I's wife), a housewife with elementary school education. The applicants would marry off their daughter, an 18-year-3-month-old female with high school education, and unemployed, with a prospective husband, an 18-year-and-6-month construction worker with junior high school education. Previously, it had been submitted to the local KUA to register the marriage, but it was rejected because the prospective bride and groom's ages did not meet the required age for getting married. The reason for the application was that the prospective bridegroom had been in a romantic relationship for a year, and at present, the prospective bride was three months pregnant.

**Case IV**

The dispensation was submitted on December 02, 2020 (644/Pdt.P/2020/PA.Tgr) by Applicant I, a farmer with elementary school education, and applicant II (applicant I's wife) a housewife with elementary school education. Both applicants would marry off their daughter, 18 years and five months old, unemployed female with high school education, with the prospective husband, a 23-year-old workshop businessman with junior high school education. Previously, the application had been submitted to the local KUA to register the marriage but rejected because the prospective bride and groom did not meet the required age for getting married. The reason for the

application was that both of them had been in a romantic relationship for three years and to avoid unwanted negative things.

### **Case V**

The dispensation was submitted on September 4, 2020 (512/Pdt.P/2020/PA.Tgr) by applicant I, a driver with elementary school education, and applicant II (applicant I's wife), a housewife with high school education. The applicants would marry off their 18-year-and-4-month son, a workshop employee with high school education, with his prospective wife, a 17-year-2-month-old unemployed female with high school education. Previously, it had been submitted to the local KUA to register the marriage but rejected because the prospective bride and groom were illegible for getting married in terms of age. The reasons for the submission were: they had been in a relationship for two years and were concerned to cause a slender.

### **Case VI**

The applicant submitted the dispensation on December 4, 2020 (647/Pdt.P/2020/PA.Tgr), a fisherman with elementary school education. The applicant would marry off his 17-year-7-month-old son, a fisherman with elementary school education, with his 17-year-4-month-old prospective bride, an unemployed female with junior high school education. Previously, it had been submitted to the local KUA to register the marriage, but it was rejected because the prospective bride and groom did not meet the required age for getting married. The reasons for the submission were: they had been in a relationship for a year and were concerned to cause slander, and the prospective bride was six weeks pregnant.

#### **a) Legal Considerations of The Judge for Case I, II, and III**

1. A general explanation of Article 7 section (1)
2. Article 6 section (1) Law No. 1/1974 as amended by Law no. 16 of 2019 about Marriage in conjunction with Article 16 section (1) of The Compilation of Islamic Law (KHI) concerning the approval of both parties, the prospective bride and groom, to get married.
3. Article 6 Section (2) of Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage, the blessing and approval of parents (of Applicants I and II) to marry off their children;
4. Article 8 section (f) of Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage, in conjunction with Article 40 section (c) of the Compilation of Laws in Indonesia that the bridegroom is both Muslim and no sharia law issues to hamper the marriage, in

conjunction with Article 39, Article 40, Article 41, Article 42, Article 43 and Article 44 of the Compilation of Islamic Law.

5. The judge ordered to present the children of applicants I and II/prospective bridegroom and their parents (Article 10 of Supreme Court Regulation No. 5 of 2019).
6. The judge has attempted to advise the parents of the prospective bride (Applicants I and II), the prospective bride, the prospective groom, and his parents about the risks of getting married at an early age, including education, unprepared reproductive organs, socio-economic impacts, psychological matter, and the possibility of domestic violence (Article 12 Supreme Court Regulation No. 5 of 2019).
7. The judge heard the statements of the applicant, the applicant's children, and the prospective husband and his parents (Article 7 paragraph 3 of Law No. 1/1974 as amended by Law No. 16 of 2019 in conjunction with Article 13 of Supreme Court Regulation No. 5/2019).
8. Evidence of P.1 and P.2 and confirmed with the witnesses' testimony.
9. Evidence of P.1, P.2, P.3, P.4, P.5, and P.6 met formal and material requirements as authentic evidence.
10. Article 1 section (2) of Law no. 23 of 2002, amended by Law no. 35 of 2014 concerning Child Protection. Article 16 section (1) of Law no. 35 of 2014 mentioned that every child has the right to protect from targets of persecution, torture, or inhumane punishment. The prospective bride will be guaranteed, besides both parents of the prospective bridegroom are ready to help their economic needs during a marriage.
11. A *Fiqh* principle, "*Pushing harms is better than pulling advantages*"

#### **b) Legal Considerations of the Judges in Granting the Case III, IV, and VI**

1. Article 49 Law no. 7/ 1989 amended by Law No. 3/ 2006, amended again by Law No. 50/ 2009 concerning Religious Court Authority.
2. The prospective bridegroom met sharia requirements (Article 8 Law No. 1/ 1974 in conjunction with Article 39 until Article 44 of Islamic Law Compilation).
3. The prospective bridegroom's parent had approved, and the prospective groom's family also had proposed to the bride.
4. The prospective bridegroom's relationship had been very close, and there would be infamy if they did not get married (Article 2 of Supreme Court Regulation No. 5 of 2019).
5. Article 7 section (2) of Law no. 16 of 2019 concerning amendments to Law no. 1/1974, if there is a deviation, the parents of the male/female side

- can apply for a dispensation to the Court with emergency reasons accompanied by sufficient supporting evidence.
6. The judge ordered to present the children of applicants I and II/prospective bride and groom and their parents.
  7. The judge had attempted to advise the parents of the prospective bride (Applicants I and II), the prospective bride, the prospective groom, and his parents about the risks of getting married at an early age, including education, unprepared reproductive organs, socio-economic impacts, psychological matter, and the possibility of domestic violence.
  8. The judge heard the statements of the applicant I and II, the prospective bride, the prospective groom and his parents.
  9. Evidence of documents P.1, P.2, P.3, P.4, P.5, and P.6 met the formal and material requirement as authentic evidence.
  10. Koran Chapter An Nur, verse 32
  11. A *Fiqh* principle: “*The government's policy always concerns to the welfare of the people*” and “*Pushing harms is better than pulling advantages*”.

Of the 6 cases that have been described previously, almost all of the judges' legal considerations are the same and follow the guidelines as mandated in Supreme Court Regulation No. 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation.<sup>40</sup> This regulation contains the stages of examining the process of the dispensation application in detail. The active role of judges is demanded in this case by exploring the background and reasons for the dispensation, not just knowing or hearing the parties' statements.<sup>41</sup>

Cases regulated in the law sometimes have unclear boundaries and indicators, including the emergency reasons in dispensation cases. The judge must refer to the existing rules accompanied by strong supporting evidence and can explore the facts at trial when giving a grant in this case so that the grant will provide legal certainty, benefit, and justice.

Of the 6 cases, the granted applications were sorted into the pregnancy and non-pregnancy category or more-than-a-year relationship category.

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<sup>40</sup>Perma ini dibuat dengan tujuan untuk membuat standarisasi proses mengadili perkara dispensasi kawin, sehingga hakim benar-benar serius dan hati-hati dalam memeriksa perkara ini. Perma No. 5 Tahun 2019 merupakan aturan khusus yang dibuat oleh MA sebagai bentuk penjelasan mengenai hukum acara permohonan dispensasi yang belum diatur dalam UU No. 16 Tahun 2019, di mana di dalamnya diatur tentang syarat administrasi, pihak yang berwenang mengajukan, teknis pemeriksaan perkara serta upaya hukum jika permohonan ditolak. Ilma, “Regulasi Dispensasi Dalam Penguatan Aturan Batas Usia Kawin Bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019,” p. 151–52.

<sup>41</sup> Ilma, p. 155.



Application with reasons due to long-standing intercourse can be seen in Cases I, II, IV, and V, while due to pregnancy in Cases III and VI. In granting the dispensation application, the judges' considerations are not only based on legal considerations but also other considerations that affect the decision.

- a) The reason for the application is that the relationship has been longstanding.
- 1) Case No. 563/Pdt.P/2020/PA.Tgr (Case I), the reason that the prospective bridegroom had been dating for approximately three years and both parents (Applicants I and II) were worried that they would commit adultery. The other considerations include:
    1. The prospective bride (18 years six months/junior high school graduate) stated her readiness to build a household, and it was proven by helping take care of household chores.
    2. The prospective groom (21 years old) worked as a farmer with an income of 2 million rupiahs/ per month.
    3. During the relationship for approximately three years, there had never been any physical or verbal violence.
    4. The wedding date had been determined based on both families' agreement and could no longer be postponed, besides the wedding committee in the community had been formed.
  - 2) Case No. 631/Pdt.P/2020/PA.Tgr (Case II), the reason is that the prospective bride had been in a relationship for a year with her prospective husband and had been living at his house and did not want to return to the applicant's house. Both parents were worried about causing negative rumors or a slander. The other considerations are as follows:
    1. The prospective husband (28 years old/junior high school) worked in a company and earned 2 million rupiahs/ per month.
    2. Even though the prospective bride was not 19 years old yet (15 years three months/elementary school education), she was considered mature by the judge because she always helped the prospective husband's parents do chores when she lived at her prospective husband's house for a year.
    3. there was no physical or mental violence during a year of relationship and living at the prospective husband's house,
    4. The wedding date had been determined on December 21, 2020, by both families and could not be postponed anymore.
  - 3) Case No. 644/Pdt.P/2020/PA.Tgr (Case IV), the reason was that the two prospective brides had been in a romantic relationship for three years and to avoid unwanted negative things. The other considerations are:

1. The prospective groom (23-year-old and junior high school graduate) worked in a workshop and had an income of seven million rupiahs/ per month.
  2. Although the age of the prospective bride was 18 years and five months and graduated from high school, the judge granted the application in consideration that the prospective groom (21-year-old) was eligible to get married and be a good husband.
  3. Both parents approved the marriage.
  4. The marriage proposal had been proposed, and the wedding had been scheduled by both families.
- 4) Case No. 512/Pdt.P/2020/PA.Tgr (Case V) was applied by the prospective groom (18 years four months old), the reason that they had been in a relationship for two years and were worried that there would be slander. The other considerations are:
1. The prospective groom worked as a workshop employee and had an income of fifty thousand rupiahs/ per day.
  2. The prospective bride (17 years two months old) used to do household chores helping her parents.
  3. There was never any violence during three years in a relationship, either verbally or physically.
  4. Having been blessed and approved by their parents
- b) Reasons for Applying Dispensation Due to an Unexpented Pregnancy
- 1) Case No. 19/Pdt.P/2020/PA.Tgr (Case III) was submitted because the prospective bridegroom had been in a romantic relationship for a year, and at present, the prospective bride was three months pregnant. Other considerations are as follows:
    1. Their relationship was very intimate, and the prospective bride was three months pregnant, so if not married, it would cause more harm (Article 2 of Supreme Court Regulation No. 5/2019).
    2. The prospective groom (18 years six months/high school education) worked as a construction worker and had an income of a hundred thousand rupiahs/ per day.
    3. The readiness of the prospective bride (18 years three months old/high school education) to build a household was proven by having done household chores to help her parents.
    4. Blessed and approved by both parents.
  - 2) Case 647/Pdt.P/2020/PA.Tgr/ Case VI) was filed by the applicants from the prospective groom because they had been in a relationship for a year

and were worried to cause slander, and the prospective bride was six weeks pregnant. Other considerations are:

1. The prospective groom (17 years seven months old/elementary school graduate) worked as a fisherman and had an income of seventy thousand rupiahs/ per day.
2. The prospective groom had proposed to the prospective bride (17 years four months old/Junior high school), and the proposal was accepted.

The description of those six cases explains that one of the factors causing the granting of a marriage dispensation application is the existence of an urgent condition or an emergency.<sup>42</sup> The category of the emergency reason is pregnancy (Cases III and VI). The marriage dispensation automatically prevents the family's disgrace (*hifz al ird*), saves the prospective mother and the child she contains (*hifz al nasl*). If the application is rejected due to pregnancy, the harm is greater than the benefits for the prospective mother, the child, and families of both parties because they will feel ashamed, and it will break life order in society because of the unclear status of the child. An unexpected pregnancy is an emergency reason, as emphasized by Mughniatul Ilma that the emergency reason for the granted dispensation application is unwed pregnancy because this reason has the greatest legal impact, both for the applicants, their daughter, and the child to be born. Meanwhile, other reasons, such as worries, customs, poverty, are still anticipatory because they are part of the roles and responsibilities of parents.<sup>43</sup> Along with that, Sonny explained that an unexpected pregnancy was one of the reasons considered urgent for the judge in granting a marriage dispensation for the benefit and interests of the child.<sup>44</sup>

From the facts in the trial, the testimony of the parents and the witnesses explained that the prospective husband worked and was economically capable and ready to support his wife and children. Prospective husbands who are working and willing to marry show responsibility for what they have done. A marriage maintains the family's dignity and provides peace and moral support to the prospective mother so that the growth and development of the child in the womb are proper. Likewise, Isna Wahyudi said that the urgent reasons included the following conditions: (a) Covering the family's disgrace; (b) Protecting the status

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<sup>42</sup>Wisono Mulyadi and Anjar Sri Ciptorukmi Nugraheni, "Akibat Hukum Penetapan Dispensasi Perkawinan Anak di Bawah Umur (Studi Kasus Di Pengadilan Agama Pacitan)," *Jurnal Privat Law*, Vol. 5, No. 2 (July 1, 2017), p. 71, <https://doi.org/10.20961/privat.v5i2.19394>.

<sup>43</sup> Ilma, "Regulasi Dispensasi Dalam Penguatan Aturan Batas Usia Kawin Bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019," p. 160–61.

<sup>44</sup> Judiasih, Dajaan, and Nugroho, "Kontradiksi Antara Dispensasi Kawin dengan Upaya Meminimalisir Perkawinan Bawah Umur di Indonesia," p. 217.

of the child in the womb; (c) Demanding for the responsibility of the man making the female pregnant, and (d) Psychological and material support for the prospective bride during pregnancy.<sup>45</sup>

Meanwhile, the dispensation application, which was submitted for reasons out of pregnancy like Case I, tells that the prospective bridegroom had been dating for three years and often went out together so that their parents were worried that they would do misconduct. Case II told that the prospective bridegroom had been dating and living at the prospective husband's house for a year. Case IV showed that the prospective bridegroom had been dating for three years and their parents were worried about their misconduct, and there would be slander. Case V showed that the prospective bridegroom had been dating for two years, and their parents were worried about slander.

Based on the reasons for the submissions, almost all of them are similar in that they had a close relationship, while the length of the relationships was different; one year, two years, and three years. Even a prospective bride lived in the same house with the prospective husband. If they did not get married, it would cause slander in the community, and it is worried that they would commit adultery. In addition, the judges also considered other reasons, namely the facts during the trial presented by the parents, the prospective bride, groom, and the witnesses. They were presented to show supporting evidence. Likewise, Isna Wahyudi emphasized that besides pregnancy, granting a marriage dispensation needs to consider the less harmful impact of child marriage compared to the dangers that arise if marriage is not carried out, for example, the child has graduated from school or does not continue his education due to cost problem, almost 18 years old, have been dating for a long time, often alone, both parents cannot afford and supervise.<sup>46</sup>

Other considerations were that the prospective husband worked (Case I income of two million rupiahs/month, Case II income of two million rupiahs/month, Case IV income of seven million rupiahs/month, and Case V income of five thousand rupiahs/day). Even though the prospective brides who were applied had not been 19 years old yet, they used to do household chores in their daily life helping their mother or their prospective mothers-in-law.

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<sup>45</sup>Muhammad Isna Wahyudi, SHI, MSI, Ketua Pengadilan Agama Kuala Kapuas "Interpretasi Alasan Sangat Mendesak dalam Perkara Dispensasi Kawin", disampaikan dalam Webinar Kajian Hukum HPA Angkatan-3 MARI, 24 September 2020.

<sup>46</sup>Muhammad Isna Wahyudi, SHI, MSI, Ketua Pengadilan Agama Kuala Kapuas "Interpretasi Alasan Sangat Mendesak dalam Perkara Dispensasi Kawin", disampaikan dalam Webinar Kajian Hukum HPA Angkatan-3 MARI, 24 September 2020.

According to the judges, it is an indicator of their maturity because they are capable of managing a household.<sup>47</sup>

Another consideration is that the wedding date (Case I, II, and IV) had been decided by both families, and could not be postponed. In addition, to determine the proper wedding date, it must be adjusted to the customs and habits. Therefore, if the wedding were canceled or postponed, it would cause problems for both family and the community. Meanwhile, in the case of V, although the wedding date had not been scheduled yet, the prospective groom's family had proposed to the prospective bride.

In addition, there is no violence during their close relationship, either physically or verbally, which shows that the instrument of legal protection for children in the case of a marriage dispensation was realized since the prospective husbands met the qualifications to provide the protection and safety for the prospective wife. Of the 6 cases above, almost all prospective husbands are over 19 years old (Case I, 21 years old, Case II 28 years old, Case IV 23 years old).

Some facts at the trial that strengthened the submission's reasons arose because the judge truly explored the overall factors behind the case from the applicants, the prospective husbands, and their parents. It is mandated by The Supreme Court Regulation No. 5 of 2019 that judges are required to play an active role in adjudicating marriage dispensation cases.

In addition, the considerations in granting the dispensation were based on sharia, juridical and sociological reasons, namely: (1) If the application is for a man, he must be economically established/working, while if the application is for a woman, she must be used to doing household work; (2) the blessing and approval of both parents to marry them off exist; (3) the relationship between the two is close, if they are not married, it will break the life order; (4) there are no hindrances regarding sharia law.<sup>48</sup>

According to the description above, the six submitted cases showed that the prospective grooms worked, and the reasons were due to pregnancy or having a relationship for a long time and living at the prospective groom's house. All cases showed that the parents agreed and approved the marriage, two of which (case I and II) had decided on a wedding date. Moreover, the relationship between the two was so close which the six cases showed that the relationship had been taking place for a year, and some girls were even pregnant (case III and VI) and

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<sup>47</sup>Interview with Ismail, SHI, one of the judges adjudicating the case of marriage dispensation at The Tenggara Religious Court.

<sup>48</sup>Rio Satria, "Dispensasi Kawin Di Pengadilan Agama Pasca Revisi Undang-Undang Perkawinan (16/10) - Direktorat Jenderal Badan Peradilan Agama," accessed on March 12, 2021, <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/dispensasi-kawin-di-pengadilan-agama-pasca-revisi-undang-undang-perkawinan-oleh-rio-satria-16-10>.

lived in the same house with the prospective groom for a year (Case II). Of the six cases, all prospective bridegrooms were eligible to get married according to sharia law.

The absence of criteria and limitations of "emergency reasons" may be due to various reasons depending on sociological and cultural conditions of each society; therefore the active role of judges is needed to provide an interpretation of the emergency reasons, and it must be based on the facts that show up during the trial and strengthened by supporting evidence, juridical and sociological considerations.

As previously described, in other courts, pregnancy was the most common factor in the application for a marriage dispensation, while The Tenggara Religious Court placed the pregnancy factor in second place. The most common reason for applying for dispensation is having been at a close and long relationship because the social conditions in Tenggara are different, especially in difficultly-accessed suburban areas, access to schools, or courts. In suburban areas, the distance from one house to another and the access to educational institutions are quite distant, so that most people only graduated from elementary school. A girl over 15 years or even over 18 years old and only graduates elementary school is not sent to study to a higher level by their parents because they (the applicants) are only elementary school graduates, a farmer or fisherman whose income for daily living is also little, and even do not graduate from a school so that parents will be happy to accept other people's proposal to marry their daughter.

Regarding the emergency reasons and the judge's legal considerations in granting the application for a marriage dispensation as described above, it seems that the judges at the Tenggara Religious Court used a systematic interpretation by linking related norms and rules based on the theory of legal interpretation, meaning that the regulations are correlated with one another. In interpreting the emergency reasons in Article 7 paragraph (2) the judges linked it to The Supreme Court Regulation No. 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation, the emergency reasons or an urgency must also be supported by supporting evidence. In addition, it correlates with Article 1 paragraph (2) of Law no. 23 of 2002, amended by Law no. 35 of 2014 concerning Child Protection. Article 16 paragraph (1) of Law no. 35 of 2014 mentions that every child has the right to protection. An emergency reason is also related to Article 8 mentioning that the prospective bridegroom does not have hindrance regarding sharia law. Based on this, the judge must review The Supreme Court Regulation No. 5 of 2019 in strengthening the emergency reasons to see whether the emergency reasons are supported by strong evidence like a pregnancy proven by a valid letter from the doctor and other evidence that

supports the reason for submitting it. In addition, it is associated with The Law of Religious Court (UUPA) No. 23 of 2002 in conjunction with Law no. 35 of 2014 article 16 regarding efforts to provide legal protection for children. At last, the two candidates are not hindered by sharia law from getting married as mandated by Article 8 of the Compilation of Islamic Law.

Furthermore, there is a historical interpretation explaining that a judge must look at the purpose of making the rule in providing an interpretation. Revising the minimum marriage age is intended to minimize child marriages so that granting applications for emergency reasons must consider it. It means that in granting the application for marriage dispensation for emergency reasons, the judge must refer to the spirit in preventing child marriage. Based on this, the emergency reason due to pregnancy which is in accordance with efforts to reduce the number of child marriages will possibly cause more harm than provide an advantage for the mother, the prospective child, and the family if it is not granted.

Finally, the sociological interpretation explains that emergency reason must consider the social conditions and customs of the local community. It can be found in the judge's consideration in which the judges refer to the facts revealed at the trial that both parties had determined the date of the marriage in accordance with the customs and traditions of the local community, and if the marriage is not carried out, it will cause discord between the family and community members. It seems that the judge also used this interpretation at the Tenggara Religious Court to support the emergency reasons put forward by the applicants.

## **Conclusion**

Marriage dispensation is a solution for a prospective bridegroom who has not reached the minimum age to get married. Marriage dispensation is submitted to the Religious Courts for an emergency reason and accompanied by supporting data. Because there are no clear boundaries and standards regarding emergency reasons, the acceptance or rejection of the application for marriage dispensation depends on the judge's consideration in interpreting the phrase "emergency reason". If referring to the theory of legal interpretation, the judges at the Tenggara Religious Court seem to use systematic interpretations, historical interpretations, and sociological interpretations in interpreting emergency reasons and granting the application for marriage dispensation. However, the use of historical interpretation has not been maximized yet. If all requests for dispensation for marriage are granted, efforts to prevent child marriages seem to be useless, even though the initial spirit of revising the minimum marriage age was to minimize the number of child marriages.

Giving a marriage dispensation is a difficult action for judges because it could be judged as legalizing child marriage. Therefore, judges with authority do not only refer to existing legal norms but also must carry out *ijtihad* and legal interpretation by exploring legal facts at trial with reference to juridical and sociological considerations to produce the most relevant legal rules and proper decision so that the decision will have the value of legal certainty, justice, and expediency.

Further research on a similar topic is needed, but in the different regions, because each region has different sociological and cultural conditions and customs affecting the criteria of emergency reasons. Most of which are the same, there are still some differences.

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