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## Application of The Concept of *Maslahah* by Judges to Issuance of Marriage Dispensation Due to Pregnancy in Religious Courts

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### Abstract

*The purpose of the study was to determine the substance of the granting of marriage dispensation due to pregnancy and to describe the implementation factors of the provision of marriage dispensation due to pregnancy in the Religious Courts. The research method used is sociological juridical research using a qualitative approach and taking three research locations in the Gorontalo area, namely the Gorontalo Religious Court, the Suwawa Religious Court and the Limboto Religious Court. This study uses prescriptive legal analysis. The results of the study, namely, substantially the provision of marriage dispensation due to pregnancy, namely the judge's consideration regarding legal considerations governing and applying the concept of *maslahah* if marriage dispensation is accepted/rejected the implementation factor of granting marriage dispensation due to pregnancy is considering the fate of a child who, if born without status, is rejected if the request for a marriage dispensation is rejected.*

## 1. Introduction

In Indonesia, the Religious Courts are the only state courts established and held with the aim of enforcing law and justice based on Islamic sharia. Religious courts in Indonesia are the implementation of Islamic sharia teachings. The existence of the Religious Courts in the Indonesian constitutional system is guaranteed through Article 24 of the 1945 Constitution.<sup>1</sup>

As the Implementing Body for Judicial Power, the people seeking justice are to receive, examine and decide every case that is brought to them, including resolving voluntary cases. The Religious Courts are also one of the 3 (Three) Special Courts in Indonesia. It is said to be a Special Court because the Religious Courts adjudicate certain civil cases and concerning certain groups of people. Thus, the Religious Courts are tasked and authorized to resolve all problems and disputes including in the fields of marriage, inheritance, endowments, grants, *infaq*, *sadaqah*, and economics sharia.

Marriage is permitted if it fulfills the conditions determined by the Marriage Law (UUP). As contained in the Marriage Law Number 16 of 2019 concerning the Married Age Limit. For those who have met the age requirements for marriage, the marriage can be carried out properly.

Marriage in Indonesia is legal according to the law as long as it is carried out according to the provisions of the religion or belief held and does not conflict with the applicable laws and regulations. Among the marriage requirements that apply in Indonesia according to Law Number 16 of 2019 concerning Marriage, namely related to the age limit for getting married, prospective grooms and brides are only allowed to marry at the age of 19 (Nineteen) years. This is regulated in Article 7 paragraph (1) of the Marriage Law. If this marriage must continue to be carried out because there are urgent factors, the party from the child's family must request a marriage dispensation to the local Religious Court.

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<sup>1</sup> Arto, HA Mukti. (2018). *The Discovery of Islamic Law for the Realization of Justice, "Applying the Invention of Law, Ultra Petita & Ex officio Hakim in Proportionality*. Yogyakarta: Pustaka Pelajar. p. 72

Along with the times and the increasingly sophisticated world of technology, it often brings changes to children. Many children are disobedient and obedient to their parents because of environmental influences and excessive use of social media and are even reluctant to go to school and engage in promiscuity. As a result of lack of attention and supervision from parents, children do harmful actions and will even damage their future.

The role of the judge in the marriage dispensation case is very important, because the culmination of the settlement of the case in the form of a decision is in the hands of the judge. Then in giving these decisions there must be a basis for consideration for the common good. So that the judge's consideration is very interesting to study, this is the reason for the author to examine the reasons for the applicant submitting a marriage dispensation application, and what is the basis for the judge's consideration in granting the marriage dispensation application.<sup>2</sup>

Marriage dispensation according to the Big Indonesian Dictionary, is a permit to release from an obligation or prohibition, so the dispensation is an allowance for something that is actually not allowed to be done or implemented. Marriage dispensation has the meaning of easing a certain limit (age limit) in making a bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty.<sup>3</sup>

For a person to get married, the age limit is an important thing. Because a perfect marriage is that both prospective partners must be biologically and psychologically mature and mentally and physically mature so that the marriage can

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<sup>2</sup> Rifai, M Zulfan. (2019). "Juridical Analysis for Religious Court Judges in Granting Applications for Marriage Dispensation". *Journal of Dynamics* 25 (3). p. 1-7

<sup>3</sup> Hidayatullah, Haris and Miftakhul Janah. (2020). "Dispensation for Underage Marriage in Islamic Law". *Journal of Islamic Family Law* 5(1). P. 34-61

be realized properly and healthily and get healthy and good offspring without ending in divorce.<sup>4</sup>

Based on data from the City Religious Courts, the number of requests for dispensation for marriage increased from 2018 to 94 requests, in 2019 requests for dispensation reached 68 children and in 2020 it reached 71 requests. Seeing the trend of increasing requests for dispensation, this allows the Religious Courts to make it more difficult or tighten the issuance of marriage dispensation letters.<sup>5</sup>

It is undeniable that the association of teenagers in this modern era has tended to approach promiscuity. Free sex, drinking alcohol, drug use become close friends for some teenagers. From some of the effects of promiscuity by teenagers, free sex is the biggest contributor to early marriage. Usually underage marriages (early marriages) occur because between the prospective groom and the prospective bride there has been sexual intercourse, both of which resulted in the woman being pregnant or not pregnant. Or often called MBA, married by accident, married by accident.<sup>6</sup>

Various reasons were put forward by parents so that their children were given a marriage dispensation. The reasons were, among others, pregnant first, children who were afraid to sleep alone or parents who were not familiar with taking care of their children or did not understand the bad effects of underage marriage. However, with various considerations, judges in granting dispensations must be in accordance with existing procedures, and can touch the sense of justice of the community so that judges are encouraged to make decisions through good and professional considerations.

The explanation of the requirements above states in the Qur'an and hadith as well as this marriage law to carry out a marriage, namely the ability to prepare for marriage. This ability and preparation for marriage can only happen to adults. In one

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<sup>4</sup>Apriyanti, et. all. (2018). "The Phenomenon of Early Marriage Makes Parents and Adolescents Not Afraid of Having Unwanted Pregnancy". *Indonesian Journal of Health Promotion* 13(1). p. 61-73

<sup>5</sup> Primary Data for 2021 at the Gorontalo Religious Court.

<sup>6</sup> Nurhidayah. (2019). "The Effectiveness of Giving Marriage Dispensation to Underage Marriage in Makassar". *Jurnal Salam: Jurnal El-Iqtishady* 1(1). p. 43-53

of the requirements that will carry out the marriage mentioned above, there is a need for the consent of both parties to enter into the marriage. The consent and consent will not arise from someone who is still a child, it means that the partner whose consent is requested must be an adult.<sup>7</sup>

All the *Shari'a* that have developed in this world are aimed at realizing the benefit of humans. Events in this world, continuously occur, always grow and never stop. Syara' gives us legal paths that can help us find a way out of the problems we face. One of the methods developed is *maslaha mursalah*.<sup>8</sup> Likewise, the issue of the issuance of marriage dispensation which seems to be commonplace in the Religious Courts.

With regard to this dispensation issue, the Religious Court Judge must have a strong reason or consideration to give a marriage dispensation determination for a child who has been pregnant first (married an accident) so as not to have a bad impact on the family and the environment. The judge also needs to review if the issuance of a marriage dispensation due to pregnancy can cause benefits to the child or can even cause harm to the child. Having married, with this problem, it encourages the author to research more deeply about the application of the *maslahah* concept by judges to the issuance of marriage dispensations due to pregnancy in the Religious Courts.

## 2. Problem Statement

This issue is very important to study because it is closely related to the process of implementing marriage which requires the provision of a marriage dispensation to the prospective bride who is underage but is already pregnant. Of course, before getting married, the prospective bride and groom will apply for a dispensation to the Religious Court. focus on the problem how the concept of *maslahah* is used by judges as a consideration in granting marriage dispensation in the Religious Courts.

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<sup>7</sup>Asman. (2019). "Underage Marriage Due to Pregnancy Out of Marriage and Psychological Impact on Children in Makrampai Village, West Kalimantan". *Al-Istinbath Journal: Journal of Islamic Law* 4(1) p. 79-100

<sup>8</sup> Muksana Pasaribu. (2014). "Benefits and Its Development as a Basis for Determining Islamic Law". *Jurnal Justitia* 1(4). p. 350-360

### 3. Methods

The type of research is Juridical Sociology. Where the research is carried out deductively, it begins with an analysis of case related to the laws and regulations governing the dispensation of pregnant marriages, which then finds the truth of coherence in the form of conformity with norms in the form of orders and prohibitions in accordance with legal principles. The type of approach taken is a qualitative approach. The location of the study took in three areas of the Religious Courts, namely the Gorontalo Religious Court, the Suwawa Religious Court and the Limboto Religious Court. The data collection method in this study consisted of four parts, namely: interviews, observations, documentation and questionnaires/questionnaires.

### 4. Discussion and Analysis

#### 4.1. Substance of Granting Dispensation for Marriage Due to Pregnancy in Religious Courts

Marriage is the behavior of creatures created by God Almighty so that life in the natural world reproduces. Marriage does not only occur among humans, but also occurs in plants and animals. Therefore, humans are intelligent animals, so marriage is one of the regular cultures that follows the development of human culture in people's lives. In a simple society the marriage culture is simple, narrow and closed, in a modern society the marriage culture is advanced, broad and open.<sup>9</sup>

Religious Courts become a legal sub-system when faced with a larger or wider legal system, such as if the Religious Courts are faced with the "Indonesian judicial system" then the Religious Courts become a sub-system of the "Indonesian judicial system" because in the "Indonesian judicial system" in addition to there are elements of the Religious Courts as well as elements of the General Courts, State Administrative Courts and Military Courts. Because the Religious Courts are a legal system, the

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<sup>9</sup> Santoso. (2016). "The Nature of Marriage According to the Marriage Law, Islamic Law and Customary Law". *Jurnal Yudisia* 7(2). p. 412-434

Religious Courts must have components and all of these components must have clear objectives.<sup>10</sup>

According to Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Application for Marriage Dispensation Article 1 Number 5, namely: "Marriage Dispensation is the granting of marriage permits by the court to prospective husbands/wife who is not yet 19 years old to get married.<sup>11</sup>The existence of a dispensation for the age of marriage (marriage dispensation) is controversial. On the one hand, its existence is a state facility to accommodate marital emergencies. The existence of a marriage dispensation is a way provided by the state to legalize juvenile marriage, even though it does not meet the marriage age standard, in order to avoid religious sins. On the other hand, its existence is accused of being a facility to legalize early childhood marriage.<sup>12</sup>

The Religious Courts in Indonesia are Civil Courts and Islamic Courts which have the authority to accept, hear and decide cases, both requests and lawsuits between people who are Muslim based on statutory rules and Islamic law.<sup>13</sup>This means that the Religious Courts hear civil cases related to civil law and Islamic law as well as cases experienced by Muslim communities. or expired.

The Religious Courts in Gorontalo Province are precisely in 3 (Three) Religious Courts where the focus of research is the Gorontalo Religious Court, the Religious Courts Suwawa and the Limboto Religious Court are the religious courts that receive the most civil cases each year. Civil cases that are often entered and Registered are

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<sup>10</sup> Domiri. (2016). "Analysis of the Religious Courts System in Indonesia." *Journal of Law and Development* 47(3). p. 327-345

<sup>11</sup> Perma No. 5 of 2019 Concerning Guidelines for Application for Marriage Dispensation

<sup>12</sup> Tobroni, Faiq. (2017). "Decision Number 74/PUU-XII/2014 and Constitutional Standards of Marriage Dispensation." *Journal of the Constitution* 14(3). p. 573-600

<sup>13</sup> Inayah, Nurul. (2017). "Determination of Dispensation for Marriage Due to Pregnancy Out of Wedlock at the Yogyakarta Religious Court 2010-2015 (Analysis of Procedural Laws for Religious Courts)". *Journal of Al-Ahwal* 10(2). p. 178-193

divorce cases, both divorce and divorce, marriage dispensations and cases of *itsbat* marriage and other civil cases.

One example of the case being studied is the determination of marriage dispensation, the Marriage Law stipulates an age limit with considerations from a health perspective. This is contained in the explanation of the Marriage Law which reads that "to maintain the health of husband and wife and offspring, it is necessary to set age limits for marriage". The explanation shows that the age limit set to maintain the health of husband and wife and their offspring, it is clearer that health is the main factor in determining the age limit.<sup>14</sup>

As is known, the marriage age limit is 19 years which is stipulated by Law No. 16 of 2019 concerning Marriage, which in fact this rule cannot be implemented immediately by the community, especially parents and children who marry underage, as evidenced by the dynamics of dispensation requests. Marriage in the Religious Courts which has its ups and downs every year.

Court Name	Year			
	2018	2019	2020	Jan-May 2021
Gorontalo Agama Religious Court	84	71	198	93
Suwawa Religious Court	-	83	159	67
Limboto Religious Court	94	88	250	106

Primary data for 2021

In connection with these data, it can be explained that the data regarding the dispensation for pregnant marriages from the three religious courts in the province of Gorontalo (Gorontalo City, Bone Bolango Regency and Gorontalo Regency) are very varied. It is clear that the data in 2020 has greatly improved from the three religious

<sup>14</sup> Fatmawati, Nita et. all. (2016). "Dispensation for underage marriage due to pregnancy outside of marriage (Study at the Demak Religious Court)". *Journal of Diponegoro Law Review* 5(2). p. 1-16



courts. Based on an interview with one of the judges at the Suwawa religious court who said that the granting of dispensation for pregnant marriages began since the pandemic and since the change in age at marriage it has increased because the application for dispensation on the grounds of pregnancy dominates. The granting of dispensation for marriage due to pregnancy basically all of his requests were granted because it included urgent reasons, unless there was still blood and marriage relations.<sup>15</sup>

Dispensation is given in order to provide legal certainty for people who need it, regardless of whether it is beneficial or harmful, it is casuistic in nature. Marriage dispensation exists because the dispensation relates to the age limit set by the laws and regulations and as an exception to the stipulated limit it will be violated.<sup>16</sup>

Judges of the Religious Courts in determining marriage dispensation always pay attention to the rules regarding the issue of marriage dispensation, whether it is Law No. 16 of 2019 concerning Marriage, Perma No. 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation, Law No. 35 2014 concerning Child Protection and other related and supporting laws regarding the determination of the marriage dispensation.

There are several stages related to the mechanism for examining marriage dispensation cases in the trial, namely the reconciliation stage, the reading application letter stage, the conclusion stage proof stage, and the determination stage.<sup>17</sup> This is as stated in the substance of the provision or determination of marriage dispensation by the Religious Courts. A child who wants to marry who in fact has not reached the age of 19 (Nineteen) as regulated by the Marriage Law must obtain permission from the Religious Court. This request for permission to marry is requested by the parents of

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<sup>15</sup> Interview with Sunyoto SH (Suwawa Religious Court Judge) on 17 May 2021

<sup>16</sup> Kamarusdiana, Ita Sofia. (2020). "Niah's Dispensation in the Perspective of Islamic Law, Law No.1 of 1974 and the Compilation of Islamic Law". *Journal of Salam: Journal of Salam & Syar'I Culture* 7(1). p. 49-64

<sup>17</sup> Mujahidin, Ahmad. (2012). *Renewal of the Procedural Law of the Religious Courts: Completed with litigation form format. Cet-1*. Bogor: Ghalia Indonesia. p. 47

the child, if the parent has died, it is the guardian who applies to the Religious Court, known as a marriage dispensation.

The government fully surrenders cases of marriage dispensation due to pregnancy to the Religious Courts. Religious Court judges as the authority holder in deciding cases must have the fairest intention to decide cases of marriage dispensation due to pregnancy. This justice is felt by all parties at least, so that the marriage dispensation really provides benefits for all parties, not one party.<sup>18</sup>

It is not easy for the judges of the Religious Courts to approve the application for a marriage dispensation by the applicant because they have to go through several stages regulated by law, especially regulated by Perma No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensations. The initial stage that must be passed is the administrative stage. At this stage the applicant must complete the requirements in the application for a marriage dispensation. This is also stated in the substance of the granting of marriage dispensation by the Judges of the Religious Courts. The substances are in the form of:

- 1) Completeness of Administration, the initial stage that must be fulfilled by the applicant for a marriage dispensation, namely the parents, is the fulfillment of administrative requirements. As regulated by Perma No. 5 of 2019 Article 5 (1), namely:
  - a. Application letter
  - b. Photocopy of the identity cards of both parents/guardians
  - c. Copy of family card
  - d. Photocopy of the child's identity card or identity card and/or child's birth certificate
  - e. Photocopy of identity card or child identity card and/or birth certificate of the prospective husband/wife;

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<sup>18</sup> Baihaqi, Muhamad. (2018). *Approval of Dispensation for Marriage due to Pregnancy in terms of Maslahat Perspective (Analytical Study at the Kendal Religious Court)*. Thesis. Faculty of Syari'ah and Law, Walisongo State Islamic University. Semarang. p. 18

- f. Photocopy of the child's last education diploma and/or certificate of still schooling from the child's school<sup>19</sup>

Completeness of these administrative requirements can be obtained by the parents of court officials. All matters concerning the requirements, procedures for making an application and even litigation will be explained, this stage is carried out at the Premeja stage in the Religious Court.

- 2) After the administrative requirements are met, the applicant will be directed to the next stage, namely to fulfill or pay a Power of Attorney to Pay (SKUM). This must be fulfilled so that the case can be tried in the Religious Courts. After that, the applicant will be directed to the cashier to pay the SKUM whose cost range has been previously determined by the court employee.
- 3) The process of reading the evidence and settling the case, after going through several stages, the case file arrives at the table of the Head of the Religious Court, then the judge studies the marriage dispensation case and sets the date and time for the trial. In the marriage dispensation trial, it is only carried out by a single judge and does not take the form of an assembly because those who are being tried are minors. At this trial, the judge asked questions and looked at the evidence and always gave advice to the dispensation applicant, namely parents and children, about the impact of underage marriage. But the judge could not force his will to refuse the marriage dispensation because it had more negative impacts than positive impacts. The judge always thinks about the benefit side of issuing a marriage dispensation. If the marriage dispensation application is rejected, what will be the fate of the child who will be born if there is no father figure. The judge reviews the sufficient evidence in the trial. In terms of the issue of issuing a marriage dispensation due to pregnancy outside of marriage, it is crucial because it is the main factor in the request for a marriage dispensation.

From these considerations, the rejection of the marriage dispensation creates a greater *maslahah* than the *madharat*. These benefits include, by not marrying the

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<sup>19</sup> Perma No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensations

parties have the opportunity to continue their education, it will give time for the parties to arrive at maturity. The parties will learn the science of kinship to understand the purpose of marriage. The groom-to-be will be given time to look for work. The *madharat* side is that the men can run away from their responsibilities from the women and prospective children. Prospective children also do not get a relationship with the father because there is no marriage. Women temporarily have to bear children's maintenance until she marries a man.<sup>20</sup>

Often, due to problems between the issuance of this dispensation, which leads to whether it causes benefit or harm after marriage, Religious Court Judges often exercise the independence rights of judges. This means that judges can use their independent rights to decide or accept applications for marriage dispensation. This right to independence certainly cannot escape the corridors of existing regulations.

#### **4.2. Factors Influencing the Implementation of Marriage Dispensation Due to Pregnancy in the Religious Courts**

In Indonesia, girls are the most vulnerable victims of child marriage, with the prevalence of: Girls from rural areas are twice as vulnerable to marrying as from urban areas, Child brides are most likely to come from poor families, girls who are less educated and drop out of school are generally more prone to becoming child brides than those who attend school.<sup>21</sup>

*Maslahah* It can be interpreted as actions that encourage human goodness in a more general sense, namely everything that is beneficial to humans, either in the sense of attracting or producing such as generating profit or pleasure or in the sense of rejecting or avoiding such as rejecting harm or damage. So everything that contains

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<sup>20</sup> Zah, Umi Nurul Laelatul. (2019). "The Judge's View on the Rejection of Marriage Dispensation No.0168/Pdt.P/2018/PA.TA Due to Pre-Marriage Pregnancy Perspective of Marsalah Mursalah". *Jurnal SAKINA: Journal of Family Studies* 3(3). p. 1-15

<sup>21</sup> Candraningrum, Dewi et. all. (2016). "Fear of Zina, Low Education, and Poverty: The Status of Girls in Child Marriage in Sukabumi, West Java." *Women's Journal* 21 (1). p. 77-95

benefits should be called *maslahah*. Thus, *maslahah* contains two sides, namely attracting or bringing benefit and rejecting or avoiding harm.<sup>22</sup>

Prohibition of adultery and marrying for adulterous couples who are still young is a step *dharuriyyah* as the primary domain and concrete steps that must be carried out in order to provide clarity of legal status while at the same time maintaining the survival of the child resulting from adultery, so that after birth they can carry on with their lives normally and do not lose their rights as individual human beings and as members of society.<sup>23</sup>

However, a successful marriage cannot be expected from those who are still physically or mentally immature. Therefore, marriage must be done with a mature preparation. In order for a marriage to be legal, it must meet several conditions certain conditions both concerning the two parties who want to carry out the marriage and those relating to the implementation of the marriage itself.<sup>24</sup>

To form a family, you must be prepared carefully Among them, the couple who will form a family must be adults, both biologically and pedagogically or responsibly. For men, they must be ready to assume responsibility as the head of the family, so they are obliged to provide a living for family members. For a woman, she must be ready to become a housewife who is in charge of controlling the household, giving birth, educating, and raising children.<sup>25</sup>

ready to be alert and not careless or careless, both in the association of children at home or at school and in the community, giving and telling about the dangers of early marriage and its effects and implications for the future, limiting the association of

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<sup>22</sup> Syarifuddin, Amir. (2014). *Ushul Fiqh 2*. Jakarta: Prenada Media Group. p. 368

<sup>23</sup> Hasanah, Rizkiyah. (2018). "Determination of Dispensation for Marriage Due to Pre-Marriage Pregnancy in View from the Maqashid Sharia Aspect". *Journal of Actualita* 1(1). p. 295-311

<sup>24</sup> Ernawati. (2020). "Dispensation for Underage Marriage at the Giri Winning Religious Court". *Journal: Muhakkamah* 5(2). p. 205-222

<sup>25</sup> Mubasyaroh. (2016). "Analysis of the Causes of Early Marriage and Its Impact on the Perpetrators". *Jurnal Yudisia* 7(2). p. 385-411

children. and do not allow watching movies or viewing images that smell or contain pornography.<sup>26</sup>

Factors Affecting the Implementation of Giving Dispensation for Marriage Due to Pregnancy in the Religious Courts:

- a. Factors of certainty, legal justice and legal benefits, the two children who have committed adultery which causes pregnancy outside of marriage, the judge considers human rights that must be protected both from children who are married and children who will be born, by means of having to be married through a marriage dispensation process that granted. If it is not granted, it will cause legal uncertainty, especially for girls and even children to be conceived. The child will not get married if the issuance of the marriage dispensation is rejected. In the end, the benefit side is put forward from the *mudhorot* side in the issuance of a marriage dispensation.
- b. On average, requests for dispensation from marriage in the Religious Courts are due to pregnancy, so these two children are judged by the judge to be inseparable, have had a relationship like husband and wife and are pregnant too, so the judge must grant the request, because if it is not granted, it is feared that the child will commit adultery. the same thing repeatedly without any ties of marriage and or the family will marry off their children in a *sirri* manner, thus adding to cases of unregistered marriages. The most basic thing is the fate of children who are born without a father when they grow up to be labeled as illegitimate children and become ridiculed by the surrounding community.
- c. The benefit factor for the parties, the Judge saw that the issuance of a marriage dispensation would have a major impact on the children and families, especially the girls. Not because it covers the disgrace of the family itself, but because of the fate of the child who can marry and the certainty of the lineage status of the child to be born.

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<sup>26</sup> Eleanora, Fransiska Novita and Andang Sari. (2020). "Early Marriage from a Child Protection Perspective". *Progressive Legal Journal* 14(1). p. 50-63

Concretely in giving a decision, the judge must not go out of the corridor of the law that regulates the issue being litigated. The judge's determination will become legal certainty and have binding legal force to be carried out because the judge's determination is a judge's statement which is stated in written form and spoken by the judge in a trial open to the public as a result of the examination of the case.<sup>27</sup>

### **4.3. *Maslahah* Concept in Giving Marriage Dispensation**

The concept of *maslahah* which is often used by judges in the Religious Courts in Gorontalo Province has a significant impact on the granting of marriage dispensation. Considering that the application for this dispensation is increasing every year, moreover, this dispensation is given to those who will carry out underage marriages.

Based on the results of the study, it shows an increasing trend, especially requests for dispensation for marriage due to pregnancy. Of the 3 (three) Religious Courts in Gorontalo Province as a sample, it shows an increase in the provision of marriage dispensations due to pregnancy in addition to other dispensations in the last 4 (four) years. In 2020 almost all Religious Courts in Gorontalo Province received a large number of dispensation requests because this condition coincided with the covid 19 pandemic. As a result of this pandemic all teaching and learning activities in schools and other activities were completely paralyzed, allowing students to do various things - things that are forbidden in religion. This problem can no longer be dammed because considering the increasing demand for granting marriage dispensations to children under the age of five.

In the process of legal discovery, which becomes the judge's reference if the law of one case is not in positive law, the judge refers to customary and religious law, not infrequently judges also use the *maslahah* method, in line with the objectives of syara' in establishing law. However, there is no *shari'a* guidance that takes into account and there is no *shara'* guide that rejects it.<sup>28</sup>

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<sup>27</sup> Ahyani, Sri. (2016). "Religious Court Considerations on Dispensation for Early Marriage Due to Pregnancy Out of Wedlock". *Journal of Legal Insights* 34 (1). p. 31-47

<sup>28</sup> Syarifuddin, Amir. (2011). *Op.cit.*, p. 351

Applications for dispensation for marriage due to pregnancy often color the trial process in the Religious Courts. Before the judge determines the granting of the marriage dispensation, the judge first studies the facts of the trial and the prohibition of marriage which is regulated in the provisions of Islamic law. After obtaining these facts, the judge will make his decision.

Marriage dispensation is given to those who are underage or not old enough to get married. Therefore, for the benefit of the people, granting dispensation by considering the benefits is the right step and does not conflict with the provisions of the *Shari'a*, because what is put forward is the benefit.

## 5. Conclusion

Substantially, the concept of *maslahah* is very important to be applied in the Religious Courts in the context of granting marriage dispensation for couples who want to get married but are not old enough according to the provisions of Law Number 16 of 2019 concerning Marriage Age Limits. The judge's consideration is the most important aspect in determining a decision that contains legal certainty, justice and contains benefits for those who want to marry but are not old enough. Meanwhile, in the *maslahah* aspect, the provision of marriage dispensation is in accordance with the purpose of providing benefits to prospective husbands and wives and staying away from all forms that are prohibited by religion. The granting of this dispensation must go through several stages, namely the completeness of the requirements for determining the marriage dispensation, payment of SKUM, The trial process and until the determination of the marriage dispensation. This trial is conducted by the sole judge of the local Religious Court and the judge can exercise his right of independence in determining the dispensation of marriage. Factors that affect the implementation of the issuance of marriage dispensation due to pregnancy because of: certainty factor, justice, benefits that must be guaranteed by the judge and the main factor is the benefit to the parties, namely the child, parents and family.

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