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## The Effectiveness of Child Protection Through Marriage Dispensation Policy in Maslāḥah Perspective

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### ABSTRACT

Maslāḥah means interests and benefits, which, when used together with the word mursalah, means unlimited, unrestricted, or freely decided interests. The Maslāḥah mursalah method emerges as a fundamental understanding of the concept that shari'ah is intended for the benefit of the community and serves to provide benefits and prevent harm. This research is descriptive and qualitative, with a normative theological approach, normative juridical, and empirical juridical. Research data sources include the Watampone Religious Court, the Ministry of Religion of Bone Regency, and the Office of Women's Empowerment and Child Protection in Bone Regency. The Watampone Religious Court carries out child protection through discretionary restrictions on accepting applications for marriage dispensation, which must be with a recommendation from the Office of Women's Empowerment and Child Protection in Bone Regency (proven pregnant) as an indication of "very urgent". This policy is contrary to the culture of the people of Bone; and concerning the "Best Interests of the Child", the point is included in the category of al-Maṣlāḥah al-Hajiyah and al-Maṣlāḥah al-Mursalah.

### INTRODUCTION

Indonesia is a state of law, and the basis for law formation has three elements: justice, certainty, and expediency. Overall, the rule of law can be interpreted as a state that stands above the law and guarantees its citizens justice. In addition, the rule of law is bound by the rules and regulations formed to achieve legal ideals. Aristotle said that the real rules are regulations that reflect justice for the association between citizens. Islam is a religion that provides guidelines for human life as a whole, covering all aspects of life towards achieving the happiness of spiritual and physical life, both in individual lives and in the life of society. Islam provides several moral directions on issues of social life, both explicitly and implicitly and reflects the ideal social life to achieve the level of welfare of humanity (Ridho, 2015). In this regard, the concept of developing Islamic law quantitatively affects society's socio-cultural, political and legal order (Islam, 2018). In general, the purpose of the creator of the law (Syar'i) in establishing its laws is for the benefit and interests and happiness of all human beings, both happiness in this mortal (temporary) world and the real (eternal) hereafter. The purpose of such Islamic law we can catch, among others, from the word of God in QS. al-Anbiya' (21); 107 and QS. Al-Baqarah (2): 201-202.

Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally, following human dignity and protection from violence and discrimination (Law Number 23 of 2002: Article I number I). Philosophically, children as part of the younger generation, as one of the human resources which are the potential and successors of the ideals of the nation's struggle in the future, which have a strategic role and have special characteristics and

characteristics, require special guidance and protection as well (Nasrianna, 2011, p. 76). Human Rights (HAM) are rights that humans intrinsically own because of the dignity as humans that they have had since (Franz Magnis Suseno, 2005, p. 121). In this way, children also have human rights. Protecting and caring for children is important because children are the generation and successors of leadership on earth. One form of child protection implemented in Indonesia is child marriage prevention. Indonesia is the second country in ASEAN and the 8th in the world in child marriage (www.Kompas.com, 31/12/21). South Sulawesi Province and, more specifically, Bone Regency, including areas where child marriages occur a lot (Agung Rahmadi, 2021a). This condition worries the future journey of the nation's generation as the successor to the staff of the state leadership (Agung Rahmadi, 2021a). Child protection has existed in Indonesia for a long time and continues to this day as regulated in various laws and regulations. The basis for the protection of children in Indonesia as the legal basis is Law no. 39 of 1999 concerning Human Rights. Law No. 39 of 1999 is an umbrella act for all forms of protection of human rights in Indonesia, including children's rights. In addition, the law regulates the implementation of the obligations and responsibilities of parents, families, communities, governments and the state to protect children. Article 3, paragraph 3 of Law no. 39 of 1999 reads, "Everyone is born free with the same and equal human dignity and rights and the right of everyone to the protection of human rights and basic human freedoms, without discrimination. Specifically, the law governing child protection as explained in Law Number 23 of 2002 concerning Child Protection in article 1 paragraph 2 that "Child protection is all activities

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to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally following human dignity, and receive protection from violence and discrimination”.

As a follow-up to this law and collaborative efforts to prevent child marriage, the Supreme Court of the Republic of Indonesia has issued Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Dispensation for Marriage, with the hope that in adjudicating cases of Dispensation for Marriage, the decision is truly in favour of the protection and benefit children's lives (Nurlinah K, 2021a). Previous researchers have been interested in the prevention of child marriage. As well as research conducted by (Svanemyr *et al.*, 2012) also explains the importance of preventing child marriage to build a better quality of life. Meanwhile, research (Susanti *et al.*, 2021) shows that efforts to prevent child marriage need support or the role of the government in controlling child marriage. While the research focuses on child protection based on a legal perspective, as done by (Fahlevi, 2018) in his research focuses on child protection aspects of positive law or national law, which includes aspects of recognition and application of the principle of legal certainty. While in research (Chandra *et al.*, 2020), the collaboration between positive and Islamic laws is the basis for protecting children.

Positive law is a collection of written legal principles and rules currently applicable and binding in general or specific and enforced by or through the government or courts in the Indonesian State. Islamic law is a law revealed by Allah SWT for the benefit of humanity. Islamic law is a law that regulates many areas of life (Yeni, 2011). Islamic law in Indonesia has experienced dynamic and sustainable development in its development (Kushidayati, 2014), both through political infrastructure and based on reality (Islam, 2018). Positive law and Islamic law have a relationship (Rumadaul, 2020); positive law aims for worldly interests relating to outward material interests with various ins and outs.

Meanwhile, religious law is God's decree to realize the benefit and interests of humans physically and mentally in this world and the hereafter (Darmawati & Anggraini, 2018, 2018; Yudha, 2017). Islamic law is the goodness of individual and social life; Allah SWT sent the Apostles as guides for the path of good and evil for humanity. as quoted by Fahlefi in Asy-Syatibi said that whatever is taught by Islam is solely aimed at the welfare of human life both in the world and in the hereafter (Shofiyah & Lathoif, 2021). Maslāḥah Mursalah is a method of law enforcement that is very effective in responding and providing solutions, as did the prophet Muhammad, companions, tabi'in and scholars' (Asriaty, 2015). The discussion of the Maslāḥah mursalah is very important because it can be said that the Maslāḥah mursalah is the foundation of the building of Islamic religious law, which is intended for the benefit of humanity as servants of Allah in terms of the life of the world and the hereafter

(Asmawi, 2014). One of the benefits studied in this study is the concept of child protection based on the perspective of Maslāḥah.

## LITERATURE REVIEW

Maslāḥah, etymologically, is a single word from al-masalih, which means the word wrong, namely “to bring goodness. Sometimes another term is also used, namely al-istislah, which means “to seek goodness.” Not infrequently, the word Maslāḥah or istislah is accompanied by the word al-mu fate which means “things that are suitable, appropriate and appropriate for use (Hasbi, 2007, p. 3). From these several meanings, an understanding can be drawn that everything, anything, which contains benefits, either to obtain benefits and goodness or to reject harm, is called Maslāḥah. In the context of the study of ushul al-fiqh, the word becomes a technical term, which means “the various benefits intended by Shari'a in establishing laws for His servants, which include the purpose of preserving religion, soul, mind, lineage, and property. Wealth, as well as preventing things that can result in the escape of a person from the five interests (Hasbi, 2007). Maslāḥah is one of the analytical methods used by ushul scholars in determining the law (istinbat), whose issue is not explicitly regulated in the Qur'an and al-Hadith It is just that this method emphasizes the aspect of direct benefit Maslāḥah mursalah in its meaning can be interpreted with something absolute According to the terms of the scholars of ushul fiqhi is a benefit, where sharia does not require a law to realize that benefit. No evidence shows the acknowledgement and rejection (Abd. Wahab Khallaf, 1973).

Maslāḥah mursalah is usually found through the islislah method, which forms the basis (source) of Islamic law al-Ammali (general purpose of Islamic law). Istislah is the Islamic path law takes to apply its rules and commands to new events without text. It is also a way of setting the rules that must exist in human life, following maqashid al-Shari'ah al-Ammah, attracting benefit, rejecting evil and establishing a perfect life as possible (Mustafa Ahmad al-Zarqa', 2000). Maslāḥah mursalah is a general understanding of benefits, namely those that can benefit and reject harm and those realized by Islamic law in a general form. The main texts of Islamic teachings have stipulated the obligation to maintain the benefit and pay attention to it when regulating various aspects of life. The maker of syara' (Allah SWT and His Messenger) does not determine the forms and types of benefits, so this kind of benefit is called mursalah, which is unlimited.

## METHODOLOGY

This research was conducted in the Watampone Religious Court's jurisdiction as the Supreme Court's front guard in resolving legal problems in the Bone Regency area, including Marriage Dispensation. The research location was chosen due to various factors, including Class 1 A court is the highest accreditation court; discretion is in the form of recommendations, which only accommodates



pregnant children, as well as the culture of the people of Bone Regency. This research is descriptive, using (Abuddin Nata, 2004) normative theological, normative juridical, and empirical juridical approaches. This research data is the field data source, namely data obtained in the Legal Area of the Watampone Religious Court, in the form of Annual Reports, Decisions, clerkship and secretarial data, as well as interviews with judges of the Watampone Religious Court. Data collection techniques in this study include literature analysis focused on literacy relating to Islamic law regarding child marriage, laws and regulations relating to Marriage Dispensation, books, jurisprudence, judges' determinations, journals, and other relevant documents. This research was obtained through a search of various sources.

Observation is an instrument that collects data through observation and sensing (Burhan Bungin, 2009). Researchers conducted interviews with informants or respondents who were considered qualified and could explain the problems being studied to examine them more deeply (Sugiyono, 2017). Documentation is a method of studying written documents such as applications for marriage dispensation and religious court decisions, legislation, and so on (Lexy. J. Moleong, 2000). In addition to the interview, observation, and documentation guidelines, this study also uses additional instruments such as description and opinion guidelines that can describe current conditions when data collection takes place, both interviews, observations, and documentation relevant to this research. The data obtained will be analyzed through qualitative data analysis; with thematic analysis, the themes obtained are analyzed thematically, which have been determined since the beginning of the study (Rahmadi Usman, 2003). This analysis will answer the researched problems regarding the Form of Child Protection by the Watampone Religious Court from the Maslāḥah perspective. Validity is the assessment stage by re-checking, starting from research plans, interviews, observations, and documentation, then making conclusions as research results and as academic accountability.

## RESULTS AND DISCUSSION

The significance is child protection that it involves various elements of the nation and even the state to overcome the possibility of potential that can damage the future of a child who is the hope and future leader of the nation. The efforts of the Supreme Court of the Republic of Indonesia in controlling and controlling the level of child marriage include:

Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning Guidelines for Examination of Marriage Dispensations. Whereas in the examination of the Marriage Dispensation case, four main things must be put forward, among others:

### 1. The best interests of the child

It is in the child's best interests that the judge's decision must refer to what is considered best for the child for

whom the Dispensation is being applied after a thorough examination and analysis of the facts in the trial. Therefore, the "accepted" decision is also taken to protect the child's future, and if the decision is "rejected," it is actually in the child's best interest. This follows al-Maṣlāḥah al-Mutaghayyirah, namely, the benefit that changes according to place, time, and legal subjects. The change in question is that the existence of urgent circumstances causes the birth of the granting of a Marriage Dispensation to a person still in the child category so that the marriage can be carried out. This situation is an exception to positive law in Indonesia (consideration of benefit) due to a change in circumstances (from non-urgent to urgent). The marriage dispensation case is granted as a form of protection in biological and social aspects, distribution of sexual libido in a lawful place, and protection from disgraceful behavior and other social ills. Meanwhile, the decision which rejected the marriage dispensation is a form of protection of children's human rights in the form of growth and self-development through the provision of opportunities to continue education and physical and psychological maturity.

### 2. Children are examined separately

Examination of the child for whom dispensation is requested in the trial is carried out separately from his parents so that the child is relaxed and free from any pressure so that the judge can obtain accurate and convincing information. Several cases of Marriage Dispensation were rejected because it was found during the examination of children who were separated from their parents that the child was not fully ready for marriage. Some stated they still wanted to continue their education (Kamaluddin, 2021).

3. A single judge is a judge who examines and hears the application for Dispensation for Marriage, not a panel of judges because it is considered a simple case.

4. Judges usually dress and create an atmosphere of intimacy to create a relaxed atmosphere for children and reduce anxiety and stress (Nurlinah K, 2021b).

5. Pocket Book of Guidelines for Adjudicating Applications for Dispensation for Marriage.

The Supreme Court realizes that child marriage in Indonesia is a serious problem. It impacts the quality of life of women, children, and the nation's future generations. Therefore, the book is published, which serves as the main guideline for all courts throughout Indonesia, with the hope of making a decision that contains the best protection for children.

The Watampone Religious Court is following up on the Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning Guidelines for the Examination of Marriage Dispensations and efforts to prevent child marriage in Bone Regency by making a discretion which is the result of collaboration from all stakeholders for the Prevention of Child Marriage (PPA) ) (Nur Alam Syaf, 2021). Discretion is a decision and action determined and carried out by government officials to overcome concrete problems faced in government

administration regarding laws and regulations that provide choices, do not regulate, are incomplete, or are unclear. There is government stagnation. Suppose it is related to the Head of the Watampone Religious Court policy related to the Marriage Dispensation case. In that case, it shows that the decision taken is to realize strenuous efforts by all elements of the nation to reduce the level of child marriage in Indonesia, especially in the Bone Regency. The discretion of the Chairperson of the Watampone Religious Court in question is to reject the case of a marriage dispensation application for applicants who do not have a recommendation from the Bone Regency Women's Empowerment and Child Protection Service (Asir Pasimbong Alo, 2021a).. Meanwhile, the Office of Women's Empowerment and Child Protection recommends that applications for child marriage are only for pregnant women; otherwise, they are rejected (Agung Rahmadi, 2021b).

This Discretion is the result of a meeting of all stakeholders (Watampone Religious Court, Office of Women's Empowerment and Child Protection, three Village Heads, Unicef representatives, and NGOs), resulting in a decision that requires children who are requested for child marriage first to obtain a recommendation from the Office of Women's Empowerment and Child Protection issued by the head of the P2TP2A Task Implementation Unit (Agung Rahmadi, 2021b). Efforts to prevent child marriage in Bone Regency are carried out by the Regional Government and all stakeholders and contribute to the Watampone Religious Court through its Discretion which requires that applicants for Marriage Dispensation get a recommendation from the Office of Women's Empowerment and Child Protection. Collaboration in the form of Discretion is expected to educate the public about the risks of child marriage and, simultaneously, reduce the rate of child marriage in Bone Regency.

This collaboration is in line with the theory of child protection, which states that child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally, following human dignity and protection from violence and discrimination. Article 2 paragraph (1) of Law Number 35 of 2014). Recommendations issued by the Office of Women's Empowerment and Child Protection in Bone Regency are not directly given to applicants whose children are pregnant, but first, they are given counseling, guidance on the importance of physical and psychological maturity and the harmful consequences that will be caused to someone who gets married at an early age child. Based on this (Discretion) policy, there has been a drastic reduction in the application for Dispensation for Marriage in the Religious Courts. Suppose a marriage dispensation application does not have a recommendation from the Legal Aid Post (Posbakum) and at the desk or register officer. In that case, it is immediately rejected, so it cannot be tried by the panel of judges (Fathur Razak, 2021).

Discretion as a manifestation of child protection efforts

presented by the Watampone Religious Court is positive action on the one hand. However, this action blocks the way for justice seekers, especially related to article 7 paragraph (2) of Law Number 16 of 2019, where the article allows the application for Marriage Dispensation in an urgent situation. Meanwhile, Discretion considers that what is meant by "urgent circumstances" are only those who are pregnant, as evidenced by the results of a doctor's examination. This Discretion, when viewed from the traditional and cultural aspects of the Bone community, there is controversy because, in reality, child marriage (sirri/unregistered marriages) continues even though the District Office of Religious Affairs has rejected it, was rejected by the P2TP2A Office of Women's Empowerment and Child Protection in Bone Regency, and rejected by the Watampone Religious Court (Nurlinah K, 2021a).. The culture of the people of Bone Regency related to child marriage, among others:

1. Islam does not prohibit that child marriage;
2. They are more proud of their young widows than old virgins.
3. Parents must always keep their children from promiscuity so as not to be tarnished;
4. Supporting the family economy due to increasing family members incidentally reduces the burden on the family (Syarifuddin Latif, 2021).

Based on the first and second points, it indicates that the trigger for the continued continuation of child marriage in Bone Regency, in addition to an urgent situation, is also caused by the community's belief that the religion they believe in allows it. In addition, it has been true since ancient times that parents of children prefer young widows to old virgins (if that were to happen). Divorce due to child marriage is rare (Ahmad Amiruddin, 2021).. The *masalah* aspect of these two things is the avoidance of a person from dishonorable behavior. At the same time, the family is free from slander (anxiety in society) because usually, there is slander against older women. Therefore, the Bugis society generally prefers to marry earlier if someone has already applied for it than to become an old maid.

The third point is the concern of parents over the ease of promiscuity with their children so that if someone proposes and is seen as a partner, they prefer to marry off their child even though they are not old enough. The fourth point is that poverty dominates child marriage in Bone Regency. Low-income families tend to get married more quickly than those already economically secure. Since the first parents have the principle that by marrying off their daughters, they will increase their energy which will support the family's economy, the last two points, when viewed from the *maṣlaḥah* aspect, can be categorized as *al-Maṣlaḥah al-Hajiyah* because the act of marrying a child is a form of action that reduces the burden on the family, both the burden of supervision and the burden of living.

Departing from the statement of the Chairman of NU which is in line with the statement of the Chairman of the

MUI of Bone Regency and the Chairman of the Regional Leadership of Muhammadiyah of Bone Regency, it is understood that child marriage is not prohibited by Islam and the culture of the people of Bone. The continuation of child marriage proves this without any legal prohibition. Substantial and carried out by religious/community leaders and government officials, as stated by the head of P2TP2A, Deputy Chairperson of the Religious Courts, Chairman of NU, Chairman of MUI, Chairman of PD Muhammadiyah, and society in general. Therefore, child marriage (an urgent situation), which laws and regulations have responded to through the "Marriage Dispensation," must be addressed wisely, so there is no chaos in the community. Prevention of child marriage is a national program that must be responded to positively by all elements of the nation. However, child marriages that are in an urgent situation should be given to an institution that the state has appointed to resolve it, namely the Court so that the process of preventing and resolving child problems goes peacefully; this is in line with the statement of the Chairman of the MUI of Bone Regency, as follows:

The Chairperson of the MUI Bone Regency advised all KUA to continue to supervise and report to the community who will carry out child marriage so that the implementation remains orderly and follows the Shari'a. Islamic law does not prohibit child marriage, especially if the child is in a state of urgency. We are all obedient and obedient to the laws and regulations and always strive with all our abilities so that the prevention of child marriage can be realized. However, if the situation is urgent, then, of course, the benefit aspect must be seen, if the benefit is better if married, then marry it, but if it can be postponed, then it will still be postponed (H.M. Amir HM, 2021).

The attitude and statement of the Chairman of the MUI is a message so that the community remains obedient to the applicable laws and regulations. Meanwhile, if an urgent situation can no longer be avoided, submit it to the Court as a competent institution to resolve the "urgent situation" as mandated by Article 7 paragraph (2) of Law Number 16 of 2019 concerning Amendments to the Law. Number 1 of 1974 concerning Marriage. This discretion is contrary to the principle of "passive justice" or waiting, which cannot reject the case for any reason, as stated in Article 56 of Law Number 48 of 2009 concerning Judicial Power and Article 10 of Law Number 7 of 1989 concerning Religious Court. Therefore, the policy seems to be forced to reduce both child marriage and chaos between related parties, especially the relationship or cooperation between the local government of Bone Regency and the Watampone Religious Court. Before this discretion, it was often the case that applications for child marriage were rejected by the Bone Regency PPPA Service but were accepted or permitted by the Watampone Religious Court through the Marriage Dispensation. The term "sounds like forced" because the Marriage Dispensation case is the competence of the Court because

there are legal issues that must be analyzed to decide whether or not a marriage is permissible. At the same time, prevention is the work area of the executive and society. It is in this context that distortions and ambiguities occur in the competence or main tasks and functions of each institution that has the potential to trigger chaos in a legal settlement in the community. This discretion can be based on Article 15 letter d of Perma Number 5 of 2019, that applications for Marriage Dispensation can be received at the Legal Aid Post (Posbakum) and the place of registration/case registration at the Registrar of the Watampone Religious Court are those who have received a recommendation from the Empowerment Service. Women and Child Protection CQ. UPT P2TP2A. As for children under the age for which permission/dispensation is applied, they can get a recommendation from P2TP2A, namely those who are already pregnant, as evidenced by a pregnancy certificate from a doctor or authorized medical officer (who has an MOU). Therefore, children in other urgent circumstances, such as being anxious because their relationship is too intimate, cannot be recommended by P2TP2A, whatever the reason, but they are still given counseling (Fathur Razak, 2021).

The recommendation from Child Protection (P2TP2A) based on Article 15 letter d of Perma Number 5 of 2019 is only a consideration for judges whose position is the same as other documentary evidence. The final decision rests on the results of the Judge's analysis, not on recommendations. Based on the data on the decision of the Marriage Dispensation case during the application of the Discretion, all the Marriage Dispensation cases which received a recommendation were granted by the Watampone Religious Court. That: People who apply for a dispensation to marry minors cannot be permitted if they are not in an urgent situation are pregnant, and so on. According to Agung Rahmadi, since the replacement of the chairman of the Watampone Religious Court, Dra. Nur Alam Syaf, SH., MH., P2TP2A's recommendation letter became the primary consideration in determining the case of marriage dispensation and even became a condition for the receipt of the application for Marriage Dispesasi at the Registrar's Office of the Watampone Religious Court. Since early January 2020, the recommendation for a marriage dispensation by the Integrated Service Center for the Protection of Women and Children (P2TP2A) has begun to be tightened, where the application file for a Marriage Dispensation applicant who does not have a recommendation from P2TP2A will have his application rejected at the Watampone Religious Court from registration. This policy was taken because, according to the head of the Watampone Religious Court, if the case for the application for a Marriage Dispensation is already in the hands of the Judge, then the Judge who examines it can no longer be intervened by anyone (Agung Rahmadi, 2021a).

The description is accurate because the recommendation from P2TP2A has become a requirement for registration at the Watampone Religious Court, meaning that if the

Dispensation applicant does not have a recommendation, his application will automatically be rejected at Table I (where the case registration is). Meanwhile, the recommendation requirement is a Pregnancy Certificate from a Medical Personnel (doctor) for those who are pregnant. According to the deputy chairman of the Watampone Religious Court, that recommendation is the implementation of Article 15 letter d of Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation (Nurlinah K, 2021a). The Maternity Certificate explains that the application for Dispensation for Marriage is proven healthy and is currently pregnant. Suppose the application for Marriage Dispensation has been received at the Registrar of the Religious Courts. In that case, the case must be immediately appointed by a Judge who will try it following the civil procedural law of the Religious Courts. About 90% of the Dispensasis Marriage cases registered at the Registrar's Office of the Watampone Religious Court were granted by the Judge.

The provision of a marriage dispensation recommendation by the UPT for the Integrated Service Center for the Empowerment of Women and Children (P2TP2A) following the Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning Guidelines for processing applications for marriage dispensation. Suppose there is a rejection by the Watampone Religious Court, and it is not continued to the trial stage because the applicant does not have a recommendation. In that case, the community/applicant returns to P2TP2A, asking for a recommendation. According to Agus Rahmadi, before issuing a recommendation, the community was first given education through counseling guidance to children who were asked for a Marriage Dispensation and to the applicant (children's parents), although in the end, P2TP2A still refused and did not give permission/recommendations (Agung Rahmadi, 2021a).

The statement from the head of the UPT P2TP2A shows that serious efforts have been made by the government through counseling to the community so that they will realize that delaying marriage to a marriageable age is for the benefit of the families of the bride and groom and especially the families of the prospective husband and wife. Empirically, it shows that child marriage has given birth to many low-income families even below the poverty line, and in general, the generation is unable to continue their education. This is a strong indication that child marriage gives birth to prolonged poverty. Low-income families tend to be easy to marry off their children when someone proposes to them because marrying their children will help the family economy; besides that, they have also been separated from the responsibility of supervising children. According to Agung Rahmadi, Head of the P2TP2A Technical Implementation Unit, the Office of Women's Empowerment and Child Protection, Bone Regency, the: Parents marry their underage children because they can no longer care for their children due to economic problems and promiscuity. The impact

of underage marriage is the high number of divorces, domestic violence, and neglect (Agung Rahmadi, 2021a). Based on this, many people in Bone Regency still have principles, such as in the Boomer Generation (1946 to 1960), where there were many child marriages at that time. This situation cannot be equated with the present because the Pre Boomers Generation was a time when global economic conditions were chaotic. Hence, poverty hit, and people faced difficult situations due to war. The divorce rate in Bone Regency is in the high category because approximately 1500 divorced couples, including child marriages, are the contributors every year. Agung Rahmadi's statement is in line with what was conveyed by several Heads of Religious Affairs Offices, including Head of KUA Bontocani, Head of KUA Kahu, Head of KUA Libureng, Head of KUA Patimpeng, that there are still many parents who marry off their children with the principle that marriage is underage. Nineteen years is permissible, and with the following considerations: (1) grateful for the application, afraid that no one will apply; (2) free from responsibility, both supervision and living expenses; (3) avoid slander (Andi Anwar, Andi Mansur, Abdul Aziz, 2021). This culture still often characterizes child marriages in Bone Regency. However, this situation has begun to diminish due to advances in education and the level of public awareness through efforts to prevent child marriage by the government by collaborating and synergizing with all stakeholders.

This phenomenon gave birth to a policy that made the recommendation of UPT P2TP2A a requirement for registration at the Watampone Religious Court. A certificate of Pregnancy from a Medical Personnel (doctor) for those who are pregnant is required to obtain a P2TP2A recommendation. Certificate of Pregnancy explains that the application for Dispensation for Marriage is proven healthy and is currently pregnant. The policy of the leadership of the Watampone Religious Court was inspired by demands from various related parties, including The Regional Government, in this case, represented by the Office of Women's Empowerment and Child Protection or P2TP2A, Unicef, Tulodo-Indonesian NGOs, several villages, and child observers, came to the Court Watampone Religion to clarify 107 (one hundred and seven) request for a recommendation for child marriage which was P2TP2A rejected but 100 of them were granted by the Watampone Religious Court. Following up on the quo meeting, the Chairperson of the Watampone Religious Court instructed the Post and Legal Aid (Posbakum) of the Watampone Religious Court and the first desk officer (case recipient) not to serve and accept applications for Dispensation for Marriage that P2TP2A did not recommend in the casu because she was pregnant. After the enactment of the instructions from the chairman of the Watampone a quo Religious Court, the case for the application for Marriage Dispensation has decreased drastically (Saifuddin, 2021). According to data from the Ministry of Religion of Bone Regency in casu Bimas Islam that in 2020 there are no data or zero



child marriages (Sawiah, 2021).

Based on these data, it shows that child marriage in Bone Regency has been well resolved. However, empirical facts speak otherwise, where child marriages continue to thrive, carried out undocumented (sirri marriages). This is following the statement of the Deputy Chairperson of the Watampone Religious Court: The case data of the Marriage Dispensation at the Watampone Religious Court shows that child marriage has been resolved or reduced. However, in reality, in the community, child marriage continues even though it is rejected at the District Religious Affairs Office, is not recommended by P2TP2A, and does not get permission/dispensation from Watampone Religious Court (Nurlinah K, 2021a).

This information shows that child marriage is still taking place in Bone Regency; However, various efforts have been made by the government in collaboration with the Watampone Religious Court and all stakeholders, and child marriage remains unstoppable. The same was conveyed by several Heads of the Sub-District Religious Affairs Office, including the Head of the Libureng District Religious Affairs Office, Head of KUA Kahu District, Head of KUA Bontocani District, and Head of Tellusiattinge District KUA. Child marriage continues to this day because the community already knows that the application for a Marriage Dispensation must obtain a recommendation from the Office of Women's Empowerment and Child Protection/UPT P2TP2A; otherwise, it will be rejected at the Watampone Religious Court. In addition, the community has been wise to take advantage of the moment of marriage isbat through the integrated service of the circuit court. People prefer marriage isbat over marriage dispensation because marriage dispensation is quite complicated and expensive and increases the scope of family disgrace, while marriage isbat is simple, fast, and inexpensive (Andi Anwar Syamsu, 2021).

Child marriages still occur a lot in society because people are smart and know the policies of the Watampone Religious Court and the Office of Women's Empowerment and Child Protection. People prefer marriage isbat rather than marriage dispensation. Some residents have pregnant children, so their application for dispensation can be accepted. However, they still choose isbat marriage because marriage isbat is more accessible, cheaper, and faster (Saharuddin, 2021).

The policy of the Chairperson of the Watampone a quo Religious Court caused controversy among judges, some accepted, and some rejected it. Responding to the problems that occurred, Saifuddin provided a solution for justice seekers to register their cases online (e-court/e-litigation) to eliminate the impression that "active justice" violates the principle of "passive justice," as stated in Article 56, paragraph (1) Law Number 7 of 1989 concerning Religious Courts jo. Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power that "Courts are prohibited from refusing to examine, hear and decide on a case submitted on the pretext that

the law does not exist or is unclear, but is obliged to examine and try it."

One of the justice seekers once asked the researchers for guidance and consideration before applying for Dispensation to Marriage to the Watampone Religious Court. As a responsibility, the researcher coordinates with the clerk of the Watampone Religious Court. The Young Registrar of Applications (Panmud) of the Watampone Religious Court advised not to apply even though e-court (online case registration) because all incoming cases must be the chairman who appoints the assembly/judge. If a marriage dispensation application does not get a recommendation from the UPT P2TP2A office, the chairman immediately takes over, and it will be rejected. Furthermore, the Panmud of the Petition and a judge recommended that they only marry in a sirri manner; later, after they were old enough, a marriage certificate was requested (Asir Pasimbong Alo, 2021b). The child protection service recommended a child who was not pregnant. The Head of the Watampone Religious Court immediately called the head of P2TP2A, which stated that we should not be discriminated against in giving recommendations (Agung Rahmadi, 2021b). Based on the policy or discretion that requires a recommendation from the UPT P2TP2A in the case of Marriage Dispensation, the reasons and arguments show that there are several benefits, including:

1. Reprimand, making the community shocked that in the end, they no longer have the desire to apply for a Marriage Dispensation to the Watampone Religious Court because they do not have a recommendation from the Office of Women's Empowerment and Child Protection CQ. UPT P2TP2A. Thus, a significant benefit was born in the form of a reduction in cases of marriage dispensation applications at the Watampone Religious Court; The condition of child marriage in Bone Regency in 2020, where the District Office of Religious Affairs has rejected marriage under the age of 19 (nineteen) as many as 167 (sixty-seven); The Watampone Religious Court received requests for Dispensation for Marriage in 174 (one hundred and seventy-four) cases; The Technical Implementation Unit of the Office of Women's Empowerment and Child Protection in Bone Regency received 167 (one hundred and sixty-seven) applications for recommendations, of which 58 (fifty-eight) applications were granted permission/recommendations, while 109 (one hundred and nine) applications were rejected. As for 2021, where the District Office of Religious Affairs has rejected marriages under the age of 19 (nineteen) as many as 76 (seventy-six); The Watampone Religious Court received 62 (sixty-two) cases of Marriage Dispensation; The Technical Implementation Unit of the Office of Women's Empowerment and Child Protection in Bone Regency received 76 (seventy-six) applications for recommendations, 63 (sixty-three) applications were granted permission/recommendations, while 13 (thirteen) applications were rejected (Forkom, 2021). shows a drastic decline from 2020 to 2021 and shows that



Bone Regency has prevented child marriage through the collaboration of all stakeholders in Bone Regency.

2. Eliminate the attitude of mutual recrimination among the parties concerned. Before the decree was enforced, NGOs and various other parties always accused the Watampone Religious Court of the door to child marriage (Kamaluddin, 2021).

3. Before this discretion, Bone Regency has labeled a red zone for child marriage. Meanwhile, after the implementation of the quo policy, the Regency of Bone, which is claimed to be a red zone for child marriage, turned 180 into a Pilot Project (pilot) for child marriage (albeit in a normative version).

4. Creating a positive impression that all stakeholders have synergized and collaborated well in efforts to overcome and always find solutions so that child marriage can be resolved and the community has realize the dangers that will be caused by child marriage.

The process of examining, adjudicating, and deciding cases of a marriage dispensation application through a single judge at the Watampone Religious Court is carried out concerning or guided by the Republic of Indonesia Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation. Dispensation cases, whether accepted or rejected by the judge in his decision, all reference “the best interests of the child” (Nurlinah K, 2021a). This is as stated in Article 16 of Perma Number 5 of 2019; in the examination, the judge must pay attention to the best interests of the child by:

1. Carefully and thoroughly study the Petitioner’s application;
2. Checking the legal position of the Petitioner;
3. Exploring the background and reasons for child marriage;
4. Exploring information related to the presence or absence of marital obstacles;
5. Exploring information related to the child’s understanding and consent for marriage;
6. Pay attention to the age difference between the child and the prospective husband/wife;
7. Hearing the statements of the applicant, the child, the prospective husband/wife, and the parents/guardian of the prospective husband/wife;
8. Taking into account the psychological, sociological, cultural, educational, health, and economic conditions of children and their parents, based on recommendations from psychologists, doctors/midwives, professional social workers, social welfare workers, integrated service centers for women and children protection (P2TP2A) or the Protection Commission Indonesian/Regional Children (KPAI/KPAD);
9. Pay attention to the presence or absence of elements of psychological, physical, sexual, and economic coercion; and
10. Ensure the commitment of parents to take responsibility for economic, social, health, and children’s education issues (Sugiri Permana, 2019).

Studying carefully means that the posita or the reasons are entirely accurate, not made up of one-sided interests. Then check the applicant’s legal position so that the applicant is confirmed to be the right person following the laws and regulations. Therefore, the Judge must know the identity of the applicant and the person for whom the dispensation is being applied. Then explore the background and reasons for the marriage concerning the “very urgent situation,” whether it is fulfilled or not.

In the best interests of the child in the realm of the Marriage Dispensation, the Judge does not only look at the urgent factors contained in the posita of the Marriage Dispensation application, but the Judge must also look carefully and examine whether the child being applied for is mature and ready to build a household, both from physical, psychological and economic aspects. The Judge also considers the conditions that may occur after the marriage. If necessary, the Judge can ask for views from other parties regarding the child’s condition, for example, psychologists, the Social Service, the Technical Implementation Unit of the Child Marriage Prevention Service, health agencies, and other related parties (Andi Maryam, 2021). Based on this, it shows that the Watampone Religious Court also makes efforts to guarantee children’s rights to live, grow naturally and get a prosperous and happy life expectancy like society in general. This indication can be seen in the activities of judges in examining, adjudicating, and deciding cases of marriage dispensation applications, always prioritizing the child’s best interests.

## CONCLUSION

Efforts to prevent child marriage are on the state’s agenda in realizing excellent human resources. Therefore, the Watampone Religious Court, which is part of the state, has protected children through the Marriage Dispensation, including First: Discretion, namely the Watampone Religious Court in collaboration with the Child Protection Service of Bone Regency where the Watampone Religious Court only accepts recommended marriage dispensation applications. by the PPPA Service who is proven to be pregnant, evidenced by a doctor’s certificate. This is included in the category of *al-maṣlaḥah al-ḥajiyah* because it prevents children from marrying at a child age so that they are more established and physically and psychologically mature. Second: Examination of the marriage dispensation is carried out with an orientation to the child’s best interests, which is a manifestation of the mandate of the child protection law. The second effort is included in the category of *al-maṣlaḥah al-ḥajiyah* and *al-maṣlaḥah al-daruriyah* if it will cause more significant harm, such as death, illness, prolonged mental disorders and others. However, the marriage dispensation law is included in the *al-maṣlaḥah al-mursalah* category. Both of these efforts are a form of repressive action from the judicial institution in resolving child marriage problems. As a form of serious effort in realizing child protection in Bone Regency, there were contributions

from other institutions, such as the Office of Women's Empowerment and Child Protection, Unicef, NGOs, and several villages. These institutions continue to provide assistance, counselling, seminars, workshops, and education so that children in Bone Regency are old enough and physically and psychologically mature before getting married. In addition, the PPPA Service provides counselling for children in "urgent circumstances", such as pregnancy and sexual intercourse, before being submitted to the Court. This effort is included in the category of al-maṣlaḥah al-ḍarūriyah because with it; children can be avoided the dangers that will befall them. It can also be categorized as al-maṣlaḥah al-mu'tabarāh because as supports it.

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