The Judge’s Considerations in Refusing an Application for Marriage Dispensation in Respect of Very Urgent Reasons

Ashabul Fadhli 1, Ashabul Kahfi 2
1 Universitas Putra Indonesia YPTK Padang, Indonesia
2 Universitas Islam Negeri Sjech M. Djamal Djambek Buittinggi, Indonesia

Corresponding Author: Name; Ashabul Fadhli E-mail; ashabulfadhli@gmail.com

ABSTRACT

The state’s indecisiveness in defining a very urgent reason clause on a marriage dispensation application at the Religious Court opens opportunities for judges to have different views in granting or rejecting a case. The essence of the very urgent reasons regulated in Law Number 16 of 2019 concerning Marriage should ideally be a barometer for judges’ considerations to determine the readiness of children to enter into marriage. This study aims to reveal the judges’ considerations in defining the very urgent reasons for the determination of law in the Bukittinggi Religious Court which are contradictory between one judge and another judge. This research departs from normative legal research based on legal documents. The approach used is a statute approach which is side by side with a qualitative approach by emphasizing on the analysis of data obtained through legal documents in the form of copies of the case for the determination of the legal dispensation of marriage at the Bukittinggi Religious Court. The results of this study prove that the judge’s powers and considerations in a marriage dispensation request with very urgent reasons produce a different output in the form of a legal determination. The judge granted case Number 26/Pdt.P/2023/PA.Bkt and rejected case Number 22/Pdt.P/2023/PA.Bkt. This phenomenon shows that the basic considerations of judges depart from various legal sources while still taking into account juridical, philosophical and sociological aspects based on the values that live in society.

Keywords: Judge’s Considerations, Marriage Dispensation, Urgent Reasons

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INTRODUCTION

Applications for dispensation from marriage submitted by the parents of the child of the prospective bride and groom to the Religious Courts are generally caused because the association of the child being requested is difficult or reluctant to control. The high volume of communication and the closeness of child partners who are reluctant to be separated are strong reasons for most parents to choose marriage as the right solution for their child’s association (Fadilah, 2021). In many cases, it is feared that the closeness of children to their spouses will break down the boundaries of social, religious and cultural norms that develop in society, so that later they are considered disturbing, and become reinforcements for many parties to immediately marry children (Fadhli & Warman, 2021). In another context, the parents’ excessive fear because of the child’s association, forces the child to marry immediately beyond the child’s ability and desire (Muqaffi, Rusdiyah, & Rahmi, 2022). Even though the child’s partner does not fully want marriage to occur, parties from the male and female families believe that marriage is the best solution so that children do not fall into the prohibitions regulated by syara’.

In another context, the limited age of children who have not reached 19 years as a requirement for marriage is a separate obstacle for parents to hasten their child’s marriage based on the provisions of state law. Based on Law Number 16 of 2019 as an amendment to Law Number 1 of 1974 concerning Marriage Article 7 paragraph (1) it is emphasized that marriage can only take place for every male and female couple who are 19 years old. In order to provide guarantees and legal certainty for citizens who wish to marry but are known to be not old enough, in paragraph (2) the State stipulates that when there is a deviation from the age provisions as above, the parents of the party concerned can request a dispensation from marriage to the court by very urgent reasons. Terminologically, dispensation from marriage is a marriage license granted by the Court to prospective grooms and brides who are not yet 19 (nineteen) years old to be able to enter into marriages based on statutory regulations.

In terms of optimizing the essence of the marriage dispensation rules and ensuring the implementation of a justice system that protects children’s rights, the issuance of the Supreme Court Regulation (PERMA) Number 5 of 2019 concerning Guidelines for Trialing Applications for Marriage Dispensation in line with the enactment of Law Number 16 of 2019 concerning Marriage, besides aiming for standardization of the marriage dispensation judicial process in the Religious Courts (Ikawati & Anisa, 2023), the presence of PERMA Number 5 of 2019 is also intended so that the process of adjudicating marital dispensation cases is carried out based on the principle of the child’s interests (Prabawati & Rusdiana, 2019). This rule is an effort by the State to prevent child marriage and provide legal protection for children (Jasmaniar & Muhdar, 2021) which is emphasized in PERMA Number 5 of 2019 article 2 concerning the principle of the best interest of the child.

The principle of adjudicating a marriage dispensation application contains a number of actions in the judge’s legal considerations to ensure the protection, care, welfare, survival and development of children (Gobel, 2021). On this basis, the dimension of examining a request for dispensation by a judge at the Religious Courts is not solely based on the consideration of the aspect of fiqh only in the estuary of mashlahat and mafsadat, but puts forward other aspects that are multi-dimensional (Fajri, 2020). Consequently, the reasons for the request for dispensation from marriage submitted by the applicant to the Religious Court must be based on very urgent reasons
that are relevant to the principle of the best interests of the child (Kurniawan & Refiasari, 2022). In fact, the mechanism for examining marriage dispensation cases by prioritizing the best interests of the child as stipulated in PERMA Number 5 of 2019 is a novelty and innovation by the State in regulating the practice of child marriage in Indonesia (Fadhl, Rahmiati, Rahmi, & Ramadhan, 2022).

Referring to the statistics on marriage dispensation cases at the Bukittinggi Religious Court, it is known that the number of marriage dispensation cases in 2023 has decreased compared to 2022. If in 2022 the number of cases in January-April is known to have 12 cases, then in 2023 in January-April it is known that there are only 2 cases, namely 2 cases in March. After reading and further digging into the 2 cases referred to through copies of cases Number 22/Pdt.P/2023/PA.Bkt and Number 26/Pdt.P/2023/PA.Bkt an interesting legal event was found on the aspect of legal considerations. Although the two cases of dispensation of marriage above depart from the same reason, namely the closeness between the child pair and both are known to have been in a very close relationship (dating) for approximately 1 year, the legal determination results in a different legal determination for each of them. Each case. In case Number 22/Pdt.P/2023/PA.Bkt the judge refused by not granting the applicant’s request. On the other hand, case Number 26/Pdt.P/2023/PA.Bkt the judge granted the applicant’s request so that the applicant received a marriage permit.

Juridically, the judge’s considerations and decisions in granting case Number 26/Pdt.P/2023/PA.Bkt are in line with the provisions of Law Number 16 of 2019 concerning Marriage Article 7 regarding dispensation of marriage. Due to age limitations, the applicant submits a marriage dispensation application by fulfilling the administrative requirements and completeness of the valid marriage dispensation application at the Bukittinggi Religious Court (Rachmatulloh & Syafiuddin, 2022). In contrast to the stipulation of case Number 22/Pdt.P/2023/PA.Bkt it was not found that way. The refusal of the case can be seen as a contra legem that the judge has left the existing rule of law. Judges are known to have switched from written law, namely legislation by setting aside existing legal rules and moving to explore legal values that live in society (Rogaiyah, 2018).

In this context, the similarity of reasons put forward by applicants for marriage dispensation does not seem to be an indication that the same reasons do not guarantee the same legal determination even though they are based on the same statutory provisions. This is due to the existence of judicial power in administering justice to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD-RI) (Dewanto, 2020). Therefore, based on Law Number 48 of 2009 article 1 paragraph (1) it is stated about judicial power as an independent State power to administer justice in the framework of upholding law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia. With the power and authority possessed by judges, article 5 paragraph (1) confirms that judges are obliged to explore, follow and understand legal values and a sense of justice that lives in society.

Departing from the description above, this paper is intended to reveal the judge’s considerations in rejecting the request for marriage dispensation on the grounds that it is very urgent in the construction of the legal determination of the marriage dispensation at the Bukittinggi Religious Court. With the existence of a contra legem in the establishment of a marriage dispensation law which was not granted by the judge, in addition to enlivening the value of progressive law in the judge’s decision in court, the
failure to grant 22/Pdt.P/2023/PA.Bkt also has implications for optimizing PERMA Number 5 of 2019 concerning Examination of Marriage Dispensation Case related to guarantees for the realization of the best interests of the child being applied for to obtain a marriage license.

RESEARCH METHODOLOGY

This research departs from normative legal research based on legal documents. The approach used is the statute approach (Marzuki, 2005) by examining a number of laws related to the powers and considerations of judges in examining marriage dispensation cases. Coupled with a qualitative approach, this study seeks to emphasize the analysis of data obtained through a copy of the legal dispensation case at the Bukittinggi Religious Court. That way, the data used in this study are primary and secondary. Primary data refers to Law Number 16 of 2019 as an amendment to Law Number 1 of 1974 concerning Marriage, Supreme Court Regulation (PERMA) Number 5 of 2019 concerning Guidelines for Trialing Applications for Dispensation of Marriage and Law Number 48 of 2009 regarding Power of Attorney. Justice. While secondary data refers to the opinion of experts or legal scholars, books, legal articles and publications that are relevant to this research. In order to limit the cases that are the object of research, this study selects legal documents, namely the case of dispensation of marriage which is set in 2023 in the amount of 2 cases in March, namely case Number 22/Pdt.P/2023/PA.Bkt and Number 26/Pdt.P/ 2023/PA. Bkt. Besides the interest of researchers with a decrease in the number of cases in 2023 compared to 2022, 2 cases of dispensation of marriage in 2023 are known to have the same reasons as those found in the case. However, in the resulting legal considerations, different legal provisions have been established. After all the data has been collected, the data will be processed and described by analyzing Miles and Huberman’s data with the steps of reducing data, displaying data and verifying data ending with drawing conclusions.

RESULT AND DISCUSSION

Very Urgent Reasons in Application for Marriage Dispensation

The limited revision of Law Number 16 of 2019 concerning Marriage Article 7 paragraph 1 is strongly suspected of being one of the reasons for the increase in requests for marriage dispensation in all Religious Courts in Indonesia (Aristoni, 2021). Changes in the nomenclature regarding the age limit for marriage, which was originally 16 years for prospective brides to 19 years, has created a new polemic in connection with the non-realization of the main goal of reforming marriage law, namely to reduce the number of child marriages through dispensation of marriage (Habibi, 2022). The assertiveness of the State in setting the age of 19 as the minimum age to enter into marriage for prospective grooms and women is not addressed as a preventive measure in preventing child marriages. Ideally, if properly understood, the idea of increasing the age of marriage aims to prepare the bride and groom to be mentally and physically mature. The clause granting dispensation in Article 7 paragraph (2) regarding the existence of very urgent reasons is actually used as an opportunity by some people to be able to legally legalize marriages based on State law by submitting requests for dispensation from marriage to the Religious Courts. As if it were a loophole, the application for a marriage dispensation is understood as a legal leniency to facilitate prospective child brides who wish to hasten the marriage (Hasan & Yusup, 2021).
The wrong paradigm in understanding the very urgent reason clause will have implications for the poor quality of life of children in marriage and the process of examining marriage cases by judges at the Religious Courts. Historically, when referring to the history of the birth of Law Number 1 of 1974 concerning Marriage regarding the regulation of the age limit for marriage, the gaps found in the practice of child marriage have had an impact on the poor quality of life of child brides with various forms of discrimination received in the household. Therefore, providing legal firmness on the age limit for marriage is essentially aimed at eliminating injustice and improving the fate of girls who have fallen into child marriage (Diniah, 2007). In the next phase, when the State has committed to set a marriage age limit by enacting Law Number 1 of 1974 concerning Marriage, the purpose of the marriage age limit is intended to end the practice of child marriage and provide full opportunities for boys and girls to be fully involved in carry out education (Fadhli et al., 2022). As for the period after the renewal of Law Number 1 of 1974 to become Law 16 of 2019 concerning Marriage, substantially it still has the same goal of limiting child marriage. Strengthening previous legal policies, through regulations in the new Marriage Law, ideally the spirit to accommodate the rights of children who apply for marriage dispensation is more stringent as PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation is issued. As a consequence, reasons for fear that lead to parents worrying about their child’s partner violating Shari’a law are no longer immediately accepted and are defined as the only very urgent reason for which requests tend to be granted (Fadhli & Warman, 2021).

Although no clear and firm explanation has been found regarding the intent of the urgent reasons in the application for marriage dispensation, Article 7 paragraph (2) explicitly states that the application for marriage dispensation is permitted if there are very urgent reasons accompanied by sufficient supporting evidence. The clause "very urgent reasons" and "sufficient supporting evidence" in this case can only be proven by the applicant for marriage dispensation through evidence in the examination of the marriage dispensation case by the judge. This means that the role of the judge in finding the law (rechtsvinding) is considered to have a very strategic role in determining whether the pair of children being applied for is proper and appropriate to be granted permission to marry (Amirulloh, 2021).

Appropriateness and eligibility above, in PERMA Number 5 of 2019 concerning Examination of Marital Dispensation Cases is defined as a child’s readiness to lead a complex household life with personal, interpersonal, economic and psycho-social content (Jasmaniar & Muhdar, 2021). Likewise with the involvement of parents to be involved and responsible for economic, social, health and education issues for children after marriage (Suryanti & Rudy, 2021).

The authority of judges in exploring, following and understanding legal values and a sense of justice that lives in society (Dewanto, 2020) makes it possible for judges to provide legal considerations regarding conditions that may occur after marriage if necessary. Therefore, in order to assess the extent to which "very urgent reasons" are relevant to the applicant’s condition, in addition to considering the aspects of benefit and mafsada in each marriage dispensation application, the judge’s considerations must also be based on comprehensive fulfillment of basic rights and the best interests of the child. Judges can explore that child marriage is based on the wishes of the child and not from the wishes of other parties that force the child or are forced to marry immediately.
Judges are also required to be able to identify the psychological condition, health and readiness of children to marry and form a household. Likewise if there is psychological, physical, sexual or economic coercion against the child and/or the child’s family to marry or be married off.

In connection with the examination of the child being requested for dispensation from marriage, Article 15 stipulates that in this case the judge may:

1. Listening to information conveyed by children without the presence of parents.
2. Listening to the child’s statement through audio visual communication media remotely at the local court or elsewhere.
3. Request recommendations from psychologists, doctors, midwives, professional social workers, social welfare workers, integrated service centers for women and children’s empowerment (P2TP2A), Indonesian/regional child protection commissions (KPAI/KPAD)
4. Involve translators or other parties who usually communicate with children if needed.

In the case examination process, judges are required to pay attention to the best interests of the children and the condition of the child and parents on the psychological, sociological, health-cultural, educational, economic aspects recommended by psychologists, doctors, midwives, professional social workers, social welfare workers, integrated service center for empowering women and children (P2TP2A), Indonesian/regional child protection commission (KPAI/KPAD). Judges are also required to give consideration if there is an element of physical, psychological, sexual, economic coercion in child marriages and ensure that parents have a strong commitment to participate and be responsible economically, socially, health and education related to child marriages.

With the considerations above, when certain conditions are found that can harm children after marriage, such as the cessation of children’s education due to marriage, the potential for disputes and domestic violence and other matters relating to children’s economic, social and psychological issues, the judge can reject the petition. because it is not in line with the principle of child protection. That is, if the reasons considered very urgent by the applicant are inconsistent with the principles and objectives of child protection, then these reasons are not categorized as very urgent reasons and tend not to be granted.

The argument regarding the urgency of the marriage dispensation application by the marriage dispensation applicant can also be measured through the obligation of the marriage dispensation applicant to complete the administrative requirements for the marriage dispensation application. In the administrative requirements for marriage dispensation applications that apply to the Bukittinggi Religious Court, there is a requirement for each applicant to complete point 6 which reads "Recommendations from Psychologists/Doctors/Midwives, Professional Social Workers/Social Welfare Workers/Integrated Service Center for the Protection of Women and Children (P2TP2A) /Indonesian/regional Child Protection Commission (KPAI/KPAD), regarding the readiness of children to marry (assembly considerations)”. The obligation of each marriage dispensation applicant to obtain a recommendation from the designated institution/institution in order to obtain a recommendation on the readiness of the child to marry is motivated by the latest regulation in PERMA Number 5 of 2019 concerning Guidelines for adjudicating Applications for Marriage Dispensation Article
15. According to information received from the Integrated Officer One Door (PTSP) Bukittinggi Religious Court, the obligation to obtain a letter of recommendation as above applies absolutely and must be fulfilled in the case of a marriage dispensation application. This is a new policy stipulated by the Bukittinggi Religious Court following the birth of PERMA Number 5 of 2019 as the mechanism and appropriate steps to determine the extent to which a child’s readiness for marriage is urgent.

The complexity of the reasons and conditions for the child being applied for in the marriage dispensation application encourages judges to always apply and uphold the law and justice based on Pancasila against the marriage dispensation applicant. Judges are required to be able to overcome and resolve problems in a case by producing decisions or legal decisions based on statutory regulations (Amarini, 2019). In certain conditions, the judge’s considerations in determining the law are not fully based on the standard rules that already exist, namely legislation.

On this basis, the single judge in the marriage dispensation case at the Bukittinggi Religious Court can turn to other considerations outside of written law by referring to the philosophical and sociological aspects inherent in the local community through a principle called contra legem. Even though Law 16 of 2019 concerning Marriage has expressly provided space and leeway for prospective brides who wish to marry but are not old enough through a marriage dispensation, on the basis of judges’ considerations and policies to realize justice, legal certainty and benefits, it leaves the legal framework. What exists by refusing a marriage license to the applicant is the power and authority of the judge in court. According to H. Fahmi R., S.Ag., M.H.I. as Chairman of the Bukittinggi Religious Court, this condition can apply anytime and anywhere. In principle, judges have the authority to interpret urgency in the meaning of urgent reasons and the readiness of a child to be married. If the judge considers that the child being requested is in proper conditions and ready to be married off, then the legal stipulation given will be granted. But on the contrary, even though it departs from the same reasons and issues, but is not accompanied by the readiness of the child personally on the physical and spiritual aspects, it will be rejected by law.

Determination of Marriage Dispensation Law in Case Number 26/Pdt.P/2023/PA.Bkt and Number 22/Pdt.P/2023/PA.Bkt.

In connection with the marriage dispensation application case that was received by the Bukittinggi Religious Court after the issuance of PERMA Number 5 of 2019, the Bukittinggi Religious Court is known to consistently hear marriage dispensation cases with various dynamics. Insufficient age is the main obstacle for prospective grooms, prospective brides and even both prospective brides have encouraged the families of the prospective brides to apply for dispensation from marriage through the Bukittinggi Religious Court. To find out the movement of the number of applications for marriage dispensation at the Bukittinggi Religious Court, the following presents statistics on cases of requests for marriage dispensation that have entered the Bukittinggi Religious Court for the last 2 years until April 2023, namely:
Tabel 1. Statistics of Marriage Dispensation Cases at the Bukittinggi Religious Court

<table>
<thead>
<tr>
<th>Registration Month</th>
<th>2021 Amount of Things</th>
<th>2022 Amount of Things</th>
<th>2023 Amount of Things</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>4</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>February</td>
<td>1</td>
<td>4</td>
<td>-</td>
</tr>
<tr>
<td>March</td>
<td>4</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>April</td>
<td>3</td>
<td>-</td>
<td>-</td>
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<tr>
<td>May</td>
<td>3</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>June</td>
<td>2</td>
<td>6</td>
<td>-</td>
</tr>
<tr>
<td>July</td>
<td>2</td>
<td>3</td>
<td>-</td>
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<tr>
<td>August</td>
<td>5</td>
<td>5</td>
<td>-</td>
</tr>
<tr>
<td>September</td>
<td>5</td>
<td>2</td>
<td>-</td>
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<tr>
<td>October</td>
<td>3</td>
<td>1</td>
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<tr>
<td>November</td>
<td>1</td>
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<td>-</td>
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<tr>
<td>December</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total Thing</strong></td>
<td><strong>33</strong></td>
<td><strong>29</strong></td>
<td><strong>2</strong></td>
</tr>
</tbody>
</table>

The movement of the case statistics above shows that the number of requests for dispensation from marriage at the Bukittinggi Religious Court has decreased in the last two years. This decrease in number indirectly disproves the argument that the number of marriage dispensation applications filed in the Religious Courts throughout Indonesia has increased after the enactment of Law Number 16 of 2019 concerning Marriage regarding the age limit (Lubis, 2021). Even though the number of cases in 2023 was only collected until April, it is believed that the trend or tendency for marriage dispensation requests will move lower than in previous years. The reason is that the complaint system or filing requests for dispensation from marriage in a number of Religious Courts in Indonesia already involves other parties or institutions outside the Religious Courts (Setiyawan & Wibawa, 2021). The same thing also applies to the Bukittinggi Religious Court regarding administrative requirements in point 6 regarding the need to obtain recommendations from Psychologists/Doctors/Midwives, Professional Social Workers/Social Welfare Workers/Integrated Service Center for the Protection of Women and Children (P2TP2A)/Indonesian Child Protection Commission/regional (KPAI/KPAD) regarding the readiness of children to marry.

Based on information received from the Integrated One Stop Officer (PTSP) of the Bukittinggi Religious Court, the Bukittinggi Religious Court has formed a cooperation agreement (PKS) with institutions outside the court with the Bukittinggi City Government (Pemko) and the Agam District Government (Pemkab). For people who act as applicants for marriage dispensation with population status in the City of Bukittinggi, the recommendations in question can be obtained through the Office of Women’s Empowerment and Child Protection for Population Control and Family Planning (P3PPKB) of the City of Bukittinggi. The P3PPKB Office of Bukittinggi City is tasked with identifying the psychological condition, health and readiness of children to enter into marriage and build a household life. Likewise for people who act as applicants for marriage dispensation with residence status of the people of the Religion Regency, recommendations can be obtained from the Office of Population Control for Family Planning, Women’s Empowerment and Child Protection (PPKBPP and PA) of the Agam Regency. The two institutions involved in the PKS have the same duties and authorities to provide assistance to parties from the family of the person seeking dispensation from marriage. The purpose of establishing this PKS is to issue recommendations on the readiness of children to enter into marriage.
Referring to the 2 copies of the case for determining the marriage dispensation law in 2023, namely case Number 22/Pdt.P/2023/PA.Bkt and Number 26/Pdt.P/2023/PA.Bkt, it is known that the two cases were filed by applicants with residence status: the people of Agam Regency. The applicant in question has received and provided assistance from the PPKBPP and PA Offices of the Agam Regency as an administrative requirement for submitting a marriage dispensation application at the Bukittinggi Religious Court. This can be proven from proving the arguments of the applicant’s application in the form of written evidence, including the minutes of assistance from the PPKBPP and PA Office of Agam Regency dated 21 February 2023 on behalf of the prospective bride and groom for case Number 22/Pdt.P/2023/PA.Bkt and minutes of similar assistance without including the date for case Number 26/Pdt.P/2023/PA.Bkt.

In determining the law, the judge granted the request for case Number 26/Pdt.P/2023/PA.Bkt by Petitioner I and Petitioner II who are the biological parents of the child being petitioned for marriage. The judge gave permission to marry the children of Petitioner I and Petitioner II to marry their future husbands. On that basis, the court charged Petitioner I and II with an amount of Rp. 120,000.00 (one hundred and twenty thousand rupiah). In this way, the legal determination by the judge by granting the petition of Petitioner I and Petitioner II is in accordance with the statutory provisions regarding dispensation for marriage for prospective brides who are not old enough.

Case Number 22/Pdt.P/2023/PA.Bkt resulted in a stipulation that was different from the previous stipulation. If case 26/Pdt.P/2023/PA.Bkt is granted and a marriage permit is granted by the judge, then case Number 22/Pdt.P/2023/PA.Bkt is rejected so that Petitioner I and Petitioner II as the biological parents of the child being petitioned for cannot marry off their child after undergoing trial. Because the legal determination by the judge against Petitioner I and Petitioner II was not granted, even though the person concerned had obeyed and complied with the laws and regulations, had good faith in fulfilling all the attached administrative requirements for the application for marriage dispensation and had submitted written evidence in the form of (1) Notification of Lack of Conditions/Rejection of Marriage Will Number B.075/Kua.03.6.7/Pw.01/02/2023, dated February 18, 2023, issued by the Head of the AGAM Religious Affairs Office, (2) Photocopy of Identity Card (KTP) concerned, (3) Photocopy of excerpt of marriage certificate on behalf of Applicant I and Applicant II, (4) Photocopy of birth certificate on behalf of the applicant’s child, (5) Photocopy of Family Card, (6) Photocopy of health certificate, (7) Photocopy of minutes of mentoring from the PPKBPP and PA Office of Agam Regency dated February 21, 2023 in the name of the applicant’s child, (8) photocopy of diploma on behalf of the applicant’s child and (9) photocopy of birth certificate in the name of the groom, then In this legal determination, it can be assumed that the judge’s legal considerations are not wholly based on a juridical basis but originate from the findings of judges who have been explored empirically in the trial.

Considerations of Judges in Rejecting Requests for Marriage Dispensation Related to Urgent Reasons at the Bukittinggi Religious Court

A copy of Case Number 22/Pdt.P/2023/PA.Bkt which explains that the rejection of Petitioner I and Petitioner II is known to have started from the legal considerations of the judge who ruled out arguing on standard rules, namely legislation and turning to
other arguments on philosophical and sociological aspects based on the values that live in society. In this case, the judge has considered that the applicant formally submitted by the applicant has complied with the provisions of Article 7 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.

In the process of examining the case, the judge has carried out the provisions of PERMA Number 5 of 2019 concerning Guidelines for Trial Applications for Dispensation of Marriage. This feeling can be seen, among other things, in the judge’s consideration of Article 12 by giving advice to the parties regarding (1) the possibility of stopping the child’s education, (2) the continuation of the child in taking 12 years of compulsory education, (3) the child’s reproductive organs are not yet ready, (4) economic, social, and psychological impacts on children, and (5) the potential for disputes and domestic violence. Furthermore, the provisions in Article 13 which regulate the obligation of judges to hear information from children who are requested for Dispensation for Marriage, prospective husbands who are requested for Dispensation for Marriage, and parents of children who are requested for Dispensation for Marriage and parents of prospective husbands. Likewise, Article 14 is considered by the judge when identifying a child’s consent to be married immediately, the psychological condition, health and readiness of the child, as well as identifying if there is physical, psychological, sexual or economic coercion. Meanwhile, the judge’s considerations in articles 15 and 16 which were realized earlier with the publication of recommendations on marriage readiness from the PPKBPP and PA Offices of Agam Regency were followed up in examining cases regarding the readiness of children for marriage.

Regarding the main reasons considered urgent by the applicant in case number 22/Pdt.P/2023/PA.Bkt regarding parents’ concerns, the judge considers, even though this has been formally fulfilled, if this is not sufficient to prove that the reasons considered urgent accord with the obligation of children to be married. It is a record that in the process of examining marriage dispensation cases after the promulgation of Law Number 16 of 2019 concerning Marriage and the issuance of PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation, it is important to consider the best interests of the child, both those considerations that refer to on the results of recommendations on child readiness issued by the PPKBPP and PA Offices of Agam Regency and/or considerations through the results of independent judges’ thoughts and opinions that are not influenced by other powers. If in the previous policy the goal of fulfilling children’s rights was not a matter of priority, so that it correlated with the notion that it was easy for the Religious Courts to grant marriage permits to applications for marriage dispensation, then this stigma would no longer apply because a special procedural law had been regulated regarding guidelines for adjudicating marriage dispensation applications.

To see how urgent the reason for the request for dispensation from marriage put forward by the applicant, the judge’s consideration will not stop at mere causal issues, but rather the extent to which measures regarding the protection, upbringing and welfare of children are accommodated in child marriage plans. Article 2 regarding the principle of adjudicating cases of marital dispensation requires judges to be more responsive in paying attention to the best interests of the child being petitioned based on the principle of:

1. The best interests of the child
2. The right to life and development of children

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3. Appreciation for the child’s opinion
4. Respect for human dignity
5. Non-discrimination
6. Gender equality
7. Equality before the law
8. Justice
9. Benefits
10. Legal certainty.

Even though the State has provided specific rules regarding guidelines for adjudicating cases of marriage dispensation which were not found in the previous rules, the fact is that in case Number 22/Pdt.P/2023/PA.Bkt the judges think differently. After knowing the circumstances of the case and giving consideration to the case, the judge is of the view that: Even though the information provided by the applicant and witnesses stated that the applicant’s child had the ability to play a role in household life and could focus on carrying out his role as a wife because he was no longer at school, this reason was considered weak when compared to the child’s readiness to marry. When the judge asked the applicant’s child’s readiness to get married immediately and live a household life, the applicant’s child expressed hesitation in expressing his readiness.

According to the information provided by Dra. Hj. Eliza as the sole judge who tried case Number 22/Pdt.P/2023/PA.Bkt, the child being asked for was unable to believe and convince the judge of the marriage plans and household roles that would be faced after the marriage took place. That is, the judge saw that the parents’ concerns about their plans to marry their children off were not accompanied by the child’s desire and consent to marry. Disapproval of the child to be married is the result of the judge’s ijtihad in exploring and understanding legal values and a sense of justice through the narrative of the applicant’s child in court. Supposedly, this is what jurists later know as legal remedies by judges in exploring the values that live in society (Barkatullah, 2011).

The judge’s lack of argument from existing legal sources (Dewanto, 2020) resulting in a contra legem legal determination, the failure to grant case Number 22/Pdt.P/2023/PA.Bkt is part of the judge’s authority. Judges have full power guaranteed by Law Number 48 of 2009 concerning Judicial Power which states that judicial power is the power of an independent State in terms of administering judicial power which aims to uphold law and justice. This principle of judges’ freedom also applies when judges formulate legal reasoning in the process of deciding or determining cases being tried (Kariadi, 2020). Law Number 48 of 2009 also emphasizes that the judge’s consideration is the result of the judge’s thoughts or opinions which are embodied in a decision or legal determination. In cases where a decision has been made or a legal determination has been determined, the judge is responsible for that because every decision and legal determination is determined with the correct reasons and legal basis (Rahman, Sofyan, & Aksi, 2022).

In this context, the judge bears the responsibility as stated in article 2 paragraph (1) that the implementation of justice is carried out “For the sake of Justice Based on Belief in the One and Only God”. In fact, the judiciary wants to create a judiciary based on Pancasila. Because of this, it is a record for judges in producing decisions and legal decisions to stand on and have ideological foundations that are not only contained in the framework of religious law but are also based on Pancasila (Shaleh & Wisnaeni, 2019). This is also in line with the ideals of Indonesian social democracy which Bung Hatta...
had hoped for that judges in reality work to represent God Almighty. Indirectly, this expression states that the judge’s power in administering justice must be honest, clean and fair (Abbas, 2010). On that basis, through various sources of considerations dug up by judges juridically, philosophically, empirical and sociological facts based on findings in court, as well as the possibility of things that could harm children’s rights in the future, the judge’s consideration by rejecting the request for dispensation for marriage Number 22/ Pdt.P/2023/PA.Bkt is an appropriate consideration and legal action.

CONCLUSION
Statistics on marriage dispensation cases at the Bukittinggi Religious Court for 2023 show a decrease in the number of cases compared to the last 2 years. There is an assumption that the involvement of institutions outside the court which are bound in the Cooperation Agreement (PKS) between the Bukittinggi Religious Court and the P3PPKB Office of Bukittinggi City and the PPKBPP and PA Office of Agam Regency contributed to reducing the number of marriage dispensation applicants by people with resident status of Bukittinggi City and Religion District. Until April 2023, only 2 cases of marriage dispensation were tried. When viewed from the siting of the case, cases Number 26/Pdt.P/2023/PA.Bkt and Number 22/Pdt.P/2023/PA.Bkt have similarities in terms of reasons considered urgent by the applicant, namely parents’ concerns. The Petitioner is worried about the association of his son who has been in a very close relationship (dating) with his partner for approximately 1 year. Although departing from the same reason, case Number 26/Pdt.P/2023/PA.Bkt was granted while case Number 22/Pdt.P/2023/PA.Bkt was rejected. The judge assessed that the hesitation shown by the applicant’s child in the form of words and actions indicated his unpreparedness to enter into marriage. Even though the judge’s considerations come from the main source of law or contra legem, Law Number 48 of 2009 concerning Judicial Power stipulates that judges have power and independence in terms of administering justice. Therefore, even though they resulted in different legal determinations, the two petitions reflected the principles of justice, legal certainty and expediency.

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