



MARRIAGE DISPENSATION AND FAMILY RESILIENCE: A CASE STUDY OF THE BENER MERIAH SHARIAH COURT, ACEH PROVINCE

Darmawan, Asmaul Husna, Mirza Rahmatillah, and Helmi Imran

Abstrak: Kebijakan dispensasi nikah telah mendorong peningkatan pernikahan dini di berbagai daerah di Indonesia, termasuk di Bener Meriah, Aceh. Pernikahan dini berdampak negatif terhadap ketahanan keluarga karena menimbulkan masalah yang berujung pada perceraian. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan studi kasus. Pengumpulan data dilakukan dengan studi dokumen yaitu Putusan Mahkamah Syar'iyah dan literatur terkait. Penelitian ini menyimpulkan bahwa terdapat hubungan yang signifikan antara dispensasi perkawinan, tingginya angka perkawinan di bawah umur dan lemahnya ketahanan keluarga. Dalam pemberian dispensasi nikah, hakim Mahkamah Syar'iyah mempertimbangkan alasan hukum dan alasan di luar hukum. Ketentuan dispensasi tersebut telah memenuhi syarat hukum, meskipun pertimbangan hukumnya tampak memaksakan. Lebih lanjut, pernikahan dini berdampak pada meningkatnya angka perceraian karena masalah-masalah seperti masalah psikologis dan kesiapan reproduksi, serta dampak buruk akibat perceraian. Oleh karena itu, diperlukan langkah-langkah konkrit dan strategis dengan melibatkan berbagai pihak, termasuk pemerintah, ulama, dan tokoh adat, yang mampu mendorong ketahanan keluarga dalam masyarakat.

Kata kunci: Dispensasi pernikahan; pernikahan dini; ketahanan keluarga; Mahkamah Syar'iyah

Abstract: The regulation on marriage dispensation has encouraged the increase in early marriage in various regions in Indonesia, including in Bener Meriah, Aceh. Early marriage has a negative impact on family resilience as it raises problems leading to divorce. This is a normative legal study with a case study approach. Data collection was carried out employing a document study, namely Sharia Court Decisions and related literature. This study concludes a significant relationship between marriage dispensation, high underage marriages, and weak family resilience. In granting marriage dispensation, the Sharia Court judges consider legal and extra-legal grounds. The dispensation stipulation has met the legal requirement, although the legal reasonings are unconvincing. Furthermore, early marriage has an impact on increasing divorce rates due to issues such as psychological problems and reproductive readiness, as well as adverse effects caused by divorce. Therefore, concrete and strategic steps are needed with the involvement of various groups, including the government, ulama, and traditional leaders, who are able to promote family resilience in society.

Keywords: Marriage dispensation; underage marriage; family resilience; sharia court

Introduction

Early marriage is a serious issue in Indonesia, including in central Aceh District, Gayo Lues, Southwest Aceh, Aceh Singkil, and Bener Meriah, reaching as high as 25% of 100 couples. This issue has been predominantly found in all jurisdictions of the Sub-District Offices of Religious Affairs (Kantor Urusan Agama/ KUA). The ages of the brides and grooms are often below the marriageable age of 19 years required by Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019 on Amendments to Law No. 1 of 1974 on Marriage.

Early marriage is only legal with the permission of the courts (marriage dispensation), which for Muslims are the Religious Courts or Islamic courts or Sharia courts. The courts can grant a marriage dispensation with certain considerations. The "dispensation" indicates that certain marriages are prohibited, yet they are permitted with consideration. Marriage dispensation is a procedure in Indonesian laws to permit underage marriage with considerations. However, in certain cases, people in Bener Meriah take advantage of marriage dispensation as an emergency exit to solve illicit sexual relationships before marriage.

There are limited empirical studies on underage marriage, particularly Bener Meriah District. Most studies are based on media reports about high divorce rates (Hudafi, 2018). The data from the directory of the Supreme Court of the Republic of Indonesia reported that the number of (official) divorce decisions at the Simpang Tiga Redelong Sharia Court reached 1,960 cases in five years until June 2021, with an average of 333 cases per year. In 2020, divorce reached 316 cases (Directory of the Supreme Court, 2020). The divorce rate remained high during the COVID-19 pandemic, as is the case of the total divorce rate in Aceh (6,090 cases) (aceh.inews.id, 2021). This slightly increased from 2019 (total of 6,048 cases) (antara.news, 2021). In Bener Meriah regency, divorce cases in 2019 were dominated by young women, with a total of 328 cases (serambinews, 2020).

Several studies addressed the issue of divorce causes (Hudafi, 2018) and early marriage (Syaiful, 2019; Adriyusa, 2020) in Aceh. Another study on factors causing underage marriage was conducted in Central Aceh, a neighboring district of Bener Meriah, which has a relatively similar cultural structure (Fitra, 2017; Ridha, 2021).

This paper aims to fill the gaps by examining the relationship between marriage dispensation, underage marriage, and family resilience in Bener Meriah. This is based on the consideration that underage marriage leads to weak family resilience. Therefore, it is necessary to rethink the issuance of marriage dispensation for underage couples, even though the law permits such a practice. There are other ways to reduce child marriage practice that can sociologically be considered.

This is a normative legal study with a case approach. Data is taken from Shari'a Court decisions on marriage dispensation and related literature (Efendi & Ibrahim, 2016: 145; Friday, 2018: 129). The court decisions are taken from Simpang Tiga Redelong Sharia Court (MS-Str), Bener Meriah Regency, dated from 2016 to June 2021. Meanwhile, the secondary data is from related laws and regulations, including Law No. 1 of 1974 on Marriage and its amendments to Law No. 16 of 2019. This study began with a desk review of secondary data and written materials and then continued with the presentation of research results on primary data. The research data were analyzed in three stages: data reduction, display, and verification (Huberman, 1992).

Marriage Dispensation, Underage Marriage, and Family Resilience

In the Indonesian legal context, marriage dispensation is an application made by someone who will get married but does not meet one of the requirements in the marriage regulations, i.e., marriageable age. Etymologically, dispensation refers to an exception to a general rule for a certain situation or an exemption from an obligation or prohibition (Pardede et al., 2021). In the 18th century, the Catholic Church granted marriage dispensations for the marriage of direct kinships or concubines; the marriage of those with genealogical or religious differences; or for Indian administrative officers or soldiers who did not have a marriage license (Siegrist, 2016).

Marriage dispensation in Indonesia is stated in Article 7, Paragraphs (2) and (3) of Law No. 16 of 2019. By law, marriage dispensation allows marriages below marriageable age. Therefore, according to Horii (2019), marriage dispensation can be seen as a legal mechanism authorizing child marriage. This is in line with the case of Morocco, studied by Sonneveld (2020), wherein Moroccan judges granted almost all requests for underage marriages to prevent unregistered childbirth

situations. In this case, the importance of the legalization of sexual relationships replaces the significance of the age of first sexual contact. This has led women's rights organizations to criticize Moroccan judges as conservative.

Horii (2019) argues that marriage dispensation in Indonesian law is related to legal pluralism because of the friction between religious and cultural values and liberal values that prioritize human rights (Sumardi et al., 2021). Family law-making, to some extent, has involved a conflict between progressive and conservative ideas; thus, there is often friction in current family law and human rights (Grijns & Horii, 2018). Therefore, efforts to prevent child marriage have not significantly reduced the number of child marriages in Indonesia (Pardede et al., 2021).

In Indonesia, child marriage is regulated in Law No 16 of 2019, which states that marriage is allowed when a man or woman has reached the age of 19. According to Pardede et al. (2021), there is a need to deeply understand the legal objectives of Law No. 16 of 2019. This may need the shifting from legal positivism to progressive legal reasoning to protect children's rights from the unfavorable effects of child marriage. A study by Sumner (2020) noted that marriage dispensation cases in the Religious Courts in 2018 increased 20 times from 2005. In addition, the meaning of the phrase "very urgent reasons" in the Elucidation of Article 7 Paragraph (2) of Law No. 16 of 2019 should be seen as a hindrance to the practice of child marriage to protect children's rights. The marriage dispensation must be seen as a last resort, not part of the procedural stages of underage marriage (Pardede et al., 2021).

However, the majority of Indonesian people submit a marriage dispensation application because of having an affair or dating, being in the puberty stage, readiness to marry, economic dependence, and disapproval from the KUA for marriage registration (Kasjim, 2016). For example, in the case of people in Central Java, some prefer to practice "*tuku umur*" buying age" in fulfilling the requirements for early marriage rather than applying for a marriage dispensation to the courts, as the former is easier. The "buying age" practice can be considered a crime as it involves data falsification (Ismayawati and Ngazizah, 2022). Marzuki et al. (2021) remark that the application of marriage dispensation is a form of parental responsibility towards

children, especially children who have been pregnant out of wedlock, to cover up their disgrace and hence avoid public humiliation.

Child marriage or underage marriage refers to any marriage or similar union, formal and informal, between a child under 18 and an adult or another child (Scott et al., 2021). Geographically, child marriage is a relatively significant issue in countries in Asia and Africa (Marshan et al., 2013). Many studies have revealed the negative effects of child marriage. Research by Hajihasani & Sim (2019) has indicated that age at marriage significantly correlates with marital satisfaction from the demographic variables. People who marry at an older age have higher levels of emotional and behavioral maturity, use more effective strategies for dealing with conflicts and problems, and, therefore, have greater marital satisfaction. To this end, marriage should be carried out at the right age since it is one of the cornerstones to achieving outcomes related to gender equality, maternal and child nutrition, fertility, education, and employment (Scott, et al., 2021).

In almost all early marriage cases found by Scott et al. (2021), adolescents are not mentally, socially, or financially prepared to give birth and care for a baby. In addition, girls who marry early become financially dependent on their husbands. Therefore, they do not have the power to make any demands on their husbands and are at higher risk of domestic violence, divorce, and neglect (Segal-Engelchin et al., 2016). Due to domestic responsibilities, married girls lack opportunities to interact with their peers and develop social support systems. The early marriage impacts are not limited to individuals who are getting married but also to the family's welfare (Saidon et al., 2017).

According to Kasjim (2016), the contributing factors to child marriage include 1) cultural values of shame for family honor, 2) family prestige and kinship, 3) parental education, and 4) inconsistent legislation. Education and work, in particular, are closely related to early marriage. If girls have neither, early marriage is the only option for many families in Indonesia, supported by cultural and religious practices. People sometimes choose the safest, fastest, and most affordable way outside the state legal scheme so underage religious marriages can be 'legal' (Grijns & Horii, 2018). In line with that, the factors that cause child marriage in Indonesia are mostly economic factors, education, conflict in the household, community traditions and religious understanding,

such as efforts to avoid adultery (Sumardi et al., 2022), environmental factors, such as promiscuity which causes pregnancy outside of wedlock (Kamarusdiana and Farohah, 2022; Wantu et al., 2021).

Multidisciplinary research is needed to understand the various pathways to early marriage and the effectiveness of laws, policies, and programs (Scott et al., 2021). The policies should focus on creating a supportive environment that fosters alternatives to child marriage (Marshan et al., 2013). 'Choice' needs to be emphasized to minimize early marriage and advance women's emancipation (Miedema et al., 2020). Expressions of shame and honor in early marriage should be understood concerning broader socio-economic and political questions (Miedema et al., 2020). In other words, policies shall reach individuals, households, and communities since early marriage is not determined by a single factor (Marshan et al., 2013).

It is undeniable that the marriage dispensation and early marriage have potentially resulted in the fragility of family resilience. This is because married children are vulnerable to violence, poverty, and divorce; therefore, the family approach is highly significant. The concept often used to explain such circumstances is family resilience, the ability to bounce back from adversity with stronger and greater resources (Walsh, 2003). The proponents of family resilience emphasize the need to examine family resilience both as a developmental construct and a process rather than as a static set of qualities (Fernandez et al., 2013). Similarly, Walsh (2013) states that family resilience requires more than managing stress, carrying burdens, or surviving trials. Family resilience involves the potential for transformation and personal and relational growth from adversity, including emotional resilience and the ability to understand, accept, and develop new habits (Allasad Alhuzai, 2020).

Even though the construction of family resilience is promising, there is no universal agreement on conceptualizing or assessing the concept (DeHaan et al., 2013). Resilience involves many processes that vary and repeat over time, and an effective process in dealing with a challenge can be different from other problems (Walsh, 1996). Thus, the idea of family resilience is complex and multidimensional. There are five dimensions of family resilience: 1) the basis of legality and family integrity, consisting of three variables (legality basis, family integrity, and gender partnership); 2) physical resilience, consisting of three variables

(adequacy of food and nutrition, family health, and availability of a fixed location for sleeping); 3) economic resilience, consisting of four variables (family residence, family income, children's education financing, and family financial security); 4) socio-psychological resilience, consisting of two variables (family harmony and compliance with the law); and 5) socio-cultural resilience, consisting of three variables (social concern, social closeness, and religious observance). In the context of Indonesia, the indicators of family resilience are mentioned in the Regulation of the Minister of Women Empowerment and Child Protection No. 6 of 2013 on the Implementation of Family Development.

Further, Walsh (2003) describes that the key processes of family resilience are based on three domains of family functioning that sustain stress and promote adaptation to challenges and adversity. Each of these domains has three characterizing factors: 1) a family belief system, consisting of interpreting difficulties, positive views, and transcendence and spirituality; 2) an organizational pattern, consisting of flexibility, connectedness, and social and economic resources; and 3) a communication process, consisting of clarity, sharing emotions openly, and collaborative problem-solving. The concept of family resilience also focuses on how the family as a unit can function as a protective factor for each member (Walsh, 2003). In addition, family resilience deals with family cohesion, belief systems, and coping strategies. Family cohesion refers to how family members feel connected to each other. Meanwhile, family belief systems relate to the effects of spirituality and a positive outlook on the family. Coping strategies refer to the psychological, financial, and social resources and skills that the family uses to deal with difficult situations (Fernandez et al., 2013).

However, the Indonesian government made various efforts to promote family resilience through the Ministry of Religion, in this case, the Office of Religious Affairs, and the judiciary, such as the Shariah Courts. Family resilience avoids an increase in the divorce rate by strengthening regulations on family resilience, the prospective bride and groom courses, and *sakina* (peaceful) family contests (Djawas et al., 2022). This is supported by existing social and customary institutions (Fajri and Nurdin, 2020; Djawas and Astuti, 2020). Therefore, the collaboration between the government and social and customary institutions is crucial in reducing the divorce rate and the negative impacts of divorce on husbands, wives and especially children.

Marriage Dispensation at the Sharia Court Bener Meriah (MS-Str)

Marriage dispensation has led to early marriage practices in the Bener Meriah community, Aceh society, and other Indonesian regions. Marriage dispensation is one of the factors, among others. The Sharia Court of Simpang Tiga Redelong issued 1,753 court decisions, consisting of 13 types of cases, as follows:

Table 1. Civil Cases Decided by the Simpang Tiga Redelong Sharia Court in 2017-2021

NO	CASE	YEAR				NO/ CASE	%
		2017	2018	2019	2020		
1	Polygamy Permit	1	0	0	0	1	0.06
2	Divorce by <i>Tbalaq</i>	83	78	97	95	353	20.14
3	Divorce by Litigation	159	201	194	185	739	42.16
4	Joint Property	1	2	2	5	10	0.57
5	Child Custody	1	0	0	0	1	0.06
6	Appointment of Others as Guardians by the Court	0	1	0	0	1	0.06
7	<i>Isbat</i> of Marriage	29	25	35	188	277	15.80
8	Marriage Dispensation	16	12	26	37	91	5.19
9	Wali Adhal	1	0	0	0	1	0.06
10	Inheritance	1	1	0	0	2	0.11
11	Determination of Heirs	13	11	21	9	54	3.08
12	Others	3	1	0	1	5	0.29
13	Rejected/dropped/not accepted/ crossed out	22	20	44	132	218	12.44
TOTAL/YEAR		330	352	419	652	1.753	100

Source: Case Reports at the Bener Meriah Shariah Court 2017-2020.

Of the 1,753 decisions, the highest cases were divorce with 1,092 (62%) cases, consisting of *talāq* divorce (divorce by husbands' repudiation) with 353 (20.14%) cases; and divorce proposed wives with 739 (42.16%) cases. The second place was marriage *ihbāt* (official confirmation of marriage events by the court), with 277 (15.80%) decisions. The marriage dispensation was in third place with 91 cases (5.19%). The least were polygamy permits, child custody, the appointment of guardians, and *wali adal* (refusal to become guardians), each of which had one decision.

Concerning marriage dispensation, Table 2 compares marriage dispensation cases in Sharia Courts throughout Aceh.

Table 2. Marriage Dispensation Stipulation in Sharia Courts throughout Aceh in 2017-2020

No	Sharia Courts in Aceh	Decision				Amount	%
		2017	2018	2019	2020		
1	Banda Aceh (Banda Aceh City)	1	1	3	14	19	1,55
2	Bireun (Bireun City)	2	3	6	68	79	6,46
3	Blangkejeren (Gayo Lues Dsitrict)	0	2	9	28	39	3,19
4	Blangpidie (Southwest Aceh District)	0	0	4	23	27	2,21
5	Calang (Aceh Jaya District)	1	0	0	18	19	1,55
6	Idi (East Aceh District)	2	4	1	30	37	3,03
7	Jantho (Aceh Besar District)	0	2	2	50	54	4,42
8	Kuala Simpang (Aceh Tamiang District)	4	6	8	37	55	4,50
9	Kutacane (Southeast Aceh District)	1	0	0	3	4	0,33
10	Langsa (Kota Langsa City)	4	1	6	21	32	2,62
11	Lhokseumawe (Lhokseumawe City)	0	2	8	26	36	2,94
12	Lhoksukon (North Aceh District)	2	2	10	88	102	8,34
13	Meulaboh (West Aceh District)	0	2	4	30	36	2,94
14	Meureudu (Pidie Jaya District)	2	0	4	24	30	2,45
15	Sabang (Sabang City)	1	1	1	3	6	0,49
16	Sigli (Pidie City)	0	4	21	135	160	13,08
17	Simpang Tiga Redelong (Bener Meriah District)	16	11	26	36	89	7,28
18	Sinabang (Simeulue District)	1	1	5	14	21	1,72
19	Singkil (Aceh Singkil District)	2	0	12	36	50	4,09
20	Subulussalam (Subulussalam City)	0	0	0	23	23	1,88
21	Suka Makmue (Nagan Raya District)	0	0	3	18	21	1,72
22	Takengon (Central Aceh District)	31	33	52	127	243	19,87
23	Tapaktuan (South Aceh District)	4	0	10	27	41	3,35
Total/ Year		74	75	195	879	1.223	100

Source: Case Reports at the Aceh Sharia Courts in Aceh from 2017-2020

In general, the four highest Sharia Courts handling marriage dispensation were Takengon (243/19.87%), Sigli (160/13.08%), Lhoksukon (102/8.34%), and Simpang Tiga Redelong (89/7.28%).

The Simpang Tiga Redelong Sharia Court was in third place due to the increase in 2020. If 2020 is excluded, the Simpang Tiga Redelong Sharia Court would be in the second position (53 stipulations/15.4%) after Takengon (116 stipulations/33.7%).

In 2020, the number of marriage dispensation cases increased throughout Aceh. This is most likely due to the issuance of Law No. 16 of 2019 on Amendments to Law No. 1 of 1974 on Marriage (effective October 15, 2019). The amended version stipulates that marriage is permitted if prospective partners are 19 or older. This is an amendment to Article 1 Paragraph (1) of Law No. 1 of 1974 on Marriage, stating, "marriage is only permitted if the male has reached the age of 19 years and the female has reached the age of 16 years". The change was made following Constitutional Court Decision No. 22/PUU-XV/2017. This decision stipulates that setting a different minimum age limit for marriage between men and women not only creates discrimination in the context of implementing the right to form a family as guaranteed in Article 28B Paragraph (1) of the 1945 Constitution, but also creates discrimination against the protection and fulfillment of children's rights as guaranteed in Article 28B Paragraph (2) of the 1945 Constitution. In this case, when the marriageable age for women is lower than for men, legally, women can form a family earlier than men. Therefore, the Constitutional Court ordered the legislators, for a maximum period of 3 (three) years, to make changes to Law No. 1 of 1974 on Marriage.

This study selected the Marriage Dispensations Stipulation issued in 2017 in Simpang Tiga Redelong Sharia Court. The following table shows the petitioners' and the respondents' descriptions.

Table 3. Data on Marriage Dispensation Cases at the Simpang Tiga Redelong Shariah Court 2017

IDENTITY	NUMBER OF DECISION_Pdc.P/2017/MS-STR													AVERAGE		
	3/4	10	14	17/18	23	25	26	27	29	34	41	48	128			
APPLICANT																
Age	24	44	44	49	39	43	42	53	34	35	42	45	42	44	49	42/43
Education				-					-							2
Senior High School																5
Junior High School																6
Primary School																2

IDENTITY	NUMBER OF DECISION_Pdt.P/2017/MS-STR														AVERAGE
	3/4	10	14	17/18	23	25	26	27	29	34	41	48	128		
Profession															
Farmer															
Trader															
Housewife															
Respondent (Male)															
Age	16	17	16	16	20	17	25	17	20	16	16	21	17	18/16,44	
Education			-											1	
Senior High School														4	
Junior High School														6	
Primary School														2	
Profession														4	
Driver														1	
Farmer														8	
Respondent (Female)															
Age	15	16	17	14	13	17	14	15	15	17	18	14	16	15,4/14,3	
Education		-	-							-				3	
Senior High School														4	
Junior High School														3	
Primary School														3	
Profession	-	-	-	-	-	-	-	-	-	-	-	-	-	13	

Source: Decision Directory of Supreme Court, 2017.

In table 3 above, there are only 13 stipulation columns out of 15 stipulations. This is because cases 3 and 4 and 17 and 18 are the same, yet separated, as the four cases involved two similar couples. The table also shows several important points. First, the average age of the petitioners was 42 years old. They are mostly the parents of the prospective grooms or brides. Except for stipulation number 3, the petitioner was the brother, 24 years old. Most of the petitioners' highest education was junior high and senior high, and there were even two elementary school graduates. Most of the petitioners were farmers.

Furthermore, there were two traders and three homemakers. Second, the average age of the prospective grooms was 18 years in the 16-21 years. Only four of the 13 prospective grooms met the legal requirements, 19 years and over. However, if these four males were excluded from the table (since they met the age requirement under the

law), then the average age of the males was 16.44 years. In addition, like the petitioners (their parents), most of the prospective grooms' latest education was junior high and senior high.

Moreover, even two attended elementary school and (if true) worked as farmers. Third, the average age of the brides-to-be was 15.4 years. If six candidates aged 16 years and over (fulfilling the requirements of the law) were excluded from the table, then the average age was 14.3 years. Their education was relatively the same as that of the male respondents, although they had no jobs.

The stipulations of the Sharia Court, in addition to the court's authority (absolute and relative), the parties' identity, and the case description, also contain a reference to the main norm of marriage dispensation, Law No. 1 of 1974 on Marriage. Article 7 of this Law states, "(1) Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years; (2) In case of deviation from Paragraph (1) of this Article, a dispensation may be requested from the Court or another official appointed by both the parents of the male and female parties". Law No. 1 of 1974 is usually enforced by the Compilation of Islamic Law (*Kompilasi Hukum Islam*/KHI) (Presidential Instruction No. 1 of 1991).

However, this legal reference had changed in the marriage dispensation stipulation as of late 2019, since the issuance of Law No. 16 of 2019 on Amendments to the Marriage Law No. 1 of 1974. The amendment emphasizes the marriageable age for men and women to be equal to 19 years. This is reinforced by the Regulation of the Supreme Court of the Republic of Indonesia No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Cases. In addition to the official regulatory norms in the legal reasoning, many stipulations also contain the basis of the Qur'an (Surah 24: 32) and the Prophet's Hadith regarding marriage orders, *fiqh* (Islamic jurisprudence) provisions regarding legal conditions for marriage, and *fiqh* rules regarding emergency conditions that shall be eliminated.

The judges' consideration in the marriage dispensation stipulations is categorized into two. First, there should be the assurance of the workings of the legislative norms, such as age, status (young man/girl), no prohibition against marriage, approval of the parties (parents and

prospective bride and groom), and the judges' efforts to advise the parties to postpone marriage until their legally suitable age. Second, reasons for emergencies are required for the dispensation to be granted.

Of the 15 judicial stipulations in 2017, the followings are reasons for marriage dispensation. Firstly, the couples had been dating and had sexual intercourse (five out of 15 decisions). Meanwhile, eight decisions did not use "having intercourse" as part of the consideration, although written as a part of the reasons in the dispensation request. Therefore, the legal reasoning statements mentioned in the stipulations are: "it is feared that actions prohibited by Islamic provisions will occur again if they are not married immediately" or with other statements, e.g., "cannot be separated", "so as not to violate religious norms", or "the harm is greater if (they are) not married".

Secondly, the prospective bride and groom are ready to marry. They have to carefully consider their rights and obligations as husband and wife and show seriousness and mental readiness. Some stipulations used more complex sentences, e.g., "that the petitioner's child is ready to become a wife and housewife, perform obligatory worship for Muslims such as praying, fasting, and being able to read the Quran". Some stipulations also contain considerations of the statements of the prospective husband who "has worked as a farmer and is able to be responsible for his wife".

To examine the relationship between underage marriage and divorce, this study collected a sample of divorce data from 2020 until June 2021. The data in the Directory of Decisions of the Supreme Court of the Republic of Indonesia showed that in 2020 the Simpang Tiga Redelong Sharia Court handled 316 divorce cases. This figure includes decisions that were invalid, revoked, unacceptable, or not available in the system. In this study, there were 262 total decisions studied, which focused on age, education, occupation, and causes of divorce.

This study found that, in general, the average age of divorcees was 38.8 years for men and 33.7 years for women. The youngest divorced couples (male: female) aged 19:20 (two cases), followed by 37:15, 23:16, and 26:16, while the oldest aged 81:49 and 95:55. The age range of the divorcees from the highest was 21-30 years (35.7%), followed by 31-40 years (31.1%), 41-50 years (18.5%), 51-60 years (9%), 15-20 years (3.1%) and 61-70 years (2.7%).

The data on employment shows that farmers reached 48.3%, homemakers at 28.8%, civil servants at 8.3%, private employees at 8.1%, temporary employees (in government institutions) at 4%, students at 1.4%, retired civil servants at 0.5%, and non-permanent workers 0.5%. In terms of education, the data showed that 40% of the divorcees were senior high school graduates, 26% were junior high school graduates, 18% were elementary school graduates, 10% were bachelor's degree graduates, 5% were diploma III graduates, and 1% master's degree graduates. The data is summarized in the following table.

Table 4. Ranking of Employment, Education, and Age of Divorcee in Divorce Decisions in 2020

Ranking	Employment	Education	Age at Divorce
I	Farmer	SHS	21-30
II	Housewife	JHS	31-40
III	Civil Servant	Elementary	41-50
IV	Private Employees	Bachelor	51-60
V	Temporary Employees	Diploma-III	15-20

Source: Directory of Decision of the Supreme Court, 2020

Although ranked fifth in the above age range, several divorces at young ages (15-20 years) are connected with the marriage dispensation stipulations, shown in the following table.

Table 5. Relationship between Divorce Decisions in 2020 and 2021 and Marriage Dispensation

No.	Divorce Decision No.	Age at Marriage (Dispensation)		Marriage Year	Age at Divorce		Education		Employment	
		H	W		H	W	H	W	H	W
1	69/2020	16	17	2017	19	20	SHS	SHS	-	-
2	217/2020	22	15	2019	23	16	Elem	JHS	Farmer	Housewife
3	270/2020	18.5	19	2017	22	22	Elem	SHS	Farmer	Housewife
4	278/2000	27	16	2018	29	18	Elem	SHS	Farmer	Farmer
5	299/2020	18	19	2019	19	20	JHS	SHS	Farmer	Housewife
6	05/2021	16	14	2017	20	18	JHS	Elem	Farmer	Housewife

No.	Divorce Decision No.	Age at Marriage (Dispensation)		Marriage Year	Age at Divorce		Education		Employment	
		H	W		H	W	H	W	H	W
7	46/2021	18	14	2015	27	19	SHS	JHS	-	-
8	65/2021	25	15	2016	30	20	SHS	Elem.	Farmer	Housewife
9	176/2021	23	15	2017	26	19	SHS	JHS	Farmer	Housewife
10	194/2021	18	15	2014	25	22	JHS	JHS	Farmer	Farmer
11	228/2021	18	17	2018	21	20	SHS	JHS	Farmer	Housewife

Source: Directory of Decisions of the Supreme Court, 2000-2021

The above table shows 11 divorced couples in which one or both parties were married through a court decision (marriage dispensation). Their ages ranged from 14-15 years for women and 16-18 years for men. In addition, the spouses' education ranged from elementary to senior high school, while the occupations were farmers and homemakers.

The eleven divorce decisions related to marriage dispensation in Table 5 reveal three important points: the presence of children after divorce, the causes of divorce, and a measure of the weakness of family resilience. First, the mental readiness of the couple, or one of the parties, is not adequate to build a good household. This can be seen from the factors that caused divorces, e.g., "lack of respect" toward the partner or partner's parents, "difficulty in advising", "partner's parents being too get involved in the couple's family problems", "being selfish", "listening others better than own partner", "not permitting the partner to work or perform Friday prayers at the mosque", "not paying attention" to the partner or children, including when getting ill, "being rude and hitting", and committing domestic violence as well as "having an affair."

Second, the readiness of the new family's economic life is lacking, as seen from the factors of their divorces, such as "lack of family economic responsibility", "being lazy to work", and "not providing physical and spiritual support within a certain period ". Some reasons are connected with the cases wherein the husbands got involved in drugs (two cases), which resulted in being sentenced to 9-10 years in prison. Third, from the 11 cases above, nine couples already had children aged 0-3 years and were under the mothers' care. This caring

duty is generally not through a court decision since the children had been with the mothers mostly at the time of the divorce proceedings. Meanwhile, the couples had long lived apart, and the court decisions were made without the presence of the husbands (*verstek*).

Marriage Dispensation and Family Resilience

Several studies examining the relationship between marriage dispensation stipulations and family resilience have revealed that the element of 'emergency' is prominent, in contrast to the efforts to achieve marriage goals. The issues such as couples committing adultery and get pregnant have been generally considered impossible to be solved except by marrying off the couples. Relatively low mental and economic readiness caused these new families to enter a new emergency called 'family resilience emergency'. This makes them vulnerable to physical and mental violence as well as divorce. This study finds that underage marriage can lead to low family resilience and negatively impact women and children after divorce. In this case, Walsh (2003) states that the function of the family as a protective tool for each member does not work as it should. Looking at the increasing number of divorce and marriage dispensation stipulations, the potential for social problems is also increasing as a family is the smallest unit determining the peace of an ideal society.

This study also finds that (a) on the one hand, judges have worked in accordance with the laws and regulations: Law No. 1 of 1974 and Law No. 16 of 2019 and the technical rules of the Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Cases. Each stipulation mentions that the marriage dispensation is granted in an emergency to protect religion and society. Therefore, the underlying legal reasoning in stipulating marriage dispensation has been fulfilled in legal formal and extra-legal. However, marriage through marriage dispensation is proven to be a factor leading to divorce. This is because child marriage poses several impacts, such as school dropout, lack of mental preparedness and knowledge of ideal family development (i.e., gender equality, maternal and child nutrition, and fertility), and social and economic unpreparedness. As mentioned earlier, underage marriage has a negative impact in many ways (Scott et al., 2021), including neglect (Segal-Engelchin et al.,

2016). Further, Hajihassani & Sim (2019) that 'marital satisfaction' is not achieved well through marriage at a young age, unlike marriage among adults, as they have higher levels of maturity, emotional, and behavioral skills and are able to cope with conflict. Thus, they will have greater marital satisfaction.

The study also indicates that marriage dispensation here is understood as an 'emergency way' to stop violations of religious and customary norms by couples (Kasjim, 2016) by providing the legal status of husband and wife and children who will be born in the near future (for cases of pregnancy as most reasons for marriage dispensation), and saving families from social disgrace. At the same time, marriage dispensation saves the young generation from long-term family life. Therefore, the main and real problem is the violation of customary and religious norms in the form of pre-marital sex.

Indeed, in the Gayo customary law (the majority tribe in Bener Meriah, Central Aceh, and Gayo Lues Districts), the way to deal with the violation of moral norms is, among other things, by marrying off the illicit couple. In this case, the woman must marry the man she appointed (*munik* in Gayo) or the one she was caught red-handed with by society (*kedepeten* in Gayo). The resolution of these two types of 'marriage emergencies' seems to affect the people's 'consciousness' to resolve their problems in court. This is because *munik* and *kedepeten* are officially resolved by the village apparatus. When the role of the village apparatus no longer exists in that domain—due to legal development—*munik* and *depeten* are solved in courts.

In addition, two other circumstances affect the judges' considerations: '*āqil bāligh* (puberty, maturity and sense of responsibility) and the size of the body, which is a big body. The use of "reaching '*āqil bāligh*'" as a consideration suggests friction between the formal legal provisions in Indonesian legislation and the classical fiqh adopted by the community.

The biological development of '*āqil bāligh*' as a condition of marriage is known in fiqh but is not used in Indonesian legislation. In many cases, unregistered marriages (implemented by the community without registration at the Office of Religious Affairs) are influenced by the '*fatwā*' (rulings) of local fiqh scholars who adhere literally to the requirements of '*āqil bāligh*'. This parallels the "big physical condition" statement in some court decisions. Most likely, the judges considered

the two conditions above a 'shortcut' to resolve the emergency faced by the prospective child brides and grooms, such as being pregnant or engaging in a sexual relationship. In Gayo customary law, this second condition is called *muroba* (*zinā*/fornication), which requires the couple to be married off.

Thus, judges, who generally adhere to legislation restricting child marriage, can find a way out in fiqh and Gayo customary law in the case of emergency. So, the considerations they make are considered legitimate. The possibility that the marriage will be over in the near future may be prevented if the prospective brides and grooms obtain advice from the judges at the initial trial stage. Such a consideration, however, will not be found in the judges' decisions because—if the advice has been given, and a marriage dispensation is still applied—the judges accept the confession and supporting evidence to make marriage dispensation possible.

Nevertheless, when many of these underage couples fall into disorganized, poor, uneducated, and even divorced households (Fitra, 2017; Hudafi, 2018; Syaiful, 2019; Fatria, 2020; Adriyusa, 2020). In this case, judges will only accept or reject the divorce filed to the court. This is no longer the judges' authority. Judges act in the legal sphere, not the social sphere, which is the cause or effect of the marriage dispensation stipulation.

Therefore, this is where the role of the judge is important in providing consideration so that the marriage dispensation is not only a factor of the formal legal sphere but sociological-anthropological ones. Likewise, there is a need to consider the impact of marriage dispensation, such as the fragility of family resilience and easy divorce. In other words, the marriage dispensation and underage marriages have led to weaknesses in family resilience that must be addressed immediately. This is not only by maximizing the role of judges but also by other government agencies and elements of society.

In line with this study, actions are needed in the formal juridical and socio-educational domains. In the first domain, it should be understood that marriage dispensation shall be treated as a last resort, not part of the stages of the marriage procedure. The "reasons of emergency" in Law No. 16 of 2019 shall prevent child marriage practices and protect children's rights (Pardede et al., 2021). Considerations of educational,

economic, social, physical, and psychological preparedness of the prospective brides and grooms shall be the main reasons for accepting or rejecting the application for a marriage dispensation. Otherwise, the court's decision on marriage dispensation will only be a way to obtain a 'marriage formality' which is prone to low family resilience.

In the second domain, serious measures should be taken by various institutions and elements of society to improve this situation. The Ministry of Religious Affairs, the Office of Islamic Law, the Ulama Consultative Council, the Regional Education Council, the Aceh/ Gayo Customary Council, the Education Office, and the Dayah Education Office need programs that lead to the character building of the Gayo youth generation. The Gayo Customary Council can be directed to rebuild the noble values of Gayo custom, including—to a certain extent—imposing sanctions on couples who have sexual relations before a legal marriage.

Conclusion

The marriage dispensation leading to early marriage practice is a serious issue in the Bener Meriah community. The dispensation has met the legal requirement, although the legal reasonings are unconvincing. In the Sharia Courts, the judges consider legal and extra-legal grounds in granting marriage dispensation. The judge's consideration, for example, stated, "it is feared that there will be more violation of Islamic provisions if they are not married immediately" or "so as not to violate religious norms and so that", or "the harm is greater if they are not married". This is also because the judges found no other way to avoid the marriage. In this case, the judges considered various aspects of fiqh and customary law. This is not mistaken because judges are indeed required to explore the living laws in society, which will create harmony in the community's sense of justice. However, a bigger problem that newly married families will face through marriage dispensation is the fragility of family resilience. Early marriage will likely result in easy divorce and psychological and reproductive problems.

Moreover, women and children are the most disadvantaged parties when a divorce occurs. Therefore, concrete and strategic steps are needed involving various groups, including the government (sharia court, KUA, educational institutions), ulama, and traditional leaders, who can guide

the community against the negative impacts of early marriage and the promotion of family resilience. Thus, marriage dispensation can be reduced to maintain family resilience.

References

- Allassad Alhuzai, N. (2020). The adjustment process of young Bedouin women who were child brides. *Journal of Community Psychology*. <https://doi.org/10.1002/jcop.22379>
- DeHaan, L. G., Hawley, D. R., & Deal, J. E. (2013). Operationalizing family resilience as process: Proposed methodological strategies. In *Handbook of Family Resilience*. https://doi.org/10.1007/978-1-4614-3917-2_2
- Fernandez, I. T., Schwartz, J. P., Chun, H., & Dickson, G. (2013). Family resilience and parenting. In *Handbook of Family Resilience*. https://doi.org/10.1007/978-1-4614-3917-2_8
- Grijns, M., & Horii, H. (2018). Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns. *Asian Journal of Law and Society*. <https://doi.org/10.1017/als.2018.9>
- Hajihasani, M., & Sim, T. (2019). Marital satisfaction among girls with early marriage in Iran: emotional intelligence and religious orientation. *International Journal of Adolescence and Youth*. <https://doi.org/10.1080/02673843.2018.1528167>
- Horii, H. (2019). Pluralistic legal system, pluralistic human rights?: teenage pregnancy, child marriage and legal institutions in Bali. *Journal of Legal Pluralism and Unofficial Law*. <https://doi.org/10.1080/07329113.2019.1683429>
- Kasjim. (2016). Abuse of Islamic Law and child marriage in South-Sulawesi Indonesia. *Al-Jami'ah*. <https://doi.org/10.14421/ajis.2016.541.95-122>
- Marshan, J. N., Rakhmadi, M. F., & Rizky, M. (2013). Prevalence of Child Marriage and Its Determinants among Young Women in Indonesia. *Child Poverty and Social Protection Conference*.
- Marzuki, Ruslan, M., Yetta, Y., Hanafi, S., & Badollahi, M. T. (2021). The Implementation of Underage Marriage Dispensation in Palu Religious Court. *Review of International Geographical Education*, 11(3), 565–569. <https://doi.org/10.33403/rigeo.800521>
- Miedema, E., Koster, W., Pouw, N., Meyer, P., & Sotirova, A. (2020). The Struggle for Public Recognition: Understanding Early Marriage through the Lens of Honour and Shame in Six Countries in South Asia and West Africa. *Progress in Development Studies*. <https://doi.org/10.1177/1464993420977790>
- Pardede, J. N., Asih, W. T., & Siregar, T. A. (2021). Progressivism of Judges in Deciding Applications for Marriage Dispensation. *Lambung Mangkurat Law Journal*. <https://doi.org/10.32801/lamlaj.v6i1.208>
- Saidon, R., Jaapar, N. Z. H., Alias, B., Sahari, N. H., Ismail, F. A., & Rahim, S. I.

- A. (2017). Underage marriage: Harmonising human rights laws and religious values. *Advanced Science Letters*. <https://doi.org/10.1166/asl.2017.8908>
- Scott, S., Nguyen, P. H., Neupane, S., Pramanik, P., Nanda, P., Bhutta, Z. A., Afsana, K., & Menon, P. (2021). Early marriage and early childbearing in South Asia: trends, inequalities, and drivers from 2005 to 2018. *Annals of the New York Academy of Sciences*. <https://doi.org/10.1111/nyas.14531>
- Segal-Engelchin, D., Huss, E., & Massry, N. (2016). The Experience of Early Marriage: Perspectives of Engaged and Married Muslim Women in Israel. *Journal of Adolescent Research*. <https://doi.org/10.1177/0743558415605167>
- Siegrist, N. (2016). Dispensations and secret marriages in Buenos Aires and Spanish America in the 18th century. *Revista Complutense de Historia de América*. <https://doi.org/10.5209/RCHA.53710>
- Sonneveld, N. (2020). Male and female judges in Morocco dealing with minor marriages towards a relational understanding of family law. In *Hawwa*. <https://doi.org/10.1163/15692086-12341376>
- Sumardi, D., Lukito, R., & Ichwan, M. N. (2021). Legal Pluralism Within The Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 5(1), 426–449. <https://doi.org/DOI: http://dx.doi.org/10.22373/sjhk.v5i1.9303>
- Sumardi, D., Umar, M. N., Sangaji, R., Yunus, F. M., & Akbar, R. (2022). Transition of Civil Law to Public Law: Integration of Modern Punishment Theory in Criminal Apostasy. *AHKAM : Jurnal Ilmu Syariah*, 22(1). <https://doi.org/10.15408/ajis.v22i1.26359>
- Sumner, C. (2020). *Ending Child Marriage in Indonesia: The Role of the Courts* (Policy Paper 19).
- Walsh, F. (1996). The Concept of Family Resilience: Crisis and Challenge. *Family Process*. <https://doi.org/10.1111/j.1545-5300.1996.00261.x>
- Walsh, F. (2003). Family resilience: A framework for clinical practice. *Family Process*. <https://doi.org/10.1111/j.1545-5300.2003.00001.x>
- Walsh, F. (2013). Community-based practice applications of a family resilience framework. In *Handbook of Family Resilience*. https://doi.org/10.1007/978-1-4614-3917-2_5

Darmawan¹, Asmaul Husna², Mirza Rahmatillah³, and Helmi Imran⁴

¹Law Faculty, Universitas Syiah Kuala (USK) Banda Aceh

^{2,3}Universitas Islam Negeri Ar-Raniry Banda Aceh

⁴Institut Agama Al-Aziziyah, Samalanga, Bireuen

E-mail: ¹darmawan@unsyiah.ac.id, ²asmaulhusna@ar-raniry.ac.id

³jirongmirza@gmail.com, ⁴tgkhelmiimran@iaialaziziyah.ac.id