

Judges' Considerations in Granting Permission to Underage Marriage Applications at the Luwuk Religious Court

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ABSTRACT

This study discusses judges' considerations in granting requests for underage marriages permission at the Luwuk Religious Court. This study used a qualitative method. The data was collected through direct observation, in-depth interviews, and written document analysis. The data, then, was analyzed using thematic analysis to find themes from the data. The results of this study show that the procedure for submitting a marriage dispensation at the religious court is the same as the mechanism for filing other application cases. Increasing the minimum age for marriage for women to 19 years impacted the increase cases of underage marriage dispensation applications at the Religious Courts. The filing of a underage marriage dispensation case in the Religious Courts was caused by preventive and curative factors. The basis used by the judge in deciding the application for underage marriage dispensation is based on the theory of law enforcement. Then there must be considerations encouraging the judge to grant the application for underage marriage dispensations. The factors considered by judges in determining the dispensation of marriage were also related to psychological, health, educational, and economic factors. These four factors were taken into serious consideration by the judge in determining the dispensation of marriage. Based on the results, we recommend the religious courts should be more selective in examining, considering, and determining applications for underage marriage dispensation to prevent social conflicts and the impact of these decisions to society.

ARTICLE INFORMATION

Keywords:

Underage marriage, marriage dispensation, judges consideration

1. Introduction

Marriage is a high respect and respect for the dignity given by Islam, specifically for humans. In Islamic law, marriage must be carried out in compliance with the conditions and pillars of marriage. As for marriage, according to Law no. 1 of 1974, marriage is an inner and outer bond between a man and a woman to live a happy and eternal household based on the Belief in One Almighty God. Therefore, marriage must be maintained by both parties to achieve the marriage's goals, so it is necessary to have preparations from both parties, both mentally and materially. This means that physically men and women have reached the age limit, which can be categorized according to positive law and baligh according to Islamic law. However, another very important factor is maturity in thinking and independence in life (able to provide a living for his wife and children). This is often forgotten by society.¹

Meanwhile, the other purpose of marriage in Islam is to fulfill the physical and spiritual needs of humans as well as to form a family and maintain and continue their offspring in living their lives in this world, preventing adultery to create calm and peace of mind for those concerned, peace in the family and society.

The problem of the age limit for being able to carry out marriage has been determined in Law no. 1 of 1974 article 7 paragraph (1), that marriage is only permitted if the man has reached the age of 19 years and the woman has reached the age of 16 years. This age limit

provision, as stated in the compilation of Article 15 paragraph (1), is based on considerations for the benefit of the family and marriage household. Get married properly without ending in divorce and get good and healthy offspring. As there has been a revision regarding the issue of the age limit for marriage, initially, the man has reached the age of 19 years, and the woman has reached the age of 16 years. In Law no. 16 of 2019 concerning Amendments to Law 1 of 1974 concerning marriage in, article 7 states that:

1. Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years.
2. In the event of deviation from the age requirement referred to in paragraph (1), the male and/or female parents may request a dispensation from the court with urgent reasons accompanied by sufficient supporting evidence.
3. The court granting a dispensation, as referred to in paragraph (2), must listen to the opinions of both bride and groom who will enter a marriage.
4. The provisions regarding the condition of one or both parents of the prospective bride and groom, as referred to in Article 6, paragraph (3) and paragraph (4), also apply to the provisions regarding the request for dispensation as referred to in paragraph (2) without prejudice to the provisions referred to in Article 6 paragraph (6). (Law No. 16 of 2019 concerning Amendments to Law 1 of 1974 concerning Marriage in the article (7))

Islam provides a place to realize this desire by following Islamic law through legal marriage. Marriage is a way chosen by Allah SWT as a way for

¹ Ramulyo, Moh. Idris. "*Hukum Pernikahan Islam*". (Jakarta: Bumi Aksara, 1996).

humans to give birth to offspring, develop well and preserve their lives after each partner is ready to play a positive role in realizing the goals of marriage.²

Marriage in Islam is a social institution from Allah SWT (divine institution). The Compilation of Islamic Law defines marriage according to Islamic law, a very strong contract to obey Allah SWT's commands and carry them out as worship, sakinah, mawaddah, and rahmah. For this reason, marriages between prospective husbands and wives who are still underage must be prevented. However not all people understand Law no. 1 of 1974 as revised in Law no. 16 of 2019 concerning Amendments to Law 1 of 1974, which the government has established.

Based on the provisions of Article 7 of the Marriage Law, a new marriage can occur after receiving a dispensation from the court if there is a deviation from the marriage age requirement. So far, parents of prospective grooms or prospective brides often submit requests for dispensation to the Religious Courts so that their children who have yet to reach the age of marriage can be given dispensation to marry due to various urgent considerations.

Among the reasons often stated in applications for dispensation of marriage is that the relationship between the prospective groom and the prospective bride is already very close, so it is no longer possible to postpone the implementation of the marriage, or even both have conjugal relations

outside of marriage. So, parents are worried their children will fall deeper into actions contrary to Islamic law. In adjudicating cases of marriage dispensation, the Religious Courts often consider the two disadvantages, the harm that occurs because of child marriage (early marriage) and the harm that will occur if the marriage dispensation is refused. The Panel of Judges often accepts requests for marriage dispensation because they view that the harm that will occur if the marriage dispensation is refused is greater than the harm that occurs as a result of early marriage, which is likely to damage the offspring (al-nasl) and honor (al-'irdl) of both candidates the bride and groom.³

The legal considerations (tasbib al-ahkam/legal reasoning) put forward by the Panel of Judges in determining the case for a request for a marriage dispensation are formulated based on legal facts proven at trial. So far, these legal facts have been obtained based on information from the parents, the two prospective brides, and grooms, and the witnesses presented before the court.

2. Literature Review

2.1 Law Number 16 of 2019 concerning Marriage

Law 16 of 2019 concerning Amendments to Law 1 of 1974 concerning Marriage has a background in connection with the Constitutional Court of the Republic of Indonesia has issued a Constitutional Court Decision Number 22/PUU-XV/2017, which is one of the considerations of the

² Sabiq. Sayyid. "*Fikih Sunah Jilid 6*", Terj. Moh. Thalib (Bandung: PT. Al Maarif, 1990).

³ Ibid135

Constitutional Court in the decision namely "However, when the difference in treatment between men and women impact or impede the fulfillment of basic rights or constitutional rights of citizens, both those belonging to the group of civil and political rights as well as economic, educational, social and cultural rights, which should not be allowed distinguished solely based on gender, then such a distinction is discrimination.⁴

In the same consideration, it is stated that setting a different minimum age for marriage between men and women has not only resulted in discrimination in the context of exercising the right to form a family as guaranteed in Article 28B paragraph (1) of the 1945 Constitution but has also created discrimination against the protection and fulfillment of the children's rights as guaranteed in Article 28B paragraph (2) of the 1945 Constitution. In this case, when the minimum age for marriage for women is lower than for men, legally, women can start a family more quickly. Because of this, in its decision, the Constitutional Court ordered the legislators to, within a maximum period of 3 (three) years, make changes to Law Number 1 of 1974 concerning Marriage so that Law 16 of 2019 concerning Amendments to Law 1 of 1974 concerning marriage⁵.

⁴ Ramulyo, Moh. Idris. "*Hukum Pernikahan Islam*". (Jakarta: Bumi Aksara, 1996).

⁵ Muslih, I., Nurdin, N., & Marzuki, M. (2020). Effectiveness of Marriage Services Through Information System Management (SIMKAH) at Palu City Religious Court
INTERNATIONAL JOURNAL OF CONTEMPORARY ISLAMIC LAW AND SOCIETY, 2(1), 20-36.

2.2 Theory of *Maqashid al-Syariah*

Muslims believe Islamic law to be a law that originates from divine law. This belief is based on the fact that the source of law in Islam is the Qur'an and the limited sunnah of the Prophet, while legal problems continue to increase along with developments in human life. For this reason, efforts to explore and find legal answers (legal istimbath) must continue to be carried out by Islamic jurists.

Sociologically it is recognized that society is always changing. Changes in society can affect the mindset and values of that society. The more advanced the way of thinking of a society, the more open it will be to accept advances in science and technology. And the more advanced science and technology, the more likely it is for legal problems to arise and require answers, the settlement of which, of course, uses *ijtihad*.

Generally, the law in the Qur'an is divided into matters of worship and social affairs because worship is *ta'abbudi* in nature, so it is not the land of humans to perform *ijtihad*. As for *mu'amalah*, Allah gives the flexibility to interpret his verses broadly as long as they do not depart from the principles set by Allah SWT.

From the perspective of Islamic legal thought (*ushul fikh*) the *ushul* scholars apply various methods in carrying out legal *ijtihad*. These methods include *qiyas*, *istislah*, *istishab*, and *'urf*. (Ahmad al-Hajj al-Kurdi, 1980) The application of these methods in practice is also based on the concept of *maqasid al-shari'ah*. In terms of language, the plural *maqasid* of the word *maqsid* means demand, intention, or purpose. (Hans Wehr, 1980) While the word *syari'ah* is

"the way to the water." (value content which is the goal of legal requirements). So *maqasid al-shari'ah* are the goals to be achieved from a legal determination.⁶

The objectives of *maqasyid al-Shariah* are: (1) Maintaining Religion (*Hifzh al-Din*). (2) Preserving the Soul (*Hifzh al-Nafs*). (3) Preserving the Intellect (*Hifzh al- 'Aql*). (4) Preserving the Offspring (*Hifzh al-Nasl*) (5) Taking care of the Property (*Hifzh al-Mal*)

The main purpose of Allah creating a law is to benefit humans and nature. The benefit of al-Syatibi can be seen from two points of view. Both are *maqashidal-Syari'* (God's Purpose) and *Maqashid al-Mukallaf* (Mukallaf's Purpose). (Asy-Syathibi, volume II) Whereas *Maqasid al-Syari'ah* in the sense of *Maqashid al-Syari'*, contains four aspects. The four aspects are: (1) The initial goal of shari'ah is the benefit of humans in this world and the hereafter. (2) Shari'at is something that must be understood. (3) Shari'at is a taklif law that must be carried out. (3) The purpose of shari'ah is to bring people under the auspices of the law

Benefits can be realized if the five main elements are realized and maintained. The five main elements are religion, soul, mind, lineage, and wealth. (Fahturrahman, 1992) To realize and maintain the five main elements of *maqasid al-shari'ah*, are divided into three levels: (1) *Maqashid al-Daruriyat*.(2) *Maqashid al-Hajiyyat* .(3) *Maqashid al-Tahsiniyat*

Maqashid al-Daruriyat is intended to maintain the five basic elements of human life within the limits of not

endangering the five. *Maqashid al-Hajiyyat* is intended to eliminate difficulties or improve the maintenance of the five basic elements. Failure to maintain this group does not threaten the existence of the five points above but only creates difficulties for the Mukalla. *Maqashid al-Tahsiniyat* is intended so that humans can do their best to perfect the maintenance of the five basic elements.

2.3 The concept of marriage

Marriage is a common *sunatullah* that applies to all creatures of Allah SWT, humans, animals, and plants. Allah SWT creates everything in pairs and matches, as it applies to perfect creatures, namely humans. Marriage, in principle, is a contract that justifies relationships, limits rights and obligations, and helps men and women who are not *mahram*.⁷ The term marriage is often differentiated, but in principle, it only differs in interpretation. From the above understanding, the writer can conclude that marriage is an inner and outer bond between a man and a woman who is not his mahram to build an eternal and happy household based on his religious shari'ah.

The purpose of marriage in Islam is not only to meet the needs of human physical and spiritual life but also to form a family and maintain and continue offspring in making his life in this world, as well as preventing adultery, to create calm and peace of mind for the person

⁶ Kamali, M. H. (2011). *Maqasid Al-Shari'ah and Ijtihad as Instruments of Civilisational Renewal: A Methodological Perspective* *ICR Journal*, 2(2), 245-271.

⁷ Wilcox, W. B., & Wolfinger, N. H. (2007). Then comes marriage? Religion, race, and marriage in urban America. *Social Science Research*, 36(2), 569-589. doi:<https://doi.org/10.1016/j.ssresearch.2006.02.005>

concerned, peace in the family and society.⁸

2.4 Underage Marriage

Marriage is a vow-binding ceremony celebrated or carried out by two people to formalize the marriage bond according to religious, state, and customary law. Wedding ceremonies have wide varieties and variations between nations, one ethnicity and another in one nation, religion, culture, and social class. Certain customs or rules are sometimes related to certain religious rules or laws.

Underage marriages are carried out at an age that is not permitted to marry by Law 16 of 2019 concerning Amendments to Law 1 of 1974 concerning Marriage article 7 paragraph 1. Namely, marriage is only permitted if a man and a woman have reached the age of 19 (nineteen) years. (Soemiyati, 2007) Several factors cause underage marriage, namely personal factors, and family factors. From the personal factor of teenagers, it is because they want to avoid sin (free sex), and some are because of "accidents." Meanwhile, the family factor is due to coercion from parents.⁹

2.5 Overview of the Religious Courts

⁸ Jawad, H., & Elmali-Karakaya, A. (2020). Interfaith Marriages in Islam from a Woman's Perspective: Turkish Women's Interfaith Marriage Practices in the United Kingdom. *Journal of Muslim Minority Affairs*, 40(1), 128-147. doi:10.1080/13602004.2020.1737415

⁹ Prettitore, P. S. (2015). Family Law Reform, Gender Equality, and Underage Marriage: A view from Morocco and Jordan. *The Review of Faith & International Affairs*, 13(3), 32-40. doi:10.1080/15570274.2015.1075758

According to the language, the court is the council or assembly that adjudicates the case, and the court is the process of adjudicating the judge's decision when adjudicating the case (the building where the case is adjudicated). Meanwhile, the religious court is a translation of *Godsdienstige Rechtspraak* which means the Religious Court. The Religious Court is an effort to seek justice or settle legal disputes carried out according to regulations in religion.¹⁰

The religious court is the official title for one of the four legal jurisdictions of the state or judicial authority in Indonesia. The Religious Court is also one of the three special courts in Indonesia. The other special courts are the Military Court and the State Administrative Court. It is said to be a special court because the Religious Courts adjudicate certain cases concerning certain groups of people (who are Muslim). In this case, the Religious Courts are only authorized in certain civil matters, not in the criminal field, and only for Muslim people in Indonesia. And also in certain Islamic civil cases only. Law Number 3 of 2006 concerning Religious Courts in Article 1 paragraph (1) reads: Religious Courts are trials for Muslim people. It can be concluded that the Religious Courts are one of the legitimate Indonesian state courts, which are special courts authorized in certain types of Islamic civil cases, only for Muslim people.

The Religious Court, as the court of the first instance, acts to receive, examine, and decide on every application or claim at the earliest and

¹⁰ Ramulyo, Moh. Idris. "*Hukum Pernikahan Islam*". (Jakarta: Bumi Aksara, 1996).

lowest stages. The Religious Courts act as daily courts to accommodate in the early stages and decide or adjudicate in the early stages all cases submitted by the community seeking justice. Submitting a request or lawsuit directly to the High Religious Court is not permissible. All cases must go through the Religious Courts in a hierarchical position as courts of the first instance. He must receive, examine, and decide on all requests or lawsuits submitted to him in his position as a court of the first instance. It is prohibited to refuse to accept, examine and decide on cases submitted to him under any pretext.

The Religious Courts have existed since the arrival of Islam to Indonesia, which was then recognized and strengthened in its position in Java and Madura in 1882, and in South Kalimantan in 1937. Outside Java, Madura and East Kalimantan in 1957, and its name is now the Religious Courts. The name unification was carried out by the Minister of Religion Decree No. 6 in 1980. Everything is supervised by the Supreme Court of the Republic of Indonesia in administering justice and its guidance.

The Law on the Religious Courts consists of seven chapters, namely 108 articles covering: Chapter I contains general provisions regarding the meaning, position, place of the seat, and management of courts within the religious courts. Chapter II regulates the composition of the religious courts and religious high courts. Chapter III regulates the power of the courts within the religious courts. Chapter IV mentions the matter of case fees which the Minister of Religion regulates with the Supreme Court's approval based on simple, speedy, and low-cost trials.

Chapter V mentions other provisions regarding the administration of justice and the distribution of tasks for judges and scholars in carrying out their duties. Chapter VI regarding transitional provisions, and Chapter VII regarding closing provisions. It is emphasized here that when the Law on Religious Courts came into effect in Java and Madura, in some (former) residencies of South and East Kalimantan and other parts of the Republic of Indonesia, it was declared no longer valid.

3. Methodology

This study used qualitative research method. This study was carried out in the religious court of Luwuk city, Banggai regency. Data sources are primary data and secondary data. Data was gathered through direct, in-depth interviews and written material analysis^{11, 12}. The interviews were conducted with the community figures and local citizens. The data, then, was analyzed through data reduction, data presentation, and verification. From the data analysis, the researchers built themes by categorizing the data according its similarities^{13, 14}. The

¹¹ Rusli, R., & Nurdin, N. (2021). Understanding Indonesia millennia Ulama online knowledge acquisition and use in daily fatwa making habits. *Education and Information Technologies*. doi:10.1007/s10639-021-10779-7

¹²Rusli, R., Hasyim, M. S., & Nurdin, N. (2021). A New Islamic Knowledge Production And Fatwa Rulings: How Indonesia's Young Muslim Scholars Interact With Online Sources. *Journal of Indonesian Islam*, 14(2), 499-518.

¹³Nurdin, N., & Pettalongi, S. S. (2022). Interpretive case study to understand online communication in an e-tendering project

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researcher also checks the validity of the data through the verification of , the data from different sources.

4. Results and Discussion

4.1 History of the Luwuk Religious Court

Initially, the area now known as Banggai Regency stood for several kingdoms, one of which was the Kingdom of Banggai. The development of the Banggai Kingdom, which was centered on the Banggai Islands, became the main kingdom of several existing kingdoms. Around the 13th century, namely during the golden age of the Singosari Kingdom centered on Java, especially when the Singosari Kingdom was under King Kartanegara in 1288-1298, the Banggai Kingdom has been known in Indonesian history where the Banggai Kingdom became part of the Singosari Kingdom. Likewise, during the Majapahit Kingdom led by Hayam Wuruk (1351-1389), the Banggai Kingdom was known as Benggawi, and became part of the Mojopahit Kingdom.

With the change in the status of the regional government, where the Swapraja Area of Banggai became a Level II Region of Banggai with the Decree of the Minister of Religion of the Republic of Indonesia No. 87 of 1966 dated December 3, 1966, and the Letter of the Head of the Makassar Religious

Courts Office No. Ac/2/168, dated May 18, 1968. The Luwuk Religious Court was opened and established on June 17, 1968. With the birth of the Luwuk Religious Court in the Banggai district, the development of the history of justice in the Republic also increased. Hence, its journey always goes hand in hand from time to time following developments era.

In the course of the history of Islam in Banggai Regency, before the colonial era until the colonial era, it was called the Banggai Kingdom. The Tahkim institution was in effect from the early days of Islam entering the Banggai Kingdom, even though Islamic society had not yet been officially formed at that time. At that time, if there was a dispute between the Muslims, upon mutual agreement, the Religious Leaders or the District Imam were asked for their services to resolve the dispute between them. The emergence of Islamic communities marked the development of Islam in the Banggai Kingdom. Among the religious leaders, some appear or are presented as holders of authority and power spiritually and politically, even in a very simple sense, but have the authority to adjudicate. This elite group has the authority to appoint certain figures to run affairs. When the Islamic kingdoms were established in the archipelago with the existence of a structure or agency that took care of the religious interests of the Muslims, the tauliyah of the Imam began to apply. and with the enactment of Tauliyah from this Imam, administratively, it will make the existence of the Religious Courts and their legal products more abstract and stronger.

4.1 Process for submitting marriage dispensation

implementation. *Jurnal Manajemen Komunikasi*, 7(1), 39-54.

¹⁴Nurdin, N., & Pettalongi, S. S. (2022). Menggunakan Paradigma Studi Kasus Kualitatif Interpretatif Online dan Offline Untuk Memahami Efektivitas Penerapan E-Procurement. *Coopetition: Jurnal Ilmiah Manajemen*, 13(2), 155-168.

Marriage dispensation is required for grooms who are not yet 19 years old and brides who are not yet 16 years old. As stipulated in the law: Marriage is only permitted if the man has reached the age of 19 and the woman has reached the age of 16 (Law No. 1 of 1974 article 7 paragraph (1) Concerning marriage). In the event of deviation from paragraph (1) of this article, you may request a dispensation from the court or other officials appointed by both the parents of the man and the woman (Law No. 1 of 1974 article 7 paragraph (2) Concerning marriage). As there has been a revision regarding the issue of the age limit for marriage, initially, the man has reached the age of 19 years, and the woman has reached the age of 16 years. In Law no. 16 of 2019 concerning Amendments to Law 1 of 1974 concerning marriage in, article 7 states that:

5. Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years.
6. In the event of deviation from the age requirement referred to in paragraph (1), the male and/or female parents may request a dispensation from the court with urgent reasons accompanied by sufficient supporting evidence.
7. The court granting a dispensation, as referred to in paragraph (2), must listen to the opinions of both bride and groom who will enter a marriage.
8. The provisions regarding the condition of one or both parents of the prospective bride and groom, as referred to in Article 6, paragraph (3) and paragraph (4), also apply to the provisions regarding the request for dispensation as referred to in paragraph (2) without prejudice to the provisions referred to in Article 6

paragraph (6). (Law No. 16 of 2019 concerning Amendments to Law 1 of 1974 concerning Marriage in the article (7)

Religious Court, after examining in court and believing that there are things that make it possible to grant the dispensation, grants a marriage dispensation with a stipulation. The bride and groom are applying for permission to marry those who do not reach the age requirement. The mechanism for filing a marriage dispensation case is the same as for filing a lawsuit. The mechanism for the process of applying for a marriage dispensation, namely:

First: Before the applicant submits his application, the applicant goes to the administration table to explain how to proceed with a case and make an application letter. The applicant can ask for help to make an application letter at the administration table. *Second:* The application letter that has been made and signed is submitted to the sub-registrar's office of application. The applicant faces the first stage, which will estimate the amount of the down payment of the case fee and write it down on a power of attorney to pay. It is estimated that the down payment for court fees is sufficient to settle the case based on Article 193 R.B or Article 182 paragraph (1) HIR or Article 90 paragraph (1) UUPA. *Third:* The applicant then faces the cashier by submitting the application letter and Power of Attorney. The cashier then receives the money, records the court fees in the journal, signs and gives the case number and paid-off sign, and returns the application letter and Power of Attorney to the Petitioner. *Fourth:* The applicant then goes to second stage by

submitting the application letter and the power of attorney that has been paid.

In settling the case for a request for dispensation from marriage at the Religious Court, the Chairman of the Panel of Judges, after receiving the case file, and the member judges study the case file. Then set the day, date, and time when the case will be held and order that the parties be summoned to appear before the appointed day, date, and time. The parties were also informed that they could prepare the evidence presented at trial. However, the evidence was usually entrusted to the clerk before the trial.

After the trial was opened and declared open to the public by the panel's chairman, the litigants were summoned to the courtroom. If the advice is not successful, then the assembly chairman reads out the petition filed by the applicant, which has been registered with the religious court clerk. Next, the assembly chairman begins the examination with questions posed to the applicant, the applicant's children, and prospective children in turn. Then the Chairperson of the Assembly continued examining the documentary evidence, and the applicant submitted the following documentary evidence:

Photocopy of birth certificate in the name of the applicant's child issued by the head of the village, marked by the Chairperson of the Assembly marked P.1. Letter of notification of refusal to enter a Model N-9 marriage issued by the Office of Religious Affairs. Furthermore, the assembly chairman declared that the trial was suspended for deliberation. The applicant, the applicant's children and prospective children were ordered out of the courtroom.

4.2 Legal basis for judges' in rejecting or granting underage marriage dispensation

Marriage dispensation is an alternative if the age limit of the parties has yet to reach what is desired by law, namely 19 years for men and women. In this case, the dispensation of marriage includes cases of requests filed at the Religious Courts or related officials, but the one with the most authority is the Religious Courts. Regard to authority is always closely related to the authority of a judicial institution. So that when filing a lawsuit or application, the prospective plaintiff or applicant must pay attention to it, that the lawsuit or application submitted to the court has the authority to handle the case, so that it will not harm the plaintiff or the applicant. Judicial procedural law in Indonesia recognizes two forms of power (authority), absolute competence and relative competence.

a. Absolute Competence

Absolute competence is the authority that concerns matters of power between judicial bodies in terms of the types of courts. Regarding the granting of powers to adjudicate in Dutch, it is called "*attribute ban rechtsmacht*" according to the roles and functions of the judiciary (Religious Courts, for example), must declare no authority to examine and adjudicate cases that are not under his authority, does not depend on the presence or absence of exceptions from the defendant, and this can be carried out at the beginning of the examination.

The scope of the absolute authority of the Religious Courts to examine, decide and settle cases at the first level between people who are Muslim in the areas of

marriage, inheritance, wills, grants, endowments, zakat, infaq, almsgiving and sharia economics, which are carried out based on Islamic law. So that if these cases are carried out by people who are not Muslim and not based on Islamic law, then these cases do not fall under the authority of the Religious Courts but instead become the authority of the general courts.

b. Relative Competence

Relative Competence is an authority that regulates the division of powers to adjudicate between similar courts depending on the place of residence of the defendant. This power is often known as "*actor sequatur forum rei*", namely, the competent court where the defendant resides. Specifically for divorce cases contested in the Religious Courts environment filed by the wife, the lawsuit is filed at the plaintiff's place of residence (wife). The address is different from the residence. A person's address is where a person places the centre where he lives, and it is more correct to say that a person's address can be seen from his ID card. In contrast, the residence is where a person stays in a certain place for a while.

According to the general civil procedural law regulated in HIR Article 118 and Rbg Article 142, the relative competence of the point of emphasis is related to the jurisdiction of a claim or application filed not at the defendant's place of residence, so the court without having to wait for the objection filed by the defendant has the authority to reject it. Each court has the authority to examine cases in terms of its jurisdiction, including:

- a) Place of domicile.
- b) Where one of the defendants resides.

- c) Where the main defendant (*hoofschuldenaar*) resides.
- d) Where the plaintiff resides, if the defendant does not have a residence and the whereabouts of the defendant are unknown.
- e) Where the immovable object (*onroerend goed*) is located.
- f) There is a choice of residence in writing in the deed if the plaintiff wants to be in the place of choice.
- g) If the court offers the right of exception to the defendant on the first day of the trial, but it is not used, or the defendant submits an exception but is rejected by the court, then the court will continue the trial.

The guardian or parents of parties can submit dispensation from a marriage that is not yet in marriageable age. An application for marriage dispensation cannot be submitted by a party or child who is not old enough because they are still under guardianship. The legal basis for the Religious Court Judge is between rejecting and granting the request for a marriage dispensation by using one of the basics: weighing the *maslahah* and *mafsadah*. More judges indeed use fiqh principles. Besides, it is rare for judges to use a legal basis other than fiqh rules because the Dispensation of Marriage cases is a matter of application.

So, in essence, the Dispensation of Marriage, according to the viewpoint of the Panel of Judges, is that here we are talking about the court's authority. Still, sometimes that authority is based on community service, providing legal protection to the community, and enforcing the law during society. And for that, the Religious Courts have more authority to grant permission to get married in each respective region. If the case is accepted because we are

authorized, there are cases which are indeed the authority of the Religious Courts. We will continue to examine, and we will examine considerations, it is like this, whether the reasons for requesting a dispensation from marriage relate to the benefits of being married. Are the people being married too young, is the person already working? Some people are not old enough but physically sufficient and have adult education, which is a consideration for the applicant for dispensation marriage.

In Article 7, paragraph 2, it is stated that deviations from the provisions of paragraph 1 regarding the minimum age limit for marriage can be requested for dispensation at the religious court or other officials submitted by both the male and female parents. Article 15, paragraph 1 of the Compilation of Islamic Law states that for the benefit of the family and household, marriage may only be carried out by the bride and groom who have reached the age specified in Article 7 of Law number 1 of 1974, namely the man is at least 19 years old. The woman is at least 16 years old, and this rule has been revised by Law no. 16 of 2019 concerning Amendments to Law 1 of 1974 concerning marriage in article 7.

The Religious Courts, after examining in court and being convinced that there are things that make it possible to grant this dispensation, the Religious Courts grant a Marriage Dispensation with a stipulation. Marriage dispensation cases at the Luwuk Religious Court are among those that often occur, although divorce cases are rare. The cases filed at the Luwuk Religious Court could have been more diverse. The general cases filed by the Luwuk people revolved

around marriage cases, one of which was the Dispensation of Marriage.

The factors for the marriage dispensation that were filed at the Luwuk Religious Court were the marriage dispensation, which is a marriage license that was submitted at the Religious Court because they were not old enough according to the provisions of the Marriage Law. The limitations contained in the Marriage Law are that women and men must be 19 years old. The goal is, yes, to legalize the parties' marriage to continue marriages that are not old enough and recognized by the state. When processing the application for the Marriage Dispensation, the judge is passive and active for the applicant. Dispensation for marriage can be submitted with the parent's consent, so the one applying for it is the guardian, not the party directly, without the guardian's knowledge. Own children, and then, what is more, file a marriage dispensation due to pregnancy due to promiscuity.

In several matters related to the issue of marriage dispensation or early marriage, it can be stated that the judge considers several factors in determining the marriage dispensation, both related to the judge who examines and adjudicates the case for the application for marriage dispensation and from those who are petitioned for marriage dispensation, namely; psychological factors, health factors, educational factors, economic factors, and socio-cultural factors.

So in the case of submitting an application for dispensation of marriage with the presence of factors that oblige the marriage to continue, some are even still influenced by customary law that has previously stated that a woman who

is even older than that must be married off, because she is worried that she will not tolerate marriage behavior, namely for girls. Therefore, it should become an understanding of the community about the factors increasing Marriage Dispensation.

5. Conclusion

The basis used by the judge in deciding the application for marriage dispensation is based on the theory of law enforcement, which is seen by the judge when conducting the case trial for the application for marriage dispensation. Then there must be considerations encouraging the judge to grant the application for marriage dispensation. The judge's considerations are, first, consideration of the child in the womb. Other considerations include moral and financial because according to the judge himself, marriage is a form of bond that is not temporary but forever. Therefore, when the child to be married is asked by the judge about readiness, all are returned to their respective guardians when not ready.

REFERENCES

- Arifin, Imron. "Penelitian Kualitatif Dalam Ilmu-ilmu Sosial dan Keagamaan". (Malang: Kalimasada Press, 1996).
- Bungin, Burhan. "Peneiltan Kualitatif, Komunikasi, Ekonomi, Kebijakan Publik, dan Ilmu Sosial lainnya". Edisi.I (Jakarta: Kencana Prenada Media Group, 2007).
- Departemen Agama RI. "Al-Qur'an dan Terjemahannya". (Bandung: Mizan, 2009).
- Departemen Agama RI. "Kompilasi Hukum Islam". (Jakarta: Dirjen Bimas Islam dan Penyelenggaraan Haji, 2004).
- Departemen Pendidikan Nasional. "Kamus Besar Bahasa Indonesia". (Jakarta: Balai Pustaka, 2005).
- Jawad, H., & Elmali-Karakaya, A. (2020). Interfaith Marriages in Islam from a Woman's Perspective: Turkish Women's Interfaith Marriage Practices in the United Kingdom. *Journal of Muslim Minority Affairs*, 40(1), 128-147. doi:10.1080/13602004.2020.173741
- Kamali, M. H. (2011). Maqasid Al-Shari'ah and Ijtihad as Instruments of Civilisational Renewal: A Methodological Perspective *ICR Journal*, 2(2), 245-271.
- Moleong, Lexy J. "Metodologi Penelitian Kualitatif." (Bandung: PT. Remaja Rosdakarya, 2002).
- Muslih, I., Nurdin, N., & Marzuki, M. (2020). Effectiveness of Marriage Services Through Information System Management (SIMKAH) at Palu City Religious Court *INTERNATIONAL JOURNAL OF CONTEMPORARY ISLAMIC LAW AND SOCIETY*, 2(1), 20-36.
- Prettitore, P. S. (2015). Family Law Reform, Gender Equality, and Underage Marriage: A view from Morocco and Jordan. *The Review of Faith & International Affairs*, 13(3), 32-40. doi:10.1080/15570274.2015.107575
- Rusli, R., Hasyim, M. S., & Nurdin, N. (2021). A New Islamic Knowledge Production And Fatwa Rulings: How Indonesia's Young Muslim Scholars Interact With Online Sources. *Journal of Indonesian Islam*, 14(2), 499-518.

- Rusli, R., & Nurdin, N. (2021). Understanding Indonesia millennial Ulama online knowledge acquisition and use in daily fatwa making habits. *Education and Information Technologies*. doi:10.1007/s10639-021-10779-7
- Nurdin, N., & Pettalongi, S. S. (2022). Menggunakan Paradigma Studi Kasus Kualitatif Interpretatif Online dan Offline Untuk Memahami Efektivitas Penerapan E-Procurement. *Coopetition: Jurnal Ilmiah Manajemen*, 13(2), 155-168.
- Nurdin, N., & Pettalongi, S. S. (2022). Interpretive case study to understand online communication in an e-tendering project implementation. *Jurnal Manajemen Komunikasi*, 7(1), 39-54.
- Prastowo, Andi. "Menguasai Teknik-teknik Koleksi Data Penelitian Kualitatif (Bimbingan dan Pelatihan Lengkap Serba Guna)". (Jogjakarta: Diva Press, 2010).
- Ramulyo, Moh. Idris. "Hukum Pernikahan Islam". (Jakarta: Bumi Aksara, 1996).
- Ruslan, Rosady. "Metode Penelitian Public Relation dan Komunikasi." (Jakarta: PT. Raja Grafindo Persada, 2004).
- Sabiq. Sayyid. "Fikih Sunah Jilid 6", Terj. Moh. Thalib (Bandung: PT. Al Maarif, 1990).
- Sugiyono. "Memahami Penelitian Kualitatif". (Bandung: Alfabeta, 2007).
- Undang-Undang No. 1 Tahun 1974 tentang Perkawinan.
- Undang-undang No. 16 Tahun 2019 tentang Perubahan Atas UU No. 1 Tahun 1974 tentang Perkawinan pada pasal 7.
- Yin. Robert K. "Case Study Design and Methods" Terj. oleh M. Djauzi Mudzakir dengan Judul: "Studi Kasus Desain dan Metode". (Jakarta: PT.Raja Grafindo Persada, 2002).
- Wilcox, W. B., & Wolfinger, N. H. (2007). Then comes marriage? Religion, race, and marriage in urban America. *Social Science Research*, 36(2), 569-589.