

ADJUDICATING UNDERAGE MARRIAGES AT RELIGIOUS COURTS

A Progressive Collaboration between Judiciary and Health Authority

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Abstract

This paper examines the state policies through the judiciary and health institutions in curbing underage marriage. Furthermore, the article sheds light on the extent to which these efforts are realized in the legal practices of the Religious Courts. Data were gathered by analyzing the decisions of the Religious Courts and supplemented with interviews. This paper argues that the state, through the judiciary, has enacted strict mechanisms via the Supreme Court Regulation Number 5 of 2019 concerning Guidelines for handling marriage dispensation cases. Other efforts have been undertaken by the Ministry of Health by requesting the Supreme Court to instruct all judiciary bodies under its jurisdiction to collaborate with health services or relevant institutions to combat underage marriage. To the author's investigation, there are 14 Religious Courts that have collaborated with the Ministry of Health. Judges in these courts consider recommendation letters as one of the considerations. The judges also exhibit a non-permissive attitude by rejecting applications for marriage dispensation without supplementary documents such as recommendation letters from the health services. This study indicates that state institutions, through the judiciary and healthcare sectors, are making progressive efforts to reduce the prevalence of underage marriage.

[Paper ini mengkaji kebijakan negara melalui lembaga kehakiman dan kesehatan dalam menekan pernikahan di bawah umur. Selain itu, artikel ini juga melihat sejauhmana upaya tersebut terrealisasikan dalam praktik hukum di Pengadilan Agama. Data dikumpulkan dengan menelaah putusan-putusan Pengadilan Agama dan dilengkapi dengan wawancara. Paper ini menegaskan bahwa negara melalui lembaga kehakiman mengeluarkan ketentuan mekanisme yang ketat melalui Peraturan Mahkamah Agung Nomor 5 Tahun 2019 tentang Pedoman menangani kasus dispensasi nikah. Upaya lain dilakukan oleh Kementerian

Kesehatan dengan cara meminta Mahkamah Agung memberikan intruksi kepada seluruh lembaga kehakiman yang berada dibawahnya untuk melakukan kerjasama dengan dinas kesehatan atau lembaga terkait guna menekan pernikahan di bawah umur. Sejauh penelusuran penulis, ada 14 Pengadilan Agama yang berkolaborasi dengan Kementerian Kesehatan. Hakim-hakim di pengadilan tersebut menjadikan surat rekomendasi sebagai salah satu pertimbangan. Hakim juga menunjukkan sikap yang tidak permisif berupa penolakan permohonan dispensasi nikah tanpa dokumen pelengkap seperti surat rekomendasi dari dinas kesehatan. Kajian ini menunjukkan bahwa lembaga negara melalui kehakiman dan kesehatan melakukan upaya progressif untuk menekan tingkat pernikahan di bawah umur.]

Keywords

Underage marriages, marriage dispensation, Religious Courts, health authorities

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Introduction

The rise of underage marriage is evidenced by data released by BAPPENAS of the Republic of Indonesia. As many as 34.5% of children have entered into underage marriages. PLAN International said that of the vulnerable age of 13-18 years, as many as 33.5% of them were married at the age of 15-16 years. Data released by the Central Bureau

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of Statistics in 2020 revealed that 1 in 9 girls had entered marriage under the age of 18. This makes Indonesia ranked 8th in the world in the practice of child marriage.¹

In conjunction with underage marriage, marriage dispensation remains an intriguing topic to explore, as it is frequently linked to the minimum age requirement for marriage. In Indonesia, the minimum age for marriage has been 19 years for both men and women since 2019.² Before 2019, the minimum age for marriage was 19 years for men and 16 years for women,³ which was later revised to 19 years for both genders.⁴ If a couple has not yet reached the age of 19 but wishes to marry, they can apply for marriage dispensation to the court. The applicant's parents are responsible for submitting sufficient supporting evidence.⁵ The judge's role is to decide whether to accept or reject the proposed decision. Judges possess the privilege of having freedom, which must be exercised by applicable legal provisions. The judge's decision serves as a symbol of justice for the community.⁶ The code of ethics for judges is outlined in the regulation number 047/KMA/SKB/IV/2009 and 02/SKB/P.KY/IV/2009. Among the rules outlined in these two documents, judges are accountable and prepared to bear the consequences of their decisions. Furthermore, judges are expected to act professionally by continuously enhancing their knowledge to ensure proper implementation and determination of decisions.⁷

A judge's ability to interpret a legal basis to create order and legal certainty in society requires a good understanding of a legal basis. Before the judge determines a decision, they listen to and connect the testimony of each applicant with the witnesses and evidence. Then, the judge concludes and writes down the legal basis that is based on the main source. Religious court judges usually prioritize the legal basis derived from the Qur'an, Hadith and

¹ Fahadil Amin Al Hasan and Deni Kamaluddin Yusup, "DISPENSASI KAWIN DALAM SISTEM HUKUM INDONESIA: Menjamin Kepentingan Terbaik Anak Melalui Putusan Hakim (MARRIAGE DISPENSATION IN THE INDONESIAN LEGAL SYSTEM: Protecting Children's Best Interests through Judges' Decisions)," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 1 (2021): 86–98.

² Law Number 16 of 2019 Concerning the Amendment to Law Number 1 of 1974 Concerning Marriage" (n.d.), <https://peraturan.bpk.go.id/Home/Details/122740/uu-no-16-tahun-2019>.

³ Law No. 1 of 1974 Marriage Law.

⁴ Law Number 16 of 2019 Concerning the Amendment to Law Number 1 of 1974 Concerning Marriage.

⁵ Sri Pujianti, "Menuntut Persamaan Batas Usia Perkawinan Dalam Dua Undang-Undang," Mahkamah Konstitusi, 2023.

⁶ Hasanul Mulkam, "Peranan Hakim Dalam Persidangan Perkara Pidana Sebagai Pengubah Dan Pembaharu Hukum Pidana," *Jurnal Hukum Samudra Keadilan* 16, no. 1 (2021): 305–19.

⁷ Ria Maulina Almadika and Pamungkas Satya Putra, "Kajian Yuridis Mengenai Etika Profesi Hakim," *Jurnal Hukum POSITUM* 6, no. 1 (2021): 113–24.

the opinions of scholars contained in *fiqh* books.⁸ Religious court judges tend to be more special than other courts. This tendency appears in the legal basis used, which refers more to the doctrine contained in the Al-Qur'an, Hadith and *fiqh*.⁹ The cases handled by religious court judges include polygamy permits, prevention of marriage, annulment of marriage, divorce, child validation, guardianship, determination of the origin of children, *isbat nikah* (marriage validation), *wali adhal* (a guardian who refuses to be a guardian in the marriage of a woman under his guardianship) and marriage dispensation, child adoption.¹⁰ Marriage dispensation cases are often associated with the minimum age of marriage. Marriage dispensation is a path taken by parents who want to marry their children but are under the age of 19.

Research on underage marriage has been conducted from broad perspective. Theresia found that underage marriage violates human rights, but the reason that often arises in marriage dispensation cases is urgency. She hopes that reducing the level of underage marriage requires collaboration across institutions and local governments.¹¹ Another study found that efforts were made to reduce the rate of marriage dispensation in Pati District by the Office of Religious Affairs (Kantor Urusan Agama, KUA). However, all efforts were not significant in reducing the rate of underage marriage. Collaboration, then, involves the KUA institution, the village head, the head of the Rukun Tetangga (RT) or neighborhoods association, and the religious and youth leaders and religious leaders around the area.¹² Different from Theresia, Irgi revealed that judges sometimes feel a dilemma when handling marriage dispensation cases in the Religious Court. If the religious court rejects the application for marriage dispensation, the applicant will perform a *sirri* marriage

⁸ Lego Karjoko et al., "Islamic Court's Approach to Land Dispute in Inheritance Cases," *AHKAM: Jurnal Ilmu Syariah* 21, no. 2 (2021): 213–38, <https://doi.org/10.15408/ajis.v21i2.21864>.

⁹ Nur Aisyah, "Peranan Hakim Pengadilan Agama Dalam Penerapan Hukum Islam Di Indonesia," *AL-Qadai* 5 (2018): 73–92.

¹⁰ Zulkarnaen, "Jenis Perkara Dan Kewenangan Pengadilan Agama," *Pengadilan Agama Surabaya* (Surabaya, 2022).

¹¹ Theresia Rosari Cakraningtyas Sekar, "Dispensasi Kawin Pada Anak Di Bawah Umur: Tinjauan Terhadap Perspektif Ham Anak Dalam Pengambilan Kebijakan (Studi Kasus Di Kabupaten Jepara)," *Journal of Politic and Government Studies* 12, no. 2 (2023): 2.

¹² Siti Malaiha Dewi et al., "Pencegahan Perkawinan Dini Dan Sirri Melalui Collaborative Governance Berbasis Gender Di Kabupaten Pati Berbasis Gender Di Kabupaten Pati," *PALASTREN Jurnal Studi Gender* 12, no. 2 (2019): 519, <https://doi.org/10.21043/palastren.v12i2.6357>.

(a marriage that is carried out in secret). Therefore, the judge grants underage marriage¹³ mostly followed the precedent of previous judges.

Ilma conducted another study related to efforts or regulation of marriage dispensation. He revealed that strict rules did not accompany the revised law regulation regarding marriage dispensation. This is evidenced by the many marriage dispensation decisions that judges still grant. The reason "very urgent" creates multiple interpretations, resulting in many marriage dispensation applications, even though the regulation of the minimum age of marriage has been updated.¹⁴ Fajri revealed that after the reform of the minimum age of marriage, the Supreme Court issued a Supreme Court Regulations in Indonesia, commonly known as PERMA (Peraturan Mahkamah Agung), on Guidelines for Adjudicating Marriage Dispensation. It aims to provide clear procedures for determining marriage dispensation cases. The factor that makes PERMA ineffective is the low level of public understanding of the negative impact of underage marriage. In addition, cultural factors, namely justifying the culture that has been carried out, as well as promiscuity that is still permissive by teenagers.¹⁵

The author investigated the progressive initiatives undertaken by the Supreme Court and healthcare institutions aimed at effecting reforms in the minimum age requirement and mitigating the incidence of underage marriages. The examination also scrutinizes the extent to which concerned entities implement these endeavors, utilizing regulations established by judicial bodies and healthcare institutions. I conducted comprehensive searches through websites and reliable sources. Furthermore, interviews were conducted with judges who have adjudicated marriage dispensation cases. Concurrently, scholarly papers, books, and other written works serve as supplementary data sources in this scholarly inquiry. The author's research when compared to previous researchers, lies in the fact that previous

¹³ M Anwar Nawawi et al., "Harmonization of Islam and Human Rights: Judges' Legal Arguments in Rejecting Child Marriage Dispensation in Sukadana, Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 1 (2022): 117–34, <https://doi.org/10.18326/ijtihad.v22i1.117-134>; Irgi Aditya Maulana, "Analisis Pertimbangan Hakim Dalam Mengabulkan Permohonan Dispensasi Nikah Dalam Pencegahan Perkawinan Dini Di Pengadilan Agama Sumber (Perkara Nomor 80/Pdt.P/2022/PA.Sbr.)" (IAIN Syekh Nurjati Cirebon, 2022), <http://repository.syekh Nurjati.ac.id/9578/>.

¹⁴ Mughniatul Ilma, "Regulasi Dispensasi Dalam Penguatan Aturan Batas Usia Kawin Bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 2, no. 2 (2020): 133–66, <https://doi.org/10.37680/almanhaj.v2i2.478>.

¹⁵ Muhammad Fajri, "The Effectiveness of Supreme Court Regulation No. 5 of 2019 in Efforts to Prevent Child Marriage," *Al-Qadān Peradilan Dan Hukum Keluarga Islam* 9, no. 2 (2022): 151–152.

studies did not look in depth at the progressive efforts of judicial institutions and other related institutions.

Efforts of the Supreme Court and the Health Ministry in Suppressing Marriage Dispensation Cases

The author explores progressive initiatives undertaken by the Supreme Court after the revision of the minimum age for marriage, along with efforts made by affiliated institutions directly associated with the Supreme Court. The author identifies the Ministry of Health of the Republic of Indonesia as one such institution directly linked to the Supreme Court. These collective progressive endeavors by the Supreme Court and the Health Office following the revision of the minimum age for marriage are delineated into five specific efforts. Firstly, the Supreme Court promulgated Supreme Court Regulation Number 5 of 2019, delineating the Guidelines for Adjudicating Marriage Dispensation Applications. The primary objective of this regulation is to fortify the justice system's implementation, ensuring the protection of children's rights, fostering enhanced parental responsibility, and averting coerced underage marriages by parents.

PERMA Number 5 of 2019 establishes procedural guidelines for judges involved in the adjudication of marriage dispensation cases. These guidelines encompass various facets, commencing with the requirement for the judge to refrain from donning court attributes and employing language and methodologies accessible to children. Subsequently, the judge is obligated to provide counsel to the underage applicant seeking marriage dispensation. Moreover, the judge is tasked with communicating to the parents the adverse repercussions associated with underage marriages, including academic dismissal, unreadiness of reproductive organs, and immature socio-economic and psychological impacts. Notably, the regulation stipulates the necessity for the judge to solicit a letter of recommendation from a qualified professional, such as a psychologist, doctor, or other relevant expert.¹⁶ The initiatives undertaken by the Ministry of Health were positively acknowledged by the Supreme Court, as evidenced by a communication disseminated through a letter addressed to all Chairpersons of the Religious High Courts and all Chairpersons of Religious Courts

¹⁶ Supreme Court Regulation Number 5 Year 2019 on Guidelines for Adjudicating Marriage Dispensation Requests, issued 2019.

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and Syar'iyah Courts. This correspondence, dated April 22, 2022, reflects the Supreme Court's response to the efforts made by the Ministry of Health in the context.

The subsequent endeavor was undertaken by the Ministry of Health, specifically by the Directorate General of Public Health. This entity provided valuable input regarding the Draft Government Regulation (RPP) concerning marriage dispensation, identified by letter number HK.01.02/B/275/2022. The ensuing communication was expressly directed to the Supreme Court. Emphasizing the optimal implementation of this initiative, the follow-up letter highlighted the necessity for coordinated efforts between the Supreme Court and local Health Offices. Its overarching objective is to enhance promotive-preventive measures aimed at mitigating the incidence of marriage dispensation cases. The detailed contents of this correspondence are delineated as follows:¹⁷ (1) to increase reproductive health education targeting school-age children, encompassing both in-school and extracurricular settings; (2) to intensify socialization efforts, focusing on educating parents, children, community leaders, and judges from religious and state courts about the consequences of early marriage; (3) to engage in advocacy initiatives directed towards local government bodies; and (4) to facilitate collaboration with the health department and professional organizations to underscore the significance of attaining physical, mental, and economic preparedness prior to entering into marriage.

The third initiative involved the issuance of Supreme Court letter No. 2449/DjA/HM.00/4/2022, constituting a consequential response to a prior communication from the Ministry of Health, as elucidated in the letter's narrative. This letter holds significant import as it is directed to all Chiefs of Religious High Courts or Syar'iyah Courts in Aceh and Chiefs of Syar'iyah Courts or Chiefs of Religious Courts across Indonesia. The communication instructs the Chief Justices of the High Courts and the Courts nationwide to coordinate and collaborate with local Health Offices by no later than July 2022. Additionally, the Religious High Courts are tasked with overseeing the implementation of this collaboration by the Religious Courts. Subsequently, the courts are mandated to submit reports on the conducted cooperation to the Director-General of the

¹⁷ Ministry of Health Republic of Indonesia, "Tindak Lanjut Audiensi Dispensasi Perkawinan," 2022.

Religious Courts Agency within a maximum of three days post-execution of the collaborative efforts.¹⁸

The fourth initiative was spearheaded by the Supreme Court through the dissemination of information on PERMA Number 5 of 2019, specifically the Guidelines for Adjudicating Marriage Dispensation Requests. This awareness campaign took place at Madani Hotel in Medan City on June 22, 2022. The primary objective of this socialization endeavor was to enhance the competency of judges in addressing and scrutinizing marriage dispensation cases, aligning with the broader objective of preventing child marriages. It was underscored that judges responsible for examining and handling marriage dispensation cases are obligated to provide guidance and seek information from the child intending to marry, as well as from the child's parents or the applicant in question. Failure by the judge to adhere to the advice and request information would render the decision regarding the proposed marriage dispensation null and void. This underscores the critical role of judges in upholding the procedural aspects outlined in PERMA Number 5 of 2019 to safeguard against child marriages.¹⁹

The fifth endeavor was undertaken by the Supreme Court through the organization of a Dialogue between the Indonesian Supreme Court and the Federal Circuit & Family Court of Australia (FCFCOA). This hybrid event occurred from October 18, 2022, to October 27, 2022, with the primary objectives of enhancing the quality of services and deliberating on the outcomes of cases involving women and children. A specific session dedicated to the presentation and review of data related to marriage dispensation cases transpired on Monday, October 24, 2022. The discussions encompassed a comprehensive overview of the situation from 2020 to 2022, including an exchange of information on marriage dispensation cases. Beyond the discourse on marriage dispensation, this session also disseminated information concerning the involvement and contributions of Independent Children's Lawyers in counseling institutions, as well as their engagement with

¹⁸ Supreme Court of Republic of Indonesia, "Surat Koordinasi Dan Perjanjian Kerjasama Dengan Dinas Kesehatan," 2022, <https://www.mahkamahagung.go.id/id/tugas-pokok-dan-fungsi%0Ahttps://journal.uinsgd.ac.id/index.php/asy-syariah/article/view/656>.

¹⁹ Pepy Nofriandi, "Hakim Pertimbangkan Kepentingan Terbaik Bagi Anak Dalam Mengadili Perkara Permohonan Dispensasi Kawin," Mahkamah Agung, 2022, <https://www.mahkamahagung.go.id/id/berita/5240/hakim-pertimbangkan-kepentingan-terbaik-bagi-anak-dalam-mengadili-perkara-permohonan-dispensasi-kawin>.

young people in rural Australia. This collaborative dialogue aimed to foster cross-border insights and promote improved services in cases involving vulnerable populations.²⁰

Religious Courts MoU Following Letter No. 2449

Following the issuance of Supreme Court letter No. 2449/DjA/HM.00/4/2022, I identified 14 religious courts in Indonesia that engaged in collaboration with the Ministry of Health. This collaboration is substantiated by the execution of Memoranda of Understanding (MoU) between the religious courts and various institutions, including the Health Office, Social Service, Ministry of Religious Affairs, Religious Affairs Office (KUA), and other pertinent offices. The religious courts involved in this collaborative initiative encompassed: (1) Parigi Religious Court, (2) Serang Religious Court, (3) Mempawah Religious Court, (4) Raha Religious Court, (5) Sumber Cirebon Religious Court, (6) Jombang Religious Court, (7) Kebumen Religious Court, (8) Hunimoa Plain Religious Court, (9) Tuban Religious Court, (10) Tembilahan Religious Court, (11) Nabire Religious Court, (12) Salatiga Religious Court, (13) Padangsidempuan Religious Court, and (14) Semarang Religious Court. A more comprehensive elucidation of the individual efforts undertaken by each religious court is provided below.

Parigi Religious Court of Central Sulawesi

Parigi Religious Court has undertaken initiatives involving collaboration with the health department. The collaboration between the Parigi Court and the District Health Office is formalized through the Memorandum of Understanding (MoU) under Numbers W19-A9/855/HM.01.1.VII/2022 and Number 440/140/DISKES. This agreement delineates the objective of the collaboration, which is to ensure the comprehensive fulfillment of the biological, psychological, economic, and social well-being of individuals seeking marriage dispensation. This entails a meticulous examination process and the issuance of a letter of recommendation for marriage dispensation, along with a certificate of medical examination for the prospective bride and groom. These documents serve as foundational evidence for the judge's considerations in marriage dispensation cases. Moreover, the Health Office, as

²⁰ Supreme Court of Republic of Indonesia, "Dialog Mahkamah Agung RI Dan Federal Circuit & Family Court of Australia (FCFCOA)," Oktober (2022): 1–23.

part of its responsibilities, administers TT Immunization, Hemoglobin, HIV Hepatitis, and Fe distribution, while concurrently safeguarding the confidentiality of the involved parties. Furthermore, the Health Office is duly authorized to offer guidance and counsel to applicants who fall below the legal age for marriage.²¹

Preceding the issuance of the letter, Parigi Religious Court had established collaborations in 2021, collaborating with the Ministry of Religion and the Office of Women's Empowerment, Child Protection, Population Control, and Family Planning. This collaborative effort is documented in the Cooperation Agreement under Numbers W19.A9/428/HM.01/111/2021, B.1996A/410/HK009/07/2021, and 078/0482/DP2AP2KB/2021. The underlying objective of this collaboration aligns with the broader initiative to ensure that the justice system upholds the rights of children and identifies that their decisions are not coerced. Additionally, it aims to enhance parental responsibility to prevent underage marriages and contribute to the standardization of adjudicating marriage dispensation cases.

The operational framework of each institution, particularly the Office of Religious Affairs (KUA), involves the verification of prospective couples to ensure compliance with marriage requirements. If these conditions are not met, the KUA guides the applicants to seek consultation and assistance from P2TP2A (Integrated Service Center for Women and Children Empowerment). Subsequently, P2TP2A conducts a comprehensive examination of the prospective bride and groom, encompassing aspects such as child psychology, sociology, culture, educational sustainability, health, and the economic standing of the child's parents. This process ensures that the child is not under duress and verifies that parents assume responsibility for the economic well-being of the applicant's child. Beyond providing a letter of recommendation, P2TP2A extends assistance in facilitating the prospective bride and groom's engagement with the Parigi Religious Court. It is noteworthy that, should an applicant for marriage dispensation fail to furnish a letter of recommendation from the health department, the judge is obligated to reject or declare the case inadmissible.²²

²¹ Religious Court of Parigi, "Perjanjian Kerjasama Pengadilan Agama Parigi Dengan Dinas Kesehatan Kabupaten Parigi Moutong," 2022.

²² Religious Court of Parigi, "Perjanjian Kerjasama Antara Pengadilan Agama Parigi Dan Kementerian Agama Kabupaten Parigi Moutong Dan Dinas Pemberdayaan Perempuan, Perlindungan Anak,

Serang Religious Court of Banten West Java

The Serang Religious Court undertook a similar initiative by engaging in collaboration with the health department concerning the Handling of Children Against the Law in the Marriage Dispensation Case. This collaborative endeavor involves the Health Service of Serang Regency, which extends support and conducts examinations for individuals intending to marry. Beyond mere assistance, the Health Service administers TT Vaccines and conducts comprehensive examinations encompassing health and psychological assessments. Subsequently, the Health Office issues a formal letter detailing the results of the examination information. This recommendation letter assumes a crucial role as one of the prerequisites for pursuing marriage dispensation.²³

Preceding the issuance of the significant directive from the Supreme Court, the Serang Religious Court entered collaboration with the Department of Family Planning, Women's Empowerment, and Child Protection (DKBPPPA) of Serang Regency in the year 2021. This collaborative effort is formalized in the Cooperation Agreement under Numbers W27-A1/2871/HM.01.1/IX/2021 and Number 197/873/DKBPPPA/2021. Notably, this collaboration extends beyond the realm of marriage dispensation cases to encompass divorce cases and disputes pertaining to child custody.

One of the primary objectives of this collaboration between the Serang Religious Court and DKBPPPA is to safeguard and proactively address cases involving underage marriages. The operationalization of this collaboration involves DKBPPPA providing pre-marital counseling services for applicants seeking marriage dispensation. Additionally, the department imparts education on the risks associated with underage marriages and the consequential impacts. Subsequently, DKBPPPA issues a certificate to the applicant, and the judge, in adjudicating the marriage dispensation case, takes into consideration the recommendation letter furnished by DKBPPPA. This collaborative effort aligns with the broader aim of protecting and anticipating the well-being of children involved in various

Pengendalian Penduduk Dan Keluarga Berencana Tentang Penanganan Anak Berhadapan Dengan Hukum Dalam Hal Dispensasi Nikah ,” 2021.

²³ Serang Religious Court, “Pengadilan Agama Upayakan Kerjasama Dengan Dinas Kesehatan Kabupaten Serang Terkait Dispensasi Nikah (DK),” *Badilag Mahkamah Agung*, 2022, <https://badilag.mahkamahagung.go.id/seputar-peradilan-agama/berita-daerah/pa-serang-upayakan-kerja-sama-dengan-dinas-kesehatan-kabupaten-serang-terkait-dispensasi-kawin-dk>.

legal contexts, extending beyond merely marriage dispensation cases to include divorces and child custody disputes.²⁴

Mempawah Religious Court of West Kalimantan

The Mempawah Religious Court in West Kalimantan has similarly engaged in a cooperative agreement with the Health Office, specifically in relation to Health Examination Services for Marriage Dispensation Applicants. This collaborative effort seeks to impart comprehensive awareness to underage individuals applying for marriage dispensation regarding the biological, psychological, economic, and social impacts associated with early marriage. The local community health center is entrusted with the responsibility of conducting health and psychological assessments for children seeking marriage dispensation. Beyond the examination process, the health center provides guidance and counseling, offering insights on how to navigate life after initiating a family.

Furthermore, the Community Health Center (Puskesmas) is granted the authority to issue a recommendation letter, with the aspiration that this letter contributes to assisting the judge in determining the child's best interests. This collaborative initiative not only serves the purpose of facilitating health assessments but is also integral to community-wide awareness efforts, promoting proactive measures before entering marriage. The overarching aim is to instill awareness within the community about the potential implications of early marriage and foster a collective commitment to responsible decision-making in this regard.²⁵

The Mempawah Religious Court further entered into a collaborative agreement with the Social Service, Women's Empowerment and Child Protection, Community Empowerment, and Village Government of Mentawai Regency. This collaboration is formalized in the Agreement Letter under Numbers W14-A3/738/HM.01/VII/2022 and

²⁴ Serang Religious Court, "Perjanjian Kerjasama Antara Pengadilan Agama Serang Dengan Dinas Keluarga Berencana Pemberdayaan Perempuan Dan Perlindungan Anak (DPBPPPA) Kabupaten Serang Tentang Layanan Konseling Bagi Pemohon Dispensasi Nikah Dan Perkara Korban Perceraian Serta Sengketa," 2021.

²⁵ Religious Court of Mempawah, "Penandatanganan Perjanjian Kerja Sama (MoU) Pengadilan Agama Mempawah Kelas I B Dengan Dinas Kesehatan Pengendalian Penduduk Dan Keluarga Berencana Kabupaten Mempawah," *Direktorat Jendral Badan Peradilan Agama*, July 21, 2022, <https://badilag.mahkamahagung.go.id/seputar-peradilan-agama/berita-daerah/penandatanganan-perjanjian-kerja-sama-mou-pengadilan-agama-mempawah-kelas-ib-dengan-dinas-kesehatan-pengendalian-penduduk-dan-keluarga-berencana-kabupaten-mempawah-21-7>.

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Number 741 of 2022. The primary objective of this collaboration is to ensure the paramount interests of children, encompassing their care, welfare, and overall growth. Additionally, it represents an earnest endeavor to ascertain the preparedness of marriage dispensation applicants and provide education regarding the social ramifications experienced by such applicants.

The crux of this cooperative effort lies in the Social Service's role in examining the prospective bride and groom, subsequently issuing a recommendation letter pertaining to their readiness. The recommendation letter received by the Court becomes a pivotal factor in the judge's considerations when adjudicating the approval or denial of marriage dispensation. This collaborative initiative underscores a shared commitment to safeguarding the well-being of children and promoting a holistic approach that extends beyond legal considerations to encompass their broader welfare and societal impact.²⁶

The Other Religious Courts

Not markedly different from the three courts experiences, the remaining eleven religious courts also engaged in collaboration with local health institutions. For instance, Raha Religious Court collaborated with both the Muna Regency Health Office and the West Muna Regency Health Office.²⁷ Similarly, the Sumber Religious Court established collaboration with the Cirebon District Health Office,²⁸ and the Jombang Religious Court partnered with the Jombang District Health Office. These collaborative undertakings are formalized through Memoranda of Understanding, under Numbers W13-A13/1993/HM/.00/6/2022 and Number: 415.4/4341/4155.17/2022.²⁹ Some of the religious courts collaborate with a single health institution, namely the local health

²⁶ Religious Court of Mempawah, "Perjanjian Kerjasama Antara Pengadilan Agama Mempawah Dengan Dinas Sosial Tentang Layanan Pemeriksaan Kesiapan Anak Bagi Pemohon Dispensasi Kawin Terhadap Anak Yang Dimohonkan Dispensasi Kawin Pada Pengadilan Agama Mempawah," 2022.

²⁷ Religious Court of Raha, "Perketat Izin Dispensasi Nikah, Pengadilan Agama Raha Tandatangani MoU Dengan Dinas Kesehatan Muna Dan Dinas Kesehatan Muna Barat," *Pengadilan Agama Raha*, June 29, 2022, <https://www.pa-raha.go.id/berita-seputar-pengadilan/524-perketat-izin-dispensasi-nikah-pengadilan-agama-raha-tandatangani-mou-dengan-dinas-kesehatan-muna-dan-dinas-kesehatan-muna-barat-28-06-22>.

²⁸ Pengadilan Agama Sumber, "Perjanjian Kerjasama Antara Pengadilan Agama Sumber Dan Dinas Kesehatan Kabupaten Cirebon Tentang Edukasi Dan Pelayanan Kesehatan Dalam Perkara Permohonan Dispensasi Kawin Pada Pengadilan Agama Sumber" (Cirebon, 2022).

²⁹ Religious Court Jombang, "Nota Kesepahaman Antara Pengadilan Agama Jombang Dengan Dinas Kesehatan Kabupaten Jombang Tentang Layanan Pemeriksaan Kesehatan Bagi Pemohon Dispensasi Kawin Pada Pengadilan Agama Jombang" (Jombang Jawa Timur, 2022).

department, while others engage in partnerships with two or more institutions. For instance, the Kebumen Religious Court coordinated with the Kebumen Regency Social Service for Women's Empowerment and Child Protection, as well as the Regency General Hospital.³⁰ Furthermore, the Tuban Religious Court collaborates with both the Tuban District Health Office and the Tuban District Social Service. These collaborative efforts underscore the multifaceted engagements between religious courts and health institutions, reflecting a concerted commitment to address the complex interplay between legal considerations and public health concerns.³¹

Judge's Involvement and Consideration

The collaborative initiatives executed by the 14 Religious Courts in Indonesia exemplify a progressive approach undertaken by these judicial entities. The engagements forged by the Religious Courts with relevant institutions manifest diverse objectives and responsibilities. Within the cohort of 14 religious courts, nine have been endowed with the authority to issue recommendation letters. These recommendation letters serve as instrumental tools to aid judges in deliberating on marriage dispensation cases, ensuring the realization of the child's best interests. The courts that have implemented this practice include the Serang, Jombang, Parigi, Kebumen, Hunimoa, Tembilahan, Tuban, Padangsidimpuan, and Semarang Religious Courts.

Conversely, five courts, specifically the Mempawah Religious Court in West Kalimantan, Raha, Sumber Cirebon, Salatiga, have undertaken the issuance of recommendation letters and provision of education without necessitating them as formal requirements or legal considerations for the judge. Additionally, the Nabire Papua religious court endeavors to conduct evaluations and meetings at least once a year as part of their ongoing efforts. This multifaceted and proactive approach underscores the diversified strategies employed by Religious Courts to navigate the complexities of marriage

³⁰ Kepaniteraan Religious Courts Kebumen, "Pengadilan Agama Kebumen, Dinas Sosial P3A Dan RSUD Kebumen Melakukan Penjajakan Kerjasama," *Website Pengadilan Agama Kebumen*, January 13, 2023, <https://www.pa-kebumen.go.id/berita-peradilan/412-pengadilan-agama-kebumen-dinas-sosial-p3a-dan-rsud-kebumen-melakukan-penjajagan-kerja-sama>.

³¹ Religious Court of Tuban, "Pengadilan Agama Tuban Tanda Tangan MoU Dengan Dinas Sosial Dan Dinas Kesehatan Kab Tuban," *Website Pengadilan Agama Tuban*, February 6, 2022, <https://pa-tuban.go.id/Seputar-PA/Pengadilan-Agama-Tuban-Tanda-Tangani-MoU-dengan-Dinas-Sosial-dan-Dinas-Kesehatan-Kab-Tuban/188>.

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dispensation cases, demonstrating a commitment to the welfare and best interests of the individuals involved.

The collaborative efforts between the judiciary and health institutions, as well as other relevant entities, as elucidated in the aforementioned data, align with the decisions rendered by judges in the adjudication of marriage dispensation cases. For instance, in the Jombang Religious Court, Judge A considered the recommendation letter issued by the health office as a crucial factor in Decision 180/Pdt.P/2021/PA.Jbg. The case involved a 17-year-old female and a 25-year-old male seeking marriage.³² Similarly, Judge F at the Jepara Religious Court also accorded significance to the health office's recommendation letter, although it is not explicitly mentioned in the decision; the letter serves as evidentiary support during the trial. Conversely, it is observed that some other religious courts have not fully implemented the Memoranda of Understanding (MoU). This is substantiated by the existence of marriage dispensation cases lacking accompanying recommendation letters. Nevertheless, judges in these instances still grant dispensations, providing rationale and considerations that fortify the judicial argument, despite the absence of formal documentation. This divergence in implementation underscores the varied approaches and considerations adopted by different religious courts in the adjudication of marriage dispensation cases.

In the case of Marriage Dispensation at the Parigi Religious Court under Decision Number 106/Pdt.P/2022/PA.Prgi, the judgment was rendered without the inclusion of a recommendation letter. Despite this, the judge proceeded to grant the marriage dispensation. Contrary to the cooperative endeavor between the Parigi Religious Court and the Health Office, wherein the absence of a recommendation letter would lead to the rejection (*niet ontrankelijke verklaard*) of the decision, this particular instance showcases the discretionary authority bestowed upon judges in accepting or rejecting decisions and the legal considerations encapsulated therein.³³ Judges wield comprehensive authority to evaluate and determine the validity of decisions, taking into account the legal considerations outlined in the decision. Occasionally, judges may opt not to factor in the health department's recommendation letter. For instance, even when the health department

³² Religious Court Jombang, Penetapan Nomor 180/Pdt.P/2021/PA.Jbg (2021).

³³ Parigi, "Perjanjian Kerjasama Pengadilan Agama Parigi Dengan Dinas Kesehatan Kabupaten Parigi Moutong."

refrains from recommending the marriage of the applicant's child, a judge might discern urgent circumstances warranting the marriage. An illustration of such urgency may involve instances where the applicant's child has engaged in sexual intercourse without resulting in pregnancy. In such cases, the judge reserves the right to override the recommendation letter from the health department based on the unique circumstances presented. This exemplifies the nuanced and discretionary nature of the judicial decision-making process in marriage dispensation cases.³⁴

Judges frequently find themselves in a quandary when confronted with the juxtaposition of prevailing legal statutes and deeply ingrained societal customs. Galuh Retno articulates this predicament, asserting that the limited awareness of health considerations and the pervasive influence of societal norms regarding underage marriage pose considerable challenges in realizing the new minimum age of marriage regulations, particularly within environments characterized by conservative traditions.³⁵ Moreover, cultural elements specific to certain regions significantly contribute to the elevated number of marriage dispensation applications. For instance, the Bugis community adheres to the "Pemmali" custom, which imposes restrictions on actions conflicting with Bugis' original customs and traditions. This particular custom has resulted in a notable surge in marriage dispensation cases brought before religious courts.³⁶ Furthermore, economic considerations and the religious legitimacy within a society often prompt individuals to disregard the stipulated minimum marriage age regulations.³⁷ Consequently, clandestine or "sirri" marriages emerge as a recourse for couples aspiring to wed but falling short of the legally mandated age requirements. The complex interplay of societal norms, cultural practices, economic factors, and legal provisions underscores the multifaceted challenges faced by judges in navigating the delicate terrain of marriage dispensation cases.³⁸

³⁴ Interview with Bapak MS (Judge in religious court of Parigi, on 30 March 2023).

³⁵ Galuh Retno Setyo Wardani, "Undang-Undang Nomor 16 Tahun 2019: Cita-Cita Dan Realita," *Pengadilan Agama Bangil*, 2022.

³⁶ Aris and Rosdalina Bukido, "Pemmali Culture in Bugis Community versus Law Enforcement of Age of Marriage in the Religious Courts," *Jurnal Ilmiah Al-Syir'ah* 20, no. 2 (2022): 206, <https://doi.org/10.30984/jis.v20i2.2056>.

³⁷ Mohamad Rana, Tajul Arifin, and Cecep Soleh Kurniawan, "WHEN RELIGION AND CULTURE MEET ECONOMY: Socio-Legal Factors for the Early Marriages of Muslim Families in Cirebon," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 15, no. 1 (2022): 82–100, <https://doi.org/10.14421/ahwal.2022.15105>.

³⁸ Ahmad Badrut Tamam, "NIKAH SIRRI Solusi Pernikahan Anak Di Bawah Umur Di Desa Petung, Panceng, Gresik," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 3, no. 1 (2010): 41–70.

Concluding Remarks

Authority is a form of power conferred upon individuals through various means. Weber classifies authority into three distinct types: legal-rational, wherein an individual possesses authority due to their appointment in accordance with established rules; traditional, wherein authority is derived from the sanctity of ancient traditions; and charismatic, where authority is acknowledged based on an individual's exemplary character or extraordinary sacred devotion.³⁹ In the context of judges, their authority aligns with the legal-rational category. The execution of legal-rational authority is realized through several mechanisms. Individuals under this authority enjoy personal freedom within defined limits imposed by their designated roles. A hierarchical structure is established, delineating varying duties and functions. Moreover, certain positions carry specific responsibilities that must be fulfilled. Career development and supervision mechanisms are in place, ensuring a structured and controlled exercise of authority within the framework of rational-legal principles.⁴⁰

Building upon Weber's theoretical framework, judges wield the authority to exercise a degree of freedom in determining their decisions. Simultaneously, judges bear responsibility for the outcomes articulated in their court decisions. Oversight of judges is carried out by two institutions, namely the Supreme Court and the Judicial Commission, each endowed with distinct powers for managing judges.⁴¹ Furthermore, judges possess the latitude to establish duties and obligations through collaborations with relevant entities, as evidenced by religious courts engaging with pertinent parties. The manifestation of legal-rational authority becomes apparent when judges, despite deciding on the same thematic issues, exhibit differing considerations and render disparate decisions (either accepted or rejected). This underscores the discretionary aspect of the authority, rendering judges unbound by a uniform outcome in deciding a case. The discretionary power of religious court judges is observable in the trial's factual details as encapsulated in their considerations or decisions. In the process of adjudication, judges typically draw upon sources such as the Qur'an, Hadith, or *fiqh* to fortify their findings and substantiate their arguments during the trial.

³⁹ Burkhard Schnepel, "Max Weber'S Theory of Charisma and Its Applicability To Anthropological Research," *Journal of the Anthropological Society of Oxford*, 1987, 32.

⁴⁰ Ali Abdul Wakhid, "Eksistensi Konsep Birokrasi Max Weber Dalam Reformasi Birokrasi Di Indonesia," *Jurnal TAPIs* 7, no. 2 (2011): 129.

⁴¹ Humas Pengadilan Tinggi Agama DKI Jakarta, "Batas Kewenangan MA Dan KY Dalam Mengawasi Hakim Pada Pembinaan Teknis Peradilan Agama Secara Virtual Diikuti Pimpinan Dan Hakim PTA DKI Jakarta," 2023.

This reliance on religious and legal sources underscores the integration of normative principles into the decision-making process within the framework of legal-rational authority.⁴²

Based on the conducted study, the author draws three key conclusions. Firstly, the government has undertaken progressive initiatives to curb underage marriages by establishing a rigorous mechanism through Supreme Court Regulation No. 5/2019, delineating guidelines for handling marriage dispensation cases. Additionally, the Ministry of Health has played a pivotal role by instructing the Supreme Court and facilitating a reciprocal exchange of guidance. The Supreme Court, in response, issued crucial directives to all subordinate courts and engaged in proactive measures such as socialization and dialogues with international counterparts like the Federal Circuit & Family Court of Australia (FCFCOA).

Secondly, the marriage dispensation procedure has, to a certain extent, incorporated provisions necessitating the submission of documents pertaining to the health and maturity of the parties seeking approval for an underage marriage. Among the 14 religious courts, 11 have established collaborations authorizing the second party to furnish a letter of recommendation, subsequently utilized as a legal foundation in the decision-making process. Two other courts elevated the recommendation letter to a prerequisite for registering a marriage dispensation case. Meanwhile, one court opted for an annual meeting with relevant parties.

Thirdly, the study underscores the progressive measures implemented by religious courts. Notably, one out of the fourteen religious courts exhibited a non-permissive stance by rejecting marriage dispensation applications lacking essential documents, such as a health department recommendation letter. Applying Max Weber's theory of rational-legal authority, the judge in this instance is categorized as possessing rational-legal authority, evident in the responsibilities and obligations stemming from collaborations between religious courts and relevant institutions. The research findings emphasize the concerted efforts of state institutions, including the judiciary and health organizations, in mitigating the prevalence of underage marriages.

⁴² Rani Dewi Kurniawati, "Efektifitas Perubahan UU No.16 Tahun 2019 Tentang Perubahan Atas UU No 1 Tahun 1974 Tentang Perkawinan Terhadap Dispensasi Kawin," *Presumption Of Law* 3, No. April (2019): 170-172.

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