

JUDGE CONSIDERATIONS IN ACCEPTING UNDERAGE MARRIAGE APPLICATIONS IN LUWUK RELIGIOUS COURT

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Abstract

This paper aims to explore the judge consideration to accept underage marriage application in Luwuk Religious Court. This research was qualitative approach. The result showed that Judges' considerations in giving marriage dispensation decisions to minors have several impacts, namely positive impacts which can avoid promiscuity, prevent a relationship, and learn to be responsible. The negative impact of dropping out of school, psychological and health impacts. In the Maslahah Perspective on Judges' Considerations in Giving Underage Marriage Dispensation Decisions regarding the determination by judges in cases, it is in accordance with maslahah, especially in the context of maintaining, because it can avoid promiscuity and can realize legal goals, especially in the context of maintaining offspring.

Keywords: judge's consideration, granting the application, and underage marriage.

Introduction

Marriage is a high honor and respect for self-esteem given by Islam specifically for humans. In Islamic law, marriage must be carried out by fulfilling the requirements and pillars of marriage¹. Based on the Law no. 1 of 1974 concerning marriage is an inner and outer bond between a man and a woman to live a happy

¹ M. Fauzil Adhim, *Kado Pernikahan Untuk Istriku* (Yogyakarta: Mitra Pustaka, 1998).

and eternal household based on the One God.² Therefore, marriage must be maintained by both parties in order to achieve the goals of the marriage, so that it is necessary to have readiness from both parties both mentally and materially. This means that physically men and women have reached the age limit that 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 (already being able to provide a living for his wife and children). This is what people often forget.

Eventhough, the other purpose of marriage in Islam is to fulfill the needs of human physical and spiritual life as well as to form a family and maintain and continue offspring in living their lives in this world, preventing adultery, in order to create peace and tranquility for the soul concerned, family and community peace. ³

The limited age to carry out a marriage has actually 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 of the benefit of the family and the marriage household. This is in line with the principles laid down by the Marriage Law, that the prospective husband and wife must be physically and mentally ready, in order to realize the goal. good marriage without ending in divorce and get good and healthy offspring. As there has been a revision on the issue of the age limit for marriage, initially the man had reached the age of 19 years and the woman had reached the age of 16 years. In the 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 a deviation from the age provisions as referred to in paragraph (1), the parents of the male and/or female parents may request a dispensation from the Court on the grounds that it is very urgent, accompanied by sufficient supporting evidence.
 3. The provision of dispensation by the Court as referred to in paragraph (2) is obliged to listen to the opinions of the two prospective brides who will carry out the 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) shall also apply to the provisions regarding the request for dispensation as referred to in paragraph (2) without prejudice to the provisions as referred to in Article 6 paragraph (6).⁴
2. In the Qur'an, Allah Almighty has recommended marriage, as for His words in QS Al-Nisa' [4]: 1 as follows:

²UndLaw No. 1 of 1974 concerning Marriage.

³Moh. Idris Ramulyo. "Islamic Marriage Law". (Jakarta: Bumi Aksara, 1996), p. 26-27.

⁴Law No. 16 of 2019 concerning Amendments to Law 1 of 1974 concerning Marriage in article 7.

3. يَتَأْتِيهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا ﴿٥﴾

The translation:

O people! Fear your Lord who has created you from one self (Adam), and (Allah) created his partner (Eve) from (himself) and from both of them Allah reproduced many men and women. Fear Allah in whose name you ask one another, and (maintain) family relations. God is always watching over you and watching over you.⁵

Islam provides a platform to realize these desires in accordance with Islamic law, namely through legal marriage. Marriage is a method chosen by Allah SWT as a way for humans to give birth to offspring, develop well and sustain life, after each partner is ready to play a positive role in realizing the goal of marriage.⁶

Marriage in Islam is a social institution that comes from God (divine institution). The Compilation of Islamic Law defines marriage according to Islamic law as a very strong contract to obey Allah's commands and carrying it out is worship.⁷ Sehe continued, it was explained in article 3 of the Compilation of Islamic Law that marriage aims to realize a *sakinah*, *mawaddah*, and *rahmah* household life. For this reason, marriages between prospective husbands and wives who are still underage must be prevented. But in reality, not forever and not all people understand and understand Law no. 1 of 1974 as revised in Law No. 16 of 2019 concerning Amendments to Law 1 of 1974 which has been determined by the government⁸.

Based on the Article 7 of the UUP (undang-undang perkawinan), if there is a deviation from the requirements for the age of marriage, the marriage can only be held after receiving a dispensation from the court. So far, the parents of the prospective groom and/or the prospective bride often apply for dispensation to the Religious Courts so that their children who have not reached the age of marriage can be given dispensation to marry due to various urgent considerations.

Among the reasons often stated in the application for dispensation for marriage is the relationship between the prospective groom and the prospective bride is very close, so that it is no longer possible to delay the implementation of the marriage, or even both have already had a husband and wife relationship

⁵Ministry of Religion RI. "Al-Qur'an and its Translation". (Bandung: Mizan, 2009), p. 78.

⁶Sayyid Sabiq. "Fiqh Sunna Volume 6". trans. Moh. Thalib (Bandung: PT. Al Maarif, 1990), p. 19.

⁷Ministry of Religion RI, "Islamic Law Compilation". (Jakarta: Director General of Islamic Community Guidance and Implementation Haji, 2004), h. 128.

⁸ Muhammad Hamsah and Nurhamidah Nurhamidah, "Pendidikan Islam Dalam Perspektif Neo-Modernisme (Studi Analisis Pemikiran Fazlur Rahman)," *Risalah, Jurnal Pendidikan Dan Studi Islam* 5, no. 2, Sept (2019): 150–75.

outside of marriage. So parents are worried that their children will fall deeper into actions that are contrary to Islamic law⁹.

The Religious Courts in adjudicating cases of application for a marriage dispensation often consider two disadvantages, the harm that occurs as a result of child marriage (early marriage) and the harm that will occur if the marriage dispensation is rejected. The Panel of Judges often accepts applications for dispensation for marriage because they consider that the harm that will occur if the marriage dispensation is rejected is greater than the harm that occurs due to early marriage, where it is likely that the offspring (al-nasl) and honor (al-'irdl) of both candidates will be damaged. the bride and groom¹⁰.

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

Research methods

This research was a qualitative method. Imron Arifin stated that qualitative research is "research that is flexible, open and can be conditioned based on the research field". Bogdan and Taylor in Rosady Ruslan stated:

Qualitative research is expected to be able to produce an in-depth description of speech, writing and observable behavior of a particular individual, group, community or organization in a particular setting context which is studied from a comprehensive and holistic point of view.¹²

Research really needs accurate and relevant data collection techniques and tools. Lexy J. Moleong stated "the use of relevant data collection techniques and tools enables objective data to be obtained"¹³. Thus, determining the technique or tool to collect the right data is very important, because it serves as a means to obtain accurate data. To obtain objective data, in this study using data collection techniques as follows:

1. Observation

Observation is one of the data collection techniques that the author will use. Observation is direct observation made by researchers on problems at the research location. Lexy J. Moleong suggested that observation is "direct observation and recording of the symptoms that appear on the object of research"¹⁴, while Burhan

⁹ Ali Miftakhu Rosyad and Muhammad Anas Maarif, "PARADIGMA PENDIDIKAN DEMOKRASI DAN PENDIDIKAN ISLAM DALAM MENGHADAPI TANTANGAN GLOBALISASI DI INDONESIA," *Nazhruna: Jurnal Pendidikan Islam* 3, no. 1 (2020): 75–99.

¹⁰ Ulfatmi, *Keluarga Sakinah Dalam Perspektif Islam* (Jakarta: Kementerian Agama RI, 2011).

¹¹ Imron Arifin. "Qualitative Research in Social and Religious Sciences". (Malang: Kalimasada Press, 1996), p. 40.

¹² Rosady Ruslan. "Public Relations and Communication Research Methods". (Jakarta: PT. Raja Grafindo Persada, 2004), p. 213.

¹³ Lexy J. Moleong. "Qualitative Research Methodology". (Bandung: PT. Teen Rosdakarya, 2002), p. 158.

¹⁴ *Ibid*, 125.

Bungin added that the direct observation and recording "using the five senses"¹⁵. Andi Prastowo added that observation is "a person's ability to use observations through the work of the senses assisted by the other five senses".¹⁶

Thus, the observation technique is a method of collecting data by observing the object of study under study which is carried out directly by the researcher by taking notes to help remember the data from the observations. Observations and recordings are made on objects where events occur or take place, so that observations are with the object being investigated, in this case to obtain accurate, valid and adequate data. Observation techniques in research are very important, this is explained by Robert K. Yin that:

Observational evidence is often useful in providing additional information about the topic to be studied, for example, observation of technology at work is a valuable tool for further understanding of the boundaries or problems of the technology in question....so that the researcher can take photographs, this will help contains important case characteristics for outside observers.¹⁷

2. Interview (interview)

Interview is a method of collecting data by asking questions directly to informants, answers or information is recorded or recorded using a recording device. Lexy J. Moleong suggested "interviewing is a way of collecting data through contacts or personal relationships between data collectors and data sources"¹⁸. Meanwhile, Prabowo in Andi Prastowo added that the interview is "a method of collecting data by asking the respondent something, the method is by having a face-to-face conversation".¹⁹

3. Documentation

Documentation is a method of collecting data by examining important documents that support the completeness of the data or through written relics, in the form of archives, books and others related to the problem to be studied. Sugiyono stated that the document is "a record of events that have passed, namely any written records relating to past events"²⁰.

The process of data analysis begins by examining the overall data obtained from various sources, namely from interviews, observations, documentation and so on. The data to be obtained in this study will be analyzed qualitatively by using the data presented, then the data is analyzed using several techniques described by Matthew B. Milles and A. Michael Huberman, as follows:

1. Data reduction

¹⁵Burhan Bungin. "Qualitative Research, Communication, Economics, Public Policy, and other Social Sciences". Edition.I (Jakarta: Kencana Prenada Media Group, 2007), p. 115.

¹⁶Andi Prastowo. "Mastering Qualitative Research Data Collection Techniques (Complete Multipurpose Guidance and Training)". (Jogjakarta: Diva Press, 2010), p. 27.

¹⁷Robert K. Yin. "Case Study Design and Methods" Trans. by M. Djauzi Mudzakir with the title: "Case Study Design and Methods". (Jakarta: PT.Raja Grafindo Persada, 2002), p. 113.

¹⁸Moleong. "Methodology". h. 165.

¹⁹Andi Prastowo. "Dominate",h.145.

²⁰Sugiyono. "Understanding Qualitative Research". (Bandung: Alfabeta, 2007), p. 82.

Data reduction in the etymological sense means reduction or cutting. Reductionism theory or procedure simplifies complex symptoms, data and so on so that it becomes less complex. Associated with reduction research means selecting data relevant to the discussion.²¹

2. Data presentation

The data presentation step is to present data that has been reduced in certain models to avoid misinterpretation of the data.

3. Data verification and conclusion drawing

Data verification is a process to re-examine the data that has been presented so that the presentation and discussion is truly accurate. Matthew B. Milles and A. Michael Huberman stated:

The third important analytical activity is drawing conclusions and verifying data. From the beginning of data collection a qualitative analyzer writer through looking for the meaning of things, noting the regularity of patterns, which may result from prepositions²².

Results and Discussion

Process of Applying for Marriage Dispensation at the Luwuk Religious Court

Marriage dispensation is required for the groom who is not yet 19 years old and the prospective bride is not yet 16 years old. As determined in the law: Marriage is only permitted if the man reaches the age of 19 years and the woman has reached the age of 16 years (Law No.1 of 1974 article 7 paragraph (1) concerning Marriage). In case of deviation from paragraph (1) of this article, you can request a dispensation from the court or other official, who is appointed by both parents of the male and female side (Law No.1 of 1974 article 7 paragraph (2) concerning Marriage). As there has been a revision on the issue of the age limit for marriage, initially the man had reached the age of 19 years and the woman had reached the age of 16 years. In the 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 a deviation from the age provisions as referred to in paragraph (1), the parents of the male and/or female parents may request a dispensation from the Court on the grounds that it is very urgent, accompanied by sufficient supporting evidence.
3. The provision of dispensation by the Court as referred to in paragraph (2) is obliged to listen to the opinions of the two prospective brides who will carry out the 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) shall also apply to the provisions regarding the request for

²¹Ministry of National Education, "Big Indonesian Dictionary". (Jakarta: Balai Pustaka, 2005), p. 1001.

²²*Ibid*,h.19.

dispensation as referred to in paragraph (2) without prejudice to the provisions as referred to in Article 6 paragraph (6).²³

The Religious Court after examining the trial, and believes that there are things that make it possible to grant the dispensation, the Religious Court grants a marriage dispensation with a stipulation²⁴. The bride and groom are like in the marriage permit for those who are not yet old. The mechanism for filing a marriage dispensation case is the same as the mechanism for filing a lawsuit. The mechanism for applying for a marriage dispensation is as follows:

First: Before the applicant submits his application, the applicant goes to the table first to obtain an explanation of how to file a case, how to make a letter of application, and at the table the applicant can ask for help to make a letter of application.

Second: The application letter that has been made and signed is submitted to the sub-registrar of the application, the applicant appears at the first table who will estimate the amount of down payment for the court fee and write it down on the power of attorney to pay (SKUM). The amount of down-payment of the case fees is estimated to be sufficient to settle the case, which is based on article 193 R.Bg or article 182 paragraph (1) HIR or article 90 paragraph (1) of the UUPA.

Third: The applicant then faces the cashier by submitting the application letter and SKUM. The cashier then receives the money and records in the court fee journal, signs and gives the case number and payment receipt to the SKUM, and returns the application letter and SKUM to the applicant.

Fourth: The applicant then appears at Table II by submitting the application letter and the paid SKUM.²⁵

The process of finishing the case for a marriage dispensation in the Religious Court, the Chairperson of the Panel of Judges after receiving the case file, together with the member judges study the case file. Then determine the day and date and time when the case will be heard and order that the parties are summoned to appear on the day, date, and hour that has been determined. The parties are also informed that they can prepare the evidence presented at the trial. However, usually the evidence has been entrusted to the clerk before the trial.

After the trial was opened and declared Then the chairman of the assembly tries to advise the applicant, the applicant's child and the applicant's prospective child by providing an explanation of the causes and consequences if the marriage is not old enough and to postpone the marriage²⁶. If it is not successful with his advice, then the chairman of the assembly reads the application letter of the applicant which

²³Law No. 16 of 2019 concerning Amendments to Law 1 of 1974 concerning Marriage in article 7.

²⁴ Muhammad Hamsah, Nurhamidah Nurhamidah, and Rasimin Rasimin, "PEMIKIRAN PENDIDIKAN KH AHMAD DAHLAN DAN RELEVANSINYA DENGAN DUNIA PENDIDIKAN MODERN," *Risâlah, Jurnal Pendidikan Dan Studi Islam* 7, no. 2 (2021): 378–90.

²⁵Luwuk PA Document 2021-2022

²⁶ Ali Miftakhu Rosyad, "The IMPLEMENTASI NILAI-NILAI MULTIKULTURALISME MELALUI PEMBELAJARAN PENDIDIKAN AGAMA ISLAM (THE IMPLEMENTATION OF MULTICULTURALISM VALUES THROUGH LEARNING OF ISLAMIC RELIGION EDUCATION)," *Risâlah, Jurnal Pendidikan Dan Studi Islam* 5, no. 1 (2019): 1–18.

has been registered with the clerk of the religious court. Furthermore, the chairman of the assembly begins the examination with questions posed to the applicant, the applicant's child and the applicant's prospective child in turn. Then the Chairperson of the Assembly continues to examine the evidence of the letter, and the applicant submits the evidence of the letter:

Photocopy of the birth certificate in the name of the applicant's child issued by the head of the village or sub-district, by the Chairman of the Assembly marked P.1. Notification of refusal to hold a Model N-9 marriage issued by the Office of Religious Affairs. Furthermore, the Chairperson of the Assembly stated that the session was suspended for deliberation. The applicant, the applicant's child and the applicant's prospective child were ordered to leave the court room. After the deliberation was completed, the suspension was revoked and the applicant was called back into the court room, then the decision was read out.²⁷

Legal Basic for Judges' Considerations in Rejecting and Accepting and Establishing Marriage Dispensation Applications

Marriage dispensation is an alternative way if the limited age of the parties has not reached what the law wants, which is 19 years for women and men. In this case, the marriage dispensation includes the application case submitted to the Religious Court or related officials, but the most authorized is the Religious Court. With regard to authority, this is always closely related to the authority of a judicial institution. So that when filing a lawsuit or application, it must be considered by the prospective plaintiff or applicant, that the lawsuit or application submitted to the court is authorized to handle the case, so that it will not harm the plaintiff or applicant.

Judicial procedural law in Indonesia recognizes two forms of power (authority), namely absolute power (*absolute competence*) and relative (relative competence).

a. Absolute Competence

Absolute competence is the authority regarding issues of power between judicial bodies in terms of the type of court, concerning the granting of power to adjudicate in Dutch called "*rechtsmacht tire attribute*", according to the role and function of the judiciary (religious courts, for example) must declare that they are not authorized to examine and try cases that are not within their authority, and do 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 absolute scope of authority of the Religious Courts to examine, decide and settle cases at the first level between people who are Muslims in the fields of marriage, inheritance, wills, grants, waqf, zakat, infaq, shodaqah and sharia economics which is carried out based on Islamic law²⁸. So that if these cases are carried out by people who are not Muslim and not based on Islamic law, then the

²⁷Akhyaruddin, PA Judge. Luwuk "Interview" January 10, 2022

²⁸ Ahmad Qodri Abdillah Azizy et al., *Pemikiran Islam Kontemporer Di Indonesia* (Kerjasama STAIN Ternate, Direktorat Perguruan Tinggi Agama Islam, Depag RI ..., 2005).

case is absolutely not under the authority of the Religious Courts, but becomes the authority of the general courts.

b. Relative Competence

Relative competence is the authority that regulates the distribution of powers to adjudicate between similar courts depending on the residence of the defendant, this power is often known as the "actor sequator forum rei" which is the court in charge of where the defendant resides. Specifically for divorce cases in the Religious Courts that are filed by the wife, the lawsuit is filed at the place of residence of the plaintiff (wife). Place of residence is different from place of residence. A person's residence is a place where a person places the center of his residence, it is more accurate to say that a person's residence can be seen from his resident card. While residence is where a person stays for a while in a certain place.

According to the general civil procedure law as regulated in HIR Article 118 and Article 142, the relative competence of the pressing point is related to the legal area of a lawsuit or application being filed not at the residence of the defendant, so the court without having to wait for the exception filed by the defendant is authorized to reject it²⁹. Each court has the authority to examine cases in terms of its jurisdiction including:

- a) Domicile (residence).
- b) Where one of the defendants resides.
- c) Where the main defendant (hoofschul denaar) resides.
- d) Where the plaintiff resides, in the event that the defendant does not have a place of residence and it is not known where his whereabouts or the defendant is unknown.
- e) Where immovable objects (onroerend go) are located.
- f) In the event that there is a choice of place of residence written in the deed if the plaintiff wants to be in the place of choice.
- g) If the defendant on the day of the first trial of the court offers the defendant a right of exception, but it is not used, or the defendant submits an exception but is rejected by the court, the court will continue the trial.

According to one of the Registrars at the Luwuk Religious Court stated that:

The marriage dispensation can be submitted by the guardian or the parent of the party who is not yet of marriageable age. Applications for dispensation from marriage cannot be submitted by parties or children who are not of age because they are still in guardianship.³⁰

The legal basis of the Religious Court Judges is between rejecting and accepting a marriage dispensation application using one of the bases, namely weighing between the maslahah and the mafsadah. Indeed, more judges use fiqh rules and besides that, judges rarely use legal grounds other than fiqh rules, because once again the case of the Marriage Dispensation is a case of application. In the rules of Fiqh it states as follows:

According to Akhyaruddin as a judge at religious court Luwuk :

²⁹ Abdullah Nasikh'Ulwan, "Perkawinan (Masalah Orang Muda, Orang Tua Dan Negara)" (Jakarta: Gema Insani Press, 1992).

³⁰Syarifuddin Tayeb, Registrar of PA. Luwuk "Interview" January 10, 2022

The essence of Marriage Dispensation according to the views of the Panel of Judges is that here it is indeed talking about the authority of the court, only sometimes that authority is based on community service, providing legal protection to the community, and enforcing the law in the midst of society. And for that, the Religious Courts are more authorized to give permission to marry in each respective area. If the case is accepted because we are authorized, there is a case that is indeed the authority of the Religious Courts, we will continue to examine it, we will examine it, in the consideration it is like this, whether the reasons for asking for a marriage dispensation are related to the benefits of getting married, is it too young for the person who is married? married, whether the person is already working,³¹

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 official proposed by the both male and female parents. In the Compilation of Islamic Law Article 15 paragraph 1 states that:

"For the benefit of the family and household, marriage may only be carried out by the prospective bride and groom who have reached the age stipulated in Article 7 of Law Number 1 of 1974, namely the male party is at least 19 years old and the female 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 Court after examining the trial and believing that there are things that make it possible to grant the dispensation, then the Religious Court grants Marriage Dispensation with a determination. Marriage dispensation cases at the Luwuk Religious Court are among those that often occur, although not as many cases as casesra divorce. The cases submitted at the Luwuk Religious Court have not been too diverse, the cases generally submitted by the Luwuk community revolve around marriage cases, one of which is the Marriage Dispensation.

Factors of the marriage dispensation that was submitted at the Luwuk Religious Court from the results of the interview with Mr. Alamsyah:

Marriage dispensation is a marriage permit that is submitted at the Religious Courts because they are not of sufficient age according to the provisions of the Marriage Law. The limits set forth in the Marriage Act are women and men must be 19 years. The goal, yes, to legalize the marriage of the parties to continue marriages that are not old enough and recognized by the state. The judge when processing the application for the Dispensation of Marriage is passive and active for the applicant. Marriage dispensation can be submitted with parental consent, so it is the guardian who proposes it, not the party directly without the knowledge of the guardian. The factors that increase the marriage dispensation are economic factors, parents are afraid that the child will not marry because it is typical of the old people, the will of the own children, and then what is more is the application of marriage dispensation due to pregnancy due to promiscuity.³²

³¹ Akhyaruddin, PA Judge. Luwuk "Interview" on January 11, 2022

³² Alamsyah, PA Judge. Luwuk "Interview" January 13, 2022

So according to Mr. Alamsyah, people apply for a marriage dispensation with the existence of factors that require the marriage to continue, some are even still influenced by past customary law that a woman who is older than her age must be married off, because worried about not being married, namely for girls. Therefore, at least it becomes an understanding for the community about the factors that increase the dispensation Marry.

Conclusion

The used basis by the judge in deciding the application for a marriage dispensation is based on the theory of law enforcement, which is seen from the judge when conducting a trial of the application for a marriage dispensation. So there must be considerations that encourage the judge to grant the request for a marriage dispensation. The judge's considerations are first, the consideration of the child in the womb. Second, other considerations, both morally and financially. Because according to the Judge himself, marriage is a form of bond that is not temporary, but forever, therefore when the judge asks about the readiness of the child to be married, then when it is not ready, everything is returned to their respective guardians.

REFERENCES

- Adhim, M. Fauzil. *Kado Pernikahan Untuk Istriku*. Yogyakarta: Mitra Pustaka, 1998.
- Azizy, Ahmad Qodri Abdillah, Adnan Mahmud, Sahjad M Aksan, and M Adib Abdushomad. *Pemikiran Islam Kontemporer Di Indonesia*. Kerjasama STAIN Ternate, Direktorat Perguruan Tinggi Agama Islam, Depag RI ..., 2005.
- Arifin, Imron. "Qualitative Research in Social and Religious Sciences". (Malang: Kalimasada Press, 1996).
- Bungin, Burhan. "Qualitative Research, Communication, Economics, Public Policy, and other social sciences". Edition.I (Jakarta: Kencana Prenada Media Group, 2007).
- Hamsah, Muhammad, and Nurchamidah Nurchamidah. "Pendidikan Islam Dalam Perspektif Neo-Modernisme (Studi Analisis Pemikiran Fazlur Rahman)." *Risâlah, Jurnal Pendidikan Dan Studi Islam* 5, no. 2, Sept (2019): 150-75.
- Hamsah, Muhammad, Nurchamidah Nurchamidah, and Rasimin Rasimin. "PEMIKIRAN PENDIDIKAN KH AHMAD DAHLAN DAN RELEVANSINYA DENGAN DUNIA PENDIDIKAN MODERN." *Risâlah, Jurnal Pendidikan Dan Studi Islam* 7, no. 2 (2021): 378-90.
- Ministry of Religion RI. "Al-Qur'an and its Translation". (Bandung: Mizan, 2009).
- Ministry of Religion RI. "Compilation of Islamic Law". (Jakarta: Director General of Islamic Community Guidance dan Maintenance Haji, 2004).
- Ministry of Education. "Indonesia Dictionary". (Jakarta: Balai Pustaka, 2005).
- Moleong, Lexy J. "Qualitative Research Methodology." (Bandung: PT. Teenager Rosdakarya, 2002).
- Nasikh'Ulwan, Abdullah. "Perkawinan (Masalah Orang Muda, Orang Tua Dan Negara)." Jakarta: Gema Insani Press, 1992.
- Prastowo, Andi. "Mastering Qualitative Research Data Collection Techniques (Complete Versatile Guidance and Training)". (Jogjakarta: Diva Press, 2010).

- Ramulyo, Moh. Idris. "Islamic Marriage Law". (Jakarta: Earth Literacy, 1996).
- Rosyad, Ali Miftakhu. "The IMPLEMENTASI NILAI-NILAI MULTIKULTURALISME MELALUI PEMBELAJARAN PENDIDIKAN AGAMA ISLAM (THE IMPLEMENTATION OF MULTICULTURALISM VALUES THROUGH LEARNING OF ISLAMIC RELIGION EDUCATION)." *Risâlah, Jurnal Pendidikan Dan Studi Islam* 5, no. 1 (2019): 1-18.
- Rosyad, Ali Miftakhu, and Muhammad Anas Maarif. "PARADIGMA PENDIDIKAN DEMOKRASI DAN PENDIDIKAN ISLAM DALAM MENGHADAPI TANTANGAN GLOBALISASI DI INDONESIA." *Nazhruna: Jurnal Pendidikan Islam* 3, no. 1 (2020): 75-99.
- Ruslan, Rosady. "Public Relations and Communication Research Methods." (Jakarta: PT. Raja Grafindo Persada, 2004).
- Sabiq. Sayyid. "Fiqh Sunna Volume 6", Trans. Moh. Talib (Bandung: PT. Al Maarif, 1990).
- Sugiyono. "Understanding Qualitative Research". (Bandung: Alfabeta, 2007).
- UndLaw No. 1 of 1974 concerning Marriage.
- Law No. 16 of 2019 concerning Amendments to Law 1 of 1974 concerning Marriage in article 7.
- Ulfatmi. *Keluarga Sakinah Dalam Perspektif Islam*. Jakarta: Kementerian Agama RI, 2011.
- Yin. Robert K. "Case Study Design and Methods" Trans. by M. Djauzi Mudzakir by title: "Case Study Design and Methods". (Jakarta: PT. Raja Grafindo Persada, 2002).