

**DETERMINATION AND ARGUMENTATION OF JUDGES IN
MARRIAGE DISPENSATION AT THE SUMBAWA BESAR RELIGIOUS
COURT: ANALYSIS OF DETERMINATION NUMBER
4/PDT.P/2024/PA.SUB REVIEW OF MASLAHAH AL-BUTI AND
LEGAL POLITICS**

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ABSTRACT

Marriage is a common instinct for all humans. In Indonesia there is an age limit for marriage. As for the age of the prospective bride and groom is 19 years according to Law Number 16 of 2019, but in the Sumbawa Besar Religious Court there was a request for marriage dispensation where the male party was still under 19 years old and there were factors underlying the determination of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/ PA.Sub that the prospective wife was pregnant outside of marriage, so the judge used Article 7 Paragraph 2 of Law Number 16 of 2019 concerning marriage and PERMA No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Requests. This research is a field research, qualitative in nature, with a legislative, conceptual, and case approach. As a result of this research, the judge

granted the request for marriage dispensation. This determination is in line with the *maslahah* of al-Buti and the legal policy of marriage dispensation. The findings in this study, First: there are legal, sociological, and philosophical factors that influence judges in deciding cases. Second: The judge's appointment is in line with the political law of the marriage dispensation and is in line with the *maslahah* of Muhammad Said Ramadan al-Buti. Third: Finding the idea of *maslahah usrah cum urgency*, with several working methods, first the judge has asked and examined the applicant's files carefully, second the judge considers the *maslahah* aspect to be prioritized in determining the marriage dispensation, third the judge is able to apply the legal policy. The contribution in this article is so that judges can provide legal policies that contain benefits for applicants for marriage dispensation. For the general public, they should pay attention to their children's social interactions to avoid free association which could lead to marriage dispensation requests at the Religious Court.

Keywords: Marriage Dispensation, *Maslahah al-Buti*, Legal Political.

Introduction

Marriage is a common instinct for all humans. Marriage is one of God's commands intended for humans to fulfill their function as social beings (*zoon politicon*). That is, beings equipped with the instinct to live together with others in an orderly manner. The steps or methods taken to live in an orderly manner are through a sacred bond known as marriage within the framework of a marriage

contract. Article 1 of Law Number 1 of 1974 on Marriage explains that marriage is a spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy and lasting family (household) based on the One Almighty God. Thus, marriage is something sacred and important. Therefore, if someone intends to marry, they are required to prepare everything thoroughly, both physically, mentally, and socio-economically.¹

Article 7(1) of Law No. 1 of 1974² on Marriage stipulates that one of the requirements for marriage is that the prospective groom must be at least 19 (nineteen) years of age and the prospective bride must be at least 16 (sixteen) years of age, which was later changed to 19 (nineteen) for both parties through Law No. 16 of 2019³ on the Amendment to Law No. 1 of 1974 regarding the provisions of Article 7(1). The subsequent paragraph further explains that if there is a deviation from the provisions of paragraph 1, a dispensation may be requested from the Court by the parents of either the male or female party.⁴ The change in the age limit originated from Constitutional Court Decision No. 22/PUU-XV/2017, which stated that the age limit for marriage was unconstitutional and contrary to

¹ Ahmad Nailul Mubarak and R. Zainul Mushthofa, "Putusan Hakim Mahkamah Agung Tentang Dispensasi Kawin (Dispensasi Kawin Dalam Sistem Hukum Indonesia)", *JOSH : Journal of Sharia*, Volume. 03 Nomor. 02, (Juni 2024), 141-142.

² Law No. 1 of 1974.

³ Efrinaldi et al, "Revealing The Dilema of Marriage Dispensation Regulations in Indonesia", *ADHKI: Journal of Islamic Family Law*, Volume 5, Nomor 1, (Juni 2023), 31-32. M. Hendri Agustiawan and Nazhifatun Mutahhirah, "Socio-Legal Analysis of Early Marriage Phenomenon during the COVID-19 Pandemic in Jombang Regency", *Asketik: Jurnal Agama dan Perubahan Sosial*, Vol. 7, No. 1 (2023), 90.

⁴ Kholifatun Nur Mustofa, "Local Values and Judges' Legal Discretion in Makassar Religious Court: The Case of Marriage Dispensation", *Asy-Syir'ah Jurnal Ilmu Syari'ah dan Hukum*, Vol. 56, No. 1, (June 2022), 27-28.

the provisions of Law No. 35 of 2014 on Child Protection, which states that a child is an individual under the age of 18 and that parents are obligated to prevent early marriage. Therefore, even if the child does not meet the age limit set by the government, both parents may apply for a marriage dispensation to the court to obtain such dispensation.⁵ This is as stipulated in the decision of the Sumbawa Besar Religious Court No. 4/Pdt.P/2024/PA.Sub regarding marriage dispensation.

The distinction between this article and the previous one can be understood. There is an article by Erfaniah Zuhriah and colleagues entitled “Dispen-ku Android-Based Application: Assisting Religious Court Judges in Deciding for Marriage Dispensation,” which is a 4D development model study aimed at creating a standard reference for decision-making regarding marriage dispensation requests using an application. The first stage involves defining the variables used in the application as measurements, the second stage is the design process, which involves developing a conceptual framework for technological innovation, the third stage is the development of the technological innovation, and the fourth stage is the dissemination phase, which involves the use of the application. In the variable definition stage, the variables used to measure the urgency of granting marriage dispensation include Social, Spousal Role, Financial, Spiritual, and Reproductive or Sexual Readiness. In the design stage, the Dispen-Ku application was created using a website that provides tools for developing Android applications using block programming. In the dissemination stage, the Dispen-Ku application, which had been uploaded to the Play

⁵ Ahmad Nailul Mubarak and R. Zainul Mushthofa, “Putusan Hakim Mahkamah Agung Tentang Dispensasi Kawin (Dispensasi Kawin Dalam Sistem Hukum Indonesia)”, *JOSH : Journal of Sharia*, Volume. 03 Nomor. 02, (June 2024), 141-142.

Store page, was distributed to the research subjects, namely two judges from the Religious Court.⁶

The article by Rohmadi et al. entitled "Judges' Considerations in Granting Marriage Dispensation Licenses in Ngawi, Indonesia: Islamic Family Law Perspective" explains that after being amended, the Marriage Law requires urgent circumstances to obtain a marriage dispensation from the court. However, the law does not specify the criteria for what constitutes an urgent situation, so judges, as those who know the law (*Ius Curia Novit*), are tasked with interpreting it through *ijtihad*. The purpose of this study is to determine the judges' *ijtihad* in interpreting Article 7 Paragraph 2 of Marriage Law Number 16 of 2019 and to identify the methods used by judges in deciding marriage dispensation cases. The results of the study show that judges interpret urgent situations systematically, namely by linking legal principles and norms, both religious and state, based on legal interpretation theory. Furthermore, in deciding marriage dispensation cases, judges use the Islamic legal study method of *Istihsan* by shifting from *Kulliyah* to *Juz'iyah*.⁷

The article by Amran Suadi and colleagues entitled "Prevention of Child Marriage in Indonesia Based on System Interconnection" seeks to discuss the phenomenon of child marriage, which is becoming increasingly prevalent in Indonesia, and the need for a comprehensive method involving all relevant stakeholders to prevent child marriage. This study aims to examine

⁶ Erfaniah Zuhriah et.al, "Dispen-ku Android-Based Application: Assisting Religious Court Judges in Deciding for Marriage Dispensation", *al-Ihkam: Jurnal Hukum dan Pranata Sosial*, Vol. 18, Nomor 2, (2023), 519-520.

⁷ Rohmadi et.al, "Judges' Considerations in Granting Marriage Dispensation Licenses in Ngawi, Indonesia: Islamic Family Law Perspective", *El-Usrah: Jurnal Hukum Keluarga*, Vol. 7, No. 1, (June 2024), 326-327.

the extent to which the Religious Court has been effective in preventing child marriage and the concept of preventing child marriage through system interconnection. This is a normative study that uses a legislative and conceptual approach. Based on the results of this study, the Religious Court's efforts to prevent child marriage have so far focused on restricting the granting of dispensations.⁸ In granting marriage dispensations, the Religious Court must ensure that it complies with the principles of child protection. The prevention of child marriage based on the interconnected system referred to in this study refers to the strategy used by the Religious Court in preventing child marriage involving the participation of other institutions. This new framework makes non-judicial institutions external participants in implementing and supervising the Court's competence in granting dispensations for marriage.⁹

The article by Imran and colleagues entitled "Aspects of Justice of Marriage Dispensation and Best Interests for Children" briefly outlines the justice of marriage dispensation and the best interests of children. The main topics discussed in this paper are marriage law and marriage dispensation according to the law, the best interests of children as explained by the law, and how to reconcile marriage dispensation with the best interests of children. The method used in this research is normative research, which examines legal norms in legislation and Constitutional Court decisions. This paper reveals that although it is considered contrary to the law based on Constitutional Court Decision No. 22/PUU

⁸ Aristoni, "Quo Vadis Marriage Dispensation in Indonesia: Judge's Decision in Preventing Child Marriage at the Jepara Religious Court", *De Jure: Jurnal Hukum dan Syar'iah*, Vol. 14, No. 2, (2022), 226-227.

⁹ Amran Suadi et.al, "Prevention of Child Marriage in Indonesia Based on System Interconnection", *Journal of Southwest Jiaotong University*, Vol. 57 No. 6 (Dec. 2022), 926-927.

XV/2017 dated December 13, 2018, which regulates the minimum age for marriage according to Article 7 paragraph (1), child marriage facilitated by marriage dispensation still occurs in Indonesia. Furthermore, not all marriage dispensation requests are approved by the court. Decisions on dispensation requests depend on a comprehensive evaluation of the substance of the request and its potential impact on the child's future well-being, prioritizing the child's best interests.¹⁰

All of the articles mentioned above are distinct from the author's article, as this article discusses the judge's argument in granting a marriage dispensation at the Sumbawa Besar Religious Court No. 4/Pdt.P/2024/PA.Sub review of *maslahah al-Buti* and the legal policy of marriage dispensation. The findings or novelty are as follows: First: The factors or aspects involved, namely legal, sociological, and philosophical. Second: The judge's decision aligns with the legal policy on marriage dispensations and is consistent with the *maslahah* of Muhammad Said Ramadan al-Buti. Third: The concept of *maslahah usrah cum urgensitas*, with several working methods: first, the judge carefully examined the petitioner's documents; second, the judge prioritized the *maslahah* aspect in determining the marriage dispensation; third, the judge was able to apply the legal policy on marriage dispensation, which is a legal policy direction that prioritizes the welfare and urgency of the parties seeking justice. This is as per the results of the author's interview with the judge of the Religious Court of Sumbawa Besar.¹¹

Research Method

¹⁰ Imran et.al, "Aspects of Justice of Marriage Dispensation and Best Interests for Children", *Jurnal Hukum dan Peradilan*, Vol. 13, No. 1 (2024), 63-64.

¹¹ Moh. Fathi Nasrulloh, Interview, Kediri and Sumbawa Besar, September 18, 2024.

This type of research is field research,¹² which seeks to gather information from judges who grant marriage dispensations by examining the contents of the decisions. This research also aims to understand marriage dispensations conceptually.¹³ In relation to this research, the author sought to trace data on marriage dispensations contained in the decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub while also confirming and inquiring with the judge. This research is qualitative in nature, meaning it seeks to reveal a specific phenomenon by describing the actual reality, formed through words based on relevant data collection techniques and analysis, rather than relying on numbers and statistics.¹⁴ This type of research was deliberately used in order to provide a complete picture of the object being studied. This study employs a conceptual approach. In this context, the concept of marriage dispensation in the decision of the Sumbawa Besar Religious Court No. 4/Pdt.P/2024/PA.Sub is analyzed using the principles of *maslahah al-Buti* and the legal policy of marriage dispensation, which are aligned with the judge's reasoning in granting the marriage dispensation, as explored through interviews. Namely, with the judge of the Sumbawa Besar Court, Moh Fathi Nasrulloh.

The conceptual approach is an approach based on arguments and doctrines developed in legal science.¹⁵ This approach

¹² Burhan Ashofa, *Metode Penelitian Hukum* (Jakarta: Rineka Cipta, 1998), 143

¹³ Muhammad Nasir, *Metode Penelitian* (Jakarta: Ghalia Indonesia, 1985), 54.

¹⁴ Djam'an Satori and Aan Komariyah, *Metodologi Penelitian Kualitatif* (Bandung: Alfabeta, 2009), 25.

¹⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2005), 136. See Abu Yasid, *Aspek-aspek Penelitian Hukum: Hukum Islam dan Hukum Barat* (Yogyakarta: Pustaka Pelajar, 2010), 85.

is important because knowledge of the arguments/doctrines developed in legal science can serve as a reference in constructing legal arguments when resolving legal issues. Arguments/doctrines will explain ideas by providing legal definitions and legal principles that are relevant to the issue at hand. In this case, the marriage dispensation in the decision of the Sumbawa Besar Religious Court No. 4/Pdt.P/2024/PA.Sub is analyzed using *maslahah al-Buti* and legal policy in marriage dispensation. In addition to the conceptual approach, a case-based approach is also used, namely the marriage dispensation request decided by the judge of the Sumbawa Besar Religious Court.

This article also uses the Statute Approach in this study,¹⁶ which is a model approach carried out by examining all laws and regulations related to the legal issues being addressed. This legislative approach is carried out, for example, by discussing the consistency/compatibility between the Constitution and the Law, or between one Law and another, and so on. In this case, the decision of the Sumbawa Besar Religious Court No. 4/Pdt.P/2024/PA.Sub, which contains the Supreme Court Regulation, is linked to the Marriage Law and the Child Protection Law.¹⁷ This article also uses a case approach by examining the issue of marriage dispensation permits in Sumbawa Besar and asking the judge who granted the marriage dispensation. The problem formulation in this article is to answer two questions. First, what is the content and argumentation of the judge in granting marriage dispensation No.

¹⁶ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2005), 136. Lihat juga Abu Yasid, *Aspek-aspek Penelitian Hukum: Hukum Islam dan Hukum Barat* (Yogyakarta: Pustaka Pelajar, 2010), 85.

¹⁷ Another term for this legislative approach is legal drafting principles (*al-qawāid al-uṣūliyah al-tashri'iyah*). This approach is used when there is no *nass*/authentic evidence that can be interpreted. See Abdul Mun'im Saleh, *Madhhab Syafi'i: Kajian Konsep Al-Maslahah*, (Yogyakarta: Ittaqa Press, 2001), 54.

4/Pdt.P/2024/PA.Sub at the Sumbawa Besar Religious Court? Second, how does the analysis of the marriage dispensation ruling of the Sumbawa Besar Religious Court No. 4/Pdt.P/2024/PA.Sub align with the principles of *maslahah al-Buti* and the legal policy on marriage dispensation?.

Judicial Ruling and Argumentation in a Marriage Dispensation Case at the Sumbawa Besar Religious Court No. 4/Pdt.P/2024/PA.Sub

The judge in the marriage dispensation case at the Sumbawa Besar Religious Court No. 4/Pdt.P/2024/PA. Sub Granting the petitioner's request; Granting a marriage dispensation to the petitioner's biological child, initials (F), to marry a woman, initials (L), under the age of 19; Orders the Petitioner to pay the case costs amounting to Rp. 545,000.00 (five hundred forty-five thousand rupiah). The Sumbawa Besar Religious Court, which examined and adjudicated the case at the first instance, has issued a ruling in the case of the Request for Marriage Dispensation filed by: Petitioner I, NIK: XXX, Place and date of birth: Sumbawa, April 2, 1980, age 45, religion Islam, last education SD, occupation Farmer, No. Phone: XXX, residing in Sumbawa Regency, hereinafter referred to as "Petitioner I." Petitioner II, NIK: XXX, place and date of birth: Senampar, June 16, 1980, age 45, religion Islam, last education SD, occupation housewife, residing in Sumbawa Regency, hereinafter referred to as "Petitioner II." The Religious Court; Having reviewed the case documents; Having heard the statements of the Petitioner, F, L, and the parents of the prospective wife of the Petitioner's child; Having examined the evidence presented in court.¹⁸

¹⁸ Decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation.

The purpose and objective of the Petitioner's request are as described above; Considering that in order to comply with the provisions of Article 12 paragraph (1) and (2) of PERMA No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Applications, the Judge has endeavored to advise the Petitioner on the risks of the marriage to be entered into and its impact on the child in terms of education, health, including reproductive organ readiness, psychological, mental, social, cultural, economic, and the potential for disputes and violence within the household, so that the parties were advised to postpone the marriage until the minimum age for marriage, but this was unsuccessful. The judge has carefully examined and considered the evidence.¹⁹ PERMA No. 5 of 2019 serves as a legal factor for judges in determining cases.²⁰

Considering that this case falls within the field of marriage, in which the Petitioner has requested a dispensation for the marriage of the Petitioner's child who is to be married but does not yet meet the age requirement as stipulated by law, then based on Article 7 paragraph 2 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 in conjunction with Article 49 paragraph 1 letter a and Article 49 paragraph 2 of Law Number 7 of 1989 on Religious Courts as amended by Law Number 3 of 2006 and the second amendment by Law Number 50 of 2009, this case falls under the absolute jurisdiction of the Religious Court; Considering that that the Petitioner is the parent of a child with the initials F, aged 18 years and 4 months, the Petitioner's wish to marry off the child has been rejected by the Moyo Utara Subdistrict Religious Affairs Office because F is not yet 19 years old, therefore

¹⁹ Moh. Fathi Nasrulloh, Interview, Kediri and Sumbawa Besar, September 18, 2024.

²⁰ Moh. Fathi Nasrulloh, Interview, Kediri and Sumbawa Besar, September 18, 2024.

based on the provisions of Article 7 paragraph 2 of Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019.²¹

The Petitioner is a party with an interest in this case (personan standi in yudisio) and therefore has the right (legal standing) to file this petition; Considering that the Panel of Judges read out the Petitioner's petition, which was essentially upheld by the Petitioner without any changes or additions; Considering that in this case the Judge has heard the testimony of F, who requested the dispensation, L, and the parents of the Petitioner's prospective daughter-in-law as intended by the provisions of Article 13 paragraph (1) of PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Petitions; Considering that the Petitioner has submitted documentary evidence to substantiate the arguments in his petition at the hearing; Considering that the written evidence submitted by the Petitioner, marked P.1 to P.7, was prepared by an authorized official, has been verified and is in accordance with the original in accordance with the provisions of Article 1888 of the Civil Code and have been stamped in accordance with the provisions of Article 3 paragraph (1) and 5 of Law Number 10 of 2020 concerning Stamp Duty, so that the Judge considers that the written evidence has fulfilled the formal requirements and must be declared admissible for consideration.²²

Considering that evidence P.1 and P.2 are photocopies of identity cards in the names of Petitioner I and Petitioner II, which

²¹ Decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation. Sandio Abid Aurian Putra dkk, "Implementation of the Marriage Dispensation: Exploring the Legal and Social Complexities in Preventing Early Marriage", *Al-Adalah: Jurnal Hukum dan Politik Islam*, Vol. 9, No. 1, January, (2024), 24.

²² Decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation.

prove that the Petitioners reside in the jurisdiction of the Sumbawa Besar Religious Court, which has the relative authority to examine and adjudicate the case; Considering that evidence P.3 is a photocopy of the birth certificate in the name of F, which proves that the Applicant's child with the initial F is still 18 years and 4 months old or has not yet reached the age of 19; Considering that based on evidence P.4, it is proven that the prospective wife of the Applicant's child, whose initials are L, is over 19 years of age; Considering that evidence P.5 is a photocopy of a Pregnancy Certificate in the name of L, which provides evidence that the prospective wife of the Applicant's child is pregnant; Considering that evidence P.6 provides evidence that F and L have received counseling services to carry out the marriage; Considering that evidence P.7 is a photocopy of a Letter of Notification of Insufficient Requirements/Rejection of Marriage or Referral from the Religious Affairs Office of Moyo Utara Subdistrict, it is evident that the Petitioner intended to marry the Petitioner's biological child named F to L, which was to be carried out and recorded before the Marriage Registrar of the Moyo Utara Subdistrict Religious Affairs Office, but this intention was rejected on the grounds that the prospective bride had not yet reached the age of 19,²³ this is a sociological factor.²⁴

Considering that based on the statements of the Petitioner, F, L, and the parents of the Petitioner's child's prospective wife, as well as documentary evidence, the Judge can find the following legal facts: That the Petitioner's child, named F, aged 18 years and 4 months, has been in a relationship with a woman named L, aged 19

²³ Decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation.

²⁴ Moh. Fathi Nasrulloh, Interview, Kediri and Sumbawa Besar, September 18, 2024.

years and 5 months, for more than a year and they have agreed to marry; That the relationship between F and L is very close and it is difficult to separate them.²⁵ That F had registered his intention to marry L with the local KUA (Office of Religious Affairs).²⁶

However, the KUA rejected it on the grounds that F was not yet 19 years old; That F was a bachelor and L was a virgin, neither had any kinship/blood relationship, were not related by milk or marriage, and there were no legal prohibitions against the marriage; That this marriage plan is the wish of F and L themselves, and there is no psychological, physical, sexual, or economic coercion against the child and/or family related to the marriage; That F and L have had sexual relations outside of marriage and the prospective wife is currently pregnant; That the Petitioner, as the parent, together with the parents of the prospective wife, are willing to take joint responsibility for guiding and nurturing the household of F and L once they are married; Considering that the judge will take the following facts into consideration; Considering that marriage is a spiritual bond between a man and a woman as husband and wife to form a happy and lasting household based on the One Almighty God, therefore every marriage must meet the requirements specified by law.²⁷ This is in line with the ideology of Pancasila, which is a philosophical factor that also serves to fulfill social justice for all Indonesian people.²⁸

²⁵ Syufa'at, "Marriage Dispensation in Underage Marriage: A Case Study at the Purwokerto Religious Court", *Al-Manāhij: Jurnal Kajian Hukum Islam*, Vol. 16 No. 1, (June 2022), 91-92.

²⁶ Decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation.

²⁷ Decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation.

²⁸ Moh. Fathi Nasrulloh, Interview, Kediri and Sumbawa Besar, September 18, 2024.

Considering that, according to the provisions of Article 7 paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage, which has been amended by Law Number 16 of 2019, it is stated that marriage is only permitted if both the man and woman have reached the age of 19, so that the child named F does not meet the minimum age for marriage as stipulated in the Law, therefore, the Religious Affairs Office's rejection of the marriage plan is correct, and marriages to be conducted by prospective brides and grooms who have not reached the age of 19, whether male or female, must obtain a dispensation from the Religious Court.²⁹

Considering that in Islamic law, minimum age is not a requirement for marriage. Islamic law only stipulates that the criteria for a person to be legally competent and capable of performing legal acts (such as marriage) are based on the criteria of mukallaf, namely that the person is aqil (rational or able to think properly) and baligh (mature, marked by ihtilam or wet dreams for men and menstruation for women) and mukallaf individuals are considered capable of exercising their rights and obligations properly and responsibly. Considering that the restriction on the age of marriage is actually intended to ensure that the bride and groom are physically and mentally ready and suitable for marriage, meaning that the bride is capable of fulfilling her obligations as a wife and/or mother, and likewise, a male prospective spouse is deemed sufficiently capable of fulfilling his role as a responsible husband and/or father as the head of the household.³⁰

Considering that, in addition, the minimum age restriction for marriage is also intended to fulfill the rights of children, such as

²⁹ Decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation.

³⁰ Decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation.

the right to express and have their opinions heard, as stipulated in Article 10 of Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 and the latest amendment by Law Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Protection of Children. -Law Number 35 of 2014 and the latest amendment by Law Number 17 of 2016 concerning the Stipulation of Perpu Number 1 of 2016 jo. Article 3 of the Convention on the Rights of the Child approved by the United Nations (UN) on November 20, 1989; Considering that, furthermore, based on Article 52 of Law Number 39 of 1999 concerning Human Rights, every child has the right to protection by their parents, family, community, and the State.³¹

Considering that, however, it has been found that the child named F, even though based on laws and regulations, has rights that must be fulfilled, such as the right to play and socialize with children of the same age, the right to obtain education and teaching, and other children's rights, these rights cannot be fully fulfilled because the child does not want to continue his education to a higher level and is eager to get married; Considering that the child of the Petitioner named F with L has had sexual relations and at this time the child's prospective wife is pregnant.³² This became a social factor that the judge took into consideration, and because the prospective husband was already working and his parents were also ready to provide guidance.³³

³¹ Decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation.

³² Decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation.

³³ Moh. Fathi Nasrulloh, Interview, Kediri and Sumbawa Besar, September 18, 2024.

Considering that during the trial, the Petitioner's child admitted that the child conceived by F's future wife was the result of an extramarital affair with the Petitioner's child named F, the judge ruled based on Article 311 RBg/ Article 1925 of the Civil Code, that such admission is formally and materially acceptable; Considering that, as it is now proven that L from F is pregnant as a result of sexual relations with F, the judge is of the opinion that the request for dispensation should be granted in order to protect F from the possibility of negative views and judgments from those close to her and the local community, which would greatly affect F's mental state and mindset, which must be protected and safeguarded.³⁴ The granting of a marriage dispensation due to L being pregnant out of wedlock requires the prospective husband and wife to marry immediately. However, if they are still getting to know each other, are still in school, and are able to refrain from sexual relations, and the prospective husband is also still in school and not yet working, then the judge may reject the request for a marriage dispensation. However, the judge may invoke Article 7(2) of the Marriage Law No. 16 of 2019 due to urgent reasons supported by evidence, along with PERMA No. 5 of 2019 Regarding Guidelines for Adjudicating Marriage Dispensation Requests.³⁵

Considering that the condition of L from F, who is pregnant as a result of sexual relations with F, before this case was examined, was left in a state of legal uncertainty that could guarantee the future of the prospective mother and her child, including certainty of protection of their human rights, the Judge is of the opinion that the State has an obligation to ensure the aforementioned legal

³⁴ Decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation.

³⁵ Moh. Fathi Nasrulloh, *Wawancara*, Kediri dan Sumbawa Besar, 18 September 2024.

protection; Considering that the presence of the State provides legal protection to L and F by granting them a dispensation to marry before a Marriage Registrar at the Office of Religious Affairs is an emergency measure to protect the life and future of the nation's children, which is in line with the principles of fiqh; emergency conditions allow for things that are otherwise prohibited.³⁶ Therefore, with this explanation, the judge's decision is in accordance with the rules of fiqh.³⁷

Considering Article 53 paragraphs (1) and (2) of the Compilation of Islamic Law, which states that “a woman who is pregnant outside of marriage can be married to the man who impregnated her, without waiting for the child to be born,” the judge ruled that the applicant's child, named F, could be married to L without waiting for the child to be born first. Considering that based on the above considerations, the judge is of the opinion that even though F is not yet 19 years old, F can be categorized as mukallaf because she is already aqil and baligh, so she is considered capable of exercising her rights and obligations properly and responsibly.³⁸

Considering that the marriage of F and L is the will of both parties themselves without coercion from any party, the plan has also been supported and approved by the parents of each

³⁶ Decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation. Moch. Djamaluddin Ahmad, *al-'Inayah Sharah al-Faraid al-Bahiyah fi Nazam al-Qawaid al-Fiqhiyyah* (Jombang: Pustaka al-Muhibbin, 2010). Abd allah bin Sa'id Muhammad 'Ubbadi al-Lahji, *Idah al-Qawaid al-Fiqhiyyah* (Surabaya: al-Hidayah, 1410). Lihat Sayyid Abi Bakar al-Ahdali al-Yamani al-Shafi'i, *al-Faraid al-Bahiyah fi al-Qawaid al-Fiqhiyyah* (Kediri: Madrasah Hidayatul Mubtadi-in, 2004).

³⁷ Moh. Fathi Nasrulloh, Interview, Kediri and Sumbawa Besar, September 18, 2024.

³⁸ Decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation.

prospective bride and groom, so that the marriage plan has taken into account the best interests of both prospective spouses, which is in accordance with the intent of Article 26 paragraph (1) letter a of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and the latest amendment with Law -Law Number 17 of 2016 concerning the Stipulation of Perpu Number 1 of 2016 jo. Article 3 of the Convention on the Rights of the Child approved by the United Nations (UN) on November 20, 1989.³⁹

Considering that Allah SWT in Surah An-Nur (24): 32 states that: Meaning: "And marry those among you who are single, and those who are suitable (for marriage) from among your male servants and female servants. If they are poor, Allah will enrich them with His bounty. And Allah is All-Encompassing in His bounty and All-Knowing".⁴⁰ With this explanation, the judge's decision is in line with Islamic law, namely the Quran and Hadith, which explain that marriage is an act performed by the Prophet Muhammad, in accordance with the maqasid al-shari'ah to build a family that contains *maslahah*.⁴¹

Considering that, therefore, the marriage of F and L is part of an effort to prevent bad things from happening in the future, in accordance with the meaning of the fiqh rule in the book Al-bajuri on page 19, which in this case is adopted as the opinion of the Judge, which reads: Meaning: "Preventing harm must take precedence over bringing about benefit".⁴² Considering that F and L have also

³⁹ Decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation.

⁴⁰ An-Nur (24): 32

⁴¹ Moh. Fathi Nasrulloh, Interview, Kediri and Sumbawa Besar, September 18, 2024.

⁴² Moch. Djamaluddin Ahmad, *al-'Inayah Sharah al-Faraid al-Bahiyah fi Nazam al-Qawaid al-Fiqhiyyah* (Jombang: Pustaka al-Muhibbin, 2010). Abd allah

received counseling services from the authorities in order to proceed with the marriage.⁴³

Considering that, based on the above legal considerations, the Judge is of the opinion that the Petitioner's request has legal grounds and therefore should be granted by granting F a marriage dispensation to marry a woman named L; Considering that this case concerns marriage, based on Article 89 paragraph 1 of Law Number 7 of 1989, amended by Law Number 3 of 2006 and last amended by Law Number 50 of 2009, the costs of the case shall be borne by the Petitioner.⁴⁴ Considering all applicable laws and regulations and Sharia law relating to this case, this decision is in line with the aspects of legal certainty, legal benefit, and legal justice.⁴⁵ The judge has examined this case thoroughly and questioned the petitioner. In this discussion, there are factors or aspects that include legal, sociological, and philosophical considerations.⁴⁶

Determination of Marriage Dispensation in Religious Court Number 4/Pdt.P/2024/PA.Sub Review of Maslahah al-Buti

The judge's decision to grant marriage dispensation No. 4/Pdt.P/2024/PA.Sub covers many aspects, including legal aspects in accordance with Article 7 Paragraph 2 of Marriage Law No. 16 of

bin Sa'id Muhammad 'Ubbadi al-Lahji, *Idah al-Qawaid al-Fiqhiyyah* (Surabaya: al-Hidayah, 1410). Lihat Sayyid Abi Bakar al-Ahdali al-Yaman al-Shafi'i, *al-Faraid al-Bahiyah fi al-Qawaid al-Fiqhiyyah* (Kediri: Madrasah Hidayatul Muftadi-in, 2004).

⁴³ Decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation.

⁴⁴ Decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation.

⁴⁵ Moh. Fathi Nasrulloh, Interview, Kediri and Sumbawa Besar, September 18, 2024.

⁴⁶ Moh. Fathi Nasrulloh, Interview, Kediri and Sumbawa Besar, September 18, 2024.

2019,⁴⁷ due to urgent reasons accompanied by evidence and PERMA No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, while still considering Article 7 paragraph 2 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 in conjunction with Article 49 paragraph 1 letter a and Article 49 paragraph 2 of Law No. 7 of 1989 on Religious Courts as amended by Law No. 3 of 2006 and the second amendment by Law Law No. 50 of 2009, this case falls under the absolute jurisdiction of the Religious Court.⁴⁸

The petitioner is the parent of a child named Anak Pemohon, aged 18 years and 4 months. The petitioner's request to marry off the child was rejected by the Moyo Utara Subdistrict Religious Affairs Office because F is not yet 19 years old, based on the provisions of Article 7 paragraph 2 of Law Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019.⁴⁹ Considering that, in addition, the minimum age restriction for marriage is also intended to fulfill the rights of children, such as the right to express and be heard, as stipulated in Article 10 of Law Number 23 of 2002 on Child Protection as amended by Law Law Number 35 of 2014 and the latest amendment by Law Number 17 of 2016 concerning the Stipulation of Perpu Number 1 of 2016 in conjunction with Article 3 of the Convention on the Rights of the Child approved by the United Nations (UN) on November 20, 1989;

⁴⁷ Law Number 16 of 2019

⁴⁸ Decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation.

⁴⁹ Nur Insani, et al, "Judicial Considerations in Child Marriage Dispensations: An Empirical Study of the Gorontalo Religious Court", *Jurnal Ilmiah Al-Syir'ah*, Vol. 22 No. 1, (2024), 42. Emma Andini dkk, "Judge's Reasoning Against the Dispensation of Marriage of Minors Due to Pregnancy After the Enactment of Law No. 16 of 2019 (Study of the Pandan Religious Court)", *Journal Equity of Law and Governance*, Vol. 5, No.2, (2022), 105.

Considering that, furthermore, based on Article 52 of Law Number 39 of 1999 concerning Human Rights, every child has the right to protection by their parents, family, community, and the State.⁵⁰

Then there were sociological factors because L was pregnant out of wedlock, and philosophical factors in line with the ideology of Pancasila. The judge's decision was also in line with the Quran, Hadith, and *maqasid al-shari'ah*, taking into account the aspects of harm and benefit caused.⁵¹ Therefore, the judge's decision in this marriage dispensation case is in line with Muhammad Sa'id Ramadan al-Buti's *maslahah*, which contains several provisions or limitations. The first is that included in *al-Maslahah fi al-Shari'ah* is *Maqasid Shari'ah*. The second limitation is that it does not contradict the Holy Book. The third limitation is that it does not contradict *al-Sunnah*. The fourth limitation is that it does not contradict *Qiyas*. The fifth limitation is that the benefit must not negate other benefits that are more important or consistent with it.⁵²

Therefore, it is understandable that the marriage dispensation was granted by the Religious Court Number 4/Pdt.P/2024/PA. This is in line with the first limitation of public interest, which is included in the objectives of Sharia law as embodied in the five universal principles of Islam, including *hifz al-din*, because the granting of a marriage dispensation due to the

⁵⁰ Decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation. Moh. Fathi Nasrulloh, Interview, Kediri and Sumbawa Besar, 18 September 2024.

⁵¹ Moh. Fathi Nasrulloh, Interview, Kediri and Sumbawa Besar, September 18, 2024.

⁵² Muhammad Sa'id Ramadan al-Buti, *Dawabiṭ al-Maslahah fi al-Shari'ah al-Islamiyyah* (Beirut: Muasasah al-Risalah, 1982), 115-276. Muhammad Solikhudin, "Pemikiran Muhammad Sa'id Ramadan al-Buti tentang Maslahah dan Batasan-Batasannya", *Mahakim*, Vol. 3, No.1 (January 2019), 19-30.

prospective wife being pregnant out of wedlock requires the prospective husband and wife to marry immediately. However, if they are still getting to know each other, are still in school, and are able to refrain from sexual relations, and the prospective husband is also still in school and not yet working, then the judge may reject the request for a marriage dispensation. Therefore, it is understandable that the judge granted the marriage dispensation due to the factor of pregnancy outside of marriage, which necessitates immediate marriage, and marriage is a religious commandment. This is in line with *hifz al-nasl*, so that the offspring or children produced are cared for and receive a proper education. It is also in line with the second and third limitations, because the granting of a marriage dispensation does not contradict the Quran and Hadith. Therefore, in granting a marriage dispensation, the judge has applied the aspect of *maslahah*, which is pleasure, and therefore all things that are harmful must be avoided. Thus, it can be understood that there is *maslahah cum urgensitas* established by the judge in upholding justice, namely by examining the case and questioning the petitioner, his child, and the prospective wife thoroughly, prioritizing the aspect of *maslahah*, and the judge's ability to apply the direction of the marriage dispensation case policy that is

Determination of Marriage Dispensation in Religious Court Number 4/Pdt.P/2024/PA.Sub Political Review of Marriage Dispensation Law in Sumbawa Besar

The judge's decision in granting marriage dispensation Number 4/Pdt.P/2024/PA.Sub which makes many things, including legal aspects in accordance with Article 7 Paragraph 2 of Marriage

Law Number 16 of 2019,⁵³ for urgent reasons accompanied by evidence and PERMA No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications while still considering Article 7 paragraph 2 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 jo. Article 49 paragraph 1 letter a and Article 49 paragraph 2 of Law Number 7 of 1989 Concerning Religious Courts as amended by Law Number 3 of 2006 and the second amendment by Law Number 50 of 2009,⁵⁴ then this case becomes the absolute authority of the Religious Court.⁵⁵

The Applicant is the parent of a child named F, aged 18 years and 4 months, the Applicant's intention to marry the child has been rejected by the Religious Affairs Office of North Moyo District because the Applicant's child is not yet 19 years old, based on the provisions of Article 7 paragraph 2 of Law Number 1 of 1974 concerning Marriage which has been amended by Law Number 16 of 2019.⁵⁶ Considering, that in addition, the limitation of the

⁵³ Law Number 16 of 2019.

⁵⁴ Fahadil Amin Al-Hasan dan kawan-kawan, "Marriage Dispensation in The Indonesian Legal System: Protecting Children's Best Interests Through Judges' Decisions", *Al-Aḥwāl*, Vol. 14, No. 1, (2021), 86-87.

⁵⁵ Decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation. Moh. Fathi Nasrulloh, *Interview*, Kediri and Sumbawa Besar, 18 September 2024.

⁵⁶ Sonny Dewi Judiasih dkk, "Kontradiksi Antara Dispensasi Kawin Dengan Upaya Meminimalisir Perkawinan Bawah Umur di Indonesia", *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum Unpad*, Volume 3, Nomor 2, (Juni 2020), 203. Ernawati dkk, "Child Participation in Marriage Dispensation in Southeast Asian Muslim Countries From The Perspective of The Convention on The Rights of The Child", *Journal of World Science*, Volume 2 No. 8 (August 2023), 1137. Uswatun Hasanah dan kawan-kawan, "Reconceptualization of Marriage Dispensation Provisions In Religious Courts (Solution To Reduce The Number of Early Marriages In Indonesia)", *SASI*, Volume 29 Issue 3, (September 2023), 465-466.

minimum age of marriage is also intended to fulfill the rights of children, such as the right to express and be heard, as stipulated in Article 10 of Law Number 23 of 2002 Concerning Child Protection as amended by Law Number 35 of 2014 and the latest amendment by Law Number 17 of 2016 Concerning the Stipulation of Perpu Number 1 of 2016 in conjunction with. Article 3 of the Convention on the Rights of the Child approved by the United Nations (UN) on November 20, 1989; Considering, that further based on Article 52 of Law Number 39 of 1999 Concerning Human Rights, every child is entitled to protection by parents, family, community and the State.⁵⁷

Then sociological factors because the prospective wife is pregnant outside of marriage, philosophical factors in line with the ideology of Pancasila. The judge's decision is also in line with the Quran, Hadith, maqasid al-shari'ah, by considering the aspects of madharat and maslahah caused.⁵⁸ So the judge's decision in this marriage dispensation case is in line with the politics of marriage dispensation law, namely the direction of legal policy that contains benefits and urgency for parties seeking justice.

The politics of marriage dispensation law can be understood as legal policy or legal direction applied by the state to achieve state goals which can be in the form of making new laws and replacing old laws. The direction of this legal policy rests on the goals of the state and the legal system in force in the country concerned, which in the context of Indonesia, the goals and legal system are contained in the

⁵⁷ Decision of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation.

⁵⁸ Agus Khotibul Umam, et al, "Dispensasi Nikah di Indonesia Perspektif Sadd Adz-Dzari'ah Marriage Dispensation in Indonesia : Sadd Adz-Dzari'ah Perspective", *Al-Adalah: Jurnal Syariah dan Hukum Islam*, Vol. 8, No. 2, (Desember 2023), 187-188.

Preamble of the 1945 Constitution, especially Pancasila, which gives birth to legal guiding principles.⁵⁹ Regarding dispensation of marriage, although there are already rules for prospective husbands and prospective wives aged 19 years as outlined in Law Number 16 of 2019,⁶⁰ in reality there are factors that underlie the determination of the Sumbawa Besar Religious Court and are strengthened by the judge's argument that the prospective wife is pregnant outside of marriage. The judge's policy is an effort to apply lesser damage by maintaining greater damage. The damage is lighter because it is contrary to positive law in Indonesia which contains *masalah*. The greater damage is the relationship without status and the position of the pregnant woman so that the child in the womb must be properly cared for and guarded, namely *maqasid al-shari'ah fi hifz al-awlad*.

Therefore, the judge applied Article 7 Paragraph 2 of Marriage Law Number 16 of 2019 due to urgent reasons⁶¹ accompanied by evidence and PERMA No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Requests⁶² which

⁵⁹ Moh. Mahfud MD, *Membangun Politik Hukum, Menegakkan Konstitusi* (Jakarta: Rajawali Pers, 2017), 5.

⁶⁰ Trisadini Prasastinah Usanti dan kawan-kawan, "Analisis Perubahan Politik Hukum Dispensasi Perkawinan Pasca Undang-Undang Nomor 16 Tahun 2019", *Notaire*, Vol. 4 No. 3, (Oktober 2021), 467-468. Rafida Ramelan dan kawan-kawan, "Disfungsi Dispensasi Kawin Dalam Pencegahan Perkawinan Anak di Indonesia", *Usrah: Jurnal Hukum Keluarga Islam*, Vol. 8, No. 1, (Juni 2024), 11-12. Andi Tenri Sucia dan kawan-kawan, "Expediting Marriage Dispensation: Balancing Child's Best Interests with Expediency Principle", *Jurnal Jurisprudentie*, Volume 10 Issue 1, (2023), 21.

⁶¹ Asmuni dan Rezha Nur Adikara, "Application of Very Urgent Criteria in The Marriage Dispensation Norms for the Protection of Children: Analysis of Jasser Auda's Theory", *Jurnal Hukum Islam*, Volume 22, Nomor 1, (Juni 2024), 25-56.

⁶² Ashabul Fadhli dan kawan-kawan, "Politik Hukum Batas Usia Perkawinan dan Dispensasi Kawin di Indonesia", *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum*, Vol.20, No.2, (December 2022), 110-111.

contains principles including the best interests of the child, the right to life and development of the child, respect for the child's opinion, respect for human rights and dignity, non-discrimination, gender equality, equality before the law, fairness, benefit, and legal certainty.⁶³ This is in line with Ija Suntana's statement that the operational principles in Islamic legal politics, including the legal politics of marriage dispensation, include equality, justice, deliberation, freedom, and public responsibility.⁶⁴ Thus, it can be understood that the judge's decision to grant a marriage dispensation is in line with the legal policy of realizing justice, benefit, and legal certainty. The contribution of this paper is to encourage judges to truly provide legal policies that are beneficial to applicants for marriage dispensation. For the general public, it is important to pay attention to their children's social interactions to avoid promiscuity, which can lead to applications for marriage dispensation in the Religious Court.

Conclusion

Marriage is a universal instinct shared by all humans. Article 1 of Law Number 1 of 1974 on Marriage states that marriage is a spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy and lasting family (household) based on the One Almighty God. The minimum age for prospective spouses is 19 years old, as stipulated in Law No. 16 of 2019. However, there are underlying factors in the decision of the Religious Court of Sumbawa Besar No. 4/Pdt.P/2024/PA. Sub that the prospective wife is already pregnant out of wedlock and the

⁶³ Supreme Court Regulation of the Republic of Indonesia Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Requests.

⁶⁴ Ija Suntana, *Politik Hukum Islam* (Bandung: Pustaka Setia, 2014), 5.

male party is still under the age of 19, so the judge applied Article 7 Paragraph 2 of the Marriage Law No. 16 of 2019 due to urgent reasons, accompanied by evidence and PERMA No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Applications, which includes principles such as the best interests of the child, the right to life and development of the child, respect for the child's opinion, respect for human rights and dignity, non-discrimination, gender equality, equality before the law, fairness, public interest, and legal certainty. Therefore, the judge granted the marriage dispensation request in the decision of the Sumbawa Besar Religious Court No. 4/Pdt.P/2024/PA.Sub. This decision is in line with the principles of *maslahah al-Buti* and the legal policy on marriage dispensation.

The findings of this study are as follows: First: Factors or aspects, namely legal, sociological, and philosophical. Second: The judge's decision is in line with the legal policy on marriage dispensation and consistent with the *maslahah* of Muhammad Said Ramadan al-Buti. Third: The findings on the concept of *maslahah usrah cum urgensitas*, with several working methods: first, the judge has carefully examined the petitioner's documents; second, the judge has considered the *maslahah* aspect to be prioritized in granting marriage dispensations; third, the judge is able to apply the legal policy on marriage dispensations, which is a legal policy direction that prioritizes the welfare and urgency of the parties seeking justice. The contribution of this paper is to ensure that judges truly provide legal policies that prioritize the public interest for applicants seeking marriage dispensations. For the general public, it is important to monitor their children's social interactions to prevent them from engaging in free-wheeling relationships that lead to requests for marriage dispensations in Religious Courts.

REFERENCES

- Abi Bakar al-Ahdali al-Yamani al-Shafi'i, Sayyid *al-Faraid al-Bahiyah fi al-Qawaid al-Fiqhiyyah* (Kediri: Madrasah Hidayatul Muhtadi-in, 2004).
- Abid Aurian Putra, Sandio, et al, "Implementation of the Marriage Dispensation: Exploring the Legal and Social Complexities in Preventing Early Marriage", *Al-Adalah: Jurnal Hukum dan Politik Islam*, Vol. 9, No. 1, January, (2024), 24.
- Ahmad, Moch. Djamaluddin *al-'Inayah Sharah al-Faraid al-Bahiyah fi Nazam al-Qawaid al-Fiqhiyyah* (Jombang: Pustaka al-Muhibbin, 2010).
- Amin Al-Hasan, Fahadil, et al, Marriage Dispensation in The Indonesian Legal System: Protecting Children's Best Interests Through Judges' Decisions", *Al-Aḥwāl*, Vol. 14, No. 1, (2021), 86-87.
- Andini, Emma dkk, "Judge's Reasoning Against the Dispensation of Marriage of Minors Due to Pregnancy After the Enactment of Law No. 16 of 2019 (Study of the Pandan Religious Court)", *Journal Equity of Law and Governance*, Vol. 5, No.2, (2022), 105.
- Asmuni dan Rezha Nur Adikara, "Application of Very Urgent Criteria in The Marriage Dispensation Norms for the Protection of Children: Analysis of Jasser Auda's Theory", *Jurnal Hukum Islam*, Volume 22, Nomor 1, (June 2024).
- Agustiawan, M. Hendri and Nazhifatut Mutahhirah, "Socio-Legal Analysis of Early Marriage Phenomenon during the COVID-19 Pandemic in Jombang Regency", *Asketik: Jurnal Agama dan Perubahan Sosial*, Vol. 7, No. 1 (2023), 90.
- Aristoni, "Quo Vadis Marriage Dispensation in Indonesia: Judge's Decision in Preventing Child Marriage at the Jepara Religious Court", *De Jure: Jurnal Hukum dan Syariah*, Vol. 14, No. 2, (2022), 226-227.
- Ashofa, Burhan *Metode Penelitian Hukum* (Jakarta: Rineka Cipta, 1998), 143

- Dewi Judiasih, Sonny, et al, "Kontradiksi Antara Dispensasi Kawin Dengan Upaya Meminimalisir Perkawinan Bawah Umur di Indonesia", *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum Unpad*, Volume 3, Nomor 2, (June 2020), 203.
- Ernawati, et al, "Child Partcipation in Marriage Dispensation in Souththeast Asian Muslim Countries From The Perspective of The Convention on The Rights of The Child", *Journal of World Science*, Volume 2 No. 8 (August 2023), 1137.
- Efrinaldi, et al, "Revealing The Dilema of Marriage Dispensation Regulations in Indonesia", *ADHKI: Journal of Islamic Family Law*, Volume 5, Nomor 1, (Juni 2023), 31-32.
- Fadhli, Ashabul, et al, "Politik Hukum Batas Usia Perkawinan dan Dispensasi Kawin di Indonesia", *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum*, Vol.20, No.2, (December 2022), 110-111.
- Hasanah, Uswatun, et al, "Reconceptualization of Marriage Dispensation Provisions In Religious Courts (Solution To Reduce The Number of Early Marriages In Indonesia)", *SASI*, Volume 29 Issue 3, (September 2023), 465-466.
- Imran, et al, "Aspects of Justice of Marriage Dispensation and Best Interests for Children", *Jurnal Hukum dan Peradilan*, Vol. 13, No. 1 (2024), 63-64.
- Insani, Nur dkk, "Judicial Considerations in Child Marriage Dispensations: An Empirical Study of the Gorontalo Religious Court", *Jurnal Ilmiah Al-Syir'ah*, Vol. 22 No. 1, (2024), 42.
- Khotibul Umam, Agus, et al, "Dispensasi Nikah di Indonesia Perspektif Sadd Adz-Dzari'ah Marriage Dispensation in Indonesia : Sadd Adz-Dzaria'ah Perspective", *Al-'Adalah: Jurnal Syariah dan Hukum Islam*, Vol. 8, No. 2, (Desember 2023), 187-188.
- Mahmud Marzuki, Peter *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2005), 136.
- Mahfud MD, Moh. Membangun Politik Hukum, Menegakkan Konstitusi (Jakarta: Rajawali Pers, 2017), 5.

- Nasir, Muhammad *Metode Penelitian* (Jakarta: Ghalia Indonesia, 1985), 54.
- Nasrulloh, Moh. Fathi. Interview, Kediri and Sumbawa Besar, September 18, 2024.
- Nailul, Ahmad Mubarak and R. Zainul Mushthofa, "Putusan Hakim Mahkamah Agung Tentang Dispensasi Kawin (Dispensasi Kawin Dalam Sistem Hukum Indonesia", *JOSh : Journal of Sharia*, Volume. 03 Nomor. 02, (June 2024), 141-142.
- Nur Mustofa, Kholifatun "Local Values and Judges' Legal Discretion in Makassar Religious Court: The Case of Marriage Dispensation", *Asy-Syir'ah Jurnal Ilmu Syari'ah dan Hukum*, Vol. 56, No. 1, (June 2022), 27-28.
- Determination of the Sumbawa Besar Religious Court Number 4/Pdt.P/2024/PA.Sub concerning Marriage Dispensation.
- Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation
- Prasastinah Usanti, Trisadini, et al, "Analisis Perubahan Politik Hukum Dispensasi Perkawinan Pasca Undang-Undang Nomor 16 Tahun 2019", *Notaire*, Vol. 4 No. 3, (October 2021), 467-468.
- Ramelan, Rafida, et al, "Disfungsi Dispensasi Kawin Dalam Pencegahan Perkawinan Anak di Indonesia", *Usrah: Jurnal Hukum Keluarga Islam*, Vol. 8, No. 1, (June 2024), 11-12.
- Rohmadi, et al, "Judges' Considerations in Granting Marriage Dispensation Licenses in Ngawi, Indonesia: Islamic Family Law Perspective", *El-Usrah: Jurnal Hukum Keluarga*, Vol. 7, No. 1, (June 2024), 326-327.
- Saifudin, Aris, et al, "Efektivitas Penerapan Pasal 7 Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan oleh Hakim dalam Perkara Dispensasi Kawin", *Journal of Lex Generalis*, Vol. 4, No. 3, (March 2023), 749-751.
- Saleh, Abdul Mun'im *Madhhab Syafi'i: Kajian Konsep Al-Maslahah*, (Yogyakarta: Ittaqa Press, 2001), 54.

- Satori, Djam'an and Aan Komariyah, *Metodologi Penelitian Kualitatif* (Bandung: Alfabeta, 2009), 25.
- Sa'id Ramadan al-Buti, Muhammad *Dawabiṭ al-Maslahah fī al-Shari'ah al-Islamiyyah* (Beirut: Muasasah al-Risalah, 1982), 115-276.
- Sa'id Muhammad 'Ubbadi al-Lahji, Abd allah bin Idah *al-Qawaid al-Fiqhiyyah* (Surabaya: al-Hidayah, 1410).
- Suadi, Amran, et al, "Prevention of Child Marriage in Indonesia Based on System Interconnection", *Journal of Southwest Jiaotong University*, Vol. 57 No. 6 (Dec. 2022), 926-927.
- Sucia, Andi Tenri, et al, "Expediting Marriage Dispensation: Balancing Child's Best Interests with Expediency Principle", *Jurnal Jurisprudentie*, Volume 10 Issue 1, (2023), 21.
- Suntana, Ija *Politik Hukum Islam* (Bandung: Pustaka Setia, 2014), 5.
- Solikhudin, Muhammad "Pemikiran Muhammad Sa'id Ramadan al-Buti tentang Maslahah dan Batasan-Batasannya", *Mahakim*, Vol. 3, No.1 (January 2019), 19-30.
- Syufa'at, "Marriage Dispensation in Underage Marriage: A Case Study at the Purwokerto Religious Court", *Al-Manāhij: Jurnal Kajian Hukum Islam*, Vol. 16 No. 1, (June 2022), 91-92.
- Law Number 1 of 1974
- Law Number 16 of 2019
- Yasid, Abu *Aspek-aspek Penelitian Hukum: Hukum Islam dan Hukum Barat* (Yogyakarta: Pustaka Pelajar, 2010), 85.
- Zuhriah, Erfaniah, et al, "Dispen-ku Android-Based Application: Assisting Religious Court Judges in Deciding for Marriage Dispensation", *al-Ihkam: Jurnal Hukum dan Pranata Sosial*, Vol. 18, Nomor 2, (2023), 519-520.