

Local Values and Judges' Legal Discretion in Makassar Religious Court: The Case of Marriage Dispensation

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Abstract: This paper examines the legal considerations used by judges in the case of marriage dispensation at the Makassar Religious Court. This paper focuses on two things, first, the judge's consideration in deciding the marriage dispensation case, while the second focus is on the age of youngest couple who applied for a marriage dispensation. The marriage dispensation decision at the Makassar Religious Court is used as the primary source, while the secondary sources are collected from interviews and scientific works related to the topic of this research. Legal pluralism is applied as an approach to determine which law is more dominant in granting marriage dispensation in Makassar. The results revealed that majority of judges use customary law as a legal consideration in granting marriage dispensation cases at the Court. The judge used customary law as a consideration to granting a marriage dispensation application. It is reported that the youngest age in the marriage dispensation was 13 years for women and 14 years for men. The author found that 13 of the 16 cases of marriage dispensation stated that the child of the applicant who filed the marriage dispensation case was not pregnant.

Keyword: *Customary law influences judge's legal considerations, marriage dispensation at the Makassar Religious Court.*

Abstrak: Paper ini mengkaji tentang pertimbangan hukum yang digunakan oleh hakim dalam memutuskan perkara dispensasi nikah di Pengadilan Agama Makassar. Tulisan ini berfokus pada dua hal, *pertama*, pertimbangan yang digunakan hakim dalam memutuskan perkara dispensasi nikah. *Kedua* fokus pada berapa usia pasangan termuda yang mengajukan dispensasi nikah. Putusan dispensasi nikah di Pengadilan Agama Makassar penulis gunakan sebagai sumber primer, sedangkan sumber sekunder penulis dapatkan dari wawancara dan karya ilmiah yang berkaitan dengan topik penelitian ini. Pluralisme hukum diterapkan sebagai pendekatan untuk menentukan hukum mana yang lebih dominan dalam pemberian dispensasi perkawinan Pengadilan Agama Makassar. Hasil penelitian menunjukkan bahwa mayoritas hakim menggunakan hukum adat sebagai pertimbangan hukum dalam mengabulkan perkara dispensasi nikah di Pengadilan. Hakim menggunakan hukum adat sebagai pertimbangan untuk mengabulkan permohonan dispensasi nikah.

Penelitian ini mengungkapkan bahwa usia termuda dalam dispensasi perkawinan adalah 13 tahun untuk perempuan dan 14 tahun untuk laki-laki. Penulis menemukan bahwa 13 dari 16 kasus dispensasi nikah menyatakan bahwa anak pemohon yang mengajukan dispensasi nikah tidak hamil.

Kata Kunci: *Hukum adat memengaruhi Pertimbangan Hukum Hakim, Dispensasi Nikah di Pengadilan Agama Makassar*

Introduction

Laws regarding the minimum age for marriage may differ in some countries. Maturity rate influences the state to make a rule that regulates the minimum age to get married. Malaysia, for example, has a minimum marriage requirement of 16 years for women, while for men is 18 years.¹ Initially, the marriage law stipulates that women should not get married until they are 16 and 19 for women and men respectively.² Since 2019, it was changed to 19 years for both men and women.³

Before adopting the new law on the minimum age for marriage, the discrimination between men and women was apparent. It can be seen from the regulation of the minimum age limit for marriage between men and women. It is because the previous society was firm with the patriarchal culture so that the minimum age for women was lower than for men. These inequalities seem to stem from subordination and gender bias, so decision-making results in inequalities between men and women.⁴ Starting in 2019, both men and women have the same standard of age to marry.

¹ Valentina Lai et al., *Child Marriage: Its Relationship with Religion, Culture and Patriarchy* (Sisters in Islam (SIS) and Asian-Pacific Resource and Research Centre for Women (ARROW), 2018), <https://www.arrow.org.my/wp-content/uploads/2018/03/National-Report-Child-Marriage.pdf>.

² Undang-Undang Nomor 1 Tahun 1974 Tentang Perawinan.

³ Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan.

⁴ Euis Nurlaelawati, *Sharia-Based Laws: The Legal Position of Women and Children in Banten Dan West Java* (Beland: Leiden University, 2016).

According to Wahidudin Adams,⁵ three reasons underlie the Constitutional Court Justices granting the applicant's application as stated in the Constitutional Court Decision No 22/PPU-XV/2017, submitted in 2017. First, the difference between men and women in the marriage law is a gender-based discriminatory treatment. Second, 16 years minimum age limit for women causes women lose their rights as a child. Third, one of the efforts to eradicate poverty is to reduce child marriages.⁶ The minimum age for marriage is expected to prevent child marriage. In fact, there are flaws in the rules that prevent this regulation from suppressing the extent of child marriage optimally because young couples are allowed to submit for marriage dispensation to the court if they are under age. Therefore, the judge may permit marriage under 19 years-old age. This dispensation creates a double standard in the law in Indonesia.⁷

A marriage dispensation has caused child marriage in Indonesia. It certainly leads to adverse effects, especially on women. Education, for example, married women automatically lose educational opportunities because schools cannot accept them. In addition, she did not want to continue to school because she already had the responsibility to take care of her child and was ashamed because of her married status.⁸ In addition the health factor has become a reason to to renew the marriage minimum age limit in Indonesia.

Getting married too early may arise other problems, such as giving birth to disabilities babies, suffering from psychosocial

⁵ "Constitutional Court Judges Handled the Judicial Review Regarding the Minimum Age Limit for Marriage in 2014 and 2017. Constitutional Court Decision Nos 30-74/PUU/2014 and No 22 PUU-XV-2017."

⁶ "Presentation of Wahidudin Adams, He Is One of the Constitutional Justices Who Handles Cases of Judicial Review Requests Related to Judicial Review of the Marriage Law. His Explanation Was given during the National Seminar "Age of Marriage After the Decisi"

⁷ Euis Nurlaelawati, "For The Sake Of Protecting Religion Apostasy and Its Judicial Impact on Muslim's Marital Life in Indonesia," *Journal of Indonesian Islam* 10, no. 01 (2016): 89–112.

⁸ Tri Windiarso et al., *Profil Anak Indonesia Tahun 2019*, Kementerian Pemberdayaan Perempuan dan Perlindungan Anak (KPPPA) (Jakarta: Kementerian Pemberdayaan Perempuan dan Perlindungan Anak (KPPPA), 2019).

health, increasing level of maternal depression etc.⁹ Some people get marry in their early age because of economic factors. Parents who cannot afford school fee will likely marry off their daughters. This decision leaves the girl with no other choice but to marry.¹⁰ From the perspective of socio-cultural factors, many traditions consider that late women in marriage are old virgins. However, the legal age used as a benchmark in society is still low. Subsequently, the poverty factor, parents often think that marrying their children even though they are underage is an alternative way to reduce the economic burden on their family. The impact of child marriage is often detrimental to women, like leaving their school, maternal death due to childbirth at a young age, babies dying in carriage or miscarriage, and is prone to domestic violence.¹¹ The impact of child marriage implies that the government is not very serious about accommodating women's welfare, especially for women who suffer from a disease caused by child marriage. In addition, people who are less committed to complying with the rules that have been regulated in the law.¹² This issue is a serious matter because about one in four girls gets married before 18.¹³

Child marriage might still be an issue as long as couple are given choice to apply for marriage dispensation. The author's previous research showed that children, who are still 12 years old, are

⁹ *Putusan Mahkamah Konstitusi Republik Indonesia Nomor 30-74/PUU-XII/2014*, 2015.

¹⁰ Subdirektorat Statistik Rumah Tangga, *Kemajuan Yang Tertunda: Analisis Data Perkawinan Usia Anak Di Indonesia* (Jakarta: Badan Pusat Statistik Rumah Tangga, 2015).

¹¹ "Presentation Muhammad Amin, He Is the Director-General of Islamic Community Guidance. His Explanation Was given during the National Seminar 'Age of Marriage After the Decision of the Constitutional Court No. 22 PUU-XV-2017'" (Jam, February 8, 2019).

¹² Kasjim, "Abuse of Islamic Law and Child Marriage in South-Sulawesi Indonesia," *Al-Jami'ab: Journal of Islamic Studies* 54, no. 1 (2016): 95–122, <https://doi.org/10.14421/ajis.2016.541.95-122>.

¹³ Zendy Wulan Ayu Widhi Prameswari and Erni Agustin, "Indonesian Marriage Law Reform: The Way To Strengthen The Protection of Children's Rights Against Child Marriage," *Journal of Southeast Asian Human Rights* 2, no. 1 (2018): 286, <https://doi.org/10.19184/jseahr.v2i1.5353>.

allowed to get married because of it.¹⁴ In addition, people only understand that parents who marry their children earlier are a matter of pride for the family. Even in certain places, those who aged 15 or 16 years is considered taboo if you are not married¹⁵ such as in Makassar. Therefore, the author relates the influence of customary law to the Judge's legal considerations, as stated in the marriage dispensation decision at the Makassar Religious Court.

Research on child marriage associated with local culture in South Sulawesi has been carried out. Kasjim, for example, said that local norms and customs influence child marriage in South Sulawesi. The family and relatives' honor, uneducated parents, and economic burdens were the reasons for child marriages in South Sulawesi. In addition, Seliana also discussed marriages focusing on customary carried out by the Bugis community. Her research emphasizes more on the traditional wedding processions in marriages through symbols performed.¹⁶

Marilang and Nurhiddayah have carried out their studies about marriage dispensation in Makassar, but both have different focuses. Marilang was more focused on the marriage dispensation than the religious court judges' consideration. His research results conclude that the benefit of receiving a marriage dispensation case in court is that the prospective groom is responsible for what he had done to his spouse. By marrying the prospective bride, the child in the womb has a clear legal status because the baby's parents were already married before the child was born. Then the prospective groom is safe from threats or persecution from the prospective bride's family.¹⁷

¹⁴ Kholifatun Nur Mustofa, "Submission of Marital Dispensation for Religious Courts in Central Java: Study of Minimum Pair Age Standards Along With Judge's Attitudes and Wisdoms," *De Jure: Jurnal Hukum Dan Syar'iah* 11, no. 1 (2019): 63–75, <https://doi.org/10.18860/j-fsh.v11i1.6611>.

¹⁵ Y, He Is One of the Judges of the Religious Courts in Gunung Kidul Yogyakarta., April 17, 2018.

¹⁶ Seliana, Syaiful Arifin, and Syamsul Rijal, "Makna Simbolik Mappasikarawa Dalam Pernikahan Suku Bugis Di Sebatik Nunukan," *Ilmu Budaya (Jurnal Bahasa, Sastra, Seni Dan Budaya)* 2, no. 3 (2018): 213–20.

¹⁷ Marilang Marilang, "Dispensasi Kawin Anak Di Bawah Umur," *Al Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan* 7, no. 1 (2018): 140–52, <https://doi.org/10.24252/ad.v7i1.5383>.

Meanwhile, Nurhidayah's research examined the effectiveness of granting marriage dispensation, which focuses on KUA officials. He found that KUA officers manipulated the children ages in four KUA. The age manipulation is intended for the children who have not met the minimum age requirement and do not have to ask permission from the local religious court judge to get married. Underage children should not be married except with the Judge's permission. This result is supported by the KUA officials' inaccuracy in examining the applicant's child data file. This problem causes many children avoid applying for marriage dispensation from religious court judges.¹⁸

The difference between the author's current and previous research is that this paper relates national law to customary law (local wisdom). Local wisdom is the local community policy to carry out a tradition that has been carried out for generations. Philosophically, local wisdom is a cultural value upheld by the community. Therefore, local wisdom is different from national law. National Law was established equally for all people in Indonesia, while local wisdom has different rules for each region and uniqueness.¹⁹

The reasons above have encouraged the author to explore more deeply about marriage dispensation in Makassar religious court. This study is emphasized on the Judge's gesture and legal considerations. It will also determine whether customary law influences judges in giving legal considerations of marriage dispensation at the Makassar Religious Court. The author focuses on the Customary influence in the decision to dispense marriage, therefore, this paper does not focus on how customary law (underage marriage) occurs in Makassar. The author uses the marriage dispensation decision as the primary source and is strengthened by the Judge's interview and papers. This research is descriptive-analytic. Legal pluralism becomes a theory to analyze the writer's.

¹⁸ Nurhidayah, "Efektivitas Pemberian Dispensasi Perkawinan Terhadap Perkawinan Di Bawah Umur Di Makassar," *El-Iqthisadi: Jurnal Hukum Ekonomi Syariah Fakultas Syariah Dan Hukum* 1, no. 1 (2019): 43–53, <https://doi.org/10.24252/el-iqthisadi.v1i1.9904>.

¹⁹ H.A. Mukti Arto, *Penemuan Hukum Islam Demi Menwujudkan Keadilan* (Yogyakarta: Pustaka Pelajar, 2018).

Minimum Age for Marriage: Polemic Between Makassar Customary Law and Positive Law

Indonesia has various cultures and customs. For instance, Makassar which has different customary rules in their weddings. The groom should provide gifts to his prospective wife. The value of it are influenced by the community's conditions or certain customs, for example women's social background and education. The gifts usually shows the social status and maintains the privilege of the bride's family.²⁰ The wedding celebration is one of the events to show the family's social status in their society, proved by the value of the groom's gift. Makasar custom applies dowry as one of the requirements that must be met when carrying out a wedding and a magnificent wedding ceremony, *Erang-Erang* (women's ornaments), and others. The more considerable and more gifts a man gives to a woman, the higher the bride or her family's social status.²¹

The wedding ceremony is even considered as a contest in society. The more luxurious the wedding ceremony celebration organized by the family, the higher the social status. The community's norms and culture influence this custom. These norms and traditions are followed and preserved.²² Before the wedding takes place, the two families, the bride, and groom, usually negotiate the total gift the groom must give to his future wife. Usually, the woman's family has decided the amount of money should the groom spend on gifts and dowries. Some families are adamant that the prospective groom must present according to the standards that have been conveyed earlier, but some reduce their gift amount. So that at this stage, the two families can bargain according to the agreement.²³

²⁰ Atun Wardatun, *The Social Practice of Mahr Among Bimanese Muslims Modifying Rules, Negotiating Roles*, ed. Arskal Salim, 8th ed. (Leiden: Brill, 2019).

²¹ Rosmah Tami, *Siri and the Access of Bugis Makassar Women to Property Rights* (Leiden: Brill, 2019).

²² Albert Schrauwers, "Three Weddings and a Performance : Marriage , Households , and Development In The Highlands of Central Sulawesi , Indonesia," *American Ethnologist, American Anthropological Association* 27, no. 4 (2000): 855–76.

²³ Interview with Brother R Is a Resident of Bone Makassar., September 2, 2019.

The diversity of family characteristics affects the bargaining. For example, a man cannot fulfill gifts and requests from the bride's family. Therefore, they cannot continue the wedding preparation because he cannot fulfill the prospective bride's family requests. In a different case, if the bride is pregnant and the prospective husband cannot fulfill the requirements for the required gift, then the gift may be paid according to the groom's ability; accordingly, the celebration is carried out. However, some still hold a large party. Makassar people have a very high sense of prestige regarding wedding celebrations, so it is not surprising that wedding ceremonies are often luxurious.²⁴

Sompa is a dowry term used in Makassar, but the term is still confused whether it is a dowry or a gift for the bride. Dowry in the form of jewelry or gold is generally considered as a dowry, but if *Sompa* is in the form of land or the like, it is often not recorded in the marriage certificate. Instead, the dowry is often written down in the marriage certificate.²⁵ Women's dowry money in Makassar is called *Panai'* money; women's *Panai'* is determined by women's education. Women graduated from elementary school are set at 20 million. Those who hold bachelor's degree are 50 million and above, while a second degree is 100 million. In addition to the educational factor, it is also seen from physical looks; the more beautiful she is, the higher the nominal amount set.²⁶

Not all parents who want to marry off their children under the age of 19 asked for permission from the Makassar Religious Court. Many child marriage cases are carried out unrecorded (*Sirri* marriage) or by manipulating the child's age. The child's initial age had not yet reached 16 years, and then the local village officer raised their age. Nurhiddayah discovered this age manipulation at 4 different KUA in Makassar. Nurhiddayah found that almost half of the child marriages in Makassar did not apply for marriage dispensation to the court. This may happen because the village official does not write down the

²⁴ Interview with Brother R Is a Resident of Bone Makassar.

²⁵ Arskal Salim, *Disputing Marriage Payments in Indonesia, A Comparative Study of Aceh and South Sulawesi* (Leiden: Brill, 2019).

²⁶ Hajra; Yayuk Basuki; M. Yusuf K; Wawan Ananda Perkasa Yansa, "Uang Panai' Dan Status Sosial Perempuan Dalam Perspektif Budaya Siri' Pada Perkawinan Suku Bugis Makassar Sulawesi Selatan," *Pena* 3, no. 1 (2017): 524.

child's actual age as it should; moreover, the KUA officers are not careful in carrying out administrative duties and selecting the marriage application file. The KUA officers' mistakes and negligence resulted in the unavoidable manipulation of age data.²⁷

The manipulation of the teen's age who want to get married but are still underage by the village officer is justified by R, who resides in Bone. She revealed that many of her neighbors do age manipulation because parents do not need to ask permission from the religious court to marry off their underage children. So that the minimum marriage does not have much effect on the high rate of child marriage in Makassar because of the opportunity to marry underage, it is still wide open through marriage dispensation or marrying their children in *Sirri* or even manipulating age.²⁸

Marriages carried out by 15 years-old age men or women in Makassar are not without reason. This marriage is based on customary law, allowing marriage under 19 years. The authors get these rules from the Judge's legal considerations at the Makassar Religious Court. The provision excerpt is as follows:

"According to the concept of customary law: If maturity is related to the act of marriage, customary law recognizes the fact that if a man and a woman are married and their children are declared adults, even though they are only 15 years old, on the other hand, if they are married, cannot produce children because they are not married. not yet able to have sex, they are said to be immature."

The above customary law is not aligned with Law No. 16 of 2019²⁹ regarding changes to the minimum age limit for marriage. This change was due to the second Judicial Review submitted by three women applicants who were being forced by their parent to get married before they are 16 years old. Were discriminated because of the parents who married below the minimum age. It resulted in the

²⁷ Nurhidayah, "Efektivitas Pemberian Dispensasi Perkawinan Terhadap Perkawinan Di Bawah Umur Di Makassar."

²⁸ R, Interview with Brother R Is a Resident of Bone Makassar.

three applicants having miscarriages because when she was pregnant, she was considered immature. On the other hand, the parents did not forced the boys to marry; even the boys are allowed to make their own choices. These reasons prompted the three applicants to propose changes to the regulation on the minimum age for marriage because it is considered discrimination between men and women, e.g., 16 years for women and 19 years for men. The minimum age limit is real discrimination between men and women.³⁰

In 2014, another applicant once tried to propose a renewal for the minimum age limit through a judicial review in the Constitutional Court. Still, the Judges decided that the judicial review submitted by the applicant had no binding legal force. They considered that raising the minimum age limit did not necessarily reduce underage marriages.³¹ The existence of a judicial review effort that was proposed in 2017 led to a change in the minimum age limit. Initially, the minimum age for marriage in Indonesia was 16 years for girls and 19 years for boys. However, after 2019, the minimum age for marriage has changed to 19 for both of them.³²

The minimum age limit for women has indeed changed. However, underage marriages can still be carried out precisely by asking permission from the religious court or district court judges according to each applicant's religion. Marriage dispensation is submitted by the male or female parents' parties. The reasons for marriage must be urgent and the application must be accompanied by sufficient supporting evidence.³³ The marriage dispensation application can be accepted or rejected by the Judge. If it is accepted, the bride and groom's marriage can be carried out by applying to the local KUA. A marriage dispensation provides a chance for parents to allow their underage children to get married.

³⁰ Read More Details in the Decision of the Constitutional Court No 22/PUU-VX/2017 of 2017

³¹ Read More Details in Constitutional Court Decision No 30-74/PUU-XXI/2014

³² *Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan*, n.d.

³³ *Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan*.

Customary law seems to be an opportunity to marry men and women under 19 years old. Because customary law in Makassar assesses maturity using standards and is linked to the rule "if a man and a woman get married and have children." The customary law does not provide a standard, but it is determined that if both parties can have a relationship and have children, they are considered adults. Therefore 15-year-old marriage is easy to find. This opportunity seems to be supported by regulations regarding a marriage dispensation because it allows couples who want to marry under 19 years old. This may happen because marriage dispensation regulations in Indonesia do not provide a minimum standard. Regardless of the prospective bride and groom's age, they can still apply for a marriage dispensation from the court.³⁴

Local Culture in Makassar Affects Judges' Legal Considerations in Marriage Dispensation Cases at the Makassar Religious Court

Does the understanding of customary law in Makassar affect the Judge's legal considerations in determining the marriage dispensation case at the Makassar Religious Court? The author examines more through the decisions related to the marriage dispensation at the Makassar Religious Court to see the relationship between the Judge's legal considerations and the early marriage custom in Makassar. Therefore, the author summarizes it as follows:

Tabel 1: The relationship between the Judge's legal considerations and the early marriage custom in Makassar

No	Case No	Judge's Legal Considerations
1.	59/Pdt.P/2018/P A.Jnp.	Islamic law does not set limits for a person to marry. However, it is to maintain good customs solely to avoid <i>Mudllarat</i> deeds in general.

³⁴ Mustofa, "Submission of Marital Dispensation for Religious Courts in Central Java: Study of Minimum Pair Age Standards Along With Judge's Attitudes and Wisdomes."

2.	272/Pdt.P/2018/P A.Bjb	Islamic law categorizes a man as an adult if he has had a wet dream, while the limit for an adult woman is menstruation. According to the concept of customary law, "If maturity is related to the act of marriage, it recognizes the fact that if a man and a woman marry and they have child, then they are considered as adult, even though they are only 15 years old, on the other hand, if they are married, and cannot have children because they are only 15 years old and not yet capable of sexual intercourse, they are said to be immature."
3.	0042/Pdt.P/2018/ PA.Pps	The Panel of Judges believes that the concept of religion and custom views that one's maturity is not measured by age but by changes in behavior and physical appearance. The concept of customary law assumes that the prospective bride and groom cannot be considered adults if they cannot have sex. So even though one of them is 15 years old, they can do sexual intercourse; they are considered an adult.
4.	18/Pdt. P/2014/PA Wsp	The Legal Council considers that the relationship between the two is close; if they are not married immediately, it will lead to consequences of violating customary and religious law.
5.	0021/Pdt.P/2014/ PA.Sgt	The Legal Council considered that the couple were already difficult to separate. Moreover, the applicant and the family were worried that it would lead to acts prohibited by religion and local customs.

6.	23/Pdt.P/2011/P A.Wsp	The Legal Council considered that the two brides and grooms were inseparable. Two extended families have also agreed to marry them off immediately. The Judge views that if the application is not granted, it will lead to the adultery, as viewed by religion and customs.
7.	48/Pdt.P/2016/P A.Mrs	The Panel of Judges considered that both had carried out the proposal ceremony according to local customs and habits. The legal facts in the trial, the prospective groom, is obliged to marry the prospective bride because they have had sexual relations—six months of pregnancy.
8.	73/Pdt.P/2016/P A.Sgm	The marriage of both parties must be carried out immediately because it is feared that if not, they will do the forbidden things.
9.	74/Pdt.P/2014/P A.Wtp	Based on the applicant's child statement, the Judge saw that the bride and groom had been blinded by love and were close. They have also stated their agreement to get married to avoid things contrary to moral values and customs.
10.	96/Pdt.P/2012/P A.Skg	The maturity of each person cannot be judged only by their age. For example, the physical signs of a girl's maturity are menstruation. In addition, the Judge found another attitude of maturity in the applicant's child.
11.	126/Pdt.P/2014/P A.Skg	The habits developed in the community; if the proposal has been accepted and the time has been agreed upon but later canceled, the men feel very humiliated. It causes something that is not desirable.

12.	170/Pdt.P/2014/P A.Mrs	The Judge considered the witness' testimony that the woman's parents had accepted the man's proposal, handing over the money to buy every need for the events that had become customary. In addition, the Judge also considered that a person is sentenced to be obliged to marry if someone does not get married immediately, it will cause actions that violate norms and decency.
13.	214/Pdt.P/2015/P A.Pwl	The Judge considered that although the applicant's child had not yet reached the age, physically and mentally, he was already an adult. He already has the income to build a household. In addition, according to customs and religion, a person's maturity is measured not by age but by changes in behavior and physical.
14.	222/Pdt.P/2013/P A.Pwl	The Judge considers that physically and psychologically, the child is mature enough, even though he is still under 14 years. In addition, the customary law concept stipulates, "If maturity is related to the decision for marriage, customary law recognizes the fact that if a man and a woman are married and their children are declared adults, even though they are only 15 years old. On the contrary, if they are married, they cannot produce children because they cannot do sexual intercourse. They are said to be immature."
15.	229/Pdt.P/2015/P A.Skg	To prevent committing sin and harm, the Judge needs to give marriage dispensation to the couple, even though they are still 13 years and ten months old.
16.	313/Pdt.P/2016/P A.Pwl	The concept of Customary and Islamic Law measures maturity in terms of age and physical and behavioral changes in the

		applicant's child. Hence, the Judge considers that both of them are ready for marriage. In addition, to avoid harm between the two.
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The writer found that in 12 out of 16 marriage dispensation cases, the judges take the customary law as their legal consideration for granting marriage dispensation cases. In the 12 cases, the Judges quoted "customary law" or "the concept of Customary Law" in their deliberation. Subsequently, the writer divides into three categories for mapping the customary law taken as the Judge's consideration. *First*, the Judges quote or compare the Customary law and Islamic law. The Judges' argument in the rulings reveals that Customary law and Islamic law measure one's adulthood standard not solely by age; instead, it values physical changes and a child's behavior. *Second*, the Judges are no longer juxtaposing Customary law with Islamic law but religious law in general. *Third*, the Judges only apply Customary law or customs as their judgment.

One of the Judges' legal considerations implemented in granting the marriage dispensation cases is applying the foundation of the customary law concept. The concept used as consideration is that the standard of adulthood is associated with "mating," so that they are declared as an adult although they were only 14 or 15 years old. In addition, the Judges also stated in their decision that customary law stipulates that one is obliged to marry if both families had carried out a marriage proposal. If they do not marry immediately, it will cause violating norms and decency acts.³⁵

The Judge's legal considerations above show that local customary law influences judges in giving legal considerations at the Makassar Religious Court. The influence of this custom is apparent in the Judge's legal considerations, It confirms that people who want to marry are not measured by age. Social factors, culture, and religious beliefs and values have close relationships with South Sulawesi child marriage. Customary law in Makassar measures a person's maturity

³⁵ Case number 170/Pdt.P/2014/PA/Mrs and number 222/Pdt.P/2013/PA.Pwl

not from the prospective bride and groom's age but rather by looking at their readiness through physical changes and children's behavior. The case used as an example is the story of the Prophet Muhammad, who married Aisyah when he was nine years old, which also became the basis for understanding in Makassar society, so they assumed that child marriage was not prohibited by religion.

The Makassar people believe that child marriage is justified in Islamic teachings. Because Islam does not regulate the minimum age limit for marriage, marriage is seen from *aqil* and *baligh*. They judged that men and women who were *aqil* and *baligh* could marry without considering their age. This notion is supported by the community's assumption that luck will get closer the sooner a woman gets married. In addition, the family feels ashamed that their daughter does not get married soon. Cultural factors such as shame for family honor, uneducated parents, and economic burden influence the strength of cultural values that occur in South Sulawesi. Therefore, child marriage is culturally preferred to avoid unwanted pregnancies.³⁶ It is in line with Y's statement, which confirmed that parents feel proud when their children are married younger than others. Even 15/16 years old is considered old to get married.³⁷

The Judge has a reason why he makes customary law a judge's legal consideration because he may pay attention to local wisdom and explore the cultural values to which he is assigned, as stated in Law No 48 of 2009³⁸ regarding Judicial Power. Customs or local wisdom from one region to another is different. For example, Makassar people know more about customary than state law, so marriage age is not considered; whether the child has reached the age according to state law or not, the most important thing is that the child feels ready to get married. Therefore, judges often feel in a dilemma when they

³⁶ Kasjim, "Abuse of Islamic Law and Child Marriage in South-Sulawesi Indonesia."

³⁷ "Interview with Y, He Is One of the Judges of the Religious Courts in Gunung Kidul Yogyakarta. The Interview Was Conducted on April 17, 2018."

³⁸ Article 5 paragraph 1 states that Judges and Constitutional Justices are obliged to explore, follow and understand the legal values and sense of justice in society.

find contradictory cases between the rules in the law and the culture in which they are assigned.³⁹

Judges include customary law in legal considerations because they must explore, follow, and understand the values of law and justice in society. Second, by *Fiqhijyyah* rules, customary law can be used as law. It makes judges often dilemma between refusing and granting marriage dispensation applications. They refuse because the applicant's age is still considered too early to marry, but on the other hand, they see that local wisdom is powerful. They cannot assume whether the case decided can have an impact for a long time; the Judge cannot be ideal in deciding the dispensation of marriage.⁴⁰ In around 1975, judges were freed to refer to an unlimited no of texts (Islamic law/Fiqh) to support the arguments on which each decision was based; this resulted in different decisions from one Judge to another. These differences arise because the legal basis used is different. Meanwhile, the standard guidelines are now used for all judges in Indonesia.⁴¹ The Judge can still give a policy towards a decision if the policy does not violate the predetermined State law. The author, in this case, sees the applied diversity of laws in Indonesia; therefore, the author uses Legal Pluralism as a theory to observe the dominance of the law used by the judges in the Makassar Religious Court.

Legal pluralism is a study that looks at the diversity of a law that arises in society. The form of diversity is national, international, or traditional law. The three laws often interact in society, so sometimes, there is a claim of rights between one law and another. Customary law (custom) and national law, for example, both fight for existence in society, but state law or national law acts as the primary

³⁹ Interview with HA. Mukti Arto. He Is the Chief Justice of the Supreme Court., September 30, 2019.

⁴⁰ Interview with HA. Mukti Arto. He Is the Chief Justice of the Supreme Court.

⁴¹ Bernard Adeney-Risakotta, "Traditional, Islamic and National Law in the Experience of Indonesian Muslim Women†," *Islam and Christian-Muslim Relations* 27, no. 3 (2016): 303–18, <https://doi.org/10.1080/09596410.2016.1186422>.

agent.⁴² The judges more believe in local wisdom than national law as their ground of deliberation in granting marriage dispensation cases. The Judges argue that their policies are solely to provide justice to the parties in disputes at the court.⁴³

The author finds that the Judge's legal considerations include customary law as a legal consideration of marriage dispensation. Although they should explore the cultural values to which they are assigned, they do not need to clearly explain a customary law that is not aligned with the national law.

"If maturity is related to the act of marriage, customary law recognizes the fact that if a man and a woman marry and their child is declared an adult, even though they are only 15 years old, on the other hand, if they are married, cannot produce children because they are not yet capable of sexual intercourse. said immature"

The expression above, for example, makes people's understanding of underage marriage stronger. Even though many negative impacts are encountered when underage marriages occur, judges should explore local wisdom to strengthen positive legal considerations. According to Mukti Arto, local wisdom must be put aside when it is in contrast to the principle of Pancasila, the 1945 Constitution, applicable laws and regulations, justice and equality, and human rights values.⁴⁴ According to the author, judges can investigate cultural and customary values applied in the community by exploring positive customs and not conflict with state law to minimize the gap between customary law and state law.

⁴² Ratno Lukito, "Segitiga Hukum Internasional, Municipal Dan Islam: Memahami Kompetisi, Interaksi Dan Resolusi Hukum Di Malaysia," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 49, no. 1 (2015): 161–91.

⁴³ Muhammad Isna Wahyudi, "Judge's Discretion In Islamic Family Law: Indonesian Religious Courts Experience," *Jurnal Hukum Dan Peradilan* 3, no. 3 (2014): 203–12.

⁴⁴ H.A. Mukti Arto, *Penemuan Hukum Islam Demi Menwujudkan Keadilan* (Yogyakarta: Pustaka Pelajar, 2018).

Age Variation of Prospective Bride and Groom: Cases and Reasons for Applying for Marriage Dispensation at the Makassar Religious Court

The Marriage Law does not regulate the minimum age limit for prospective brides who apply for a marriage dispensation; this causes the children's ages to vary. The reasons put forward also vary. The presentation is as follows:

Tabel 2: Age and Reasons Variation for Applying for Marriage Dispensation at the Makassar Religious Court

No	No Case	Male Age	Female Age	Pregnant/ Not Pregnant
1.	59/Pdt.P/2018/PA.Jnp. ⁴⁵	17 years	16 years	no
2.	272/Pdt.P/2018/PA.Bjb ⁴⁶	27 years	14 years	pregnant
3.	0042/Pdt.P/2018/PA.Pps ⁴⁷	18 years	20 years	no
4.	18/Pdt. P/2014/PA Wsp ⁴⁸	19 years	14 years	no

⁴⁵ The reason for applying for a marriage dispensation is that the two have a close relationship. The families in both parties are worried that if they do not get married soon, something terrible will happen. The prospective groom works as a transportation driver, while the prospective wife does not yet work.

⁴⁶ The applicant wants to immediately marry his son because his daughter's relationship is very close to her future husband. In addition, the applicant's child is ready to marry.

⁴⁷ The reasons put forward by the parties that they want to get married soon are because the two are very close, so they are worried that they will cross religious prohibition. The bride and groom work in a workshop. The nominal salary earned is not included in the decision.

⁴⁸ The reason for applying for a marriage dispensation was that the two families had already set a wedding day and distributed invitations. Although the prospective groom's job is a farmer, his income is not stated in the decision.

5.	0021/Pdt.P/2014/PA.Sglt ⁴⁹	22 years	14 years	pregnant
6.	23/Pdt.P/2011/PA.Wsp ⁵⁰	22 years	15 years	no
7.	48/Pdt.P/2016/PA.Mrs ⁵¹	17 years	17 years	pregnant
8.	73/Pdt.P/2016/PA.Sgm ⁵²	18 years	17 years	no
9.	74/Pdt.P/2014/PA.Wtp ⁵³	21 years	14 years	no
10.	96/Pdt.P/2012/PA.Skg ⁵⁴	27 years	15 years	no
11.	126/Pdt.P/2014/PA.Skg ⁵⁵	28 years	14 years	no

⁴⁹ The reason for submitting a marriage dispensation is because the prospective bride is nine weeks pregnant. The prospective groom job is a daily laborer who earns Rp. 1,000,000 per month

⁵⁰ The two brides are already in love. Employment and income are not disclosed in the decision.

⁵¹ The female candidate is six months pregnant. The bride and groom do not have jobs.

⁵² The bride and groom do not have any jobs. The reason was that they were worried that if the bride and groom were not immediately married, they would do prohibited misconduct by religion and customs.

⁵³ The prospective groom is a farmer, while the woman is not yet working. They both applied for a marriage dispensation because the male candidate had proposed to the female candidate. His family agreed that the prospective groom was the right husband candidate for his child.

⁵⁴ The second marriage of the bride and groom is very urgent because the applicant has already received a proposal from the male side, so the applicant is worried that prohibited misconduct will occur if he is not married immediately. Moreover, their wedding invitations had already been printed and circulated, so it was hard to delay. The job of the prospective bride is a clothing seller.

⁵⁵ The prospective bride works as a tailor, while the groom works as a clothing seller. The reason is that the two are already dating; both applicants want to immediately marry off their children because they are worried that if they don't get married soon, it will impact prohibited things.

12.	170/Pdt.P/2014/PA.Mrs ⁵⁶	14 years	18 years	no
13.	214/Pdt.P/2015/PA.Pwl ⁵⁷	18 years	14 years	no
14.	222/Pdt.P/2013/PA.Pwl ⁵⁸	21 years	14 years	no
15.	229/Pdt.P/2015/PA.Skg ⁵⁹	32 years	13 years	no
16.	313/Pdt.P/2016/PA.Pwl ⁶⁰	21 years	14 years	no

The reasons put forward from the data above reveal that out of the 16 decisions, only three cases were submitted because of pregnancy, while the other 13 cases were not caused by pregnancy. Four factors are used as reasons for the applicants to marry their children immediately. First, Invitations. Second, because the prospective bride has already been chosen by her parents as a prospective husband, her parents think that the prospective groom is

⁵⁶ The female candidate works as an Alfamidi employee, while her future husband does not work. Therefore, applying for a marriage dispensation is because the two are very close and cannot be separated. Moreover, both teenage parents are worried that something forbidden will happen if they do not get married soon.

⁵⁷ Worrying about doing prohibited things is the applicant's reason to marry their children quickly. The prospective groom's job is a farmer, while the prospective bride does not work.

⁵⁸ The prospective husband's job is a farmer, while the prospective bride does not work. The reason for the courtship between the applicant's child and her future husband is one of the reasons put forward by the applicant.

⁵⁹ The prospective bride and groom work as farmers, while the prospective bride does not work. The applicant is worried they will commit adultery which the applicant uses to apply for a marriage dispensation for his child because, according to the applicant, the two prospective brides are very close.

⁶⁰ The prospective groom's job is a farmer, while the prospective bride does not work. The two have been dating for seven months; this is why the parents want to marry off his son even though he is still a minor. The applicant's concern about marrying off his child is because the relationship between the two is close and cannot be separated. Hence, the applicant is afraid that if his child is not married immediately, he will do misconduct prohibited by religion.

worthy of marrying his daughter. Third, the invitation has been disseminated widely because the proposal has been made. Fourth, parents worry about their children because the relationship between the bride and groom is very close. Finally, ten decisions were submitted because the applicant was worried that his child would do prohibited things by religion or custom if the bride and groom were not married immediately. The reason is that the bride and groom will do a misconduct demeanor, which parents do not want.

The dispensation cases above also show the various ages of every bride and groom in the Religious Courts. The written data found that the applicant's child (boy) was 14 years old, while the youngest child (girl) was 13 and ten months old. Most reasons for applying for a marriage dispensation in Makassar are not pregnancy but other factors behind the marriage. For example, a proposal made to a woman means that the man is obliged to marry the prospective bride. If the proposal has been accepted but not immediately married, it will lead to acts that violate norms and decency. Furthermore, the impact is more shame on the family. Invitations that have already been distributed also make it an obligation for a man to marry the prospective bride. If the marriage of both parties is canceled, it will look bad for both families, and the relationship between the two families will be tense.

Marriages held in the Bugis Society bind the bride and groom and bind the two families together. The bride must accept her husband's family as her own family and vice versa. A Buginese elder stated this:

"If you are looking for a future wife or husband, look for a partner who also likes your family. Because marriage is not only for the bride and groom but also for both parties' families."⁶¹

The author presents 16 cases of marriage dispensation above, four of which were submitted by the applicant in which the two prospective brides were still underage. Case No

⁶¹ Nurul Ilmi Idrus, "Behind the Notion of Siala : Marriage, Adat and Islam among the Bugis in South Sulawesi," *Intersections: Gender, History and Culture in the Asian Context*, no. 10 (2004): 1–15.

59/Pdt.P/2018/PA.Jnp, 48/Pdt.P/2016/PA.Mrs, 73/Pdt.P/2016/PA.Sgm and 214/Pdt.P/2015/PA.Pwl. One case was motivated by pregnancy, while the other three cases were because the parents fear their children will do the prohibited demeanor by religion or custom. The author only found one person out of four couples who already had a job (farmer) which is contained in the decision No 214/Pdt.P/2015/PA.Pwl. While the other three couples do not have jobs. Although work is not a determinant of marriage, work is one aspect considered necessary before someone gets married. Because the prospective groom will later be responsible for the prospective bride's life and their new family, work is vital to meet the needs of the new family of both parties.

Four cases submitted by the parents of the underage couple need to be reevaluated. Because marriage dispensation was used as the emergency path by both bride and groom who want to get married, their age has not met the requirement. The objective of minimum age is to achieve an ideal marriage, and however, with this marriage dispensation, many families are "taking advantage" of this loophole. If the marriage dispensation cases became more massive each year, it would no longer be an emergency path. This marriage dispensation is also regarded as one of the ways to get legal marriage for underage adolescents because the applicants are included in the child category.⁶²

Conclusion

The rules regarding the minimum age limit for marriage since 2019 have been renewed. The renewal of the minimum age for marriage has increased the number of applications for marriage dispensation in Indonesia, especially for women. Before 2019, a woman who is 16 years old does not need to ask for a marriage dispensation from the court. But since the age renewal, both woman and man younger than 19 years must apply for a marriage dispensation to the court. The author's study focuses on the case of

⁶² Nur Lailah Ahmad and Witriani, *Dispensasi Kawin Dan Penolakan Permohonan Di Pengadilan Agama Wates: Rasa Malu versus Keadilan Dan Perlindungan Perempuan* (Yogyakarta: Suka-Press in Cooperation with Pusat Pengarusutamaan Gender dan Hak Anak, 2019).

marriage dispensation at the Makassar Religious Court. The findings revealed that the legal basis for the judge in granting a marriage dispensation application was based on the concept of customary law or juxtaposing customary law with Islamic law. For example, the concept of custom which measures a person's maturity does not refer to their age, but rather looks at whether or not a person is "able to have sex". Or the judge considers that the Customary Law and Islamic Law do not provide a minimum age limit for marriage. This is to maintain good customs (avoidance *kemadharatan*).

In twelve of the sixteen applications that the author found, the judge cited customary law or the concept of customary law in the judge's legal considerations. Four of the all petitions juxtapose customary law with Islamic law. Thus, the legal basis that judges tend to use in granting marriage dispensations at the Makassar Religious Court is customary law. Furthermore, the authors found that the age of the youngest prospective groom and bride were 14 and 13 years old respectively. The application for a marriage dispensation is stated in the case of marriage dispensation No 170/Pdt.P/2014/PA.Mrs and 229/Pdt.P/2015/PA.Skg. The reason for submitting a marriage dispensation No 170/Pdt.P/2014/PA.Mrs is because the bride and groom are very close, while the reason 229/Pdt.P/2015/PA.Skg is proposed because they are dating. The judge is indeed given the authority to explore the customary law where he is assigned, but the customary law that is explored or used as a legal basis is customary law that supports national law, not weakens it with national law.

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