



Optimizing The Role of Religious Jurisdiction in Preventing Child Marriage in Gorontalo Province

Aliyas¹, Suardi Rais^{1*}, A. ST. Kumala Ilyas¹, Jupri¹, Yoslan K Koni¹

¹Universitas Ichsan Gorontalo, Indonesia

*Correspondence: suardi.rais@mail.com

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ABSTRACT

The prevalence of child marriage under 18 years released by the Central Bureau of Statistics in 2020 places Gorontalo Province in the 6th highest place in Indonesia with a rate of 23.16%. The data is corroborated by the records of the Supreme Court who receive cases of requests for dispensation from marriage which each year has increased. The religious court's allusion to child marriage through a marriage dispensation mechanism. A quo mechanism is regulated in Supreme Court Regulation (PERMA) Number 5 of 2019 concerning Guidelines for Trialing Applications for Dispensation of Marriage. Various factors behind the request for underage marriage include: because they really want to get married, because they are pregnant out of wedlock and there are applications for girls whose age has not been justified by law. On the basis of these problems, this study aims to provide space for the religious court as the final determinant through legal considerations and its sociological aspects, prioritizing prevention efforts by narrowing the space for applications, examining cases more carefully, and the commitment of the parties to respond to the negative consequences of child marriage. The research method used is the legal behavior approach that occurs in society (socio legal research).

Keywords: Child Marriage; Optimization; Prevention; Religious Courts

1. Introduction

Child marriage is a form of child abuse. Forced child married or because of certain conditions must be married under the age of 18 years will have greater vulnerability both in terms of access to education, quality of health, potential experiencing violence and living in poverty. potentially even spawn intergenerational poverty. (Puskapa, 2020)

The practice of child marriage is rooted in various aspects, both individual, family, community and structural. In general, there are at least 3 factors that are closely related to the practice of child marriage, namely educational factors, economic factors, and child environmental factors. The 2020 Susenas data shows that on the education factor the level of educational attainment is higher for those who are married over 18 years. For women, almost half (45.56 percent) who married at an adult age completed senior high school (SMA). The average length of schooling for both women and men aged 20-24 who were married after the age of 18 was higher than those who were married before the age of 18. In terms of economic factors, for poor households, mostly girls are considered an economic burden and marriage is seen as a solution to escape from poverty and this is in accordance with the 2020 Susenas data which shows that children from families from the lowest economic quintile are most at risk of child marriage. While on the child's environmental factors, in this case what is meant is the child's place of residence. Susenas data shows that girls in rural areas are twice as likely to get married as girls living in urban areas (UNICEF et al., 2020).

Quoted from Quentin Wodon's research, early childhood is a period critical in a child's development. Bad conditions at the beginning of life not only affect the physical growth of children, but also the development and abilities of the brain them as a consequence to survive long into adulthood (Wodon, 2016)

The spirit of preventing child marriage shown by all stakeholders followed by the government's commitment through the 2020-2024 RPJMN from 11.2 percent in 2018 to 8.74 in 2024 is a response to the emergency of child marriage. Not only until there the government continues to make breakthroughs in national policies and campaigns and government partners through campaigns to stop child marriage, Child Friendly Cities,

Community-Based Integrated Child Protection as well as reproductive health education and Sexuality is considered not able to reduce the number of child marriages.

In 2019 there was a change in the Marriage Law where the age requirement for marriage was for women are equated with the marriage age limit for men, which is 19 years old. However, the law still provides room for exceptions through dispensations marriage. This then gives way to child marriage, according to the data issued by the supreme court indicates an increase in requests for dispensation In 2019, 23,126 cases were recorded, then in 2020 there were quite a sharp increase with a total of 35,441 cases (Musthofa & Dzul Farhan, 2021; Lahaliang, et. al., 2022).

Based on the National Socio-Economic Survey (SUSENAS) on child marriage in Indonesia, Gorontalo Province is the 6th highest area after Central Sulawesi province.(BPS, 2018) This is in line with data released by religious courts spread across 6 districts/cities in 2020, there were 918 requests Article 2 of the Marriage Law stipulates that marriage is valid if it is carried out according to the laws of each religion and belief. Then, every marriage is recorded according to the applicable laws and regulations. It should be noted, regarding the minimum age for a person to marry, Article 7 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage stipulates that marriage is only permitted if the male and female parties have reached the age of 19 year. This means that the dispensation of marriage as a deviation from the rules regarding the age limit of children is the main estuary for obtaining the legalization of child marriage. If the judge does not give permission to marry, it is certain that child marriage will not occur. The problem raised by this research is the extent of the role religious courts in reducing the level of child marriage. and what factors underlie the judge granted the application for child marriage dispensation

2. Method

The type of research used is empirical research, namely research with field data as the main data source, such as the results of interviews and observations. Empirical research is used to analyze law which is seen as patterned social behavior in people's lives that always interact and relate to social aspects. So the approach in this study uses a qualitative approach, which is a way of analyzing research results that produce analytical descriptive data, namely data that is stated in writing or verbally as well as real behavior, which is researched and studied as a whole. (Qamar et al., 2017)

The steps that the writer carried out to analyze the accuracy of the data after it was obtained were: 1) Editing, the first stage was carried out by re-examining the data that had been obtained, especially from its completeness, clarity of meaning, suitability and relevance to other data groups so as to maximize research and quality data. 2) Classifying, reducing existing data by compiling and classifying the data obtained into certain patterns to facilitate reading and discussion in accordance with research needs. 3) Verifying, is proving the correctness of the data to guarantee the validity of the data that has been collected. This verification is carried out by meeting data sources (informants, informants and respondents) and providing the results of interviews with them to respond to whether the data is appropriate or not. 4) Analysing, the process of presenting data which have been classified, then interpreted by linking existing data sources and then analyzed according to the items studied in this study.

3. Result and Discussion

3.1 the Role of the Religious Courts in Suppressing the Level of Child Marriage

During the period from 2020 to 2021 the increase and decrease in prevalence at the district/city level in Gorontalo Province varies in magnitude. Following are the data on requests for dispensation from marriage at the Religious Courts in Gorontalo Province.

Table 1. Data on requests for dispensation from marriage at the Gorontalo Religious Court

No	Year	Number of Applications
1	2020	189
2	2021	221
3	2022	133

Data source: SIPP Gorontalo Religious Court

Table 1 above shows that the request for dispensation from marriage at the Goorentalo Religious Court is still quite high, this can be seen from the increase in requests every year. In 2020 there were 189 requests, then in 2021 there were 221 requests and in 2022 there were 133 requests.

Table 2. Data on requests for dispensation from marriage at the Kwandang Religious Court.

No	Year	Number of Applications
1	2020	-
2	2021	62
3	2022	98

Data source: SIPP Gorontalo Religious Court

Table 2 above shows that requests for dispensation from marriage at the Kwandang religious court also experience an increase in requests every year. In 2020 there will be no application considering that at that time North Gorontalo Regency was still in the same court area as Gorontalo Regency to be precise the Limboto Religious Court. After officially operating Kwandang PA, in 2021 the Kwandang Religious Court received 62 cases of dispensation from marriage, then in 2022 there was an increase in requests totaling 98 cases.

Table 3. Data on requests for dispensation from marriage at the Limboto Religious Court

No	Year	Number of Applications
1	2020	250
2	2021	289
3	2022	254

Data source: SIPP Gorontalo Religious Court

Table 3 above shows that requests for marriage dispensation at the Limboto religious court do not seem to have increased significantly from year to year, but the Limboto Religious Court is the court that receives the most requests for marriage dispensation each year among the other religious courts. For example, in 2020 there were 250 requests, in 2021 there were 289 requests and in 2022 there were 254 requests.

Table 4. Data on the Marisa Religious Court's application for dispensation from marriage

No	Year	Number of Applications
1	2020	98
2	2021	152
3	2022	67

Data source: SIPP Gorontalo Religious Court

Table 4 above shows that requests for dispensation from marriage at the Marisa religious court. In 2020 there were 98 requests, then in 2021 there were 152 requests and in 2022 there were 67 requests.

Table 5. Data on requests for dispensation from marriage at the Suwawa Religious Court

No	Year	Number of Applications
1	2020	159
2	2021	240
3	2022	138

Data source: SIPP Gorontalo Religious Court

Table 5 above shows that requests for dispensation from marriage at the Suwawa religious court. In 2020 there were 159 requests, then in 2021 there were 240 requests and in 2022 there were 138 requests.

Table 6. Data on requests for dispensation from marriage at the Tilamuta Religious Cour

No	Year	Number of Applications
1	2020	124
2	2021	76
3	2022	34

Data source: SIPP Gorontalo Religious Court

Table 6 above shows that requests for dispensation from marriage at the Tilamuta Religious Court have decreased from year to year. In 2020 there were 124 requests, then in 2021 it decreased to 76 requests and in 2022 there were 34 requests.

The decline in the number of child marriages cannot be separated from the role of the courts. The Supreme Court has its own policy by issuing Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Trial Applications for Dispensation of Marriage. The presence of this Perma aims to tighten the occurrence of marriage at a young age and try as much as possible if marriage dispensation is given, it must consider the best interests of the child. Therefore, every application for dispensation must be presented by the child to court with the aim of getting a response from him regarding the reasons that prompted him to marry at a young age.

Seeing the high number of requests for dispensation from marriage, the role of the Religious Courts is indeed important in preventing child marriages. Child marriage is related to various factors which can be structural in nature, as well as those originating from the community, family, as well as individual capacities. The results of the study show that children who are more vulnerable to child marriage are girls, children who live in poor families, children who live in rural areas and children who have low education.

In the last 10 (ten) years there has only been a small decline in child marriages in Indonesia. Therefore the government responded with several policy breakthroughs. Among them is the change in the minimum age of marriage for women as stipulated in Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage. The law has included a change in the minimum age for marriage for girls from 16 years to 19 years. This has accommodated the principle of equality and also a progressive form of affirmation. In addition, government partner institutions have also developed several intervention programs, such as a national campaign to stop child marriage, child-friendly cities, community-based reproductive and sexual health education and integrated child protection. The various government efforts and programs above have in fact not been able to prevent and overcome child marriage and its effects. So that more maximal, fast and integrated efforts are needed to prevent and overcome child marriage. These efforts include:

- a) Strengthening laws and policies in protecting children from marriage
- b) Overcoming poverty which is often a driving factor for child marriage.
- c) Ensuring child education and health services
- d) Providing education to the public about child marriage
- e) Support further research on the protection of women and children.
- f) Optimizing the role of the court in preventing child marriage.

Among the several efforts above, the Religious Courts (PA) also have a significant role in preventing child marriage in Indonesia. He has the authority to determine whether or not a girl or a boy under the age of 19 (nineteen) can marry. This then became the point of contact for the religious courts against child marriages through the marriage dispensation mechanism. The authority of the court as regulated in the Marriage Law is then further regulated in Supreme Court Regulation (PERMA) Number 5 of 2019 concerning Guidelines for Trial Applications for Dispensation of Marriage. It can be said that the Religious Courts are the final determinant of child marriage. If there is a child marriage that has been rejected by the Court in its application for dispensation and continues to carry out the marriage, it will not be recorded at the KUA and the marriage is an "underhand marriage", which has no legal force.

With regard to the age limit for marriage, the Qur'an does not specifically discuss the age of marriage, but only underlines the signs and signals, so it is up to the fiqh and the Muslims to determine the best age limit according to the conditions and signs. -sign that has been determined and the place where the law was promulgated.(Ahyani, 2016)

With the dispensation of marriage, religious court judges play an important role. Muara utama to get the legalization of child marriage is through a judge. If the judge does not give permission to marry, it is certain that marriage will not take place for the child. Conversely, if the judge gives permission, child marriage will still occur. Therefore, the judge as the final decision maker, through legal and sociological considerations, puts forward efforts to prevent child marriage by narrowing the scope for applications for marriage dispensation, examining

cases more carefully by increasing the burden of proof, as well as the commitment of the parties to respond to the negative consequences arising from child marriage.

Based on data from the religious courts, the facts show that the role of judges in efforts to prevent marriage is considered to be still not optimal, where on average, requests for dispensation from marriage submitted by parents/guardians of children are very rarely rejected by judges. where the facts of the trial show that the marriage to be carried out is very urgent and accompanied by sufficient evidence.

Based on the research results, there are at least three forms of efforts made by religious court judges in the jurisdiction of Gorontalo province in an effort to reduce the level of child marriage, namely:

a. Mediate against both parents/guardians.

Mediation by judges is to provide advice and views to parents and children about the consequences of marriage. Participation of parents/guardians in requests for dispensation from marriage is the main supporting factor for child marriage. So by giving constructive advice to parents about the consequences of child marriage, it is hoped that it can provide understanding to both parents to think about the future of their long-term children. Especially the logical consequences that arise when child marriages continue. Conflicts or disputes in the household often occur in early marriages, this is due to the psychological maturity of the child. Not to mention the problem of reproductive health and high mortality for mothers if they marry at an early age.

Quoted in a study conducted by Fadlyana and Larasaty, it was stated that pregnancy at the age of less than 17 years increases the risk of medical complications for both the mother and the child. Pregnancy at this very young age is correlated with maternal mortality and morbidity. It was stated that girls aged 10-14 years had five times the risk of dying during pregnancy or childbirth compared to the age group 20-24 years, while this risk doubled in the age group 15-19 years. The maternal mortality rate under the age of 16 in countries with middle and low incomes is even higher, up to six times.(Fadlyana & Larasaty, 2016)

The child's body anatomy is not ready for the process of conceiving or giving birth, so complications can occur. Pregnancy at a very young age also carries a risk of maternal and infant mortality, abnormalities in the baby or birth defects, high blood pressure and premature birth, babies born with below normal weight, sexually transmitted diseases, and postpartum depression. (Anjarwati, 2017)

b. Identify the basic desire to get married.

The judge's effort to prevent child marriage is to ensure that the desire for marriage comes from the child. It is not precisely the desire of the parents who are the most active in putting forward their desire to avoid the responsibility of caring for the child until they are independent or there are other things from the wishes of the child's parents so that they want to marry off their child.

c. Pay attention to conformity of facts between parents, children and witnesses.

Conformity between the applicant's reasons and the statements of witnesses, parents and children becomes the judge's guide in formulating his legal considerations so that on that basis whether the application is granted or rejected. The legal considerations here mean that when the judge makes a decision, it must be in accordance with the arguments and legal evidence submitted.

3.2. Factors Underlying the Judge Granting the Request for Child Marriage Dispensation

Marriage dispensation is a marriage that occurs in a couple or one of the candidates who wants to marry at an age below the standard limit of marriage age that has been set by law. These restrictions are regulated in the provisions of state law, namely the Civil Code and the Marriage Law). The conditions for marriage according to civil law are:

- a) Internal requirements/material requirements/subjective requirements are differentiated into absolute and relative (Articles 27 to 49 of the Civil Code)
- b) external conditions / formal requirements / objective requirements (Article 50 to Article 84 of the Civil Code)

The internal requirements regulate the minimum limit for the bride and groom to marry, which refers to the provisions of Article 29 of the Civil Code, which stipulates that a marriage can take place for a man if he is 18 years old and for a woman if she is 15 years old. The internal requirement, which limits the age of marriage for men and women, is a concrete step to prevent early marriage from occurring. In contrast to the Marriage Law

based on the latest changes, namely Law Number 16 of 2019 changes to Law no. 1 of 1974 concerning marriage where marriage is only permitted if a man and a woman have reached the age of 19 (nineteen) years. even though there are deviations from the age provisions referred to in the a quo provision where the parents of the man and/or the parents of the woman can request dispensation from the Court with very urgent reasons accompanied by sufficient supporting evidence.

From these two legal perspectives, it can be concluded that between the Civil Code and Law no. 1 of 1974 concerning marriage strictly stipulates an age limit for marriage to take place. This restriction is an effort to prevent early marriage, especially for women who have not yet attained legal proficiency.

According to the Compilation of Islamic Law (KHI), the age limit for marriage is the same as Law no. 1 of 1974 concerning marriage, in Article 15 Paragraph (2) KHI emphasizes that in order to enter into a marriage a person who has not reached the age limit of 21 years must obtain a permit as stipulated in Article 6 Paragraph (2), (3), (4) and (5) Marriage Law.

The challenges faced by judges in preventing the practice of marriage dispensation are as follows: first, Law number 16 of 2019 provides space for children's parents to get married. The birth of this new law by changing the minimum age limit which is higher than before has caused an increase in the number of child marriages. Based on the results of the study, it was found that there were 2 (two) reasons underlying the judge in granting the request for marriage dispensation, namely:

a. Benefit is more important than harm.

The main principle that is the priority of the judge giving dispensation for child marriage is the benefit of the child. The benefit of the child is everything that brings benefit to oneself and the child's future. Benefit for him is that the child is protected from adultery and immorality which is prohibited by religion. Religion strictly prohibits Muslims from falling into adultery, because adultery results in unclear heredity. In a fiqh rule it is explained that "Rejecting damage takes precedence over attracting goodness"

While the problem of the disadvantages of child marriage is faced in two forms, namely first, the disadvantages of child marriage, which actually still require adequate guidance from parents and are not yet psychologically and financially mature to build a household. Second, if the request is rejected, it will certainly have an adverse impact on the prospective bride and groom.

For example, in the case of decision number 0029/Pdt.P/2017/PA.Gtlo where the applicant submitted a request for dispensation to marry the Petitioner's son, Adam Djafar bin Amin Djafar, who was only 17 years old. The judge's consideration in the a quo decision is because the Petitioner's child and his future wife have been dating for a long time and love each other and agree to continue marriage (building a household), the two cannot be separated, and have even been pregnant for about 4 months, so to avoid negative public opinion and the possibility of unwanted things and mafsada that is greater than the two of them, then both of them need to be married immediately.

Then in another case, namely case number 0091/Pdt.P/2017/PA.Lbt where the applicant Rahman H Rauf bin Habi Rauf submitted a request for dispensation to marry off his son named the Petitioner's biological child named Irma Rauf bint Raman H. Rauf who is 15 (five fifteen) years where in the consideration of the judge saw that the close relationship (dating) of the Petitioner's child with her future husband was very close even the Petitioner's child was 15-16 weeks pregnant and both of them had agreed to continue this relationship by forming a household and the parents of the prospective bride have been deliberating, this shows that the marriage of the two prospective bride and groom is very urgent if it is allowed to take place without continuing with the marriage it will be able to bring harm to both of them, so that the benefits obtained if the marriage is postponed waiting for the Petitioner's child to reach the age of 16 should be ignored

Seeing the two forms of the judge's decision above, it can be concluded that the judge when examining the application for dispensation of marriage pays close attention to the evidence submitted to the trial and if in the trial the judge is faced with two forms of reasons, namely because the two have been in a relationship for a long time and or because they have become pregnant out of wedlock. The reason is that it is very difficult for judges to reject because they always refer to Islamic legal theory in fiqiyah rules which reads "Rejecting damage takes precedence over attracting goodness."

b. Best Interests for Children

The best interest for the child is that all actions and policies related to the child must consider the best interest for him/her. The Child Protection Law regulates four important elements in order to optimize child protection, namely: non-discrimination; best interests of the child, survival, development and respect for the child's opinion. These four things are the main basis for all stakeholders, both family, community and government, which must be realized in empirical reality for children. (Mansari & Rizkal, 2021)

4. Conclusion

Marriage dispensation as a deviation from Article 7 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage stipulates that marriage is only permitted if the male and female parties have reached the age of 19. become the main estuary to obtain the legalization of child marriage. Therefore, the religious courts in an effort to reduce the level of child marriage take at least three forms that religious court judges take, namely: (1) mediating the two parents/guardians, (2) identifying the basic desire to marry, and (3) paying attention to the suitability of facts between parents, children and witnesses. Nevertheless, the role of the Religious Courts in efforts to prevent marriage is considered to be still not optimal. There are 2 (two) reasons that underlie judges in granting requests for dispensation from marriage, namely that benefit is more important than harm and the best interests of the child.

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