

Religious Court Dispensation on Applications for Child Marriage License in Islamic Law Perspective (Study of the Luwuk Religious Court)

Citra Dewi^{1*}, Maisa², Andi Purnawati³

¹²³Pascasarjana Universitas Muhammadiyah Palu

(*)Email Korespondensi: dewicitra421@gmail.com

ABSTRACT

The dispensation for child marriage granted by the judge in the religious court is a provision of Law Number 16 of 2019 concerning Marriage. It states that the age limit for marriage for boys and girls is the same, which is 19 years. Then when examined from the perspective of Islamic law based on the compilation of Islamic law (KHI), it does not set a standard age for marriage.

The research was conducted at the Religious Courts of Luwuk Regency, the Office of Religious Affairs (KUA) of North Luwuk District, and the Kilongan Village Office. The research was carried out in June – July 2022. The research source was the head of the Office of Religious Affairs (KUA) Kec. North Luwuk, the young clerk of the Luwuk Religious Court application, and the secretary of the whole kilongan.

Based on the results of the research obtained above, the researchers found that the dispensation against child marriage permits from the perspective of Islamic law should still prioritize Islamic values but not override the laws and regulations that apply in Indonesia, meaning that society in general and parents in particular observant to see the principle of benefit in marrying off their children at an age that is not yet mature enough according to the law.

The researcher's suggestions are (1) In granting marriage dispensation permits to children, of course, still pay attention to the principle of benefit that comes from Islamic law itself, namely, the purpose of marriage, the benefits of marriage, and the nature of marriage. (2) To form a firm and careful attitude of a judge, it requires emotional maturity of a judge who handles a marriage dispensation application.

Keywords: *Dispensation, Religious Court, Child Marriage.*

ABSTRAK

Dispensasi perkawinan anak yang diberikan oleh hakim di pengadilan agama, merupakan suatu ketetapan dari Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan. Yang menyatakan batas usia perkawinan bagi anak perempuan dan laki-laki disamakan yaitu 19 tahun. Kemudian apabila dikaji kedalam prespektif hukum islam berdasarkan kompilasi hukum islam (KHI) tidak menetapkan standar umur perkawinan.

Penelitian dilakukan di Pengadilan Agama Kabupaten Luwuk, Kantor Urusan Agama (KUA) Kecamatan Luwuk Utara, dan Kantor Kelurahan Kilongan. Penelitian dilaksanakan pada bulan Juni – Juli 2022. Yang dijadikan sumber penelitian adalah, kepala Kantor Urusan Agama (KUA) Kec. Luwuk Utara, panitera muda permohonan Pengadilan Agama Luwuk, dan sekretaris luruh kilongan.

Berdasarkan hasil penelitian yang diperoleh diatas, peneliti menemukan bahwa Dispensasi terhadap Izin perkawinan anak yang ditinjau dari prespektif hukum Islam seharusnya tetap mengedepankan nilai-nilai keIslaman tetapi tidak mengesampingkan aturan Perundang-undangan yang berlaku di negara Indonesia, artinya bahwa masyarakat pada umumnya dan orang tua khususnya jeli melihat asas kemanfaat dalam menikahkan anak remeka di usia yang belum cukup dewasa menurut Undang-Undang.

Adapun Saran Peneliti adalah (1) Dalam memberikan Izin dispensasi perkawinan kepada anak tentunya tetap memperhatikan asas kemanfaatan yang bersumber dari hukum Islam itu sendiri yaitu, tujuan pernikahan, manfaat pernikahan, dan hakikat pernikahan. (2) Untuk membentuk sikap tegas dan penuh kehati-hatian seorang hakim maka dibutuhkan kematangan emosional dari seorang hakim yang menangani permohonan dispensasi perkawinan.

Kata Kunci: *Dispensasi, Pengadilan Agama, Perkawinan Anak.*

1. INTRODUCTION

Basically, Islamic law is not regulated absolutely about the age limit for marriage. There are no religious provisions regarding the minimum and maximum limits for carrying out marriages, giving leeway for humans to regulate them. Marriage in Islam is not only an institution that justifies a legal sexual relationship, but there is a universal legal aspect in the social institutional system which is very important, because in society there are various groups and various interests of each so that there is a general involvement in society.

In general, underage marriages carried out under Islamic law are classified as permissible marriages because there are no rules in the sources of Islamic law, namely the Qur'an and Hadith that prohibit underage marriages. However, the jurists give the rights of the children concerned, after they grow up to carry out the marriages that they have carried out or after the Faskh path. This right is called the right of *khiyar*, which means the right to guarantee the existence of volunteers of the parties concerned for the time that their guardians exercised during their childhood.

Exactly in 2020 the Luwuk Religious Court of Central Sulawesi Province, heard the application for dispensation for the marriage of minors, on behalf of the child Amelia Pari Adam Binti Parli Adam aged (18 years 8 months), and on behalf of the child Vani Sofianti Binti Slamet Riyadi aged, (17 year 9 months). From the

application for the marriage of minors, the judge grants the request or grants dispensation to the applicants to carry out the marriage. In fact, marrying a child who is still underage is a deviation from Article 7 paragraph (1) of the Marriage Law Number 1 of 1974 but this deviation can be made possible by the existence of a dispensation from the court as stated in Article 7 paragraph (2) that in the event of a deviation from the provisions age as referred to in paragraph (1). The parents of the man and/or the parents of the woman can request a dispensation from the Court on the grounds that it is very urgent and accompanied by sufficient supporting evidence so that this means that it is still permissible to marry the prospective groom and bride even if they are still minors with an urgent clause. on that article.

One of the marriage requirements that apply in Indonesia according to Law Number 1 of 1974 concerning Marriage which has been amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage is related to the age of marriage, the prospective bride and groom, both men and women have reached the age of 19 (nineteen) years.

If there is a deviation from the requirements for the age of marriage mentioned above, based on the provisions of Article 7 paragraph (2) of the Marriage Law, the marriage can only be held after receiving a dispensation from the court. Parents or guardians of the prospective groom and/or woman who have not reached the age of marriage apply for a marriage dispensation to the court, the Religious Court for those who are Muslim and the District Court for those of other religions. Marriage dispensation is basically a concession given to people who want to continue to marry off their underage children even though the law has prohibited it, but the clause can apply for a marriage dispensation to the court to create legal indecision against underage marriage, which should not be done however, such deviations can be made possible by a court order.

To anticipate disparities in handling cases of marriage dispensation applications. Because the laws and regulations have not explicitly and in detail regulated the process of adjudicating cases of marital disparity, the Supreme Court of the Republic of Indonesia issued Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Disparity in Marriage. The Supreme Court responded quickly to the Revision of the Marriage Law by issuing the Marriage Disparity Regulation in order to realize the examination of marriage disparity cases that were oriented to the interests of the child by taking into account moral, religious, customary and cultural aspects, psychological aspects, health aspects, and the impacts. This study focuses on the Dispensation of the Religious Courts Against Child Marriage Permits in the Perspective of Islamic Law, How do judges give dispensations to child marriages in religious courts.

2. LITERATURE REVIEW

The term marriage according to Islam is called marriage or *ziwaj*". These two terms are seen from the meaning of the words in Indonesian there is a difference, because the word "nikah" means sex between husband and wife while "*ziwaj*" means an agreement between a man and a woman who bind themselves in a husband and

wife relationship to achieve the purpose of life in carrying out worship. to Allah. Therefore, before getting married, the prospective husband and wife are really willing to continue their life as the implementation of Allah's commands as stated in the Qur'an. And according to its form, Islam manifests a family structure as husband and wife who is blessed by Allah through a covenant (aqad) of spiritual and physical purity/sacred value.

The purpose of marriage is also contained in the Qur'an, The purpose of marriage itself is clearly stated in the Surah Ar-Rum verse 21 which means: *And among the signs of His power is that He created for you wives of your own kind. , so that you tend to and feel at ease with him, and He made between you love and compassion. Verily in that are signs for a people who think. (Q.S. ar-Rum: 21).*

Marriage is obligatory for someone who is financially capable and is also very at risk of falling into adultery. This is because it is obligatory to protect oneself from adultery. So if the only way out is by getting married, of course getting married for someone who almost falls into the abyss of adultery is obligatory. The scholars do not differ in opinion regarding the obligation of a person to marry if he is a capable person and is afraid of the risk of adultery on him. And if he is not able, then Allah will surely make him sufficient in terms of his sustenance, as His word which means: *And those who are not able to marry should keep their chastity (self), so that Allah enables them with His bounty. And the slaves you have who want a covenant, make a covenant with them, if you know there is any good in them, and give them a share of the treasure God has given you. And do not force your female slaves to commit prostitution, while they themselves desire chastity, because you seek worldly gain. And whoever forces them, then indeed Allah is Forgiving, Most Merciful (to them) after they were forced. (Surat an-Nur: 33).*

2.1 Dispensation Against Child Marriage Permit Application

Marriage dispensation, according to the Big Indonesian Dictionary, is a permit to release from an obligation or prohibition so the dispensation is an allowance for something that is actually not allowed to be done or implemented. Marriage dispensation has the meaning of easing a certain limit (age limit) in bonding between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Godhead.

Dispensation is an exception to the provisions of legal regulations or laws that should apply formally. Marriage dispensation is an exception to the provisions of Article 7 paragraph 1 of Law No. 1 of 1974 concerning the minimum age limit for marriage for male and female candidates who have not reached the minimum age for marriage due to several things or under certain circumstances. In the Supreme Court regulation concerning Guidelines for adjudicating applications for marriage dispensation as regulated in Article 1 paragraph 5 states that: Marriage dispensation is the granting of a marriage permit by the court to a prospective husband/wife who is not yet 19 years of age to marry. Article 3 explains the guidelines for adjudicating the application for Dispensation for Marriage which aims to:

- a. Applying the principles as referred to in Article 2;

- b. Ensuring the implementation of a judicial system that protects children's rights;
- c. Increase the responsibility of parents in the context of preventing child marriage;
- d. Identifying whether or not there is coercion behind the application for Marriage Dispensation; and
- e. Realizing the standardization of the process of adjudicating applications for Dispensation for Marriage in the Court.

In the second part of the Supreme Court regulation number 5 of 2019 it regulates the administrative requirements for submitting an application for a marriage dispensation as stated in Article 5 paragraph

(1) the administrative requirements for submitting an application for Dispensation for Marriage are:

- a. Application letter;
- b. Photocopy of Identity Card of both Parents/Guardians;
- c. Photocopy of Family Card;
- d. Photocopy of Resident Identity Card or Child Identity Card and/or Child's Birth Certificate;
- e. Photocopy of Identity Card or Child Identity Card and/or birth certificate of the prospective husband/wife; and
- f. Photocopy of the child's latest education certificate and/or still-school certificate from the child's school.

(2) If the requirements as referred to in paragraph (1) letter b to letter f cannot be fulfilled, other documents can be used that explain the identity and educational status of the Child and the identity of the Parent/Guardian.

The dispensation of the age of marriage is not granted without any reason. There are many factors behind the determination of the age dispensation for marriage. Both factors from the applicant and from the judge's consideration as the giver of the age of marriage dispensation. From the decisions that have been made, many considerations have been put forward, such as to avoid things that could lead to adultery, because the two prospective brides feel they are ready to marry.

2.2 Definition of Child Marriage

According to the Big Indonesian Dictionary, children are etymologically defined as humans who are still small or humans who are not yet mature. According to R.A. Kosnan "Children are young people at a young age in their soul and journey of life because they are easily influenced by their surroundings". Therefore, children need to be taken seriously. However, as the most vulnerable and weak social beings, ironically, children are often placed in the most disadvantaged position, do not have the right to speak up, and even become victims of violations of their rights.

As Law Number 1 of 1974 concerning Marriage which has been amended by Law Number 16 of 2019 stated that women have equated the age limit with men, which is 19 (nineteen) years in marriage, and so does the Law Number 23 of 2002 which has

been amended by Law Number 35 of 2014 concerning Child Protection, it is stated that children are those aged between eight to eighteen years, including in this sense still in the womb.

One of the triggers for the emergence of problems or controversies in child marriage is because on the one hand there are groups who use justification based on the provisions of *fiqh* or the rules of Islamic law. Those who use Islamic legal justification are only based on a textual understanding of verses or hadiths related to the issue of age of marriage. Then for those who have a different view of rejecting child marriage, they say that the context of the verse or hadith about the age of marriage at that time (the lifetime of the Prophet) must be adapted to the present. Nowadays, based on the results of surveys or research, child marriage has more harmful effects than benefits.

2.3 Legal Basis of Marriage Dispensation

The issue of marriage dispensation is one of the issues that has always been a concern among many researchers in Indonesia. The aspect that is being looked at is related to the aspect of child protection, because if a child does not reach the age limit set by laws and regulations, a dispensation can be requested to the Religious Courts in accordance with their respective jurisdictions. The Big Indonesian Dictionary defines marriage dispensation as permission to release from an obligation or prohibition.

In other words, marriage dispensation is something that was initially not allowed but given leeway to become permissible by following certain conditions that have been determined by legislation. According to Iqbal, marriage dispensation is a concession or waiver granted by the competent authorities, namely the Religious Courts and the Syar'iyah Court in the case of marriage of one of the bride and groom, both men and women who are still underage and are allowed to carry out marriages provided that they have received dispensation. from the competent authority. In other words, this marriage dispensation only exists when the party who feels the need must submit an application for the leniency to the court. The judge becomes the person who has the authority to determine whether or not marriages under children are allowed to continue by giving a determination of the permissibility of continuing the marriage. At the empirical level, the phenomenon of underage marriage has actually been practiced by the Indonesian people for a long time which is motivated by various factors, including economic problems, lack of education level, understanding of culture and religious values or due to having been pregnant before marriage (married). by accident). Another factor is because of the support from the parents of the couple's children who want to get married. This is based on Article 7 of the Regulation of the Minister of Religion Number 11 of 2007 concerning Marriage Registration which states that prospective brides who are not yet 21 years old must obtain permission from their parents. This permit is mandatory because it is considered that it still requires parental guidance and management.

After the enactment of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, the marriage age for men and women

became the same, namely 19 years. This law in addition to providing a high age limit, but still provides space to apply for a marriage dispensation for parents of children as confirmed in Article 7 Paragraph (2) of Law Number 16 Year 2019 which states in the event of a deviation from the age provisions as referred to in paragraph (1), parents of men and/or parents of women can request dispensation to the Court on very urgent grounds accompanied by sufficient supporting evidence.

3. METHODS

Legal research methods are divided into several types of legal research, namely normative legal research and empirical (sociological) legal research. Normative legal research is legal research that puts the law as a building system of norms. The system of norms in question is about principles, norms, rules of laws and regulations, court decisions, agreements and doctrines. This research belongs to the type of research, juridical empirical, or called field research where empirical law will answer the question of, how is the Dispensation of the Religious Courts on applications for child marriage permits in the perspective of Islamic law. How does the judge grant dispensation against child marriage in the religious court.

The approach method that the researcher uses is:

a. Interview method

Interviews were conducted freely, openly using a tool in the form of a list of questions that had been prepared (as an interview guide), in accordance with the problems to be answered

b. Informant

Where the researcher wants to explore wider information in the form of opinions and ideas from various parties involved in this research, namely: the Religious Court of Luwuk Regency, KUA of Luwuk District and Luwuk Utara District.

4. RESULTS AND DISCUSSION

4.1 Dispensation against Application for Child Marriage Permit from the Perspective of Islamic Law

Referring to the results of the research conducted by the researcher, the researcher will discuss the dispensation for the application for a child marriage permit which is viewed from the perspective of Islamic law and also from the point of view of positive law that applies in Indonesia.

When talking about the application for a marriage dispensation submitted by the applicant (the child's parent) whose age has not reached the minimum age limit, it is not allowed to have a marriage, which in fact the child is still in the child category because based on Law Number 16 of 2019 concerning Marriage, the minimum age limit Girls and boys are equal, namely 19 years. However, when something very urgent happens for the marriage to take place immediately, the place to apply for a marriage dispensation can only be submitted to the Religious Courts in this case,

namely the Luwuk Religious Court where the researchers conducted the research.

As for the focus of the researchers so that they are interested in conducting research at the Religious Courts of Kab. Luwuk, namely the case experienced by the petitioners Mr. Parli Adam bint Arpan Adam and Mrs. Ani Hidayani bint Muklis, both of whom applied for a marriage dispensation at the Luwuk Religious Court. With the aim of marrying off their children who are not old enough according to Law Number 16 of 2019 concerning Marriage.

Previously, they had coordinated with the Klingan Village, Kec. Luwuk Utara, at that time they wanted to ask for a letter of recommendation for submitting a marriage to be forwarded to the Office of Religious Affairs (KUA) Kec. North Luwuk. However, after verifying the file, it was found that there were prospective brides who were about to get married who were not old enough for both women and men.

With this verification, they are directed to apply for a marriage dispensation to the Luwuk Religious Court. Because that is the legal place according to the law to apply for a marriage dispensation. As the results of the author's interview with Mr. Ahamad Shabri Zunnurain as the young Registrar of applications at the Religious Courts of Luwuk Regency, Central Sulawesi Province as follows:

The Luwuk Regency Religious Court in this case as an institution that is given the authority by law to handle several issues, one of which is the application for a marriage dispensation while several terms and conditions for submitting an application for a marriage dispensation in the Religious Courts include,

- 1) Step 1: Finding Information on Marriage Dispensation requirements
- 2) Step 2: Come to the Religious Court with the requirements
- 3) Step 3: Submit an Application
- 4) Step 4: Paying Case Down Payments
- 5) Step 5: Get Case Number
- 6) Step 6: Determination of Session Day
- 7) Step 7 : Attending the Session

Seeing from the stages that the author has described above, it is clear that when a person has stated that he wants to get married, but is not old enough, he must apply for a marriage dispensation to the Religious Courts in this case as a legal and official place as stipulated by law.

In the age limit of marriage, according to the Compilation of Islamic Law (KHI) is the same as Law no. 1 of 1974 concerning marriage, Article 15 Paragraph (2) of the KHI emphasizes that to carry out a marriage a person who has not reached the age limit of 21 years must obtain a permit as regulated in Article 6 Paragraph (2), (3), (4) and (5) Marriage Law. Meanwhile, in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. It has been mandated that the age limit for marriage for a person is 19 years for men and women.

Researchers interview with Mr. H. Abdul Halik Samali. SAg, as the Head of the Luwuk District Religious Affairs Office as follows:

"He said that regarding the requirements for marriage registration at the Luwuk District Religious Affairs Office (KUA), he followed the applicable procedures where there was registration, filling out a form and also asking for a marriage recommendation letter from the local sub-district office where the prospective bride and groom resided. For the time starting from registration until the day of the marriage contract that has been determined, he said the KUA of Luwuk District needs a maximum of 10 days after registration, the duration of that time by the Luwuk District KUA is used to verify whether the data is in accordance with the procedure or whether there is a data discrepancy (violation) and with regard to if a marriage application is found under the age determined by law, the Luwuk District KUA issues a letter N5 or the rejection of the application can be followed up when it has obtained a permanent decision in the Religious Court in the form of a marriage dispensation ".

The results of interviews conducted by researchers with the Head of the Office of Religious Affairs in Luwuk District, found that, it turns out that the spearhead of the filter for the implementation of Law No. 16 of 2019 concerning Marriage is still maintained and KAU remains committed to implementing the rules set by the government. In addition to the Office of Religious Affairs (KUA) and the Religious Courts, researchers conducted research at the Kilongan Village office, North Luwuk District, with the aim of strengthening the data analysis that the researchers carried out so that this data would then be guaranteed and systematic in carrying out the stages of this research. The researchers conducted interviews in the office of Kel. Kilongan, North Luwuk District together with the Secretary of the Village Head (Seklur) Mrs. Rosye Syamsir S.Sos as follows:

"We were at the Kilongan sub-district office in North Luwuk District when there were people who wanted to ask for a recommendation for a marriage which would be forwarded to the North Luwuk District Religious Affairs Office (KAU). Of course we have to verify electronic data, namely through family cards and others, when a discrepancy in the data is found in this case age, we will not issue the recommendation... and usually if it is urgent for the marriage to take place, we direct us to submit an application marriage dispensation at the Luwuk Religious Court".

Based on this interview, the researcher knows that the marriage dispensation application submitted by Mr. Parli Adam bint Arpan Adam and Mrs. Ani Hidayani bint Muklis. They apply for dispensation from the marriage of their children who are still underage according to the applicable law. In the opinion of researchers, marriages carried out religiously in terms of referring to the Compilation of Islamic law are of course highly recommended to hasten for anyone who is ready to get married.

4.2. Granting Judge Dispensation for Child Marriage in the Religious Courts.

Marriage is all the hopes of every human being to be able to carry out a marriage with various processes that must be passed, some are young and some have to go through an application, namely submitting an application to the Religious Courts due to the insufficient age limit for marriage according to Law Number 16 years. 2019 on Marriage.

So the role and function of the Religious Courts is to hear and also decide whether every application for a marriage dispensation or not all applications for a marriage dispensation for children can be decided or dispensed.

That is why the authority to obtain a child marriage dispensation is in the Religious Courts, this has certainly been carefully thought out and considered, and also given that the judiciary has integrity in dealing with various kinds of issues, it is more appropriate if the application is addressed and authorized in the Court Religion.

As the results of the researcher's interview with Mr. Ahmad Shabri Sunnurain SH, Junior Registrar of Applications at the Religious Court of Luwuk Banggai Regency as follows:

"We at the Religious Courts of Luwuk Banggai Regency as the authorized institution to hear every application related to marriage dispensation, of course, we still accept all incoming applications, later the panel of judges will decide whether the application is granted to get a marriage dispensation or not. Because the judge in deciding every application must have various considerations".

From the results of the interview, the researcher assumes that a firm and professional attitude from a judge is needed considering the breath of Law Number 16 of 2019 concerning Marriage is in the attitude of the judge who is mandated to handle or hear requests for dispensation for child marriage. With the mechanism that has been determined at the Religious Courts, especially the Luwuk Religious Court, then all the procedures that need to be passed to register the marriage dispensation application include: As the results of the researcher's interview with Mr. Ahmad Shabri Sunnurain SH, Junior Registrar of Applications at the Religious Court of Luwuk Banggai Regency as follows:

"In the Luwuk Religious Court, every application made or submitted by the applicant to obtain a marriage dispensation must go through the processes and stages that have been stipulated by law, including:

- 1) Application for Marriage Dispensation
- 2) Rejection Letter from KUA
- 3) Copy of ID cards of both parents/guardians
- 4) Copy of KK
- 5) Copy of Marriage Book of both parents/guardians
- 6) Photocopy of Child's Birth Certificate

- 7) Photocopy of child's ID card or other identity
- 8) Photocopy of the child's last diploma
- 9) Doctor's Certificate (for those who are already pregnant)
- 10) Statement of Commitment to Both Parents
- 11) Photocopy of KTP of the Prospective Husband (Wife) or other identity

When all these stages have been fulfilled as a condition for submitting a marriage dispensation application, we as part of the application at the Luwuk Religious Court will follow up on the application for trial”.

From the results of a review related to the system or flow of registration for a marriage dispensation application, researchers see that new problems are still found, namely, what if it turns out that in the trial the applicant does not meet the requirements to apply for a marriage dispensation.

So according to the researcher, when talking about children, there are many considerations that must be fulfilled to be able to decide to give the child marriage dispensation.

Of the many applications for dispensation for child marriage submitted to the Luwuk Religious Court As the results of the researcher's interview with Mr. Ahmad Shabri Sunnurain SH, Junior Registrar of Applications at the Religious Court of Luwuk Banggai Regency as follows:

"The application for dispensation for child marriage was heard at the Luwuk Religious Court, where the judge in his decision with the decision number: 192/Pdt.P/2020/PA.lwk. with the applicant. Mr. Parli Adam bin Arpan Adam and Mrs. Ani Hidayati bint Mukhlis, in his decision the judge granted the petitioners' request the judge granted dispensation to the child of the petitioners named Amelia Parli Adam bint Parli Adam to marry a man named Muhklis S. Ibrahim bint Salihun Ibrahim which will be implemented in the jurisdiction of the Office of Religious Affairs, Kec. West Toili. Charges the Petitioners to pay court fees in the amount of Rp. 641,000 (six hundred and forty one thousand)”.

From the results of research conducted by researchers at the Luwuk Religious Court, it can be seen that, almost all applications for marriage dispensation received approval from the judge. However, according to the researcher, what needs to be underlined is how the judges consider so that they can give a decision to give a dispensation to a child marriage application. Then this is still a problem because researchers cannot interview judges directly, considering that a judge has the prerogative right to provide explanations to researchers so that what researchers can interview is the young clerk of the application at the Luwuk Religious Court.

Then the question is whether so far the Religious Court of Luwuk Banggai Regency has refused in relation to the marriage dispensation application submitted by the community. Seeing the issue of marriage in the community is a very urgent matter because it involves the dignity of a person, so it is considered

important that there is a seriousness in handling the application for a marriage dispensation.

After the researchers conducted direct research at the Luwuk Religious Court, the researchers found many things, namely, as the results of the researcher's interview with Mr. Ahmad Shabri Sunnurain SH, Young Registrar of Applications at the Religious Court of Luwuk Banggai Regency as follows:

Table 1
Number of Cases per Year

NO	YEAR	CASES
1	2017	12
2	2018	29
3	2019	40
4	2020	92
5	2021	99

Source of interview data arranged by researcher, 2022.

Referring to the table described above, the researcher assumes that, when the administrative documents for the application for a marriage dispensation submitted to the Religious Courts are complete, the next stage is the trial process. Seen from every year the number of applications for dispensation of marriage in Kab. Luwuk is quite high, this illustrates that the intensity of the community in terms of marrying their children is so large but is hindered by the applicable laws and regulations so that approval from the State is needed through the Religious Courts which are given the authority to directly handle requests for dispensation for marriage for children who are not old enough according to the Act. Number 16 of 2019 concerning Marriage.

5. CONCLUSION

- a. Dispensation for child marriage permits which are viewed from the perspective of Islamic law should still prioritize Islamic values but do not override the laws and regulations that apply in the country of Indonesia.
- b. It takes a firm attitude and also full of caution for a judge in responding to requests for dispensation of marriage for children who are not yet mature enough according to the law, because the key to the passage of a rule is in the breath of a judge in giving a decision.

Based on the conclusion of the research, the researcher recommends as follows:

- a. In granting marriage dispensation permits to children, of course, still pay attention to the principle of benefit that comes from Islamic law itself, namely, the purpose of marriage, the benefits of marriage, and the nature

of marriage. Parents should pay attention to the three elements that researchers have described above considering that marriage for a child who is not mature enough according to the law and according to religion will have an impact on their lives in the future.

- b. To form a firm and careful attitude of a judge, it takes the emotional maturity of a judge who handles a marriage dispensation application.

References

- Arya Ananta Wijaya, *Jurnal Ilmiah Analisis Perkawinan dibawah umur menurut tinjauan hukum Islam dan Undang-Undang Nomor 1 Tahun 1974 (studi kasus didesa geperung kec. Lingsar Lombok Barat)*, Fakultas Hukum Universitas Mataram, 2013, Hal. 7-9
- Hadaiyatullah, S. S., & Huda, N. (2020). *Praktek Hukum Acara Dispensasi Kawin. ASAS*, 12 (01), 150-166
- Kementrian Agama, RI., *Al-Qura'n dan Terjemahnya* (Semarang: Karya Toha Putra, 2011), h. 77.
- Penjelasan ini diuraikan melalui sebuah Kata Pengantar dalam buku *Fikih Kawin Anak Membaca Ulang Teks Keagamaan Perkawinan Usia Anak-Anak* (2016), diterbitkan oleh Rumah Kitab kerjasama Ford Foundation
- R.A. Koesnan. *Susunan Pidana dalam Negara Sosialis Indonesia*. Sumur Bandung. Bandung. Hal. 113

Article in Journal

- Akume, S. (2016). Kajian Yuridis Tentang Pemberian Mahar Dalam Pelaksanaan Perkawinan Menurut Hukum Islam. *Lex Et Societatis*, 4(1).
- Afrizal, T. Y. (2019). Dispensasi Perkawinan di Bawah Umur dalam Perspektif Hukum Islam dan Perundang-Undangan Bidang Perkawinan di Mahkamah Syar'iyah Lhokseumawe. *ADHAPER: Jurnal Hukum Acara Perdata*, 5(1), 93-112.
- Bastomi, H. (2016). Pernikahan Dini Dan Dampaknya (Tinjauan Batas Umur Perkawinan menurut Hukum Islam Dan Hukum Perkawinan Indonesia). *YUDISIA: Jurnal Pemikiran Hukum dan Hukum Islam*, 7 (2), 354-38
- Hidayatulloh, H., & Janah, M. (2020). Dispensasi Nikah di Bawah Umur dalam Hukum Islam. *Jurnal Hukum Keluarga Islam*, 5(1), 34-61.
- Hidayatulloh, H., & Janah, M. (2020). Dispensasi Nikah di Bawah Umur dalam Hukum Islam *Jurnal Hukum Keluarga Islam*. 5 (1), 34-61.
- Iqbal, M., & Rabiah, R. (2020). Penafsiran Dispensasi Perkawinan bagi Anak di Bawah Umur (Analisis Beberapa Putusan Mahkamah Syar'iyah Aceh). *El-Ussrah: Jurnal Hukum Keluarga*, 3(1), 101-114.
- Inayah, N. (2017). Penetapan dispensasi nikah akibat hamil di luar nikah di Pengadilan Agama Yogyakarta tahun 2010-2015 (Analisis Hukum Acara Peradilan Agama). *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 10(2), 178-193.

Kusumawati, Y. (2018). Celah Hukum Terjadiya Praktik Perkawinan Di Bawah Umur Dan Tindakan Kondusif Perlindungan Ham.SANGAJI: *Jurnal Pemikiran Syariah dan Hukum*, 2 (1), 36-56.