
Problematizing the Minimum Age of Marriage: The State and Local Perspective on Marriage Dispensation in South Sulawesi

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ABSTRACT

Child marriage occurs throughout the world, in developed countries and especially in developing countries, including Indonesia. This article examines how categorization of age is problematized, particularly in the context of marriage dispensation after the amendments of marriage law in 2019. Using a qualitative approach, this study was conducted in Maros Baru District, Maros Regency, South Sulawesi. Thirty-seven participants were involved in interviews; 30 more participated in focus group discussions. The results show that there is a gap between legal categorization of age and its local interpretation in the context of marriage practices. While the amendment of marriage law in 2019 aims to increase the minimum age of marriage, marriage dispensation still occurs. Marriage dispensation is usually given under the consideration of supported evidence in relation to the benefits (*maslahat*) as well as the harms (*mudharat*). However, when a request of marriage dispensation is rejected, a marriage still occurs. As such, it is very common for unregistered marriage (*nikah siri*) to be a “way out”.

Keywords: *age of marriage; children; child marriage; marriage dispensation; Religious Court; unregistered marriage*

INTRODUCTION

Child marriage occurs all over the world, both in developed countries and especially in developing countries. Efforts to abolish child marriage are a response to a growing body of evidence showing the scale and scope of the problem. More than 700 million women living in the world today get married as children, of which 1 in 3 are married before the age of 15 (United Nations Children’s Fund 2014). However, according to Warner (2004:2), no one knows for sure the prevalence of child marriage in the world because of the significant number of unregistered marriages in many countries, especially developing countries, such as Indonesia. In the context of the ASEAN region, the number of child marriages in Indonesia is the second highest rank after Cambodia. This requires serious attention because child

marriage may result in the loss of children’s rights, such as for education, playing, protection, security, and others, including its impact on their reproductive health, as Bunting and Merry (2007:330) have argued that “child marriage is salient by being at the intersection of various themes on the human rights agenda”.

Global commitment to elimination of early marriage, forced marriage, and child marriage has also become increasingly prominent in recent years. In 2014, the Secretary General of the United Nations (UN) recommended a specific target in the post-2015 Sustainable Development Goals on the elimination of child marriage, which was supported by 116 member countries, including Indonesia (United Nations General Assembly 2014). This commitment is then continued in

the 2030 Sustainable Development Goals (SDG 2030) as covered in SDG5, namely achieving gender equality and empowering all women and girls with target 5.3, that is, eliminating all harmful practices, including child marriage. Horii (2021) have argued that the current international approach to child marriage is complete prohibition of marriage under the age of 18. Child marriage is considered a problem internationally, and those who practice child marriage tend to be viewed as “traditional”, that is, insufficiently modern.

The trend of girl marriage in Indonesia has slowly declined in the period between 2008 and 2018, both those who have their first marriage before 18 and 15 years old. However, within 10 years the decline was only 3.5%. This means that 1 in 9 women aged 20 to 24 have their first marriage before the age of 18. This also means there were more than one million women between 20 and 24 years old who married for the first time at the age of less than 18. More than sixty thousand women of the same age married for the first time at the age of 15.¹

In 2019, there were still 20 provinces in Indonesia with a prevalence of child marriage above national figure (11.2%), including South Sulawesi which ranked 12th (14.11%). South Sulawesi is the fifth highest contributor for child marriage under 15 years old.² In addition, South Sulawesi is among the 22 provinces which ranked 19th (11.22%) for women aged 20 to 24 years old who married before 18. Between 2015 and 2020, the prevalence of girls aged 20 to 24 who married for the first time has only slightly decreased from 13.80% (2015) to 12.11% (2019).³ In response to this, the governor of South Sulawesi instructed to stop child marriage through the Governor Instruction (*Instruksi Gubernur*) No. 1 of 2018.

However, this number may not reflect the actual situation because practices of age manipulation and unregistered marriage were common in South Sulawesi (Idrus 2018:109). Horii (2018) questions whether legal measures will be effective because even if the marriageable age is raised, there are many ways to get married outside of the state legal system. In her study in West Java and Bali she discovered several methods commonly used to avoid legal marriageable age. These were facilitated by local actors at the village level by changing the birthdate of the bride or groom in the required documents, postdating the marriage certificate, unregistered marriage, and marriage dispensation.

In the middle of 2018, child marriage in Maros Regency came to the fore with the exposure of child marriage in Majannang Village, Maros Baru District, Maros Regency. The marriage between a 14 years old boy, and 16 years old girl went viral in social media. This

was an arranged marriage with the consent of both parties, but this marriage was not allowed by the Religious Affairs Office (Kantor Urusan Agama, KUA) because they could not meet the minimum age of marriage.⁴ Despite this, the couple went ahead with their marriage under unregistered marriage (*nikah siri*).

This example indicates that despite the fact that child marriage is against the Marriage Law No. 1 of 1974 (now Law No. 16/2019), the Child Protection Law, and the Human Rights Law, the practice continues. As a country that has ratified international instruments, such as Convention on the Rights of the Child (CRC), Indonesia is obliged to fulfill the rights of children⁵ as regulated in the CRC.⁶ Sa’dan (2015:149-154) argued that forced child marriage violates the child’s human rights because of coercion in marriage (without the child’s consent), gender-based violence (girls are powerless to resist parental coercion to marry), and the existence of crime in marriage (children are “exchanged” for money/wealth due to poverty). However, not all child marriage is forced marriage (see, for example, Idrus 2018), while most human rights advocates argue that child and early marriages are by definition “forced marriages”, even when the child appears to give his or her consent (Equality Now 2014:53).

Child marriage, defined as marriage under the age of 18, is a “silent and widespread practice” (Nour 2009:51). In Indonesia, the Marriage Law (before the amendment) stipulates that the minimum age for marriage is 16 for female 19 for male. However, according to the Child Protection Law the age of children is before 18. Therefore, marrying at the age of 16 for women does not violate the law when referring to Law No. 1/1974. However, based on the Child Protection Law, getting married at the age of 16 is a violation (Mayandra 2020). This means the Marriage Law was in conflict with the Child Protection Law. Even though in the context of child marriage it also includes boys, most children married under the age of 18 are girls. In Indonesia, the ratio is 21:1, meaning that for every 21 girls who get married under 18, there is one boy who gets married at that age.

In his study in Batusangkar Religious Court, Fadhli (2018) found that granting dispensation of marriage is seen as both a “solution” and a “problem”. It is seen as a “solution” when premarital sex or pregnancy out of wedlock occurs, but as a “problem” when the dispensation of marriage is rejected and they marry in secret (*kawin sembunyi-sembunyi*), both to maintain the family honour. After the enactment of Law No. 16/2019 concerning the Amendments to Law No. 1/1974, marriage dispensations are still accommodated, but it

can only be done through the Religious Courts (PA) for Muslims and State Courts (PN) for non-Muslims. This indicates that granting marriage dispensation has become stricter, which aims to minimize the practice of child marriage in Indonesia (Kania et al. 2021; Judiasih et al. 2020; Mayandra 2020). Before the enactment of Law No. 16/2019, despite the fact that marriage dispensation is ordered by the Marriage Law through the Religious Court,⁷ this tended to be ignored. Changing the birthdate of bride or groom in the required documents is preferred.

Judiasih et al. (2020) shows that there is a contradiction between dispensation of marriage and efforts to minimize child marriage. This can be seen from the increasing number of people who have applied for a marriage dispensation since the amendment to the Marriage Law. Iqbal and Rabiah (2020:112), for example, have argued that although the law has increased the minimum age of marriage, this cannot be strictly applied. Marriage dispensation “opens the door” for child marriage as there isn’t any specifying ground to decide whether the dispensation of marriage is granted or rejected (Iqbal and Rabiah 2020:112; Horii 2020). Marriage dispensation is the only way for people to obtain legalization from the state for an underage marriage.

Judges commonly grant the request for a marriage dispensation based on two considerations, namely legal and social justice, as long as two conditions for granting dispensation are met. The two conditions are the fulfillment of the legal pillars (*rukun*) of marriage and for the purpose of benefiting human life (*kemaslahatan ummat*) (Yunus and Faisal 2018; Salam 2017; Prabowo 2013). But, according to Iqbal and Rabiah (2020:111), there are multiple negative impacts of granting marriage dispensation, including divorce, death due to immature reproductive health, and poverty because the husband has not been able to earn a living. In addition, according to Idrus (2018:115-128), whatever the consequence of underage marriage it is also impacted on the parents.

A number of studies indicates that avoiding *zinah* (extra- and pre-marital sexual intercourse) has also contributed to child marriage in Indonesia (Fadhli and Warman 2021; Horii 2020; Fadhli 2018; Grijn et al. 2016; Marcoes and Dwianti 2016; Candraningrum dkk. 2016). Horii (2018) affirms that for judges, granting dispensation of marriage in court is a way to “protect the children” from social stigma due to premarital pregnancy. Therefore, pregnancy out of wedlock has become a common reason to apply for a marriage dispensation, and in such case the request is commonly granted (van Gobel 2021; Horii 2018; Fadhli 2018; Salam 2017; Hasriani 2016; Munadhiroh 2016; Yunus dan Faisal 2018;

Dewi 2013). In her study on marriage dispensation in Karanganyar Religious Court, Dewi (2013) criticizes how the judge easily grants a marriage dispensation without thorough examination on the reasons presented and without authentic and sufficient supported evidence. Raising the age of marriage along with dispensation of marriage gives an impression that it is a half-hearted policy since the latter “opens the door” for child marriage in Indonesia.

This article deals with how the categorization of age is socially problematized and how this was related to marriage dispensation. While most literature dealing with dispensation of marriage focuses on documents provided by the Religious Court (see, for example, Iqbal dan Rabiah 2020; Yunus and Faisal 2018; Fadhli 2018), in this article the court hearings of dispensation of marriage in the Religious Court is also examined. In the first session of this article, I will discuss how the state regulates the minimum age for marriage and the age marriage debate. This is followed by an examination of local perception of age limit for marriage. Finally, I will discuss marriage requirements and the marriage dispensation practices.

RESEARCH METHODS

Maros Regency is one of the regencies in South Sulawesi with a high rate of child marriage. Data from Dinas Pemberdayaan Perempuan dan Anak (DP3A, Women and Children Empowerment Service) Maros Regency shows that between 2017 and 2019 there was a significant increase of child marriage, namely 22 in 2017 to 217 in 2019. There was a sharp decrease in subsequent years, i.e.: 149 in 2020 and 65 in 2021. This might be because the new regulation has already been introduced (*disosialisasikan*). However, Maros Baru District, which is located in the buffer zone of the regency, is still the highest contributor to child marriages in the regency, and Majannang Village is the highest contributor in the district. Therefore, it was chosen as the research setting.

This article draws on an ethnographic study conducted between July and December 2019, and occasional visits were done between 2020 and 2021. Data was collected using in-depth interviews, observations, and focus group discussions (FGD). In-depth interviews were conducted with 37 participants to explore the perceptions of the minimum age of marriage, marriage requirements, marriage dispensation and its procedures. These participants can be broadly categorized into two groups: (1) those who experienced child marriage (22 girls and 4 boys); and (2) key stakeholders (11 persons). Key stakeholders include the Head DP3A,

Deputy Chairperson of the Religious Courts, the Head of KUA, marriage officiant (*penghulu*), extension workers (*penyuluh*), Islamic priest (*imam*), the former and current Village Head (*Kepala Desa*), the Sub-district Head (*Lurah*), Neighborhood Head (*Galla'*), a father who married off his children at the age of child, and a mother whose daughter married underage.

Observations were made at the local Village Office (*Kantor Desa*), Office of Religious Affairs {*Kantor Urusan Agama (KUA)*} and the Religious Courts {*Pengadilan Agama (PA)*} as three institutions associated with marriage. At the KUA, I observed how the prospective bride and groom {*calon pengantin (catin)*} dealt with marriage documents and bridal lessons {*kursus calon pengantin (suscatin)*}. At the PA, I observed the marriage dispensation trials and the marriage *itsbat* trial.⁸

In addition to interviews and observation, three FGDs were successfully conducted, each involving 10 participants. One FGD involved participants from a group of community and religious leaders; another with a group of girls; and another with a group of parents. The FGDs were conducted to discuss minimum age of marriage, requirements for marriage, how to deal with age being insufficient, procedures for marriage administration, as well as marriage dispensation and its processes.

All participants gave their consent before interview or FGD. For underage participants (below 18 years old), consent to interview was obtained from parents/guardians. All FGDs were recorded with the consent from all participants. Individual interviews were not recorded because participants were not willing to be recorded. Observations in the three offices (Village Office, KUA, and PA) were under the approval of the head of each office. Except for the names of government officials, community leaders (*Tomas*), religious leaders (*Toga*), and the research setting, all names mentioned in this paper were pseudonyms.

FINDINGS AND DISCUSSION

State Perspectives on the Age of Marriage Debate

According to Law No. 35 of 2015 concerning Amendments to Law No. 23 of 2002 on Child Protection (hereafter referred to as the Child Protection Law) (article 1:1) “A child is someone who is under 18 years old, including children who are still in the womb”. However, according to Law No. 1/1974, one of the conditions for marriage was the minimum age of marriage, i.e. 16 for women and 19 for men (article 7:1). This not only shows the difference in the age categorization between

the two regulations, but it also indicates how the state had legalized child marriage even when Law No. 23 of 2002 came with a limit of age on childhood (before 18 years old).

Although the Child Protection Law appeared later, efforts to revise the Marriage Law have often been discussed. In 2014 a judicial review was proposed by a number of women activists through the Constitutional Court (MK). *Yayasan Pemantau Hak Anak* (YPHA, Children Rights Monitoring Foundation), and *Yayasan Kesehatan Perempuan* (YKP, Women Health Foundation) initiated the judicial review to examine article 7(1), proposing to increase the minimum age of marriage from 16 to 18 years old. The basis of their claim was that girls below 18 years old are vulnerable to reproductive health issues (including maternal mortality) and poverty. The constitutional judge dismissed this claim based on the fact that the minimum age of 16 does not violate the constitution. In addition, according to the judge increasing the marriage age limit for women from 16 to 18 will not guarantee to reduce the divorce rate, overcome health problems, and minimize other social problems. The judicial review was rejected by the Constitutional Court and the two organizations were suggested to propose for a change in the minimum age of marriage through legislative review process.⁹

Similarly, in 2015, *Koalisi 18+* proposed to examine article 7 (1 dan 2) and urged the Constitutional Court to grant YPHA and YKP proposal. According to *Koalisi 18+*, the then minimum age limit for girls have created legal uncertainty. In addition, the 1974 Marriage Law also legitimizes underage girls to marry, and thus violates children rights.¹⁰ However, this judicial review was rejected by the Constitutional Court based on the argument that there is no age limit for marriage in order to prevent sexual urges (*nafsu*). According to the Court, sexual urges should be channeled through legal marriages based on religious teachings to prevent the birth of children out of wedlock or illegitimate children. In this context, the Constitutional Court ignored various facts related to the impacts of child marriage including a high maternal mortality rate, domestic violence, and unfulfilled right to education. The Constitutional Court ignored that marriage is not only related to the aspect of lust, but other aspects that affect children’s lives, such as enjoying childhood, health, and education.¹¹

The Constitutional Court also considers that the age limit requirement, especially for women, was adjusted to many aspects, such as health, social, culture and economy. There is no guarantee that raising the age limit will reduce divorce, health and other social

problems. To prevent child marriage which causes many problems, age limit alone is not the only contributing aspect. When referring to various developments, socio-economic, cultural, and technological aspects are also included, so that the age of 18 years can be considered lower or even higher.¹²

At the end of 2018, after another judicial review lawsuit by three women from different regions who had experienced child marriage, supported by attorneys and 14 women's NGO, the Court finally granted the lawsuit for changing the minimum age of marriage for women from 16 to 19 years (13 December 2018). The Constitutional Court made decisions based on the these four arguments, namely: 1) Article 7 (1) of the Marriage Law contradicts the 1945 Constitution which states that every citizen has the same position before the law; 2) The Marriage Law is not synchronized with the Child Protection Law (article 1:1), which stipulates that a child is someone who is not yet 18 years old; 3) The adverse effects of child marriage related to health; violation of the constitutional rights of citizens to attend basic 12-year compulsory education; 4) Previous age limit increases the practices of child marriage. On this basis, the Constitutional Court also ordered the House of Representatives (DPR) to make changes to the Marriage Law within a maximum period of three years, and DPR agreed to this change.¹³

Although the revision of the marriageable age invoked debate among members of DPR, this revision was finally ratified on September 16, 2019. Article 7 (1) of the Marriage Law was revised to change the minimum age for marriage for women from 16 to 19 years, similar to the minimum age of marriage for men.¹⁴ The amendment, however, might explain why there is such an increase marriage dispensation requests, particularly between 2020 and 2021 that I will discuss in the following section.

Local Perspective on Age of Marriage

In Maros Baru sub-district (hereafter referred to as Maros Baru), a person is categorized as a child as long as s/he is unmarried. In Bugis, this is *tau lolo* (for women) and *tau runka* (for men). Once one enters into marriage irrespective of their legal age, s/he automatically is transitioned into adulthood (Idrus 2018:101-102).

Although marital status does not guarantee one's maturity, local perceptions of being "adult" are related to marital status (see, for example, Idrus 2018:101-102; Rosyidah and Fajriah 2013:63). Marriage automatically transfers a person's status from a child to a "parent" (*orang tua*), which means "adult" (Idrus 2018:101-102), whether or not they have children. Women are expected

to become young mothers, while males are supposed to become young breadwinners. At the same time, young people are still highly dependent on their parents. Parents' burden is not only from an economic perspective (with additional family members, while income is not significant), but also from social perspective. For example, women are burdened with the extra task of taking care of grandchildren because their daughters who become young mothers are not yet qualified to take care of their children (Idrus 2018:115-128). Thus, as long as a person is not married, then s/he is still considered a "child" (*"anak"*), this status has nothing to do with age and behavior of a person, as illustrated below.

Sangkala, for example, a teenager from Maros Baru who now lives in Kalimantan was only 14 years old when he married his cousin who is two years older than him. After marriage, he is socially expected to have responsibilities towards his wife (and children) as the head of the family (*pangngulu balla*). In addition, as a Makassarese, although it is not an obligation, he is expected to support his parents-in-law as is common practice. Mrs. Nannu (Sangkala's mother-in-law as well as his aunt) said that: "it's nice when they send me some money, even if it just a small amount of money" (*assipattongi nisa 'ring punna nipidatui ki doe', manna sikedde*). This indicates that Sangkala, who is still classified as a child under the Child Protection Law, now takes on multiple roles, not only as a husband and income provider to his wife (and children), but also as a son-in-law by sending money/goods through his wife. Nur I'annah (2018:82) calls this situation as "prematurely maturing" (*menjadi dewasa secara prematur*).

Asni (20 years) is another example of a child who becomes an "adult" prematurely. Asni and her husband (Faiz, 20 years) were 16 years old when they got married. Although before marriage she had worked as a dishwasher in a kiosk at a nearby market, the earnings were used to support herself. However, after getting married she no longer works as a dishwasher, but is now helping her husband as a food seller in the market. As a married person, Asni is also the backbone of her family because her parents are divorced. Together with two of her brothers who work as a vegetable seller and a construction worker, Asni supports her mother who no longer works.

These cases show that marriage makes a person's status changes automatically, from "child" (unmarried) to "parent" ("adult"). The person concerned is treated as an "adult" who should be responsible based on gender roles; men as breadwinners (*pangngulu balla*), women taking care of children and the household (*pajaga balla*'),

although the gendered division of labor is not rigid (Idrus 2018:102). When this gendered division of labor is ignored, for example, a husband does not provide for his wife (and children); while a wife does not take care of the household, they are called childish couple (childish husband and wife)(*singkamma ana'-ana'*).

Although the amendment of the Marriage Law was still relatively new at the time of this research, it has sparked a discussion in the local community. I discovered in a FGD with parents, when the minimum age of marriage was insufficient (*lolo inji*), the age could be “added”. The addition of age is very common in the past (see, for example, Horii 2018; Idrus 2016). Now, this kind of speculation can no longer be practiced because according to parents: “now there is a regulation” (*nia'mo peraturang*). This is interesting as it infers that there was no regulation in the past. Those who married at the age of children similarly expressed:

- “In the past there was no regulation on the minimum age for marriage, if we only knew, children were not married” (*Dulu tidak adapi peraturan bahwa sekian tahun umur baru bisa menikah, seandainya ada aturan, anak tidak dinikahkan*) (Ibu Aisyah, a mother whose daughter married underage, 42 years, Maros Baru).
- “In the past there was no regulation [on the minimum age for marriage], now there is a strict inspection” (*Dulu-dulu tidak ada peraturan, sekarang sudah ada jadi ketat pemeriksaan*) (Sukma, 17 years, Maros Baru).
- “Here child marriage is common, but now the regulation is enforced” (*Di sini perkawinan anak itu lumrah, tapi sekarang keras peraturan*) (Ramlah, 20 years, Maros Baru).

The regulation in question is the Marriage Law No. 1/1974, effective since 1975. But they always say the regulation is like a “new rule”. There were two reasons why they said that. First, they did not understand the minimum age of marriage as stipulated under the 1974 Marriage Law. Secondly, the system used in recent years is completely online (2015), so changing one’s age is no longer possible. The amendment of minimum age of marriage occurred during data collection. Since then, parents understand that changing one’s age is no longer possible (FGD-Parents, 14 November 2019). In practice, this new law was effectively enacted early in 2000.

Although parents generally understand that their daughter is still very young, they do not know for sure in what age a person is allowed to marry under the relevant

laws. They assumed that a suitable age for marriage is between 16 and 17 years. It is expressed variably based on the age of female, as follows:

- 16 years old: “She is almost old enough” (*Biringmi ganna umuru'na*)
- 17 years old: “She is old enough” (*Ganna'mi umuru'na*)
- 18 years old: “It is more than the minimum age” (*Labbi mi umuru'na*)

Since the issuance of Law No. 16/2019, there was a confusion among people involved in the marriage administration and community leaders on whether this law should be immediately enacted. On 7th of November 2019, the KUA of Maros Baru district finally carried out a meeting (*sosialisasi*) to discuss about the new law with village heads, *imam*, extension workers (*penyuluh*), *government official*, and Indonesian Ulema Assembly (*Majelis Ulama Indonesia, MUI*)(see **Figure 1**).



Figure 1. Socializing of Law No. 16/2019 & FGD with community & religious leaders, 7 November 2019.

The Village Heads and the *Imam* had different ideas, especially around the minimum age of marriage. They argued that with 16 years as the age limit, there were many practices of manipulation. They were concerned that with 19 years as the age limit, more manipulation would be practiced. In the past, there was still “a gap to be tolerated” (*celah untuk dibijaki*), but since the implementation of the online system, all data must be in sync. This shows two important findings: *firstly*, the age of marriage is always a problem, as people always look for “gaps”. However, this also points to the second important findings, that the ambivalence

towards the minimum age of marriage can no longer be accommodated by the online system. With the current system, whether the prospective marriage couple (*catin*) will get permission or not is depended on the *catin*'s age. When the age does not meet the requirement of the minimum age of marriage, the KUA will refer to the Religious Courts to request a marriage dispensation as will be discussed in the next section.

Local Perspective on Marriage Requirements

In a legal country like Indonesia, only registered marriage is recognized by the state. This is based on the Minister of Religion Regulation No. 19 of 2018 concerning Marriage Registration (hereafter referred to as *Permenag 19/2018*) in Chapter II (article 3).¹⁵ Furthermore, in Chapter II (article 4) it is regulated that the requirements for marriage include 14 aspects,¹⁶ including dispensation of marriage from the Religious Court when the minimum age for marriage is not met.

When I asked about the requirements for marriage in an FGD with the girls group, the answer was linked to non-administrative requirements of marriage. For example, announcing marriage plan to the extended family, decision making (*attappu kana*) that includes "spending money" (*doe' panai*) (see, for example, Idrus 2016),¹⁷ dowry (*sunrang*),¹⁸ wedding presents (*erang-erang*), printed invitations, wedding clothes, renting electrons, and many more. Matters related to the marriage administration was often taken care of at a later stage, before the D-day.¹⁹ Similar answer was heard from parents. This demonstrates that for the bride-to-be and their parents, marriage administration is not their concern. They commonly leave it to the husbands (the fathers of the bride) or a village head (*imam*).

In both the FGD-girls and FGD-parents, it was revealed that no one knew clearly what the overall administrative requirements were. But they mentioned: a letter of recommendation for matrimony (N1-Form) from the village head, Identity Card (KTP), Family Card (KK), birth certificate, passport photos, certificate of tetanus injections (TT) from public health center (Puskesmas), attending *Suscatin*²⁰ (bridal course) at KUA which is expressed as "being lectured by the ustadz" (*diceramahi oleh Pak ustadz*). What is the content of the advisory session, no one remembered in detail. In general, it is a starting-up lesson, including taking care of the household, taking a *junub* bath, reading the Qur'an, and being a responsible husband/wife.

Required documents are generally taken care of

by fathers of the bride, so that mothers and children who are getting married do not know for sure. In an interview with Pak Idam (75 years old, 5 November 2019), a father whose all his nine children were married at the age of a child, said that he handled the paperwork with the village head. According to him, in the past, age could still be changed, but "now there are rules". However, according to him, whatever the rules, if a potential partner (*jodoh*) is available, nothing can stop (*punna tassungkemi sura'na/jodona, tenakkulle nihalangi*). According to him, if the age of his child has reached 13 years (either a boy or a girl), then he begins to cast a spell (*nibaca-bacai*) on his child, so that his/her *jodoh* would be quickly found (*lintaki tattimba sura'na*). Pak Idam's statement indicates at least two important points. *Firstly*, he wanted to gain legitimacy for child marriages that occur to his children. *Secondly*, obtaining a permit to marry, which should be constrained by the minimum age limit, could still be done because in the past manipulating age was possible. This method took precedence over taking care of marriage dispensation.

Because all matters of marriage preparation that are not related to the administration of marriage are usually taken care of first, then when there is a problem with the requirements of marriage, which is commonly related to the minimum age of marriage, the non-administrative preparations that have been made were used as legitimacy to carry out the marriage regardless of prospective bride and/or groom's age. The parents along with their extended family would be ashamed (*siri*) if the marriage was not carried out because the news about the upcoming marriage had spread. In the situation where the family then propose a marriage dispensation, the decision of the court was no longer important. The marriage would still be carried out.

This was confirmed by Pak Sirajuddin (47 years), a former village head, in the FGD with parents. He said that increasing one's age when it is lower than the minimum age of marriage under the Marriage Law can no longer be done in recent years since the implementation of the online system for marriage registration in 2015. Pak Sirajuddin has a number of experiences in dealing with such cases, both in relation to his own daughter's marriage and to marriage of members of the village. Practices such as increasing one's age in order to fulfil the minimum age of marriage and changing the family card (KK), were all common at that time.

However, in an FGD with community leaders, there was a debate regarding in what level of authority should a letter of recommendation for matrimony be granted. For example, when a father of prospective

bride came to the Village Head to ask for an N1-form (see Figure 2), the Village Head faces a dilemma if the minimum age of marriage (under the Marriage Law of 1974) was insufficient. On the one hand, when they sign N1-Form, it means that they allow child marriage. On the other hand, if they do not give their approval, community would feel abandoned. The Head of KUA, Pak Ash (7 November 2019), explained that the authority to give permission for marriage on the basis of legal age is at the KUA level, while the Village Head only provides and signs N1 Form, a legal letter stating that *catin* resides in his jurisdiction. The requirement to fulfill the minimum age of marriage has nothing to do with N1-form. Thus, whether or not the minimum age of marriage is fulfilled, the Village Head/Sub-district Head still has to sign the N1 Form. This indicates that the Village Head/Sub-district Head does not clearly understand their main duties and responsibilities.

Keputusan Dirjen Bimas Islam
Nomor 713 Tahun 2018
Model N1

KANTOR DESA / KELURAHAN
KECAMATAN
KABUPATEN : MAROS

SURAT PENGANTAR PERKAWINAN
Nomor : 20

Yang bertanda tangan di bawah ini menjelaskan dengan sesungguhnya bahwa :

1. Nama :
2. Nomor Induk Kependudukan :
3. Jenis Kelamin :
4. Tempat Tanggal Lahir :
5. Kewarganegaraan :
6. Agama :
7. Pekerjaan :
8. Alamat :
9. Status Perkawinan :
- a. Laki-laki : Jejaka, Duda, Atau beristri ke
- b. Perempuan : Perawan, Janda
10. Nama Istri/Suami terdahulu :

Adalah benar anak dari perkawinan seorang pria :

Nama Lengkap dan alias :

Nomor Induk Kependudukan :

Tempat dan tanggal lahir :

Kewarganegaraan :

Agama :

Pekerjaan :

Alamat :

Dengan seorang wanita

Nama Lengkap dan alias :

Nomor Induk Kependudukan :

Tempat dan tanggal lahir :

Kewarganegaraan :

Agama :

Pekerjaan :

Alamat :

Demikian, surat pengantar ini dibuat dengan mengingat sumpah jabatan dan untuk dipergunakan sebagaimana mestinya.

.....20.
Kepala Desa/Lurah

*) nama terang

Figure 2. N1 Form (Letter of Domicile)

Local Perspective on Marriage Dispensation

Marriage dispensation is the granting of the right to a person to get married particularly when they have not reached the minimum age for marriage. To obtain

a marriage dispensation, one must apply to Religious Courts, as regulated in the Regulation of the Supreme Court of the Republic of Indonesia No. 5/2019 concerning Guidelines for Adjudicating Proposals for Marriage Dispensation (hereafter Perma RI No. 5/2019).²¹

For the community, however, going to the Religious Courts is usually avoided because of the image of the court. The court is considered socially frightening since it is identical with criminals. going to court is also seen to be complicated, cost a lot of money, and time consuming because marriage dispensation can take up to three trials. Thus, applying for a marriage dispensation tends to be avoided. However, after the enactment of the Marriage Law No. 16/2019, the number of proposals for dispensation of marriage increased significantly in Maros Regency between 2020 and 2021. Data from Women's Empowerment and Child Protection (*Dinas Pemberdayaan Perempuan dan Perlindungan Anak, DP3A*) indicated that there was a sharp increase on the requests of marriage dispensation from 70 in 2019 (49 were granted) to 237 in 2020 (207 were granted) to 254 in 2021 (152 were granted). However, in the third week of December 2022, the number has started to decline (57 accepted out of 71 proposals). This decline might be a sign that people starts to get used to this new legal age of marriage.

This raises a question. If a prospective couple (*catin*) is referred to the Religious Court, under what consideration such proposal for marriage dispensation is granted or rejected? The Deputy Chairperson of the Religious Court of Maros Regency explained that there were three things that were taken into consideration in granting a marriage dispensation (interview with Muhammad Ridwan). *First*, the marriage proposal has been accepted and all the knick-knacks for the wedding have been prepared, so the family would feel ashamed (*siri*) if the marriage did not happen. *Second*, marriage is considered to lessen the economic burden of the parents. *Third*, considerations are also made based on gender. For the prospective bride, this includes the ability to do domestic tasks (cooking, cleaning, etc.). In assessing if a girl is capable to take care of the household, the judge will also see if she has a mature bodied (*malongkoro*). In addition, marriage dispensation would likely be granted if the prospective bride has premarital sex, or if she is already pregnant. For the prospective groom, the main consideration is related to his behaviors (i. e. non-drinkers, non-gamblers and the like) rather than his ability to be responsible (responsible for his wife and ability to provide for her). The Panel of the Judges examine the reasons presented and the supporting evidence.

But, among others, the most common considerations to grant a marriage dispensation is premarital sex and/or pregnancy out of wedlock. In such a case, the Panel of Judges has the principle that marriage cannot be postponed and should happen sooner. This is also common elsewhere (see, for example, van Gobel 2021; Horii 2018; Fadhli 2018; Salam 2017; Hasriani 2016; Munadhiroh 2016; Yunus dan Faisal 2018; Dewi 2013). Otherwise, the considerations in rejecting the proposed marriage dispensation are woman's physical appearance (i.e. thin) and when there is no "urgent" factor to get married (i.e., premarital pregnancy and pregnancy out of wedlock).

Furthermore, the Panel of Judges also consider the benefits (*maslahat*) and harms (*mudharat*) associated with granting or rejecting a marriage dispensation request. When the benefits are more dominant than the harms, then the proposed marriage dispensation is rejected; but when the harms are dominant than the benefits, then the proposed marriage dispensation is granted. In Maros Regency, there is a Memorandum of Understanding between the Religious Courts and DP3A issued early in 2021. Accordingly, all applications for marriage dispensation are first referred to this institution for counseling, the results are used as consideration at the Religious Court.

One of the cases in which a marriage dispensation was granted was the case of Nunu (15 years) and Saleh (20 years). Saleh, who is a pond farmer, was sure that he would be able to provide for his wife when asked about his readiness for marriage. Nunu expressed her readiness to get married based on Saleh's capability to provide for her since he already has a job. But what made this request granted was public scrutiny. The couple met almost every night and came home early in the morning. It was concluded that if the proposed marriage dispensation was not granted, they would become a target of an angry community because people thought they had "polluted the village". In many cases, when premarital sex occurs, the proposed marriage dispensation is granted. This points to the idea that the harms (*mudharat*) are more dominant than the benefits (*maslahat*).

Local Perspective on Unregistered Marriage

Unregistered marriages (*nikah siri*) are usually chosen because of two reasons. Some people do not care about marriage certificate. But, there are also those who are keen to have their marriage certificates, as experienced by Arni (18 years) who married when she was 16 years

old, which at the time was the legal minimum age of marriage. Her husband Sampara at that time was 38 years old. The couple could not marry legally because even if Sampara had separated from his previous wife for a long time, he was not legally divorced yet. Sampara and Arni then married by *nikah siri*. Article 38c of the Marriage Law states that the termination of a marriage is caused by three factors, namely: death, divorce, and court decisions. In this case, Sampara did not take care of the divorce from his previous marriage before proposing to Arni. When his divorce certificate was questioned, he could not prove it and therefore the administration for marriage cannot be continued. To make it simple, an *imam* from another village agreed to marry them off for a certain fee (IDR1,500,000 about US\$100) with the promise that the marriage certificate would be issued soon. At the time, the legal marriage fee at KUA was only IDR600.000,- (about \$US39). However, the promise was unfulfilled. Instead of dealing with divorce papers from his previous marriage and legalizing his current marriage through *itsbat nikah*, Sampara allows himself to always be haunted by his own imagination. He fears that without a marriage certificate, he will be separated from his current wife.

Some couples intend to wait until they meet the age limit to get a marriage certificate. Haniah, for example, married at the age of 15 with a boy aged 16. Both did not meet the minimum age limit, which at that time was 16 years for female and 19 years for male. They did not propose for marriage dispensation. Even though this was not a forced marriage, their parents decided to marry them off through unregistered marriage (*nikah siri*). In 2019, both still had not reached the amended age limit, so they had to wait for another two years to legalize their marriage.

According to the Deputy Head of the Maros Religious Court (26 December 2019), those who come to propose for a marriage certificate are not always young people or those who got married when their age was below the minimum age of marriage. Adult couple also came to propose for a marriage certificate in order to register for school, to register for pilgrimage, and to apply for bank loan. The *Dukcapil* officials also regularly educate people about the importance of taking care of population administration, such as ID cards (KTP), family cards (KK), and other identity cards [Interview with The Head of the Population and Civil Registry Office (*Dukcapil*) of Maros—Pak Eldrin Saleh, 6 December 2021}. Nonetheless, local community often could not care, unless necessitated in certain situation.

CONCLUSION

The amendment to Marriage Law in 2019 stipulates that the age limit for marriage is 19 years for both male and female, which is in accordance with the categorization of age based on Child Protection Law (No.23/2002). However, this is still in contrast with local categorization of age, which is strongly linked to marital status. Thus, marriageable age is always socially problematized.

While the new law increases the minimum age of marriage, the marriage dispensation “opens the door” for underage marriages. Moreover, there is no clear limit to the extent to which a marriage dispensation can be granted or rejected. Despite the fact that proposing a marriage dispensation in the Religious Courts is socially avoided, there has been an increase in such requests since the amendment. Dispensation of marriage tends to be accommodated after the enactment of the Law No. 16/2019. But, whether exemption was granted or rejected, the marriage would still take place, and it is very common that unregistered marriage (*nikah siri*) becomes “the way out”.

The consideration for granting or rejecting the application of marriage dispensation by the Religious Court depends on the reasons and the supported evidence. However, the considerations are very subjective and commonly related to perceived benefit (*maslahat*) and harms (*mudharat*).

Findings of this study highlight important practical recommendations at various levels. First, at the village level, data filing is required to document people who come to ask for a letter of recommendation for matrimony (N1-Form) whether or not the couple meet the age limit requirements for marriage. This can help village officials to identify and to educate them and the parents in relation to marriage requirements, marriage dispensation, and marriage certificates. In addition, village officials need to better understand their main tasks and functions (*tupoksi*), so as not to get confused between the authority of the village/sub-district head and KUA. Second, the Department of Population and Civil Registry needs to continuously educate the community about the importance of population administration because many community members become stateless due to child marriage. Third, similarly, KUA needs to educate the community about the requirements for marriage, marriage procedures, and the importance of taking care of the administrative requirements of marriage before dealing with marriage preparations. At least both marriage preparations and administrative requirements (including ensuring the age limit is met) should be done simultaneously so that this is not used as an excuse to continue the marriage in the

case of not meeting the age limit requirement. Finally, the Religious Courts need to educate the community about the functions of the Religious Courts, so that this institution does not become a frightening specter; and to educate about the requirements, functions, and how to carry out a marriage dispensation and *itsbat* nikah if necessary.

My findings point to a possible increase in underage unregistered marriage (*nikah siri anak*) after the enactment of the amendments to the Marriage Law in 2019, but it is not yet elaborated. Therefore, this might be a potential topic for future research.

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ENDNOTES

- 1) Retrieved on 15 July 2021 from <https://www.unicef.org/indonesia/media/2851/file/Child-Marriage-Report-2020.pdf>.
- 2) Retrieved on 22 January 2020 from <https://makassar.tribunnews.com/2019/03/06/lpa-sulsel-urutan-5-tertinggi-di-indonesia-pernikahan-anak-di-bawah-umur>.
- 3) Retrieved on 15 May 2022 from <https://www.batukarinfo.com/komunitas/articles/upaya-pencegahan-perkawinan-usia-anak-di-provinsi-sulawesi-selatan>.
- 4) Retrieved on 3 Juli 2021 from <https://makassar.tribunnews.com/2018/05/01/begini-kisah-perjodohan-hingga-pernikahan-bocah-di-maros>.
- 5) Children’s rights include: the right to be heard, the right to be free from discrimination, the right to protection from all forms of violence and actions that harm their health, the right to protection from exploitation that interferes their education, or endangers their health, physical, mental, spiritual, moral or social. In a human rights perspective.
- 6) Four principles of the Convention on the Rights of the Child (CRC): non-discrimination, best interests of the child, the right to survival and development, and the views of the child.
- 7) The principal amendments to the Law are contained in the provisions of Article 7 that (1) Marriage is only permitted if the man and woman have reached the age of 19; (2) When the age provisions, as referred to paragraph 1, is violated, the parents of prospective

bride and groom may request a dispensation of marriage from the Court on the grounds that it is very urgent, accompanied by sufficient supporting evidence; (3) The provision of dispensation by the Court as referred to in paragraph 2 must listen to the opinions of both parties of the prospective bride and groom who will carry out the marriage; (4) The provisions regarding the condition of one or both parents of the prospective bride and groom as referred to in Article 6 (paragraph 3) and (paragraph 4) shall also apply to the provisions regarding the request for dispensation as referred to paragraph 2 without prejudice to the provisions as referred to in Article 6 (paragraph 6).

- 8) *Itsbat nikah* is an application for the ratification of an unregistered marriage that is submitted to the court to declare that the marriage is valid and has legal force. In fact, marriage can only be proven by a marriage certificate made by the Marriage Registrar. To propose for *itsbat nikah*, one requires to submit the following documents: application/lawsuit of *itsbat nikah*, a statement letter from local KUA that their marriage is unregistered, a statement letter from the local village head regarding the existence of their marriage, copy of the valid applicant's ID cards (KTP, from both husband and wife), and copy of Family Card (KK).
- 9) Retrieved on 15 August 2021 from <https://www.mkri.id/index.php?page=web.Berita&id=11150>.
- 10) Retrieved on 15 August 2021 from <https://www.mkri.id/index.php?page=web.Berita&id=11123>.
- 11) Retrieved on 15 August 2021 from <https://nasional.tempo.co/read/1155057/mk-kabulkan-gugatan-ujimateri-batas-usia-perkawinan>.
- 12) Retrieved on 15 August 2021, <https://nasional.kompas.com/read/2015/06/18/1620408/MK.Tolak.Naikkan.Batas.Usia.Perkawinan.bagi.Perempuan>.
- 13) Retrieved on 15 August 2021, <https://news.detik.com/berita/d-4341570/mk-perintahkan-dpr-revisi-uu-perkawinan-soal-batas-usia-menikah>.
- 14) Retrieved on 15 August 2021, <https://www.kemenpppa.go.id/index.php/page/read/29/2322/dpr-ri-sahkan-batas-usia-perkawinan-jadi-19-tahun>.
- 15) Chapter II (article 3) consists of registration of marriage will to be carried out at the District KUA where the contract is held; registration of marriage will is carried out no later than 10 (ten) working days before the marriage is carried out; and in the case that the registration of the marriage will is carried out in less than 10 working days, the prospective bride and groom must obtain a letter of dispensation from the Sub-district Head where the contract is held.
- 16) The 14 aspects of marriage requirements include a letter

of recommendation for matrimony from the sub-district where the prospective bride and groom live; photocopy of birth certificate, identity card (KTP), family card (KK), ; a marriage recommendation letter from the local District KUA for prospective brides who are married outside the sub-district where they live; the consent of the bride and groom; written permission from parents or guardians for the bride and groom who have not reached the age of 21 years; permission from the guardian who maintains or is related by blood, in the event that both parents or guardians as referred to in the previous point pass away or are in a state of incapacity; permission from the court, in the absence of parents, guardians and guardians; marriage dispensation from the court for prospective husbands who have not yet reached the age of 19 years and for prospective wives who have not reached the age of 16 years; a letter of permission from his superiors/units if the prospective bride is a member of the Indonesian national army/police of the Republic of Indonesia; determination of polygamy permit from the Religious Court for husbands who intend to have more than one wife; a divorce certificate or an excerpt from the divorce registration book/divorce registration book for those whose divorce occurred before the enactment of Law No. 7 of 1989 concerning Religious Courts; and a death certificate or a certificate of death for the husband/wife made by the sub-district/village head or an official at the same level for the widow/widower left behind.

- 17) *Doe'panai'* (ascending money) is delivery money given by the male family to the female family. The value depends on the social status of the woman and the ability of the man, as well as the agreement of the families of both parties. *Doe'panai'* is "spending money" for the wedding party, so that when a divorce occurs, *doe'panai'* is non-refundable and does not depend on the length of the marriage period. Once the wedding party is over, the *panai'* money is considered to have run out.
- 18) *Sunrang* is a Makassar term for dowry, an absolute requirement according to religious law (Islam) which is embraced by the majority of Makassar people. *Sunrang* is a gift from a man to a woman, it can be in the form of goods or money. For the lower class, it is commonly a two gram ring.
- 19) *Hari H* atau D-Day refers to the day an event takes place.
- 20) *Suscatin*, which stands for *kursus calon pengantin*. is the provision of knowledge, understanding and skills in a short time to prospective couple (*catin*) about domestic/family life. This refers to the Regulation of the Director General of Islamic Community Guidance No. DJ.II/491 of 2009 as the legal basis.
- 21) The purpose of establishing guidelines for adjudicating applications for dispensation for marriage is to: 1) apply

the principles as referred to in Article 2, namely the principle of the best interests of the child, the principle of the right to life and development of the child, the principle of respect for the opinion of the child, the principle of respect for human dignity, the principle of non-discrimination, gender equality, the principle of equality before the law, the principle of justice, the principle of expediency and the principle of legal certainty; (2) guarantee the implementation of a judicial system that protects children's rights; 3) increasing parental responsibility in the context of preventing child marriage; 4) identify whether or not there is coercion behind the application for a marriage dispensation; and 5) realize the standardization of the process of adjudicating applications for marriage dispensation in court.

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