



# Rationalization of Islamic Legal Considerations in Marriage Dispensation: A Lesson from Katingan, Central Kalimantan

Iswantoro<sup>1</sup>, Faiq Tobroni<sup>2\*</sup>

<sup>1,2\*</sup>Faculty of Shariah and Law, Sunan Kalijaga State Islamic University

Email: <sup>1</sup>[iswantoro@uin-suka.ac.id](mailto:iswantoro@uin-suka.ac.id), <sup>2\*</sup>[faiq.tobroni@uin-suka.ac.id](mailto:faiq.tobroni@uin-suka.ac.id)

---

Submitted	: 2022-10-12	Accepted	: 2022-11-22
Revision	: 2022-11-20	Publish	: 2022-11-25

---

**Abstract:** This paper finds the importance of paying attention to the psychological readiness of children as consideration in granting a marriage dispensation. Katingan Regency Local Regulation Number 9 of 2018 requires applicants for marital dispensation to check their psychological health. This study investigates how such requirements help judges formulate rational legal considerations in handling applications for a marriage dispensation. This study uses qualitative methods and analysis of the intertextuality of legal texts. Kasongan Religious Court Decision Number 39/Pdt.P/2022/PA.Ksn has taken advantage of the implementation of this provision. The judge rejected the application for a marriage dispensation because the results of the hospital's assessment showed that the prospective bride and groom were not psychologically prepared. This decision ruled out the reasons for the applicants on the pretext of only avoiding adultery. The legal considerations refer to the essential objective of Islamic law: the best benefit (*maslahat*) for children.

**Keywords:** Marriage Dispensation, Islamic Law, Psychological Readiness and Adultery

**Abstrak:** Artikel ini menemukan pentingnya memperhatikan kesiapan psikologis anak sebagai pertimbangan dalam pemberian dispensasi perkawinan. Peraturan Daerah Kabupaten Katingan Nomor 9 Tahun 2018 mempersyaratkan pemohon dispensasi perkawinan memeriksakan kesehatan psikologis tersebut. Kajian ini menginvestigasi bagaimana persyaratan ini membantu hakim menyusun pertimbangan hukum yang rasional dalam menangani permohonan dispensasi perkawinan. Penelitian ini menggunakan metode kualitatif dan analisis intertekstualitas teks hukum. Putusan Pengadilan Agama Kasongan Nomor 39/Pdt.P/2022/PA.Ksn telah memanfaatkan pelaksanaan ketentuan ini. Hakim menolak permohonan dispensasi perkawinan karena hasil asesment rumah sakit menunjukkan calon pengantin tidak mempunyai kesiapan psikologis. Putusan ini mengesampingkan alasan pemohon dengan dalih hanya menghindari zina. Pertimbangan hukumnya mengacu kepada tujuan hakiki hukum Islam, yakni kemasalahatan terbaik bagi anak.

**Kata Kunci:** Dispensasi Perkawinan, Hukum Islam, Kesiapan Psikologis, dan Perzinaan

## Introduction

The policy of preventing marriage at a young age is not sufficiently carried out by drafting laws and regulations at the national level. The local government is the closest party to the community.

The central government has seen this advantage. Since 2011, the State Ministry for Women's Empowerment and Child Protection of the Republic of Indonesia (Kemen PPA) has launched the development of child-friendly districts or cities. This policy is regulated in the Ministerial Regulation of the Minister of Child Protection 12/2011 concerning Child-Friendly District/City Indicators. As a follow-up to this initiative, several districts or cities issued local regulations regarding the prevention of child marriages. One of them is Katingan Regency. This district made Regional Regulation Number 9 in 2018 to prevent child marriage (the Local Regulation).

The presence of this Local Regulation is a significant contribution to add to strategies for preventing child marriage. Local government is the representative of the state closest to the people. If people's daily problems cause most child marriages, the contribution of the local government is needed to prevent child marriages. It is hoped that the presence of Local regulation will contribute to covering up the weaknesses of national legal products in preventing child marriage.

One of the reasons why child marriages still occur is the viewpoint of society that uses concessions in Islamic law as a pretext for applying for a marriage dispensation. Islamic law does not recognize a legal age for marriage. The national marriage law has accommodated these characteristics of Islamic law by providing an alternative application for dispensing the age of marriage for child prospective brides and grooms. The existence of leniency in Islamic law, which does not regulate the legal age for weddings, and the existence of a mechanism for requesting dispensation of marriage age in the national marriage law has backfired on efforts to prevent marriage at a young age. Data from the Kasongan Religious Court in Katingan Regency shows that requests for dispensation from child marriage have experienced a dynamic increase. From 2020 to 2022, requests for child marriage dispensation at the Kasongan Religious Court reached 54 applicants<sup>1</sup>. The number of applications for marriage-age dispensation at the Kasongan Religious Court was much higher than those at the Kasongan District Court. From 2020 to 2022, there were only two applications for marriage dispensation at the Kasongan District Court<sup>2</sup>. Comparing the number of applications for marriage dispensation between the two courts shows a non-positive response from the Muslim community toward implementing the Local Regulation.

This research assumes that child marriage prevention policies also require a synergy between state and religious law. This paper wants to reveal the contribution of the Local Regulation in tightening the application for dispensation of the age of marriage at the Kasongan Religious Court in the Katingan Regency. This study uses an analysis of the intertextuality of legal texts. At its origins, intertextuality is an approach to studying legal texts. The intertextuality of legal texts is used to find connections between one legal text and another<sup>3</sup>. In this study, the researchers used an analysis of the intertextuality of legal texts to describe the continuity of material on child marriage prevention in the Local Regulation with the same material in national legal products. This study uses normative

---

<sup>1</sup> Pengadilan Agama Kasongan, "Data Permohonan Dispensasi Kawin Pada Pengadilan Agama Kasongan Kabupaten Katingan 2020-2022," Pengadilan Agama Kasongan, 2022, [https://sipp.pa-kasongan.go.id/list\\_perkara/search](https://sipp.pa-kasongan.go.id/list_perkara/search).

<sup>2</sup> Pengadilan Negeri Kasongan, "Data Permohonan Dispensasi Kawin Pada Pengadilan Negeri Kasongan Kabupaten Katingan Tahun 2020-2022," Pengadilan Negeri Kasongan, 2022, [http://sipp.pn-kasongan.go.id/list\\_perkara/search](http://sipp.pn-kasongan.go.id/list_perkara/search).

<sup>3</sup> Faiq Tobroni, "Tinjauan HAM Dalam Regulasi PPPK Dengan Intertekstualitas Teks Hukum (Human Rights Review in Regulations on PPPK with Intertextuality Legal Text)," *Jurnal HAM* 11, no. 2 (2020): 219-38, <https://ejournal.balitbangham.go.id/index.php/ham/article/view/1172>.

legal research methods. With this method, this research will investigate the aspects contained in a regulation<sup>4</sup>. The internal element sought in the Local Regulation is the weakness and strength in preventing child marriage. This study collects data by documentating Katingan Regency Local Regulation Number 9 of 2018, Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, Law Number 1 of 1974 concerning Marriage, Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation, and several research results in the form of journals that examine problems in handling the phenomenon of child marriage.

### Polemics of Early Marriage

This paper sees that the court is the last line of defense to prevent child marriage from occurring. Data on requests for marriage dispensation at the Kasongan Religious Court in Katingan Regency from 2020-2022 show that the Muslim community in Katingan is part of the problems in child marriage. This problem is actually not a strange thing. The research by The Center for Gender Studies at the School of Strategic and Global Studies at the University of Indonesia concluded that religious leaders are part of the root cause of child marriage<sup>5</sup>. Some Muslim leaders (*kyai*) believe that child marriage is not prohibited in Islam. They look at the history of the Prophet Muhammad, who also married Aisha as a child. Seeing how complex the root causes of child marriage are, studies to formulate the prevention of child marriage require a comprehensive approach.

Many studies have discussed child marriage. The discussion of most research is still limited to the factors that cause marriage at an early age, its negative effects, judges' considerations in granting dispensation for marriage to children, and strategies to prevent marriage at a young age. Several studies have found that the causes of child marriage are rooted in complex issues, such as female pregnancy out of wedlock<sup>6</sup>, economic reasons<sup>7</sup>, living environment<sup>8</sup>, and ease of requesting a marriage dispensation for children<sup>9</sup>. Female pregnancy out of wedlock has two mutually reinforcing implications for the occurrence of child marriage. On the one hand, a woman's pregnancy outside marriage is a strong reason for the bride to apply for a marriage dispensation. On the other hand, a woman's pregnancy out of wedlock is a logical reason for the judge to grant the application for a marriage dispensation.

<sup>4</sup> Korneliz Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020): 45-57, <https://ejournal2.undip.ac.id/index.php/gk/article/view/7504>.

<sup>5</sup> Program Studi Kajian Gender Sekolah Kajian Strategik Dan Global Universitas Indonesia, "Perkawinan Anak Dalam Perspektif Islam, Katolik, Protestan, Budha, Hindu, Dan Hindu Kaharingan Studi Kasus Di Kota Palangkaraya Dan Kabupaten Katingan, Provinsi Kalimantan Tengah" (Jakarta, 2016), <https://www.kemenpppa.go.id/lib/uploads/list/b1dac-laporan-penelitian-perkawinan-anak.pdf>.

<sup>6</sup> Titing Sugiarti and Kunthi Tridewiyanti, "Implikasi Dan Implementasi Pencegahan Perkawinan Anak," *JLR-Jurnal Legal Reasoning* 4, no. 1 (2021): 81-95, <https://journal.univpancasila.ac.id/index.php/jlr/article/view/2968>.

<sup>7</sup> Setiadi Setiadi, "Getting Married Is a Simple Matter: Early Marriage among Indonesian Muslim Girls in Rural Areas of Java," *JSW (Jurnal Sosiologi Walisongo)* 5, no. 2 (2021): 143-54, <https://www.jurnal.walisongo.ac.id/index.php/JSW/article/view/7970>.

<sup>8</sup> Adinda Hermambang et al., "Faktor-Faktor Yang Memengaruhi Pernikahan Dini Di Indonesia," *Jurnal Kependudukan Indonesia* 16, no. 1 (2021): 1-12, <http://ejurnal.kependudukan.lipi.go.id/index.php/jki/article/view/502>.

<sup>9</sup> Imam Subchi et al., "Legal Policy of Child Marriage In the Covid-19 Pandemic Period," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021): 846-66, <https://www.jurnal.ar-raniry.ac.id/index.php/samarah/article/view/10570>. This has been strictly required in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (Marital Law

Another study found that child marriages still often occur even though such marriages are considered to have negative impacts, such as poverty<sup>10</sup>, education and health rights<sup>11</sup>, and the future of children<sup>12</sup>. Not much debate about the negative impact of child marriage on the right to education. One study found that some schools had required their students to make a statement about not being married while they were students<sup>13</sup>. Regarding health, it is not disputed that early marriage has contributed to maternal mortality<sup>14</sup>. Another negative impact that stands out from marriage at a young age is the problem of growth and development and the future of children. Someone who marries early will find it challenging to develop themselves through formal education. Failure to pursue formal education may not directly lead to poverty. But suppose a person is deprived of the opportunity to receive a higher formal education. In that case, he is also deprived of opportunities that are more open in determining employment and sources of income. However, there is debate about the negative impact of child marriage on poverty. Recent studies state that early marriage does not affect poverty<sup>15</sup>.

Several studies have highlighted the strategies undertaken to prevent child marriage. Among these strategies is a counseling program starting from schools<sup>16</sup> and cooperation with religious leaders<sup>17</sup>. Other studies have looked at the occurrence of marriage at a young age because the court granted the request for dispensation at the age of marriage. The judge's consideration in granting a marriage dispensation is the existence of urgent facts<sup>18</sup>, such as a woman's pregnancy before the wedding. Granting dispensation in cases like this is considered beneficial for both parties. The first benefit is for women in the form of legal support to legalize marital relations with prospective husbands. The second benefit is for future children, in the form of legal certainty, to obtain civil rights with the father and the father's family.

Some of the research indicates the importance of multi-stakeholder and multi-perspective approaches in developing strategies to prevent child marriage. Therefore, it is essential to look at the contribution of the Local Regulation of Katingan Regency to tighten the application for a marriage

<sup>10</sup> Andi Hidayat Anugrah Ilahi, "The Evaluation of Early Marriage Law Renewal in Indonesia," *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang* 7, no. 1 (2021): 129–52, <https://journal.unnes.ac.id/sju/index.php/ulj/article/view/43000>.

<sup>11</sup> Wiwik Afifah, "Hukum dan Konstitusi: Perlindungan Hukum atas Diskriminasi pada Hak Asasi Perempuan di dalam Konstitusi," *DiH: Jurnal Ilmu Hukum* (Universitas 17 Agustus 1945 Surabaya, 2018), <https://doi.org/10.30996/dih.v0i0.1583>; Afifah.

<sup>12</sup> Dini Fadilah, "Tinjauan Dampak Pernikahan Dini Dari Berbagai Aspek," *Jurnal Pamator: Jurnal Ilmiah Universitas Trunojoyo* 14, no. 2 (2021): 88–94, <https://journal.trunojoyo.ac.id/pamator/article/view/10590>.

<sup>13</sup> Elya Kusuma Dewi, Sarip Sarip, and Muntahibun Multahibun, "Politik Hukum Surat Pernyataan Dilarang Menikah Bagi Anak Sekolah Menengah Pertama," *Jurnal Bina Mulia Hukum* 6, no. 1 (2021): 116–29, <http://jurnal.fh.unpad.ac.id/index.php/jbmh/article/view/294>.

<sup>14</sup> Singgih Susilo et al., "Investigation of Early Marriage: A Phenomenology Study in the Society of Bawean Island, Indonesia," *Journal of Population and Social Studies* 29 (2021): 544–62, <https://so03.tci-thaijo.org/index.php/jpss/article/view/254038>.

<sup>15</sup> Wulansari Dyah Rahayu and Heni Wahyuni, Ph.D., "The Influence Of Early Marriage On Monetary Poverty In Indonesia," *Journal of Indonesian Economy and Business* 35, no. 1 (March 11, 2020): 30–43, <https://doi.org/10.22146/jieb.42405>.

<sup>16</sup> Andi Marlah Susyanti and Halim Halim, "Strategi Pencegahan Pernikahan Usia Dini Melalui Penerapan Pusat Informasi Dan Konseling Remaja (PIK-R) Di SMK Negeri 1 Bulukumba," *Jurnal Administrasi Negara* 26, no. 2 (2020): 114–37, [http://www.journal.stialanmakassar.ac.id/index.php/jurnal\\_administrasi\\_negara/article/view/1249](http://www.journal.stialanmakassar.ac.id/index.php/jurnal_administrasi_negara/article/view/1249).

<sup>17</sup> Sastro Mustapa Wantu et al., "Early Child Marriage: Customary Law, Support System, and Unwed Pregnancy in Gorontalo," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021): 780–803, <https://jurnal.ar-raniry.ac.id/index.php/samarah/article/view/9573>.

<sup>18</sup> Mansari Mansari and Rizkal Rizkal, "Peranan Hakim Dalam Upaya Pencegahan Perkawinan Anak: Antara Kemaslahatandan Kemudharatan," *El-USRAH: Jurnal Hukum Keluarga* 4, no. 2 (2021): 328–56, <https://jurnal.ar-raniry.ac.id/index.php/usrah/article/view/10219>.

dispensation at the Kasongan Regency Religious Court. This Local Regulation symbolizes multi-stakeholder and multi-perspective approaches to preventing child marriage through rationalizing legal considerations for granting a marriage dispensation.

### The Local Regulation on the Prevention of Child Marriage

In terms of substance and redaction of regulations, these regional regulations aim to prevent child marriage. The law does not only follow an ideal strategy. Some examples of ideal methods used by these regulations are empowering parents and the community to provide education about the negative impacts of early marriage. These regional legal products also pay attention to realistic strategies in addressing policies to prevent child marriages. One of these practical strategies is to encourage the involvement of local governments in tightening applications for a marriage dispensation. This is a realistic strategy because most of the population in the Katingan Regency is Muslim. The data shows that the number of applications for marriage dispensation in the Religious Courts shows a progressive movement.

The realistic choice of the local government of Katingan Regency to involve itself in tightening the application for marriage dispensation as a strategy to prevent early marriage is not without problems. There is an impression that the substance of the regional regulation contains several issues, as follows. First, there is an internal inconsistency between the title and the spirit of the content. Second, there is an external contradiction between the legal age for marriage in the Local Regulation and the legal age for marriage in the new national marriage law.

The first relates to the inconsistency between the title and the content in the Local Regulation. The title is the prevention of child marriage. However, some articles have several weaknesses in pursuing the goal of preventing child marriage. This can be seen in the provisions governing the role of parents and local governments in addressing children who are about to marry at a young age (Article 10, paragraph 1, letter A, chapter VI of the Local Regulation). When one child is about to marry at a young age, the article regulates the parents' responsibilities to oversee the application for marriage dispensation for their children. In the application process, parents are responsible for providing a child psychologist or counselor to assess the child's mental health. Several studies have stated the importance of having a child psychologist or counselor to detect the mental maturity of the bride and groom who will marry early. One research has shown the effectiveness of counseling guidance in preventing child marriages<sup>19</sup>. The existence of counseling materials, such as explanations about the actual situation in the household, can be a consideration for a child to postpone early marriage<sup>20</sup>. Other materials in counseling guidance, such as an explanation of the weakness of the reproductive organs in adolescent girls, have provided an understanding for young women to prepare themselves

<sup>19</sup> Rasta Kurniawati Br Pinem, Nur Rahmah Amini, and Ina Zainah Nasution, "Bimbingan Perkawinan Pranikah Bagi Usia Remaja Dalam Upaya Mencegah Pernikahan Anak," *Maslahah: Jurnal Pengabdian Masyarakat* 2, no. 3 (2021): 138–50, <http://www.ejurnalilmiah.com/index.php/Maslahah/article/view/174>.

<sup>20</sup> Alfani Ariwibowo et al., "Analisis Konseptual: Peran Layanan Bimbingan Pranikah Sebagai Bentuk Pencegahan Pernikahan Dini," in *Prosiding Seminar Nasional Bimbingan Dan Konseling Universitas Ahmad Dahlan* (seminar.uad.ac.id, 2021), 54–59, <http://seminar.uad.ac.id/index.php/PSNBK/article/view/7794>.

for making decisions about marriage<sup>21</sup> so that, in the end, they choose in advance to postpone early marriage<sup>22</sup>.

The existence of rules regarding marriage dispensation in the Local Regulation shows the duality. On the one hand, the Local Regulation is entitled to prevent marriage at an early age. Still, on the other hand, the Local Regulation also regulates an alternative to deviate from the original spirit. Weaknesses like this are not much different from Law 16/2019 and Law 1/1974. The national-level marriage law still contains contradictions in addressing child marriage<sup>23</sup>. On the one hand, Law 16/2019 has raised the legal age for marriage. But on the other hand, Law 16/2019 still maintains the mechanism for requesting a marriage dispensation. This indicates the weakness of the government's firmness to eradicate society from the practice of underage marriages<sup>24</sup>. Many criticize the existence of an article regarding marriage dispensation. The presence of dispensation articles is considered to have contributed to the creation of legal uncertainty in improving the standard of marriage age<sup>25</sup>. The court is the place to get the legalization of underage marriages. Permission from the court helps support underage marriages to have legality according to religious and state law<sup>26</sup>.

Many studies consider that the court is weak in preventing marriage at a young age because it is supposed to make it too easy to apply for dispensation at the age of marriage. There are several studies rejecting this conclusion. The Supreme Court is believed to have shown its seriousness in addressing the application for dispensation of marriage age through the presence of Supreme Court Regulation Number 5 of 2019. This regulation is a solution to regulate the criteria for the best benefit for children in making decisions<sup>27</sup>. Even so, many still say that the courts have failed to carry out their role in preventing child marriages<sup>28</sup>. This failure was not due to court performance but because of an arrangement regarding dispensation. Experience in implementing national marriage law and the increase in the legal age for marriage has encouraged a growth in applications for dispensing the age of marriage. The spirit of preventing child marriage by increasing the legal age for marriage

<sup>21</sup> Teresia Retna Puspitadewi and Amrotun Mustainah, "The Socialization Of Adolescent Counseling Information Program Through Adolescent Cadres In Preventing Early Marriage In Sawir Village, Tuban," *Jurnal Pengabdian Masyarakat Kesehatan* 8, no. 1 (2022): 19–23, <http://journal.stikespemkabjombang.ac.id/index.php/jpm/article/view/918>.

<sup>22</sup> Iin Las Priyanti, "Efektivitas 'Program GenRe' Dalam Pencegahan Pernikahan Dini Pada Siswa SMK 2 Gedangsari," *G-Couns: Jurnal Bimbingan Dan Konseling* 5, no. 2 (2021): 265–69, <http://journal.upy.ac.id/index.php/bk/article/view/1572>.

<sup>23</sup> Sonny Dewi Judiasih, Susilowati Suparto Dajaan, and Bambang Daru Nugroho, "Kontradiksi Antara Dispensasi Kawin Dengan Upaya Meminimalisir Perkawinan Bawah Umur Di Indonesia," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 3, no. 2 (2020): 203–22, <http://jurnal.fh.unpad.ac.id/index.php/acta/article/view/221>.

<sup>24</sup> Levana Safira, Sonny Dewi Judiasih, and Deviana Yuanitasari, "Perlindungan Hukum Terhadap Anak Yang Melakukan Perkawinan Bawah Umur Tanpa Dispensasi Kawin Dari Pengadilan," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 4, no. 2 (2021): 210–25, <http://jurnal.fh.unpad.ac.id/index.php/acta/article/view/521>.

<sup>25</sup> Ratnaningsih Ratnaningsih and Sudjatmiko Sudjatmiko, "Menakar Nilai Keadilan, Kemanfaatan, Dan Kepastian Hukum Pencegahan Perkawinan Anak," *Jurnal Economic & Business Law Review* 1, no. 1 (2021): 50–66, <https://jurnal.unej.ac.id/index.php/JEBLR/article/view/24212>.

<sup>26</sup> Kiki Amaliah and Zico Junius Fernando, "Akibat Hukum Dispensasi Perkawinan Anak Di Bawah Umur," *Al Imarah: Jurnal Pemerintahan Dan Politik Islam* 6, no. 2 (2021): 200–217, <https://ejournal.iainbengkulu.ac.id/index.php/alimarah/article/view/4936>.

<sup>27</sup> Fahadil Amin Al Hasan and Deni Kamaluddin Yusup, "DISPENSASI KAWIN DALAM SISTEM HUKUM INDONESIA: Menjamin Kepentingan Terbaik Anak Melalui Putusan Hakim," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 1 (2021): 86–98, <http://ejournal.uin-suka.ac.id/syariah/Ahwal/article/view/2266>.

<sup>28</sup> Irma Suryanti and Dewa Gde Rudy, "Disfungsi Dispensasi Kawin Dalam Upaya Pencegahan Perkawinan Anak," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 10, no. 4 (2021): 782–94, <https://ojs.unud.ac.id/index.php/jmhu/article/view/71385>.

is considered a futile project because it is not accompanied by firmness regarding requests for dispensation from a marriage that judges can accept<sup>29</sup>.

However, with rationalizing considerations, requests for marriage dispensation do not always have to be understood negatively. The Local Regulation of Katingan Regency looks realistically at the existence of a mechanism for requesting marriage dispensation. This mechanism is not only supported by national marriage law but also has always been the choice of the Katingan Muslim community when they want to marry off their underage children.

The second substance problem is an external inconsistency between the substance in the Local Regulation and Law 16/2019. One substance requiring immediate changes is the legal age at marriage. The Local Regulation was issued before a change in the legal age for marriage in Law 16/2019. When the Local Regulation was passed in 2018, Law 1/1974 still regulated 19 years for men and 16 years for women as the legal age for marriage. Then in 2019, Law 16/2019 changed the standard to be the same for men and women, namely 19 years. The change in the legal age for marriage is to carry out an objective side in setting the legal age for marriage<sup>30</sup>. Politically, in national law, many groups support equalizing the legal age for marriage for men and women, namely 19 years. Many people think that 19 years reflects the democratic configuration of legal politics. This figure is the meeting point of the interests of various groups in determining the age of marriage<sup>31</sup>. The number 19 years as a requirement for marriage age is still below the medical standard. The ideal age of marriage in the medical view is 20 years for women and 25 years for men<sup>32</sup>. The legal age for marriage in the Katingan Local regulation lags behind the national marriage law. This Local Regulation still states that the standard for applying for a marriage dispensation is age under 19 years for men and age under 16 years for women. This lag is because the Local Regulation was issued earlier than Law 16/2019. Because the national government has changed Law 1/1974, the Local Government should also improve the standard material for the age of marriage in the Local Regulation.

### **Mental Maturity as a Determinant of Marriage Dispensation**

Even though it seems counterproductive to prevent early marriage, the substance regarding marriage dispensation in the Local Regulation has helped the Kasongan Religious Court to tighten the application for marriage dispensation. Of the 54 requests for marriage age dispensation, the Kasongan Religious Court did not grant all of these applications. An interesting finding is that not all excuses for using Islamic law to prevent the recurrence of adultery are accepted by the judge as a reason for granting the request for marriage dispensation. In 2022, the judge of the Kasongan Religious Court rejects two (2) cases of requests for marriage dispensation. One of two rejections is a case in which the prospective bride and groom admit they already have a very close biological relationship.

<sup>29</sup> Mughniatul Ilma, "Regulasi Dispensasi Dalam Penguatan Aturan Batas Usia Kawin Bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 2, no. 2 (2020): 133–66, <https://ejournal.insuriponorogo.ac.id/index.php/almanhaj/article/view/478>.

<sup>30</sup> Yusuf Ridho Billah and Abdul Qahar, "Politik Hukum Penetapan Batas Usia Perkawinan Dalam UU Perkawinan No. 16 Tahun 2019," *AL MAQASHIDI* 4, no. 2 (2021): 65–76, <https://ejournal.sunan-giri.ac.id/index.php/ALMAQASHIDI/article/view/518>.

<sup>31</sup> Muhamad Hasan Sebyar, "Politik Hukum Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *IUS: Jurnal Ilmiah Fakultas Hukum* 10, no. 1 (2022): 47–65, <https://ejournal.upm.ac.id/index.php/ius/article/view/963>.

<sup>32</sup> 39

The prospective couple is only 14 years old<sup>33</sup>. They realize they have fucked like a husband and a wife three times. The couple's parents stated that they had been in a relationship for one year and both had fucked like husband and wife intercourse, but it did not result in pregnancy. Their parents worry about the appearance of slander and other sins. Therefore, the parents are trying to get the prospective couple married. However, the Office of Religious Affairs rejected the application for marriage because the couple did not meet the legal age for marriage.

Furthermore, the couple's parents asked for a marriage dispensation from the Kasongan Religious Court. During the litigation process, it was found that according to Islamic law, the couple did not have any obstacles as a requirement for the validity of marriage in Islamic law. Both of them are not *mahrams*. However, the judge asked the couple to prove their mental maturity in building a household. The judge's request is by the Local Regulation Policy, which requires the parents of the prospective bride and groom to undergo an assessment of the child's mental readiness test. Then, the couple checked themselves for their mental maturity at the Kasongan regional public hospital<sup>34</sup>.

The couple gave a Doctor's Certificate dated November 1, 2022, issued by the UPT Public Service Board of Mas Amsyar Kasongan Hospital. The couple has received a psychological maturity check from a Specialist Psychiatric from the Mas Amsyar Kasongan Hospital. The results of the Doctor's assessment stated that the couple was not physically and psychologically ready to marry. They still do not understand the rights and obligations of husband and wife. The two children still need guidance and supervision from their parents. Finally, based on the results of the mental maturity test, the Kasongan Religious Court rejected the application for a marriage dispensation.

The judge's opinion strengthens a child's mental maturity requirement as a condition for granting marriage dispensation. According to the judge, mental readiness is closely related to maturity or self-maturity. The judge quoted Gordon Willard Allport that states about the dimensions of maturity, including a) self-extension; b) dependable ways of relating warmly to others, such as tolerance, empathy, trust, and genuineness; c) self-acceptance or emotional security; d) realistic perception and appraisal); e) problem-centeredness; f) self-objectification; and g) a unifying philosophy of life, allowing comprehension and integration of one's goals and values<sup>35</sup>. The judge believed that the couple did not fulfill several mature personal indications, which could be seen in the patterns of daily socialization relationships, problem-solving methods, and their lack of understanding of their roles as husband and wife. Thus, the judge assessed that the couple did not have the mental readiness and maturity to navigate the dynamics of the household issues.

What is interesting about this case is that the judge realized that there were two simultaneous *mafsadat* (something dangerous). The first is the *mafsadat* about the potential for repeated adultery between two unmarried couples. The acknowledgment from the couple and parents' admission shows that they already have a close relationship and have fucked relationships as husband and wife. Thus, if the couple is not officially married soon, the potential for the repetition of adultery is enormous. The second is *the mafsadat* on the potentiality for an inharmonious family to occur. This is based on the results of the mental maturity assessment from the Regional General Hospital, which stated

<sup>33</sup> Pengadilan Agama Kasongan, "Putusan Pengadilan Agama Kasongan Nomor 39/Pdt.P/2022/PA.Ksn," Mahkamah Agung, 2022, <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaed60d674ce0924b509313630323531.html>.

<sup>34</sup> Pengadilan Agama Kasongan.

<sup>35</sup> Gordon W Allport, *Pattern and Growth in Personality*, *Pattern and Growth in Personality*. (Oxford, England: Holt, Reinhart & Winston, 1961).\ "Personality: A Psychological Interpretation\" (see 11: 1964



that the couple did not yet have the skills to think about the responsibilities of husband and wife in a family. Thus, the judge believed that granting marriage dispensation to the couple provides the greater *mafsadat* for the families of the prospective bride and groom and their born later children.

Regarding the contradiction of two occurring potential *mafsada*, the judge saw that not granting a marriage dispensation would prevent a larger *mafsada* from occurring. The judge believes that mental readiness is the principal capital to ensure that the prospective bride and groom can realize the purpose of marriage, namely to form a harmonious family. Mental readiness will awaken the husband and wife to have a sense of responsibility for their respective roles in the family. The challenge of being married is not only to meet the necessities of life for husband and wife. When they have children, the obligation to make ends meet also applies to their children. Mental readiness will determine the direction of the household's journey so that the existence of the family can guarantee happiness for the husband and wife as well as for their children. Disharmonious families can cause divorce between husband and wife. Divorce can be avoided if the prospective bride and groom have mental readiness in the family. Therefore, granting a marriage dispensation will not guarantee that the couple will form a harmonious family, which will not ensure that the marriage will run sustainably.

The judge took the smaller *mafsadat*. The judge believed that the *mafsadat* of adultery could be prevented. According to the judge, the potential for repeating adultery could be controlled with the participation of parents in supervising their child's social interactions. Furthermore, the judge held on to a hadith of the Prophet, stating that young men and women who were not ready or did not have the capabilities to get married could take an alternative to fast. Based on the reading of this hadith, the judge understands that marriage is not the only alternative to avoid adultery. Marriage is not an alternative priority to prevent adultery. The occurrence of adultery is caused by the parent's negligence in carrying out their responsibilities to provide education, awareness, and maximum supervision of their children.

The decision of the Religious Court shows that the existence of Local Regulations on the prevention of child marriage has at least contributed to rationalizing the consideration for granting marriage dispensation. So far, Islamic law has received criticism about its commitment to preventing child marriage. This is because Islamic law does not impose standard age requirements. Islamic law relies on the maturity of the prospective bride and groom. But in practice, the Islamic legal mechanism does not provide for assessing the mental maturity test. State legal regulations must complement the weaknesses possessed by Islamic law. The Local Regulation has positioned itself to complete the shortcomings of Islamic law.

Islamic law enforcement instruments do not have complete means to test a person's mental maturity. Health facilities, both in the form of physical and psychological health, are the obligation of the government to provide them. In the context of local autonomy, health affairs have been distributed from the central government to regional governments. That is why every local government must provide health facilities like hospitals. About the governance of health and government affairs like this, the existence of Local Regulation is the legal basis for local governments' presence to prepare health facilities. The local government contributes to preparing facilities by assessing the mental maturity of the prospective bride and groom. On the other hand, the judges (both religious and district courts) can use the results of this assessment to determine the status of a marriage dispensation.

The results of the mental maturity assessment are essential for judges in religious courts who are facing requests for marriage dispensation from the Muslim community. There is a strong notion that religious judges will be forced to vote to grant a marriage dispensation if the applicants have admitted to having sexual intercourse as husband and wife. The judge can rule out assumptions and excuses like this because the mental maturity of the couple is more important. This mental maturity is a model for believing that the marriage can run harmoniously. Meanwhile, the pretext of adultery cannot be used as an excuse to force early marriage because adultery can be prevented in other ways.

## Conclusion

The Katingan Local Regulation to prevent child marriage is a breakthrough that needs to be appreciated. As a breakthrough, it is not easy for the implementation to be effective. The challenge of conformity to norms is still a critical problem for Local Regulation. The issue of preventing child marriages also has been regulated in national legal products. In addition, preventing child marriage also requires a complex approach. That is why it is understandable if the Local Regulation still has many weaknesses. However, behind these weaknesses, some advantages need to be maximized to cover the deficiencies in the mechanism for requesting a marriage dispensation. Religious law can be a contributor to increasing the number of child marriages. This also applies to Islamic law. The absence of a legal age requirement for marriage as a legality of marriage in Islamic law is a trigger for many Muslim communities who prefer to apply for marriage dispensation to expedite marriages for their underage children. One stipulation from the Kasongan Religious Court in Katingan has benefited from the implementation of the Local Regulation. The involvement of the local government in providing facilities for mental maturity assessments for the prospective marital couple has been helpful for judges in religious courts. In one decision, judges do not have to accept a request for marriage dispensation on the pretext of avoiding adultery and admitting that they have had fucked like a husband and a wife. The judge can rule out the guise of preventing adultery for a couple who has not fulfilled the adequacy of mental maturity. Mental maturity is more important because it guarantees harmonious family formation. Meanwhile, the potential for adultery can actually be prevented with other alternatives such as fasting. It doesn't always have to be through marriage.

## Acknowledgments

The authors would like to thank the Institute for Research and Community Engagement (LPPM), Sunan Kalijaga State Islamic University, Yogyakarta. The institute has provided financial support for this research in the 2021 fiscal year.

## References

- Afifah, Wiwik. "Hukum Dan Konstitusi: Perlindungan Hukum Atas Diskriminasi Pada Hak Asasi Perempuan Di Dalam Konstitusi." *DiH: Jurnal Ilmu Hukum*. Universitas 17 Agustus 1945 Surabaya, 2018. <https://doi.org/10.30996/dih.v0i0.1583>.
- Allport, Gordon W. *Pattern and Growth in Personality*. Pattern and Growth in Personality. Oxford, England: Holt, Reinhart & Winston, 1961.

- Amaliah, Kiki, and Zico Junius Fernando. "Akibat Hukum Dispensasi Perkawinan Anak Di Bawah Umur." *Al Ijarah : Jurnal Pemerintahan Dan Politik Islam* 6, no. 2 (2021): 200–217. <https://ejournal.iainbengkulu.ac.id/index.php/alimarah/article/view/4936>.
- Ariwibowo, Alfani, Agus Supriyanto, Indah Tri Sutanti, and Sri Hartini. "Analisis Konseptual: Peran Layanan Bimbingan Pranikah Sebagai Bentuk Pencegahan Pernikahan Dini." In *Prosiding Seminar Nasional Bimbingan Dan Konseling Universitas Ahmad Dahlan*, 54–59. seminar.uad.ac.id, 2021. <http://seminar.uad.ac.id/index.php/PSNBK/article/view/7794>.
- Benuf, Korneliz, and Muhamad Azhar. "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." *Gema Keadilan* 7, no. 1 (2020): 45–57. <https://ejournal2.undip.ac.id/index.php/gk/article/view/7504>.
- Billah, Yusuf Ridho, and Abdul Qahar. "Politik Hukum Penetapan Batas Usia Perkawinan Dalam UU Perkawinan No. 16 Tahun 2019." *AL MAQASHIDI* 4, no. 2 (2021): 65–76. <https://ejournal.sunan-giri.ac.id/index.php/ALMAQASHIDI/article/view/518>.
- Dewi, Elya Kusuma, Sarip Sarip, and Muntahibun Multahibun. "Politik Hukum Surat Pernyataan Dilarang Menikah Bagi Anak Sekolah Menengah Pertama." *Jurnal Bina Mulia Hukum* 6, no. 1 (2021): 116–29. <http://jurnal.fh.unpad.ac.id/index.php/jbmh/article/view/294>.
- Fadilah, Dini. "Tinjauan Dampak Pernikahan Dini Dari Berbagai Aspek." *Jurnal Pamator: Jurnal Ilmiah Universitas Trunojoyo* 14, no. 2 (2021): 88–94. <https://journal.trunojoyo.ac.id/pamator/article/view/10590>.
- Hasan, Fahadil Amin Al, and Deni Kamaluddin Yusup. "DISPENSASI KAWIN DALAM SISTEM HUKUM INDONESIA: Menjamin Kepentingan Terbaik Anak Melalui Putusan Hakim." *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 1 (2021): 86–98. <http://ejournal.uin-suka.ac.id/syariah/Ahwal/article/view/2266>.
- Hermambang, Adinda, Choirul Ummah, Eunike Sola Gratia, Fathul Sanusi, Wilda Maria Ulfa, and Nooraeni Nooraeni. "Faktor-Faktor Yang Memengaruhi Pernikahan Dini Di Indonesia." *Jurnal Kependudukan Indonesia* 16, no. 1 (2021): 1–12. <http://ejournal.kependudukan.lipi.go.id/index.php/jki/article/view/502>.
- Ilahi, Andi Hidayat Anugrah. "The Evaluation of Early Marriage Law Renewal in Indonesia." *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang* 7, no. 1 (2021): 129–52. <https://journal.unnes.ac.id/sju/index.php/ulj/article/view/43000>.
- Ilma, Mughniatul. "Regulasi Dispensasi Dalam Penguatan Aturan Batas Usia Kawin Bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019." *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 2, no. 2 (2020): 133–66. <https://ejournal.insuriponorogo.ac.id/index.php/almanhaj/article/view/478>.
- Judiasih, Sonny Dewi, Susilowati Suparto Dajaan, and Bambang Daru Nugroho. "Kontradiksi Antara Dispensasi Kawin Dengan Upaya Meminimalisir Perkawinan Bawah Umur Di Indonesia." *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 3, no. 2 (2020): 203–22. <http://jurnal.fh.unpad.ac.id/index.php/acta/article/view/221>.
- Mansari, Mansari, and Rizkal Rizkal. "Peranan Hakim Dalam Upaya Pencegahan Perkawinan Anak: Antara Kemaslahatandan Kemudharatan." *El-USRAH: Jurnal Hukum Keluarga* 4, no. 2 (2021): 328–56. <https://jurnal.ar-raniry.ac.id/index.php/usrah/article/view/10219>.

- Pengadilan Agama Kasongan. "Data Permohonan Dispensasi Kawin Pada Pengadilan Agama Kasongan Kabupaten Katingan 2020-2022." Pengadilan Agama Kasongan, 2022. [https://sipp.pa-kasongan.go.id/list\\_perkara/search](https://sipp.pa-kasongan.go.id/list_perkara/search).
- . "Putusan Pengadilan Agama Kasongan Nomor 39/Pdt.P/2022/PA.Ksn." Mahkamah Agung, 2022. <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaed60d674ce0924b509313630323531.html>.
- Pengadilan Negeri Kasongan. "Data Permohonan Dispensasi Kawin Pada Pengadilan Negeri Kasongan Kabupaten Katingan Tahun 2020-2022." Pengadilan Negeri Kasongan, 2022. [http://sipp.pn-kasongan.go.id/list\\_perkara/search](http://sipp.pn-kasongan.go.id/list_perkara/search).
- Pinem, Rasta Kurniawati Br, Nur Rahmah Amini, and Ina Zainah Nasution. "Bimbingan Perkawinan Pranikah Bagi Usia Remaja Dalam Upaya Mencegah Pernikahan Anak." *Maslahah: Jurnal Pengabdian Masyarakat* 2, no. 3 (2021): 138–50. <http://www.ejurnalilmiah.com/index.php/Maslahah/article/view/174>.
- Priyanti, Iin Las. "Efektivitas 'Program GenRe' Dalam Pencegahan Pernikahan Dini Pada Siswa SMK 2 Gedangsari." *G-Couns: Jurnal Bimbingan Dan Konseling* 5, no. 2 (2021): 265–69. <http://journal.upy.ac.id/index.php/bk/article/view/1572>.
- Program Studi Kajian Gender Sekolah Kajian Strategik Dan Global Universitas Indonesia. "Perkawinan Anak Dalam Perspektif Islam, Katolik, Protestan, Budha, Hindu, Dan Hindu Kaharingan Studi Kasus Di Kota Palangkaraya Dan Kabupaten Katingan, Provinsi Kalimantan Tengah." Jakarta, 2016. <https://www.kemenpppa.go.id/lib/uploads/list/b1dac-laporan-penelitian-perkawinan-anak.pdf>.
- Puspitadewi, Teresia Retna, and Amrotun Mustainah. "The Socialization Of Adolescent Counseling Information Program Through Adolescent Cadres In Preventing Early Marriage In Sawir Village, Tuban." *Jurnal Pengabdian Masyarakat Kesehatan* 8, no. 1 (2022): 19–23. <http://journal.stikespemkabjombang.ac.id/index.php/jpm/article/view/918>.
- Rahayu, Wulansari Dyah, and Heni Wahyuni, Ph.D. "The Influence Of Early Marriage On Monetary Poverty In Indonesia." *Journal of Indonesian Economy and Business* 35, no. 1 (March 11, 2020): 30–43. <https://doi.org/10.22146/jieb.42405>.
- Ratnaningsih, Ratnaningsih, and Sudjatismiko Sudjatismiko. "Menakar Nilai Keadilan, Kemanfaatan, Dan Kepastian Hukum Pencegahan Perkawinan Anak." *Journal Economic & Business Law Review* 1, no. 1 (2021): 50–66. <https://jurnal.unej.ac.id/index.php/JEBLR/article/view/24212>.
- Safira, Levana, Sonny Dewi Judiasih, and Deviana Yuanitasari. "Perlindungan Hukum Terhadap Anak Yang Melakukan Perkawinan Bawah Umur Tanpa Dispensasi Kawin Dari Pengadilan." *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 4, no. 2 (2021): 210–25. <http://jurnal.fh.unpad.ac.id/index.php/acta/article/view/521>.
- Sebyar, Muhamad Hasan. "Politik Hukum Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan." *IUS: Jurnal Ilmiah Fakultas Hukum* 10, no. 1 (2022): 47–65. <https://ejournal.upm.ac.id/index.php/ius/article/view/963>.
- Setiadi, Setiadi. "Getting Married Is a Simple Matter: Early Marriage among Indonesian Muslim Girls in Rural Areas of Java." *JSW (Jurnal Sosiologi Walisongo)* 5, no. 2 (2021): 143–54. <https://www.journal.walisongo.ac.id/index.php/JSW/article/view/7970>.

- Subchi, Imam, Qosim Arsadani, Muhammad Ishar Helmi, and Efin Faridho. "Legal Policy of Child Marriage In the Covid-19 Pandemic Period." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021): 846–66. <https://www.jurnal.ar-raniry.ac.id/index.php/samarah/article/view/10570>.
- Sugiarti, Titing, and Kunthi Tridewiyanti. "Implikasi Dan Implementasi Pencegahan Perkawinan Anak." *JLR-Jurnal Legal Reasoning* 4, no. 1 (2021): 81–95. <https://journal.univpancasila.ac.id/index.php/jlr/article/view/2968>.
- Suryanti, Irma, and Dewa Gde Rudy. "Disfungsi Dispensasi Kawin Dalam Upaya Pencegahan Perkawinan Anak." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 10, no. 4 (2021): 782–94. <https://ojs.unud.ac.id/index.php/jmhu/article/view/71385>.
- Susilo, Singgih, Novia Fitri Istiawati, Muhammad Aliman, and Muhammad Zulfi Alghani. "Investigation of Early Marriage: A Phenomenology Study in the Society of Bawean Island, Indonesia." *Journal of Population and Social Studies* 29 (2021): 544–62. <https://so03.tci-thaijo.org/index.php/jpss/article/view/254038>.
- Susyanti, Andi Marlah, and Halim Halim. "Strategi Pencegahan Pernikahan Usia Dini Melalui Penerapan Pusat Informasi Dan Konseling Remaja (PIK-R) Di SMK Negeri 1 Bulukumba." *Jurnal Administrasi Negara* 26, no. 2 (2020): 114–37. [http://www.journal.stialanmakassar.ac.id/index.php/jurnal\\_administrasi\\_negara/article/view/1249](http://www.journal.stialanmakassar.ac.id/index.php/jurnal_administrasi_negara/article/view/1249).
- Tobroni, Faiq. "Tinjauan HAM Dalam Regulasi PPPK Dengan Intertekstualitas Teks Hukum (Human Rights Review in Regulations on PPPK with Intertextuality Legal Text)." *Jurnal HAM* 11, no. 2 (2020): 219–38. <https://ejournal.balitbangham.go.id/index.php/ham/article/view/1172>.
- Wantu, Sastro Mustapa, Irwan Abdullah, Yowan Tamu, and Intan Permata Intan. "Early Child Marriage: Customary Law, Support System, and Unwed Pregnancy in Gorontalo." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021): 780–803. <https://jurnal.ar-raniry.ac.id/index.php/samarah/article/view/9573>.

