

## THE ROLE OF RELIGIOUS COURT IN PREVENTION UNDERAGE MARRIAGE

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### **Abstract**

Indonesia is the second highest country in ASEAN in the prevalence of underage marriage after Cambodia and ranks 7<sup>th</sup> highest in the world for the absolute number of child brides. The tangent point of child marriage with the Religious Court enters through the case of marriage dispensation. As the authority of the Religious Courts, marriage dispensation is very dilemmatic and debatable because simultaneously the case is biased in value, between benefit, harmness, and community behavior. In sociology, society always changes and the difference is only in the nature or level of change. One of the fundamental aspects of the reflection of the Religious Court decisions that put forward efforts to prevent child marriages is to narrow the space for filing child marriage cases, examine the case more carefully by adding to the burden of proof, and the commitment of the parties to respond to the negative consequences of child marriages.

*Indonesia menjadi negara ke-2 tertinggi di ASEAN dalam prevalensi pernikahan anak setelah Kamboja, dan menempati urutan ke-7 tertinggi di dunia atas angka absolut pengantin anak. Titik singgung pernikahan anak dengan Pengadilan Agama masuk melalui perkara dispensasi nikah. Sebagai kewenangan Pengadilan Agama, dispensasi nikah sangat dilematis dan debatable karena secara simultan perkara tersebut bias nilai, antara kemaslabatan, kemudharatan, dan perilaku masyarakat. Secara sosiologi, masyarakat senantiasa mengalami perubahan dan yang menjadi pembeda hanyalah pada sifat atau tingkat perubahannya. Salah satu aspek mendasar dari cerminan putusan-putusan Peradilan Agama yang mengedepankan upaya pencegahan pernikahan anak adalah mempersempit ruang gerak pengajuan perkara pernikahan anak, memeriksa perkara secara lebih cermat dengan menambah beban pembuktian, serta komitmen para pihak merespon akibat negatif yang ditimbulkan dalam pernikahan anak.*

**Keywords:** Religious Courts, Prevention, Marriage, Children

## Introduction

The role of the Religious Courts has existed in Indonesia in line with the existence of Islamic law that came together with the Islamic religion in the VII century AD in the Nusantara.<sup>1</sup> Since the reform era through the *One Roof System* launched by the Supreme Court in 2004, the Religious Court has been one of the executors of judicial power in Indonesia under the Supreme Court. The position of the Religious Courts is in line with the three other court environments, namely the general court, military court, and state administration court.

The authority of the Religious Courts is contained in Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. The authority of the Religious Court includes disputes between Muslim people in the fields of: a) marriage; b) inheritance; c) wills; d) grants; e) endowments; f) *zakat*; g) *infaq*; h) *sadaqah*; and i) Islamic economics. In the explanation of number 37 Article 49 covers at least 22 areas of marital law, one of which concerns the dispensation of marriage to child marriage. This juridical reason shows the role of the Religious Courts through marriage dispensation is very significant in providing child protection.<sup>2</sup>

The point of contact of child marriages with the Religious Courts goes through marital dispensation cases. As the authority of the Religious Court, marriage dispensation is very dilemmatic and debatable because simultaneously the case is biased in value, between the benefit, harm and public behavior. In sociology, society always changes and the only difference is the nature or level of change.<sup>3</sup> Therefore, it is necessary to change the law to be more assertive, useful and in favor of women and children. Law in the principles of sociology underwent various changes, and each change is likely to affect people's behavior.<sup>4</sup>

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<sup>1</sup> Amran Suadi and Mardi Candra, *Politik Hukum Perspektif Hukum Perdata dan Hukum Pidana Islam serta Ekonomi Syariah* (Jakarta: Kencana Prenada Media Group, 2017), p. 15.

<sup>2</sup> Mardi Candra, *Aspek Perlindungan Anak Indonesia: Analisis tentang Perkawinan di Bawah Umur* (Jakarta: Kencana Prenada Media Group, 2018), p. 6.

<sup>3</sup> Abdul Manan, *Aspek-Aspek Pengubah Hukum* (Jakarta: Kencana Prenada Media, 2006), p. 71.

<sup>4</sup> Amran Suadi, *Sosiologi Hukum: Penegakan, Realitas & Nilai Moralitas Hukum* (Jakarta: Kencana Prenada Media Group, 2018), p. 18.

Religious Courts as one of the executors of judicial power are faced with two major expectations. First, the Religious Courts are required to uphold the law and justice to the best of their “*in konkreto*” to apply the normative aspects of the law. Second, the Religious Courts are also required to pay more serious attention to the interests of women and children, so that they do not become victims of the legal behavior of the community, especially in child marriages.

This paper tries to elaborate the role of the Religious Courts in preventing child marriages that have plague very quickly due to various factors. Elaboration emphasizes general policies (general discretion) and decisions of the Religious Courts that reflect efforts to prevent child marriage. More specifically, this study discusses about the regulation of child marriage as a legal basis for the Religious Courts, the Religious Courts policy in trying to prevent child marriages and significant efforts reflected from the decisions of the Religious Courts in preventing child marriage.

### **Regulation of Child Marriage as a Juridical Basis for Religious Courts**

Regulations for religious courts in carrying out their various roles are very important, including in preventing child marriage. In addition to al-Qur’an and Hadith as the main sources of Islamic law, child marriage regulations in Indonesia are contained in two statutory regulations, namely, First, Law Number 1 of 1974 concerning Marriage. Second, Act Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.<sup>5</sup>

Although the two laws and regulations have the same position and nature, which is equally strong and equally specific. However, the two regulations are not in line with child marriages. Many experts are of the opinion that the Law on Child Protection that comes later has not fulfilled the principle of synchronization and harmonization of the existing Marriage Law, so that its enforcement is ineffective and maximal. Harmonization has a function to prevent and overcome the disharmony of the law. Harmonization can also guarantee the process

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<sup>5</sup> Mardi Candra, *Aspek Perlindungan Anak Indonesia...*, p. 223.

of establishing a bill that is consistent with the principle, for the sake of legal certainty.<sup>6</sup>

Arrangement of child marriage in the Marriage Law is contained in Article 7 paragraph (1), which confirms that:

(1) Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years.

(2). In the case of deviations from paragraph (1) this article may request dispensation from the Court or other official appointed by both male and female parents. “Whereas in the Child Protection Act alluded to Article 26 paragraph (1) letter c, which confirms that: “Parents are obliged and responsible to prevent marriages at the age of the child.

However, in the level of implementation by the Minister of Religion Regulation Number 11 Year 2007 regarding Marriage Registration in Chapter IV Article 7 which states that a prospective bride who has not reached the age of 21 years must obtain permission from parents. This permit is mandatory because it is considered to still require guidance and management of parents.<sup>7</sup>

In addition to the juridical basis above, there are a number of positive legal grounds that are referred to by the Religious Court in terminating child marriages, as follows:

a. The 1945 Constitution and its Amendments

Constitutionally child protection is contained in Article 28B paragraph (2) of the 1945 Constitution, which emphasizes that, “every child has the right to survival, growth and development and has the right to protection from violence and discrimination.” On the basis of that constitutional basis and the ratification of the Convention On The Rights of the Child (CRC), it is necessary to establish a regulation on child protection.

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<sup>6</sup> Solly Lubis, *Landasan dan Teknik Perundang-Undangan* (Bandung: Mandar Maju, 1989), p. 1.

<sup>7</sup> Kartini Alga, *Batas Usia Pernikahan dalam Undang-Undang*, <http://KURancah.blogspot.com/2012/07> accessed July 10, 2017.

- b. Law Number 3 of 1997 concerning Juvenile Court  
This law is a representation to protect the rights of children who violate the law. In its consideration in letter (b), it is stated that in order to carry out guidance and provide protection for children, support is needed both in terms of institutions and legal enhancements that are more stable and adequate, therefore the provisions regarding the administration of justice for children need to be carried out specifically. This law was passed and promulgated on January 3, 1997.
- c. Law Number 39 of 1999 concerning Human Rights  
Law Number 39 of 1999 concerning Human Rights expressly states that it provides absolute protection for children.
- d. Law Number 4 of 1979 concerning Child Welfare  
Law Number 4 of 1979 concerning Child Welfare is not merely a juridical basis for providing protection for children. But more than that, this law as it reads, also regulates the provision of comfort and welfare to children.

In this context the judge examining the case of child marriage must consider comprehensively and consider the harm and mischief that would result if they were given permission to get married, or if they were not given permission to get married. Judges are not only concerned with the text of the law. Judges must not only rely on the sound of the text of a law. Judges must be able to give judgments based on juridical, sociological, psychological and public interest (*maslaha mursala*) aspects. Here the judge is required to be able to elaborate legal issues by trying to make legal discoveries that are most appropriate according to the values of justice based on the norms adopted by the community.

The law governing the family will experience changes due to changes in society. The substance, institutions and culture of family law continues to change, both within the Islamic community and beyond.<sup>8</sup> Any demands for the revision of articles related to the minimum age of marriage that have arisen lately must be addressed wisely and wisely. Although there are groups that support the current revision, not a few

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<sup>8</sup> Syamsuhadi Irsyad, "Wacana Hukum Keluarga Di Indonesia", *Jurnal Pustdiklat MA RI*, vol. 1, no. 2 (2002), p. 17.

groups who reject it. The Indonesian Ulema Council through the discussion forum on religious matters (*bathsul masail*) in Pontianak in May 2018 included those who refused to revise the Marriage Law.

In principle, the juridical review of Article 7 paragraph (1) of Law No. 1 of 1974 concerning Marriage is based on the understanding that marriage age is the most important part in household development. The age of marriage clearly has implications for household problems, which can arise in the context of moral crises, disharmony, and lack of responsibility.<sup>9</sup> Although it is factually recognized that child marriage has become part of the customs of the people in Indonesia and has penetrated into practice through the Religious Courts.<sup>10</sup>

Based on the benefit of consideration, each Islamic country and the majority Muslim population countries set their own age for marriage based on *ijtihad* in their country. The following are differences in age for marriages in these countries:<sup>11</sup>

From the description of the table, it can be understood that the age of marriage adopted by the Islamic world and Muslim-majority countries is on average ranging from 15-21 years, except for the countries of Iraq and Somalia which do not differentiate the age of marriage between men and women which are equally 18 year. In addition, the table above also shows that the marriage age limit is already in the normal category. However, the comprehensive age limit of marriages that have been set in these countries is not always consistent with the reality of society, the fact is with the increasing number of children who have early marriages, even though their age is far below that set by the state. Therefore, especially in Indonesia still needed an institution called marriage dispensation.

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<sup>9</sup> Andi Syamsu Alam, *Usia Ideal Memasuki Dunia Perkawinan; Sebuah Ikhtiar Mewujudkan Keluarga Sakinah*, Kencana Mas, Jakarta, 2005, Hlm. 101.

<sup>10</sup> Mardi Candra, *Aspek Perlindungan Anak Indonesia...*, p. 124.

<sup>11</sup> Tahir Mahmood, *Personal Law in Islamic Countries: history, text and comparative analysis* (New Delhi: Academy of Law and Religion, 1987), p. 270.

**Table 1.** Differences in Age for Marriages in Islamic Countries

No	Country	Age of marriage	
		Men	Women
1	Algeria	21	18
2	Bangladesh	21	18
3	Egypt	18	16
4	Indonesia	19	16
5	Iraq	18	18
6	Jordan	16	15
7	Lebanon	18	17
8	Libya	18	16
9	Malaysia	18	16
10	Morocco	18	15
11	North Yemen	15	15
12	Pakistan	18	16
13	Somalia	18	18
14	South Yemen	18	16
15	Syria	18	17
16	Tunisia	19	17
17	Turkey	17	15

*Source: Azizah (2018),<sup>12</sup> Summa (2005).<sup>13</sup>*

## Religious Court Policy in Preventing Child Marriage

Basically, there is an improvement in the mindset of the community in addressing child marriages, especially child marriages that occur illegally without the permission of the Religious Court. Marriage to minors carried out by community leaders without going through a marriage dispensation institution in the Religious Court, in addition to being subjected to moral sanctions, even to the removal from public office,<sup>14</sup> and there are also subjected to criminal sanctions as happened

<sup>12</sup> Nur Azizah, "The Analysis of Minimum Marriage Age Determination in Indonesia and Other Islamic Countries", *Jurnal Ilmiah Al-Syir'ab*, vol. 16, no. 2 (2018), p. 155.

<sup>13</sup> Muhammad Amin Summa, *Hukum Keluarga Islam di Dunia Islam* (Jakarta: Rajagrafindo Persada, 2005).

<sup>14</sup> The Guardian, salah satu media terbesar di Inggris memberitakan kasus Aceng dengan judul besar, "Indonesians Protest over Garut Chief's Text-Message Divorce", see The Guardian.com, "Indonesians protest over Garut chief's text-message divorce", (4 Dec 2012), available on <https://www.theguardian.com/world/2012/dec/04/indonesians-protest-text-message-divorce>, accessed July 5, 2019. See also M. Fauzan, *Skandal Pernikahan Empat*

in the case of Pujiono Cahyo Widiyanto's marriage known as the Syekh Puji, a journalist and caretaker of the pesantren with Lutviana Ulfah.<sup>15</sup> The lack of dispensation cases that were appealed to the court was related to barriers to access, such as costs, distance, going to court, lack of information about marital dispensation cases, and community attitudes.

In terms of the culprit, the marriage of minors can be divided into two kinds, first marriage of minors with adults, second marriage between fellow minors. Marrying minors by adults tends to be considered as an act of exploitation against children and is suspected to damage the way of thinking and the future of children. While the marriage of fellow children under the age tends to be due to the association of children and opinions that develop in the community, of course this is even worse for the future of the child in question. However, the marriage of minors can be legalized and legally valid through a marriage dispensation agency.

The important thing that needs to be underlined is that the marriage of minors must be done through a legal process through the establishment of a court. If the law functions as a guardian of order and social engineering, then the marriage dispensation that must be carried out through the establishment of the court is a progress towards curbing the practice of the marriage of minors who live in the midst of society, so that the events of underage marriage in the future have certainty. the law, then the practice must be done through a court.

Religious Courts in the past decade or since the implementation of the one roof system of judiciary has made various improvements in the administration of justice to support efforts to reform the judiciary based on the principles of transparency and accessibility for all levels of the justice seeker community.

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*Hari Bupati Garut Aceng Fikri Perspektif Hukum Perlindungan Anak dan Perempuan* (Jakarta: Majalah Hukum Varia Peradilan, IKAHI, 2013), p. 51.

<sup>15</sup>The marriage between the 43-year-old man and a 12-year-old young girl invited a strong reaction from the National Commission for Child Protection. Even observers are competing to give opinions that have a corner. Generally, the comments that came out looked at it negatively. On the other hand, Sheikh Puji, as he is familiarly called, argued to cadre the successor candidates to his company. He chose a girl who was still young because it was considered to be pure and not yet contaminated by the flow of modernity. Moreover, in Sheikh Puji's view, marrying a young girl is not a religious prohibition.

The Religious Court seeks to reform several subsystems in the justice system that have so far not been considered to reflect equal access to justice seekers as well as protection or partiality of the rights and legal access of women, children and the poor. Through the Directorate General of the Religious Courts (Ditjen Badilag), two strategic plans (Renstra) have been developed to support judicial reform in formulating further policies relating to efforts to protect the rights and legal access for women and children, and to improve the performance of all judicial apparatus in order to realize good governance.<sup>16</sup>

The practice of marriage dispensation according to some opinions that developed seemed to “simplify” the marriage process without considering the harmony of family life in the future. If the orientation is only in the context of the fulfillment of inner living, then the meaning of marriage is lost and is not in line with the objectives of Islamic marriage law which aspires to civil.<sup>17</sup> Islam has provided a very broad indication of a harmonious family life, and provides strict consequences from the aspects of marriage law.<sup>18</sup>

#### ***a. Judicial Transparency***

Judicial transparency is a fundamental element of efforts to reform the justice system and institutions. It becomes the main prerequisite for a trial expected by the public, namely a court that enforces law and justice without discrimination and without manipulative bureaucracy. Transparency is one of the court values,<sup>19</sup> which must be owned and implemented in the systems and work procedures of the judiciary.

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<sup>16</sup> Direktorat Jenderal Badan Peradilan Agama, *Rencana Strategis Direktorat Jenderal Badan Peradilan Agama 2010 – 2014* (Jakarta: Ditjen Badilag Mahkamah Agung Republik Indonesia, 2009), p. 4.

<sup>17</sup> Azyumardi Azra, *Menuju masyarakat madani: gagasan, fakta, dan tantangan* (Bandung: Remaja Rosdakarya, 1999), p. 65.

<sup>18</sup> Ibrahim Hoseen, *Fiqh Perbandingan Dalam Masalah Nikah, Thalaq, Rujuk dan Hukum Kewarisan* (Jakarta: Ihya Ulumuddin, 1979), p. 97.

<sup>19</sup> Court values are values that must exist and are implemented by a judiciary in order to create an excellent court. There are at least 10 values that must be owned or owned by a good judicial institution; equality before the law, fairness, impartiality, independence of decision-making, competence, integrity, transparency, accessibility, timeliness, dan certainty. See International Consortium for Court Excellence, *The*

Court transparency is the openness of the judiciary to the judicial process which should be applied in the examination of the case, including the disclosure regarding the decision handed down by the Judge (propriety of the process, the decision, and the decision maker).<sup>20</sup> The aim of judicial transparency is “to foster greater public trust and confidence” (increase public confidence in the judiciary).<sup>21</sup>

Transparency is one of the values that has been implemented by the Religious Courts in accepting, adjudicating, deciding upon, and resolving cases received. One manifestation of transparency is the stipulation of a number of policies by the Religious Courts. One of the policies implemented is the implementation of the Case Tracking Information System (SIPP),<sup>22</sup> which allows justice seekers to access the latest information regarding the case investigation. Inside is multivariate information, starting from the trial schedule, court fees, and other information that is useful for justice seekers.

Judiciary transparency is also concerned with publication of decisions. In this connection, the Religious Courts in recent years have encouraged massive publication of decisions on court websites to facilitate justice seekers in accessing decisions against their cases. Previously, when information technology had not yet become a preference regarding openness of the judiciary, there was no Religious Court decision published on the internet site.

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*International Framework for Court Excellence*, 2<sup>nd</sup> Edition (USA: National Center for State Courts, 2013), p. 3.

<sup>20</sup> International Consortium for Court Excellence, *The International Framework...*, p. 4.

<sup>21</sup> State Courts Singapore, *International Framework for Court Excellence: The State Courts of Singapore Model, A Practical Guide for Sustainable Court Excellence* (Singapore, n.d.), p. 19.

<sup>22</sup> Prior to the application of the SIPP, the Religious Courts had previously implemented the application *Sistem Informasi dan Administrasi Perkara Peradilan Agama* (Information System and Administration of Religious Courts Cases/SIADPA) which presented the latest information regarding the examination of a case. With the new policy of the Chief Justice of the Supreme Court, the Religious Court then shifts to the implementation of the SIPP, whose function is identical to SIADPA but with some modifications to improve the performance and transparency of the judiciary.

As noted by Cate Sumner and Tim Lindsey,<sup>23</sup> the Religious Courts, since the implementation of the one roof system of judiciary realizes the importance of accountability and transparency of the judiciary in increasing public confidence.

Transparency continues to be the focus of the Religious Courts in increasing public confidence. In addition to the publication of massive decisions through the internet, transparency is also realized by determining consistent and open court fees for justice seekers. All legal fees that must be paid are published on the internet with the case database as set forth in the SIPP. This shows the serious efforts of the Religious Courts in increasing public trust.

### ***b. Access to the Court***

Access to justice is one of the concerns of the Religious Courts in an effort to increase public trust and realize reform of the judiciary. Access to the Court is an important issue in the midst of declining public confidence in the judiciary in general. Issues regarding access to the Court include the location of the Court from the residence of the parties, court fees, and the Court's sensibility of the community seeking justice with a weak economy (the poor), especially for female heads of household living below the poverty line (living below the poverty line).

In addition to these efforts, the technical policy undertaken by the Religious Courts is to maximize the provision of advice by the Panel of Judges on the consequences of child marriage. After the advice and advice given by the panel of judges at the trial, not a few applicants of marriage dispensation in the Religious Courts understand and are aware, that in marriage not only physical and psychological maturity needs to be considered but also social factors, especially social and economic maturity. Someone who has dared to form a household means being brave enough to support his wife and children. Marriage dispensation for minors applies very selectively, can only be given in a state of emergency and forceful, for example the child is already pregnant or can not be separated again so that feared acts of immorality if they are not married.

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<sup>23</sup> Tim Lindsey and Cate Sumner, "Courting Reform: Indonesia's Islamic Courts and Justice for the Poor" (New South Wales: Lowy Institute for International Policy, 2010), p. 29.

Thus, in practice the protection function of children in the dispensation of marriage to the marriage of minors is to save a child from greater harm. Even though the marriage of a minor has an element of harmness that is the immature prospective bride of various things, but if the marriage is not carried out on the child, there will be a greater harm to the child in question.

## **Decision of the Religious Court in Preventing Child Marriage**

According to the 2012 National Socio-Economic Survey (Susenas), more than  $\frac{1}{4}$  (25%) of Indonesian women aged 20-24 have been married when they were not yet 18 years old. This data shows that 1,348,886 girls are married before the age of 18, equivalent to 3,695 girls per day in Indonesia. Of the total girls, 292,663 were married before 16 years and 110,198 before the age of 15 years.<sup>24</sup> Indonesia is the second highest country in ASEAN in the prevalence of child marriage after Cambodia, and ranks the seventh highest in the world for the absolute number of child brides.<sup>25</sup>

Requests for child marriages that enter through marriage dispensation cases in the Religious Courts from year to year always increase, especially in the last six years. National total data shows that in all of Indonesia in 2011 there were 1504 cases of marriage dispensation, then in 2012 it increased sharply to 10093 cases, in 2013 to 11869 cases.<sup>26</sup> Then in 2014 it increased again to 1,2009 cases, in 2015 there were 13518 cases, and in 2016 there were 13612 cases.<sup>27</sup>

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<sup>24</sup> Badan Pusat Statistik, *Survei Sosial Ekonomi Nasional 2012 Triwulan 1* (Dec 11, 2013), available on <https://microdata.bps.go.id/mikrodata/index.php/catalog/87/study-description>, accessed July 20, 2018.

<sup>25</sup> Achmat Hilmi et al., *Mendobrak Kawin Anak: Membangun Kesadaran Kritis Pencegahan Kawin Anak* (Jakarta: Yayasan Rumah Kita Bersama, 2018), p. 5.

<sup>26</sup> Badan Peradilan Agama Mahkamah Agung RI, *Laporan Tentang Perkara yang Diterima dan Diputus – LIPA.8 Data Total Secara Nasional*, <http://infoperkara.badilag.net>, accessed March 15, 2018.

<sup>27</sup> Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung RI, *Laporan Tahunan Direktorat Jenderal Badan Peradilan Agama*, (February 24, 2015), available on <https://badilag.mahkamahagung.go.id/laptah/laptah/laptah>, accessed August 24, 2017.

One of the fundamental aspects of the reflection of Religious Court decisions that put forward efforts to prevent child marriages is to narrow the space for filing child marriages, examine cases more closely by adding to the burden of proof, as well as to the commitment of the parties to respond to the negative consequences caused in child marriages. .

To reduce the door to permit and dispensation of marriage, the executive in this case the government made regulations to reduce and tighten the conditions for granting permits and the age of women over 16 years. Likewise, marriage registration of a young man is carried out when he has shown evidence that he has a job as a source of income. Through competent institutions to provide appeals, and dissemination of marriage law.<sup>28</sup>

The thought is relatively inclusive and elastic, but it leads to an impractical process, therefore socialization between institutions is needed. Viewed from the effectiveness of the implementation of the law, then when a prospective husband and wife have entered into a marriage, but in terms of age violating the provisions of the law, then sanctions can be demanded to be imposed at the time of registration. If the marriage takes place because of the tradition of forced marriage, then legal sanctions are imposed on parents. That is, sanctions for violating the age of marriage in accordance with the provisions of the law. Law cannot be called law if it is not enforced.<sup>29</sup>

Within the framework of child marriage, the Religious Court's decision has adopted legal norms that represent the spirit of child protection. In a number of decisions the Religious Court regarding child marriage is no longer just emphasized on the application of the norms of Article 7 of the Marriage Law in particular, but rather emphasizes the consideration of the best equipment for the child.

There are two important obstacles in resolving marital dispensation cases, namely: First, the examination of marital dispensations has not yet referred to the juvenile justice system, so that it is still treated as an ordinary case. Secondly, the requirements for permitting a marriage

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<sup>28</sup> Peunoh Daly, *Hukum Perkawinan Islam: Suatu Studi Perbandingan Kalangan Ablas Sunnah dan Negara-negara Islam* (Jakarta: Bulan Bintang, 1988), p. 133.

<sup>29</sup> Rifyal Ka'bah, "Penegakan Hukum di Indonesia", *Jurnal Pusdiklat MA RI*, vol. 1, no. 1 (2002), p. 36.

dispensation case according to several studies were apparently incomplete.

Therefore, it is necessary to increase the ability of judges in the religious court to hear cases of marriage dispensation in which children are subject to whose statements must be heard and to be asked for their opinions purely without pressure from anyone including their own parents.

The religious court has expected an ideal ruling in child marriage by regulating five main points, namely: First, the role of the child is fully and fully involved, and is carried out with a closed public hearing mechanism. Second, it strictly stipulates the criteria for children who can be given marriage dispensation. Third, determine the limit of the minimum age that can be given a marriage dispensation. Fourth, the law must regulate the financial security of parents or guardians for children who are granted marriage dispensation. Fifth, it contains norms that make harmonization between the child protection law and the marriage law.

The introduction of the rule of law as stated above, in the practice of child marriage shows the strong commitment of the Religious Courts in preventing child marriage. It is hoped that this will set a good precedent for collective efforts to prioritize the interests of children, which often cannot be fulfilled because the existing legal mechanisms are inadequate to accommodate them.

## **Conclusion**

Child marriage regulation as a juridical basis for the Religious Courts is still debatable and inadequate it is indicated by the disharmony of existing laws and regulations. The Religious Court has carried out various policies in the prevention of child marriages. Decisions of the Religious Courts have reflected significant efforts in preventing child marriage. In order for the Religious Court judges to be given training in the ability to hear cases of marriage dispensation for early marriage/children because of their specific characteristics such as certification of juvenile justice.

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