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The Phenomenon Of Early Marriage: Policy Analysis Of The Religious Court In Belopa Luwu Regency

Muhammad Akbar¹

Institut Agama Islam Negeri Palopo, Jl. Agatis Balandai, Kota
Palopo



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Abstract

The rise of early marriages in Belopa, Luwu Regency, has increased every year. Therefore, the purpose of this research is to find out the performance of the Belopa Religious Court in addressing and presenting a marriage dispensation policy and knowing the perspective of Islamic law with the widespread early marriage in Belopa. This type of research is field research and exploratory. The research informants consisted of 6 husband and wife couples, 3 parents or marriage guardians, head of KUA, 1 KUA employee, 2 judges, 2 clerks and 1 employee of the Belopa Religious Court. Research data obtained by means of observation, in-depth interviews and documentation. Furthermore, the data were analyzed by descriptive qualitative. The results of the study show that the performance of the Belopa Religious Court in addressing and presenting the marriage dispensation policy in the fairly easy category is given with evidence that the majority of marriage dispensation applications submitted at the Religious Courts are granted by the judge. Beside from that, this research also illustrates that Islamic Law as a mitigation patron for the rise of early marriage can be effective if it is not permissible to ignore the Marriage Law Number 16 of 2019 where when *fiqh* has been transformed into law then actually *fiqh* products which are the source of material must be seen as not is no longer valid or at least the product is no longer binding. Our only reference is the law with all the regulations under it.

Keywords: *Early Marriage, Religious Court Policy, Policy Analysis*

Abstrak:

Maraknya pernikahan dini di Belopa Kabupaten Luwu mengalami peningkatan setiap tahunnya. Oleh karena itu, tujuan penelitian ini adalah untuk mengetahui kinerja Pengadilan Agama Belopa dalam menyikapi dan menghadirkan kebijakan dispensasi nikah serta mengetahui perspektif hukum Islam dengan maraknya pernikahan dini di Belopa. Jenis penelitian ini ialah field research dan eksploratif. Informan penelitian terdiri atas 6 orang pasangan suami-istri, 3 orang tua atau wali nikah, kepala KUA, 1 pegawai KUA, 2 orang Hakim, 2 orang panitera dan 1 orang pegawai Pengadilan Agama Belopa. Data penelitian diperoleh dengan cara observasi, wawancara mendalam dan dokumentasi. Selanjutnya data dianalisis secara deskriptif kualitatif. Hasil penelitian menunjukkan bahwa kinerja Pengadilan Agama Belopa dalam menyikapi dan menghadirkan kebijakan dispensasi nikah dalam kategori cukup mudah diberikan dengan bukti mayoritas permohonan dispensasi nikah yang diajukan di Pengadilan Agama dikabulkan oleh hakim. Di samping itu, penelitian ini juga menggambarkan bahwa Hukum Islam sebagai patron

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mitigasi maraknya pernikahan dini dapat efektif bila tidak boleh mengabaikan Undang-undang Pernikahan Nomor 16 tahun 2019 dimana ketika fikih telah ditransformasikan menjadi undang-undang maka sejatinya produk fikih yang menjadi sumber materialnya harus dipandang tidak lagi berlaku atau setidaknya produk itu tidak lagi mengikat. Rujukan kita satu-satunya adalah undang-undang dengan segala peraturan di bawahnya

Kata Kunci: Pernikahan Dini, Kebijakan Peradilan Agama, Analisis Kebijakan

A. INTRODUCTION

Marriage is essentially a form of life cooperation between men and women in a society where they have the same goals and dreams and the same understanding as a medium for actualizing devotion (Putra, 2021). Marriage is a contract that provides the legal benefits of the ability to have a family relationship (husband and wife) between a man and a woman and provide mutual assistance and limit the rights of the owner and the fulfillment of obligations for each (Ghozali, 2018). This means that the relationship that is built must be *ma'ruf* by keeping secrets between the two, *mawaddah* association with providing a sense of security, peace and love, as well as a merciful relationship with each other, especially into old age. For the success of the marriage required the desire, determination and effort of both (Lailiyah et al., 2021). This is because marriage is a very strong commitment to obey the commands of Allah SWT and carry it out is worship (David et al., 2020). Marriage is also defined as a social contract and a divine contract in which there is the essence of the union of two persons who bind themselves together in a conjugal relationship, a relationship that causes a man and woman to have the same rights and obligations in one family (Maloko, 2016).

Islam does not require a definitive minimum age for marriage. The benchmark only refers to reaching the age of puberty and also being able to (Thaib, 2019). The theological reason is found in the word of Allah SWT in Q.S An-Nur/24: 59 in which the verse explains that the age of puberty is a reference for a person eligible for marriage in Islam. A child at the age of puberty can already apply to his parents or guardians if they want to get married. The age of puberty as well-known explained by the *fuqaha* which is marked by the arrival of menstruation for women while for men is marked by a dream that makes out his semen (*junub*) (Romana et al., 2021).

In addition to the verse, Abdullah Ibn Mas'ud Radliyallaahu 'anhu said that the Prophet Sallallaahu 'alaihi wa Sallam said to us: "O Young Generation, whoever among you has been able to have a family should marry, because he can subdue the view and maintain the genitals. Whoever is not able to fast should fast, because he can control you" (HR. Muttafaq Alaihi, Hadith No. 993) (Baqi A, 2020). This verse and the Hadith show that marriage can be done at a young age. Marriage under the legal age is valid as long as the conditions and pillars of marriage have been met but it is haram if it causes haram. Maturity age is one indicator for the achievement of the purpose of marriage, namely the benefit of the household and society as well as security guarantees for pregnancy. In order to realize the benefits of the provisions of marriage, it is returned to the age standardization as stipulated in law Number 16 of 2019 Article 7 Paragraph 1 as a guideline.

Referring to the Marriage Law, marriage can only be allowed for those who have met the age limit for marriage, namely the age of 19 for both men and women. The age limit is considered to have matured the body and soul to be able to carry out marriage so that it can realize the purpose of marriage properly without ending in divorce and get healthy

and qualified offspring. In the compilation of Islamic Law (KHI) market 15 Paragraph 1 is based on consideration of the benefit of the family and household in the future. so that the marriage can only be carried out by the bride and groom with the age requirements set forth in Article 7 of Law No.1 of 2019. The age limit basically does not require the existence of underage marriage.

In the handling of early marriage is not an easy thing to do Protection. In particular, the number of early marriages that occur in the Belopa community of Luwu Regency is still relatively high. There are still many people who marry below the age limit as stated in the law of the Republic of Indonesia Number 16 of 2019 concerning marriage in Article 7 Paragraph 1. This is as conveyed by Mrs. RDB as an employee of the registrar of marriage dispensation submission documents that during a pandemic, public interest is quite high in applying for a dispensation. Various reasons in the submission, such as getting pregnant first as a result of uncontrolled intercourse and the reason for mutual love (fear of his girlfriend married to someone else). This makes them develop the confidence and will be able to build a household. The majority of these couples do not have a job and some are still in school. The culture inherent in the community is compounded by their ignorance about the age restriction for a person who is going to get married. It's okay to marry your child at any age. This means that the marriage dispensation provided by the law to some extent gives the perception of the community to marry their children even though they have not reached the age of 19.

In Islam, the actions of a Muslim must have a status in Sharia Law, because it does not come out or free from the provisions of the laws of Allah. The essence of Islamic Law is to create social benefits for humans both in the present and in the future (Ayatina et al, 2021). Islamic Law is comprehensive, humanist, and always brings mercy to all humans on Earth (Suhairi et al., 2022). The early marriage law is valid if it has fulfilled the conditions and pillars of marriage that have been determined, namely *sighat (ijab-qabul)*, prospective bride (husband-wife), guardian for women and two witnesses (Ali, 2020). If viewed from the point of view of Islam, the age limit for carrying out marriage is not set clearly and firmly, it does not provide definite clarity about the age limit for a person to be able to do marriage. In Islam, it is given the freedom for anyone who already has the ability to marry immediately and does not retreat to perform a marriage for those who are able, how it will lead to haram (sin) (Zaini, 2015). But according to jurisprudence, one of the most important factors in preparing for a wedding is age. The age of a person can determine whether he is mature enough to behave and do or not (Desa et al., 2022). In marriage, an adult and mature attitude is required from each candidate (Armia, 2018).

Based on preliminary data obtained from the Luwu Regency Belopa Religious Court in 2018-2020 regarding marriage dispensation, it gives an idea that since the inauguration of the Belopa Religious Court in August 2018, 20 people have been granted marriage dispensation, an increase of 50 people in 2019 so that there are 52 people who get marriage dispensation. Entering the pandemic period in 2020, those who received a marriage dispensation were 58 people as a result of service restrictions, not due to public awareness not to get married early. Application for the dispensation, the majority occurred among low-educated people. These circumstances encourage the construction of positive law must be able to actualize the normative role of the family oriented to culture, religious morals, independence, achievement orientation and independence and especially through psychological approaches.

B. RESEARCH METHODOLOGY

The approach used by researchers is juridical normative and juridical formal because it is intended to understand the phenomenon of research subjects and expose the data needed in a descriptive form so that the data that has been collected does not need to be quantified. This means that the research data is not in the form of ordinal numbers, intervals and discrete. Researchers attempt to describe the reality that actually happened. This type of research is field research and explorative. Field research because researchers focus on the results of data collection from predetermined informants with the aim of obtaining more compatible data. While explorative is a review at the Belopa religious court to obtain data on cases of early marriage decisions that have been *inkrah* (Asikin & Amiruddin, 2018). The results of the research developed are related to the phenomenon of early marriage in Luwu Regency, is Policy Analysis Belopa Religious Court in which the research informants consisted of 6 couples husband-wife, 3 parents or guardians of marriage, head of KUA, 1 employee KUA, 2 Judges, 2 clerks and 1 employee Belopa Religious Court.

The instruments used in this study are interview guidelines (short writing containing questions that require long answers, not yes or no answers), observation sheets, stationery in the form of books and pen to record the main points of the interview, recording tools such as cell phones to record the interview results (enabled if the researcher has trouble recording the interview results), and documentation (some case numbers needed). The data analysis used is descriptive qualitative. Qualitative descriptive is a method of data analysis by describing the situation and then separated by category to obtain conclusions or important points that then produce a concise, clear and easily understood picture of the reality that occurs in the field. That is, in this research the data obtained through interviews or documentation, separated and categorized in accordance with the formulation of problems that have been determined, namely the facts and data on the rise of early marriage in Luwu Regency, the performance of the Belopa Religious Court in addressing and presenting the marriage dispensation policy and the equality of Islamic law as a mitigation patron of the rise of early marriage in Luwu Regency.

C. RESULTS AND DISCUSSION

1. Performance Belopa Religious Court in Addressing and Presenting Marriage Dispensation Policy

In 2018, there were two cases filed at the Belopa Religious Court of Luwu Regency to obtain a marriage dispensation. The Belopa Religious Court judge considered that the applicant met the formal requirements, the cost of the case was met and both the parents of the male and female candidates were present to testify on the dispensation application so that the judge gave the verdict of the two applicants *inkra*. This means that the judge granted the application for the submission of the marriage dispensation. The application for marriage dispensation has increased by 70 cases in 2019 so that there are 72 applicants who want and hope to get a marriage dispensation. The fact is that the application granted by the judge of the Religious Court of Belopa Luwu Regency is 52 cases because it has fulfilled the formal requirements, paid all the costs of the case that have been set by the

court and the witnesses presented in the trial gave supporting testimony to the application for the dispensation of marriage. This means that 52 prospective couples who will get married have received permission and the *inkra* decision from the Belopa Religious Court judge to hold a wedding. This gives an idea that the decision of the Religious Court of Belopa Luwu Regency on the application for dispensation of marriage is included in the category of easily given with evidence of the majority of dispensation requests granted by the judge, namely 72.22 percent.

The Belopa Religious Court judge in his decision rejected 3 cases of marriage dispensation because the applicant in the case could not prove the allegations leveled against one of the prospective bride, the Belopa Religious Court judge also did not accept 3 cases of early marriage dispensation because of non-fulfillment of the formal requirements of the applicant and the judge canceled 3 cases of early marriage dispensation because the application did not attend the judge's summons at the trial time that had been set. The judge of the Belopa Religious Court of Luwu Regency revoked 9 cases of applications for the submission of early marriage dispensation because they had been previously heard and crossed out 2 applicants from the register because the person concerned did not pay the costs of the case that had been set by the court.

Entering the pandemic period in 2020, those who applied for an early marriage dispensation were 67 cases as a result of service restrictions, not due to public awareness not to marry early. The fact is that no case was rejected and removed from the register by the judge of the Belopa Religious Court of Luwu Regency because there were witnesses who were able to provide evidence supporting the application submitted by the applicant during the trial and the applicant had the ability to pay the costs of the case in the trial. The judge of Belopa Religious Court of Luwu Regency only dropped 3 cases of early marriage dispensation application because the application did not attend the summons at the time of the trial that had been set so that the entire case of the application granted by the judge of Belopa Religious Court of Luwu Regency was 58 cases. This means that in 2020, 58 prospective married couples received an *inkra* decision and permission from the judge to be able to have an early marriage. This gives an idea that the decision of the Religious Court of Belopa Luwu Regency on the application for dispensation of marriage is included in the category of fairly easy to be given with the evidence of the majority of dispensation requests granted by the judge, namely 86.57 percent.

In a state of restriction on service activities in 2021, it does not relax the enthusiasm of the community to apply for a marriage dispensation at the Belopa Religious Court, Luwu Regency. Recorded there are 27 cases received by the Religious Court of Belopa Luwu District and has been decided by the judge by granting all these requests. This means that within the last five months there have been 27 early marriages because *inkra* has obtained a decision from the judge of the Luwu Regency Belopa religious court to obtain a marriage dispensation permit.

This fact is reinforced by the results of interviews that researchers conducted with Mr. SP, as the Clerk of the Religious Court of Belopa Luwu Regency, stated that:

“When it comes to deciding whether all is granted, of course not all. The majority of requests were granted by the Council. surely there are many considerations regarding it. So, in that case, first consider the formal requirements, whether they are met or not. oh yeah, in the formal terms of the matter has not been examined. if you meet the formal requirements, the case continues. Examples of formal requirements, for example, there are people who want to apply for marriage turned out to be his parents who came, not the candidate then this does not meet because the

candidate who came should have his name listed to file a case. There are also found in the trial, the applicant usually cannot present witnesses to strengthen his application, there are also ordinary applicants who do not attend the trial or the applicant does not pay the costs of the case, so the case is rejected. the average person who asked was a couple whose level of education could be said to be still lacking."

Based on the case filed at the Belopa Religious Court of Luwu Regency in 2018-2021, it gives an idea that the decision of the Belopa Religious Court in the category is quite easy to be given with evidence that the majority of marriage dispensation applications filed at the Belopa Religious Court are granted by the judge. Some cases of marriage dispensation applications are not granted by the judge are basically incomplete formal requirements submitted, the applicant did not attend the trial, the witnesses submitted by the applicant cannot prove the applicant's request during the trial and the applicant does not pay the costs of the trial case.

Dispensation is exemption from a rule due to the presence of special considerations, exemption from an obligation or prohibition. This means that the dispensation is a softening of obstacles prohibiting or canceling a marriage in a special case or the leeway given by the Religious Court to the bride and groom who are not yet sufficient to carry out the marriage or marriage that should not be done but for certain reasons or for certain reasons forced to be given a dispensation by the Religious Court.

The submission of marriage dispensation by the Luwu Regency community is caused by preventive factors (prevention), namely the Prevention of adultery due to the development of social media, lifestyle and adolescent promiscuity, so that their tendency to associate freely is higher, so hastening marriage is an effort to overcome the dangers of promiscuity. Even though most parents are not old enough to apply for marriage dispensation, most of them are reasonable, afraid that their children will commit adultery or become pregnant before marriage. Because they have been dating for a long time and are difficult to separate. They chose to marry their children as a solution and applied for a marriage dispensation in the religious court.

In principle, before the judge makes a decision, the judge has to consider whether the application can be granted or not. This is because the existing rules do not mention explicitly and in detail the reasons for granting dispensation. So that the solution is left entirely to the court through the legal evidence presented and the facts revealed before the trial, to research and explore the most appropriate reasons to be used as a basis for consideration in granting dispensation. The usual evidence required by law is:

- a. Proof of the letter, including: a copy of the birth certificate in the name of the applicant's child issued by the head of the Village/Kelurahan, and a notice of refusal to marry (Model N-9) issued by the Office of Religious Affairs;
- b. Witness evidence. The usual witness evidence presented by the judge in the trial is two people.

Application for dispensation of marriage filed in the Religious Court of Belopa Luwu district is processed through the trial voluntarily. In the trial, the parents and the bride and groom are asked for an explanation of the circumstances and reasons for which the marriage dispensation application is submitted. In deciding a case, the judge must have a strong basis so that his decision can be held accountable. The judge must include

sufficient and mature consideration in each decision. The judge in giving a decision on the marriage dispensation application must explore the values of justice that live in the community. In these circumstances, the judge of the Religious Court of Belopa, Luwu Regency, as the Competent Authority, is required to decide which is more problematic between early marriages by letting them fall into adultery. Against 139 cases granted in the Religious Court of Belopa Luwu Regency from 2018 to May 2021, the researcher considered that the granting of marriage dispensation to the applicant has been carefully considered by the judge in accordance with applicable laws and regulations. The Data and facts obtained about the marriage dispensation data from the Belopa Religious Court of Luwu Regency in 2018-2021 give an idea that the verdict of the Belopa Religious Court judge in the category is quite easy to provide with evidence that the majority of marriage dispensation applications filed in the Belopa Religious Court are granted by the judge. The tendency of judges of the Religious Court of Belopa Luwu Regency in granting the application the marriage dispensation includes the following points:

- a. Sufficient reason and not contrary to court regulations and applicable legislation, namely Marriage Law Number 16 of 2019 Article 7 Paragraph 2 and legal evidence submitted;
- b. It is in accordance with the procedure by requesting family information related to children who want to get married to explore the eligibility of applicants entitled to apply or not get a dispensation;
- c. Already proposed (fiance) and there is no obstacle to marriage because the two prospective bride no blood relationship or lineage, no relationship semenda and no relationship sesusuan so worried both will fall into prohibited acts of religion (adultery);
- d. Feeling that it does not violate religious law because it has fulfilled the conditions of maturity (puberty), has earned enough and is approved by their respective parents;
- e. Advised to undo his intention did not work because of the statement of Will and the agreement of both to marry with all the consequences or have been ready inwardly.

The tendency of the judge of the Belopa Religious Court of Luwu Regency in granting the application, in addition to adhering to the applicable positive law, also the rules of jurisprudence which states, rejecting danger takes precedence over attracting benefits. In other words, by granting the dispensation of the age of marriage to candidates who are not old enough to marry, it is accepted by common sense that it really benefits both the prospective bride and the family of each bride and avoids harm from sinful acts committed by young couples outside of marriage.

Similarly, 3 cases were rejected by the judge of the Luwu Regency Belopa Religious Court, all for the best interests of the applicant. The consideration used as the basis for the panel of judges of the Belopa Religious Court of Luwu Regency in rejecting the marriage dispensation application case is dominated by the absence of the applicant in the agenda of evidence without any clarity or information submitted to the court regarding his absence. This shows that the applicant himself is what hinders the examination process to be protracted. In addition, according to the panel of judges, in applying Law Number 16 of 2019 in the case of marriage dispensation, the court must pay more attention to the reasons and readiness of applicants who want to remain married even though their age is not sufficient in the Marriage Law.

Based on how many informants the researchers made as subjects showed the same attitude that they were basically not ready for marriage. It is only because of family considerations that they participate in the current culture of early marriage. The culture inherent in the community is compounded by their ignorance about the age restriction for a person who is going to get married. It's okay to marry your child at any age. The result is often quarrels and squabbles due to unstable emotions, loss of opportunity to taste higher education, not responsible for the family because they still want to enjoy youth, cause a sense of inferiority in their peers because they are in an uncertain condition in social status where when hanging out with peers who are teenagers in fact they already have the status, the existence of domestic violence (KDRT) which ended in divorce colored the negative impact of early marriage that occurred for the people of Luwu Regency.

Early marriage for the people of Luwu Regency, which in fact the bugis tribe is a common thing that does not always marry early has a negative impact. The existence of mutual understanding between spouses makes domestic life harmonious. In addition, cultural factors that are still quite thick for the people of Luwu Regency about early marriage make them feel inferior to their peers because they consider carrying out religious orders by avoiding adultery and other acts that can be done by legitimate married couples.

2. Tendency of Belopa Religious Court Judges in Dispensation Decision Making

Dispensation is basically a softening of obstacles that prohibit or cancel a marriage in a special case or the leeway given by the Religious Court of Belopa Luwu to the bride and groom who have not been sufficient to carry out the marriage or marriage that should not be done but for certain reasons or for certain reasons forced to be given a dispensation by the Religious Court of Belopa. Application for marriage dispensation based on formal requirements as submitted by the judge of the Religious Court of Belopa Luwu Regency submitted directly by the prospective bride who is not old enough to the Religious Court, after examining in the trial and believes that there are things that allow for early marriage dispensation to be given with a determination.

The court has the power to judge and handle the issue of marriage dispensation application in which the judge must interpret and weigh the decision taken. Ideally, the judge in determining the dispensation of marriage remains based on considerations that are in accordance with the Marriage Law Number 16 of 2019, which limits the age of marriage to at least 19 years for men and women. In granting this dispensation, the judge is required to give consideration that puts forward the concept of *maslahat murshalah*, namely the consideration of goodness and rejecting damage in society and efforts to prevent harm. This is based on the results of interviews that researchers conducted with Mr. AB, as the judge of the Religious Court of Belopa Luwu Regency, stated that:

"According to the consideration of the assembly, so far we have never obtained an extreme case, which we have no reason to consider, which means that in accordance with the mandate of the existing court regulation (Perma), if it has no reason at all or does not meet the conditions in accordance with Perma, we reject it. But so far the proposed has met the requirements set by the existing law, the existing Perma. Regarding whether we (the assembly) did not advise the applicant in advance? Of course, this is also we have traveled, the applicant has also advised us

to undo his intention to marry early but did not succeed. There is no obstacle to getting married and worrying about falling into adultery because they have been proposed, the support of their parents are some of the reasons for the applicant to consider us to grant his application. Rejecting the danger of taking precedence over withdrawing the benefit becomes our consideration (majelis) in granting the application, in addition to adhering to the applicable positive law."

The tendency of the judge of the Religious Court of Belopa Luwu Regency in granting the marriage dispensation application because the judge had previously given advice to be taken into consideration by the applicant but the advice did not succeed in convincing the applicant. This is in accordance with the results of interviews that researchers conducted with Mr. DR, as the judge of the Religious Court of Belopa Luwu Regency, stated that the interview gives an idea that the consideration of the judge of the Religious Court of Belopa Luwu Regency in granting the application, in addition to adhering to the applicable positive law, is also based on the consideration of the judge who put forward the concept of *maslahat murshalah*, namely the consideration of goodness and rejecting damage in society and efforts to prevent harm. The absence of obstacles to marriage so worried about falling into adultery because it has been proposed to be the tendency of the judge of the Religious Court of Belopa Luwu Regency to grant the applicant's application to obtain a marriage dispensation.

Another consideration held by the judge of the Religious Court of Belopa Luwu Regency in granting the marriage dispensation application is that the applicant in submitting his application has a job, has met the formal requirements and does not conflict with applicable legislation. This is confirmed by the results of interviews that researchers conducted with Mr. AB, as the judge of the Religious Court of Belopa Luwu Regency, stated that:

"The first of course we consider first in terms of formality. whether it is in accordance with the procedure or not, in accordance with Perma and legislation or not. The second, after that we ask for consideration of the family and others related to it. If we require or direct it to the P2TP2A Commission, everyone must go there to get recommendations. The screening process in P2TP2A is like what we (the panel of judges) do not know because it is not our authority, which is clear to meet the requirements it must go through it, a letter of recommendation from P2TP2A. Then, of course, from the family we also ask for information and others related to children who want to get married. Regarding the information we ask for, it varies, such as whether this applicant already has income to support his family later or not. Then we also present the family in this case the parents directly at the hearing to ask for information from the bride and groom. What's worse, (researcher) sometimes the woman has become pregnant before applying for a marriage dispensation."

The same thing was also conveyed by Mr. DR as the judge of the Religious Court of Belopa Luwu Regency, that the formal completeness and information of the candidate's parents who corroborated the application in the trial became the basis for our tendency to grant his application. He said that:

"Yes, the recommendation of P2TP2A has become an absolute requirement to be met before further examination. This means that it is a condition associated with formality. The request must be fulfilled, if it is not fulfilled, the request cannot be accepted. Well, even after that does not guarantee to be accepted the application, we certainly have to check and ask for information from the family of the bride and groom to be our consideration whether this is appropriate to be granted or rejected, Of course, our footing is beneficial related to if granted like what. In

connection with the rejected case there are various, usually the applicant does not appear in court without any evidence. There are also applicants when asked about their readiness to get married, they answer that they are not ready because they still want to go to school."

The results of the interview showed that the applicant's reasons greatly influenced the attitude of the judges at the Religious Court of Belopa Luwu Regency in making the decision to grant permission for the dispensation of marriage. In granting the dispensation granted by the Religious Court of Belopa Luwu Regency, the judge considers more about the formal evidence submitted by the applicant, so that most cases of applications for dispensation are granted by the judge. This is also based on the consideration of the judge who put forward the concept of *maslahat murshalah*, namely the consideration of goodness and rejecting damage in society and efforts to prevent harm.

Based on the results of the interview showed that the considerations of the panel of judges of the Religious Court of Belopa Luwu Regency in granting the application for dispensation of marriage include: it is in accordance with the procedure to request Family information related to children who want to get married, sufficient reason and not contrary to applicable legislation, has been proposed (fiance) , already have an income and are advised to undo the intention is not successful and expressed the will to marry with all the consequences or have been ready inwardly.

In addition to adhering to the positive law in force, the judge in his judgment referred to also the rules of jurisprudence which states, rejecting danger takes precedence over attracting good. In other words, by granting the dispensation of the age of marriage to candidates who are not old enough to marry, it is accepted by common sense that it really benefits both the prospective bride and the family of each bride and avoids harm from sinful acts committed by young couples outside of marriage.

3. Linkage of Islamic Law with the Rise of Early Marriage in Luwu Regency

Each region has differences about the age limit of maturity of a person both men and women. In general, early marriages performed in Islamic Law are classified as permissible marriages (permissible) because there are no rules in the sources of Islamic law, namely the Quran and Hadith that prohibit early marriage. The prohibition is only contained in law Number 16 of 2019 and the compilation of Islamic law (KHI). In Islam, there are no strict rules that determine the age of marriage. Based on Islamic law, basically all age groups can perform marriage bonds. In Islam the condition for marriage is "*aqil* and *baligh* who do not look at the age limit.

Differences in the age limit for early marriage both in Islam and in law No. 16 of 2019 Article 7 Paragraph 1 is still an unresolved issue. Islamic Law and the law of marriage adheres to the principle that prospective husbands and wives must have the maturity of their souls and bodies to be able to carry out marriage, in order to realize the purpose of marriage properly without ending in divorce and getting good and healthy offspring. The marriage law as a positive law in force in Indonesia, sets the marriage age limit of 19 years for both men and women, not the age limit for someone to act so that there are still many Luwu Regency people who marry below the age limit as stated in Law Number 16 of 2019 concerning marriage in Article 7 Paragraph 1.

Given the situation and conditions in Luwu Regency, people marry for the sake

of benefit so that when they have not reached the age of marriage, the community takes advantage of the allowances stipulated in the Marriage Law Article 7 Paragraph 2, which is to apply for a dispensation from the local religious court so that the Religious Court of Belopa Luwu Regency in its decision granted 139 applicants permission to have an early marriage.

In practice there are many early marriages in the community, but the implementation does not involve government officials who have authority in this case the local KUA, marriage is only carried out based on religious law alone without being registered at the local KUA. Lack of public awareness to comply with a regulation also became an indicator of the ineffectiveness of the application of the Marriage Act, such as if the bride or one of them is not old enough to get married, then the bride manipulates the age to avoid legal provisions for the bride who is not old enough. Supposedly early marriages performed without dispensation cannot be registered by VAT.

Questioning the rampant number of early marriages that occur in Luwu Regency, the root of the problem is a mistake in understanding jurisprudence that has been transformed into law. Islamic jurisprudence is regarded as the law of God in the sense of Shari'a. Therefore, jurisprudence has an unshakable value of sacredness. While the law of marriage, despite the nuances of Islam is very thick, including KHI, whose formulation involves scholars from all over Indonesia is still considered a government law only. Islamic law as a patron of mitigating the rise of early marriage in Luwu Regency, it is not allowed to ignore the Marriage Law Number 16 of 2019, even on the grounds that the practices he practices follow the Prophet SAW. The practice of the messenger of Allah (peace be upon him) must first be revealed to be the norms while still paying attention to the context of the event. Not necessarily, although the Prophet married Aisha at the age of 6 years and asked her to live together at the age of 9 years, but the socio-historical context is certainly different from what is faced today, especially the Belopa community.

Differences in the age limit for early marriage both in Islam and in law No. 16 of 2019 is still an unresolved issue. The people of Luwu Regency generally do not consider the issue of the age of the children who are married because they think it will not affect their household life later. A person's age is not a guarantee of happiness. Questioning the rampant number of early marriages that occur in Luwu Regency, the author believes that the root of the problem is a mistake in understanding jurisprudence that has been transformed into law. The church considers Islam to be the law of God. Therefore, jurisprudence has an unshakable value of sacredness (Hidayatullah, 2021). While the Marriage Law, although the nuances of Islam are very thick, including the KHI whose formulation involves scholars from all over Indonesia, is still considered government law only. It is this view that the author thinks needs to be straightened out. At least two things need to be explained.

a. The Qur'an and fiqh are not the same. The Qur'an is the first and foremost source of law. The Qur'an is holy and unchanging. While jurisprudence is an understanding of the dialectic of the text with the context and empirical reality at the time of faqih do the process of understanding. In other words, jurisprudence is actually nothing more than a product of thought whose level of truth is relative, in contrast to the Qur'an whose truth is absolute. The relativity of the truth of jurisprudence does not mean that jurisprudence cannot be held. Throughout the process of Ijtihad is true, then the

product of jurisprudence should be used as a foothold in religion. The company is very open to changes. Therefore, in the discourse of jurisprudence is known a very popular rule, namely the change of law in accordance with the change of place and time (time). The product of classical jurisprudence of the past, may no longer be relevant to the context of today. On the other hand, what in the past has not been regulated, based on the needs of today, can be formulated a new jurisprudence.

b. There is an impression of Muslims difficulty in distinguishing the products of Islamic law. There are at least four types of products that are often referred to as Islamic law.

- 1) It is not binding. It is not possible to arrest and punish a person who does not pray, does not fast, does not give zakat, even though jurisprudence clearly requires it;
- 2) Fatwa, which is a legal product that is initially individual. Fatwas in the beginning were questions that someone asked when facing Islamic legal issues to their experts. The answer of the expert (*mufti*) is called fatwa. Its nature is non-binding. The one who asks, is allowed to seek legal answers to other muftis;
- 3) *Qadha*, namely the decision of the court (*syariyyah* court) given *qadhi* against an event involving litigants. Its properties bind all parties. For *qadha*, the court has the authority to impose the execution of its decision if there is no further legal remedy;
- 4) *Qanun* or law. The process is called *taqnin* or legislation. In a slightly different language, *taqnin* is the process of transforming the material of jurisprudence, fatwa, and even *qadha* into positive law. Its nature binds all citizens or people. For example, Marriage Law Number 16 of 2019.

Islamic law as a patron of mitigating the rise of early marriage that occurs in Luwu Regency, it is not allowed to ignore Marriage Law Number 16 of 2019, even on the grounds that the practice is done according to the Prophet SAW. The practice of the messenger of Allah (peace be upon Him) must first be revealed to be the norms while still paying attention to the context of the event. When jurisprudence has been transformed into law, in fact, the product of jurisprudence that is the source of its material must be viewed as no longer valid. Strictly speaking, in the context of early marriage law, jurisprudence *munakahat* whose rules are contained in the books of faith *mazhab* and his followers, as long as it has been regulated in the articles of law, no longer enforced. At least, the product is no longer binding. Our only reference is the law with all the rules under it.

D. CONCLUSIONS

The performance of the Belopa Religious Court of Luwu Regency in addressing and presenting the marriage dispensation policy in the category is quite easy given the evidence that the majority of applications for marriage dispensation filed in the Religious Court are granted by the judge. The cases filed were 168 cases and the Belopa religious court in its decision granted 139 cases, rejected 3 cases, 7 cases were not accepted, 11 cases were revoked, 6 cases were declared dead and 2 cases were removed from the register. The tendency of the judge in granting the application for the dispensation of marriage includes several points: sufficient reason along with the

legal evidence submitted, does not conflict with applicable regulations, according to the procedure by requesting information related family, has been proposed (fiance) and there is no obstacle to marriage so that both worry they will fall into prohibited acts of religion (adultery), feel, approved by their respective parents and adhering to the rule of jurisprudence "rejecting danger takes precedence over attracting good". Islamic Law as a patron of mitigating the rise of early marriage can be effective, it should not ignore the Marriage Law Number 16 of 2019 where when jurisprudence has been transformed into law, in fact the jurisprudence product that is the source of the material must be viewed as no longer valid or at least the product is no longer binding. Our only reference is the law with all the rules under it.

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