

Marriage Validation for Underage Marriages at the Watampone Religious Court

Jamaluddin T, Yusuf Jabbar

¹⁻²Institut Agama Islam Negeri Bone

Email Corresepondece: jamaluddinstain@gmail.com

Abstract: Marriage in human life is a necessity, and to prevent disorder in its implementation, representative norms are needed. That is Article 2 paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage. Paragraph (1) Based on the two norms mentioned above, there often arises a practice in society where only Article 2 paragraph (1) is applied while ignoring paragraph (2), so many people get married and even live as husband and wife for years without having a marriage certificate or book. Based on this phenomenon, the state provides a solution in the form of a marriage legalization request (*itsbat nikah*) to the Religious Court for Muslims and a marriage approval request to the District Court for those who are not Muslim. The provision of the opportunity for marriage legalization (*isbat nikah*) for underage marriages for those who do not obtain permission/dispensation to marry from the Religious Court is symbolic because it serves as a solution for cases where marriage dispensation is closed to reasons other than pregnancy. The implication is that the marriage dispensation is at the discretion of the judge by considering the facts in the trial and issuing a decision to approve or reject granting permission/dispensation.

Keywords: Marriage Validation; Marriage; Underage.

Abstract: Perkawinan dalam kehidupan umat manusia adalah sebuah keniscayaan, agar tidak terjadi kegaduhan dalam pelaksanaannya, maka perlu adanya norma yang representatif. Yyakni pasal 2 ayat (1) dan (2) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan. Ayat (1) Berdasarkan dua norma tersebut di atas seringkali melahirkan praktek di masyarakat dimana hanya menerapkan pasal 2 ayat (1) saja dengan mengabaikan ayat (2), sehingga tidak sedikit masyarakat yang melangsungkan perkawinan dan

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bahkan sudah bertahun-tahun hidup sebagai suami isteri namun tidak memiliki akta nikah atau buku nikah. Berdasarkan fenomena tersebut, negara memberi jalan keluar berupa permohonan isbat nikah ke Pengadilan Agama bagi yang beragama Islam dan permohonan pengesahan perkawinan ke Pengadilan Negeri bagi yang beragama selain Islam. Diberikannya peluang isbat nikah kepada pernikahan di bawah umur bagi yang tidak mendapat izin/dispensasi kawin dari Pengadilan Agama merupakan sebuah simbolis karena merupakan solusi atas tertutupnya dispensasi kawin bagi yang selain karena alasan hamil. Implikasinya bahwa dispensasi nikah berada pada pertimbangan hakim dengan melihat fakta-fakta dalam persidangan, dan menerbitkan putusan menerima atau menolak memberikan izin/dispensasi.

Keywords: Isbat Nikah; Perkawinan; di bawah Umur.

Introduction

Marriage in human life is an inevitable part of life. To prevent confusion in its implementation, representative norms are necessary.¹ The norms regulating marriage in Indonesia are of two types: religious norms and state norms,² as stipulated in Article 2 paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage. Paragraph (1) states: Marriage is valid if conducted according to the laws of each person's religion and belief; and paragraph (2) states: Every marriage must be registered in accordance with the applicable laws and regulations.³

Based on the two norms mentioned above, it often gives rise to practices in society where only Article 2, paragraph (1), is applied, while ignoring paragraph (2), resulting in many people getting married and even living as husband and wife for years without having a marriage certificate or a marriage book. Nowadays, all aspects of life use internet technology, including population administration, which includes registration, among others, such as marriage registration. Marriage registration is now linked to the central Population and Civil Registration office. Therefore, when people carry out administrative procedures, it often causes problems. For example, procedures for continuing education, registering a marriage, a birth certificate,

¹Khamim Muhammad Ma'rifatulloh, *Harmonisasi Norma Perkawinan Beda Agama Dalam Undang-Undang Perkawinan Dan Undang-Undang Administrasi Kependudukan*. Diss. Universitas Islam Negeri Maulana Malik Ibrahim, 2017.

²Herman M Karim, "Keabsahan Perkawinan Beda Agama Di Indonesia Dalam Prespektif Cita Hukum Pancasila." *ADIL: Jurnal Hukum* 8.2 (2017): 185-209.

³Mardalena Hanifah, "Perkawinan Beda Agama Ditinjau dari Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan." *Soumatara Law Review* 2.2 (2019): 297-308.

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and so on, all require the parents' marriage certificate. In response to this phenomenon, the state provides a solution in the form of a petition for marriage legalization (*isbat nikah*) to the Religious Court for Muslims and a petition for marriage validation to the District Court for those who are of other religions.

Until now, the issue of marriage legalization (*isbat nikah*) continues to surface. This can be seen in two ways. First, integrated services are still being held, often referred to as mobile sessions or sessions outside the court office, where the marriages of around 1,000 couples per year have been legalized; Second, the volume of marriage legalization cases continues to appear in the case register at the Watampone Religious Court, ranking as the second most common type of case after divorce cases, both contested divorces and unilateral divorces. Third, providing the opportunity for marriage legalization (*isbat nikah*) for underage marriages for those who did not obtain permission/dispensation to marry from the Religious Court.

The third point is a new phenomenon in the field of marriage legalization in the Watampone Religious Court, where the marriage legalization request that the author considers symbolic is seen as a solution due to the closure of marriage dispensations for reasons other than pregnancy.⁴

Marriage Dispensation Requests at the Watampone Religious Court can only be accepted at the clerk's office if the request has been completed with a recommendation from the Integrated Service Center for the Empowerment of Women and Children (P2TP2A) or the Office for the Empowerment of Women and Child Protection, in cases where the reason is pregnancy. Requests for other reasons will definitely be rejected by the staff at counter 1 (under the instructions of the Chief Judge).⁵

The refusal is actually contrary to the principle of the judiciary, which states that the court is passive, as stipulated in Article 56 paragraph (1) of Law Number 7 of 1989 concerning Religious Courts in conjunction with Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which reads, 'The court is prohibited from refusing to examine, try, and decide a case

⁴Tafara Albert Gwarinda, *The impact of the common law and legislation on African indigenous laws of marriage in Zimbabwe and South Africa*. Diss. University of Fort Hare, 2013.

⁵Asir Pasimbong Alo, Junior Registrar of Petitions at the Watampone Religious Court, Online Interview via WhatsApp, December 15, 2020.

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submitted because the law does not exist or is unclear, but is obliged to examine and adjudicate it".⁶

The requirement of pregnancy in applications for a marriage dispensation also contradicts Articles 5, 6, 7, 8, and 9 of the Supreme Court of the Republic of Indonesia Regulation on Guidelines for Adjudicating Marriage Dispensation Applications. The summary of the contents of Articles 5 to 9 is that an application letter, Identity Card, Family Card, and Diploma must be submitted by parents/guardians, and if both prospective spouses have not reached the minimum age, their applications must be submitted to the same court. The policy or discretion made by the Head of the Watampone Religious Court in rejecting marriage dispensation applications that are not recommended by P2PT2A is essentially intended to suppress and tighten marriage dispensation applications, and this is implemented for the following reason.

Firstly, the large number of Marriage Dispensation applications each year has led some NGOs to accuse the Religious Court of widely allowing child marriages, and on that basis, the perception was born that Bone Regency is a red zone for child marriage, prompting many observers to conduct research in Bone Regency related to early-age marriage, including UNICEF, Tulodo, and others.⁷

The meeting was attended by the Head of the Watampone Religious Court, UNICEF, the Tulodo NGO, representatives from the Integrated Service Center for the Protection of Women and Children (P2TP2A), two village heads, and several child welfare activists. The meeting was held following a decision by the Watampone Religious Court approving marriage dispensation requests for 100 applicants, which had previously been rejected or not recommended by P2TP2A.⁸

Following up on the results of the dialogue mentioned above, the Head of the Religious Court made a policy to tighten and limit the acceptance of marriage dispensation requests, namely, only for those who have a recommendation from P2TP2A. This means that even if not due to pregnancy, because there have been cases where members of the public were given

⁶Rohmah Rofingaton, *Analisis Yuridis Terhadap Perkara Nomor 0280/Pdt. P/2017/PA. Po tentang Penolakan Dispensasi Kawin Pada Pengadilan Agama Ponorogo*. Diss. IAIN Ponorogo, 2018.

⁷Kamaluddin, Registrar of the Watampone Religious Court, Interview at the Watampone Religious Court Office, December 10, 2019.

⁸Saifuddin, Deputy Chairman of the Watampone Religious Court, Online Interview via WhatsApp, June 18, 2020.

recommendations not for reasons of pregnancy, they became furious. The policy or discretion of the Head of the Religious Court is not written down and is only in the form of an appeal, but it is implemented strictly by the Legal Aid Post (Posbakum), counter 1, and the registration officers.

Based on this phenomenon and to prevent confusion in the community, the Watampone Religious Court visited the Bone Regency Ministry of Religious Affairs, specifically the Islamic Guidance Section, to provide solutions to the complicated situation that is occurring. The proposed solution is that if there are members of the community whose children are in an urgent and/or worrying situation (a relationship that has become too intimate), they should be allowed to proceed with their marriage without registering it initially, and one or two years later, they can apply for a legalization of marriage at the Religious Court to obtain legal recognition (marriage certificate).⁹

Based on these solutions, it is hoped that problems that may arise can be mitigated, both among the parties involved and in the community in general. On the other hand, underage marriage can be minimized to the maximum extent. The implementation of these two methods has made Bone Regency a pilot project for child marriage.

Thus, the phenomenon of marriage dispensation requests, where the community no longer wants to submit them to the Watampone Religious Court, arises because the people of Bone Regency are already aware that marriage dispensation requests, other than for pregnancy reasons (not recommended by P2TP2A), will certainly be rejected. Therefore, it is very urgent to observe the role of the religious court in granting marriage dispensations by looking at the problems occurring within the community.

Methodology

This field research uses a qualitative juridical-empirical approach conducted at the Watampone Religious Court to analyze the practice of marriage validation (*itsbat nikah*) for underage couples. Primary data were collected through in-depth interviews with judges and legal practitioners to understand the legal considerations in practice, which were then supported by secondary data in the form of document studies on copies of court decisions and relevant regulations. All data were processed descriptively through the stages of reduction, presentation, and conclusion drawing to provide a

⁹Sawiah, Islamic Guidance Staff at the Ministry of Religious Affairs of Bone Regency, Interview on Dr. Wahidin Sudirohusodo Street, January 10, 2021.

comprehensive overview of the legal mechanisms and sociological facts that influence the early marriage validation process in the area in accordance with the framework of Islamic law and applicable legislation.

Result & Discussion

Judicial Considerations in Granting a Ruling on Marriage Ratification Requests at the Watampone Religious Court

It has become an inevitability that every ruling or decision on a case that has been examined and decided by a judge and/or panel of judges in court, which will be pronounced in an open session to the public, is first given its legal considerations.¹⁰ Legal considerations are the key to a decision in determining the content of the ruling, which can be in the form of granting, rejecting, nullifying, revoking, or NO (Niet ontvankelijk verklaard)¹¹ meaning legally unfounded.¹²

Based on the researcher's investigation of 15 decisions from the Watampone Religious Court in the form of rulings on Marriage Validation cases, namely case numbers:

No.	Nomor Putusan	Tahun
1	654/Pdt.G/2017/PA.Wtp	2017
2	794/Pdt.G/2017/PA.Wtp	2017
3	813/Pdt.G/2017/PA.Wtp	2017
4	519/Pdt.G/2018/PA.Wtp	2018
5	665/Pdt.G/2018/PA.Wtp	2018
6	724/ Pdt.G/2018/PA.Wtp	2018

¹⁰Tata Wijayanta, and Hery Firmansyah. *Perbedaan pendapat dalam putusan pengadilan*. MediaPressindo, 2018. Lihat Juga, Elfi Marzuni, *Penerapan Asas Kebebasan Hakim Dalam Mengambil Putusan Perkara Pidana*. Diss. Universitas Islam Indonesia, 2005.

¹¹Omi Try Aryani, *Analisis putusan tidak dapat diterima (niet ontvankelijkjke verklaard) dalam perkara waris tahun 2019: studi kasus di Pengadilan Agama Praya*. Diss. UIN Mataram, 2022.

¹²Raynaldo Handojo Putra, and Mia Hadiati. "Analisis Dasar Pertimbangan Hakim Dan Akibat Hukum Dalam Menolak Gugatan Cerai Yang Tidak Dapat Diterima (Niet Ontvankelijkjke Verklaard) Di Pengadilan Dilihat Dari Perspektif Hukum Acara Perdata." *UNES Law Review* 6.2 (2023): 4843-4856.

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7	1101/ Pdt.G/2018/PA.Wtp	2018
8	123/Pdt.G/2019/PA.Wtp	2019
9	855/Pdt.G/2019/PA.Wtp	2019
10	716/Pdt.G/2020/PA.Wtp	2020
11	834/Pdt.G/2020/PA.Wtp	2020
12	1127/Pdt.G/2020/PA.Wtp	2020
13	1243/Pdt.G/2020/PA.Wtp	2020
14	493/Pdt.G/2021/PA.Wtp	2021
15	768/Pdt.G/2021/PA.Wtp	2021

Data Source: Watampone Religious Court

Based on the data, it shows that, in general, the legal considerations of the judges of the Watampone Religious Court regarding marriage legalization requests are applied to cases that are granted as well as those that are not granted.¹³ Considerations of the Judge in Granting Marriage Validation, among others:

Ad. 1. The intentions and objectives of Applicant I and Applicant II; The intentions and objectives in each decision are a necessity that must be included to determine the alignment between the allegations and the requests.

Ad. 2. Announce the application on the Court's notice board for 14 (fourteen) days. This second consideration in the form of an announcement is intended so that during this period, if there are any family members or related parties who object to the application, they can contest or prevent and cancel it.

Ad. 3. The presence of Petitioner I and Petitioner II in the hearing from the beginning to the end of the trial. Consideration regarding the attendance of the parties involved is conducted to determine their seriousness in seeking approval for their marriage. If a petitioner does not appear at the first hearing despite being properly and duly summoned, and also does not send someone else as their representative, their application may be dismissed. This is in accordance with Article 124 of the Het Herziene Indonesisch Reglement (HIR), which states: 'If the plaintiff does not appear before the District Court on the appointed day, even though duly summoned, or does not send someone to appear on their behalf, the lawsuit is considered dismissed and the plaintiff

¹³Directory of Supreme Court Decisions of the Republic of Indonesia, accessed and downloaded on October 1, 2021.

is charged with the relevant matters; however, the plaintiff has the right to file the lawsuit again, provided that they first pay the said court fees".¹⁴

Ad. 4. Statement of facts or grounds for the Marriage Validation petition. The statement of facts in a Marriage Validation petition consists of the reasons and legal events that explain the chronological occurrence of the marriage, including: the time, place, guardian, witnesses, dowry, marriage contract, and the identities of the parties involved. These statements will then be proven in court through evidence presented by the parties. If the statements are consistent with the evidence submitted and have reached the minimum standard of proof and can convince the judge, the Marriage Validation petition may be granted.¹⁵

Ad. 5. Applicants I and II are obliged to prove the arguments of their petition. It is an established rule that every plaintiff or petitioner must prove the cause or arguments of their claim in court based on Article 283 RBg, which states that anyone who claims to have a right or an event must prove the existence of that right or event. Article 283 RBg reads, 'Anyone who considers themselves to have a right or a situation to reinforce their right or deny someone else's right must prove that right or situation.' (Civil Code of 1865; IR. 163.)".¹⁶

Ad. 6. Submission of 2 (two) witnesses by Petitioner I and Petitioner II. The primary and most decisive effort of the Petitioners to provide evidence is to present 2 (two) witnesses in court who will be asked to provide information related to the marriage that was conducted by Petitioner I and Petitioner II. These witnesses are to verify the claims in the Petitioners' application that a legal event in the form of a valid marriage contract in accordance with the applicable law has indeed taken place.

Two witnesses are mandatory in civil case examinations according to the principle of civil procedural law, which states 'unus testis nullus testis,' meaning one witness is not a witness. If two witnesses are proposed but only one meets the formal requirements, then it is considered not a witness, meaning that it does not meet the minimum standard of evidence.

¹⁴Maswandi, S. H. "Putusan Verstek dalam Hukum Acara Perdata." *Jurnal Mercatoria* 10.2 (2017): 160-179.

¹⁵Abdul Manan, *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama*, h. 180.

¹⁶Ratag, Geraldo Alfa, Meiske Tineke Sondakh, and Josina Emelia Londa. "Eksistensi Akta Dibawah Tangan Yang Dilegalisasi Notaris Dalam Pembuktian Di Pengadilan." *Lex Administratum* 10.3 (2022).

According to procedural law, if only one witness meets the requirements, the case will be rejected, and it cannot be resubmitted. After all, it falls under the category of “ne bis in idem,” resulting in a NO verdict, meaning it is inadmissible because it has no legal basis. Therefore, witnesses in a trial must receive special attention because they are closely related to whether a lawsuit or petition is granted or rejected.

Regarding the issue of requests for marriage legalization (isbat nikah), judges in the Religious Court are cautious in issuing 'rejection' decisions because it concerns the survival of a family in which there are many individuals who will become children of the parties. According to Kamaluddin Kasim, there was once a request for marriage legalization where the guardian was not valid, which according to the law should have been rejected, but due to humanitarian considerations, Kamaluddin Kasim remarried the couple so that their marriage would become legitimate according to Sharia. As for the registration, it is merely an administrative matter, meaning the judge granted the request for the sake of the welfare and future of their offspring.¹⁷

Ad. 7. Consistency of statements from Petitioner I, Petitioner II, and the witnesses. One important part of the judge's consideration is the level of consistency in the statements of Petitioner I, Petitioner II, and the witnesses; if the level of consistency is high, it indicates a high level of validity of the posita.

The explanation referred to is that the marriage of Petitioner I and Petitioner II that was carried out has fulfilled the pillars and conditions of marriage as referred to in Article 14 of the Compilation of Islamic Law, namely the presence of: a prospective husband, a prospective wife, a marriage guardian, two witnesses, as well as the offer and acceptance.

Ad. 8. The Pillars and Conditions of Marriage Are Fulfilled. The consideration at this eighth stage is to determine whether the marriage is valid and can be legalized or not. If the pillars and conditions are met, the marriage can be ratified or recognized as a legitimate marriage, both according to Islamic law and the applicable statutory regulations.

Ad. 9. The presence or absence of marriage impediments in accordance with Articles 8 to 11 of Law Number 1 of 1974. Consideration regarding the existence or non-existence of marriage impediments is an important and primary consideration because it concerns the permissibility or impermissibility of a marriage. If the couple is found to have marriage

¹⁷Kamaluddin Kasim, Judge of the Watampone Religious Court, Interviewed at the Watampone Religious Court Office on October 15, 2021.

impediments, they must automatically be separated or annulled because it falls under the category of prohibited marriages.

Ad.10. Trial Facts. The trial facts in question are those that indicate the fulfillment of Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage in conjunction with Article 3 of the Compilation of Islamic Law.

Ad.11. Marriages that can be legally recognized. A marriage that is valid according to Islamic law and has been registered at the District Office of Religious Affairs is a marriage that can be legally recognized. This is in accordance with Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage in conjunction with Article 5 paragraph (2) of the Compilation of Islamic Law.

Ad.12. Marriages that are not recorded or have not been registered. A husband and wife who have conducted an Islamic marriage but have not registered it can simply have the marriage recorded by the Civil Registrar/Head of the Religious Affairs Office at the Subdistrict Office, after which a marriage certificate will be issued upon first submitting a petition for marriage legalization (*isbat nikah*) to the Religious Court.

Ad.13. Marriages that can be legally recognized by the Religious Court. Article 7 paragraph (3) of the Compilation of Islamic Law states that a marriage recognition (*isbat nikah*) request that can be submitted to the Religious Court is limited to matters related to: resolving a divorce; loss of a marriage certificate; doubts about the validity of one of the marriage requirements; marriages that occurred before the enactment of Law No. 1 of 1974; and marriages conducted by individuals who have no legal impediment to marry under Law No. 1 of 1974. Therefore, if a marriage does not fall into these categories, it cannot be recognized as a valid marriage.

Ad.14. Marriages that occur after the enactment of Law Number 1 of 1974 concerning Marriage. Based on Article 7 paragraph (3) letter d, it is stated that the marriages that can be legalized are marriages that took place before the enactment of Law Number 1 of 1974 concerning Marriage. As for applications for marriage legalization for marriages that occur after the enactment of Law Number 1 of 1974 concerning Marriage, they refer to and are based on Article 6 paragraph (6) of this law as well as Article 7 paragraph (3) letter e of the Compilation of Islamic Law, which states that applications for marriage legalization can be made for marriages conducted by those who do not have any impediments to marriage according to Law Number 1 of 1974.

Therefore, for legal certainty and for the purposes of registering the marriage at the District Office of Religious Affairs, the marriage between Petitioner I and Petitioner II can be legalized.

The inclusion of Article 7 paragraph (3) letter d of the Compilation of Islamic Law aims to clarify that it is also permissible to legally recognize marriages that occur after the enactment of Law Number 1 of 1974, as long as they do not have any legal impediments to marriage according to that law. Based on these considerations, the petition for marriage legalization by the applicants can be granted.

Legal Consideration of Marriage Confirmation Cases Whose Ruling is NO (Niet Onvankelijk), Cannot Be Accepted

First, the intent and purpose of the applicants' request are the same as the considerations in the case of marriage legalization that was granted. Second, based on the applicants' request, Applicant I was under 19 years old, for example 18 years old, at the time of marriage to Applicant II and did not obtain permission from the Religious Court, so the request of Applicant I and Applicant II does not legally meet the conditions for marriage legalization; According to Article 7 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, prospective brides and grooms, both male and female, must be at least 19 (nineteen) years old.

Third, because the petition for marriage legalization (*isbat nikah*) is unconditional, the petitions of Petitioner I and Petitioner II cannot be further considered. Therefore, the panel of judges thinks that it is legally proper and justified if the petitions of Petitioner I and Petitioner II are not accepted (*Niet Ontvankelijk Verklaard*). Fourth, since the case falls within the field of marriage, in accordance with Article 89 paragraph (1) of Law Number 7 of 1989, as amended by Law Number 3 of 2006 and further amended by Law Number 50 of 2009, the court fees are charged to Petitioner I and Petitioner II. And Fifth, considering all the articles in the legislation and Islamic law related to this case.

Example of a marriage legalization ruling that was not accepted (NO) in the context of determining that: (1) Declares the application of Petitioner I and Petitioner II inadmissible (*Niet Onvankelijk*); (2) Orders Petitioner I and Petitioner II to pay the case fees amounting to Rp.

The explanation per point is an analysis of the judge's considerations in the decision or determination of the marriage legalization petition case at the Watampone Religious Court, the decision of which is NO as follows:

Ad.1. The purpose and objective of the Applicants' request are the same as the consideration in the marriage legalization case that was granted; the first consideration is the same as the previous consideration (granted) including considerations in other decisions in the field of civil cases in the Religious Court.

Ad.2. Considerations regarding the age of both spouses at the time of marriage. If either of the bride or groom, whether male or female, has not reached the minimum marriage age of 19 years, or both are still under 19, for example 18 or 17 years old, and at the time of marriage did not obtain permission or dispensation from the Religious Court, the applicants' request is deemed legally ineligible for marriage legalization. This is based on Article 7 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 on Marriage, which states that prospective brides and grooms, both male and female, must be at least 19 (nineteen) years old.

Ad.3. The request for marriage legalization is unconditional. Since the request for marriage legalization is unconditional, the requests of Applicant I and Applicant II cannot be further considered. Therefore, the panel of judges believes that it is appropriate and legally justified if the requests of Applicant I and Applicant II are not accepted (Niet Ontvankelijk Verklaard).

Unconditional, meaning they conducted an underage marriage without permission from the Religious Court, and then the Panel of Judges issued a NO ruling, which cannot be accepted because it is not based on law. The ruling could be a sanction for the legal violations committed by both spouses. Nevertheless, it should be understood that the ruling does not fall under the 'ne bis in idem' category, meaning that the application can still be submitted again at another opportunity.

The judges' explanation regarding the legal considerations, for example by Kamaluddin Kasyim, is that the leadership policy which limits requests for marriage dispensation and provides the opportunity to apply for marriage legalization (isbat nikah) after the marriage as a solution is a flawed policy because it adds problems rather than solving them. By adding problems,

it means: (1) There is a negative presumption from the public, such as giving the impression to society that sexual relations should occur before the marriage contract (ijab kabul), since being pregnant is required in order to be allowed to marry underage. (2) It complicates matters, because ideally, registration and marriage should be conducted properly and smoothly; (3) Applying for marriage legalization (isbat nikah) after having a child, or one or two years after the marriage, becomes a new problem. Besides being troublesome, it can also add further issues if it is not accepted (NO) by the court on the grounds that it is conditional.¹⁸

Muhammadong, that the conclusions reached by the judge are based on the pieces of evidence and trial proofs or the situation and atmosphere of the trial as analyzed by the judge. That after examining all cases of marriage legalization for underage marriages, it shows that there was only 1 (one) judge who ruled NO (could not accept) the petition for marriage legalization for underage marriages, while all the others granted it, except for those who were absent (dismissed) and those who withdrew their lawsuit.¹⁹

The Phenomenon of Child Marriage Without Court Permission/Dispensation in Bone Regency

Child marriage in Bone Regency still continues, both for those who have permission/dispensation from the court and those who do not receive permission. The information obtained by the author, both from the Watampone Religious Court, the Ministry of Religious Affairs of Bone Regency, and the Office of Religious Affairs in sub-districts throughout Bone Regency, shows that child marriage is still ongoing. It is true that normatively, Bone Regency has been recorded as a Pilot Project for child marriage, whereas it was previously considered/labeled as a red zone for child marriage. Empirically, child marriage still continues due to the apathetic and permissive attitudes of all parties involved. This permissive attitude serves as a solution to the tightened recommendations or acceptance of applications for Marriage Dispensation cases at the Watampone Religious Court.

The Watampone Religious Court only accepts marriage dispensation requests that have a recommendation from the Integrated Service Center for

¹⁸Kamaluddin Kasim, Judge of the Watampone Religious Court, Interviewed on Yos Sudarso Street, on October 10, 2021.

¹⁹Muhammadong, Judge of the Watampone Religious Court, Interviewed on Yos Sudarso Street, on October 10, 2021.

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the Empowerment of Women and Children, whereas the P2TP2A only recommends children who are pregnant; others are rejected (not recommended).²⁰

Based on this, many child marriages occur without permission/dispensation, which ultimately results in numerous requests for legalization of marriages involving minors.

The issue arising from this phenomenon, at the Watampone Religious Court, occurs in two versions: there is a group of judges who can grant a petition for the legalization of marriage for underage couples on the grounds that the essential conditions are met and for the welfare of the family and future generations, while there is also a group of judges who issue a NO (Niet Onvankelijk Verklaard) decision, meaning it cannot be accepted because it is unconditional (lacking permission/dispensation).²¹ A NO decision is actually a sanction for unlawful acts; a NO decision can still be filed again because it does not fall under the category of *Ne bis in Idem* (the same case cannot be filed twice).

As for the phenomenon of child marriage that occurs in several places in the Bone Regency area, according to the accounts of various community leaders, it is as follows:

First, Andi Mansur: that in general, the public already understands that the court only accepts applications for marriage dispensation for those who have received a recommendation from the Integrated Service Center for the Empowerment of Women and Child Protection, in this case, only those who are pregnant, as proven by a doctor's statement.²²

As a result, many people engage in underage marriages, and these marriages go on normally even though they actually violate the law (Law Number 16 of 2019). This happens because there is no prohibition or reprimand from the authorities. Therefore, underage marriages occur everywhere throughout the Bone Regency and proceed smoothly, indicating a permissive attitude toward underage marriage. This happens because information from the Religious Court states that underage marriages, in urgent cases, can be carried out, and a solution will later be prepared in the form of an *isbat nikah* (official marriage validation).

²⁰Yusdiarni (Posbakum Officer), Abdul Razak (Clerk/Register Officer of the Watampone Religious Court), Interview at Yos Sudarso, on August 9, 2021.

²¹Ahmad Amiruddin (Administrator of the Watampone Religious Court), Interview at Yos Sudarso, on November 8, 2021.

²²Andi Mansur, Head of the Kahu District Religious Affairs Office, Interview in Palattae Kahu, on September 9, 2021.

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Secondly, Suyuti, the general public is already aware of the policies of the Watampone Religious Court and the Bone Regency Women's Empowerment and Child Protection Agency regarding the restriction of child marriage recommendations. Therefore, if there are people who have children that urgently need to be married, they marry off their children even without permission or dispensation from the Religious Court. In fact, some people could actually be allowed to marry due to pregnancy, but they still choose to marry without registration because it is cumbersome and complicated.²³

Saharudin said that currently, many people engage in underage marriages in an unregistered manner because they are unable to obtain a recommendation from the Child Protection Agency, which generally cannot have its application accepted in the Watampone Religious Court.²⁴

Third, Mustamin, in reality, child marriage still occurs, even though normatively it should not. This is because the community goes ahead without obtaining permission/dispensation from the court.²⁵

Fourth, Hj. Sawiah, S.Ag., M.H., stated that child marriage continues to occur in Bone Regency despite strict enforcement and restrictions from the Child Protection Agency, the Court, and other related institutions. The tightening referred to only allows recommendations for those who are pregnant, which are generally accepted for registration in the Religious Court. This turmoil has caused many conflicts in the community; as a solution, all related parties are apathetic and permissive. As a result, child marriages happen smoothly everywhere. This has led to a large number of requests for marriage legalization (*isbat nikah*) for underage marriages.²⁶

Statements from several Heads of Sub-District Religious Affairs Offices indicate that child marriages continue to occur almost throughout Bone Regency, citing urgent reasons that cannot be postponed even without permission or dispensation from the Religious Court.²⁷

Based on statements from several figures, it shows that child marriage in Bone Regency still continues in large numbers; however, the exact number

²³Suyuti, Head of the Dua Boco District Religious Affairs Office, Interview via Mobile Phone, November 9, 2021.

²⁴Saharudin, Head of the Religious Affairs Office of Tellu Siattinge District, Interview on Jalan Dr. Wahidin Sudirohusodo, on November 11, 2021.

²⁵Mustamin, Head of Kahu District, Bone Regency, Interview at Palattae Kahu, on September 9, 2021.

²⁶Sawiah, Adamin, and Program Coordinator of the Ministry of Religious Affairs of Bone Regency, Interview on Ahmad Yani Street, Watampone, on October 10, 2021.

²⁷M. Nur, Saharuddin, Ambo Tuo, each Head of the District Religious Affairs Office, Interview on Jalan Ahmad Yani Watampone, on November 9, 2021.

cannot be confirmed because it is not officially recorded at the District Religious Affairs Office. Nevertheless, it can be inferred from the many marriage legalization certificates for underage marriages.

Based on various sources, both references and respondents indicate that there are 3 versions regarding the considerations of judges concerning the issuance of rulings on requests for the legalization of marriages involving minors, among others:

First, Nur Alam Syaf, Nurlinah K., and others agreed with the leadership's policy of tightening the requirements for marriage dispensation applications, and in their legal considerations as well as their decisions on marriage ratification for underage marriages, they approved them, representing the majority group in the Watampone Religious Court.²⁸

Secondly, the second group is represented by Kamaluddin Kasim. They actually do not agree with the restriction on accepting requests for Marriage Dispensation, and also do not agree with judges whose decisions reject the legalization of marriages for underage couples, because both only add problems (rather than provide solutions). It was added that the fiery ball should not end up in the Religious Court; societal issues should be resolved by public officials in their respective areas, and the Religious Court should not be scapegoated as the cause or gateway for child marriages.

Third, Hj. Rudianah Halim and Adaming, representing the third group, tend to impose sanctions on child marriage perpetrators by issuing a NO decision (not acceptable) because it is unconditional regarding applications for legal recognition of marriages under age. This group bases its opinion on the response from the Registrar of the Supreme Court of the Republic of Indonesia, stating: "The administrative requirement for underage marriages is that there must be a court dispensation, and if the requirement is not met, such a marriage is considered illegal. If they want to register the marriage after fulfilling the requirement, they must remarry or renew the marriage (tajdid nikah) and have it registered."²⁹

According to Nurmiati, each judge has regulations that underpin their decisions. For judges who reject (NO), the basis is the response from the Registrar of the Supreme Court of Indonesia to questions from the first-level court, because the foundation lies in a violation of the law regarding

²⁸Nur Alam Syaf, Head of the Watampone Religious Court, Interview via Whatsapp, on October 7, 2020.

²⁹Judiasih, 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* 3.2 (2020): 203-222.

dispensation, and the solution is that, after meeting the requirements, they must remarry. As for the group of judges who approve, the basis is that since they are already married, they are considered mature, so the marriage legalization (isbat nikah) can be granted even though they have technically violated the law by not obtaining dispensation from the court. According to Nurmiati, there should be a common understanding to avoid disparities in decisions in similar cases, but it is also recognized that judges have the right to independence that must not be interfered with by anyone or from anywhere, so both approaches continue to run smoothly.³⁰

Conclusion

Judges in examining and adjudicating Isbat Nikah cases are carried out based on the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2015 concerning Integrated Services for Mobile Court Hearings of District Courts and Religious Courts/Sharia Courts in the context of Issuing Marriage Certificates, Marriage Books, and Birth Certificates; and the Compilation of Islamic Law. The considerations of the Watampone Religious Court judges in deciding requests for Isbat Nikah for Underage Marriages basically have two significant versions, namely granting it and stating it as unconditional so that it cannot be accepted through a *Niet Onvankelijk Verklaark* (NO) decision.

The first version that grants the petition is based on the consideration that the marriage has no prohibitions against it and has met the essential elements and requirements of marriage. According to various regulations, legal adulthood occurs for two reasons: first, due to reaching the required age, and second, because of being married. Since the applicants have already married, they are considered legally adult, and therefore, their marriage can be legalized. The second version, which rejects it (cannot be accepted because it is legally baseless/conditional), states that at the time of marriage, one of the parties was not of sufficient age (19 years) under Law Number 16 of 2019, amending Law Number 1 of 1974 on Marriage, and did not obtain permission/dispensation from the Court. Therefore, the petition is declared conditional. However, it should be understood that the rejected decision can still be resubmitted for examination and adjudication in Court.

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³⁰Nurmiati, Interview via WhatsApp, on November 9, 2021.

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