

**MARRIAGE DISPENSATION AFTER AMENDMENT
OF LAW 1/1974 IN RELIGIOUS COURT 1 B
WONOSARI**



Arranged by:
Cahya Wulan Ndini
NIM: 19421051

THESIS

Submitted to Ahwal Syakhsyah Department International Program
Faculty of Islamic Studies Universitas Islam Indonesia
To fulfill one of the terms of obtaining
Law Degree

YOGYAKARTA
2023

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Supervisor:
Dr. Mukhsin Achmad, M.Ag.

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2023**

STATEMENT LETTER

The undersigned below:

Name : CAHYA WULAN NDINI
Student Number : 19421051
Place and Date of Birth : Purbalingga, 8th of June 1998
Concentrate : Islamic Law Profession
Thesis Title : **MARRIAGE DISPENSATION AFTER
AMENDMENT OF LAW 1/1974 IN
RELIGIOUS COURT 1 B WONOSARI**

Hereby declare that this thesis is the result of my work and true originality. Suppose in the future it turns out that the writing of this thesis is the result of plagiarism toward other people's work. In that case, I am willing to take responsibility and, at the same time be willing to accept the sanctions based on the rules of conduct that apply at Universitas Islam Indonesia.

Thus, the statement I made truthfully and without any force.

Yogyakarta, 5th of May 2023

ersigned,



Cahya Wulan Ndini




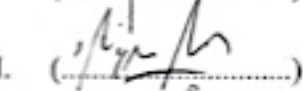


PENGESAHAN

Skripsi ini telah diujikan dalam Sidang Munaqasah Program Sarjana Strata Satu (S1) Fakultas Ilmu Agama Islam Universitas Islam Indonesia Program Studi Ahwal Al-Syakhshiyah IP yang dilaksanakan pada:

Hari : Kamis
Tanggal : 25 Mei 2023
Judul Skripsi : Marriage Dispensation After Amendment of Law 1/1974
in Religious Court 1B Wonosari
Disusun oleh : CAHYA WULAN NDINI
Nomor Mahasiswa : 19421051

Schingga dapat diterima sebagai salah satu syarat untuk memperoleh gelar Sarjana Strata Satu (S1) Syariah pada Fakultas Ilmu Agama Islam Universitas Islam Indonesia Yogyakarta.

TIM PENGUJI:

Ketua : Dr. M. Roem Syibly, S.Ag, MSI 
Penguji I : Muhammad Miqdam Makfi, Lc., MIRKH. 
Penguji II : Dr. YUSDANI, M.Ag 
Pembimbing : Dr. Mukhsin Achmad, S.Ag, M.Ag. 

Yogyakarta, 30 Mei 2023



Yogyakarta,


Dr. Drs. Asmuni, MA

INTERNAL MEMO

Yogyakarta, 5 May 2023 H
14 Syawal 1444 H

Subject : **Thesis**
Dear : Honorable **Dean of the Faculty of Islamic Studies**
Universitas Islam Indonesia
Di-Yogyakarta

Assalaamu'alaikum Wr. Wb.

Based on the appointment by the Dean of the Faculty of Islamic Studies, Universitas Islam Indonesia, with letter number: 90/Dek/60/DAATI/FIAI/I/2023, on 16th of January 2023/ 23rd of Jumada al-Thani 1444 H, for our duties as supervisor of the thesis:

Student Name : Cahya Wulan Ndini

Student Number : 19421051

The student of the Islamic Studies Faculty, Universitas Islam Indonesia

Study Department : *Ahwal Syakhsiyyah* International Program

Academic Year : 2022/2023

Thesis Title : MARRIAGE DISPENSATION AFTER AMENDMENT
OF LAW 1/1974 IN RELIGIOUS COURT 1 B
WONOSARI

After researching and making necessary improvements, we finally decided that your thesis above fulfills the requirements to be submitted to the Munaqasa Trial of the Islamic Studies Faculty, Universitas Islam Indonesian

Thus, it can be tested soon, and together with us, we will send 4 (four) copies of the thesis in question.

Wassalaamu'alaikum Wr. Wb.

Supervisor



Dr. Mukhsin Achmad, M.Ag.

SUPERVISOR'S APPROVAL

The undersigned is the thesis supervisor, certifying that:

Student Name : CAHYA WULAN NDINI
Student Number : 19421051
Thesis Title : **MARRIAGE DISPENSATION AFTER
AMENDMENT OF LAW 1/1974 IN
RELIGIOUS COURT 1 B WONOSARI**

According to the process and the results of supervising among several months, and being made necessary improvements, then the concerned person can register herself to join the Munaqasah Trial of the *Ahwal Syakhsiyyah* International Program Department, Faculty of Islamic Studies, Universitas Islam Indonesian.

Supervisor
Yogyakarta, 5th of May 2023



Dr. Mukhsin Achmad, M.Ag.

ACKNOWLEDGMENT

This thesis is presented for my grandmother (*almh*), who was been waited for my graduation since the Eid Fitr last year. Thus, this thesis, such a fulfilment promise of finishing my thesis in Eid Fitr this year even though my grandmother (*almh*) was gone four months ago, but this thesis will be a witness to fulfilling promise and intention.

اللَّهُمَّ اغْفِرْ لَهَا وَارْحَمْهَا وَعَافِهَا وَاعْفُ عَنْهَا

آمِينَ

MOTTO

وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ ۖ وَلَا تَأْكُلُوهَا إِسْرَافًا

وَبِدَارًا أَنْ يَكْبَرُوا ۚ وَمَنْ كَانَ عَنِيًّا فَلْيَسْتَعْفِفْ ۚ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ ۚ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ

أَمْوَالَهُمْ فَأَشْهِدُوا عَلَيْهِمْ ۚ وَكَفَىٰ بِاللَّهِ

“And test the orphans (in their abilities) until they reach marriageable age. Then if you perceive in them sound judgment, release their property to them. Moreover, do not consume it excessively and quickly (anticipating) that they will grow up. Furthermore, whoever (when acting as guardian) is self-sufficient should refrain (from taking a fee); and whoever is poor – let him take according to what is acceptable. Then when you release their property to them, bring witnesses upon them. And sufficient is Allah as Accountant.”

(QS. An-Nisā: 6)¹

¹ Tim Penerjemah Al-Quran UII, *Qur'an Karim dan Terjemahan Artinya* (Yogyakarta: UII Press, 1999) 138.

PEDOMAN TRANSLITERASI ARAB LATIN

KEPUTUSAN BERSAMA

MENTERI AGAMA DAN MENTERI PENDIDIKAN DAN KEBUDAYAAN REPUBLIK INDONESIA

Nomor: 158 Tahun 1987
Nomor: 0543b//U/1987

Transliterasi dimaksudkan sebagai pengalih-hurufan dari abjad yang satu ke abjad yang lain. Transliterasi Arab-Latin di sini ialah penyalinan huruf-huruf Arab dengan huruf-huruf Latin beserta perangkatnya.

A. Konsonan

Fonem konsonan bahasa Arab yang dalam sistem tulisan Arab dilambangkan dengan huruf. Dalam transliterasi ini sebagian dilambangkan dengan huruf dan sebagian dilambangkan dengan tanda, dan sebagian lagi dilambangkan dengan huruf dan tanda sekaligus.

Berikut ini daftar huruf Arab yang dimaksud dan transliterasinya dengan huruf latin:

Table 0.1: Tabel Transliterasi Konsonan

Huruf Arab	Nama	Huruf Latin	Nama
ا	Alif	Tidak dilambangkan	Tidak dilambangkan
ب	Ba	B	Be

ت	Ta	T	Te
ث	Ṡa	ṣ	es (dengan titik di atas)
ج	Jim	J	Je
ح	Ḥa	ḥ	ha (dengan titik di bawah)
خ	Kha	Kh	ka dan ha
د	Dal	d	De
ذ	Ḍal	ḏ	Zet (dengan titik di atas)
ر	Ra	r	er
ز	Zai	z	zet
س	Sin	s	es
ش	Syin	sy	es dan ye
ص	Ṣad	ṣ	es (dengan titik di bawah)
ض	Ḍad	ḏ	de (dengan titik di bawah)
ط	Ṭa	ṭ	te (dengan titik di bawah)
ظ	Ẓa	ẓ	zet (dengan titik di bawah)

ع	`ain	`	koma terbalik (di atas)
غ	Gain	g	ge
ف	Fa	f	ef
ق	Qaf	q	ki
ك	Kaf	k	ka
ل	Lam	l	el
م	Mim	m	em
ن	Nun	n	en
و	Wau	w	we
هـ	Ha	h	ha
ء	Hamzah	‘	apostrof
ي	Ya	y	ye

B. Vokal

Vokal bahasa Arab, seperti vokal bahasa Indonesia, terdiri dari vokal tunggal atau *monoftong* dan vokal rangkap atau *diftong*.

1. Vokal Tunggal

Vokal tunggal bahasa Arab yang lambangnya berupa tanda atau harakat, transliterasinya sebagai berikut:

Table 0.2: Tabel Transliterasi Vokal Tunggal

Huruf Arab	Nama	Huruf Latin	Nama
ـَ	Fathah	a	a
ـِ	Kasrah	i	i
ـُ	Dammah	u	u

2. Vokal Rangkap

Vokal rangkap bahasa Arab yang lambangnya berupa gabungan antara harakat dan huruf, transliterasinya berupa gabungan huruf sebagai berikut:

Table 0.3: Tabel Transliterasi Vokal Rangkap

Huruf Arab	Nama	Huruf Latin	Nama
ـِي...	Fathah dan ya	ai	a dan u
ـِو...	Fathah dan wau	au	a dan u

Contoh:

- كَتَبَ kataba
- فَعَلَ fa`ala
- سَيْلَ suila

- كَيْفَ kaifa
- حَوْلَ haula

C. Maddah

Maddah atau vokal panjang yang lambangnya berupa harakat dan huruf, transliterasinya berupa huruf dan tanda sebagai berikut:

Table 0.4: Tabel Transliterasi *Maddah*

Huruf Arab	Nama	Huruf Latin	Nama
أ...إ...أ	Fathah dan alif atau ya	ā	a dan garis di atas
إ...إ	Kasrah dan ya	ī	i dan garis di atas
و...و	Dammah dan wau	ū	u dan garis di atas

Contoh:

- قَالَ qāla
- رَمَى ramā
- قِيلَ qīla
- يَقُولُ yaqūlu

D. Ta' Marbutah

Transliterasi untuk ta' marbutah ada dua, yaitu:

1. Ta' marbutah hidup

Ta' marbutah hidup atau yang mendapat harakat fathah, kasrah, dan dammah, transliterasinya adalah “t”.

2. Ta' marbutah mati

Ta' marbutah mati atau yang mendapat harakat sukun, transliterasinya adalah “h”.

3. Kalau pada kata terakhir dengan ta' marbutah diikuti oleh kata yang menggunakan kata sandang *al* serta bacaan kedua kata itu terpisah, maka ta' marbutah itu ditransliterasikan dengan “h”.

Contoh:

- رَوْضَةُ الْأَطْفَالِ raudah al-atfāl/raudahtul atfāl
- الْمَدِينَةُ الْمُنَوَّرَةُ al-madīnah al-munawwarah/al-madīnatul munawwarah
- طَلْحَةَ talhah

E. Syaddah (Tasydid)

Syaddah atau tasydid yang dalam tulisan Arab dilambangkan dengan sebuah tanda, tanda syaddah atau tanda tasydid, ditransliterasikan dengan huruf, yaitu huruf yang sama dengan huruf yang diberi tanda syaddah itu.

Contoh:

- نَزَّلَ nazzala
- الْبِرُّ al-birr

F. Kata Sandang

Kata sandang dalam sistem tulisan Arab dilambangkan dengan huruf, yaitu ال, namun dalam transliterasi ini kata sandang itu dibedakan atas:

1. Kata sandang yang diikuti huruf syamsiyah

Kata sandang yang diikuti oleh huruf syamsiyah ditransliterasikan sesuai dengan bunyinya, yaitu huruf “l” diganti dengan huruf yang langsung mengikuti kata sandang itu.

2. Kata sandang yang diikuti huruf qamariyah

Kata sandang yang diikuti oleh huruf qamariyah ditransliterasikan dengan sesuai dengan aturan yang digariskan di depan dan sesuai dengan bunyinya.

Baik diikuti oleh huruf syamsiyah maupun qamariyah, kata sandang ditulis terpisah dari kata yang mengikuti dan dihubungkan dengan tanpa sempang.

Contoh:

- الرَّجُلُ ar-rajulu
- الْقَلَمُ al-qalamu
- الشَّمْسُ asy-syamsu
- الْجَلَالُ al-jalālu

G. Hamzah

Hamzah ditransliterasikan sebagai apostrof. Namun hal itu hanya berlaku bagi hamzah yang terletak di tengah dan di akhir kata. Sementara hamzah yang terletak di awal kata dilambangkan, karena dalam tulisan Arab berupa alif.

Contoh:

- تَأْخُذُ ta'khuẓu
- شَيْءٌ syai'un
- النَّوْءُ an-nau'u
- إِنَّ inna

H. Penulisan Kata

Pada dasarnya setiap kata, baik fail, isim maupun huruf ditulis terpisah. Hanya kata-kata tertentu yang penulisannya dengan huruf Arab sudah lazim dirangkaikan dengan kata lain karena ada huruf atau harkat yang dihilangkan, maka penulisan kata tersebut dirangkaikan juga dengan kata lain yang mengikutinya.

Contoh:

- وَإِنَّ اللَّهَ فَهُوَ خَيْرُ الرَّازِقِينَ Wa innallāha lahuwa khair ar-rāziqīn/
Wa innallāha lahuwa khairurrāziqīn
- بِسْمِ اللَّهِ مَجْرَاهَا وَ مُرْسَاهَا Bismillāhi majrehā wa mursāhā

I. Huruf Kapital

Meskipun dalam sistem tulisan Arab huruf kapital tidak dikenal, dalam transliterasi ini huruf tersebut digunakan juga. Penggunaan huruf kapital seperti apa yang berlaku dalam EYD, di antaranya: huruf kapital digunakan untuk menuliskan huruf awal nama diri dan permulaan kalimat. Bilamana nama diri itu didahului oleh kata sandang, maka yang ditulis dengan huruf kapital tetap huruf awal nama diri tersebut, bukan huruf awal kata sandangnya.

Contoh:

- الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ Alhamdu lillāhi rabbi al-`ālamīn/
Alhamdu lillāhi rabbil `ālamīn
- الرَّحْمَنُ الرَّحِيمُ Ar-rahmānir rahīm/Ar-rahmān ar-rahīm

Penggunaan huruf awal kapital untuk Allah hanya berlaku bila dalam tulisan Arabnya memang lengkap demikian dan kalau penulisan itu disatukan dengan kata lain sehingga ada huruf atau harakat yang dihilangkan, huruf kapital tidak dipergunakan.

Contoh:

- اللَّهُ غَفُورٌ رَحِيمٌ Allaāhu gafūrun rahīm
- لِلَّهِ الْأُمُورُ جَمِيعًا Lillāhi al-amru jamī`an/Lillāhil-amru jamī`an

J. Tajwid

Bagi mereka yang menginginkan kefasihan dalam bacaan, pedoman transliterasi ini merupakan bagian yang tak terpisahkan dengan Ilmu Tajwid. Karena itu peresmian pedoman transliterasi ini perlu disertai dengan pedoman tajwid.

ABSTRAK

DISPENSASI KAWIN SETELAH AMANDEMEN UU 1/1974 DI PENGADILAN AGAMA 1B WONOSARI

CAHYA WULAN NDINI

NIM : 19421051

Perkawinan anak merupakan sebuah perkawinan antara anak di bawah 18 tahun dengan yang sebayanya ataupun usia dewasa. Hukum yang berlaku di Indonesia mengatur mengenai minimal umur bagi perempuan untuk menikah adalah 16 tahun, hingga per September 2019 yaitu dengan disahkannya Amandemen UU 1/1974, yang mengubah usia minimal menikah bagi perempuan dan laki-laki menjadi 19 tahun. Pengesahan ini tentunya menjadikan angka dispensasi kawin meningkat. Maka dari itu, penelitian ini menjabarkan mengenai korelasi disahkannya UU 16/2019 dengan kondisi dispensasi kawin serta faktor yang memengaruhinya. Hal menarik mengenai penelitian ini adalah pada kenaikan kasus dispensasi kawin yang diikuti dengan penurunan di tahun berikutnya. Kemudian, alasan dipilihnya Pengadilan Agama 1B Wonosari dikarenakan pengadilan agama ini merupakan satu-satunya pengadilan agama yang mengalami penurunan secara konstan di antara pengadilan agama lainnya yang berada di wilayah yurisdiksi PTA Yogyakarta. Penelitian lapangan dengan metode deskriptif dan pendekatan kualitatif dilaksanakan melalui peninjauan wawancara narasumber terpilih dan analisis penetapan hakim. Teknik analisis yang digunakan adalah model interaktif yaitu penganalisisan data sembari melakukan pengambilan data, pemilahan data, dan penyajian data. Disahkannya UU 16/2019 menyebabkan kasus dispensasi kawin naik secara signifikan hingga 123% dengan faktor kenaikan: pergaulan remaja, anggapan penduduk lokal, budaya, kehamilan, pacaran yang sudah lama, sudah melakukan hubungan suami-istri, kelahiran bayi, keguguran, tinggal satu rumah, dan faktor yang tidak diketahui. Kasus dispensasi kawin mengalami penurunan secara bertahap pada 2021-2022, hal ini dipengaruhi oleh adanya penerapan kebijakan-kebijakan dari berbagai *stakeholder* di Kabupaten Gunungkidul yang berkolaborasi, khususnya pada penyelenggaraan MoU dalam membatasi perkawinan anak melalui peninjauan wawancara dan asesmen dari psikolog di PPT PPA.

Kata Kunci : Dispensasi kawin, Pengadilan Agama 1B Wonosari, UU 16/2019

ABSTRACT

MARRIAGE DISPENSATION AFTER AMENDMENT OF LAW 1/1974 IN RELIGIOUS COURT 1 B WONOSARI

CAHYA WULAN NDINI
NIM : 19421051

Child marriage is a marriage between a child under 18th and an adult or another child. The law that was adopted in Indonesia has ruled the minimum age female for marriage is 16th y.o thus, in September 2019, stipulated Amendment Law 1/1974, it amended the minimum age to 19 years old for males and females. Indeed, this stipulation makes the marriage dispensation cases increase. Therefore, this research emphasized the correlation between the enactment of Law 16/2019 to the condition of marriage dispensation and the factor that influence it. The interest in this research is the rising number of marriage dispensation cases that got decreased. Then the reason for taking Religious Court 1B Wonosari as the object is because the only one that gets a constant decrease among Religious Courts on the jurisdiction of PTA Yogyakarta. Through descriptive methodology and qualitative approach that run as field research gathered qualitative data by interview and analysis of voluntary jurisdiction. The analysis technique uses an interactive model analyzing such analyzing the obtained data while executing the data collection, data reduction, and data display. The enactment of Law 16/2019 brought out a significant increment of up to 123% in marriage dispensation with the rising factor such as teenage society, local assumptions, culture, pregnancy, long relationships, fornication, baby born, miscarriage, staying under one roof house, and unknown. These cases decreased gradually in 2021-2022, influenced by the applied policies from the collaboration of various stakeholders, especially the conducting of MoU in restricting child marriage through the interview and assessment at PPT PPA.

Keywords: Law 16/2019, Marriage Dispensation, Religious Court 1B Wonosari

PREFACE

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، وَبِهِ نَسْتَعِينُ عَلَى أُمُورِ الدُّنْيَا وَالْآخِرَةِ، وَالصَّلَاةُ وَالسَّلَامُ عَلَى أَشْرَفِ الْأَنْبِيَاءِ

وَالْمُرْسَلِينَ وَعَلَى آلِهِ وَصَحْبِهِ أَجْمَعِينَ، أَمَّا بَعْدُ

All praise and deep gratitude to Allah, the One True Almighty God, for his blessing and guidance; thus, this thesis can be finished on its time, the time Allah has decreed. *Salawat* and greetings are always devoted to the prophet Muhammad SAW, who brought the light out in the dark era and removed all the ignorance, hence existed the freedom of learning for all gender, and found many discoveries until created this civilization.

The process of arranging and finishing this thesis, titled "Marriage Dispensation After Amendment of Law 1:1974 In Religious Court 1 B Wonosari," is not separated from the support, guidance, suggestion, and supervision of several involved parties till this thesis can be finished properly. Thus, incredible gratefulness is sincerely given to the honorable:

1. Prof. Fathul Wahid, S.T., M.Sc., Ph.D., as the Rector of Universitas Islam Indonesia
2. Dr. Drs. Asmuni, M.A, as the Dean of the Faculty of Islamic Studies Universitas Islam Indonesia
3. Dr. Anton Priyo Nugroho, S.E., M.M., as the Head of the Department Islamic Studies Faculty of Islamic Studies Universitas Islam Indonesia

4. Krismono, SHI., MSI., as the Head of Diploma Program in Family Law (Ahwal Syakhshiyah)
5. As the thesis supervisor, Dr. Mukhsin Achmad, M.Ag., has supervised me comprehensively and patiently during these several months.
6. As the academic supervisor, Fuat Hasanudin, Lc., MA., supervised and advised me in my educational journey in this Department.
7. All lectures of the Study Program in Family Law (Ahwal Syakhshiyah) Faculty of Islamic Studies Universitas Islam Indonesia and academic civitas of Faculty of Islamic who have been giving helpful knowledge until this thesis can be finished.
8. Two precious institutions that helped the thesis accomplishment were Religious Court 1B Wonosari and the Social Agency of Female Empowerment and Child Protection at Gunungkidul Regency. Especially the Penal of Judges in Religious Court 1B Wonosari and all staff involved, and all Child and Woman Protection team involved in Social Agency of Female Empowerment and Child Protection at Gunungkidul Regency.
9. Enormous gratitude to my parent and family, who supported me affectionally and financially with mature preparations for religion and knowledge, theoretically and practically.
10. For PP UII, which was a shelter for me and supervised me to the balancing life between knowledge and morals, between this world and hereafter.
11. All my besties and friends who supported me accompanied me in joy, sorrow, laughter, and tears. Those beside me in my worst condition

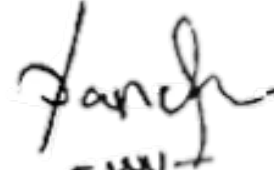
understand me for who I am and become my charger. My big love for my two midwives, my random best friend, friends of AS IP 2019, Triumvirate Friends, KKN 333, Dulur PPUII, Research Team of Marcomm, Apprentice Colleague, and Workmates.

12. All parties that cannot be mentioned one by one have been making an immense contribution to arranging this thesis.

The arrangement of this thesis is far from the perfect word because all the perfectness is Allah's own. Thus, I wish all dearest readers to give supportive suggestions and criticism for improving and revising this thesis so that this thesis can be valuable and helpful later on.

Yogyakarta, 13th of April 2023

Writer,



Cahya Wulan Ndini

LIST OF CONTENTS

FRONT COVER	1
INNER COVER	i
STATEMENT LETTER	ii
EXAMINER’S APPROVAL	iii
INTERNAL MEMO	iv
SUPERVISOR’S APPROVAL	v
ACKNOWLEDGMENT	vi
MOTTO	vii
GUIDELINE OF ARABIC LATIN TRANSLATION	viii
ABSTRAK	xvii
ABSTRACT	xviii
PREFACE	xix
LIST OF CONTENTS	xxii
LIST OF TABLES	xxiv
LIST OF DIAGRAMS	xxv
LIST OF PICTURES	xxvi
CHAPTER I. INTRODUCTION	1
A. Background.....	1
B. Research Questions.....	5
C. Research Objectives.....	5
D. Benefits Of Research.....	6
E. Discussion Systematics.....	7
CHAPTER II. LITERATURE REVIEW AND THEORETICAL FRAMEWORK ..	9
A. Literature Review.....	9
B. Theoretical Framework.....	15
CHAPTER III. RESEARCH METHOD	25
A. Type of Research and Approach.....	25
B. Place or Location of Research.....	26
C. Research Informant.....	26
D. Technic of Informant Determination.....	27
E. Technic of Data Collection.....	28
F. Data Validity.....	28

G. Technic of Data Analyze	30
CHAPTER IV. RESULT AND DISCUSSION	32
A. General Description of Religious Court 1 B Wonosari.....	32
B. Marriage Dispensation Condition After Amendment of Law 1/1974.....	36
C. The Rising Cases and The Factors	37
D. The Decreasing Cases and The Factors.....	47
CHAPTER V. CONCLUSION AND SUGGESTION.....	57
A. Conclusion.....	57
B. Suggestion	59
REFERENCES	61
APPENDIX.....	I
CURRICULUM VITAE	XLI

LIST OF TABLES

Table 0.1: Tabel Transliterasi Konsonan.....	viii
Table 0.2: Tabel Transliterasi Vokal Tunggal.....	xi
Table 0.3: Tabel Transliterasi Vokal Rangkap.....	xi
Table 0.4: Tabel Transliterasi Maddah.....	xii
Table 1.1: Marriage Dispensation Cases in Religious High Court Yogyakarta.....	3
Table 4.1: Structural Organization Data.....	35
Table 4.2: Marriage Dispensation Judgement in 2022.....	55

LIST OF DIAGRAMS

Diagram 1.1. Marriage Dispensation Graphic in Religious Court 1B Wonosari	3
Diagram 1.2. Dispensation Marriage Cases in Religious High Court Yogyakarta	4
Diagram 4.1. Marriage Dispensation Cases in 2017- 2020	37
Diagram 4.2. Classification of the Applicant of Marriage Dispensation	40
Diagram 4.3. The Reason for Marriage Dispensation Cases Based on Judgement	45
Diagram 4.4. Marriage Dispensation Cases in 2020-2022	54

LIST OF PICTURES

Picture 1.1. Marriage Dispensation Cases in 2019.....	2
Picture 3.1. Technic of Data Analyze.....	30
Picture 4.1. Marriage Dispensation Cases in 2019.....	38
Picture 4.2. Development of Marriage Dispensation Cases Among 2017-2020.....	39
Picture 4.3. The Spreading Map of Dispensation Marriage Cases 2020.....	44
Picture 4.4. Counselling Service Flow	53
Picture 5.1. Research Permission Letter.....	I
Picture 5.2. Interview with Muhammad Novriandi, January 26 th , 2023.....	XL
Picture 5.3. Maps of Religious Court 1B Wonosari.....	XL

CHAPTER I

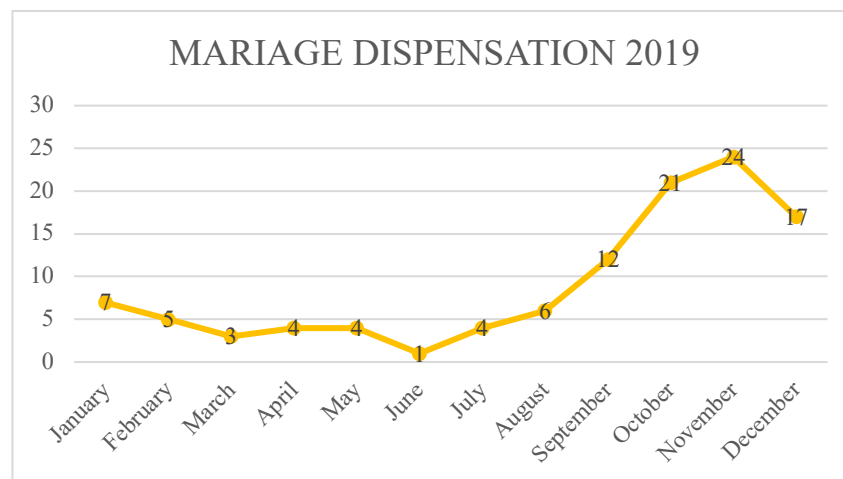
INTRODUCTION

A. Background

Child marriage is a specter in the child world, the age of children that should in growing up and thriving era such as studying, playing, and reaching their dreams. All of it turns into the duties of husband and wife, then father and mother, whereas their age and psychological condition are not complete enough to do the duties. Therefore, after going to Religious Court in applying marriage dispensation cases, several months or years later, they came to Religious Court again in applying divorce.

There is a quote from a book that stated “Pelaminan bukan tempat terbaik untuk tumbuh kembang anak”, Aisle is not the best place for child development. It is such a suitable quote to express about child marriage in Indonesia which, at first law, regulated the minimum age for males 19th years old meanwhile for females 16th years old. This discrimination is a form of inequality before the law. Besides that, the regulation also does not accord with the Child Protection Law Article 1 section (1), which states that the definition of a child is one who has not reached 18 years old, including the child in the fetus. Thus, the existence of Law 16/2019 on the Amendment of Law 1/1974 on marriage is needed for executing the Constitutional Court Decree of the Republic of Indonesia 22/PUU-XV/2017 and equalizing perception of the limitation in children's age as stated in Child Protection Law. Even

though the stipulation of it brings a new problem as the increasing number of marriage dispensation application cases, especially in Religious Court 1B Wonosari, such as the graphic below:



Picture 1.1. Marriage Dispensation Cases in 2019

(Source: PA Wonosari Report 2022)

Uniquely, after the rising number of marriage dispensation cases come the decreasing era, even just a tiny decrease. But this is such good news in the implementation of this policy, which means the stipulation of law 16/2019 on the amendment of law 1/1974 on marriage is giving positive feedback. This rise and down graphic occurred in the Religious Court 1 B Wonosari such the graphic below:

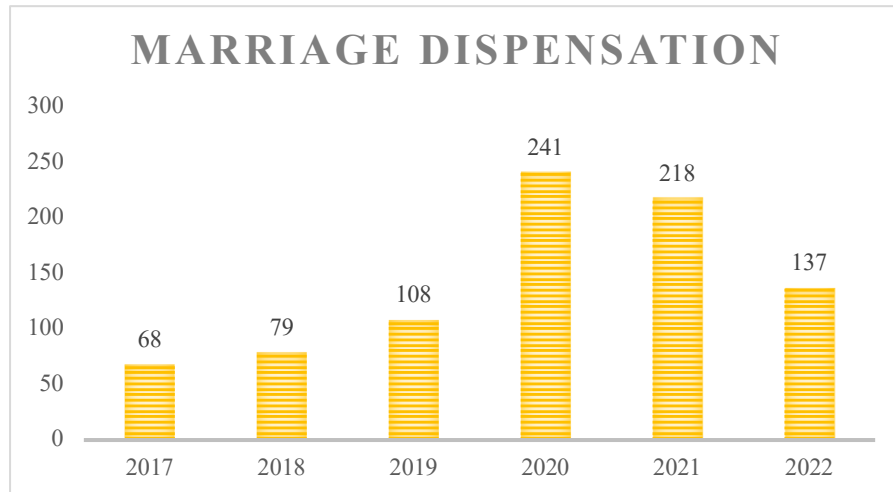


Diagram 1.1. Marriage Dispensation Graphic in Religious Court 1B Wonosari
(Source: PA Wonosari Report 2022)

The graphic above describes the development of marriage cases that increased in late 2019, continued in 2020, and decreased by 23 cases in 2021.

Religious Court 1 B Wonosari was selected as the place for this research because the marriage dispensation cases in Religious Court 1 B Wonosari has different development among another regency in Yogyakarta provinces like Sleman, Kulon Progo, Wates, and Bantul. The table and graphic below show the increase and decrease of dispensation marriage in Religious High Court Yogyakarta from 2019 until 2022; even though another Religious Court also gains decreasing cases, the only one that gets the constant decrease is Religious Court 1 B Wonosari.

Table 1.1: Marriage Dispensation Cases in Religious High Court Yogyakarta

No	Pengadilan	Perkara			
		2019	2020	2021	2022
1	PA BANTUL	124	238	162	154
2	PA SLEMAN	134	277	233	254
3	PA WATES	45	119	80	54
4	PA WONOSARI	108	241	218	171
5	PA YOGYAKARTA	57	72	64	56

(Source: Pusat Data Perkara Kinsaker Badilag, 2022)

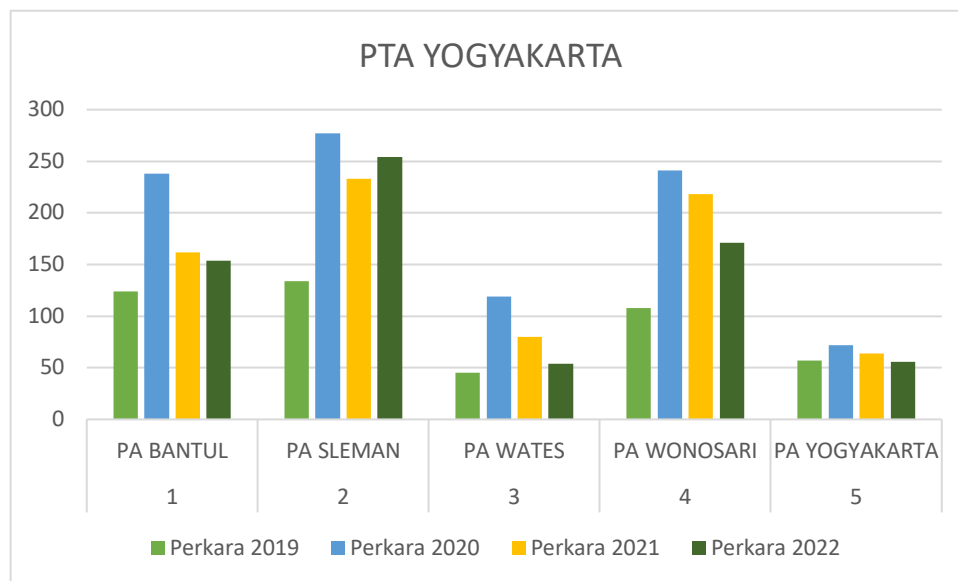


Diagram 1.2. Dispensation Marriage Cases in Religious High Court Yogyakarta

(Source: Pusat Data Perkara Kinsaker Badilag, 2022)

Furthermore, the tradition or culture applied in Gunungkidul is also the reason for selecting Religious Court 1 B Wonosari. The local community in Gunungkidul regency, especially those who stayed in the coastal area, believes that a girl who has finished her study even has not reached the age of 18th is allowed to get married, and women who are in the 20th era but has not married consider as the spinster; thus their parent tried to make their daughter married before 20 years old. Moreover, several places at Gunungkidul Regency being the lewd area for unmarried couples, such as Clongop Mountain and Tegalrejo Waterfall.¹

¹ Endah Tiara Furi, "Praktek Nikah di Bawah Umur dan Upaya Penanggulangannya di Kecamatan Gedangsari, Gunungkidul Tahun 2012-2016", *Tesis*, Yogyakarta: UIN Sunan Kalijaga, 2017.

Therefore, the researcher used this topic as the source of the research regarding Marriage Dispensation After the Amendment of Law 1/1974 On Marriage In Religious Court 1 B Wonosari.

B. Research Questions

The research question exposed from the background of the problem in this research are:

1. How is the correlation between the total amount submission tier of Marriage Dispensation cases in Religious Court 1B Wonosari with the enactment of Law Number 16 of 2019 on the Amendment to Law Number 1 of 1974 on Marriage?
2. How has the condition of Marriage Dispensation submission cases in Religious Court 1B Wonosari since the promulgation of Law Number 16 of 2019 on the Amendment to Law Number 1 of 1974 on Marriage?
3. Why has the number of Marriage Dispensation submission cases in Religious Court 1B Wonosari increased and decreased since the Law Number 16 of 2019 on the Amendment to Law Number 1 of 1974 on Marriage was issued?

C. Research Objectives

The research objectives of this research divided into three points such as below:

1. Explaining the correlation between the submission tier of Marriage Dispensation cases in Religious Court 1B Wonosari with the enactment of

Law Number 16 of 2019 on the Amendment to Law Number 1 of 1974 on Marriage

2. Emphasizing the condition of Marriage Dispensation submission cases in Religious Court 1B Wonosari since the promulgation of Law Number 16 of 2019 on the Amendment to Law Number 1 of 1974 on Marriage
3. Searching the factors that caused the increasing or decreasing the number of Marriage Dispensation submission cases in Religious Court 1B Wonosari since the Law Number 16 of 2019 on the Amendment to Law Number 1 of 1974 on Marriage issued.

D. Benefits Of Research

The benefits of this research are defined into practical one and theoretical with detailed information such as below:

1. Theoretically Benefit

This research is supposed to give advantages in expanding the knowledge repository, especially in the comprehension fields regarding the impact of the promulgated Law Number 16 of 2019 on the Amendment to Law Number 1 of 1974 on Marriage, according to the Development of Marriage Dispensation Cases in Religious Court 1 B Wonosari.

2. Practically Benefit

This research practically contributes to a reference and correction among the existing laws and the occurred phenomena for the institution of the Religious Court in handling the marriage dispensation cases through the consideration

of the judge involved. Then for Supreme Court participated in offering their concernment to overcome the marriage dispensation cases such as the existing Supreme Court Regulation (Perma) Number 5 of 2019 on the Guidelines of Adjudicating on the Marriage Dispensation Application. The last is the benefit for the Ministry of Female Empowerment and Child Protection of the Republic of Indonesia as the state institution that manages the prosperity and protection of females and children in Indonesia, which contributes to granting the recommendation letter for child condition.

E. Discussion Systematics

Discussion systematics consists of the logical argument that exposes the urgency of each chapter and subchapter from this thesis and the relation between one and another (logical sequences). Systematic represents the thesis as a unity that is integral and urgent.

Discussion systematic is an explanation and exposure that is done descriptively regarding the things that are written generally for ease in understanding the full description of this thesis, such as:

The first chapter is formed from the introduction; this chapter discusses the background of the problem, research question, research objectives, research benefit, and systematic discussion.

The second chapter consists of a literature review and conceptual framework; the discussion in this chapter is regarding the prior research and research novelty

used by the researcher to arrange this research, then the literature review that suits and is relevant to this research.

The third research discussed the research methodology. In this chapter, the researcher explains and exposes the type of method chosen in running this research; inside it, there are also explanations about the kind of approach, location of the research, informant, technic in choosing informant, technic of collecting data, and analyzing data.

The fourth chapter consists of the result and discussion, which will expose the result of the research from observation and interview. Then the discussion of the analysis was obtained from the data and reality.

The fifth chapter is closing, it is the last chapter that consists of conclusion and suggestion or recommendation. The conclusion showed the summary from a whole step of research and then the suggestion will expose several policies suggestion for the stakeholders in the future to face this phenomenon.

CHAPTER II

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

A. Literature Review

The literature review is an obvious and logical presentation of the prior relevant research. The literature review aims to identify and emphasize the vital variable and then document it as an urgent discovery from the previous research that functionated as the basis of the theoretical framework and hypothesis.¹ A literature review in research is a must because a literature review suchlike a key for revealing the truth to help solve the research problem.²

This literature review comes from prior research related to this ongoing research. Several relevant research was taken as reference in this research and compared. The outcome of this comparison is to strengthen the originality of this ongoing research and as evidence of its novelty. Therefore, this section consists of the explanation and emphasizes several relevant kinds of literature that investigate the Development of Marriage Dispensation Cases in a Religious Court after the promulgation of Law Number 16 of 2019 on the Amendment to Law Number 1 of 1974 on Marriage and its impact, such as below:

The first reference journal is the journal of Lilik Andar Yuni (2021) under the title “Analysis of The Emergency Reasons in The Application of Marriage Dispensation at The Tenggara Religious Court,” this journal explained all of the

¹ Juliansyah Noor, *Metode Penelitian: Skripsi, Tesis, Disertasi dan Karya Ilmiah*, ed-3, (Jakarta :Kencana Prenada Media Grup, 2013), 66

² Basrowi and Suwandi, *Memahami Penelitian Kualitatif*, ed-1, Jakarta: Rineka cipta, 2008), 46.

author's analysis of the emergency reason for application marriage dispensation in Tenggara Religious Court regarding the correlation of the increasing marriage dispensation cases after the stipulating of Law 16/2019 on the Amendment to Law 1/1974 on Marriage, which 18-19 years old being the dominant range about 50.92%.³ Lilik's research was executed in 2020; thus, the exposed data only showed the increasing phenomena. Meanwhile, this thesis reveals not only the increase but also the decreasing phenomena of marriage dispensation cases that occurred in Religious Court 1 B Wonosari.

Following reference that is the prior research of this research is the Supriyadi and Siti's journal (2022) titled "Judges' Legal Culture in Dealing with High Number of Applications for Child Marriage Dispensation during Covid-19 Pandemic at the Kudus Religious Court". The high number from the application of marriage dispensation cases at Kudus Religious Court based on this journal is not only caused by the pandemic but also triggered by the existence of Law 16/2019 on the Amendment to Law 1/1974 on Marriage. Furthermore, the socio-cultural and the local norm lived in Kudus local community, which believes that child marriage is a preventive way of immoral acts against immature children and is a barrier to promiscuity; thus, it also contributes to enhancing the marriage dispensation at Kudus.⁴ The difference between Supriyadi's journal and this research is in the discussion on decreasing marriage dispensation cases.

³ Lilik Andar Yuni, "Analysis of the Emergency in the Application of Marriage Dispensation at the Tenggara Religious Court", *SAMARAH: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 2(2021): 976-1002.

⁴ Supriyadi and Siti Suriyati, "Judges' Legal Culture in Dealing with High Number of Applications for Child Marriage Dispensation during Covid-19 Pandemic at the Kudus Religious Court", *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, no. 1 (2022): 136-161.

Imam Subchi and friends (2021) was writing a journal about “Legal Policy of Child Marriage in the Covid-19 Pandemic Period” This journal discovered the rising of marriage dispensation application during the pandemic period based on the data from Supreme Court that states there were 34,000 cases in 2020, 25,864 in 2019, meanwhile in 2018 just about 13,880.⁵ During the pandemic, marriage dispensation cases increased; sadly, 60% of them are the child under 18 years old. Indeed, this rising not only acquired from the pandemic but also from the ratification of Law 16/2019 on the Amendment to Law 1/1974 on Marriage, which was expected to be the light of justice in bringing equality rights for women but turned out to be a boomerang, based on the argument of the author from the journal. Hence, it is quite different from the purpose of this research which will discuss the decrease, in this case, a year later.

The fourth reference comes from Anju and Shatha’s journal, titled “20 Years of the Evidence Base on What Works to Prevent Child Marriage: A Systematic Review” This journal explains how to delay child marriage through girls’ schooling support. 8 out of 10 medium-high studies show positive results in preventing that case.⁶ Thus, increasing girls’ human capital and opportunities are the most straightforward pathway for delaying marriage. The result of this journal is in line with the hypothesis of this research; therefore, it was chosen as one of the reference sources, with the difference that the object of research is related to marriage

⁵ Imam Subchi et al., “Legal Policy of Child Marriage in the Covid-19 Pandemic Period”, *SAMARAH: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 2 (2021): 846-866.

⁶ Anju Malhotra and Shaththa Elnakib, “20 Years of the Evidence Base on What Works to Prevent Child Marriage: A Systematic Review”, *Journal of Adolescent Health* 6, no. 8 (2021): 847-862.

dispensation in Religious Court 1 B Wonosari after the Stipulation of Law 16/2019 on the Amendment to Law 1/1974 on Marriage.

Journal under the title “Children Marriage Phenomenon During the Covid-19 Pandemic” is another reference of this research. The Journal, composed by Sofia Gussevi and friends, explains the rising marriage dispensation in Purwakarta Religious Court during the pandemic, beginning with 92 cases in 2019 and up to 258 cases in 2020.⁷ The pandemic period is the differentiation between Sofia’s journal and this ongoing research, as this research exposes the rising of Marriage Dispensation because of the enactment of Law 16/2019 on the Amendment to Law 1/1974 on Marriage and the decreasing phenomena of these cases.

Alfiya Nurul Laili (2022), in her thesis “Peran Dinas Sosial Pemberdayaan Perempuan dan Perlindungan Anak terhadap Pencegahan Perkawinan pada Usia Anak di Kota Probolinggo,” discussed the role of social affairs agency in decreasing the number of child marriage. Even just 0.6%,⁸ this is such positive progress for marriage dispensation cases that is controversial in this country. The development of the marriage dispensation cases, from the increase until the decrease, is the main discussion in this ongoing research, besides novelty research.

The seventh reference is Ahmad Riza’s journal (2022) with the titled “Dialektika Pembuktian Alasan Mendesak dalam Dispensasi Nikah dan Korelasinya terhadap Kepentingan Terbaik bagi Anak”. The content of this journal

⁷ Sofia Gussevi et al., “Children Marriage Phenomenon During The Covid-19 Pandemic”, the article is presented on The 6th *International Conference on Islamic and Civilization (ICONIC)*, Purwakarta, October 28th, 2021.

⁸ Alfiya Nurul Laili, “Peran Dinas Sosial Pemberdayaan Perempuan dan Perlindungan Anak terhadap Pencegahan Perkawinan pada Usia Anak di Kota Probolinggo”, *Skrpisi*, Jember: UIN Jember, 2022.

such a similar discussion as this ongoing research, especially in its preamble regarding the discussion of the rising marriage dispensation cases since 2016 and the 7.01% decrease in 2021.⁹ The emphasis on the concept of ‘best interest of the child’ makes a big distinct point to this ongoing research which emphasizes the impact of the development of the marriage dispensation case after the promulgation of Law 16/2019 on the Amendment to Law 1/1974 on Marriage.

The following reference is coming from the thesis of Ihza Kriptie (2020) titled “Tinjauan Dampak Pemberlakuan Undang-Undang Nomor 16 Tahun 2019 Terhadap Pengajuan Dispensasi Pernikahan Dini di Pengadilan Agama Negara Bali”. This thesis analyzes the enhancement of marriage dispensation in the Bali Religious Court from 3 cases up to 17 cases after the stipulation of Law 16/2019 on the Amendment to Law 1/1974 on Marriage.¹⁰ Since this journal only analyzes the increase, it represents a difference from this ongoing research which the analysis is regarding the increasing and decreasing marriage dispensation phenomena in Religious Court 1 B Wonosari.

Thesis under the title “Pelaksanaan Pasal 7 Ayat (1) Undang-Undang Nomor 16 Tahun 2019 Sebagai Perubahan atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Berkaitan dengan Usia Kawin (Studi Penelitian: Pengadilan Agama Banyuwangi Kelas 1 A)” is discussing the significant rising of marriage

⁹ Ahmad Rizza Habibi, “Dialektika Pembuktian Alasan Mendesak dalam Dispensasi Nikah dan Korelasinya terhadap Kepentingan Terbaik bagi Anak”, retrieved from <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/dialektika-pembuktian-alasan-mendesak-dalam-dispensasi-nikah-dan-korelasinya-terhadap-kepentingan-terbaik-bagi-anak-oleh-ahmad-rizza-habibi-s-hi-26-4>, accessed at Thursday, December 1st 2022, 11.30 PM.

¹⁰ Ihza Kriptie Adhela, “Tinjauan Dampak Pemberlakuan Undang-Undang Nomor 16 Tahun 2019 Terhadap Pengajuan Dispensasi Pernikahan Dini di Pengadilan Agama Negara Bali”, *Skrpsi*, Yogyakarta: Universitas Islam Indonesia, 2022.

dispensation cases in Religious Court 1A Banyuwangi at number 980 cases since Law 16/2019 on the Amendment to Law 1/1974 on Marriage applied.¹¹ Therefore, the discussion about the decreasing marriage dispensation will be the research novelty of this ongoing research.

The last reference is the thesis of Ahmad Baihaqi (2021) under the title “Dampak Dispensasi Kawin terhadap Pasal 7 Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan dan Peningkatan Angka Perceraian di Pengadilan Agama Pasuruan”, this thesis explained about the increasing of marriage dispensation and divorce cases in Pasuruan after the enactment of Law 16/2019 on the Amendment to Law 1/1974 on Marriage as the socio-culture in Pasuruan which almost citizen in Pasuruan prefer to get married by secret while waiting the voluntary jurisdiction from Religious Court.¹² Thus, the difference for this thesis is explaining the increasing and decreasing marriage dispensation cases without divorce cases.

The grand novelty discovered from this research with the title “Marriage Dispensation After Amendment of Law 1/1974 In Religious Court 1 B Wonosari” is the research about increasing and decreasing dispensation cases in Religious Courts that had not been exposed in the prior research. The discussion about the factors of its rising and decreasing is also the novelty of this research.

¹¹ Hilda Lutfiah, “Pelaksanaan Pasal 7 Ayat (1) Undang-Undang Nomor 16 Tahun 2019 Sebagai Perubahan atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Berkaitan dengan Usia Kawin (Studi Penelitian: Pengadilan Agama Banyuwangi Kelas 1 A)”, *Skripsi*, Banyuwangi: Universitas 17 Agustus 1945, 2021.

¹² Ahmad Baihaqi, “Dampak Dispensasi Kawin terhadap Pasal 7 Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan dan Peningkatan Angka Perceraian di Pengadilan Agama Pasuruan”, *Skripsi*, Malang: UIN Malang, 2021.

B. Theoretical Framework

Theories are bundled systems of principle that strive to explain or make sense of certain phenomena.¹³ Theories provide guidance and potential organizational frameworks for this research, Marriage Dispensation After Amendment of Law 1/1974 in Religious Court 1B Wonosari based on socio-juridical theory. Therefore, the conceptual framework built into this theoretical framework is divided into three parts as they are the elements in this research.

1. Marriage Dispensation

a) Definition

Marriage, based on the Oxford Dictionary of Law, means a ceremony, civil or religious, that creates the legal status of husband and wife and the legal obligations arising from the status.¹⁴ Meanwhile, marriage in Law 1/1974 is defined as the inner and outer bonding between a male and female as the spouse to form a happy and everlasting family (household) according to Belief in on supreme God.¹⁵ In the Comprehensive Desk Dictionary, dispensation refers to an official permission to disregard a rule.¹⁶ In Indonesian Positive Law, the definition of marriage dispensation is a granting of marriage permission by the court to the candidates of husband or wife who has yet to reach 19 years old.¹⁷ As the definition

¹³ Sarah J Tracy, *Qualitative Research Methods: Collecting Evidence, Crafting Analysis, Communicating Impact*, ed-1, (Pondhicherry, India: Wiley Balckwell A John Wiley & Sons, Ltd., Publication, 2013), 49.

¹⁴ Elizabeth A Martin, *Oxford Dictionary of Law*, Fifth Edition, (Oxford: Oxford University Press, 2002), 305.

¹⁵ *Law 1/1974...*, article 1

¹⁶ Thorndike & Barnhart, *Comprehensive Desk Dictionary*, (London: Hodder & Stoughton Limited, 1952), 242.

¹⁷ *Supreme Court Regulation (Perma) 5/2019*, article 1, section (5)

above concluded that a marriage dispensation applied to child marriage; child marriage itself refers to any formal marriage or informal union between a child under the age of 18 and an adult or another child.¹⁸ The word “child marriage” is used in accordance with the vocabulary used by United Nations International Children’s Emergency Fund (UNICEF).

b) Child Marriage Based on Moslem Scholar Opinion

The discussion about child marriage based on Muslim scholar opinion start from the majority one, Syafi’i scholar located in the book *al-Umm*. In the book *al-Umm*, it is written that a young girl who has not reached maturity may not be married except with her father’s permission.¹⁹ Adapted from the book of *Fathul Bārī*, child marriage, according to Ibnu Baṭāl, affiliated with the Mālikī School statement, is allowed even though they are still toddlers, but sexual intercourse will be permitted when they have reached their period, such as puberty.²⁰ The idea mentioned before was strengthened by Ibnu Munzir in the book *al-Mughni fi Fiqhi al-Imam Ahmad Ibn Hanbal*. He stated that a father was allowed to marry his young daughter to a suitable man as a condition, such as the *dalīl* below:²¹

¹⁸ Programme: “Child Marriage”, retrieved from <https://www.unicef.org/protection/child-marriage>, accessed at Saturday, 14th of January 2023, 15.07 PM

¹⁹ Imam Syafii, *Al-Umm*, translated by Ismail Yakub, Kitab Induk, Jilid. 7, (Kuala Lumpur: Victory Agencie, 1989), 170.

²⁰ Ibnu Hajar al-Asqalany, *Fathul Bārī: Kitabun Nikah*, cet.1, (Beirut: Darul Balaghoh, 1986), 39.

²¹ Muhammad Abdullah bin Ahmad Ibnu Qudamah, *al-Mughni fi Fiqhi al-Imam Ahmad Ibn Hanbal*, Jilid. 9, cet.3, (Riyadh: Darul Alamil Kutub, 1997), 398.

وَالَّذِي يَسْنُ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنْ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلَاثَةَ أَشْهُرٍ وَالَّذِي لَمْ يَحِضْ وَأُولَاتِ الْأَحْمَالِ
أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مِنْ أَمْرِهِ يُسْرًا

“And those who no longer expect menstruation among your women - if you doubt, their period is three months, and (also for) those who have not menstruated. And for pregnant women, their term is until they give birth. And whoever fears Allah - He will make for him of his matter ease.” (QS. At-Ṭallāq:4)²²

Meanwhile Ibnu Syurumah, Abu Bakar al-Aṣam, and Uṣman al-Batti have different thoughts from the majority thought above. They thought that underage children, girls or boys, are not legally married until they reach puberty (*bālig*) age and through the agreement.²³ The *dalīl* used by that ulama is:

وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ وَلَا تَأْكُلُوهَا
إِسْرَافًا وَبِدَارًا أَنْ يَكْبَرُوا ؕ وَمَنْ كَانَ عَنِيًّا فَلْيَسْتَعْفِفْ ؕ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ ؕ فَإِذَا دَفَعْتُمْ
إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهَدُوا عَلَيْهِمْ ؕ وَكَفَىٰ بِاللَّهِ

“And test the orphans (in their abilities) until they reach marriageable age. Then if you perceive in them sound judgment, release their

²² Tim Penerjemah Al-Quran UII, *Qur'an...*, 1016.

²³ Abu Muhammad Ali bin Ahmad bin Sa'id bin Hazm, *Al-Muhalla*, “Bab An-Nikah”, translated by Khatib Amir, cet.1, (Jakarta: Pustaka Azam, 2016), 143.

property to them. Moreover, do not consume it excessively and quickly (anticipating) that they will grow up. Furthermore, whoever (when acting as guardian) is self-sufficient should refrain (from taking a fee); and whoever is poor – let him take according to what is acceptable. Then when you release their property to them, bring witnesses upon them. And sufficient is Allah as Accountant.” (QS. An-Nisā: 6)²⁴

Based on their opinion, if the child is married before puberty, verse 6 of An-Nisā will mean nothing.²⁵

c) Child Marriage in Another Country

Marriage dispensation existed because of child marriage, which is a big homework as it includes human rights violations, especially in child protection. Child marriage not only occurred in Indonesia but also other countries, such as Uganda; marriage before 18 years old with the high prevalence of HIV as the social values and cultural norms applied in Uganda, which promoted child marriage and early childbearing.²⁶ Based on the Research of Tammary Esho and team, there are 15 million girls married off before 18th in 30 countries of sub-Saharan Africa; this occurred because of the influence of community and family interest on sustaining

²⁴ Tim Penerjemah Al-Quran UII, *Qur'an*..., 138.

²⁵ Abu, *Al-Muhalla*, 143.

²⁶ Sajeda Amin et al., “The Adolescent Girls Vulnerability Index: Guiding Strategic Investment in Uganda”, *Best of UNICEF Research*, (Florence Italy: Innocenti, 2014), 34-36.

the cultural or religious beliefs like purity, honor, fidelity in marriage, preserving virginity before marriage and financial security.²⁷

d) The Factor

The cases of child marriage in Indonesia developed year by year, from increasing to decreasing. The factors that caused the marriage dispensation are:

- Educational

The lack of education contributes to the minimum knowledge of children, especially on how dangerous child marriage is for health, mental health issues, and reproduction health. Thus, the highest graphic of the married couple before the 18th is those who graduated from junior high school 44,86% and elementary school 33,95%.²⁸

- Economy

Some research discovered that poverty is the main factor in marriage dispensation, especially in developing countries. But another research also found that poverty is not the main factor it is just the booster of marriage dispensation, as the Susenas data in March 2018.²⁹

- Residence

Based on the data from Susenas 2018, the girls who live in rural areas are more vulnerable to get child marriage than the girls who live in

²⁷ Tammary Esho et al., “The perceived effects of COVID-19 pandemic on female genital mutilation/cutting and childor forced marriages in Kenya, Uganda, Ethiopia and Senegal”, *BMC Public Health*, no. 22(2022): 601.

²⁸ Gaib Hakiki et al., *Pencegahan Perkawinan Anak: Percepatan yang Tidak Bisa Ditunda*, (Jakarta: KemenPPS, 2020), 14.

²⁹ Gaib Hakiki et al., *Pencegahan...*, 44.

urban areas, with a ratio of 2:1. Besides it, the environment also has a big role such like promiscuity because teenager age is an unsteady age as it the puberty period for them.³⁰

- Tradition and Religion

Indonesia has a variety of traditions and religions; moreover, the tradition of child marriage is spreading as the amount of Indonesian ethics. One of the examples in the tradition in Lombok is *meraqiq*, in which the bride is taken away to the groom's house for marriage.³¹

Almost all religions consider good deeds and avoid promiscuity; thus, religion is also a factor in marriage dispensation, in the local community at Sukabumi believes that child marriage is a better way than being trapped in zina.³²

e) The Negative Impact

Child marriage with early pregnancy (under 18th) has a high risk for the mother's health because the mother is in a growth period, which needs nutrition, whereas the fetus also needs nutrition. Therefore, the mother and the fetus are competing over nutrition. Besides what was mentioned before, there are other risks of child marriage with early pregnancy:

- Potential for premature birth
- Baby born with less weight
- Baby born disabled

³⁰ Ahmad Syahrus, *Hukum...*, 389.

³¹ Gaib Hakiki et al., *Pencegahan...*, 45

³² Cecep Sumarna and Neng Hannah, *Pernikahan Usia Anak Problematika dan Upaya Pencegahannya*, ed-1, (Jakarta: Media Kalam, 2019), 9.

- Mother at risk of anemia
- Mother is prone to eclampsia
- Mother bleeds easily during childbirth
- The increasing number of mother depression as the unstable development psychology
- The increasing number of maternal mortalities
- The younger the mother has her first child, the more susceptible she is to obtaining cervical cancer
- The risk of getting sexually transmitted diseases.³³

Another negative impact of marriage dispensation is several risks for the children, such as dropout, losing the playing time and growing period, losing dreams, divorce after child marriage, and suicide.³⁴

f) The Solution and Prospect

According to the Book of Hukum Perlindungan Perempuan, the solutions to child marriage are spiritual strengthening, selective socializing, and self-commitment. Therefore, emerge several prospects expected from the mentioned solution are back to the children's benefit in preparing them as the prevalent spouses by knowledge of well-being, mental stability, biological maturity, and financial security.³⁵

2. Law 16/2019 on the Amendment to Law 1/1974 on Marriage

a. History

³³ *Constitutional...*, 20-21.

³⁴ Ahmad Syahrus, *Hukum...*, 393-400.

³⁵ Ahmad Syahrus, *Hukum...*, 402-409

Inside the consideration of Law 16/2019 on the Amendment to Law 1/1974 on Marriage, written that the enactment of this law is as the implementation of the Constitutional Court Decree of the Republic of Indonesia 22/PUU-XV/2017, especially in point 4, which stated that Constitutional Court instructing the legislator for making an amendment on Law 1/1974 on Marriage especially the article that discussed the minimum age of marriage for female with maximum period three years.³⁶

Before this law applied, the minimum age of marriage for males was 19 years old, whereas for females, is 16 years old.³⁷ Therefore, many problems appeared for gender discrimination and human rights violations until the 20th of April 2017, which was the pioneer of the justice gate as the registration of judicial review case in Law 1/1974 on Marriage.³⁸

Due to the state guarantee of citizen rights to establish a family and to further descendants through legal marriage,³⁹ the guarantee of child rights in being entitled to viability, to grow up, and to development as well as be entitled to protection against violence and discrimination.⁴⁰ Thus, the amendment of Law 1/1974 on marriage was held, especially Article 7 section (1).

b. Content

³⁶ *Constitutional...*,59.

³⁷ *Law 1/1974...*, article 7, section (1)

³⁸ *Constitutional...*,2.

³⁹ *The 1945 Constitution of the Republic of Indonesia*, article 28 B, section (1)

⁴⁰ *The 1945...*, article 28 B, section (2)

Law 16/2019 on the Amendment to Law 1/1974 on Marriage consists of two articles; the first article has exposed the amendment of Article 7 Law 1/1974 on Marriage, which declares that marriage is permitted when a male and female are 19th years old.⁴¹ If happen a deviation from the age term referred to in section (1), the parents/child guardian/lawyer could submit the marriage dispensation application to the Court by giving the reason deeply urgent and evidence.⁴² The dispensation granted by the court referred to in section (2) must hear the argument between two parties who will marry.⁴³

The second article, as the closing provision is, stated that this law comes into force on the date of its promulgation; so that every person may know hereof, it is ordered to promulgate this law by its placement in the State Gazette of the Republic of Indonesia.⁴⁴

c. Process

The process of marriage dispensation application submission is available at Supreme Court Regulation (Perma) Number 5 of 2019 on the Guidelines of Adjudicating on the Marriage Dispensation Application such the explanation below:

- 1) Applicant (parents/one of them/child guardian/lawyer) comes to the executive unit for one-door integrated services (PTSP) to register the cases with the complete administrative term ⁴⁵ such as a letter of

⁴¹ *Law 16/2019 on the Amendment to Law 1/1974 on Marriage*, article 1, section (1)

⁴² *Ibid.*, section (2)

⁴³ *Ibid.*, section (3)

⁴⁴ *Ibid.*, article 2

⁴⁵ *Supreme....*, article 6

marriage dispensation application, the copy of parents or child guardian identity card, the copy of the family card, the copy of child identity and/birth certificate, the copy of child partner identity and/birth certificate, the copy of the last education certificate and/letter of the statement still in school from the child school,⁴⁶ recommendation letter from Psychologist or Doctor at Pusat Pelayanan Terpadu Perlindungan Perempuan dan Anak (P2TP2A).⁴⁷

- 2) If the application has not fulfilled the term yet, the clerk will return the file; on the contrary, if the application has been fulfilled, the application will be registered after the applicant pays the case payment. The applicant who could not pay the payment shall submit the *prodeo* one.⁴⁸
- 3) Investigation session begins from the first trial with eight people who should come to the court, such as the bride, the groom, the bride's parents, the groom's parents, and two witnesses.⁴⁹

⁴⁶ *Ibid.*, article 5, section (1)

⁴⁷ *Ibid.*, article 15, point d

⁴⁸ *Ibid.*, article 9

⁴⁹ *Ibid.*, article 10

CHAPTER III

RESEARCH METHOD

Methodology is a word derived from the Greek *meta hodos*, which means the way along which or a system of methods and principles in doing something.¹ The research methodology used in this thesis arrangement is using a descriptive methodology. The descriptive methodology is research that inquires about the problems in society; also the norm applied to them; this methodology aims to make a systematic description, factual, accurate, characteristic, and relationship between the researched phenomena.² Furthermore, this methodology has a feature in researching the normative problems with the condition on it and comparing the phenomena at a time.³

A. Type of Research and Approach

This research is field research which is known as a method of gathering qualitative data by the main idea “researcher goes into the field .”Through observation, the phenomenon is *in situ*.⁴ Field research is a direct study of citizens' social life reality,⁵ such as this research that observes the teenager's social reality life in Gunungkidul regency, especially on the marriage dispensation cases in Religious Court 1B Wonosari.

¹ Sari Wahyuni, *Qualitative Research Method: Theory and Practice*, ed-3, (Jakarta: Salemba Empat, 2019), 18.

² Mohammad Nazir, *Metode Penelitian*, ed-1, (Jakarta: Ghalia Indonesia, Jakarta), 63.

³ *Ibid.*, 64.

⁴ Sari Wahyuni, *Qualitative...*, 9.

⁵ Basrowi and Suwandi, *Memahami...*, 52.

The approach of this research is using the qualitative approach. A qualitative approach is researching the object's natural condition, in which the researcher is the main instrument.⁶

B. Place or Location of Research

The place of this research is divided into three places. The first is Religious Court 1 B Wonosari, in Jalan KRT Judoningrat, Siraman, Wonosari, Gunung Kidul. The second location is the Social Agency of Female Empowerment and Child Protection at Gunungkidul Regency, in Jl. KH. Agus Salim No. 125, Ledoksari, Kepek, Wonosari, Daerah Istimewa Yogyakarta. The Integrated Service Center for the Protection of Women and Children Gunungkidul Regency (PPT PPA) is the last place. PPT PPA Gunungkidul Regency is located at Ksatrian Street No.38, Wonosari.

C. Research Informant

The research informant was selected as the informant for this research consists of two institutions involved with the marriage dispensation cases. One of them is Religious Court 1 B Wonosari, the judicative institution which handles and adjudicates the application of marriage dispensation cases. The informant includes the Religious Court 1 B Wonosari, a single judge who adjudicates the cases and the judge in charge of managing the MoU between Religious Court 1B Wonosari and

⁶ Sugiyono, *Memahami Penelitian Kualitatif*, ed-3, (Bandung: Alfabeta, 2007), 1.

the Gunungkidul Government, then the clerk who records the court session and has data of all cases in Religious Court 1 B Wonosari.

The second is the Social Agency of Female Empowerment and Child Protection at Gunungkidul Regency. This executive institution handles and supervises social problems, including female empowerment and child protection. Furthermore, the institution that does the socialization about child marriage.

The last is the psychologist or counselor at the Integrated Service Center for the Protection of Women and Children Gunungkidul Regency (PPT PPA), who takes part in developing marriage dispensation cases by giving the recommendation letter through the assessment.

D. Technic of Informant Determination

Nonprobability sampling is the technic of informant determination used in this research, as nonprobability sampling does not give the same potential to each member of the population.⁷ Then the specific technic that chosen from this nonprobability sampling is purposive sampling, which takes the sample from purposive sampling and needs particular consideration.⁸ This consideration is regarding the purpose of this research that has been written on the research objectives. Thus, people or institutions who are involved with the development of marriage dispensation cases in Gunungkidul Regency are selected as temporary informants for this research.

⁷ Sugiyono, *Memahami...*, 53.

⁸ *Ibid.*, 54.

E. Technic of Data Collection

Technic of data collection is the most strategic step in research, as the primary purpose of research is collecting data.⁹ The technic that used in this research is the triangulation method and triangulation data research. Triangulation means a combination. Thus triangulation method is a combination method for data collection, such as observation and semi-structural interviews. The observation is covering of 3 steps such as the description step, the reduction step, and the last is the selection step.¹⁰ A semi-structured interview is a flexible interview that allows a new question to be brought up during the interview as the result of what the interviewee says.¹¹ This semi-structured interview gives two ways to communicate between the interviewer and informant. Therefore reliable and comparable qualitative data will be obtained.

The triangulation data source is complementary to the technic which mentioned before; in this step, the researcher is going to use the archival data about marriage dispensation cases registered in Religious Court 1 B Wonosari and Social Agency of Female Empowerment and Child Protection at Gunungkidul Regency

F. Data Validity

Data validity is a degree of accuracy between the data on the research object and the reported data from the researcher.¹² In qualitative research, the data collection is stated as valid one if there is no differentiation between what has been

⁹ *Ibid.*, 62.

¹⁰ *Ibid.*, 70.

¹¹ Sari Wahyuni, *Qualitative...*, 54.

¹² Sugiyono, *Memahami...*, 117.

reported by the researcher and the reality of the research object.¹³ Thus, the data validity test in qualitative research is divided into four tests, such as:

a. Credibility

The credibility or internal validity is related to the results of qualitative research that should be believable from the participant's perspective of the research.¹⁴ There are six ways to examine the credibility of data in qualitative research the extension of observation, the enhancement of persistence, the triangulation, the peer discussion, the analysis of negative cases, and the last member check.¹⁵

b. Transferability

Transferability shows a degree of accuracy in implementing the resulting research to the sample population;¹⁶ with the convenience word, could this result be implemented or applied to another situation.

c. Dependability

Dependability is also known as reliability. Therefore, it addresses how accurately the research methods and techniques produce data.¹⁷ The sign of reliable data is when another researcher can repeat or replicate the whole research process.

d. Confirmability

¹³ *Ibid.*, 119.

¹⁴ Sari Wahyuni, *Qualitative...*, 40.

¹⁵ Sugiyono, *Memahami...*, 120

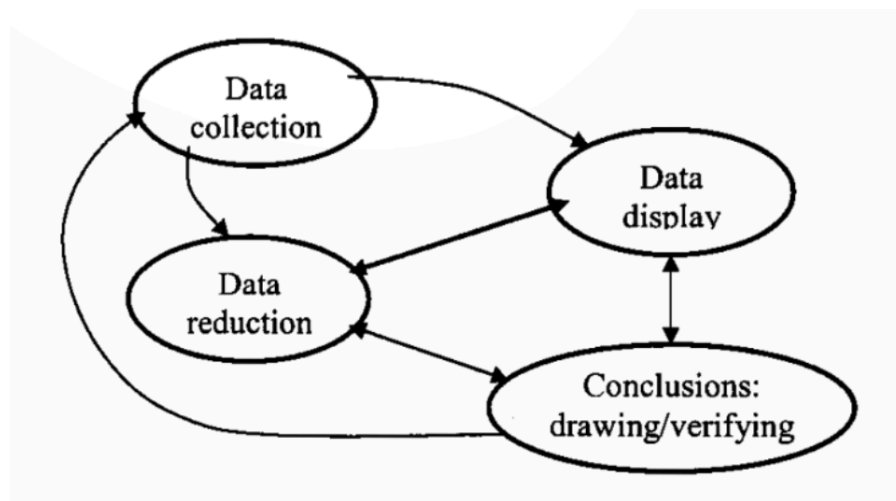
¹⁶ *Ibid.*, 130.

¹⁷ Sari Wahyuni, *Qualitative...*, 44.

Confirmability is called the objectivity test, which means the statement of objective research is stated when many people confirm the result of the research.¹⁸

G. Technic of Data Analyze

Analyzing data is a systematic searching and arranging data process that was obtained from the results of interviews, field notes, and documentation in the way of organizing data into categories, emphasizing it into units, synthesizing it, arranging it into a pattern, selecting which one more important than other and which one will be studied, and then the last is making a conclusion.¹⁹ The technic of data analytics used in this research is the interactive model data analysis, such as in the picture below:



Picture 3.1. Technic of Data Analyze

(Source: Sugiyono, 2007)

¹⁸ Sugiyono, *Memahami...*, 131

¹⁹ Sugiyono, *Memahami...*, 89.

The reason for taking this model as the technic of data analysis is related to the approach used in this research, qualitative research. Data analysis in qualitative research is not arranged, such as in quantitative research, which is arranged after the data collection. In qualitative research, analysis is begun since this research started through the prior research. Then the interactive model analysis is illustrated in the picture before, which means that while executing the data collection, the researcher also analyzes the obtained data, so do the data reduction and data display until a conclusion or verification is discovered.

CHAPTER IV

RESULT AND DISCUSSION

A. General Description of Religious Court 1 B Wonosari

1. History and Location

Everything in this world has its history, as the Religious Court 1 B Wonosari. Religious Court Wonosari was established on the 1st of August 1961, based on the Ministry Decree of Religious Affairs Number 61 on the 25th of July 1961. The first building of Religious Court Wonosari is located on West Square Street (Now known as Masjid Street), Kepek, Wonosari. It was built on 940 m² acres of land, and the building area is 150 m².

Before establishing the Religious High Court in Yogyakarta, the jurisdiction of Religious Court Wonosari was on the Religious High Court Semarang until 1993. Thus, after the official announcement of Law 20/1992 on the Establishment of Religious High Court Yogyakarta, Bandar Lampung, and Jambi on the 30th of January, 1993, by the Chief of Supreme Court of the Republic of Indonesia, the jurisdiction of Religious Court Wonosari moved to Religious High Court Yogyakarta. Meanwhile, the jurisdiction area of Religious Court 1 B Wonosari covered 18 sub-districts such as Ponjong, Pathuk, Panggang, Semin, Wonosari, Purwosari, Semanu,

Playen, Karangmojo, Gedangsari, Ngawen, Nglipar, Tanjungsari, Girisubo, Saptosari, Rongkop, Tepus, and Paliyan.¹

Then, in 2010 the Religious Court 1B Wonosari moved to a new building, which is recent location in Jalan KRT Judoningrat, Siraman, Wonosari, Gunung Kidul, to increase the services for citizens who seek justice.² Wonosari is derived since Wonosari is the capital city and the administrative center of Gunungkidul Regency, as stated in UU 55/1950 *juncto* PP 32/1950.³

2. Vision and Mission of Religious Court 1B Wonosari⁴

An institution needs aims or goals to be reached as the guide in running the institution, known as a vision and mission. This also applies to Religious Court 1B Wonosari, which has an idea of “Realizing Religious Court 1 B Wonosari as The Dignified Institution and Upholding Justice”. Four missions are the guideline for Religious Court 1B Wonosari, such as below:

- a. Keeping the dignified and independency of Religious Court Wonosari.
- b. Providing equitability legal services under the information technology-based.

¹ Biro Tata Pemerintahan Setda DIY, *Kode dan Data Wilayah Administrasi Pemerintahan DIY*, (Yogyakarta, 2022), 106-169.

² Super User, “Sejarah Pengadilan Agama Wonosari”, retrieved from <https://www.pa-wonosari.go.id/tentang-pengadilan/profile-pengadilan/sejarah-pengadilan>, accessed at Wednesday, 7th of December 2022, 13.00.

³ AdminWB, “Sejarah Singkat Kabupaten Gunung Kidul”, retrieved from <http://dpad.jogjaprov.go.id/article/news/viewww/sejarah-singkat-kabupaten-gunung-kidul-1486>, accessed at Monday, 10th of April 2023, 15.43.

⁴ Super User, “Visi Dan Misi Pengadilan Agama Wonosari”, retrieved from <https://www.pa-wonosari.go.id/tentang-pengadilan/profile-pengadilan/visi-dan-misi>, accessed at Wednesday, 24th of February 2023, 21.18.

- c. Improving the human resources quality of Religious Court Wonosari.
- d. Upgrading the credibility, accountability, and transparency Religious Court Wonosari.

3. Absolute Competence

According to Law 7/1989, the duties and powers of the Religious Court are investigating, deciding, and adjudicating the cases at the first level among Muslims.⁵ Meanwhile, the scope of absolute competence in Religious Court is regulated by Law 3/2006 on the Amendment to Law 7/1989 on Religious Judicature such below:

- | | | |
|-----------------|----------|--------------------------------|
| 1) Marriage | 4) Grant | 7) Infaq |
| 2) Inheritance | 5) Waqf | 8) Shadaqah |
| 3) Testamentary | 6) Zakat | 9) Sharia Economy ¹ |

4. Structure Organization

Based on the information from the website of Religious Court 1B Wonosari, the organizational structure in it is arranged as the table:¹

⁵ Law 7/1989, article 49, section (1)

¹ Law 3/2006 the provisions of article 49

¹User, Idem: "Struktur Organisasi", retrieved from <https://www.pa-wonosari.go.id/tentang-pengadilan/profile-pengadilan/struktur-organisasi>, accessed at Wednesday, 7th of December 2022, 15.00 PM

Table 4.1: Structural Organization Data

Employee List	
Religious Court 1 B Wonosari	
Head	: Moehamad Fathnan, S.Ag., M.H.I.
Deputy Head	: Ahsan Dawi, S.H., S.H.I., M.Si.
Judge	: H. Muhammad Novriandi, S.H.
Auxiliary Judge	: Drs. H. Barwanto, S.H., M.H.
	Dra. Sri Sangadatun, M.H.
	Drs. Mudara, M.S.I.
	Drs. Sapari, M.S.I.
	Drs. H. Husin, S.H., M.H.
Clerk	: Ahmad Fatkhurohman, S.H., M.H.
Secretary	: Suharjana, S.H.
Junior Registrar of Law	: Khoiril Basyar, S.H.
Junior Registrar of Application	: Hastuti Ramadhana, S.E., S.H., M.H.
Junior Registrar of Lawsuits	: Herlina Triwijayanti, S.H., M.H.
Sub-Section Head of Staffing, Organization and Management	: Mya Shita Rini, S.E., S.H.
Sub-Section Head of General and Finance	: Fuad Tansyauddin, S.E.
Sub-Section Head of Planning, Information Technology and Reporting	: Rahmat Hadi Darmawan, S.Kom.
Functional Staff as the Substituter Clerk	: Tety Rohmayani, BA
	Ferry kurniawan. SH., MH.
	Harmanta, S.H.
	Cacan Wijaya, S.H.
	Daru Solikhah, S.Ag.
	Puji Setyaningsih, S.H.
	Ritawati, S.H.
Bailiff/ Substituter Bailiff	: H. Ahmad Mashuri, SH, MSI
	Sumitro Jatiroso
	Lia Ratna Sari, S.H.
	Ary Dian Iswahyudi, S.T. M.Si.
Administrator of Case Register	: Pratami Dewi, A.Md.A.B.
Staff of Planning, Information Technology and Reporting	: Mawar Lupita Aztri, S.Kom.
Administrator of Mail	: Mariono, S.M.
Public Relation Analyst	: Istichomah, S.P.
CPNS Analyst of Planning, Evaluation and Reporting	: Atika Rahmi Rufaida, S.E.

B. Marriage Dispensation Condition After Amendment of Law 1/1974

The condition of marriage dispensation in Religious Court 1B Wonosari, especially since the ratification of Law 16/2019, exposes the development of the cases from a significant increment to a gradual reduction. The statement before is obtained from observation of the data collecting process that is coming from various places such as Religious Court 1B Wonosari, Social Agency of Female Empowerment and Child Protection at Gunungkidul, and the Integrated Service Center for the Protection of Women and Children Gunungkidul Regency (PPT PPA).

The diagram below shows the significant increment in 2020 that was reached more than twice the number a year before. This increment is influenced by the newest law that regulates the minimum age of males and females for married as 19 years old. Meanwhile, the past regulation held the minimum age of females as 16 and males at 19. The high number of marriage dispensations in Gunungkidul Regency creates other social problems, such as the increasing stunting issue, the high maternal mortality rate, and the rising number of poverty and divorcing.² Thus, the stakeholder in Gunungkidul Regency cooperated with other institutions to solve the increasing marriage dispensation.

² Interview with Rogaiyah at Yogyakarta, February 20th 2023

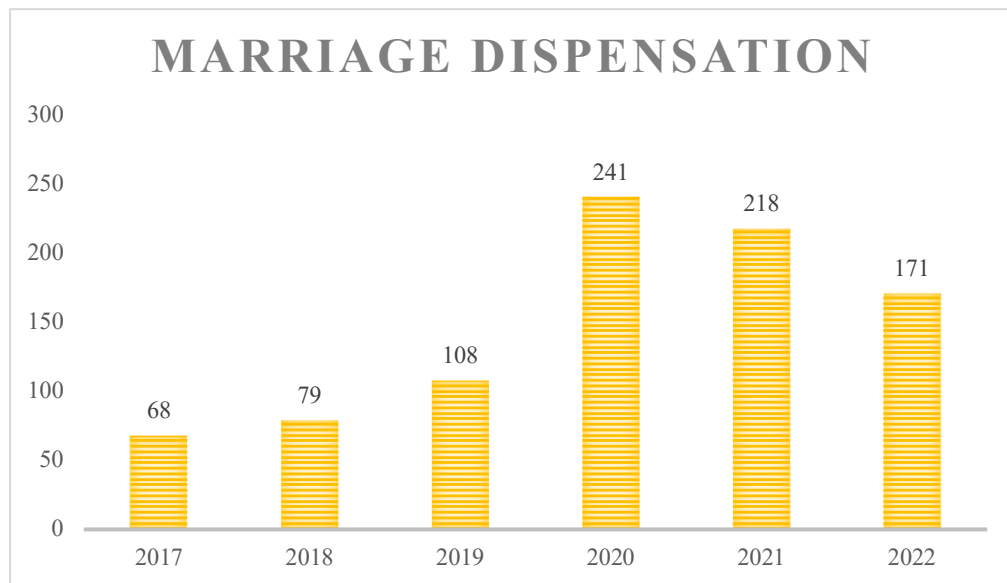


Diagram 4.1. Marriage Dispensation Cases in 2017- 2020

(Source: PA Wonosari Report 2023)

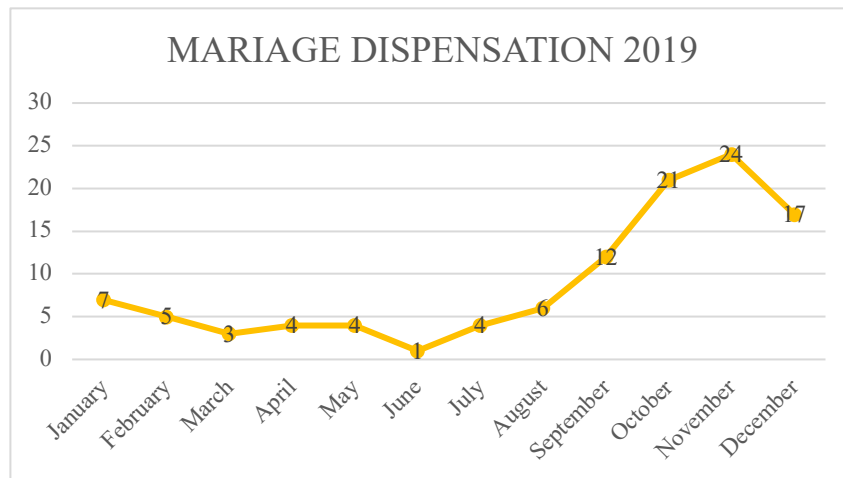
The diagram above shows that the marriage dispensation cases in recent years are growing less as the endeavor from stakeholders and citizens will be discussed in detail in the next sub-chapter.

C. The Rising Cases and The Factors

The amendment of Law 1/1974, Law 16/2019, influenced the increasing cases of marriage dispensation in Indonesia's Regency with no exception. This statement strength by Muhammad Novriandi, one of the respondents in charge as a Single Judge in Dispensation Marriage Cases. In his opinion, the amendment of Law 1/1974 to Law 16/2019 is the automatic consequence that made the citizens applicate marriage dispensation cases more than before as the enlargement of the marriage age for females, from age 16 to age 19.³ The graphic below shows the

³ Interview with Muhammad Novriandi at Yogyakarta, January 26th 2023.

evidence of the increasing marriage dispensation cases in 2019 when Law 16/2019 was enacted.

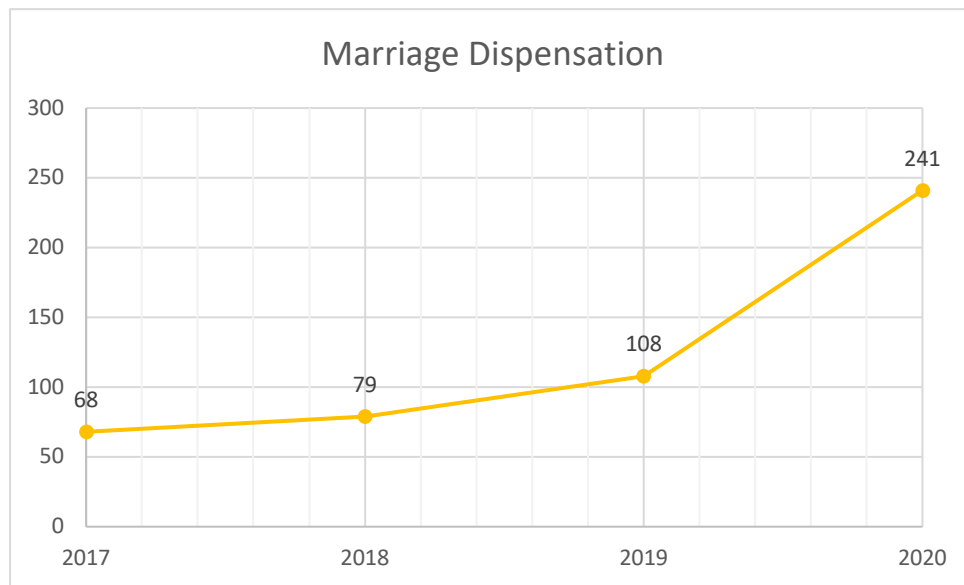


Picture 4.1. Marriage Dispensation Cases in 2019

(Source: PA Wonosari Report 2022)

The enforcement of Law 16/2019 in the middle of September, precisely on the 16th, made the graphic goes up significantly to twice the month before. From 6 applicants become 12 applicants, even this increment was kept up continuously per month.

Based on the Religious Court 1B Wonosari Report, the high number of this marriage dispensation cases continued into the culmination point in 2020 with a detailed graphic in picture 3.



Picture 4.2. Development of Marriage Dispensation Cases Among 2017-2020
(Source: PA Wonosari Report 2022)

Referring to the graphic above, there is a gradual increment in marriage dispensation from 68 applicants in 2017 become 79 applicants in 2018, which means that in a year, the applicants get an increase of 11 applicants. , Afterward, there was a 37% increment between 2018 and 2019, as the year of Law 16/2019 stipulated, going to the culmination point of increasement that occurred in 2020. The number of applicants in 2020 was 241, while in 2019, there were 108 applicants. This made the graphic grow up significantly by 123%.

The abovementioned evidence proves a correlation between the enactment of Law 16/2019 and the submission tier of marriage dispensation in Religious Court 1B Wonosari. The enactment of this law brought out a significant increment of up to 123%. This increment also occurred in another religious court, but a year later, from 2021 until 2022, the development cases in Religious Court 1B Wonosari had unique trends which made the graphics decrease gradually while another religious

court had the unstable graphic. This is the reason for the interesting dispensation marriage cases in Religious Court 1 B Wonosari.

Based on the statement of Muhammad Novriandi, the condition of marriage dispensation in Gunungkidul regency is high enough with the various age range. However, most of them are close to 19 years old.⁴ This statement is strengthened by the diagram within this paragraph which the sketch of the diagram was formed by the analysis of voluntary jurisdiction of marriage dispensation cases during 2022.

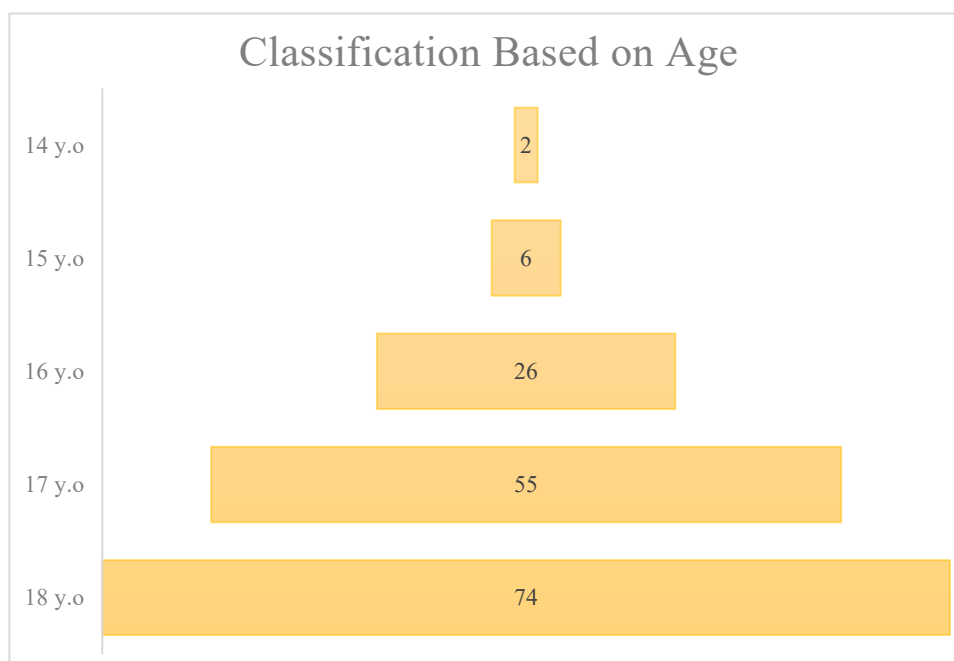


Diagram 4.2. Classification of the Applicant of Marriage Dispensation

(Source: Voluntary Jurisdiction Analysis on Marriage Dispensation Cases, 2022)

The diagram above shows the classification of applicants based on their age; two children are still 14 years old, and all of them are female. One of them was still a

⁴ Interview with Muhammad Novriandi at Yogyakarta, January 26th 2023.

pupil in junior high school, and the other was not continuing her study. Then, the child who is still 15 years old is six children, 5 of them are female, and one other is male. Twenty-six children are still 16 years old, with three males and the other 23 females. The next are those aged 17 years, totaling 55 children, 39 female, and the remaining 16 male. The last are those aged close to 19 years, has 74 children, who made this range the most than other age ranges as stated by Muhammad Novriandi that the age between 18 and 19 is the most registrar, 46 of them are female, and 28 others are male. The result of the judge's interview and voluntary jurisdiction analysis informed that Law 16/2019 influences the condition of marriage dispensation in Gunungkidul Regency; 66% of children between 17 and 19 are female.

According to the interview with Muhammad Novriandi, the increment in marriage dispensation is caused by several factors, such as the number of residents in a regency, the differentiation of religion, financial condition, and educational attainment.⁵ This perspective is gained from the comparison between the Religious courts he was in charge of, such as Kapuas Hulu, Siak Sri Indrapura, and Wonosari. The amount of residents in Wonosari is more than in Siak Sri Indrapura or Kapuas Hulu. Regarding the differentiation of religion, 40% of residents in Kapuas Hulu were Catholic and Kaharingan, and the 60% left were Moslem; meanwhile, in Siak Sri Indrapura, there were 98% of Muslim residents. Thus, the residents who have business in Religious Court Siak Sri Indrapura are more than Religious Court Kapuas Hulu and Religious Court 1B Wonosari, which has the most cases than the

⁵ Interview with Muhammad Novriandi at Yogyakarta, January 26th 2023.

mentioned Religious Court. The lack of financial condition in a family requires the children to help their parents, which causes those children stopped their school. The last of Muhammad Novriandi's interviews are about educational attainment; in his opinion, the lack of educational attainment created several assumptions like the assumption that single women who are not continuing their studies are becoming a burden for their parents; the following assumption is the high risk of extra-marital sex and pregnant for a couple who are not married.

Based on the interview with Desti Fatmasari, a psychologist at Integrated Service Center for the Protection of Women and Children Gunungkidul Regency (PPT PPA), the causality of marriage dispensation application is not only a single factor but multifactor such assumption, society, and cultural.⁶

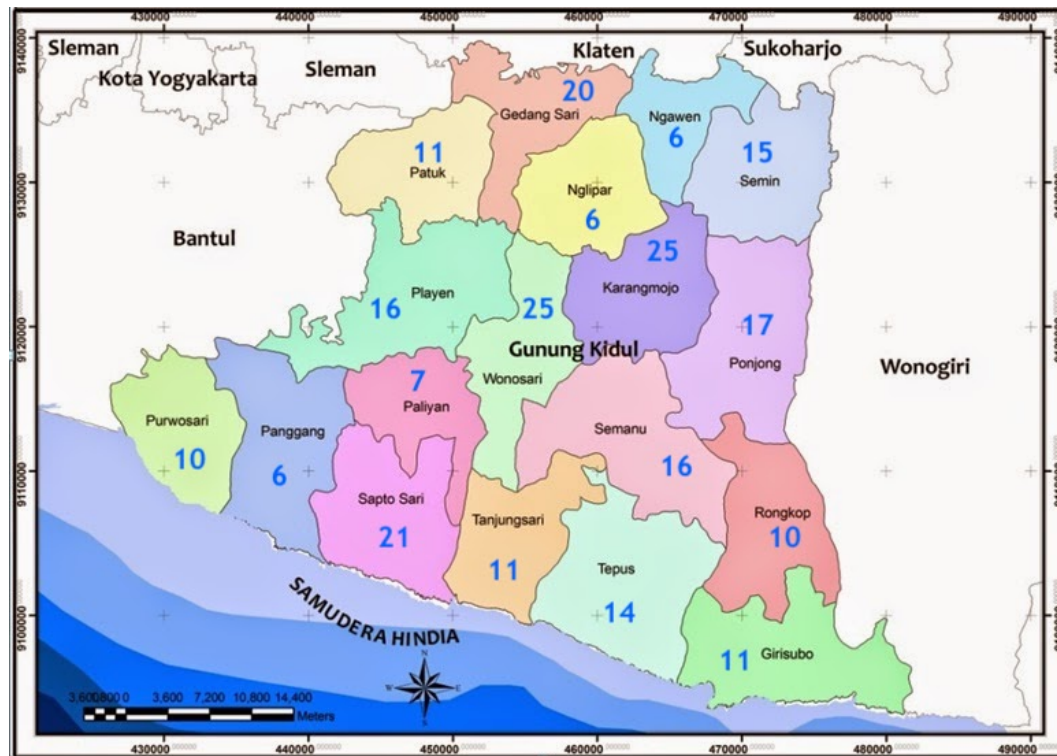
The citizen around Gunungkidul Regency has the assumption that a child who has reached 16th years old ought to be married, as soon as possible. Besides that, society also is the factor that caused the high number of marriage dispensation cases. The teenage society in Gunungkidul knows each other through social networks such as *Whatsapp*, *Instagram*, and *Facebook*. Those social networks are a bond for them, starting from the social networks and then meeting each other until having a relationship, the proper one to the inappropriate one. Nevertheless, most of those relationships are inappropriate if it is compared with the local norm and religious norms because most of those relationships lean towards negative behavior in the perspective of the local norm and religious norms, such as hugging, kissing, cuddling, and having sex until pregnant. The last factor, according to Desti

⁶ Interview with Desti Fatmasari at Yogyakarta, January 26th 2023.

Fatmasari, is culture; in Gunungkidul Regency, there exists a culture regarding an engaged couple which is defined similarly to a married couple which has a freedom card to do everything that was forbidden before, such as permission to stay in together.

In the interview with Fajar Nugroho, one of the staff in the Child Protection Division at the Social Agency of Female Empowerment and Child Protection Gunungkidul Regency, they stated that two factors caused the rising marriage dispensation. One is a social assumption, and the other is the culture that grows around the Gunungkidul coast.⁷ Following Fajar Nugroho's statement, there is a social assumption in Gunungkidul Regency that poverty will be ended by marrying children from; low-income families. On the other hand, that assumption contradicts reality. However, at the reality kind of marriage like that is creating another poverty instead of reducing it. It is such a vicious circle that the numbers of poverty increase. The second factor that Fajar Nugroho exposed concerns the local culture or tradition that lives on several residents who stayed along the coast at Gunungkidul, such as in a subdistrict named Saptosari. The parents in Saptosari will marry their daughter if a man is visiting their daughter, even if the daughter of the man's age does not reach the legal age to marry. Therefore in 2020, the marriage cases along the coast of Gunungkidul were high, especially in Saptosari, such as in the map below. The combination of societal teenagers and local assumptions is the factor that caused the high number of marriage dispensation cases at the center of Regency, such as

⁷ Interview with Fajar Nugroho at Yogyakarta, January 26th 2023.



Wonosari with 25 cases, and around it, like Karangmojo with 25 cases, Semanu with 16 cases, and Playen with 16 cases.

(Source: PA Wonosari Report 2021)

The map in Picture. 4 above show the spreading of marriage dispensation cases in Gunungkidul Regency, which is influenced by multifactor, as stated by several respondents, such as the enactment of Law 16/2019, teenage society, local assumptions, and culture. The whole mentioned factors are named external factors.

The discussion about external factors is not separated from the internal one. These internal factors are written in voluntary jurisdiction as the reason on *posita* (the fact of law) and the judge's consideration. The internal factors in this research are gained from the Voluntary Jurisdiction Analysis on Marriage Dispensation

Picture 4.3. The Spreading Map of Dispensation Marriage Cases 2020

Cases in 2022, besides also gained from the interview of respondents as figured in Diagram 4.

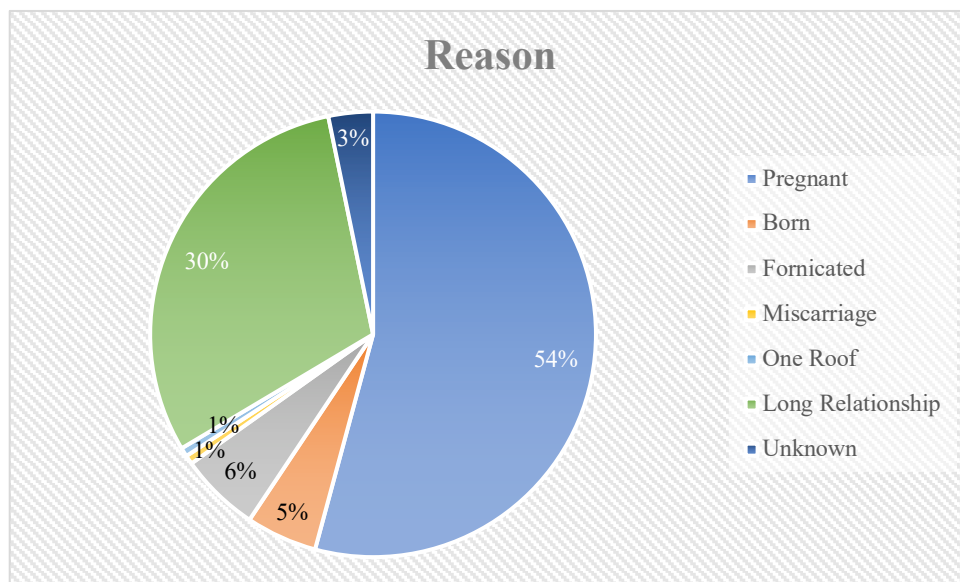


Diagram 4. 3. The Reason for Marriage Dispensation Cases Based on Judgement (Source: Voluntary Jurisdiction Analysis on Marriage Dispensation Cases, 2022)

The analysis results from voluntary jurisdiction on marriage dispensation cases in 2022 indicate the internal factors such as pregnant as the winner of the year, which takes first place with a percentage of 54%; it means that more than half applicants of for marriage dispensation are pregnant. Therefore, their parents as their guardians register the marriage dispensation application in contemplation of the legalization of child marriage of their children. In line with Muhammad Novriandi's opinion, extra-marital pregnancy is the most internal factor influencing the high number of marriage dispensation cases in Gunungkidul.⁸ Based on Muhammad Novriandi that the most influencer of internal factor besides extra-marital

⁸ Interview with Muhammad Novriandi at Yogyakarta, January 26th 2023.

pregnancy is those who are not pregnant but did extra-marital sex,⁹ which in the diagram written as fornicated with a percentage of 6%, and 1% also had extra-marital sex until pregnant, unluckily the fetus was a miscarriage. The worst is that 5% of applicants already have children aged one month, three months, six months, and even one year old. Than 1% of them also had lived together under one roof as a married couple. The pair of mentioned evidence before is concerning with the statement of Desti Fatmasari that one of the internal multifactor is not only pregnant but a baby born and secret marriage or *nikah sirri*.¹⁰ The 30% remained who had the long relationship, which on the voluntary jurisdiction written that almost all of them went two by two frequently and even stay in together. The last 3% is reported as the unknown reason because the cases in that 3% are dismissed and revoked; therefore, what is written on the voluntary jurisdiction is not wholly enough to expose the fact of law at the *posita* and consideration.

As a result of the discussion above obtained that the rising factor of marriage dispensation cases is divided into two parts, the external and the internal; teenage society, local assumptions, and culture is the external factor. Meanwhile, the internal factors are concluded as the Diagram 4, such as pregnancy, long relationship, fornication, baby born, miscarriage, stay in one roof house, and unknown.

⁹ Ibid

¹⁰ Interview with Desti Fatmasari at Yogyakarta, January 26th 2023.

D. The Decreasing Cases and The Factors

The enactment of Law 16/2019 increases the number of marriage dispensations. Although the increasement in marriage dispensation does not come alone, it also influences other variables, including the rising of poverty, stunting, maternal mortality, and divorce, which is caused by the unpreparedness of mental, financial, and reproduction.¹¹ Hence, this trend is reduced by the consent of stakeholders in Gunungkidul Regency, such as the government as the executive agency,¹² the regency legislative council (DPRD) as the legislative agency, and the religious court as the judicial agency. Each of those agencies has its role in reducing the increasement of marriage dispensation cases, the active role of the legislative and executive agencies, which act with the policies, and the passive role of the judicial agency, which works with the dictum through the consideration for the *posita* (fact of law) and what proceeds on the court¹³

Due to the promulgation of Law 16/2019, the Supreme Court enacted Perma 5/2019 as the Guidelines for Adjudicating on the Marriage Dispensation Application on the 21st of November 2019.¹⁴ According to Muhammad Novriandi, every court has a guideline, one of which is in the marriage dispensation court, which has Perma 5/2019 as the guideline. This newest guideline has specific details such as the requirement for presenting the bridegroom's parents; if the parents are absent, the voluntary jurisdiction will be declared as the inadmissible petition or *Niet Ontvankelijke Verklaard* (N.O). Meanwhile, the previous guideline was

¹¹ Interview with Rogaiyah at Yogyakarta, February 20th, 2023.

¹² Interview with Fajar Nugroho at Yogyakarta, January 26th 2023.

¹³ Interview with Muhammad Novriandi at Yogyakarta, January 26th 2023.

¹⁴ *Supreme...*, closing provision.

optional, despite several judges initiating to present the parents.¹⁵ In addition, Perma 5/2019 is obliged the recommendation from a psychologist or counselor as the expert in Female and Child Protection (PPA) and the certificate of health from a doctor or midwife, excluding the pregnancy certificate.¹⁶ The recommendation or counseling result from the psychologist is analyzing the children's psychological aspect, including the evaluation of the child's maturity and capability in marriage; for example, if a child is assessed as incapable of carrying out the duties of their wife or husband. Therefore, the counseling result impacts the judge's consideration of voluntary jurisdiction.¹⁷ The consideration of the judge consists of some legal reasoning, such as the legal reasoning from the socio-juridical perspective, which has been explained above, and the legal reasoning from the philosophy perspective, which use the rule of benefit and harm (*kaidah manfaat dan mudharat*). Besides the consideration of minimal age written on the law, judge also consider the impact of benefit and harm by *darul mafāsidi muqoddamun 'alā jalbil maşālihu* principle. The harm in marriage dispensation cases is more obvious than the benefit; thus, rejecting the harm is prioritized over bringing the benefit.¹⁸ Back to Perma 5/2019, the administrative term, evidence, and the detailed article on it, which is more complicated than the previous one, is the factor in decreasing marriage dispensation cases, thus the existence of Perma 5/2019 such a problem-solving in filtering and selecting the registered cases as what stated Muhammad Novriandi that the purpose

¹⁵ Interview with Muhammad Novriandi at Yogyakarta, January 26th 2023.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

of government in raising the minimum marriage age is an ideal purpose of completing the 12-year compulsory education.¹⁹

The subsequent discussion is regarding the active role of the government of Gunungkidul Regency. According to Fajar Nugroho, the attempt to reduce marriage dispensation cases is a joint collaborative assignment between the government, especially the Social Agency of Female Empowerment and Child Protection at Gunungkidul Regency and another stakeholder in Gunungkidul Regency, by applying several collaborations, such as below:²⁰

1. The Regent of Gunungkidul Regency in enacting the Regent Regulation 93/2022 on the amendment to Regent Regulation 20/2022 on the Prevention of Child Marriage.
2. The collaboration with the Agency of Female Empowerment, Family Planning, and Birth Control through the religious instructor at the Ministry of Religious Affairs in Gunungkidul Regency for training the bridegroom about pre-marital education.
3. The Division of Communication, Information, and Education (KIE), by educating the public that preventing child marriage is an asset to making Gunungkidul Regency a Child-Friendly District.
4. The collaboration with the Agency of Communication and Informatics regarding the video screening of child marriage prevention on video electronics.

¹⁹ Interview with Muhammad Novriandi at Yogyakarta, January 26th 2023.

²⁰ Interview with Fajar Nugroho at Yogyakarta, January 26th 2023.

5. The collaboration with the villages by forming a unified group of child protection based on the community; 77 villages from 144 had joined the group.
6. The Regency Legislative Council (DPRD), through the stipulation of Regional Regulation 1/2020, on the administration of violence against women and children. Then the Regional Regulation 12/2020 on Gender Mainstreaming in Regional Development and Regional Regulation 13/2020 on Protection and Fulfillment of Children's Rights. Besides that, the Regency Legislative Council (DPRD) also does the socialization regarding the Regional Regulation in 2022 and 2023.
7. The collaboration with Family Welfare Development (PKK), especially the consent from the movement leader of Family Welfare Development to give socialization in several junior high schools around Gunungkidul. 5 schools were visited in 2022 as the implementation program of socialization in urging the pupils to accomplish the 12-year compulsory education.
8. Collaborating with the Indonesian Journalist Association in socializing and educating citizens.
9. The collaboration with several institutions, including the Universities in Gunungkidul.
10. The collaboration with Religious Court 1B Wonosari by conducting the Memorandum of Understanding (MoU) in restricting child marriage through the interview and assessment at Integrated Service Center for the Protection of Women and Children Gunungkidul Regency (PPT PPA) with the counselor or

psychologist who in charge to do counseling with the child and the parents who involved in Dispensation Marriages cases.

The Memorandum of Understanding (MoU) between Religious Court 1B Wonosari and the Government of Gunungkidul Regency discussed collaboration and the active involvement of all parties in reducing the high number of child marriages in Gunungkidul Regency.²¹ Based on the interview with Rogaiayah, this MoU is not just the follow-up from the letter of the Public Health General Director, Ministry of the Health of the Republic on Indonesia Number HK.01.02/b/275/2022, because the concept of this MoU was created on the early of 2021 by conducting the formal and informal discussion on several local government events to reduce the number of child marriage in Gunungkidul Regency. Some religious courts in another regency signed the MoU with the Health Agency; it is different from Religious Court 1B Wonosari, which signed the MoU with Local Government; according to Rogaiyah, this decision is such multifunction key because the education and socialization regarding the lousy impact of child marriage would be more accessible in reaching the target under the management of Education Authorities, Health Agency, and Social Agency. As regulated on Perma 5/2019, the passive role of a judicative agency is the final stronghold in preventing child marriage. That role is implemented in the form of management of the marriage dispensation application, starting from the case registered, which had to be fulfilled the administrative term as determined on Perma 5/2019, likewise on the process of hearing and trial in a court, then the counseling attempt by the judge, the inspection

²¹ Interview with Rogaiyah at Yogyakarta, February 20th 2023.

in a court, and the legal consideration by the judge which must ensure the fulfillment of child best interest, gender equality, and equality before the law based on the judge knowledge regarding the rights of the child and the destructive impact of child marriage.²²

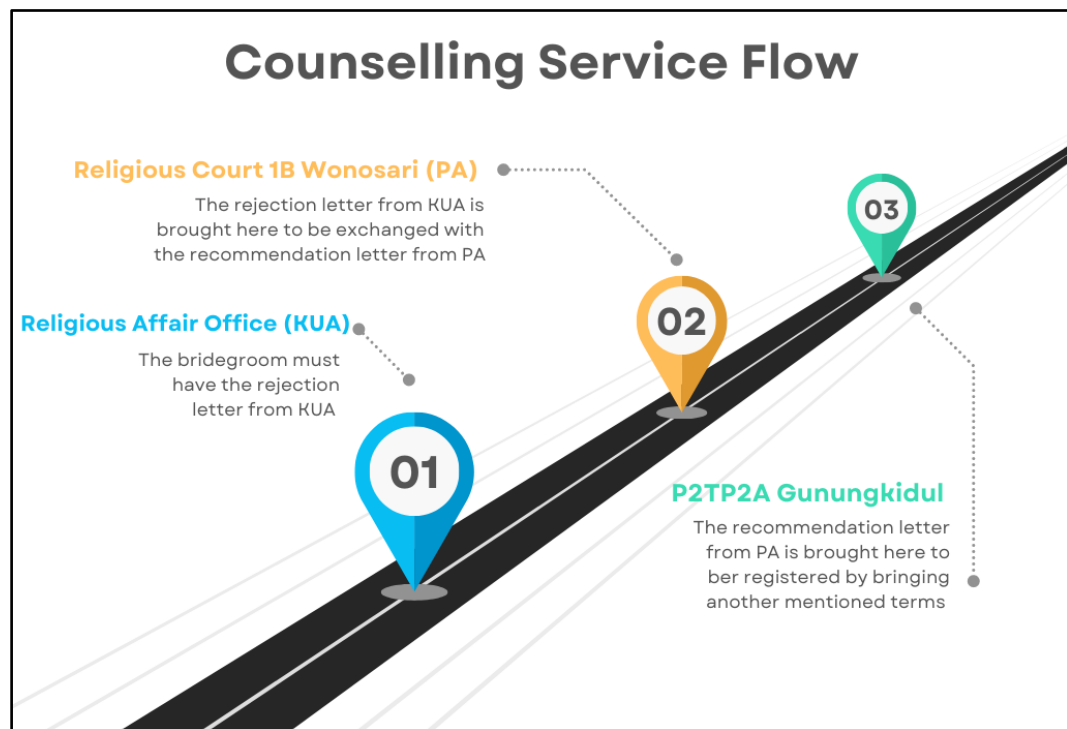
Based on Rogaiayah, the counseling service and child assistance is the crucial step in applying the marriage dispensation because through this counseling, the psychological readiness of the child will be known, including whether there is coercion from the parents or other third parties on child marriage planning.²³ Desti Fatmasari stated that the counseling is not only for the child's children but also for their couple and parents. The psychologist will handle the counseling of the bridegroom by giving them the assessment and interview regarding the psychological aspect of the bridegroom, then the financial aspect and their view on marriage, such as their behavior in facing the problems, managing their emotions, the reason of their marriage, their society, their parenting. Meanwhile, the social worker handles the parent's counseling to find out the reason for marriage and the effort of parents in helping the child if the bridegroom is in an unstable financial condition.²⁴

‘When in Rome, do as the Romans’, this proverb represents that every place has a regulation, so does the Integrated Service Center for the Protection of Women and Children Gunungkidul Regency (PPT PPA), which has administrative counseling terms and counseling service flow as the beneath picture.

²² Interview with Rogaiyah at Yogyakarta, February 20th 2023.

²³ *Ibid.*

²⁴ Interview with Desti Fatmasari at Yogyakarta, January 26th 2023.



Picture 4.4. Counselling Service Flow

(Source: Personal Documentation, 2023)

The meaning of mentioned terms in Picture 5 is the administrative counseling terms which are detailed below:

1. The psychological cover letter or the recommendation letter from the Religious Court addressed to the head of PPT PPA Gunungkidul Regency.
2. The copy of the family card (the bridegroom)
3. The copy of the parent's or child guardian identity card (the parents of both bridegroom)
4. The copy of the birth certificate (the bridegroom)
5. The copy of identity/ if it is existing (the bridegroom)
6. The copy of pregnancy certificate from Public Health Center (Puskesmas), Private Midwife, Obstetrician (by showing the KIA book if pregnant)

The registration queuing depends on the number of registrars; besides the offline registering, there also existed an online way through the hotline number of PPT PPA to simplify the applicants who stayed far from the city's center.

The applied policies from the collaboration of various stakeholders in Gunungkidul Regency brought out a good result as the decreasing number of marriage dispensation cases in Gunungkidul Regency such as the beneath diagram:

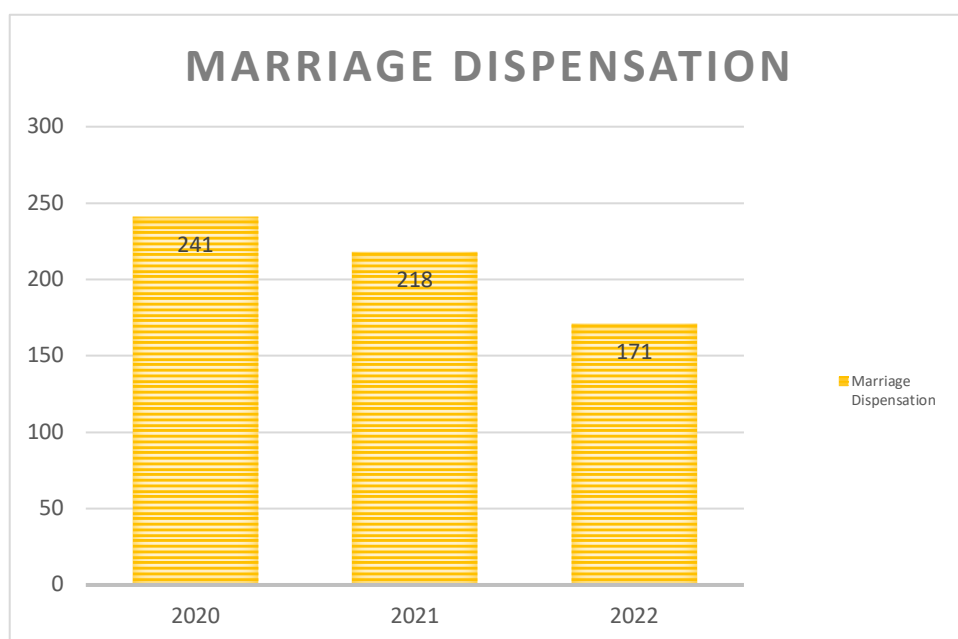


Diagram 4.4. Marriage Dispensation Cases in 2020-2022

(Source: PA Wonosari Report 2023)

The statistic graphic of marriage dispensation cases from 2020 to 2022, which decreased gradually, is evidence of the operational policies.²⁵ According to Desti Fatmasari, the decrease in marriage dispensation cases after the MoU signing could not be compared because the MoU has only been running for one year. However, the accurate data from 2021 to 2022 states that it is decreasing.²⁶ This statement is

²⁵ Interview with Rogaiyah at Yogyakarta, February 20th 2023.

²⁶ Interview with Desti Fatmasari at Yogyakarta, January 26th 2023.

strengthened by Fajar Nugroho, who exposed the impact of reducing the number of child marriages on the number of stunting; from the last report, the number of stunting is going down by 5%, from 19% to 12%.²⁷

The gradually decreasing condition of marriage dispensation cases is not only exposed by the graphic but also shown through the voluntary jurisdiction analysis in 2022, as shown in the table below. There were 171 marriage dispensation cases in Religious Court 1B Wonosari; the cases adjudicated as granted are 145 cases, while the 26 remaining cases are classified as partly granted, revoked, rejected, and dismissed.

Table 4.2: Marriage Dispensation Judgement in 2022

Adjudication	Amount
Granted	145
Partly Granted	19
Revoked	3
Rejected	1
Dismissed	3

(Source: Voluntary Jurisdiction Analysis on Marriage Dispensation Cases, 2022)

They were named as the partly granted cases because the judge was not granting all the petitions (a claim at law). Still, only half of it, or the judge was granting the petition by adding the order as the judge has the right of ex officio (the judge's right to decree a case that not existed on the petition). There were 19 cases partly granted in 2022, 10 of them were caused by the unrecommended form from the psychologist at PPTPPA; thus, these 19 partly granted were added to continue the counseling, and one of them with an order to do the 'Paket C' Examination. Then the three revoked cases were caused by the age of children, which reached 19 years old at

²⁷ Interview with Fajar Nugroho at Yogyakarta, January 26th 2023.

the time of the court, and the other one was revoked as the power of attorney voiding. The only rejected case was caused by a non-urgent condition that the judge assessed through the *posita* (fact of law) and the hearing and trial process. The three lefts were classified as dismissed cases because the parties involved did not come to the court.

The gradually decreasing marriage dispensation cases in Gunungkidul Regency, especially Religious Court 1B Wonosari, need to be made the stakeholder in the offhanded of satisfied condition. However, stakeholders, especially the Social Agency of Female Empowerment and Child Protection at Gunungkidul Regency, keep giving the endeavor such innovations and breakthroughs. The innovation from the government of Gunungkidul Regency has involved the child forum in the campaign of the Pioneer and Reporter or 2P (*Pelopor* and *Pelapor*). Hence the child forum is the front guard as the peer counselor is considered more effective in participating in the development planning. Moreover, there is another breakthrough involving the children, especially those who sit in Elementary and Junior High Schools, to contribute to the Culture Annual Agenda.²⁸

²⁸ Interview with Fajar Nugroho at Yogyakarta, January 26th 2023.

CHAPTER V

CONCLUSION AND SUGGESTION

A. Conclusion

There are four points of conclusion which concluded from this fundamental research as the answer from the research question such this beneath point:

1. The enactment of Law 16/2019 and the submission tier of marriage dispensation in Religious Court 1B Wonosari are correlated to each other, as the enactment of this law brought out a significant increasement up to 123%. This increment also occurred in another religious court, but a year later, from 2021 until 2022, the development cases in Religious Court 1B Wonosari had unique trends which made the graphics decrease gradually while another religious court had the unstable graphic.
2. The condition of marriage dispensation cases in Gunungkidul Regency based on the result of the judge's interview and voluntary jurisdiction analysis informed that Law 16/2019 is influencing 66% of children between 17 and 19 are female, who in age close to 19 years amount 74 children, 46 of them are female, and 28 others are male. Starting with the significant increase in the condition of Marriage Dispensation Cases in Gunungkidul Regency is facing a gradual reduction in 2021 and 2022.
3. The factors that caused the marriage dispensation condition in Religious Court 1 B Wonosari are concluded as below:

- a) The rising factor of marriage dispensation cases is divided into external and internal. The enactment of Law 16/2019, teenage society, local assumptions, and culture are the external factor. Meanwhile, the internal factors are concluded as the Diagram 4, such as pregnancy, long relationship, fornication, baby born, miscarriage, stay in one roof house, and unknown.
- b) The decreasing factor of marriage dispensation cases in Religious Court 1B Wonosari is influenced by the applied policies from the collaboration of various stakeholders in Gunungkidul Regency. Those policies are:
- The administrative term, evidence, and the detailed article on Perma 5/2019, which is more complicated than the previous one, are problem-solving in filtering and selecting the registered cases.
 - The conducting of the Memorandum of Understanding (MoU) in restricting child marriage through the interview and assessment at PPT PPA.
 - The enactment of Regent Regulation 93/2022 on the amendment to Regent Regulation 20/2022 on the Prevention of Child Marriage.
 - The training of the bridegroom about pre-marital education from the religious instructor at the Ministry of Religious Affairs in Gunungkidul Regency.
 - Video screening of child marriage prevention via video electronic as education to the public.

- The stipulation of Regional Regulation 1/2020 on administering violence against women and children. Then the Regional Regulation 12/2020 on Gender Mainstreaming in Regional Development and Regional Regulation 13/2020 on Protection and Fulfillment of Children's Rights.
- Several socializations besides the routine socialization from Social Agencies, such as socialization regarding the Regional Regulation from DPRD and the socialization from PKK in several junior high schools around Gunungkidul.

B. Suggestion

Several suggestions that will be exposed in this research are obtained from the journey of the observation until the finishing of this research. Thus, these suggestions can provide knowledge or learning for the appropriate parties. Here it is the several suggestions:

1. For the institution of the Religious Court generally, in handling the marriage dispensation cases to make Religious Court 1B Wonosari has a role in its collaboration with the local government in reducing the high number of marriage dispensation cases. And then for the judge involved primarily, as written in Supreme Court Regulation 5/2019, which ruled about the result of psychologist assessment as one of the considerations that the judge must consider; therefore, the judge in charge of dispensation cases ought to be considering what on the result of assessment till created the best interest of child concept.

2. Social Agencies and all staff involved in improving their performance in reducing child marriage, especially in the districts along the coast and with strong local norms. Besides, the Social Agency of Female Empowerment and Child Protection at Gunungkidul Regency should document the activities of socialization and other events related to the structured document as evidence.
3. For the Ministry of Female Empowerment and Child Protection of the Republic of Indonesia to integrate the branch office such as PPA PPT in one place or at least near place with the center one. The far space between PPA PPT and Social Agency creates a deficiency of coordination and a lack of observation between PPA PPT as the curative institution and the Social Agency as the preventive institution.
4. For the continuous researcher to conduct research in a different place by conducting the increasing and decreasing cases.

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APPENDIX

I. Surat Keterangan Pelaksanaan Penelitian



PENGADILAN AGAMA WONOSARI
Jl. KRT Judoningrat Siraman Wonosari Telp. (0274) 391325
Wonosari Kode Pos 55851
Homepage: www.pa-wonosari.go.id
Email: admin@pa-wonosari.net

SURAT KETERANGAN TELAH MELAKUKAN PENELITIAN
Nomor : W12-A4/1297/HM.01.1/IV/2023

Yang bertanda tangan dibawah ini:

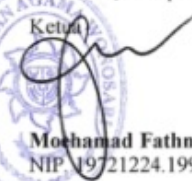
Nama : Moehamad Fathnan, S.Ag., M.H.I
Jabatan : Ketua Pengadilan Agama Wonosari
Unit Kerja : Pengadilan Agama Wonosari

Dengan ini menerangkan :

Nama : Cahya Wulan Ndini
NIM : 19421051
Pekerjaan : Mahasiswa
Fakultas/ Jurusan : Ilmu Agama Islam / Hukum Keluarga (Ahwal Syakhshiyah) Program Internasional
Universitas / PT : Universitas Islam Indonesia Yogyakarta

Telah selesai melaksanakan kegiatan penelitian di Pengadilan Agama Wonosari, dengan judul **"Marriage Dispensation After Amendment of Law 1/1974 in Religious Court 1B Wonosari"**.

Demikian surat keterangan ini dibuat untuk dapat dipergunakan sebagaimana mestinya.

Wonosari, 12 April 2023
Ketua

Moehamad Fathnan, S.Ag., M.H.I.
NIP. 19721224.199803.1.003

Picture 5.1. Research Permission Letter

II. Transcript of the Interviews

The interview in this research takes place in 4 different places suiting the respondent's locations in charge or staying.

The first one takes place in Religious Court 1B Wonosari on Thursday, January 26th, 2023, at 09.00 WIB with one of the judges in charge of Dispensation Marriages Cases as the supervisor research in the location.

A. Informant List

Name : H. Muhammad Novriandi, S.H., M.H.

NIP : 198411182011011007

Position : Judge

B. Result of the Interview

Menurut data yang didapatkan, Kabupaten Gunungkidul sempat menjadi nomor satu dari segi pengajuan Dispensasi Kawin se-Yogyakarta. Akan tetapi ini bukan hal yang paten, bisa dikatakan saat ini pengajuan Dispensasi Kawin di Gunungkidul mengalami penurunan hingga pada angka 168 kasus, hal ini tentunya merupakan kabar yang baik bapak/ibu.

Sebelum adanya penurunan tersebut, Pemerintah dalam menangani maraknya kasus pernikahan anak, mengesahkan Undang-Undang Nomor 16 Tahun 2019 tentang perubahan UU 1/1974 mengenai perubahan umur minimal perkawinan yang disamakan yaitu 19 tahun, bersamaan dengan hal itu pula diberlakukan Perma 5/2019 sebagai pedoman bagi hakim dalam mengadili permohonan dispensasi kawin.

Pertanyaan : Sudah berapa lama bapak menangani dispensasi kawin?

Jawaban : Menangani kasus dispensasi kawin dimulai sejak saya diangkat menjadi hakim tahun 2014 tepatnya pada bulan Oktober di Kalimantan, nama daerahnya Kapuas Hulu, Pengadilan Agama Putu Sibau. Jadi Putu Sibau adalah ibukota dari daerah Kapuas Hulu. Kemudian setelah itu pindah ke Siak, yang mana di sini terjadi peningkatan perkara kasus dispensasi kawin. Hal ini dilatarbelakangi beberapa faktor. Nah perbedaan antara Kapuas dan Siak yang pertama adalah di jumlah penduduk. Di Kabupaten Siak penduduknya lebih banyak daripada di Kapuas Hulu. Kemudian juga ada di perbedaan agama, penganut agama Islam daerah Kapuas Hulu itu berjumlah 60%, 40% sisanya itu beragama Katolik dan Kaharingan. Sedangkan penganut agama Islam di Kabupaten Siak dengan nama Pengadilan Agama Siak Sri Indrapura adalah 98%, karena banyaknya umat Islam otomatis yang berkepentingan di Pengadilan Agama pun banyak juga. Setelah itu pindah ke Pengadilan Agama Wonosari Kabupaten Gunungkidul meningkat lagi perkaranya. Hal ini juga disebabkan faktor yang pertama yakni jumlah

penduduk, di Gunungkidul jumlah penduduknya lebih banyak daripada Sri Indra Pura.

Pertanyaan : Faktor yang menyebabkan adanya kenaikan perkara dispensasi kawin dari yang bapak sebutkan adalah mengenai jumlah penduduk dan agama, apakah dari segi budaya juga menjadi faktor?

Jawaban : Iya, penduduk dan agama kemudian untuk budayanya ada beberapa di daerah seperti Putu Sibau tingkat pendidikannya juga lebih rendah, karena tingkat pendidikannya lebih rendah perempuan sana kalau tidak sekolah buat apa melajang hanya menambah beban orang tua. Menurut mereka risikonya lebih tinggi jika tidak menikah seperti risiko melakukan seks di luar nikah atau bahkan hamil di luar nikah, jadi faktor pendidikan juga berpengaruh. Kemudian di Siak juga sama rata-rata di Siak yang mengajukan Dispensasi Kawin itu merupakan masyarakat transmigrasi. Memang masyarakat asli, masyarakat melayu juga mengajukan Dispensasi tapi lebih banyak masyarakat transmigrasi karena masyarakat melayu itu lebih tinggal di kota serta masalah ekonomi juga turut serta memengaruhi. Jadi pendidikan di sana itu sebenarnya gratis, di Kapuas Hulu juga gratis bahkan di

Siak Sri Indra Pura itu lebih lagi dengan daerahnya yang kaya, bahkan dikasih subsidi seperti baju seragam, buku, tetapi kondisi ekonomi yang susah mengharuskan anak-anak ini membantu orang tuanya. Hal ini mengakibatkan anak-anak tersebut putus sekolah. Orang tua melihat karena anak ini putus sekolah, lebih baik untuk menikah artinya mengurangi beban orang tua.

Pertanyaan : Menurut bapak, untuk daerah Wonosari sendiri, bagaimana kasus dispensasi kawinnya?

Jawaban : Untuk daerah Wonosari itu cukup tinggi juga, dengan penyebab yang hampir sama seperti yang telah disebutkan sebelumnya yaitu penduduk yang beragama Islam kemudian masalah ekonomi dan yang paling penting itu, masalah hamil di luar nikah. Jadi rata-rata yang mengajukan Dispensasi Kawin itu mereka hamil di luar nikah, jarang untuk yang tidak hamil di luar nikah. Selain itu kebanyakan yang tidak hamil itu rata-rata sudah melakukan hubungan badan. Sedikit sekali yang tidak melakukan hubungan seksual. Nanti bisa dilihat datanya di putusan di gugatan yang hamil berapa orang.

Pertanyaan : Apakah ada perbedaan prosedur dalam menangani Dispensasi Kawin dari sebelum dan sesudah disahkannya UU 16/2019?

Jawaban : Pada dasarnya hampir sama, perbedaannya kalau di Perubahan Undang- Undang yang lama menjadi yang baru, yaitu UU 16/2019 itu mengharuskan adanya rekomendasi dari PPA. Rekomendasi ini meneliti aspek psikologis dari anak, apakah anak ini dinilai sudah matang dan cakap untuk melaksanakan pernikahan atau belum. Jadi selalu ada rekomendasi dari PPA, itu merupakan perbedaan yang paling pokok, kalau sebelumnya tidak ada itu. Kemudian ada juga surat keterangan dokter yang menerangkan bahwa calon pengantin ini sehat secara jasmani maupun rohani, kalau keterangan sudah hamil itu sudah tentu ya, tapi di luar keterangan kehamilan ini itu harus ada dua yang disebutkan tadi yaitu rekomendasi dari PPA dan surat keterangan dokter.

Pertanyaan : Untuk pertimbangannya di Perma 5/2019 kan sudah tertulis mengenai pedoman hakim dalam mengadili perkara Dispensasi Kawin, apakah sebelum adanya Perma ini juga ada pedoman lain?

Jawaban : Setiap sidang itu ada pedomannya, hanya saja yang terbaru ini pedomannya lebih rinci seperti yang terbaru ini dalam pedomannya wajib menghadirkan orang tua calon pengantin pasangan. Kalau tidak dihadirkan maka putusannya harus di N.O atau tidak diterima. Yang sebelumnya tidak mewajibkan tetapi hakim berinisiatif sementara yang sekarang ini wajib.

Pertanyaan : Kapan bapak mulai bertugas menjadi hakim di Pengadilan Agama Wonosari?

Jawaban : Saya sendiri, mulai pindah kesini tahun 2021 tepatnya di bulan September, mulai bersidang itu di bulan Oktober.

Pertanyaan : Untuk kenaikannya sendiri, apakah rata-rata umurnya yang mendekati 19 tahun atau malah di bawah umur sekali seperti 17 tahun?

Jawaban : Bervariatif tapi kebanyakan mepet ke 19 tahun, faktor mepet ini kenapa tetap dilangsungkan pernikahan, kenapa mereka mengajukan dispensasi kawin padahal tinggal menunggu beberapa bulan, itu karena faktor hamil di luar nikah.

Pertanyaan : Apakah dampak dari hasil konseling atau surat rekomendasi dari PPA terhadap putusan perkara Dispensasi Kawin?

Jawaban : Ada satu perkara, dilihat dari psikologis si anak itu dilihat dari PPA, mereka kan ahli di bidang itu karena ada psikolognya. Nah apabila dinilai anak ini tidak mampu mengemban tugas mereka sebagai istri atau suami maka direkomendasikan untuk ~~tidak~~ dinikahkan karena dari PPA menilai keinginan mereka menikah karena terpaksa, karena sudah hamil duluan dipaksa oleh pihak masing-masing keluarga. Jadi kita itu memperhatikan betul rekomendasi dari Perlindungan Anak tersebut, karena mereka sudah diberi kewenangan oleh Perma, Perma kan itu aturan hukum. Sudah diberi kewenangan oleh Perma dan mereka memang ahli di bidang itu. Jadi kita memang mempertimbangkan, makanya setiap rekomendasi dari PPA itu kan tertutup suratnya dibukanya kapan? Ketika sidang, mereka sendiri tidak boleh melihat itu, takut nanti tidak direkomendasikan.

Pertanyaan : Dalam memberikan putusan selain berdasarkan Perma 5/2019, apakah ada *legal reasoning* yang lain?

Jawaban : Iya itu sudah pasti ya, yang pertama itu *legal reasoning* lain itu Undang- Undang sendiri, tadi UU 16/2019. Kemudian juga ada KHI Inpres 1/1991, kemudian ada PP 9/1975, kalau hukum acara yang dipakai itu adalah HIR di Jawa dan Madura, kemudian RBG di luar pulau Jawa dan Madura. Kemudian dipakai juga pedomannya itu buku dua Mahkamah Agung yang khusus tentang Pengadilan Agama.

Pertanyaan : Dari *legal reasoning* yang telah disebutkan, apakah kebijakan tersebut memberikan dampak yang positif pada pertimbangan dalam putusan?

Jawaban : Sudah tentu, pada dasarnya tujuan Pemerintah, menaikkan batas perkawinan itu tujuannya baik, salah satunya untuk menuntaskan wajib belajar. Namun realitas yang terjadi di lapangan, karena adanya perubahan UU 1/1974 ke UU 16/2019 yang sebelumnya laki-laki berumur 19 tahun sedangkan perempuan minimal berumur 16 tahun menjadi laki-laki dan perempuan dengan berumur 19 tahun, maka secara otomatis membuat masyarakat mengajukan perkara lebih banyak lagi. Nah memang banyak jadinya, namun belakangan itu terjadi penurunan itu di antara faktor

penyebabnya itu, sudah banyak kesadaran masyarakat, yang kedua karena tadi proses syarat administrasi dan bukti memang jauh lebih banyak daripada yang lama seperti surat rekomendasi PPA, kemudian surat keterangan dokter dan lain sebagainya

Pertanyaan : Menurut bapak, pengajuan Dispensasi Kawin ini mengalami penurunan sejak kapan?

Jawaban : Itu terjadi di akhir-akhir tahun 2022, tapi menurunnya itu tidak tajam tapi masih dalam keadaan landai.

Pertanyaan : Untuk faktornya sendiri selain kebijakan yang menjadi pendorong dalam turunnya apakah ada faktor lain?

Jawaban : Kita ini kan pasif ya, pengadilan itu pasif artinya pengadilan itu hanya melihat dari alasan-alasan permohonan yang diajukan. Artinya kita melihat dan mempertanyakan dari bertambahnya syarat otomatis mereka mungkin ada yang malas mengajukan, cuma memang yang punya wewenang untuk meneliti itu bukan Pengadilan Agama tetapi Pemerintah Daerah. Karena Pengadilan Agama itu menerima tidak melakukan survei ke masyarakat. Itu bukan kompetensinya pengadilan, yudikatif itu harus pasif, tidak boleh aktif. Siapa yang

harus aktif itu adalah eksekutif, dan legislatif tentunya dalam menyuarakan suara rakyat. Jadi yudikatif itu data survei dari alasan-alasan masyarakat itu tidak tahu karena tidak melakukan survei untuk itu.

Pertanyaan : Apakah ada faktor-faktor dari diterima atau ditolaknya pengajuan Dispensasi Kawin itu sendiri?

Jawaban : Pada dasarnya itu memakai kaidah manfaat dan *muḍarat*, Undang- Undang sudah jelas bahwa mengatur umur minimal untuk menikah itu 19 tahun. Namun hakim juga mempertimbangkannya dampak manfaat serta *muḍaratnya* mana yang lebih besar kalau seandainya ditolak apakah manfaatnya yang lebih besar atau mudharatnya yang lebih besar. Makanya dipakai kaidah *darul mafāsidi muqoddamun ‘alā jalbil maṣālihu*. Jadi menolak *kemuḍaratan* itu lebih didahulukan daripada menggapai kemaslahatan yang lebih jelas, jadi *muḍaratnya* itu jelas sedangkan kemaslahatannya belum jelas. Maka ditolak *muḍarat* yang jelas itu. Nah faktor-faktornya itu di antaranya yang paling banyak adalah hamil di luar nikah kemudian yang kedua tidak hamil namun sudah melakukan hubungan seksual, kemudian

baru sedikit faktor yang memang menikah tetapi belum melakukan hubungan seksual itu bisa dihitung jari.

The second interview took place in the Social Agency of Female Empowerment and Child Protection at Gunungkidul Regency on Thursday, January 26th, 2023, at 11.00 WIB with one of the staff in charge of the Child Protection Division as the supervisor research in the location.

A. Informant List

Name : Fajar Nugroho, S.IP.,MAP

NIP : -

Position : Child Protection Section

B. Result of the Interview

Menurut data yang didapatkan, Kabupaten Gunungkidul sempat menjadi nomor satu dari segi pengajuan Dispensasi Kawin se-Yogyakarta. Akan tetapi ini bukan hal yang paten, bisa dikatakan saat ini pengajuan Dispensasi Kawin di Gunungkidul mengalami penurunan hingga pada angka 168 kasus, hal ini tentunya merupakan kabar yang baik bapak/ibu.

Sebelum adanya penurunan tersebut, Pemerintah dalam menangani maraknya kasus pernikahan anak, mengesahkan Undang- Undang Nomor 16 Tahun 2019 tentang perubahan UU 1/1974 mengenai perubahan umur minimal perkawinan yang disamakan yaitu 19 tahun, bersamaan dengan hal itu pula diberlakukan Perma 5/2019 sebagai pedoman bagi hakim dalam mengadili permohonan dispensasi kawin.

Pertanyaan : Bagaimanakah kondisi pengajuan permohonan dispensasi kawin di Kabupaten Gunungkidul setelah diundangkannya UU 16/2019?

Jawaban : Jadi gini ya mba, ini memang menjadi komitmen dari Pemerintah Kabupaten Gunungkidul sendiri karena melihat bahwa tren kenaikan perkawinan anak ini memang luar biasa sekali sehingga ini menjadi salah satu fokus di Pemerintah Kabupaten Gunungkidul untuk menurunkan angka perkawinan anak, karena apa? Karena angka perkawinan anak ini kan imbasnya banyak sekali dari faktor ekonomi kemudian yang menjadi isu nasional ini *stunting*. Ini kemudian menjadi salah satu fokus dari Pemerintah Kabupaten Gunungkidul untuk menurunkan angka perkawinan anak.

Pertanyaan : Bagaimana peran Dinas Sosial Kabupaten Gunungkidul dalam mengatasi kenaikan ini?

Jawaban : Banyak sekali yang dilakukan jadi semua sektor, kemudian menjadi bersama-sama, karena penurunan angka *stunting* ini-kan mutlak diperlukan, sehingga dari hulunya dulu yang kita garap agar hilirnya ketika

perkawinan anak ini sudah turun dimungkinkan angka *stunting*-nya ini juga turun. Nah kemudian bapak bupati mengeluarkan Peraturan Bupati terkait pencegahan perkawinan usia anak, nanti kami serahkan *soft file* nya ada itu dari tahun 2022. Kemudian yang selanjutnya ketika angka perkawinan anak ini tinggi, kami melakukan kerja sama, melakukan MoU dengan Pengadilan Agama Wonosari untuk istilah dalam tanda kutip mempersulit, tapi bukan mempersulit, karena ini kan hak; hak asasi, kami tidak menghalangi. Mempersulit dalam tanda kutip di sini maksudnya adalah agar di luar kehamilan yang tidak diinginkan ini kita bisa membatasi. Kalau terjadi kehamilan tentunya harus segera dinikahkan kan ya mba, tapi kalau untuk mereka yang belum hamil ini akan kita batasi dulu. Dengan cara yaitu sebelum mereka mengajukan dispensasi ke Pengadilan Agama, ini harus masuk ke UPT PPA terlebih dahulu untuk dilakukan *asesmen* atau peninjauan wawancara. Kemudian dari hasil wawancara ini psikolog klinis yang ada di UPT PPA ini bisa memberikan rekomendasi kepada Pengadilan Agama bahwa ini siap bahwa ini tidak, ini kerja sama yang kami lakukan. Kemudian kerja sama ini sudah berjalan sekitar dua

tahun ini, kemungkinan kalau ini turun *nggih alhamdulillah*. Jadi ini ada efek dominonya, di satu sisi pencegahan *stunting* juga berjalan, kemudian di sisi lain yaitu pada hulu-nya pencegahan perkawinan anak juga menurun.

Ini kemudian teman-teman yang dari Dinas Pemberdayaan Perempuan dan Keluarga Berencana juga melakukan hal yang sama, mereka kemudian bekerja sama dengan para penyuluh agama yang ada di Kementerian Agama di Kabupaten Gunungkidul. Mereka bersama-sama melakukan seperti kalau orang mau menikah diberikan pelatihan itu mereka memberikan pelatihan tentang gambaran umur yang tepat, serta pengasuhan anak, kemudian mengenai 1000 hari di dalam kandungan. Hal ini diberikan agar mereka juga punya pengetahuan lebih ketika memang umurnya belum mencukupi. Nah ini yang kemudian menjadi sebuah agak sulit untuk masyarakat Gunungkidul dalam menikahkan anaknya di bawah umur. Kami tidak menghalangi hak asasi mereka tapi kan ini demi mereka juga.

Kemudian dari sisi Komunikasi, Informasi dan Edukasi (KIE) juga terus memberikan edukasi kepada masyarakat

bahwa pencegahan perkawinan anak ini merupakan salah satu modal agar Kabupaten Gunungkidul bisa dikatakan sebagai kabupaten layak anak. karna apa? Karna tahun 2022 ketika Kabupaten Gunungkidul mengikuti evaluasi kabupaten layak anak, kita masih tetap di posisi madya karena banyaknya angka perkawinan anak. Ini yang kemudian menjadikan Kementerian Pemberdayaan Perempuan dan Perlindungan Anak tidak memberikan kami evaluasi yang lebih, karena perkawinan anaknya masih tinggi.

Kemudian terkait dengan pencegahan juga, kami bekerja sama dengan beberapa Lembaga, ada yang di Universitas Gunungkidul, kemudian dengan penggerak PKK Kabupaten Gunungkidul, kemudian dengan Persatuan Wartawan Indonesia mereka kami ajak semua untuk bersama-sama melakukan sosialisasi, melakukan edukasi kepada masyarakat agar semuanya juga berjalan. Jadi jangan sampai hanya Dinas Sosial Pemberdayaan Perempuan dan Perlindungan Anak saja yang berusaha tapi kami mengajak semua sektor. Jadi pencegahan ini mutlak dilakukan dan mungkin juga kalau sekarang ada hasilnya alhamdulillah. Jadi banyak sekali pencegahan yang kami lakukan melalui media sosial dari Pemerintah

Kabupaten maupun dari Dinas Sosial sendiri. Kemudian kami juga punya kerja sama dengan Dinas Komunikasi dan Informatika terkait dengan penayangan pencegahan perkawinan pada usia anak, kalau mbak *pirsa* di *Videotron*, kita juga sudah kerja sama dengan mereka. dan ini memang punya efek, kalau setiap hari masyarakat diberi brosur-brosur kan beda tentunya. Kerja sama kita juga dengan kelurahan, teman-teman pamong lurah, kita juga dalam tahun 2022 kita bekerja sama dengan ada lima kelurahan yang membentuk kelompok perlindungan anak terpadu berbasis masyarakat, kemudian ada 77 desa yang sudah menjadikan dirinya sebagai kelurahan layak anak. Salah satu indikator agar suatu kelurahan dapat menjadi kelurahan layak anak adalah turunnya angka perkawinan anak. ini ada 77 kelurahan dari 144 desa, kita sudah punya 77 kelurahan. Ini merupakan komitmen dari Pemerintahan Kabupaten khususnya bapak bupati dan *stakeholder* yang lain agar turut juga menurunkan angka kekerasan, angka perkawinan pada anak. Dan ini juga didukung oleh Dewan DPRD Kabupaten Gunungkidul karena mereka dalam tahun 2022 juga mengeluarkan regulasi khusus untuk perempuan dan anak. Adapun regulasi tersebut yaitu Perda 1/2020 tentang

penyelenggaraan pelayanan kekerasan perempuan dan anak, kemudian Perda 12/2020 tentang Pengarusutamaan Gender Dalam Pembangunan Daerah, kemudian Perda 13/2020 tentang Perlindungan dan Pemenuhan Hak Anak ini dukungan dari dewan. Dan mereka juga melakukan sosialisasi terkait dengan Perda ini pada tahun 2022 dan 2023 mereka terus melakukan sosialisasi terkait perda ini. Jadi dimungkinkan karena efeknya berjalan itu semua pihak memang ini kami ucapkan syukur Alhamdulillah, hampir separuh sendiri, luar biasa sekali. Meskipun baru mengalami penurunan di dua tahun ini, paling tidak ini sebuah angin segar bahwasanya kita mengelola pencegahan perkawinan anak ini kan hilirnya nanti *stunting* juga menurun, angka perceraianya juga dimungkinkan untuk turun. Dikarenakan angka perceraian di Gunungkidul kan luar biasa, ada 1700 sekian kasus. Hal ini menjadi PR kita bersama. Jadi itu yang mungkin bisa kami katakan sebagai komitmen pemerintah kabupaten. Jadi semua pihak turut serta, kemudian adanya isu *stunting* juga menjadi *trigger* atau pemicu bagi kami untuk lebih baik lagi.

Sekarang ini kan ketua penggerak PKK-nya kan juga *konsen* terkait dengan ini, beberapa saat yang lalu mencanangkan adanya beliau ingin *mubeng* di SMP-SMP, karena di SMP ini yang justru paling rentan untuk terjadi perkawinan anak. *Nuwun sewu* kan *nek mpun munggah teng* SMA itu kan pola pikirnya sudah beda, di samping *nek* SMP ini kan masih rentan, kemudian ibu bupati mencanangkan tahun 2022 ada lima sekolah yang sudah diberikan sosialisasi, beliau langsung yang turun, mengajak anak-anak didik untuk belajar memenuhi 12 tahun wajib belajar dan diberikan semacam edukasi agar angka stuntingnya juga turun, angka kematian pada ibu dan anak juga turun. Ini kan hal baru meskipun di sekolah ada pelajaran kesehatan reproduksi, tapi kan kalau yang menyampaikan tokoh masyarakat mereka kan menerimanya kan lain seperti ibu bupati, teman-teman dari Perkombina yang lain juga ikut ini kan mereka penerimaannya akan beda.

Pertanyaan : Apakah ada data mengenai perkembangan kasus dispensasi kawin sebelum dan sesudah adanya kebijakan?

Jawaban : Sosialisasi terkait dengan Kelurahan Layak Anak, kemudian *Workshop* perlindungan anak terpadu berbasis masyarakat, kemudian ada sosialisasi Perda.

Pertanyaan : Selain dengan kebijakan-kebijakan dengan kerja sama ke beberapa instansi, kelurahan-kelurahan, apakah ada kiat-kiat lagi untuk menstabilkan lebih lagi dari penurunan yang ada?

Jawaban : Memang inovasi harus diperlukan terkait dengan pencegahan perkawinan pada usia anak, jadi inovasi yang dilakukan oleh Pemerintah Kabupaten ini di kami melibatkan forum anak sendiri dari tingkat kabupaten untuk mereka menjadi 2P, pelopor dan pelapor. Jadi mereka forum anak Kabupaten Gunungkidul kita jadikan garda terdepan dikarenakan anak saat yang menasihati orang yang lebih tua kan agak sungkan tetapi kalau mereka melakukan konselor sebaya, umurnya sebaya itu kan beda, *treatment*-nya beda, penyampaiannya juga beda. Mereka bisa lebih menerima jika ada konselor sebaya yang dijadikan rujukan bahwa ternyata forum anak dari kabupaten kemudian dari tingkat kecamatan, kemudian di tingkat kelurahan bisa menjalankan aktivitasnya. Karena forum anak ini kita jadikan sebagai

yang terdepan dalam hal di usia anak tidak terlepas dari forum anak ini harus berpartisipasi dalam hal perencanaan pembangunan kemudian menjadi pengawas pembangunan, ini mereka menjadi sibuk tidak memikirkan lagi untuk melakukan perkawinan. Ditambah lagi juga agenda tahunan kebudayaan, ini kan luar biasa. Jadi Dinas Kebudayaan yang ada di Kabupaten Gunungkidul juga melibatkan anak-anak, khususnya yang ada di SD dan SMP. Jadi ini memang kerja bareng-bareng, inovasinya harus dilakukan agar bisa diterima khususnya anak-anak dan juga bisa diterima oleh mereka yang memang rentan terhadap kasus-kasus ini. Karena beberapa kasus yang terjadi kalau *njenengan pirsu* yang ada di Saptosari itu ketika *nuwun sewu njenengan piyayi putri terus didolani karo rencange, esuke iku ken rabi*.

Kalau yang lainnya tidak, bahkan di Kapanewon Gedangsari sempat diadakan Gedangsari *Award* yang diberikan oleh Pak Camat kepada kelurahan yang tingkat perkawinannya 0, jadi diberikan *reward* entah itu berbentuk uang atau yang lain. Jadi dalam satu tahun jika ada satu desa yang angka perkawinan anaknya 0 akan diberikan *reward* sebagai bagian dari upaya pencegahan.

Ini salah satu inovasi yang ada ditingkat kecamatan, untuk yang kabupaten seperti yang telah dibicarakan sebelumnya kita melibatkan forum anak, tokoh agama, tokoh masyarakat.

Pertanyaan : Faktor penyebab kenaikan?

Jawaban : Jadi ini masalah budaya yang terjadi di kecamatan Saptosari karena tradisinya masih kuat. Jadi kalo *njenengan didolani rencang, esuke bapake wis takon “kowe arep rabi kapan?, wis rabi wae”*

Ini yang kemudian harus kita dalam tanda kutip lawan dengan edukasi agar mereka juga semakin paham bahwa perkawinan anak ini hanya akan menjadi malapetaka bagi anak. Nah biasanya mereka ini kalo semisal dipersulit mereka akan tetap melakukan perkawinan *sirri* yang nantinya ikut disahkan ketika adanya isbat nikah massal. Budaya ini bukan hanya di Saptosari tetapi juga berlaku di sekitarnya seperti Paliyan.

Ya karena itu faktor budaya, budaya patriarki kan masih terlalu kuat. Kemudian masih ada anggapan dengan menikahkan anak ini kemiskinannya juga lepas “aku uwis ora ngurusi anakku, ben diurusi bojone” lah ini kan anggapan-anggapan, bahwa menikahkan anak di usia

muda ini akan membebaskan mereka dari kemiskinan kan ini juga salah bahkan akan menjadikan tambahan angka kemiskinan. Jadi *mindset* masyarakat yang ada di pedesaan masih seperti itu, ketika menikahkan anaknya akan meringankan kemiskinan tapi kan ternyata tidak, hal ini malah menjadi lingkaran setan *mubeng-mubeng*. Jadi untuk budayanya sendiri lebih di sekitar daerah Saptosari atau bagian Selatan dari Kabupaten Gunungkidul, dekat pantai.

Pertanyaan : Apakah kebijakan tersebut memberikan dampak yang positif?

Jawaban : Menurut Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, angka perkawinan anak sekarang ini disebut dengan kekerasan psikis, kalau yang sudah hamil duluan itu menjadi kekerasan seksual. Meskipun mereka suka sama suka, tetapi dimasukkan datanya sebagai kasus seperti itu. Jadi kalau saya menganggap angka perkawinan turun ini saya sudah syukur alhamdulillah. Ternyata pekerjaan kita bersama teman-teman ini diapresiasi masyarakat. Dan masyarakat juga menerima itu dengan data yang ternyata memang menurun dari tahun ke tahun. Tapi ini juga ada imbas dengan isu

stunting juga, jadi kan karena angka *stunting* di Gunungkidul itu paling tinggi di antara kabupaten yang ada di DIY, ini kan menjadi *konsen* juga. Kalau misalkan untuk *nggarap* bayi yang *stunting* itu kan mudah tapi kan hulunya juga harus digarap, hilirnya bayi yang *stunting* diberi gizi dirawat dengan baik, pengasuhan yang baik. Pasti nanti kan beda, tapi kan kalau hulunya tidak digarap ya sama saja, ternyata dengan turunnya angka perkawinan anak angka *stunting* juga ikut turun dari laporan terakhir itu turun 5% dari 19% sekarang ini menjadi 12% kalau tidak salah.

The third interview on Thursday, January 26th, 2023, at 13.00 WIB, took place at the Integrated Service Center for the Protection of Women and Children Gunungkidul Regency (PPT PPA) with the counselor or psychologist in charge to do counseling with the child and the parents who involved in Dispensation Marriages cases.

A. Informant List

Name : Desti Fatmasari, S.Psi, M. Psi
NIP : -
Position : Psychologist at Integrated Service Center for the Protection of Women and Children Gunungkidul Regency (PPT PPA)

B. Result of the Interview

Menurut data yang didapatkan, Kabupaten Gunungkidul sempat menjadi nomor satu dari segi pengajuan Dispensasi Kawin se-Yogyakarta. Akan tetapi ini bukan hal yang paten, bisa dikatakan saat ini pengajuan Dispensasi Kawin di Gunungkidul mengalami penurunan hingga pada angka 168 kasus, hal ini tentunya merupakan kabar yang baik bapak/ibu.

Sebelum adanya penurunan tersebut, Pemerintah dalam menangani maraknya kasus pernikahan anak, mengesahkan Undang- Undang Nomor 16 Tahun 2019 tentang perubahan UU 1/1974 mengenai perubahan umur minimal perkawinan yang disamakan yaitu 19 tahun, bersamaan dengan hal itu pula diberlakukan Perma 5/2019 sebagai pedoman bagi hakim dalam mengadili permohonan dispensasi kawin.

Pertanyaan : Sejak kapan pemberian surat rekomendasi anak untuk permohonan dispensasi kawin ini menjadi syarat untuk sidang Dispensasi Kawin?

Jawaban : Selama ini, kami di UPT Perlindungan Anak itu memiliki MoU dengan Pengadilan Agama terkait dispensasi kawin. Dispensasi kawin sendiri itu MoU- nya per 1 November 2022, kami itu bukan memberikan surat rekomendasi tetapi hasil konseling, jadi kami melakukan konseling kepada yang pertama kedua belah pihak calon

yang laki-laki maupun perempuan meskipun yang kurang umur perempuan misalkan, itu yang laki-laki juga harus menerima konseling, jadi memang sepasang gitu ya. Kemudian yang kedua itu dari orang tua kedua belah pihak, orang tua dari mempelai laki-laki maupun orang tua dari mempelai perempuan. Biasanya memang yang melakukan konseling calon pengantin dengan saya sendiri, kemudian yang orang tua itu dengan pekerja sosial. Kemudian untuk syarat konseling calon di UPT Perlindungan Perempuan dan Anak Kabupaten Gunungkidul itu sebagai berikut:

1. Surat pengantar konseling psikologis dari Pengadilan Agama ditujukan kepada Kepala UPT PPA Kabupaten Gunungkidul
2. Fotokopi Kartu Keluarga Calon Pengantin (calon suami dan calon istri)
3. Fotokopi KTP Orang Tua Calon Pengantin (orang tua calon suami dan orang tua calon istri)
4. Fotokopi Akta Kelahiran Calon Pengantin (calon suami dan calon istri)
5. Fotokopi KTP Calon Pengantin/ jika ada (calon suami dan calon istri)

6. Fotokopi keterangan yang menyatakan hamil/ tidak dari Puskesmas/ Bidan Swasta/ Dokter ahli kandungan (jika hamil menunjukkan buku KIA)

Jadi alur untuk mendapatkan pelayanan konseling urusan Dispensasi itu calon pengantin mendapatkan surat penolakan dari KUA, kemudian dari surat penolakan itu dibawa ke Pengadilan Agama, nanti di Pengadilan Agama akan mendapatkan surat rekomendasi untuk mendapatkan konseling di sini, kemudian setelah mendapatkan surat rekomendasi, surat rekomendasi tersebut dibawa kesini untuk didaftar dengan membawa syarat-syarat yang sudah ada dan ada tambahan itu surat keterangan yang menyatakan hamil atau tidak. Jadi memang kan itu juga kita tidak tahu, ketika hanya omongan saja, ini sedang hamil, ini tidak hamil padahal sebenarnya hamil, maka dari itu dibutuhkan surat keterangan dari layanan Kesehatan. Kemudian ketika memang sudah hamil itu wajib untuk membawa buku KIA yang warna *pink*, setelah itu semua terkumpul kemudian didata oleh yang di depan setelahnya akan dijadwalkan untuk konselingsnya kapan. Biasanya kan banyak ya yang konseling, bisa seminggu bahkan kalau

misalkan pas tidak antre, sekarang daftar besok konseling juga bisa. Kemudian pendaftaran juga bisa dilakukan via *online* melalui *hotline service whatsapp* kami, kemudian nanti di *hotline* itu mengatakan akan mengajukan dispensasi kawin, nanti syarat-syaratnya di PDF, kemudian nanti kami jadwalkan kapan. Nah nanti ketika yang konseling pas hari H-nya itu membawa syarat-syaratnya yang fisik, jadi untuk memudahkan soalnya kan di sini jauh-jauh lokasinya ada yang di pucuk gunung, di sini kan jangkauannya jauh sehingga untuk memudahkan pendaftaran bisa melalui *online* dengan di *pdf*. Ketika mendaftar sebenarnya bisa diwakilkan tidak harus yang calon pengantin yang penting membawa syarat-syaratnya, kalau misalkan di hari pendaftarannya itu ada syarat-syarat yang kurang itu gapapa, nanti bisa disusulkan pas konseling. Oh ini belum ada surat keterangan hamil. Kan beda ya surat sehat dan surat keterangan hamil, biasanya surat keterangan sehat itu tidak mencantumkan dia hamil atau tidak. Kemudian setelah itu kami konseling, dalam konseling tersebut kami melihat secara psikologis calon pengantin itu seperti apa kemudian dari hasilnya itu keluar 1 minggu setelah konseling, tapi tergantung antrean juga bisa jadi lebih

juga. Biasanya nanti kami *wa* misalkan atas nama siapa sudah jadi.

Pertanyaan : Sejak kapan pemberian konseling ini dilakukan?

Jawaban : Mulai 1 November 2021, sebelumnya belum ada dikarenakan MoU dimulai pada tanggal tersebut. Jad memang hasil konseling dari kami itu syarat yang paling utama juga ketika nanti mau mendaftar, tidak ada hasil konseling, nanti tidak diterima pengajuan dk-nya di Pengadilan Agama.

Pertanyaan : Apakah hasil-hasil dari konseling ini selalu memberikan hasil berupa rekomendasi anak terkait atau bagaimana?

Jawaban : Tidak, nanti kan hasil konseling itu memang ada rekomendasi tapi bukan untuk, jadi judulnya itu hasil konseling, jadi kita melihat dari *asesmen* kita, wawancaranya seperti apa, kita melihat yang pertama dari psikologis, kemudian yang kedua kan dari segi ekonomi juga, kan penting *nggih*, kemudian selain itu juga dari gimana sih dia pandangan tentang pernikahan itu seperti apa, sudah memahami apa belum, memang pada kenyataannya secara psikologis itu memang belum

mampu, belum tahu, melihat dari alasan-alasannya menikah itu apa. Ternyata setelah selama ini kita mengonseling satu tahun lebih, itu memang alasannya beragam, bukan hanya karena hamil.

Pertanyaan : Bagaimana isi dari hasil konsultasi, pada umumnya?

Jawaban : Hasil konselingnya itu nanti secara umum saja ya, karena memang ini sebenarnya rahasia dari klien, bahkan dari hasilnya itu nanti dari kami bersifat rahasia dikasih amplop kemudian di staples dan yang calon pengantinnya itu tidak boleh membuka. Yang boleh membuka itu nanti Hakim di Pengadilan Agama karena memang bersifat rahasia, sehingga memang pada waktu konseling itu isinya melihat dari sisi psikologisnya dia seperti apa, kemudian bagaimana ketika menyikapi permasalahan, pandangan- pandangan tentang pernikahan itu seperti apa, kemudian selain itu juga secara ekonomi, seperti apa. Dan juga melihat dari segi orang tuanya juga. Kan orang tuanya juga dikonseling. Dari orang tuanya segimana si untuk anaknya ini memang, kenapa kok dinikahkan, bisa ga menunggu untuk sampai cukup umur untuk menikah, biasanya ketika memang tidak begitu *urgent* secara psikologis

juga belum stabil, belum mampu untuk mengelola emosi, kemudian juga secara ekonomi belum mampu, biasanya nanti itu menandakan bahwa calon pengantin belum siap. Kemudian alasan menikah itu seperti apa. Kemudian juga pergaulan dia seperti apa, kemudian hubungan dia dengan orang tuanya seperti apa, pengasuhannya anak ini siapa, kita kan bisa melihat ya ketika pengasuhannya dari orang tua ataupun dari nenek, kakek. Oh ternyata memang ketika dia latar belakang terjadi permasalahannya memang karena kurang adanya pengawasan dari orang tua, atau misalnya pengabaian, kelalaian orang tua yang menyebabkan pergaulan anaknya bebas sehingga ketika anak itu kan sebenarnya belum mampu membedakan yang baik dan yang benar. Yang penting dia senang, jadi dia mencari pergaulan-pergaulan lewat Hape.

Pertanyaan : Faktor penyebab pengajuan dispensasi kawin?

Jawaban : Kalau dari data catin 2021 yang masuk di kami itu sekitar 32 untuk bulan November dan Desember, yang 2022 total catin 184 dan itu pun juga faktornya banyak bukan hanya hamil. Jadi kalau di Gunungkidul itu faktornya banyak juga sih, bisa jadi karena budaya. Budayanya

berupa anggapan lingkungan masyarakat itu bahwa anak usia 16 tahun harus segera menikah. Kemudian ada juga budaya yang memang ketika sudah lamaran, mengacu pada yang sudah kami tangani salah satu faktor yang dapat kami simpulkan itu ketika sudah lamaran itu sudah agak bebas, boleh nginep, boleh ini sehingga berakhir dengan terjadi hal-hal yang seperti itu. Kemudian juga pergaulan, dengan kenalan yang lewat media sosial, pergaulan yang menyebabkan dia hamil juga. Biasanya kenalannya itu lewat Hape, *wa promote*. Kami juga baru taunya dari kasus-kasus itu, *wa promote* itu nomornya dipromosikan lewat *wa*, misalkan nomornya si A dipromosikan ke si B, jadikan nanti ada yang kontak-kontak, banyak kenalannya. Banyak juga yang kenalannya itu dari situ, lewat grup-grup itu juga ada, grup mencari jodoh, mencari pertemanan itu ada dari media sosial *ig*, *wa* kemudian dari *facebook*. Jadi memang pergaulan itu tadi perkenalannya. Soalnya ini orang sana, ketemu orang sana, gimana perkenalannya jadi seperti itu. Ada juga yang karena faktor sudah nikah *sirri*, jadi ini sudah nikah *sirri* atau belum, tapi dari kita untuk nikah *sirri* dalam membuktinya kita juga tidak ada yang baku. Ada juga yang dikarenakan anaknya sudah

lahir, banyak faktor yang mempengaruhi, tidak hanya satu faktor ya, karena memang ada tuntutan dari masyarakat karena sering runtang runtung, jadi untuk tau penyebabnya apa ya multi-faktor, tidak bisa memakai faktor tunggal, karena memang sudah ingin nikah itu juga ada.

Pertanyaan : Untuk catin yang memberikan alasan “sudah ingin menikah” apakah dari segi psikologi, ekonomi dan lain-lainnya ?

Jawaban : Ada juga yang sudah cukup, ada yang memang belum kita kan juga bisa melihat dari itu ya, untuk kesiapan dia memang siap untuk menikah atau enggak dari unsur yang tadi. Alasan “karena ingin” tetapi dia-nya tidak tahu kalau semisal kan ditanya tentang pandangan pernikahan itu seperti apa, ya belum kaya gitu. Jadi kan ya belum memahami tentang peran kewajiban tanggung jawab sebagai seorang suami atau istri seperti apa. Meskipun yang sudah cukup umur pun banyak juga permasalahan, apalagi yang belum cukup umur.

Pertanyaan : Terhitung dari disahkannya MoU ini apakah terjadi kenaikan atau penurunan untuk kasus dispensasi kawin sendiri?

Jawaban : Dikarenakan MoU ini belum berjalan satu tahun jadi belum ada pembandingnya, akan tetapi kalau dilihat sepertinya memang menurun, karena kan dulu di 2021 Desember 252, terus sekarang kan (2022) jadi 184, iya menurun sih memang

The fourth one is the interview with the former head of Religious Court 1B Wonosari, who was in charge of making the cooperation agreement between Religious Court 1B Wonosari and the Social Agency of Female Empowerment and Child Protection at Gunungkidul Regency on work planning of the child marriage prevention. This interview was taken on Tuesday, February 20th, 2023, at 10.30 WIB.

A. Informant List

Name : Rogaiyah, S.Ag., M.H.

NIP : 19760424.200003.2.001

Position : Deputy Head of Religious Court 1A Boyolali

B. Result of the Interview

Berdasarkan data yang diperoleh, per bulan April 2022, Seluruh Pengadilan Agama di Indonesia mendapatkan surat instruksi untuk berkoordinasi dan bekerja sama dengan Dinas Kesehatan sebagai tindak lanjut dari Surat

Direktur Jenderal Kesehatan Masyarakat Kementerian Kesehatan Republik Indonesia Nomor HK.01.02/b/275/2022.

Pertanyaan : Apakah adanya MoU Antara Pengadilan Agama Wonosari dengan Pemerintah Daerah Gunungkidul merupakan penindak lanjutan dari surat tersebut?

Jawaban : Iya, meskipun sebenarnya sejak awal tahun 2021, antara Pengadilan Agama Wonosari dengan pihak terkait dalam hal ini Dinas PPA yang berada di bawah di Dinas Sosial PP kabupaten Gunungkidul saat itu telah mengadakan pembicaraan, secara formal maupun informal dalam beberapa acara/kegiatan pemerintah daerah yang kami ikuti, untuk menekan angka pernikahan dini di Kabupaten Gunungkidul;

Pertanyaan : Kapanakah MoU ini ditandatangani?

Jawaban : MOU secara resmi ditandatangani pada bulan Februari 2022

Pertanyaan : Membahas tentang apakah MoU tersebut?

Jawaban : Membahas Kerja sama dan keterlibatan aktif seluruh pihak terkait dalam MOU untuk mengurangi tingginya angka pernikahan oleh anak di bawah umur di Kabupaten Gunungkidul

Pertanyaan : Sebagai Lembaga yudikatif dengan peran pasif, upaya preventif-promotif apakah yang menjadi peran Pengadilan Agama Wonosari?

Jawaban : Sebagaimana diatur dalam Perma No.5 Tahun 2019, PA dalam hal ini mempunyai peran sebagai benteng terakhir dalam upaya pencegahan perkawinan anak, peran tersebut dapat terimplementasikan dalam bentuk penanganan perkara DK yang diajukan oleh Pihak, dari sejak perkara itu didaftarkan haruslah telah memenuhi syarat administratif sebagaimana telah ditentukan dalam Perma, demikian juga dalam proses persidangan, upaya penasihatn oleh hakim, pemeriksaan dalam persidangan, dan pertimbangan hukum oleh hakim dalam pengambilan putusan harus benar-benar dapat memastikan pemenuhan kepentingan terbaik bagi anak, kesetaraan gender dan persamaan di depan hukum, dengan didasari oleh pengetahuan hakim berkenaan dengan hak-hak anak dan dampak buruk perkawinan anak

Pertanyaan : Apakah dengan adanya MoU ini menjadi salah satu faktor penurunan kasus Dispensasi Kawin pada tahun 2021 dan 2022 di Kabupaten Gunungkidul?

Jawaban : Untuk mengetahui apakah terdapat penurunan pengajuan DK di Pengadilan Agama Wonosari pasca ditandatanganinya MOU, itu dapat dilihat pada grafik statistik jumlah perkara DK yang diajukan sejak bulan Februari sampai dengan Desember 2022

Pertanyaan : Pengadilan Agama di beberapa kabupaten menandatangani MoU dengan pihak Dinas Kesehatan, hal ini berbeda dari PA Wonosari tentunya itu, maka dari itu pertanyaannya adalah mengapa pihak Pengadilan Agama Wonosari memilih bekerja sama dengan Pemerintah Daerah Gunungkidul?

Jawaban : Ini dilakukan, karena upaya penurunan tingkat pernikahan dini, tidak bisa dilakukan hanya dg kerja sama antara dua pihak, dalam hal ini PA dan Dinkes, lebih dari itu karena edukasi dan sosialisasi mengenai dampak buruk dari perkawinan di bawah umur akan lebih mudah mencapai sasaran jika melibatkan pihak lain, dalam hal ini Dinas Pendidikan, demikian juga Dinas Sosial yang membawahi PPA, maka PA Wonosari menganggap penting untuk langsung mengajak pemerintah daerah untuk bekerja sama menyelesaikan masalah ini; Dalam beberapa pertemuan dengan Bupati

dan wakil Bupati, Sekda dan Ibu Asisten I Pemda waktu itu, semuanya menginginkan angka pernikahan di bawah umur dapat ditekan karena salah satu dampak adanya pernikahan di bawah umur adalah tingginya tingkat perceraian dan naiknya angka kemiskinan di Kabupaten Gunungkidul, 2 hal ini tentu saja menjadi *concern* Pemda yang harus bisa diatasi bersama. Ketidaksiapan mental, ketidaksiapan materi, dan ketidaksiapan reproduksi akan sangat berpengaruh pada tingginya angka perceraian, kemiskinan, kematian ibu hamil dan tingginya angka *stunting* di kabupaten Gunungkidul...ini yang menjadi dasar PA untuk tidak hanya melibatkan Dinkes dalam kerja sama tetapi lebih luas kami ingin Pemerintah daerah ikut menjadi motor yang menggerakkan OPD lainnya yang terkait untuk bersama-sama PA menekan angka pernikahan anak

Pertanyaan : Sebelumnya mohon maaf ibu, dari hasil wawancara yang saya dapatkan dengan pihak PPA, dimulainya konseling sejak 11 November 2021, untuk itu apakah ada MoU dengan pihak PPA sebelum MoU yang tahun 2022 atau bagaimana ya ibu?

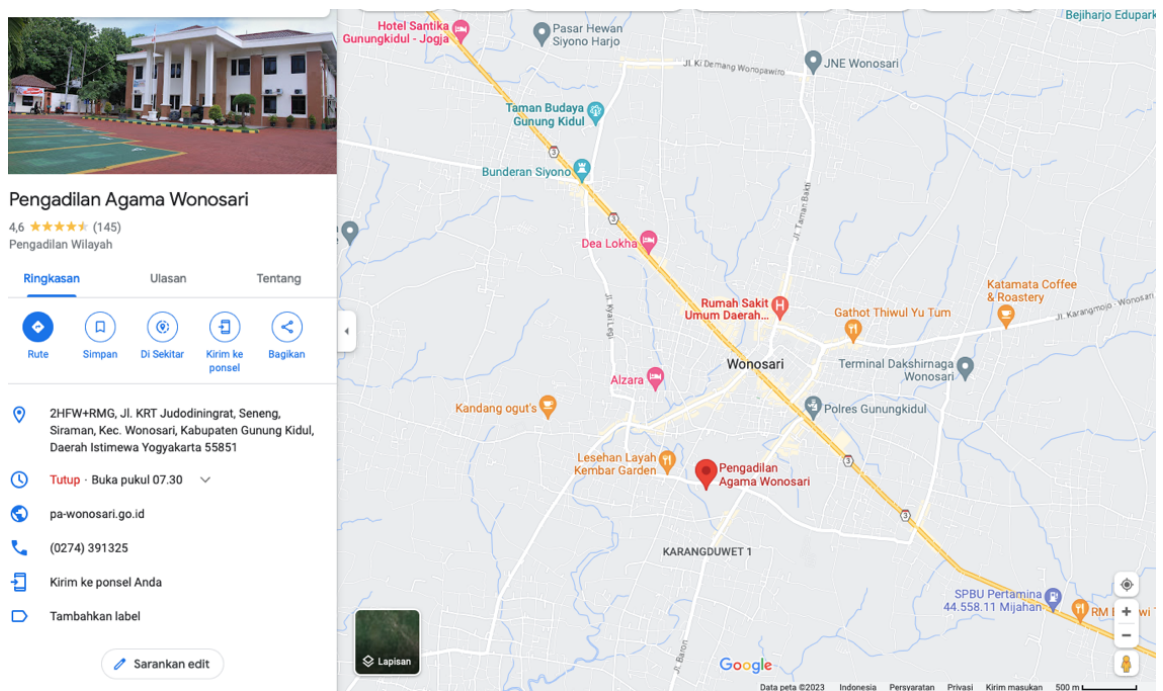
Jawaban : Seingat saya belum, pada awalnya kami hanya melakukan audiensi dan koordinasi dengan PPA mengenai pentingnya layanan konseling dan pendampingan kepada anak yang dimintakan dispensasi untuk menikah oleh orang tuanya, konseling ini penting untuk mengetahui kesiapan psikis anak termasuk ada tidaknya paksaan orang tua/pihak ketiga lainnya dalam rencana pernikahan anak. Respons baik dari Pihak PPA memungkinkan kami untuk mendapatkan hasil konseling terhadap anak, sebelum perkara disidangkan, bahkan tanpa diawali dengan MOU. Secara formal, kerja sama mengikat yang dituangkan dalam bentuk MOU baru dilaksanakan sejak tahun 2022

III. Documentation of Research



Picture 5.2. Interview with Muhammad Novriandi, January 26th 2023

IV. Maps of Religious Court 1B Wonosari



Picture 5.3. Maps of Religious Court 1B Wonosari

CURRICULUM VITAE

Name : Cahya Wulan Ndini

Place and Date of Birth : Purbalingga, 8th of June 1998

Gender : Female

Address : ‘Bengkel Gimin Motor’ Jl. Andong Sinawi
No.22, Bobotsari, Purbalingga, Jawa Tengah,
53353.

Agama : Islam

Status : Belum Menikah

Pekerjaan : Mahasiswa

Nomor Hp : 082187662950

Email : cahyandinisv@gmail.com

Riwayat Pendidikan : 1. TK Aisyah Bobotsari (2002-2004)
2. SDN 1 Bobotsari (2004-2010)
3. SMPN 1 Bobotsari (2010-2013)
4. Pondok Modern Darussalam Gontor Putri
Kampus 5 (2013-2017)
5. Universitas Islam Indonesia (2019-2023)

Riwayat Organisasi : 1. El- Markazi
2. Organisasi Santri Pondok Pesantren (OSPP)
UII
3. Marketing and Communication Fakultas
Ilmu Agama Islam (Marrcomm FIAI)