

# REVEALING THE TRUTH OF MARRIAGE DISPENSATION

AN ANALYSIS OF CHILD MARRIAGE PRACTICE IN TUBAN, BOGOR, AND MAMUJU DISTRICTS



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## INTRODUCTION

The legal age of marriage in Indonesia is 21. Under age 21, parental consent is required with a minimum age of 16 for girls and 19 for boys. However, the mechanism of marriage dispensation, as stipulated in the 1974 Marriage Law, allows exceptions to the minimum age (16 for girls and 19 for boys) subject to consent from an appropriate authority, such as judges from the Religious Court (for Muslims) or District Court (for non-Muslims).

A research report by 18+ Coalition<sup>1</sup>, *Revealing the Truth of Marriage Dispensation: An Analysis of Child Marriage Practice in Tuban, Bogor, and Mamuju Districts* (2016), analyzed the requests of marriage dispensation<sup>2</sup> to Religious Courts in three districts in Indonesia (Tuban, Bogor, and Mamuju) during 2013-2015. The research aimed to map the situation in which marriage dispensation was requested and granted (or denied) and to understand the relevant procedures. Data was obtained using in-depth interviews, focus group discussions, observation, and a policy analysis was undertaken.

## BACKGROUND

The Convention on the Rights of the Child (CRC) provides a globally accepted definition that a child is someone below the age of 18.<sup>3</sup> Therefore, child marriage is a marriage entered into by someone below 18 years old. In principal, the practice of child marriage violates child rights as it deprives them of their rights to education, health, and their right to be protected from violence, among others.

To ensure child protection in Indonesia, the state has ratified several child-related international conventions<sup>4</sup> and government regulations in lieu of law.<sup>5</sup> However, the Marriage Law is inconsistent with the Indonesian Child Protection Law (2002), which states that a child is someone below the age of 18.

Nationally, child marriage prevalence in Indonesia remains high with 25 per cent of ever-married women aged 20-24 married before age 18, according to data

from the National Socio-economic Survey (Susenas) 2008-2015.<sup>6,7</sup> Child marriage prevalence data in Indonesia is available at the provincial level, with West Sulawesi, where Mamuju is located, ranked highest at 34 per cent in 2015.<sup>8</sup> The provinces in which Tuban and Bogor are located, East Java and West Java respectively, have a child marriage prevalence of 24.5 per cent and 25.9 per cent in 2015.<sup>9</sup> Additionally, West Sulawesi has the highest average prevalence of child marriage under 15, averaging 5.5 per cent during 2008-2012.<sup>10</sup>

### The Indonesian Marriage Law

The Marriage Law in Indonesia permits females at age 16 and males at age 19 to marry with the permission of their parents, as expressed in article 7 (1), "A marriage is only allowed when the male marriage candidate has reached the age of 19 (nineteen) years and the female marriage candidate the age of 16 (sixteen) years."<sup>11</sup>

## Marriage Dispensation

Marriage dispensation is a mechanism to legally enable couples who are under the minimum marriage age, as stipulated by Marriage Law article 7 (2), to marry. The article states, “In deviation from the provision in paragraph (1) of this article, dispensation may be petitioned to the Court or other authority<sup>12</sup> designated by the parents of both the male and female marriage candidate.”

A dispensation request is to be submitted to the Religious Court (for Muslims) or District Court (for non-Muslims) by parents of the dispensation subject. The request is decided by the Court, and the result of marriage dispensation is a ruling in favor or against the request. The process is detailed in Figure 1.

Marriage dispensation is also regulated in other countries, such as the Republic of Congo, Dominican Republic, France, South Africa, and Benin. Many countries, such as Indonesia, follow judiciary consent (the dispensation approved by the Court), but in some others, the President or Ministry of Justice holds the authority to give consent.

## Legal Ambiguities around Marriage Dispensation

The procedure for granting marriage dispensation requests in Indonesia is not completely clear in many aspects, making it open for multiple interpretations and loopholes.

- The phrase ‘other authority’ stated in Marriage Law article 7 (2) is ambiguous as it has never been clearly defined, and therefore it leaves room for free interpretation as to *which* authority can approve the dispensation.
- Government Ordinance No. 9 1975 on the Implementation of Law No. 1 1974 and other national-level regulations<sup>13</sup> were expected to provide further provisions on marriage dispensation. However, these regulations do not specifically address marriage dispensation. The Government Ordinance solely states that marriage registration officials are obliged to verify whether a request has been approved by the Court; while other procedures and requirements related to the process of marriage dispensation request, such as tolerable minimum age and required documentation, are not provided.

- The Marriage Law does not set clear parameters and criteria for which marriage dispensation requests can be accepted.

## THE PROCESS OF MARRIAGE DISPENSATION REQUESTS IN INDONESIA

The process of submitting a marriage dispensation request to the Religious Court in Indonesia is depicted in Figure 1.

Before going to the Office of Religious Affairs (KUA), every dispensation subject needs to take a stamped cover letter from the head of the neighborhood cluster (*ketua RT*) to the village office (*desa/kelurahan*), where they obtain three additional forms (N1, N2, N4). These forms are brought to the KUA along with other required documents, including ID card, birth certificate, and family card.

When the KUA official verifies the documents and finds that the age does not meet the minimum age of marriage stipulated by the Marriage Law, the marriage request will be rejected. The KUA will prepare a statement letter rejecting the request as demonstrated by the N8 form to be submitted to the Religious Court.

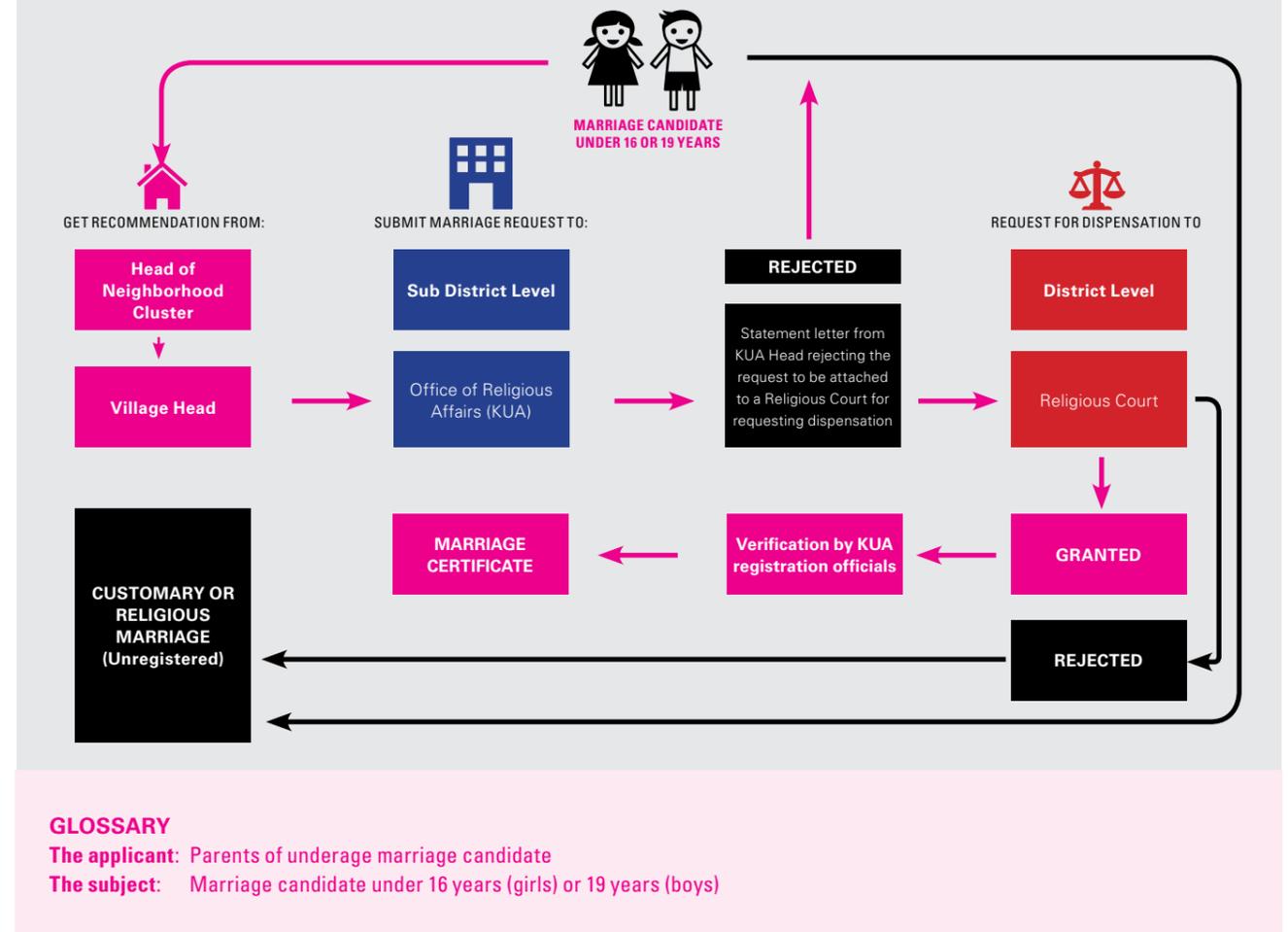
As stated in the Marriage Law, parents are the only party eligible to request marriage dispensation (‘the applicant’), and submit the N8 form, and the marriage candidate is referred to as the ‘subject of dispensation’.

Legal documents required for the process are as follows:<sup>14</sup>

1. Copy of parents’ marriage certificate
2. Copy of parents’ ID cards
3. Copy of dispensation subject’s birth certificate and latest diploma (if applicable)
4. Copy of family card
5. Statement letter from KUA Head rejecting the request

The process of marriage dispensation takes between 11-15 working days, from the time a request is submitted until a ruling is issued. This includes a one-time court session for hearing and document verification.

Figure 1: The process of a marriage dispensation request through the Religious Court



## ROLES AND RESPONSIBILITIES OF OFFICE OF RELIGIOUS AFFAIRS (KUA) AND OFFICE OF CIVIL REGISTRATION, RELIGIOUS COURT AND DISTRICT COURT

The Office of Religious Affairs (KUA), under the Ministry of Religious Affairs’ mandate, is located at the sub-district level, while the Office of Civil Registration is located at the district level, under the Ministry of Home Affairs’ mandate. KUA specifically provides marriage registration services for Muslims, while the Office of Civil Registration provides marriage registration services for adherents of other religions. Additionally, the Office of Civil Registration’s services are not limited to marriage registration, but include other services such as birth and death registration regardless of faith. However, in the case of marriage registration, Muslims are required to only utilize KUA.

KUA data is not shared with the Office of Civil Registration, and vice versa. Therefore, marriage registration data from KUA and the Office of Civil Registration are not integrated and no accumulated figure is available.

At the district level, the Religious Court administers civil cases, such as inheritance disputes, marriages and divorces, and adoptions for Muslims.<sup>15</sup> On the other hand, the District Court administers both civil and criminal cases, and is accessible for anyone.<sup>16</sup>

## RESEARCH SUMMARY AND MAIN FINDINGS

The report, *Revealing the Truth of Marriage Dispensation*, investigates the practice of marriage dispensation in three districts in Indonesia; Tuban (East Java), Bogor (West Java), and Mamuju (West Sulawesi). It collected all registered marriage dispensation requests throughout 2013-2015 in district-level Religious Courts as well as analyzed the practice of unregistered marriage. The report delivers five main findings:

### 1. The majority of marriage dispensation cases are approved by the Religious Court

The research identified a total of 377 rulings on marriage dispensation were issued by Religious Courts during 2013-2015 in Tuban, Bogor, and Mamuju; while none were recorded in District Courts in Bogor and Mamuju since 2013, and none in Tuban since 2011.<sup>17</sup>

Below is the breakdown of marriage dispensation rulings per area:

**Table 1: Total marriage dispensation rulings by district, 2013-2015**

RELIGIOUS COURT	TOTAL
Tuban district	333
Mamuju district	25
Bogor district	19
<b>Total</b>	<b>377</b>

Below is the detail of rulings issued by the Religious Courts:

**Table 2: Total marriage dispensation by type of ruling, 2013-2015**

STATUS	TOTAL
Approved	366
Not approved	4
Cancelled	6
Rejected	1
<b>Total</b>	<b>377</b>

The requests for dispensation in Tuban district are significantly higher than other areas, but it might not necessarily reflect that the prevalence of child marriage practice in Tuban is higher. This may be because unregistered (customary and religious) marriages<sup>18</sup> are more common in the other districts as they are performed without going through the Courts.

Of all requests reviewed for the purposes of this study, **97.3 per cent were granted**, indicating that the Religious Court is likely to grant the majority of marriage dispensation requests, regardless of the reasons, which will be discussed later in this brief.

Among the very small percentage of requests which were not approved and cancelled (2.66 per cent), most could not be processed for procedural reasons such as the applicant and the subject not appearing for the court session. Only one case was rejected by the Court with the justification of child rights violation.<sup>19</sup>

### 2. More than half of female dispensation subjects are aged 14-15 years while the majority of male dispensation subjects are aged 17-18 years

From the findings, it is noted that 55 per cent of dispensation subjects were girls, 67.7 per cent of whom were aged 14-15 years. The research also found one female dispensation subject to be as young as 12 years. For boys, 75 per cent of dispensation subjects were aged 17-18 years.

The tables below show age brackets for both male and female dispensation subjects.

**Table 3: Age range of female dispensation subjects**

AGE	FEMALE DISPENSATION SUBJECT
10-13 years	5.2%
14-15 years	67.7%
>15 years	26.4%
Unknown	0.7%

**Table 4: Age range of male dispensation subjects**

AGE	MALE DISPENSATION SUBJECT
15-16 years	25%
17-18 years	75%

### 3. Female dispensation subjects are most likely to be unemployed while male dispensation subjects are more likely to be laborers

Most dispensation subjects are secondary school-aged, between 13 and 18 years. However, only two per cent are identified as being enrolled in school (0.9 per cent for girls and 1.2 per cent for boys), while most are employed. This may suggest cases where children are dropping out of school to earn an income needed to provide for a family.

**Table 5: Occupation of female dispensation subjects**

OCCUPATION	FEMALE DISPENSATION SUBJECT
Unemployed	44%
Farmer	37%
Domestic servant	2.4%
Student	0.9%
Unknown	10.5%
Others	5.2%

**Table 6: Occupation of male dispensation subjects**

OCCUPATION	MALE DISPENSATION SUBJECT
Laborer	57%
Farmer	19.8%
Vendor	6%
Student	1.2%
Others	16%

According to the above table, around 44 per cent of female dispensation subjects are unemployed, which suggests they have limited economic power. While most male dispensation subjects are already employed, 37.9 per cent have a fairly low income, with 1.1 million rupiah or less per month, even though Bogor district's minimum wage (UMK) is Rp 2,590,000 per month in 2015.<sup>20 21</sup>

#### 4. Many child marriage cases remain unregistered

It is difficult to know how many cases of customary child marriage have taken place, as the data is not recorded. Furthermore, it is easy to formalize the marriage (*isbat*) once the couple is of legal age, yet age of customary or religious marriage is not recorded during the formalization process. Therefore, while it is noted that during 2013-2015, there were 'only' 377 marriage dispensation rulings issued by the Religious Courts in aforementioned research areas, it is likely that many more customary or religious marriages took place given the high prevalence of child marriage in the research areas.<sup>22</sup>

Details of marriage dispensation requests can be found in Table 7.

**Table 7: Total registered marriage dispensation requests in 3 Religious Courts by year, 2013-2015**

	2013	2014	2015	TOTAL
Tuban	163	193	177	533
Bogor	8	12	11	31
Mamuju	0	9	16	25

The number of registered requests at the three Religious Courts vary from the number of rulings due to double requests in some cases. If both female and male subjects are under 16 and 19 years, both need to submit a request separately. The subsequent ruling issued by the Court applies to both male and female subject combined.

However, field research found that child marriage at the community level is prevalent. In Bogor, for instance, religious or customary marriage is common among community members because of the inability to pay for marriage dispensation costs to the Court,<sup>23 24</sup> transportation, and to obtain necessary documentation, as many live in poverty. Moreover, marriage dispensation procedures are considered complicated, and religious or customary marriage is chosen as a 'shortcut' to avoid the hassle; marrying in front of a local religious leader becomes the easier choice. Because these marriages remain unregistered, they can occur at any age.

#### 5. The process of marriage dispensation lacks rigorous verification

From the analysis of rulings in the three Religious Courts, one of the gaps is related to the status of the marriage dispensation applicant. In the law, it is stated that only parents have the right to request for marriage dispensation. However, research found that in practice, applicants who are not parents also request for marriage dispensation without further verification from the Court. Parents are the predominant applicants (96 per cent), but uncles (0.5 per cent), siblings (0.2 per cent), cousins (0.2 per cent), grandfathers (0.7 per cent), and others (1.7 per cent) are also able to request for marriage dispensation.

The Marriage Law does not state that guardians are able to request for marriage dispensation. However, in practice, guardians (extended family members) are able to request for it without having proof of legal guardianship. Rather, the process is based on testimonies from the applicants and witnesses, thus it is not clear whether these individuals are the official guardians of the marriage dispensation subject.

Secondly, required documents such as the parents' marriage certificate, ID cards, and family card are often not presented in the verification process during the court session. Ninety-one per cent of rulings studied do not indicate the applicant presented required documents such as those mentioned above.

Thirdly, only about 46 per cent of the dispensation subjects presented their birth certificates during the verification process. As age is a crucial factor in applying for marriage dispensation, it is disconcerting that the judges are able to grant the exemption without having proof of age. Additionally, document falsification that masks the actual age of a subject is another concern.

*“The age of 21 years is the minimum limit of marriage without parental consent, and without it, KUA officials should reject any marriage requests under 21 years. However, it is not uncommon to mask the marriage candidate's actual age by issuing a fake ID card, which complicates the situation.”*

*- Adib Macbrus, Head of Sub-directorate Sakinah Family Empowerment, Ministry of Religious Affairs*

Despite the high rate of unverified legal documents, the approval of dispensation request is 97.3 per cent in the three districts.

## TWO-LEVEL CHALLENGES

One of the core gaps regarding marriage dispensation is the lack of comprehensive guidelines to regulate the issuance of approvals. Additionally, district-level governments in Tuban, Mamuju, and Bogor do not have additional regulations, such as a District Regulation (Perda), that respond directly to child marriage practices, including marriage dispensation. Moreover, the Marriage Law itself does not specify clear requirements and procedures.<sup>25</sup>

The research identified marriage dispensation challenges at two levels:

#### a. Procedural law

1. The process of marriage dispensation in the Religious Court is carried out within a very short time period, between 11-15 working days; some are carried out between 5-10 days. The court session itself is conducted only once, and the remaining days are spent by the applicants waiting for the court session and ruling issuance. Therefore, there is not adequate time to carry out a thorough investigation of the request.
2. Marriage Law article 7 (2) states that marriage dispensation should be requested by parents. Nevertheless, there are some cases in which the request is submitted by other parties, which in the cases studied did not prevent them from being processed.
3. Legal standing between the applicant and the dispensation subject is not clearly verified, due to the absence of legal documents (family card, ID card, birth certificate, and parents' marriage certificate) during the verification process.
4. The judge's role in giving advice to parents to consider their child's best interest is likely not performed even though they have a key responsibility to prevent child rights' violations. Only four cases were reported as cancelled (1.06 per cent from all rulings) because the parents followed judges' advice to reconsider their request; whilst 86 per cent of rulings do not present any data on whether judges gave advice prior to the court session.
5. In some cases, the age gap between the subject and their partner is significant. For male subjects, the age gap with female partners is around 0-2 years (for example, a male subject of 17 and a female partner of 19); however, for female subjects, the age gap with male partners could be as high as 15 years (for example, a female subject of 15 and a male partner of 30).

## b. Requesting and Ruling

1. From cases studied, there are four main reasons why parents request marriage dispensation:
  - The dispensation subject has already been in a relationship/engaged (98 per cent);
  - S/he has reached 'maturity', *aqil baligh* (91 per cent);
  - S/he is ready to 'settle down' (91 per cent); and
  - S/he is already employed (89 per cent).

Parents usually present more than one reason for requesting marriage dispensation, and these reasons are recurrently mentioned in almost all rulings.

The reasons indicated above are those listed by the parents. **Significantly, the research was not able to identify the wishes of the dispensation subjects or whether they had been consulted in the decision-making process.**

Only four per cent, or 14 out of 377 cases indicate pregnancy out of wedlock as a reason for requesting dispensation. However, reasons such as pregnancy and employment were claimed without the existence of evidence (medical record or salary slip) but merely based on testimony.

2. Based on the rulings reviewed in the research, there are three main considerations given by judges in issuing a ruling in favor of dispensation. The first consideration is related to the *fiqiyah* principle, which stipulates that approving the exemption is to prevent *mudarat* (damage) (92 per cent).<sup>26</sup> Second, the existence of an intimate relationship between the subject and his/her partner (96 per cent). Third, parents' "anxiety" (presumably over their child's risky behaviour) (89 per cent).

Even though the considerations are slightly different, all indicate similar concerns; dispensation is seen as a legitimate way to prevent behaviors perceived to be socially and religiously unacceptable.

3. The Court appears very 'flexible' in approving marriage dispensation requests as in many cases the proper verification process or regulations are not followed, as indicated earlier.

Another important aspect is the lack of the child's testimony as the dispensation subject. In the CRC, it is stated that a "child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child".<sup>27</sup> In most cases, it would appear that the subject's testimony is not given independently or privately during the court session; and it is difficult to determine whether the subject's testimony was expressed freely, without pressure, if at all. Instead, the case is generally based on a third party's testimony (usually the parents/applicants).

## CONCLUSION

The report, *Revealing the Truth of Marriage Dispensation: An Analysis of Child Marriage Practice in Tuban, Bogor, and Mamuju Districts*, highlights that the implementation of marriage dispensation is fraught with challenges and in its current state is incompatible with international and national child rights frameworks.

The Indonesian Marriage Law should be amended and harmonized with the CRC and Indonesian Child Protection Law to ensure the law is in line with national and international child rights principles. The minimum age of marriage for girls should be increased to 18 and the practice of marriage dispensation should be eliminated. Policy reforms to promote child rights are necessary in order to protect Indonesian children from legalized child marriage practices, such as marriage dispensation.

- 1 Coalition to End Child Marriage or 18+ Coalition is a movement initiated by individuals, groups, and organizations to end child marriage in Indonesia. Current members of the coalition include End Child Prostitution, Child Pornography & Trafficking Of Children For Sexual Purposes (ECPAT Indonesia), Institute for Criminal Justice Reform (ICJR), Koalisi Perempuan Indonesia (KPI), Magenta, Semarak Cerlang Nusa (SCN), and Yayasan Pemantau Hak Anak (YPHA)
- 2 In the Indonesian legal system, marriage dispensation can be requested to either the District Court or Religious Court. The Religious Court is only accessible for Muslims, while the adherents of other religions are directed to the District Court. This study only focuses on marriage dispensation requests and rulings in the Religious Courts in three districts due to no reported case from the District Courts since 2013.
- 3 The Convention on the Rights of the Child article 1.
- 4 The Convention on the Rights of the Child, ratified into Presidential Decree No. 36 Year 1990; The Convention of the Elimination of All Forms of Discrimination against Women (CEDAW), ratified into Law No. 7 Year 1984; International Convention on Civil and Political Rights (ICCPR), ratified into Law No. 12 Year 2005; and International Convention on Economic Social and Cultural Rights (ICESCR), ratified into Law No. 11 Year 2005.
- 5 The 1945 Constitution of the Republic of Indonesia (UUD 1945) article 28B; Law No. 23 Year 2002 on Child Protection; and Law No. 39 Year 1999 on Human Rights.
- 6 Statistics Indonesia (BPS) and UNICEF, 2016, *Child Marriage in 2013 and 2015*. Jakarta: Indonesia, p. 7 (Susenas 2013 and 2015).
- 7 BPS and UNICEF, 2016, *Progress on Pause: An Analysis of Child Marriage Data in Indonesia*, Jakarta: Indonesia (Susenas 2008-2012).
- 8 BPS and UNICEF, *Child Marriage in 2013 and 2015*, p. 55.
- 9 Ibid.
- 10 BPS and UNICEF, *Progress on Pause*, p. 27.
- 11 For the brief's purpose, 'marriage candidate' is referred to as 'dispensation subject'.
- 12 Despite the unclear definition of who the 'other authority' is, this study did not find any 'other authority' involved during the process of marriage dispensation besides judges.
- 13 Supreme Court Decree No. 026/KMA/SK/II/2012; Minister of Religious Affairs Decree No. 3 Year 1975; Minister of Religious Affairs Decree No. 11 Year 2007 on Marriage Registration; Guideline on the Implementation of Responsibilities and Administration in Religious Court, Book II, Revised 2010.
- 14 These documents are requirements to requests marriage dispensation, and will be verified during the court session. The requirements vary across Religious Courts, but commonly these documents are ones that are needed.
- 15 The roles and functions of the Religious Court are stipulated under Law No. 7 Year 1989 jo. Law No. 3 Year 2006.
- 16 The roles and functions of the District Court are stipulated under Law No. 2 Year 1986 jo. Law No. 8 Year 2004.
- 17 See Statement Letter on the absence of dispensation request at Bogor District Court (Number W11.U20, UM.08.01-919), Tuban District Court (Number W.14.U.29/03/Pdt.03.01/II/2016), and Mamuju District Court (Number W.22.U12.273./HK/II/2016).
- 18 See proceedings of FGD and interviews in Bogor with Yanti Gunayanti (Head of Child Protection and Welfare BPPKB Bogor district), Wayan Sri H (Department of Health Bogor district), and Sahrudin (Head of Judge, Religious Court Cibinong).
- 19 The case was found in Tuban Religious Court, East Java in January 2015. The subject of dispensation was a 12 year-old girl when her parents requested for marriage dispensation to the Religious Court. The parents were afraid of the intimacy between their daughter and her boyfriend since they were already engaged for one month. The judges decided to reject the request because she was particularly young, and her parents still need to fulfill her rights as a child, by referring to 2002 Child Protection Law. See ruling number 0031/Pdt.P/2015/PA.Tbn.
- 20 See West Java Governor's Decree No. 560/Kep.1581-Bangsos about UMK in West Java, Year 2015.
- 21 Indonesia's poverty line per March 2015 was Rp 342,541 in urban areas and was Rp 317,881 in rural areas, Calculation and Analysis of Macro Poverty in Indonesia 2015, p. 27, 2015, Jakarta: BPS.
- 22 Bogor district has a fairly low marriage dispensation number of only 31 cases from 2013-2015, despite being the most populous district in Indonesia, with under 19 child marriage prevalence more than 20 per cent in nine out of forty sub-districts. Similarly, in Mamuju during 2014-2015, there were 25 registered marriage dispensation requests found in Religious Court, while under 19 child marriage prevalence is more than 20 per cent in seven out of thirteen sub-districts. In Tuban, there were 533 marriage dispensation requests recorded at the Religious Court, while 10 out of 20 districts in Tuban have more than 20 per cent of under 19 child marriage prevalence, 2010 Census, Statistics Indonesia. The 2010 Census used age group between 10-19 years to identify child marriage prevalence.
- 23 Bogor district has 499,100 poor individuals or equal to 8.83 per cent from total population, the highest in West Java (Statistics Indonesia, West Java Office, 2013).
- 24 The cost for requesting marriage dispensation at the Religious Court varies, depending on the distance from the applicant's home to the Court. If the applicant lives within range I, the cost would be Rp 391,000, range II Rp 491,000, range III Rp 541,000, and range IV Rp 591,000. See Statement Letter of the Head of Judge of Cibinong Religious Court No. W10-A20/0018/Hk.05/I/2016.
- 25 Interview with Arif Handoyo, Head of Legal Bureau, Tuban.
- 26 Fiqiyah principle refers to fiqh or Islamic jurisprudence.
- 27 Convention on the Right of the Child article 12.

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