

# HUMAN RIGHTS VALUES VERSUS LOCAL NORMS: JUDGES' CONSIDERATION OF MARRIAGE DISPENSATION AT THE CENTRAL JAVA RELIGIOUS COURT, INDONESIA

*VALORES DOS DIREITOS HUMANOS VERSUS NORMAS LOCAIS: CONSIDERAÇÕES DOS JUÍZES SOBRE A DISPENSA DO CASAMENTO NO TRIBUNAL RELIGIOSO DE JAVA CENTRAL, INDONÉSIA*

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## Abstract

This article aims to examine judges' considerations on marriage dispensation cases, whether using human rights values and norms or local norms. The article discusses challenges posed to implementing human rights values and norms, including child rights in such instances, especially in the Central Java Religious Court. Supporting data consists mostly of court decisions and interviews with judges at three Islamic courts in Central Java. The research reveals that most of the judges' legal considerations in granting marriage dispensation apply the foundation of the local norms (Adat/customary law), Islamic Law, and national legislation related to marriage, but lacks reference to human rights norms.

**Keywords:** Marriage dispensation, legal reasoning, human rights values

## Resumo

Este artigo tem como objetivo examinar as considerações dos juízes em casos de dispensa de casamento, analisando se utilizam valores e normas de direitos humanos ou normas locais. O artigo discute os desafios enfrentados na implementação de valores e normas de direitos humanos, incluindo os direitos da criança, nesses casos, especialmente no Tribunal Religioso de Java Central. Os dados de apoio consistem principalmente em decisões judiciais e entrevistas com juízes de três tribunais islâmicos em Java Central. A pesquisa revela que a maioria das considerações ju-

rídicas dos juízes ao conceder dispensa de casamento se baseia nas normas locais (Adat/direito consuetudinário), na lei islâmica e na legislação nacional relacionada ao casamento, mas carece de referência às normas de direitos humanos.

**Palavras-chave:** Dispensa de casamento, raciocínio jurídico, valores de direitos humanos

## 1. Introduction

This article examines the disparity between social practices and established human rights standards and principles in Indonesia, particularly regarding legal reasoning governing the granting of marriage dispensation whereby persons otherwise deemed under the minimum marital age may be granted permission to marry. Largely in response to the nation's ratification of a number of international human rights conventions, including the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and also in an attempt to reduce child marriage, the Indonesian government adjusted the minimum age for marriage for females.

United Nations Children's Fund/UNICEF (2023) defines child marriage as any formal marriage or informal union involving a child under 18 and an adult or another child. Hence when the Indonesian Marriage Act of 2019 defined the minimum acceptable marital age as 19, it varied from the general definition of the age at which adulthood is generally attained (that is, 18 years of age) under the Convention on the Rights of the Child. The continued requirement for parental permission reveals the continuing strong role of the family in such decision-making (UNICEF, 2019). The possibility of a legal exemption permitting child marriage also remains. Under Article 7, par. 2 of the Indonesian Marriage Act of 2019, persons under 19 seeking to marry must (together with their parents and/or guardians) first obtain approval by successfully applying for a marriage dispensation to the appropriate court. This means that effectively there is no absolute minimum age for marriage; rather, it remains in the hands of the judiciary (Sumner, 2022), although some guidance has been issued (see further below) (Rismana et al., 2024). Parents almost inevitably play a role in such matters. Under the Marriage Act, unmarried children under 18 are considered to remain in the 'custody' of their parents with the parents able to represent the child's legal rights in legal actions. Muslim (or nominally Muslim) couples must apply to a Religious Court for a dispensation; non-Muslims (Protestant, Buddhist, Catholic, Confucian, or nominally so for marriage) apply to a secular court. Muslim applicants are the subject of this article.

Some scholars argue that the lack of implementation of human rights values worldwide may stem from non-state actors, such as families and religious communities, which impacts the state's commitment to upholding human rights values (Cassel 2001; Anagnostou & Mungiu-Pippidi, 2014; LeBlanc et al., 2010; Heyns & Viljoen, 2001). Indonesia exemplifies this dilemma: Despite the state's ratification of international human rights conventions and apparent efforts to implement their

standards, a substantial gap remains, with a high occurrence of girls marrying before the age of 18. Data spanning from 2013 to 2023 indicates that the highest incidence of child marriages was in 2013, with figures then fluctuating between 2014 and 2019, and subsequently declining from 2019 to 2023. The cumulative impact of underage marriage with its recognized adverse effects is high. Early in the second decade of the 21<sup>st</sup> century in Indonesia, an estimated 11 million men and 38 million women (Cameron et al., 2021) had been married before the age of 19 (5 million men and 20 million women before the age of 18) (Cameron et al., 2023).

In 2023, the provinces with the most marriage dispensations were West Java (317,715) East Java (285,189) and Central Java (256,144) (Annur, 2024). Central Java, the geographical focus of this study, is classified as a low-income province. Its economic status impacts access to ongoing education, contributing to the prevalence of child marriage and the pursuit of marriage dispensation. However, factors such as familial poverty, sexual relations outside marriage, resulting pregnancy, local customs, lack of sex education, and the pervasive use of technology have also contributed to the increase in applications for a marriage dispensation. Underage marriage has been linked with poverty (both of families of origin and the family being formed) and lower educational outcomes (pre-existing as well as pregnancy-forced discontinuation with early cessation of education involving both parties though males less so, but with resulting lasting income and occupation trajectory impacts. There is also an increased risk of poor maternal and neonate outcomes (higher rates of perinatal complications and elevated death rates for both mother and child) and a higher incidence of intimate partner violence for child brides than for those women who wed as adults, and higher divorce rates. Such risks of impacts further increase if both parties are children (Cameron et al., 2021). Hence underage marriage in such a situation is not seen as a desirable goal but rather as possible way to deal with difficult circumstances, perhaps ‘the lesser of two evils’ where the alternative may be a substantial increase in the number of young unwed mothers (and their children) who would bear the brunt of societal disapproval and a lack of monetary, social and emotional support. Familial financial stress can also result in early marriage, particularly for daughters, while familial and cultural expectations for early marriage also encourages child marriage (Cameron et al., 2023).

Most studies on dispensation marriage focus on the religious or Islamic perspective (Efrinaldi et al., 2023; Sriono et al., 2023; Zulaiha & Mutaqin, 2021; Mesraini et al., 2020), the ‘best interest of the child’ perspective (Chusnida & Anggrawan, 2022; Horii, 2020), and the need for ‘sufficient evidence’ (Mansari et al., 2020) and ‘urgent reason’ (Hadiati & Brilianci, 2023). The study focuses on the paradox

of child protection in marriage dispensation after the issue of Indonesian Supreme Court Regulation Number 5 of 2019 (Perma 5/2019), where the ultimate outcome is child marriage, a result frequently (especially internationally) regarded as ‘undesirable’ and contrary to the intent of child protection. The article will investigate this paradox by analyzing the interaction between local norms and human rights values. Formerly there was little or no reference to a human rights perspective in the adjudications. Ensuring legitimacy (and support of the prospective bride and child) through marriage in the event of pregnancy and the prevention of illicit sexual relations appear to have been the usual considerations, with little or no reference to ‘human rights’ as such. Therefore, this study examines the vernacularization of human rights values and regional norms on judges' marriage dispensation decisions.

Indonesian Perma 5/2019 provides clear guidelines for judges handling marriage dispensation cases, including child marriage. According to Article 1 (5) of Perma 5/2019, ‘marriage dispensation’ is defined as granting permission for individuals under the age of 19 to marry. When adjudicating these cases, judges are required to adhere to principles such as ‘the best interests of the child’, the right to life and development, respect for children's opinions, human dignity, non-discrimination, gender equality, and legal justice, as outlined in Article 2 of Perma 5/2019.

These principles remind all child protection providers that decisions regarding the child’s future are not determined by or based/centered on the interests of adults (the economic well-being of other family members, for example). Therefore, it is necessary to know to what extent the principle of the child's best interests is fulfilled in the implementation of applications for dispensation in the religious courts, as Article 17 of Perma 5/2019 states that judges must consider: The protection and best interests of the child in the regulations, legislation and unwritten laws in the form of legal values, local wisdom, and a sense of justice that lives in society; and international conventions related to child protection. These norms are adopted or appropriated by other individuals and communities in a process often described in terms of ‘diffusion’ or ‘travel’. They are embedded in social relationships, identities, and subjectivities and are transformed by the social context into which they move. The way they are enacted depends on the set of social relationships, ideologies, and power structures enveloping them. When normative ideas or practices move from one social context to another, they are inevitably translated, redefined, and adapted to new circumstances—this process is called ‘vernacularization’(Munro, 2008; Boyle, 2007).

This article employs a ‘vernacularization’ framework to comprehend any gap. Regarding language, ‘vernacular’ refers to its communicative and combative power

arising from nativeness and familiarity (Pardy, 2013). It represents a mode of speech that requires no explanation being commonly understood by the native populations. In political and international global norms, ‘vernacularization’ involves reinterpreting human rights ideas or norms through local appropriation and adaptation to local understandings and conditions without altering their fundamental meanings (Munro, 2008). Global norms may resonate with the intricate social and political world people inhabit and be integrated into pre-existing institutional arrangements, either in their entirety or selectively according to the degree of dissonance between the global and local norms, and the extent to which a country or community is prepared to embrace them.

Mihr (2022) describes glocal (global-local) governance as a multi-level decision-making process in which different actors and stakeholders in the private or public sectors make joint decisions, divide responsibilities, and enforce decisions locally, embodying global universal principles, norms, and legislation. These processes and actions enable a transparent participatory approach to solving and addressing local issues. In essence, this is a means for bridging the gap between the lofty aspirations of human rights norms and the social reality in each local context (Pardy, 2013). Human rights norms are often established on an international level by a ‘norm-setting’ institution (such as the United Nations) with varying degrees of agreement among member nations. Signatories may work towards full acceptance of the concepts over time, incorporating them into their domestic legislation and reduce or maintain any reservations.

The focus on the vernacularization of human rights, by emphasizing local ideas of rights and justice, is both motivated by and leads to the recognition of local actors' agency. Merry argues that vernacularization provides a conceptual framework for reconciling the tensions between different justice traditions at any level and among different actors (Boyle, 2007; Goodale, 2024). It is only through this vernacularization process that legal norms become meaningful to local populations and operate effectively in practice, leading to the successful implementation of human rights law.

In this research, the vernacularization frame examines how judges in Indonesia consider and make decisions based on international human values that have been incorporated into national legislation. These values include those expressed in the Convention on the Rights of the Child (ratified by Indonesia through Presidential Decree No. 36 of 1990 (Keppres 36/1990) and in national Child Protection Act No. 23 of 2002, amended in 2014. In the context of marriage dispensations, judges may also consider *fiqh* (scholarly interpretation and elaboration of *Sharia*) and so-

cial/local norms as discretionary factors (as national legislation permits) to protect children and their yet-to-be-born offspring from social stigma and other ramifications that it is feared will occur in the absence of a dispensation. Tension among these norms and values influences the role of international human rights law in domestic legal systems. Outcomes and considerations may not fully align with the views on child protection of those bodies who framed the international human rights conventions. Examination of decisions over time reveals that reasoning, interpretation and decisions on cases with similar circumstances may differ. Decisions may reflect changing mores, whether this is to seek to more strictly enforce particular cultural or religious values or permit broader interpretations. In terms of the issuance of marriage dispensations, judges have decided that legally permitting child marriage can protect children from negative social and legal consequences, illustrating the complex interplay between international human rights norms and local concepts of justice.

The research question of this study is why a gap exists between social practice and prescribed human rights norms and values in marriage dispensation (whereby persons under the minimum legal marital age can marry)? This study discusses challenges posed to implementing child rights in such instances, especially in Central Java Religious Court. Indonesia. Therefore, the aims of this study to describe judicial considerations highlighting the pluralistic nature of the Indonesian legal system, which incorporates international law, Indonesian legislation, *Sharia* (Islamic Law), and *Adat* (traditional/cultural law). The research question and the objective of the study will be examined in the result and discussion section through the court decisions and the legal reasoning. Ultimately, the conclusion and policy implication of this study will be based on the data and analysis presented.

## 2. Methodology

The study was conducted through documentary research in 2023–2024 at three courts in Central Java. Central Java was selected because it is among the four provinces with the nation's highest marriage dispensation rates (the others being East Java, West Java, and South Sulawesi) (Mufarida, 2023). A qualitative study approach was chosen by collecting and analyzing ten court decisions on marriage dispensation from the Semarang, Demak, and Ambarawa religious courts. Qualitative approaches are generally concerned with exploring, understanding, and describing the personal and social experiences of a small number of participants' own frames of reference or views of the world rather than trying to test a preconceived hypoth-

esis on a large sample (Weingard, 1993). The ten court decisions were chosen and delivered by the courts to the researcher based on the marriage dispensation applications, some of which had been granted and been rejected. To obtain judges' understanding about human rights norms and make decisions on marriage dispensation, the researcher selected semi-structured questionnaires as the tool. Hereafter, the research question will be answered.

### **3. Result and Discussion**

#### **3.1. Reason for Application for Marriage Dispensation**

The demographic data regarding marriage dispensation applicants indicates that most potential brides were under 18 years of age, with education up to junior high school, and were unemployed at the time of their marriage dispensation application. This data confirms that despite the change in the putative legal age for marriage in Indonesia, the practice of child marriage persists. Table 1 below presents the reasons judges in three Central Java religious courts supplied for granting or refusing applications.

Table 1: Legal Pluralism in Judges' Legal Reasoning

Court case number	Legal reasoning			
	Local norms	Fiqh and KHI	National marriage law	Human rights norms in legislation
<b>GRANTED BECAUSE OF PREGNANCY</b>				
297/Pdt.P/ 2023/PA.Smg	v	v	v	v
440/Pdt.P/ 2023/PA.Smg	v	v	v	v
441/Pdt.P/ 2023/PA.Smg	v	v	v	-
217/Pdt.P/ 2023/PA.Amb	v	v	v	-
254/Pdt.P/ 2023/PA.Amb	v	v	v	-
49/Pdt.P/ 2024/PA.Dmk	v	v	v	-
<b>NOT PREGNANT BUT GRANTED</b>				
312/Pdt.P/ 2023/PA.Amb	v	v	v	v
51/Pdt.P/ 2024/PA.Dmk	v	v	v	-
<b>REJECTED BECAUSE PROSPECTIVE WIFE IS IMMATURE</b>				
206/Pdt.P/ 2023/PA.Dmk	v	v	v	-
312/Pdt.P/ 2023/PA.Dmk	v	v	v	-

*Note:* The final column refers to the Child Protection Acts of 2002 and 2014 and Kepres 36/1990. Source: Semarang Religious Court, Ambarawa Religious Court and Demak Religious Court, 2023–2024.

The table above demonstrates that judge decision-making on the base of existing various legal systems in Indonesia is known as legal pluralism, where ‘two or more legal systems coexist in the same social field,’ which is common in legal systems worldwide. In Indonesia, legal pluralism is based on *Adat*/customary law, *Sharia*/Islamic Law, Dutch (colonialist residual) law, and state law. For this study, various legal resources are used together, such as state law/national legislation on marriage issues (governed by the Marriage Act 1974 as amended in 2019, Perma 5/2019), and international human rights values (on women and children affairs) adopted into Indonesian legislation (Child Protection Act 2002 and 2014, Ratification of CEDAW Act No. 7 of 1984, Presidential Decree No. 36 of 1990 on Ratification of CRC (*Keppres* 36/1990), local norms (*Adat*/customary law), and *Sharia*/Islamic law (as contained in the Compilation of Islamic Law) and *fiqh* (its

interpretation). The following table will show court decisions regarding the use of various provisions.

The Marriage Act of 1974, amended in 2019, is one of the national laws regarding marriage. Article 7(1) of Law No. 16 of 2019, which amends Law No. 1 of 1974, states that a man and a woman can marry if they are at least 19 years old. Article 7(2) states that if there is a deviation from the age requirement, the parents of both parties can request a marriage dispensation from the Court, supported by valid reasons and evidence. This provision allows for flexibility in cases where it is deemed urgent and beneficial to set aside the age requirement. Judges must, therefore, consider all reasons and potential impacts before granting a marriage dispensation.

An issue often highlighted is that, according to Islamic law a minimum marital age (in years) has never been established for a person neither male nor female; however, Qur'ān indicates that everyone who enters into marriage must be ready and able (Rohman, 2016; Hanafi, 2011). No verse in the Qur'ān explicitly mentions an age for marriage, and no *hadith* (reported saying or tradition approved of or instituted by the Prophet) directly mentions a qualifying age (Syarifuddin, 2011). In dealing with this issue, *Sharia* jurists agreed to stipulate that a person is held accountable for his/her actions and has the freedom to determine his/her life after reaching puberty or adulthood/*baligh* (Faizal and Qohar, 2021). In general, scholars link adulthood with a person having reached puberty, as evidenced by nocturnal emission (if male) or menstruation (if female). Where such signs are absent, then maturity is seen in terms of age which most scholars argue is 15 years (Aminudin, 2018). *Baligh* (adulthood/maturity/responsibility) refers to a person who has reached a certain age and can cope with all the affairs/problems they face by considering right and wrong.

This paradigm is understandable but not certain, given that many factors influence intellectual and emotional maturity in addition to physical maturity. Most of the judges in this research used this paradigm, and they also cited from the *Qur'ān* and *Hadith*.

A judge may emphasize several provisions of Islamic law, among them *Qur'ān* surah an-Nur verse 32, which reads: “And marry the unmarried among you and the righteous from among your male servants and your female servants” (Court Decision: 312/Pdt.P/2023/PA.Amb). A presiding single judge (see Court Decision: 297/Pdt.P/2023/PA.Smg and Court Decision 440/Pdt.P/2023/PA.Smg) may also quote in his consideration a hadith of the Prophet Muhammad enjoining marriage narrated by Bukhari Muslim, which reads, ‘O young people, if you can marry, then

marry’.

Where the judge on Court Decision: 440/Pdt.P/2023/PA.Smg thought that the prospective wife had found her “soul mate” and should be married immediately, the following hadith narrated by Bukhari was cited on:

From Ali bin Abu Tholib, verily Rasulullah SAW. Said: O Ali, three things cannot be postponed, namely: *Salah* [daily prayer] when the time has come, *Janazah* [funeral prayer] when the [the prepared body] is present for burial, and marriage when a daughter has found a mate who is *Kufu* [or comparable].

A further hadith of the Prophet Muhammad used as a basis for consideration in a judgment views marriage as a means of preventing lust and to be engaged in when financially able:

O young men, whoever among you can fulfill the shopping [economic] obligations of marriage, you should marry. Marriage can close the eyes and reduce lust, and whoever is unable to do so should fast because fasting is a shield for him (Court Decision: 254/Pdt.P/2023/PA.Amb.)

This consideration is based on the intent of the *qaidah* (legal maxim) of *fiqh*, which in this case the judge’s opinion draws upon that is, is taken as the judge’s opinion, rejecting *mafsadat* (damage) is more important than accruing benefits. The greater (higher) benefit must be prioritized if several benefits collide. Moreover, if several *mafsadah* (danger, damage) collide, the lightest *mafsadah* is chosen. (Kitab Taqrir alQawaid wa Tahrir al-Fawaid, 2/468. Syarah al-Qawaid as-Sadiyah p. 204, al-Qawaid al-Fiqhiyyah al-Kubra wa Ma Tafarraa Anha, p. 527(Court Decision: 51/Pdt.P/2024/PA.Dmk).

The term *Adat* refers to the authentic law of the Indonesian community and is often translated as ‘customary’ or ‘traditional’ law. *Adat* has been acknowledged in the Indonesian Constitution of 1945 and national legislation, including Act No. 39 of 1999 concerning Human Rights. Hurgronje (Marzali, 2013), an oriental expert from the Netherlands, coined the term ‘*Adatrecht*’ or ‘*Adat Laws*’ and distinguished *Adat* from that part of *Adat* that was recognized and/or in some way permitted to function by the state. These laws are rooted in sacred and religious norms and consist of social norms established and upheld by legal functionaries or authorized officials within a particular society. Despite being defined in regulations as ‘non-statutory’ (Priambodo, 2018) *Adat Law* governs legal relationships within the society and sanctions exist for violations. *Adat* and *Adat Law* intersect and/or overlap.

Under *Adat*, an individual is recognized as having rights and obligations within their community. Customary law governs the relationship between individuals and their communities as an indivisible unit, emphasizing the importance of

community interest over personal interest. Individuals are considered subjects serving the public/community interest, and the primary objective of *Adat* is to foster harmony between individuals and the community. This perspective significantly influences marriage beyond the relationship between a husband and wife to encompass religious ceremonies, kinship, neighborhood ties, and the broader community. It also involves adherence to social norms and obligations that govern interpersonal relationships within society and with deity/deities.

Under *Adat*, marriage has specific legal implications for the society. These may arise before marriage through proposing and establishing a bond between the prospective couple, their parents, and communities. Legal consequences may also manifest post-marriage, encompassing the rights and responsibilities of parents during *Adat* ceremonies, as well as their active involvement in fostering harmony and upholding the stability of their children's married lives. In certain instances, marriage can serve as a means to address social issues, mend broken kinship ties, or foster new connections. This discussion illustrates the comprehensive nature of marriage under *Adat* Law.

In dealing with marriageable age, *Adat* has no strict period elapsed since birth, rather physical maturity is the major criterium. As one judge observed, "If maturity is connected with marriage, customary law recognizes that if a man and a woman marry and have children, they are declared adults, even though they are only 15 years old. Otherwise, if they are married, [but]cannot produce children because they are not yet capable of sexual intercourse; they are said to be immature" (Court Decision: 217/Pdt.P/2023/PA.Amb). Where the prospective wife was already pregnant (possibly 12 weeks or more), all the judges interviewed argued that even though she was a child (a minor) this situation clearly demonstrated that the reproductive organs of the prospective bride and groom were ready for marital relations; moreover, if they are not married immediately, the child/ren would be born-out-of wedlock, bringing disgrace and disadvantage for the child/ren and their family. So, they argued this disadvantage must be eliminated by allowing such a couple to marry. The judge's consideration demonstrates how judges interpret the *Adat* in such instances.

### **3.2. Legal Reasoning: Dominant and Sub-servient Legal Resources**

There are several reasons underlying the submission of a marriage dispensation request to the Religious Court, such as both applicants have already had

relations like husband and wife; an unintended pregnancy; the girl has already been proposed to, due to a parents' will (to arrange a marriage for their daughter/son); and economic factors. For those reasons, the judge will categorize it as "... a very urgent reason. . ." (on the basis of Article 7, par. (2) of the Indonesian Marriage Act of 2019) or not very urgent. Unfortunately, there is no further explanation about the words 'a very urgent'; therefore, it becomes the judges' authority to interpret. Based on the factors presented by the applicant and accompanied by sufficient supporting evidence before the court, the judge will decide whether to grant or deny the request. For most judges, the applicant's pregnancy becomes a reason for granting the dispensation request, whereas applicants who are not yet pregnant generally have their requests denied.

However, judges in making decisions must also pay attention to and base them on various applicable legal regulations, including human rights norms. Of the ten court decisions, only three cited human rights values explicitly in the granted or rejected decision. Judges who had been trained to handle child marriage issues and are certified were responsible for citing human rights values in some courts. In cases where the court lacks a certified judge, judges with experience in dealing with child issues are appointed to handle marriage dispensation cases. This suggests that not all religious courts in Indonesia have certified judges, which may have failed to consider human rights values in judicial decisions.

Legal analysis of the ten court decisions in this study shows that most judges rely on local norms, Islamic law, and national legislation when dealing with marriage issues. Only a small number of judges consider the human rights values endorsed and established by national legislation. This pattern is evident not only in applications that are approved but also in those that are rejected. It indicates that local norms and Islamic law overshadow the concept of (international) human rights values. For instance, in case 312/Pdt.P/2023/PA. Amb, the judge, approved the request of a woman who was not pregnant. The judge referred to human rights values together with local norms, and Islamic law, but human rights values are not as influential as local norms and Islamic law. Below is the excerpt from the judge's reasoning, including the reference to the child's best interest principle though remain biased gender.

The judge considers the aspects of the child's best interest in the case one by one. In terms of psychology, both are considered mature and ready to marry. Moreover, the wedding ceremony for both has been [arranged]; if canceled, it will psychologically impact the wife and husband candidate and their parents. Apart from that, sociologically, both candidates are considered capable of socializing with

their surrounding environment. [The wife] able to adapt to her nature as a woman, which is applied by carrying out women's duties in the household, while the prospective husband is someone who works hard and is responsible.

Considering that, from an educational aspect, their marriage plans are deemed not to hinder their education, given that they graduated from elementary school and junior high school. They plan to continue to a higher level by pursuing an education package. Considering the health aspect, based on evidence issued by public health officers and women and children empowerment public office, the candidates' health is good physically and mentally.

The judge's decision in this case appears to be largely based on biased gender. It was influenced by the prospective wife's ability to perform household duties, and the prospective husband's ability to support them, her physical and emotional well-being, while noting the couple's desire to further their education. However, the judge also cited reasons for rejecting the application, including the wife candidate's age, recent graduation from junior high school, and lack of pregnancy. Despite the judge's advice regarding the potential risks of marriage, the parents and the couple seemed determined to go through with the marriage due to social pressure and norms and concerns about the daughter's behavior. The community's standards of morality and decency seemed to influence the parents' decision to seek their daughter's marriage. Despite being advised about the potential impacts of marriage, including reproductive health, economic and social impacts, the possibility of disrupting their education and the potential for domestic violence, the parents and the couple were determined to proceed with the marriage.

This highlights the influence of local customs, including social punishment or sanction (scandal and shame), directly affecting the candidate and their parents rather than prioritizing the rights of the child. There is often no social sanction for marrying a child at a young age within certain communities and even by the state, despite Article 26, par. 1 of the Child Protection Act 2002 mandating that parents must prevent child marriage, and transgression will have legal consequences. Only a few cases that garnered widespread attention resulted in child marriage being treated as a criminal offense, with the adult groom facing (but subsequently avoiding) penalties. In at least one example, the parents and the individual who officiated the illegal marriage were not incarcerated (liputan6.com 2022; merdeka.com 2022).

Thus far, the situation demonstrates the Indonesian community's lack of understanding about the rights of the child in the Indonesian community, especially on the part of the prospective bride and her parents. The religious court appears to emphasize protecting the child from social stigma or social sanction, given that social

sanction is harsher than state sanction, especially for children born out-of-wedlock. Regarding an illegitimate child, one of the Religious Court judges interviewed judges disagreed, arguing that the fear of stigma for such a child is premature because the fetus may not be safely delivered, and/or they may not encounter sanctions as local norms (*Adat*/customary law) change over time to adapt to the new and leave the old norms behind (Interview with M.A.D. Putra, Judge, Ambarawa Religious Court). Such an assumption, however, could also be considered premature as change (*Adat* or codified) may serve to either strengthen or weaken existing norms.

The absence of human rights values in judges' decisions on marriage dispensation shows that the Indonesian government's ratification of a human rights treaty is not enough to ensure its effectiveness. Despite extensive scholarly attention, explanations for States' disparate human rights practices remain unsatisfactory (Benneker et al., 2020). Scholars argue that the lack of human rights values in judicial decision-making may have been influenced by a belief that the human rights values are a binding treaty but rather are a statement of principles (Risse & Sikkink, 2017). When local norms are stronger than human rights values, the implementation of human rights values lessens. Moreover, the absence of human rights values cited in court decisions in religious courts may influenced by the judges' identity and be attributed to the court's adherence to Islamic law and Sharia principles.

This phenomenon supports the Risse and Sikkink's research (2017) that scholars in international law have long recognized the intersubjective nature of actors' interests, and preferences are not given outside social interaction or deduced from structural constraints in the international or domestic environment. Social constructivism does not take the interests of actors for granted but problematizes and relates them to the identities of actors. Identities also provide a measure of inclusion and exclusion by defining a social "we" as religious judges and embedded norms (religious, traditional/*Adat*, and social) and delineating the boundaries against the "others", namely human rights values such as children's rights. So, there is interaction among these various norms within judges' thoughts. The process of human rights change almost always begins with some instrumentally or strategically motivated adaptation by national governments to a growing awareness of human rights values.

The process by which principle ideas held by individuals (in this instance, judges) become norms (in the sense of collective understandings about appropriate behaviour) which then lead to changes in their identities, interests, and behaviour is called 'socialization' but it seems not to happen to nor be practiced by judges in religious courts. This likely occurs because not all judges able to hear marriage

dispensation cases have received appropriate training and obtained the relevant child judge certificate and the authority to decide such applications. This is because if there is no child-certificated judge in a religious court, then any judge who has tried child-related cases (for example, child custody requests in divorces) can hear requests for marriage dispensation. This is an explanation for why human rights values do not appear in judicial decisions on marriage dispensations. This creates a situation where formal rules (legislation) remain weakly enforced and social norms (*Adat*) can become more dominant and offer a competing role model to formal rules. This situation also demonstrates that human rights values are considered less important than local norms (customary/*Adat* las and Islamic/Sharia law), meanwhile judges at Central Java Religious Court have an important role as agent of change; by referencing human rights values in their decisions, especially the best interest of the child, judges can help promote the communities' and government apparatus' awareness and concern.

#### **4. Conclusion and Policy Implication**

Most of the judges' legal considerations in granting marriage dispensation apply the foundation of the local norms (*Adat*/customary law), Islamic Law, and national legislation related to marriage; few court decisions cite the human rights values that had been adopted or ratified by the Indonesian government national legislation. The absence of human rights values in judicial decisions on marriage dispensation demonstrates that the position of human rights values is inferior to that of local norms (customary law) and Islamic law. Therefore, it is important to supervise the court's consideration and decisions in this issue – whether the consideration utilizes the human rights instruments, especially children's human rights, considering that applications for marriage dispensations are often made by those under 18 years old. Furthermore, it is also necessary to issue implementing regulations of the Indonesia Marriage Law 2019 that provide explanations regarding the definition of very urgent reasons as guidelines for judges.

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