

***Pemmali* Culture in the Bugis Community versus Law Enforcement of Age of Marriage in the Religious Courts**

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ABSTRACT

This study aims to explore the law enforcement of the age of marriage in the Bugis community, Islamic law and national law, and pemmali culture as one of the most crucial reasons for marriage dispensation. This study used sociological juridical research with normative and formal approaches, socio-anthropological and case studies. Data analysis techniques used the positivist theory of the legal system, law enforcement, and sociology of the legal system. The results showed that the enforcement of the age of marriage in the Bugis community does not have an age standard determination unless the daughter is menstruating. The application of pemmali culture causes daughters to become victims of underage marriages. They are blind to the knowledge of the age of marriage in Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage. Most fiqh scholars still debate the application of the marriage age for children. As long as girls have not menstruated, they do not question child marriage if it is menstruating. However, in Indonesian national law, there is no way to legalize child marriage before getting a marriage dispensation. Pemmali culture can be one of the reasons for the sharp increase in marriage dispensations in Religious Courts due to the mindset of parents in the Bugis community when their daughters are underage and are proposed to three times by men. A significant implication of these findings is to reduce the amount of marriage dispensation recommended in the next research on the effectiveness of socialization of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage.

Keywords: Bugis community; law enforcement of age, marriage dispensation; *pemmali* culture.

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INTRODUCTION

Cultural factors also determine the law enforcement system in the community. In law enforcement, Friedman (1975) emphasizes the importance of considering the legal system, such as its legal structure, substance, and culture. The legal structure contains legal instruments and institutions. The legal substance is the rules, norms, laws, and regulations. At the same time, legal culture is attitudes or behavior, beliefs, and expectations about the law.

Law enforcement in a legal system, the Bugis community, is one of the most influential communities in maintaining and implementing culture in Indonesia. Implementing culture in the Bugis community can influence law enforcement, and marriage law is no exception. Implementing culture sometimes involves law enforcement, especially in child marriage. One of the cultures in the Bugis community is *pemmali*. Until now, it still exists and is a firm belief. *Pemmali* is a form of taboo, prohibition, or not allowed to do according to Bugis culture. *Pemmali* culture believes to be very closely related to life problems, especially during the early marriage process.

Recently, one of the viral issues in the Bugis community is that the consequences of the *pemmali* culture can cause underage girls to ask for a marriage dispensation in the Religious Courts. On the other hand, child marriage can continue to occur both in cities and villages. Child marriage faces the main reasons after the change in the determination of the marriage age in Law Number 16 of 2019 concerning marriage, amendments to Law Number 1 of 1974. However, there are also several reasons, such as limited economic capacity, education, pregnancy without early marriage, and limitations in understanding Islamic law in the Bugis community.

On the other hand, the Religious Courts are courts that can resolve all Islamic family law cases in Indonesian Muslim society (Rosadi, 2015). The Religious Courts, through Law Number 50 of 2009, amending Law Number 3 of 2006, and Law Number 7 of 1998 concerning Religious Courts, have transformed into a judicial institution that emphasizes its status and power as a judicial institution that creates legal unity and purifies function of the religious Court. Thus, the Religious Courts are courts exercising judicial power, and the marriage dispensation (Rosadi, 2021) is no exception.

Based on data sources since conducting the survey, it was found in the Parepare Religious Court, Sidenreng Rappang Religious Court, Pinrang Religious Court, and the Barru Religious Court that child marriage is a strong belief in the *pemmali* culture in the Bugis community. There are many judges granting marriage dispensation that parents generally marry off their daughters even though their children are still minors; the men have made three proposals.

Pemmali culture can play a role in ensuring that, as one of the factors, child marriage increases sharply in the Religious Courts. As the results of research

conducted by Salenda (2016) in his writings "Abuse of Islamic Law and Child Marriage in South Sulawesi, Indonesia" that child marriage in the Bugis community in South Sulawesi cannot be separated from '*pemmali*' especially girls proposed for the third time.

Bin Tanra et al. (2019) argued that the emphasis on *pemmali* culture could influence the behavior patterns of the Bugis people in everyday life. *Pemmali* is considered taboo by the Bugis community to prevent someone from doing inappropriate things. *Pemmali* also believes in strengthening character and creating a harmonious and peaceful social order.

On the other hand, the Bugis community believes that breaking *pemmali* can bring a curse on human life. *Pemmali*, as a hereditary culture, contains the teachings of values and a philosophy of life guide for the ancestors. Thus, *pemmali* also believe to be a medium for maintaining someone to avoid behavior that deviates from values (Abidin et al., 2019; Syahfitri et al., 2019).

So far, there has been no systematic study of the *pemmali* culture in the Bugis community as the cause of child marriage, especially for girls who have received three proposals from men. *The Bugis community believes pemmali culture is a reason to come to the Religious Courts to request a marriage dispensation.*

Studies on *pemmali* culture are very different from previous studies, such as studies reviewing the representation of the meaning and function of *pemmali* in modern and traditional Bugis communities (Khaerunnisa & Muliana, 2022), the contribution of Bugis land *pemmali* in moral formation (Rusli & Rakhmawati, 2013), and *pemmali* in the Bugis-Makassar community in South Sulawesi from the perspective of Islamic law (Abidin, 2019).

Furthermore, researching local wisdom in the Bugis culture solves various problems of modern society (Yusuf et al., 2021). The research only examines Bugis culture regarding *panaik* money as a tradition practiced for generations in the legal aspect of marriage, explaining *panaik* money at the level of *masalah hajiyyat*. Moreover, *panaik* money considers '*dui cappu*' (money out) to finance the marriage (Sudirman et al., 2019). The research conducted by (Maimunah et al., 2021; Sofiana & Sunni, 2021) are slightly closer to these studies, but there are apparent differences because they explain the judge's considerations in giving marriage dispensation for pregnant women without marriage in the Religious Courts.

The *pemmali* culture in the Bugis community is related to the law of child marriage, such as a study conducted by Djamilah & Kartikawati, (2014) that identified the economic, social, health, and cultural impacts of child marriage problems. Studies on early marriage and legal protection for children (Musfiroh, 2016), factors and the role of the government in law enforcement and child protection (Muntamah et al., 2019), and the existence of marriage dispensation for the implementation of child protection in Indonesia (Hizbullah, 2019). In addition, a study of efforts to reconstruct the age limit for marriage in Indonesian national

law from a fiqh perspective (Fadhilah & Rahmah, 2012) and the problem of child marriage in Indonesia (Tampubolon, 2021).

Therefore, no *pemmali* study directly examined child marriage law in the Bugis community. *Pemmali* culture in this study is considered one of the most crucial issues to be followed up on because it can increase the number of child marriages in the Religious Courts. The object of this research is to examine how are the dynamics of law enforcement on the age of marriage in the Bugis community perspective, how is the debate over the age of child marriage in Islamic law and national law, and how *pemmali* culture is the reason for marriage dispensation in the Religious Courts?.

Basically, from all studies on child marriage, it can be ascertained that there are problems with the law. However, this study emphasizes the *pemmali* culture as the reason children become victims of underage marriages. Dispensation in the Religious Courts is no exception.

METHODS

This research is juridical sociological research. The approach is a normative and formal juridical, socio-anthropological, historical, and case study of marriage dispensation. This research process lasts for 4 (four) months, from June to October 2021. The location of this research is the jurisdiction of the Religious Courts of Parepare, Sidenreng Rappang, Pinrang, and Barru, as areas inhabited by the Bugis community. Therefore, the main reason for choosing the Parepare, Sidenreng Rappang, Pinrang, and Barru Religious Courts is because the four locations are jurisdictions whose residents are the Bugis community who practice the *pemmali culture*. Locations with many residents requesting marriage dispensation at the Religious Courts. As a result, the judges have difficulty enforcing the age of marriage in Law Number 16 of 2019. The focus of the research is the culture of *pemmali*, tracking the number of marriage dispensations in the Religious Courts, age determination in Islamic law, and statutory regulations.

The data was collected by observing specific *pemmali* culture as the reason for the marriage dispensation in the Religious Courts. In-depth interviews were conducted to obtain data through judges, Marriage Registrars (PPN), the Head of the Religious Affairs Office, family law lawyers, and legal experts. Documentation carries out to review Law Number 16 of 2019. The data analysis technique uses the positivist theory of the legal system, law enforcement theory, and sociological theory of the legal system. Data analysis uses theories constructed to answer the problems in this research.

Researchers bind themselves as instruments to act directly in the process of data collection, data processing, and analysis, as well as data interpretation, the data collected, data processing, and comparative analysis of age determination in the Bugis community, Islamic law, and national law. Furthermore, analyzing data on the progress of the implementation of Law Number 16 of 2019 is classified into 2

(two) stages, starting from 2017 to 2019 before implementation, and post-implementation from 2019 to 2021, then the marriage dispensation data is calculated annually and explained through figures of 4 (four) Religious Courts.

RESULTS AND DISCUSSION

Law enforcement of the Age of Marriage in the Bugis Community Perspective

Justice always expects of all human beings. Justice is a tool used to deal with things outside of us. Therefore, justice cannot be separated from the meaning it gives to humans or humanity through the concept of humans themselves. Justice can achieve through the law, which aims to achieve justice. Furthermore, the law is a set of mandatory rules issued by the authorities that impose sanctions on those who disobey. The existence of the law intends to protect the rights of all citizens and bring order to society. However, Indonesian law is subject to dynamics and is often difficult to enforce (Hilman & Ratnawaty, 2017). It can therefore be argued that the existing laws are not as effective as they should be illegal. Law is sometimes called a legal illness that causes it to be unable to fulfill its function.

According to Lawrence M. Friedman, the law's functioning can determine by a legal structure structured like a machine in which there are legislative and law enforcement bodies. Enforcement of the age of marriage law in Indonesia is still a very complex task, so it will take time to improve the legal system (Suparman, 2016). Enforcing the law and achieving justice is difficult, given the legal structure involved. The legislature does the legal substance in the form of resolutions, procedures, and legal regulations, and it is also extralegal. Community involvement in legislation affects the effectiveness of law enforcement. However, laws that cannot enforce are useless (Herviani et al., 2022). Indonesia shows that many laws are still declared valid and enacted but are ineffective, especially in enforcing the age of marriage in the Bugis community. It does not seem to be by the idealization of Law Number 16 of 2019; due to the strong pemmalı culture, its application in Bugis society requires judges to determine marriage dispensation.

Legal culture includes values and attitudes that affect the law's functioning, commonly referred to as legal culture. Legal culture serves as a bridge between the rule of law and the legal behavior of all societies. The relationship with the pemmalı culture in Bugis society also influences law enforcement, especially the age of marriage. Although Law Number 16 of 2019 has stated that the marriage age of the prospective groom and bride is 19 years old, respectively. The power of pemmalı culture in the Bugis community contradicts the reality of applying Law Number 16 of 2019 in the Religious Courts.

The context of the law's structure, substance, and culture can be related to the standard of marriage age in the Bugis community if the daughter is already menstruating. Parents usually find that their daughter is menstruating, which means that she is fit for marriage and ready to become a mother (Wibowo et al., 2021). Moreover, for their daughter, a man has already come to propose; parents in the

Bugis community consider it an honor, and happiness cannot measure by anything else.

On the other hand, parents in Bugis community do not know the laws and regulations, especially in determining the age limit for marriage. That is why his daughter in the Bugis community has the potential for marriage without any age limit.

Menstruation events experienced by a daughter are a sign that she can get married and get pregnant. Such reasons are a factor by parents in the Bugis' community request for dispensation to the Religious Courts, especially in the jurisdictions of the Parepare Religious Court, Sidenreng Rappang Religious Court, Pinrang Religious Court, and Barru Religious Court in South Sulawesi.

The existence of their daughters in the Bugis community means that age never considers in marriage. An article can be used for cultural comparison in the Bugis community, especially applying *pemmali* culture that describes child marriage. An idea to invalidate the provision of a marriage age before 18 years, which applies The determination of the age limit from the normative framework regarding the legally permissible age of marriage, is regulated in Article 21, paragraph 2 of the 1990 African Charter on the Rights and Welfare of the Child. Under the charter, it intends to create a binding legal obligation to determine the age of marriage in every African country. In addition, it can test the resilience of physical development and socio-emotion in the marriage of a daughter (married at the age of <15 years, 15 to years). 17 years, or 18 years) (Efevbera, Sc, et al., 2017).

In contrast, the Bugis community applies a culture called *ade to' riolo* (customs of the ancients) related to marriage, such as *pemmali*. *Pemmali* in marriage can face two realities, especially Bugis community. For example, if a daughter is proposed to by a man, but has a sister who is still a girl or a virgin, then *volkgeits* (mindset) in the Bugis community is *pemmali* that if you step over to your older sister old and still a virgin status.

The philosophical meaning of *pemmali* culture in that context is that parents are worried that older daughters can become spinsters. Therefore, the problem can still be solved by marriage, as long as the prospective groom is willing to give a ring as a substitute not to precede his unmarried sister.

Pemmali also applies in the Bugis community; when the daughters have proposed three times, it is taboo if they do not accept the third proposal. According to the mindset at the same time, it has become a believer in the Bugis community that if they do not accept the third proposal, the girl's child can become a spinster and eventually cannot get a mate again.

Departing from the *pemmali* culture, which is very sacred in the Bugis community, it creates opportunities for child marriages to occur that have not yet reached the minimum age. The enforcement of the law age of marriage in Law

Number 16 of 2019 has many obstacles to its implementation in the Bugis community. Many parents in the Bugis community are still ignorant of their knowledge regarding the enforcement of the marriage age allowed in Law No. 16 of 2019. The relationship between *pemmali* culture and imposing a marriage age seems to show the opposite context, especially if the *pemmali* culture has been glorified and sacred in Bugis society.

The enforcement of the law on the age of marriage in the Bugis community is essential for the involvement of the Marriage Registrar at the Office of Religious Affairs to conduct counseling and socialization of Law Number 16 of 2019. Implementing the *pemmali* culture in Bugis community is not always the reason for child marriages that have not reached the minimum age.

Debate on the Age of Child Marriage in Islamic Law and National Law

Child marriage is still disputed by fiqh experts or Islamic law experts, both from the perspective of classical fiqh and in the law. According to the majority of scholars or the majority of fiqh scholars, child marriage is legal if it fulfills the pillars and conditions, namely the presence of a prospective husband and wife, consent and *qabul*, the presence of a female guardian, and two witnesses. However, some scholars do not allow child marriage for various arguments.

According to the *fuqaha* who allow child marriage, they argue and put forward several legal arguments as follows: first, the content of *Q.S. Al-Talaq (65):4* states that women who have not menstruated and who are in menopause have three months of *iddah* (waiting time). The existence of *iddah* for women who have not menstruated is a sign or indication that it is permissible to marry children because there can be no *iddah* if it does not begin with marriage, and then divorce occurs.

Furthermore, the content of *Q.S al-Nur (24):32* explains God's command to marry women with partners or husbands. The word *الايامي* (women) in verse in *Surah al-Nur* contains a general meaning ('*am*), meaning all women, including women who are not yet mature. *Usul fiqh* scholars explain and agree that general words will remain in general use or cover all of their parts as long as no *dalil* specializes in them.

The history of hadiths explaining the Prophet Muhammad's marriage with Aisyah is the legal basis for the *fuqaha* to allow child marriage. According to a hadith, Aisyah stated that the Prophet married her when she was six years old and lived with her when she was nine. According to history, the Prophet's companions also married their relatives at a young age or when they were children.

Furthermore, *baligh* (reach age) in marriage law is not required to measure marriage's validity (Izzuddin, 2009). *Baligh*, according to the views of fiqh experts, can be identified by two things: based on special signs or age. The sign of a man's puberty is a dream or the discharge of semen, while for a woman, it is menstruation. The criteria for puberty based on age are different among the schools of

jurisprudence; the Hanafi group holds the view that for men, 18 years and women, 17 years. The Shafi'i group is 15 years for men and nine years for women, while according to the Hambali group, it is 15 years for men and women (Asrori, 2015).

According to fiqh experts or scholars who prohibit or do not justify child marriage, they argue from the content of the verse Q.S. *An-Nisa'* (24):32. Explains that the acceptability of a person to carry out a marriage is the age of *rusyd* (puberty). Even though it does not explicitly explain that *baligh* is a requirement to enter into marriage if children who are not yet *rusyd* are allowed to marry, they ignore the essence and content of the verse. The explanation of *rusyd* in the interpretation of al Misbah, as quoted by Achmad Asrori, states that the basic meaning of *rusyd* is the accuracy and straightness of the road. Therefore, a person is said to be *rusyd* when he has a perfect mind and soul, which makes a person able to behave and have the appropriate actions possible (Izzuddin, 2009).

Sources quoted from Agus Muchsin, one of the religious leaders and also fiqh experts, that in Islamic fiqh, there is a debate among fiqh experts about whether or not it is permissible to marry a child who is not yet *baligh*. This difference is because the verses about child marriage are unique in their meaning, which still requires interpretations. He further said that although there are differences among the fiqh experts, the understanding of the Bugis community in Parepare City, Sidenreng Rappang, Pinrang, and Barru regarding child marriage when they are already *baligh*. So, marriages must occur when both men and women are of age, even if one or both of them have not reached the age of puberty in the Bugis community. It is known as the *mappasitaro* tradition or just an arranged marriage. The marriage postpones until it is possible to marry (Muchsin, 2021).

As in fiqh, polemics and debates about the age limit for children find in national law. Determination of the age of children varies or is not uniform from one rule or law to another. Differences in views regarding the provisions or rules regarding the age limit for child marriage cannot necessarily be used as legal guidelines. However, there must be rules and regulations and obtain recognition from judges or the government. This cooperation is essential to avoid the existence of legal dualism, which confuses society. It is in line with the rule that says **القاضي الزام الخلا** which means the judge's decision or decision is binding and eliminates different opinions or views.

Thus the provisions regarding the age of child marriage that use as guidelines or references are Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI) in its articles stating that the minimum age for marriage is 19 years for men and 16 years for a woman. Furthermore, the age limit for children revises with the application of Law Number 16 of 2019 to 19 years for both men and women.

***Pemmali* Culture as Reason for Marriage Dispensation in Religious Courts**

Child marriage can be found in every area on a global scale (Gaston et al., 2019) and regional (Nguyen & Wodon, 2015). The phenomenon of regional child marriage in practice continues to occur in several Ajattapareng areas, such as Parepare City, Barru Regency, Sidenreng Rappang Regency, and Pinrang Regency. This situation can be proven in the practice of child marriage which continues to increase by requesting for a marriage dispensation at the Religious Court. The position of the Religious Courts is an institution that is expected to provide legality of child marriage.

Child marriage can find several other factors, such as having sex can cause sex without marriage; maybe some children are trapped in prostitution (Mikhail, 2002). Sex without marriage, whether done with promiscuity or prostitution, can result in pregnancy (Wahi et al., 2019). In addition, in the *pemmali* culture in the Bugis community, parents marry off their children if they do things that are contrary to cultural and social values. Another context to worry about is that children elope (*silarian*). Parents in the Bugis community believe that it is better for their children to get married than they do things that can cause disgrace to the family, including *siri* in maintaining self-esteem as a shared honor in the family.

Another situation arises when parents match their daughters, even though they are underage, with economically secure men (Parsons et al., 2015), have high social status, and have close relatives, making it difficult to refuse marriage. Women also feel the benefits of having a partner with a high social status, especially if their husband-to-be has a higher social status than women, so they can improve their social status.

Marriage can also be caused by a low level of education (Wodon et al., 2016). In the same context, child marriage is also caused by uneducated parents in Bugis community. Parents who are not effectively educated are more likely to marry off their children. They have a traditional patriarchal view that the role of women is to take care of the household, take care of children, cook, and take care of the house. Parents believe that women do not need higher education to fulfill their obligations. If a daughter accepts a man's proposal while still a minor, the parents tend to marry off the child. Also, less educated parents believe their daughter's marriage will ease their financial burden.

The next context contributing to child marriage is the legal rules regarding marriage or inconsistent laws. There are already rules regarding the minimum age limit for getting married (Arthur et al., 2018). However, it is still possible that there is a gap that can be justified by the laws and regulations to carry out marriage through a marriage dispensation.

Information obtained from Rusdianto, an advocate who has handled many requests for dispensation at the Parepare Religious Court, stated that the reason for applying for dispensation was due to casuistry. It can be said to be dominant in a

context different from the *pemmali* cultural factor. That is why child marriage is difficult to stem from the *pemmali* culture, which considers rooted in the Bugis community. *Pemmali* culture has a powerful influence in the Bugis community, so many child marriages occur and apply for marriage dispensation in the Religious Courts.

The Bugis culture for the first process before marriage is *paita* (with remote observation, supervision, and investigation), commonly called *mabbaja laleng* (opening the road). The next process is *mammanu-manu'*, which uses a trusted person as a bridge between the families of women and men. The goal is to find a woman to propose to later. After finding a woman who is considered suitable by the family of the prospective groom, known as *mappese'-pese'*, it is continued the application process or the term *maduta/massuro* in the Bugis community. If the application is accepted, the *mappetu ada'* (make a deal) event will continue as a dialogue between the groom's family and the spokesperson from the bride's family. There are no more disagreements in the *mappetu ada'* event because everything has been resolved before there was *mappetu ada'* (Rahmatiar et al., 2021).

The proposal process in the Bugis community is still very varied; some even propose for girls up to three times. If the child has been proposed for the third time, then in the Bugis community, it applies to the *pemmali* culture. The philosophical meaning contained in the *pemmali* culture is believed by the Bugis community that if it did not carry out, it will have a harmful impact or could bring disaster.

As for *pemmali* in the Bugis community, the meaning is identical to prohibition, taboo when it is not carried out so that a woman who has been proposed to three times by not marrying is considered to have rejected her fortune or mate. Therefore, the *pemmali* culture is considered very sacred, firmly held in the belief of the Bugis community not to violate it either by words or actions. The context that becomes a belief in the Bugis community is that it still refers to events that have already happened, so they are afraid to violate them. This fact can be trusted because many women do not marry until they are old because they have been proposed to by men but refused the proposal.

Changes in the law regarding the age of marriage according to Law Number 16 of 2019, then another factor that causes child marriage to occur is the *pemmali* culture. In the context of the Bugis community, even though girls are still underage and have been proposed to three times by the men to be their husbands, they request a marriage dispensation at the Religious Courts.

Furthermore, Rusdianto, a family law lawyer, explained that many daughters request marriage dispensation because they apply the *pemmali* culture. Parents in the Bugis community believe that if a girl is proposed to by a man three times, then it becomes a *pemmali*, so it is taboo if she does not accept the proposal for the third time. Belief in the Bugis community, if a girl has been proposed for the third time, then refuses the application, worried that no more men will come to apply. Even though they did not consider the age of their daughters as minors, they

went to the Religious Courts to request a marriage dispensation. The belief that developed as a *pemmali* culture in the Bugis community was afraid that they would not get it again if their daughter became an old maid.

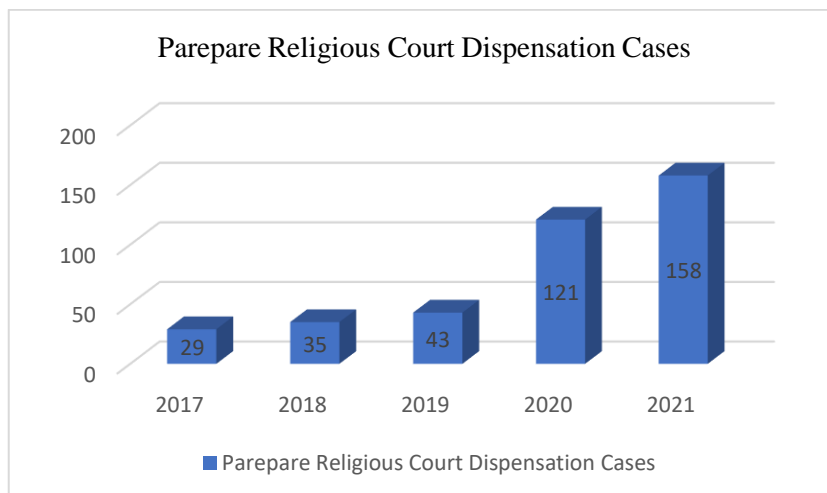
Quoting the opinion of Muhammad Kunardi and Maimunah, marriage is an exception for the prospective groom who is not entitled to marry according to positive law. Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 Article 7 paragraph (1) states that marriage is only allowed if a man and a woman have reached the age of 19 years. Raising the minimum age of marriage in this context provides hope for reducing child marriage rates. However, section (2) states that if there is an exception to the minimum marriage age, then the parents of the prospective groom are allowed to apply for a marriage dispensation for emergency reasons and accompanied by supporting evidence. As a result, it aims to prevent child marriage. Because the judge must interpret the law, the judge must interpret it because it is unclear. This means someone makes a fair decision with legal certainty (Yuni, 2021).

The Faculty of Law UGM, a women's coalition, argues that the waivers are very lax and do not have a guideline for judges to determine whether the application for waivers should be granted, so the potential for violations of women's rights is quite significant. Therefore, the responsibility to protect women (Efevbera, Bhabha, et al., 2017), apart from increasing the age of marriage to a minimum age equal to the age of men, is to implement more stringent dispensation regulations. In addition to the minimum age, the state must make an obligation to actively protect and guarantee the fulfillment of human rights and freedoms, especially for women. Child protection aims to ensure the fulfillment of children's rights and child welfare (Wahyuningrum et al., 2021).

Of course, health experts strongly oppose limiting the marriage age for women to 16, which generally does not support child marriage, pregnancy, and childbirth. It is the leading cause of death in adolescents aged 15-19. Women under the age of 20 are at increased risk of disease and death during their reproductive years. At the age of 20, women are medically (physically, biologically, endocrinologically), psychologically, and emotionally mature to exercise their reproductive rights safely. In particular, a quality generation of Indonesians will be born. With little access to education and no qualifications, it is difficult to find work across the country; this is also reducing the country's productivity. Child marriage affects young people's health and psychology because they marry young. Loss of education, persistent poverty, loss of job opportunities, early separation from family, easy divorce, and children who do not receive adequate attention has developmental delays and behavioral deviations (Bangsawan et al., 2022).

The application of the maximum age is refuted by the data on child marriages that have received a dispensation from the Religious Courts; it can be seen in several figures, as follows:

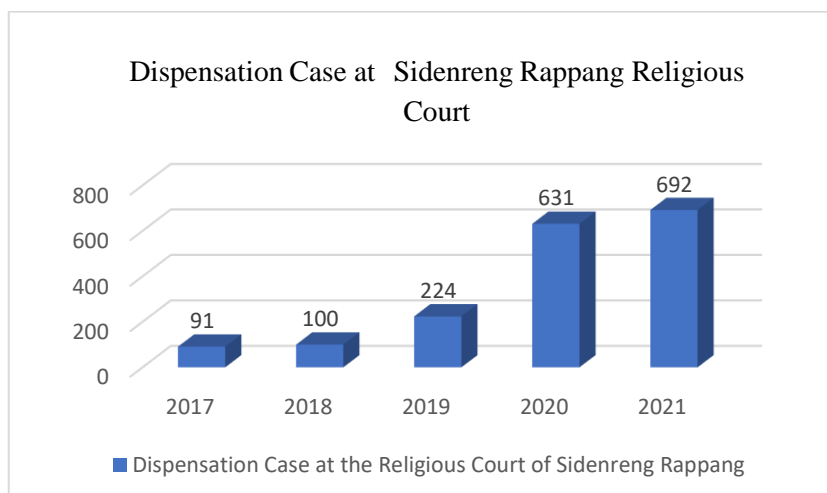
Figure 1. Authentic Data on Marriage Dispensation Cases at the Parepare Religious Court



Source: Parepare Religious Court

Based on the data in figure 1, the most prominent difference before the implementation of Law Number 16 of 2019 in the case of dispensation is the marriage age of 16 years for prospective brides. The reality is different after the implementation of Law Number 16 of 2019 is the age of 19 years for all prospective brides. Marriage dispensation increased sharply at the Parepare Religious Court. Child marriage dispensation enactment of Law Number 16 of 2019 within five years with a total of 386 cases, explained 29 cases or 8% in 2017, 35 cases or 9% in 2018, 43 cases in 2019 or 11%, in 2019 were 121 or 31%, and 2021 were 158 cases or 41%.

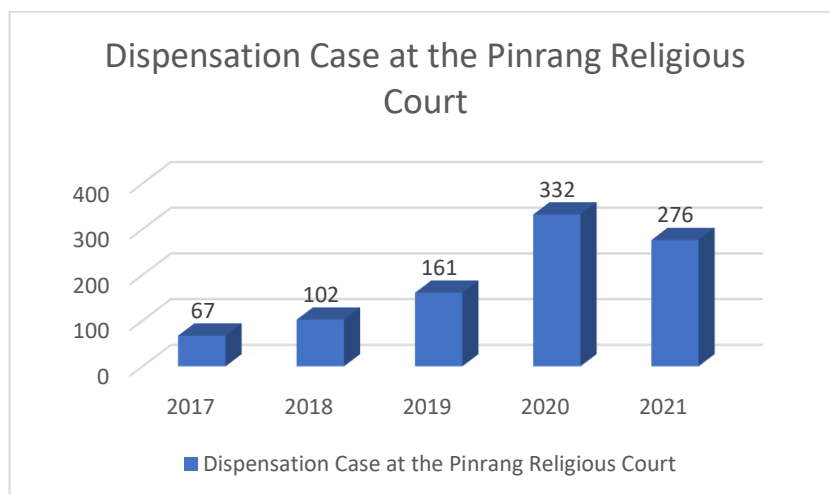
Figure 2. Authentic Data on Dispensation Cases at the Religious Court of Sidenreng Rappang



Source: Sidenreng Rappang Religious Court

The Sidenreng Rappang Religious Court has a jurisdictional area inhabited by a very dense population, the majority of whom are Muslim. Dispensation cases after the implementation of Law Number 16 of 2019 have the same reality as other Religious Courts, which continue to experience an increase in dispensations yearly. From the data in figure 2, there were 91 cases, or 5%, in 2017. There were 100 cases, or 6%, in 2018, where the marriage age is still 16. While the marriage dispensation was still stable until October, in November 2019 began, the implementation of Law Number 16 of 2019 suddenly doubled the increase to 224 cases or 13%. In the following year, the increase in marriage dispensation was increasingly unstoppable with a sharp increase; there were 631 cases, or 36%, in the Sidenreng Rappang Religious Court. In 2021, dispensation cases will continue to increase until they reach 692 or 40%. The number of cases in five years was 1,738 cases.

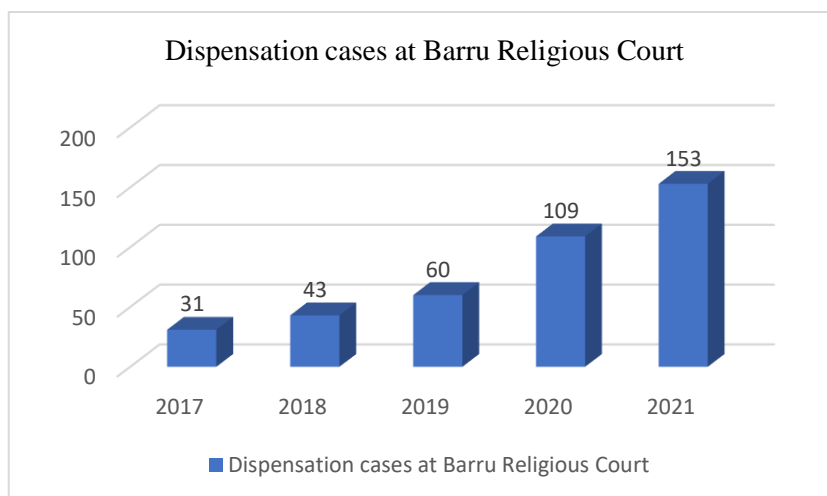
Figure 3. Authentic data on the Dispensation Case at the Pinrang Religious Court



Source: Pinrang Religious Court

In the development of dispensation cases at the Pinrang Religious Court in five years, there were 67 cases or 7% in 2017, 102 cases or 11% in 2018, and they were still at the age of 16 in Law Number 1 of 1974. However, after the implementation of Law Number 16 of 2019, there were 161 cases, or 17%, 332 cases, or 35%, in 2020, and 276 cases, or 30%, in 2021.

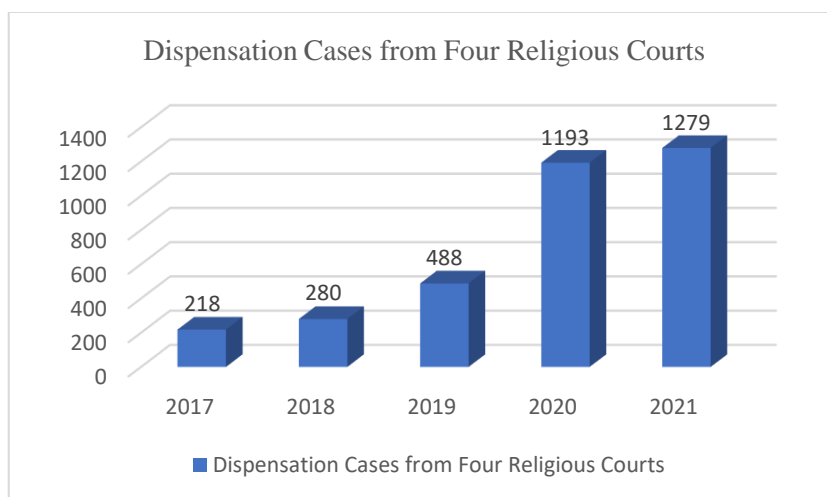
Figure 4. Authentic Data on Dispensation Cases at the Barru Religious Court



Source: Barru Religious Court

The development of dispensation cases at Barru Religious Court can see in five years, there were 31 cases or 8% in 2017, 43 cases or 11% in 2018, 60 cases or 15% in 2019, 109 cases or 27% in 2020, and there were 153 cases or 39% in 2021. The total of five years was 396 cases.

Figure 5. Authentic Data on Dispensation Cases from Four Religious Courts



Data sources are the Parepare Religious Court, Sidenreng Rappang, Pinrang, and Barru. Data on dispensation cases from four Religious Courts were 218 cases, or 6%, in 2017. Two hundred eighty cases, or 8% in 2018. 488 or 14% in 2019, 1.193 cases or 35 in 2020, and 1.279 cases or 37 in 2021. The total of the four Religious Courts is 3,458 cases. After the implementation of Law Number 16 of 2019, all Religious Courts experienced a parallel reality with an increase in dispensation cases.

Data on the age of marriage that can be obtained at each Religious Court is divided into two groups, the children of the prospective groom and the children of the prospective bride. First, children under the age of 19 years for the groom and 16 years for girls. Second, since the October 2019 enactment of Law Number 16 of 2019, the age of girls has increased to 16 years, the same as the age of the prospective groom. Data on child marriages for each figure in the Religious Courts also shows a very significant increase in the number of children of prospective brides who are married. In 2017 and 2018, the married children of the bride and groom were still in stable condition, but in 2019 there was a very significant increase in married children.

The judges' considerations from the four Religious Courts whose jurisdictions are inhabited by the Bugis community, with several factors in providing dispensation for children to marry even though they have not reached the minimum age, are as follows;

Case 1, Establishing a very close courtship relationship between children who have not yet reached the minimum age. Parents are worried that both of them can be trapped in promiscuity or adultery, and pregnancy can occur without marriage. Therefore, parents can choose to marry off their children to avoid disgrace and shame in the family.

Case 2, The factor is that her daughter was pregnant before marriage. The context results from promiscuity by teenagers without regard to religious norms and pregnancy without marriage. According to the Compilation of Islamic Law (KHI) in article 53, a pregnant woman without marriage can be married off by a man who causes her to become pregnant. Marriage with a pregnant woman can carry out before the child is born without remarriage. According to the judge at the Parepare Religious Court, in determining the dispensation for marriage, the children get pregnant early without marriage.

Case 3, Another factor that causes underage marriage is children's education. For children who drop out of school or children who do not continue their education to a higher level, parents want to marry off their children. Children who do not have educational opportunities are usually married off by their parents if a man comes to propose to his daughter.

Case 4, The factor that causes marriages that have not reached the minimum age is that the family's economy is less prosperous. Poor economic ability is the cause of child marriage. Based on the practice in society that marrying off their children can reduce the burden and support the family economy.

Case 5, Child marriage in the Bugis community that applies *ade to 'riolo* (ancient community custom) has been formed into a belief. *Ade to 'riolo* strongly trusts the Bugis community, including *pemmali*. Their daughters, who have been proposed to by men three times, are the reasons for the Bugis community to marry off their daughters even though they have not reached the minimum age. Culture in

the Bugis community, if the daughters have received the proposal three times, then the *pemmali* do not accept the proposal. Parents came to the Religious Courts requesting a marriage dispensation for their daughters. Unfortunately, the reason for the *pemmali* was not written in the trial report (BAP). At the same time, *pemmali* listens in the case *posita* (reasons as chronologies of events). After the judge determined the marriage dispensation for the child about to marry, nothing was written in the determination. However, the implicit decision was not included as a judge's consideration in the Religious Court.

However, the *pemmali* culture firmly believes in the Bugis community. The Marriage Registrar at the Office of Religious Affairs (KUA) continues to work hard to provide intensive advice to prospective brides to postpone their marriage early until they meet the requirements according to Law Number 16 In 2019. The Marriage Registrar also explained child marriage's negative impacts (disadvantages). The *pemmali* culture has a more decisive influence than the hard work of the Marriage Registrar. If the parents still want to marry their daughter, they can apply for a marriage dispensation to the Religious Court.

It is undeniable that the reason for the *pemmali* culture in Bugis community is one of the reasons for asking for a marriage dispensation in the Religious Courts. *Pemmali* cultural beliefs in Bugis community find to be very difficult for Marriage Registrars to enforce the minimum marriage age in Law Number 16 of 2019, even though Marriage Registrars have determined. That the requirement to carry out child marriages who have not reached the minimum age is a dispensation in the Religious Courts.

The *pemmali* culture is one of the solid reasons for requesting a marriage dispensation and has increased sharply in the Religious Courts. Through law enforcement on the age of marriage, Marriage Registrar Officials refuse to carry out and register marriages without dispensation from the Religious Courts.

Law enforcement on the age of marriage by Marriage Registrar Officials that dispensation from the Religious Courts is the main requirement for children who have not reached the minimum age. The focus is on *pemmali* culture as a cause of child marriage, and the Marriage Registrar does not work to permit marriage to children without dispensation from the Religious Courts.

According to Amir Said, the Head of KUA Bacukiki Barat in Parepare City, he explained during an interview that it found that many parents married their daughters off for *pemmali* reasons. As a reason for the *pemmali* culture, many parents do not want their children not to get a mate again. Therefore, the Marriage Registrar acts to provide legal counseling to both parents so that they follow the dispensation procedure. The marriage dispensation procedure applied, among others; 1) Both parents (father or mother) of the prospective bride have not yet reached the minimum age, acting as applicants submit a written application for dispensation to the Religious Court; 2) The application submitted to the Religious Court at the place of residence of the applicant, and 3) the application must contain,

firstly, the identities of the parties; both *posita* or reasons or arguments underlying the submission of the application as well as the identity of the candidate to marry a man or a woman, and include the *petitum* as the condition for which the decision requested in the Religious Courts. Usually, the *posita* and *petitum* contain *pemmali* culture as the main reason, but the judge's determination never mentions *pemmali* as the main reason for requesting a marriage dispensation.

The facts are according to sources from legal practitioners such as family law lawyers, The Head of KUA, Marriage Registrar Officers, Jurists, and judges. Four Religious Courts covered jurisdictions inhabited by the Bugis community, such as Parepare, Sidenreng Rappang, Pinrang, and Barru. It proves that *pemmali* culture is one of the reasons very crucial in determining the case of marriage dispensation. However, law enforcers must respond to the Pemmali culture in the Bugis community in family law problems; the marriage dispensation is no exception. *Pemmali* culture has become part of the legal culture, so the two cannot separate in law enforcement and community life.

Cisero, a legal sociologist, said that where there is society, there is the law. Therefore, the *pemmali* culture, as part of the family law problems faced by the community, cannot be left without a solution through marriage dispensation in the Bugis community in the Religious Courts.

CONCLUSION

The *pemmali* culture in the Bugis community has a strong influence in undermining the prosecution of the age of marriage in religious courts. With the application of *pemmali* culture into the Bugis community almost every year, the number of child marriages applying for a marriage dispensation continues to grow in the Religious Courts. Moreover, in the Bugis community, most parents still refer to Islamic law in determining the age of married girls. As a result of child marriage, there is a strong suspicion that there is no standard for determining the age of marriage in Bugis community. Therefore, this research still has some limitations, so it can be recommended for further research on the strength and effectiveness of the socialization of the application of Law Number 16 of 2019 to reduce the number of child marriages in the Bugis community.

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REFERENCES

- Abidin, Z. (2019). *Pemali dalam Budaya Masyarakat Bugis dan Makassar di Sulawesi Selatan Perspektif Hukum Islam*. Universitas Islam Negeri Alauddin Makassar.
- Abidin, Z., Samin, S., & AR, M. O. H. S. (2019). Pemmali: Metode Dakwah Leluhur Bugis Makassar. *Jurnal Dakwah Tabligh*, 20(1), 92.
- Arthur, M., Earle, A., Raub, A., Vincent, I., & ... (2018). Child marriage laws around the world: Minimum marriage age, legal exceptions, and gender disparities. In *Journal of women ...* (p. 52). Taylor & Francis.
- Asrori, A. (2015). Batas Usia Perkawinan Menurut Fukaha Dan Penerapannya Dalam Undang-Undang Perkawinan Di Dunia Muslim. *Al-'Adalah*, 12(2), 824.
- Bangsawan, M. I., Ni'ami, M., Aryono, A., Ivenenata, E. M., Nosita, S., & Nurrohman, I. (2022). Dispensation for Marriage and Sexual Health. *International Journal of Multicultural and Multireligious Understanding*, 9(3), 162.
- Bin Tanra, M., Amat, A., & Samad, L. A. (2019). Pemmali dalam Masyarakat Bugis di Pantai Timur Sabah. *Jurnal Komunikasi Borneo (JKoB)*, 29.
- Djamilah, D., & Kartikawati, R. (2014). Dampak perkawinan anak di Indonesia. *Jurnal Studi Pemuda*, 3(1), 1.
- Efevbera, Y., Bhabha, J., Farmer, P. E., & Fink, G. (2017). Girl child marriage as a risk factor for early childhood development and stunting. *Social Science & Medicine*, 185, 93.
- Efevbera, Y., Sc, M., Bhabha, J., Sc, M., Farmer, P. E., D, M., Fink, G., & A, M. (2017). Social Science & Medicine Girl child marriage as a risk factor for early childhood development and stunting. *Social Science & Medicine*, 185, 93. <https://doi.org/10.1016/j.socscimed.2017.05.027>
- Fadhilah, N., & Rahmah, K. (2012). Rekonstruksi Batas Usia Perkawinan Anak dalam Hukum Nasional Indonesia. *De Jure, Jurnal Syariah Dan Hukum*, 4(1), 49–61.
- Friedman, L. M. (1975). *The legal system: A social science perspective*. Russell Sage Foundation.
- Gastón, C. M., Misunas, C., & Cappa, C. (2019). Child marriage among boys: a global overview of available data. *Vulnerable Children and Youth Studies*, 14(3), 219.
- Herviani, F., Zuhriah, E., & Yasin, R. C. L. (2022). Pertimbangan Hakim dalam Pemberian Dispensasi Nikah Perspektif Teori Sistem Hukum Lawrence M. Friedman di Pengadilan Agama Malang. *Jurnal Intelektualita: Keislaman, Sosial Dan Sains*, 11(1), 117–127.

- Hilman, D., & Ratnawaty, L. (2017). Membangun Moral Berkeadilan Dalam Penegakan Hukum Di Indonesia. *Yustisi*, 4(1), 59.
- Hizbullah, A. (2019). Eksistensi Dispensasi Perkawinan terhadap Pelaksanaan Perlindungan Anak Di Indonesia. *Jurnal Hawa: Studi Pengarus Utamaan Gender Dan Anak*, 1(2), 269.
- Izzuddin, A. (2009). Problematika Implementasi Hukum Islam Terhadap Perkawinan di Bawah Umur di Indonesia. *Journal de Jure*, 1(1), 4–5.
- Khaerunnisa, A., & Muliana, H. (2022). Representasi Makna dan Fungsi Pemmali pada Masyarakat Modern dan Tradisional Etnis Bugis di Desa Barang Palie. *Jurnal Aksara Sawerigading*, 1(1), 45–59.
- Maimunah, M., Helim, A., Aina, N., & Adawiyah, R. (2021). Juridical and Sociological Considerations of Judges in Granting Marriage Dispensation after Enactment Law No. 16 Of 2019. *Jurnal Ilmiah Al-Syir'ah*, 19(2), 147.
- Mikhail, S. L. B. (2002). Child marriage and child prostitution: Two forms of sexual exploitation. *Gender & Development*, 10(1), 43.
- Muchsin, A. (2021). *Interview*,.
- Muntamah, A. L., Latifiani, D., & Arifin, R. (2019). Pernikahan dini di Indonesia: Faktor dan peran pemerintah (Perspektif penegakan dan perlindungan hukum bagi anak). *Widya Yuridika: Jurnal Hukum*, 2(1), 1–12.
- Musfiroh, M. R. (2016). Pernikahan Dini dan Upaya Perlindungan Anak di Indonesia. *De Jure: Jurnal Hukum Dan Syariah*, 8(2), 64.
- Nguyen, M. C., & Wodon, Q. (2015). Global and regional trends in child marriage. *The Review of Faith & International Affairs*, 13(3), 6–11.
- Parsons, J., Edmeades, J., Kes, A., Petroni, S., Sexton, M., & Wodon, Q. (2015). Economic impacts of child marriage: a review of the literature. *The Review of Faith & International Affairs*, 13(3), 12–22.
- Rahmatiar, Y., Sanjaya, S., Guntara, D., & Suhaeri, S. (2021). Hukum Adat Suku Bugis. *Jurnal Dialektika Hukum*, 3(1), 103.
- Rosadi, A. (2015). Peradilan Agama di Indonesia: Teoridan Sistem Pembentukan. *Bandung: Simbiosis Reka Utama*.
- Rosadi, A. (2021). *Hukum dan Administrasi Perkawinan* (p. 28). Simbiosis Rekatama Media.
- Rusli, M., & Rakhmawati, R. (2013). Kontribusi “Pemmali” Tanah Bugis Bagi Pembentukan Akhlak. *El-Harakah*, 15(1), 19.
- Salenda, K. (2016). Abuse of Islamic law and child marriage in south-Sulawesi Indonesia. *Al-Jami'ah: Journal of Islamic Studies*, 54(1), 95–121.

- Sofiana, N. E., & Sunni, M. I. (2021). The Application of Article 53 of KHI (Islamic Law Compilation) Regarding Pregnant Marriage in Lottery Marriage. *Jurnal Ilmiah Al-Syir'ah*, 19(1), 133.
- Sudirman, S., Samin, S., Aidid, H., & Talli, A. H. T. (2019). Masalah Review of The Dowry (Marriage Cost) Bugis-Makassar Community. *Jurnal Ilmiah Al-Syir'ah*, 17(2), 164–179.
- Suparman, H. A. (2016). Penegakan Hukum terhadap penyelenggaraan pelayanan publik. *Jurnal Wawasan Yuridika*, 31(2), 177–182.
- Syahfitri, N., Arifin, M. B., & Rijal, S. (2019). *Pemali dalam Masyarakat Etnik Bugis di Kota Samarinda: Suatu Tinjauan Semiotika*. 3(2), 221.
- Tampubolon, E. P. L. (2021). Permasalahan Perkawinan Dini Di Indonesia. *Jurnal Indonesia Sosial Sains*, 2(5), 738–746.
- Wahi, A., Zaleski, K. L., Lampe, J., Bevan, P., & Koski, A. (2019). The lived experience of child marriage in the United States. *Social Work in Public Health*, 34(3), 209.
- Wahyuningrum, D. R., Suhariningsih, S., & Sulistyorini, R. (2021). Jurisdictional Implications Vagueness of Marriage Dispensation Norms in Law Number 16 Year 2019. *International Journal of Multicultural and Multireligious Understanding*, 8(7), 564.
- Wibowo, H. R., Ratnaningsih, M., Goodwin, N. J., Ulum, D. F., & Minnick, E. (2021). One household, two worlds: Differences of perception towards child marriage among adolescent children and adults in Indonesia. *The Lancet Regional Health - Western Pacific*, 8, 100–103. <https://doi.org/https://doi.org/10.1016/j.lanwpc.2021.100103>
- Wodon, Q., Nguyen, M. C., & Tsimpo, C. (2016). Child marriage, education, and agency in Uganda. *Feminist Economics*, 22(1), 59.
- Yuni, L. A. (2021). Analysis of The Emergency Reasons in The Application of Marriage Dispensation at The Tenggara Religious Court. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 5(2), 981.
- Yusuf, M., Wekke, I. S., Salleh, A., & Bukido, R. (2021). Legal Construction of the Buginese Understanding. *Jurnal Ilmiah Al-Syir'ah*, 19(2), 253–254.