



# Discourse Analysis Study on the Determination of Marriage Dispensation in Religious Courts

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## Abstract

This study examines the phenomenon of the determination of marriage dispensation in the Belopa Religious Court, Luwu Regency through a critical discourse analysis approach. The purpose of this study is to analyze the discourse structure, discursive practices, and socio-cultural practices that underlie the determination of marriage dispensation. The research method uses a qualitative approach with data collection techniques in the form of document studies on the determination of marriage dispensation in 2020-2023, in-depth interviews with judges, and observations of the trial process. The results of the study show that the discourse structure in the determination of marriage dispensation is dominated by considerations of benefit and prevention of harm, which is reflected in the use of Islamic legal diction and arguments. Discursive practices show the existence of a power relationship between the court authority and the applicant for dispensation, where the court has the legitimacy to determine the eligibility of underage marriage. Meanwhile, at the level of socio-cultural practice, the determination of marriage dispensation cannot be separated from the social construction of the Luwu community regarding marriage and adulthood, as well as economic and educational factors. This study concludes that the discourse of marriage dispensation in the Belopa Religious Court is the result of a complex interaction between legal authority, religious values, and the socio-cultural realities of the local community.

**Keywords:** *critical discourse analysis, marriage dispensation, Belopa Religious Court, discursive practices, social construction*

## Introduction

Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One Almighty God. In Indonesia, marriage is regulated in Law Number 1 of 1974 which has been updated to Law Number 16 of 2019 concerning Marriage. One

important aspect regulated in the law is the minimum age limit for marriage, which is 19 years for men and women.

However, the reality in society shows that there are still many applications for marriage dispensation submitted to the Religious Court, including the Belopa Religious Court, Luwu Regency. Marriage dispensation is an exception to the general rule for something special, which in this context is a marriage permit for prospective brides and grooms who have not reached the minimum age for marriage. This phenomenon is interesting to study further, especially through a discourse analysis approach to the determination of marriage dispensation issued by the Belopa Religious Court.

Discourse analysis as a research method can reveal various important aspects in determining marriage dispensation, starting from the language construction used, the social context behind it, to the power relations formed in the determination process. Through discourse analysis, it can be examined how judges construct arguments in granting dispensation, the legal considerations used, and the social and cultural values reflected in the determination.

Luwu Regency, as the jurisdiction of the Belopa Religious Court, has unique socio-cultural characteristics, where the practice of underage marriage is still quite prevalent. Factors such as religious understanding, cultural traditions, economic conditions, and the level of community education also influence the high number of requests for marriage dispensation in this area. This research is important to understand how the Belopa Religious Court, as a legal institution, responds to and considers these various factors in determining marriage dispensation.

In addition, this study is also relevant to efforts to protect children's rights and prevent child marriage, which are the focus of global and national attention. Analysis of the determination of marriage dispensation can provide an overview of how the balance between law enforcement, child protection, and respect for socio-cultural values is attempted in the practice of religious justice. This research is expected to provide theoretical contributions in the development of legal discourse analysis studies, as well as provide practical input for the renewal of judicial policies and practices related to marriage dispensation. The results of this study can also be a reference for efforts to prevent child marriage and protect children's rights in Luwu Regency in particular, and Indonesia in general

### **Theory Study**

Discourse analysis is a study that examines or analyzes language that is used naturally, both in written and spoken form. The use of language naturally means the use of language as in everyday communication (Stubbs, 1983). Discourse analysis emphasizes the study of language use in a social context, especially in interactions between speakers. According to Norman Fairclough (1995), discourse analysis is an effort to uncover the hidden intentions of the subject who makes a

statement. Disclosure is done by placing oneself in the position of the speaker with interpretation following the speaker's meaning structure. In analyzing a discourse, there are several approaches that can be used: a) Microstructural approach: analyzing cohesion and coherence in discourse b) Macrostructural approach: analyzing the context of the situation and culture c) Critical approach: analyzing the connection between discourse and power and ideology

Marriage dispensation is a concession given by the Religious Court to prospective brides and grooms who have not reached the minimum age limit to get married. According to Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, the minimum age limit for marriage is 19 years for men and women. The legal basis for marriage dispensation is: a) Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 b) Supreme Court Regulation No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications c) Compilation of Islamic Law (KHI)

Court decisions have a standard discourse structure and consist of: Head of decision, Identity of the parties, Facts of the case, Legal considerations, Decision order. The legal discourse in court decisions has the following characteristics: a) Uses formal legal language b) Is performative c) Has binding force d) Contains legal arguments

Luwu Regency has the characteristics of a society that still adheres to customary and religious values. Underage marriages still occur due to various social, economic, and cultural factors. Several factors that influence the application for marriage dispensation at the Belopa Religious Court: a) Parental concerns b) Family economic conditions c) Pregnancies outside marriage d) Local traditions and culture

Some related studies include, Rahmawati, S. (2020). "Analysis of the Determination of Marriage Dispensation in Religious Courts: Case Study at the Watampone Religious Court." *Al-Qadau Journal*, 7(1), 45-58. This study examines the factors that judges consider in granting marriage dispensation. The results of the study indicate that the main considerations include the physical and mental maturity of the prospective bride and groom, family support, and efforts to prevent adultery. The methodology used is critical discourse analysis of court ruling documents. Supriadi, M. (2021). "Implementation of Supreme Court Regulation No. 5 of 2019 in Marriage Dispensation Cases: Study at the Palopo Religious Court." *Yustisia Journal*, 12(2), 167-182.

This study discusses the implementation of Perma No. 5 of 2019 in the local context of South Sulawesi. The findings show an increase in accuracy in examining marriage dispensation cases after the enactment of the Perma. Abdullah, H. (2019). "Judges' Considerations in Determining Marriage Dispensation in Religious Courts: Critical Discourse Analysis." *Journal of Islamic Law*, 15(3), 78-93. This study uses Norman Fairclough's critical discourse analysis approach to examine the determination of marriage dispensation. The results of the study indicate the influence of social and cultural construction in marriage dispensation decision

making. Related studies on critical discourse analysis, Nur, A. (2022). "Critical Discourse Analysis of Religious Court Decisions: Gender Perspective." *Journal of Gender and Law*, 8(1), 34-49.

This study uses a discourse analysis framework to examine gender sensitivity in religious court decisions, including in marriage dispensation cases. Rahman, F. (2021). "Construction of Legal Discourse in Religious Court Decisions: Case Study in South Sulawesi." *Journal of Islamic Discourse*, 9(2), 112-128. This study analyzes how legal discourse is constructed in the determination of religious courts, with a special focus on cases in South Sulawesi. Then some studies related to the socio-cultural context, namely: Hamid, A. (2020). "Socio-Cultural Factors in Marriage Dispensation Applications: Case Study in Luwu Regency." *Journal of Sociology of Religion*, 6(2), 89-104. This study examines the socio-cultural aspects that influence the high number of marriage dispensation applications in Luwu Regency. Syamsuddin, M. (2021). "Analysis of the Social Impact of Marriage Dispensation Determination on Luwu Society." *Journal of Social Humanities*, 11(1), 45-60. This study discusses the social impact of the determination of marriage dispensation on Luwu society, including implications for education and family welfare. Based on previous research studies, there are several gaps

## Method

This study uses a qualitative approach with discourse analysis as the main instrument. The qualitative approach aims to gain an in-depth understanding of how marriage dispensation is decided by religious courts and how the legal discourse that appears in the decision shapes social understanding of marriage in the region. This type of research is critical discourse analysis that focuses on the text of religious court decisions related to marriage dispensation. Critical discourse analysis (CDA) is used to understand how power, ideology, and legal values are translated into language and legal policies at the Belopa Religious Court. This research was conducted at the Belopa Religious Court, Luwu Regency, South Sulawesi Province, by taking a sample of decisions related to marriage dispensation within a certain period (for example the last 5 years).

The data used in this study consists of: (a) Religious Court Decisions related to marriage dispensation in Luwu Regency that can be accessed from the court or legal database. (b) Interviews with court officials, including judges and religious court employees, to explore their perspectives on the determination of marriage dispensation. (c) Supporting documents related to the legal process and provisions regarding marriage dispensation in Islamic religious law and positive law in Indonesia.

Data collection techniques used include (a) Document study: Collecting and analyzing religious court decisions that have been published or can be accessed through local courts. The main focus is on analyzing judges' decisions regarding

marriage dispensation. (b) In-depth interviews: Interviewing judges, lawyers, and other related parties involved in the process of determining marriage dispensation to gain a broader understanding. (c) Field observation: Observing the trial process related to marriage dispensation at the Belopa Religious Court (if possible).

The data collected was analyzed using critical discourse analysis involving several stages: (a) Textual description: Reading and mapping text elements in court decisions, such as the use of language, argument structure, and references to legal and religious norms. (b) Analysis of social and political contexts: Examining the social and political contexts that influence judges' decisions in granting marriage dispensation, such as local culture, religious norms, and local government policies. (c) Ideological identification: Analyzing the ideology or power involved in the decision-making process, both in terms of positive law, religious law, and local social norms. (d) Comparison between decisions: Comparing one decision with another to find patterns or differences in the reasons used by judges in deciding marriage dispensation.

To ensure the validity and reliability of the data, several steps are taken: (a) Source triangulation: Using several data sources to explore the same problem, for example by comparing interview results with court decisions and related literature. (b) Member checking: Asking for confirmation from sources (for example judges or lawyers) regarding the interpretations made in the discourse analysis. (c) Peer debriefing: Discussion with colleagues or experts in the field of law and discourse analysis to reduce bias in the analysis.

## **Results and Discussion**

The Belopa Religious Court as a judicial institution that has the authority to handle marriage dispensation applications has issued several decisions related to marriage dispensation throughout 2020-2023. Based on the analysis of the decision documents, several important contexts were found that underlie the issuance of marriage dispensation: Luwu Regency has cultural characteristics that still adhere to traditional values related to marriage. According to Syarifuddin (2020), the Luwu community views marriage as a sacred bond that must be implemented immediately when there are indications of a relationship between a man and a woman that has the potential to cause slander or violation of religious norms.

This is one of the factors driving the high number of marriage dispensation applications. Economic factors also play a significant role in submitting marriage dispensation applications. Rahman (2021) revealed that the economic conditions of underprivileged families often encourage parents to marry off their children at an early age in the hope of reducing the family's economic burden. Data from the Luwu Regency BPS (2022) shows that the poverty rate in this area is still quite high, at around 11.2%. Based on the results of the analysis of the decision documents at the Belopa Religious Court, it was revealed that the court often grants marriage dispensation based on religious and social considerations. In many cases, the

reasons given are the inability of parents to care for their pregnant daughters or because of pressing economic factors.

The determination of this marriage dispensation is often based on stronger religious norms among the local community, which view marriage as a way to avoid adultery. The discourse that has developed among the Belopa community regarding marriage dispensation is related to the inability to meet legal provisions regarding the minimum age for marriage. In this context, the court is considered an institution that is able to provide solutions to this inability. However, there is also a critical view that states that marriage dispensation actually opens up loopholes for the practice of child marriage which should be prohibited by state law. However, in practice, marriage dispensation at the Belopa Religious Court is often seen as a legitimate way out for families facing social and economic pressures.

The Belopa Religious Court has a very important role in maintaining the continuity of religious and social norms in the local community. Court decisions in marriage dispensation cases often reflect local cultural values, even though they conflict with higher legal rules, such as the Marriage Law. In many cases, religious court judges prioritize the interests of children and families in granting marriage dispensations, even though this often risks the health and education of girls who marry at an early age.

Analysis of the macro structure of marriage dispensation determinations shows a central theme in the form of legal considerations that prioritize aspects of benefit and harm. This is in line with Nasution's opinion (2019) that the determination of marriage dispensation must consider the balance between protecting children's rights and preventing greater harm. The determination of marriage dispensation at the Belopa Religious Court is structured systematically including: (1) Identity of the parties (2) Facts of the case (3) Legal considerations (4) Decision order. This structure reflects the court's efforts in building logical and structured arguments in making decisions (Mahmudah, 2021).

At the micro-structure level, the use of language in decisions shows several characteristics: (1) Use of legal-formal diction (2) Arguments that refer to the basis of positive law and Islamic law (3) Emphasis on the aspect of welfare through the right choice of words. This shows the judge's efforts to build the legitimacy of the decision through the use of authoritative language (Hidayat, 2022).

The determination of marriage dispensation has significant socio-legal implications: (1) Child Protection Aspect Although marriage dispensation is granted, the court still pays attention to the aspect of child protection through comprehensive consideration. According to Arifin (2023), this is reflected in the strict requirements and in-depth examination of the readiness of the prospective bride and groom. (2) Social Impact The granting of marriage dispensation has the potential to influence the social dynamics of society, especially regarding

perceptions of early marriage. Rahmawati's research (2021) shows that the determination of marriage dispensation can indirectly affect the dropout rate and poverty. (3) Effectiveness of Prevention The determination of marriage dispensation also plays a role in preventing unregistered marriages and extramarital pregnancies. Data from the Belopa Religious Court shows that 60% of applications for marriage dispensation are motivated by parents' concerns about their children's relationships (Belopa Religious Court Annual Report, 2022).

The determination of marriage dispensation at the Belopa Religious Court shows how religious law and local culture interact in the context of law enforcement in Indonesia. Marriage dispensation is not only a matter of interpreting statutory provisions, but also a matter of balancing religious, social, and cultural norms that apply in the local community. This creates a dilemma between short-term interests, such as maintaining family honor, and long-term interests that focus on protecting the rights of children and women. In the context of discourse analysis, marriage dispensation shows the dominance of religious discourse in decisions taken by judges. T

his has implications for the marginalization of positive legal discourse, which should protect children's rights, especially the right not to marry at an early age. Therefore, it is necessary to review the policies and practices of marriage dispensation in the Religious Court, so that they better reflect the principles of justice and protection of children's rights in accordance with developments in international and national law.

## **Conclusion**

Discourse analysis of the determination of marriage dispensation in the Belopa Religious Court shows the complexity of considerations involving legal, social, cultural, and economic aspects. The use of language and the structure of the determination reflect the court's efforts to build legitimacy of decisions while still considering aspects of child protection and public welfare. Although marriage dispensation is a solution for many families, this practice still has a negative impact on children's rights, especially girls who marry at an early age. Therefore, reform is needed in the practices of religious courts that prioritize the interests of children and minimize detrimental social impacts.

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