

JUDICIAL DISPARITIES IN LEGAL INTERPRETATION: THE APPLICATION OF PROGRESSIVE LAW IN MARRIAGE DISPENSATION RULINGS

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Abstract

Purpose: This study aims to analyze the disparity in judicial interpretations and the application of legal progressivism in marriage dispensation decisions at the Muara Bulian Religious Court. This study seeks to explore how judges construct legal reasoning when faced with applications for underage marriage dispensation and whether their decisions reflect consistency or divergence in applying child protection principles.

Methods - This study employs a socio-legal approach with qualitative methods. Data were obtained from case decisions, field observations, and interviews with judges at the Muara Bulian Religious Court. The data were analyzed thematically to identify patterns of judicial interpretation and the extent of progressivism in the rulings' content.

Findings - The results reveal a disparity in judges' interpretations, particularly regarding the use of progressive legal reasoning. Some judges strictly adhere to statutory provisions, while others accommodate sociocultural considerations and parental requests, resulting in inconsistent outcomes. Although progressive legal theory provides opportunities for child protection, in practice, dispensations are often granted, thereby reinforcing early marriage practices instead of preventing them.

Contribution/Limitation of Research: This study contributes to the discourse on judicial discretion and progressive legal thought in the context of family law adjudication. However, it is limited to the Muara Bulian Religious Court; thus, its findings cannot be generalized to all religious courts in Indonesia.

Originality/Value - This study highlights the tension between statutory child protection norms and judicial discretion in marriage dispensation cases. It offers a critical socio-legal perspective on how progressivism is interpreted and practiced at the local courts.

Keywords: Judicial Interpretation, Legal Progressivism, Marriage Dispensation, Religious Court.

Abstrak

Tujuan - Penelitian ini bertujuan untuk menganalisis disparitas interpretasi hakim dan penerapan progresivitas hukum dalam putusan dispensasi kawin di Pengadilan Agama Muara Bulian. Fokus penelitian diarahkan pada bagaimana hakim membangun argumentasi hukum ketika menghadapi permohonan dispensasi kawin di bawah umur, serta apakah putusan-putusan tersebut menunjukkan konsistensi atau perbedaan dalam menerapkan prinsip perlindungan anak.

Metode - Penelitian ini menggunakan pendekatan socio-legal dengan metode kualitatif. Data diperoleh dari putusan pengadilan, observasi lapangan, dan wawancara dengan hakim Pengadilan Agama Muara Bulian. Analisis dilakukan secara tematik untuk mengidentifikasi pola interpretasi hakim dan sejauh mana progresivitas hukum diimplementasikan dalam putusan.

Temuan - Hasil penelitian menunjukkan adanya disparitas dalam interpretasi hakim, khususnya terkait penggunaan kerangka hukum progresif. Sebagian hakim cenderung berpegang ketat pada ketentuan undang-undang, sementara yang lain lebih akomodatif terhadap pertimbangan sosial budaya dan permintaan orang tua, sehingga menghasilkan putusan yang inkonsisten. Meskipun teori hukum progresif memberi peluang bagi perlindungan anak, praktik di lapangan memperlihatkan dispensasi justru lebih sering diberikan, sehingga memperkuat praktik perkawinan anak daripada mencegahnya.

Kontribusi/Keterbatasan Penelitian - Penelitian ini memberikan kontribusi pada diskursus mengenai diskresi hakim dan pemikiran hukum progresif dalam konteks peradilan keluarga. Namun, penelitian ini terbatas pada Pengadilan Agama Muara Bulian, sehingga temuannya tidak dapat digeneralisasi pada seluruh pengadilan agama di Indonesia.

Orisinalitas/Nilai - Penelitian ini menyoroti ketegangan antara norma perlindungan anak dalam undang-undang dengan diskresi hakim dalam kasus dispensasi kawin. Kajian ini menawarkan perspektif socio-legal kritis mengenai bagaimana progresivitas hukum diinterpretasikan dan dipraktikkan di tingkat pengadilan agama di tingkat lokal.

Kata Kunci: Interpretasi Hakim, Hukum Progresif, Dispensasi Kawin, Pengadilan Agama.

INTRODUCTION

In recent decades, the issue of dispensation of marriage has gained global attention due to its strong association with child marriage, which is considered a major barrier to sustainable development (SD). The United Nations (UN), through the Sustainable Development Goals (SDGs) has set a target to eliminate child marriage by 2030 through Sustainable Development Goals (UNICEF, 2020). Empirical evidence on the negative implications of child marriage, particularly among individuals who are not yet physically or psychologically mature, raises serious concerns regarding the high probability of infant mortality, stunting, and the risk of physical and sexual violence (Anggreni et al., 2023; Wibowo et al.,

2021). From a welfare perspective, such practices contribute to the degradation of social life, poverty, human rights protection, and gender equality (Nawawi et al., 2022; Tekile et al., 2020), thereby further complicating the prospects of improving living standards in the future (Wahhaj 2018).

Indonesia has formally committed to addressing and reducing the prevalence of child marriages. This commitment is reflected in the amendment of the Marriage Law, which sets the minimum legal age for women to marry at 19 years (Chusnida & Anggriawan, 2022; Yuni, 2021). In addition, the government has launched several nationwide initiatives aimed at preventing child marriage, one of which is the National Strategy for the Prevention of Child Marriage (Stranas

PPA) (Bappenas 2020). The primary objective of these measures is to reduce the prevalence of early marriage, which currently affects approximately 25.52 million children in India. However, the effectiveness of these policies remains limited, as Indonesia continues to rank fourth globally in terms of child marriage (Schoolmedia News, 2023).

This alarming reality has also been evident in Batang Hari Regency, Jambi Province, in recent years. Data from the Muara Bulian Religious Court indicate that between January and October 2023, 86 marriage dispensation applications were granted. This figure represents a sharp increase compared to 68 and 77 applications in 2022 and 2021, respectively (Tribunjambi.com, 2023). Ironically, one of the main objectives of the Marriage Law amendment was to prevent and reduce early marriage (Maimunah et al., 2021; Yusuf 2020). However, as in many other regions, this regulation has paradoxically led to a significant rise in marriage dispensation petitions filed in court.

Marriage dispensation permits may not directly prevent early marriage. However, the frequent approval of such petitions risks setting a precedent and legitimizing underage marriages (Wahyudi & Prastiwi, 2022). Once a petition is granted, the right to marry is formally recognized and sanctioned by the state of Georgia. In practice, the issuance of marriage dispensations by Religious Courts continues to provoke debate and controversy (Bukido, Harun,

et al., 2023; Supraptiningsih, 2021). Judicial discretion is not always inclined toward approval, as judges hold the authority to reject applications for child marriage under certain conditions (Wahyudi & Prastiwi, 2022). In other words, the granting of marriage dispensation in Religious Courts is not automatic. Judges must carefully examine each case by considering multiple factors to ensure that their decision serves the best interests of all parties, particularly the underage child (Suadi and Candra, 2022).

Within this framework, the role of judges is pivotal, as judicial selectivity is essential for curbing the rise in child marriage. Therefore, it is critical to investigate the legal reasoning and normative foundations that guide judicial decisions in granting dispensations. Judicial responsiveness, particularly in navigating contemporary social dynamics and progressive legal challenges, becomes vital when strict legal positivism proves inadequate (Rahardjo, 2009; Rohmawati & Rofiq, 2021). While judges may sometimes approve dispensations by weighing contextual and social factors, they are equally capable of refusing them to cultivate a paradigm of legal consciousness within society. This reflects the understanding that law operates not merely as a juridical reality but also as a medium for embodying philosophical and normative values (Alexy, 2021).

In Jambi Province, particularly Batang Hari Regency, the surge in marriage dispensation petitions reflects the tension between the statutory minimum marriage age and local communities' social and cultural realities. The Muara Bulian Religious Court recorded a significant increase in dispensation cases over the past five years, with 329 rulings. Specifically, there were 25 cases decided in 2019, increasing to 68 in 2020, 77 in 2021, 68 in 2022, and 91 in 2023. This trend indicates an important dynamic in judicial practice, particularly in how the courts respond to marriage dispensation petitions amid regulatory changes and growing demands for child protection. In such circumstances, judges are required to apply legal norms textually and interpret the law in light of the actual conditions faced by petitioners. Divergent approaches and judicial considerations in deciding similar cases open a critical space for analyzing how interpretation is carried out and to what extent progressive legal values are integrated into the judicial reasoning. This study is situated within this phenomenon, aiming to explore how substantive justice is realized amid the ongoing tension between written legal norms and local social dynamics.

Previous studies specifically examining judicial interpretation in marriage dispensation cases have been conducted by several scholars. Fajriyah et al. revealed that differences in judges' perspectives when interpreting urgent

reasons have led to variations in dispensation rulings, particularly in cases in East Java (Muzayyanah Dini Fajriyah et al., 2023). Putri and Santika highlighted the gap between normative understanding and judicial practice, demonstrating that some judges remain trapped in formalistic reasoning (Putri & Santika, 2022). Kurniawan and Refiasari examined decisions rejecting dispensation petitions, emphasizing the diverse ways in which the phrase *very urgent reasons* is interpreted by judges (Kurniawan & Refiasari, 2022). Maimunah et al. found that, in many cases, progressive legal approaches were not dominant, and the socio-psychological considerations of the child were often overlooked as a primary basis for judicial reasoning (Maimunah et al., 2021). Collectively, these studies show that although progressive law and judicial interpretation are crucial in marriage dispensation cases, little research has analyzed them in an integrated manner through a socio-legal approach, particularly with attention to disparities in judicial reasoning. Therefore, this study seeks to fill this gap by examining how progressive law and interpretive variations are applied in the decisions of the Muara Bulian Religious Court.

Previous studies have primarily focused on the legality of marriage dispensations and their impact on individuals and society. However, research specifically addressing how judges interpret the law in dispensation

cases, particularly through a progressive legal approach, remains relatively limited. This gap presents an opportunity for a more in-depth investigation into how the decisions of Religious Courts reflect legal progressivism, especially in marriage dispensation cases. Such dialectics also reveal disparities in interpretation among judges, which are shaped by differences in their knowledge and experience. This study seeks to uncover patterns of judicial interpretation that may serve as a reference for other courts, while also contributing to efforts to strengthen the protection of children's rights in Indonesia. Furthermore, the findings are expected to provide a foundation for policy reform regarding marriage dispensation. Against this backdrop, this study examines how these issues are manifested in the dispensation decisions of the Muara Bulian Religious Court in Jambi. This court was selected because of its consistently high and increasing number of dispensation cases over the past five years, as well as the significant variation in judicial reasoning. These conditions present a valuable opportunity to analyze judicial interpretive practices and assess the extent to which progressive legal principles are applied in response to local social and cultural dynamics.

METHOD

This study employs a socio-legal approach that combines normative and

empirical methods to evaluate the effectiveness, relevance, and application of progressive legal principles in the rulings on marriage dispensation. The normative dimension involves doctrinal research examining statutory provisions, the Compilation of Islamic Law (KHI), Supreme Court Regulation No. 5 of 2019, and dispensation decisions issued by the Muara Bulian Religious Court between 2019 and 2024. Case selection was based on variations in judicial outcomes (granted, rejected, inadmissible, and withdrawn) and the diversity of legal reasoning adopted by judges. This normative analysis was integrated with empirical findings to identify the extent to which these decisions reflect indicators of progressive law.

The empirical component of this study was conducted through courtroom observations and in-depth interviews with three judges handling the cases: Judge Beni Kurniawan, Judge Fitrah Nur Halim, and Judge Sri Rezki Dwi Putri. The interviews focused on judicial reasoning processes, the use of legal sources, and socio-psychological considerations in decision making. Secondary data were obtained from legal documents, academic publications, and official reports from the Muara Bulian Religious Court. The combination of primary and secondary data enabled the exploration of the connections between theoretical frameworks and actual judicial practices. Consequently, the analysis not only illustrates the formal procedures undertaken by judges

but also reveals the dynamics of judicial considerations that influence the application of progressive law at the court level in Indonesia.

Data analysis was conducted in four interrelated stages. First, all dispensation rulings were classified based on judicial outcomes and legal grounds employed, providing an initial overview of the general tendencies in court decisions. Second, each ruling was examined to identify indicators of progressive law as formulated by Satjipto Rahardjo, while also assessing its alignment with Ronald Dworkin's parameters of legal interpretation, which emphasize the integrity and consistency of legal principles. Third, the findings were compared across cases to trace the patterns of judicial reasoning and identify forms of disparity in decision-making. Fourth, the results of this normative analysis were integrated with empirical data obtained from interviews and observations, producing a synthesis that allows for a critical assessment of the extent to which judicial practices at the Muara Bulian Religious Court consistently embody substantive justice principles.

RESEARCH AND DISCUSSION

Judicial Interpretation and Its Disparities in Marriage Dispensation Rulings

The authority of the Religious Courts is regulated under Article 49 of Law No. 3 of 2006, which amended Law No. 7 of 1989 concerning Religious Courts,

particularly in the area of marriage law. Religious Courts have jurisdiction over marriage-related cases, including applications for marriage dispensation filed by the guardians or parents of prospective brides or grooms who do not meet the minimum age requirement (Purnomo & Rohmatulloh, 2022). This authority is exercised with reference to the principles of shari'ah law and by considering aspects of public welfare (*maslahah*) and the best interests of the individuals involved in the case.

Applications for marriage dispensation are typically submitted by the guardians or parents of underage prospective spouses, as children themselves lack the legal capacity to submit such requests due to their dependency under guardianship. Judges at the Muara Bulian Religious Court deliberate on the principles of shari'ah by balancing *maslahah* (benefit) and *mafsadah* (harm) to determine whether to approve or reject applications. Judge Beni Kurniawan explained:

"Most judges prioritize *fiqh* principles in dispensation cases, particularly because such cases are petition-based. The *fiqh* principle that emphasizes preventing harm over seeking benefit serves as a crucial guideline to ensure that judicial decisions are fair, aligned with shari'ah, and responsive to community needs" (Kurniawan, interview, June 4, 2024).

Relying on *fiqh* principles, judges adhere to the maxim that preventing harm takes precedence over seeking benefits. This principle serves as a

guiding framework in judicial decision-making, ensuring that rulings uphold justice, remain consistent with shari'ah values, and contribute to the welfare of society. In addition, Judge Fitrah Nur Halim emphasized that once the court proceedings establish the existence of legitimate grounds,

“The Religious Court will issue a ruling to grant the application for a marriage dispensation. In practice, the application of other legal grounds is rarely employed because these cases are petition-based, which makes judicial handling more dependent on *fiqh* principles” (Halim, interview, June 4, 2024).

In deciding marriage dispensation cases, judges at the Muara Bulian Religious Court carefully evaluate the urgency of the circumstances and supporting factors before either approving or rejecting a petition. Decisions are made with prudence to ensure accuracy and fairness. Nevertheless, the rulings on marriage dispensation at this court reveal a degree of disparity, even though most petitions were granted. The details of the judicial determinations on dispensation applications at the Muara Bulian Religious Court are presented in the following table:

Table 1. Marriage Dispensation Petition Decisions at the Religious Court of Muara Bulian, 2019-2023

Year	Decision Category					Total
	Granted	Withdrawn	Dismissed	Not Accepted	Rejected	
2019	22	3	-	-	-	25
2020	58	7	2	1	-	68
2021	71	6	-	-	-	77
2022	65	1	2	-	-	68
2023	86	-	-	1	4	91
Total	302	17	4	2	4	329

Over the five-year period from 2019 to 2023, the Religious Court of Muara Bulian recorded a total of 302 applications for marriage dispensation that were received and granted. However, only 27 applications were rejected. Among the rejected cases, the reasons varied: 17 applications were withdrawn, 4 were dismissed, 2 were declared inadmissible, and 4 were denied by the judges of the Religious Court of Muara Bulian.

For the year 2024, up to the time this study was conducted, several marriage dispensation applications were rejected by the Religious Court of Muara Bulian. The decisions included the following:

1. Decision No. 48/Pdt.P/2024/PA.Mbl., registered on May 20, 2024, and decided on June 4, 2024. In its ruling, the court declared that the petitioners' application was procedurally defective due to plurium litis consortium (lack of necessary parties). The legal considerations cited in the judgment referred to Islamic jurisprudence (*fiqh*), the Compilation of Islamic Law (Kompilasi Hukum Islam), statutory regulations, and legal jurisprudence.
2. Decision No. 28/Pdt.P/2024/PA. Mbl. was registered on February 21, 2024, and decided on March 13, 2024. The legal considerations in this ruling also relied on Islamic jurisprudence, the Compilation of Islamic Law, statutory regulations and jurisprudence.

3. Decision No. 14/Pdt.P/2024/PA. Mbl. was registered on January 23, 2024, and was decided on February 6, 2024. The legal considerations in this case were based on statutory regulations as positive law and the Compilation of Islamic Law.

Several decisions rejecting applications for marriage dispensation were predominantly based on procedural aspects of the law rather than the substantive merits of the petitions. Accordingly, the rejections were not grounded in the judicial interpretation of the substantive reasons for the requested dispensation. For example, in Decision No. 48/Pdt.P/2024/PA.Mbl., registered on May 20, 2024, and decided on June 4, 2024, the court declared the petition procedurally defective due to plurium litis consortium (the lack of necessary parties). The ruling emphasized compliance with formal legal requirements stipulated by statutory regulations. Similarly, Decision No. 28/Pdt.P/2024/PA.Mbl., registered on February 21, 2024, and decided on March 13, 2024, as well as Decision No. 14/Pdt.P/2024/PA.Mbl., registered on January 23, 2024, and decided on February 6, 2024, also demonstrated the judges' careful consideration of every argument and fact. Collectively, these rulings reaffirm the court's commitment to ensuring that each petition is adjudicated per the prevailing legal provisions.

Pursuant to Law No. 16 of 2019, the minimum legal age for marriage is set at

19 years for both men and women (Bukido, Haris, et al., 2023; Dakhoir & Sa'adah, 2023). Substantive law stipulates that individuals below this age threshold are, in principle, ineligible to marry unless a valid justification exists (Mursyid & Yusuf, 2022). Judges are authorized to grant a dispensation as an exception to the minimum age requirement if legitimate reasons are presented, as further regulated under Supreme Court Regulation (Perma) No. 5 of 2019 (Gani et al., 2021; Rosih Oci, 2023).

According to Judge Beni Kurniawan, who handled several marriage dispensation cases, multiple considerations must be weighed in reaching a decision:

"The Religious Court of Muara Bulian essentially only receives cases and does not possess the authority to prevent or prohibit the registration of petitions, he said. The court has no instrument to stop individuals from marrying underage. The only available mechanism is through a marriage dispensation ruling, which must consider various aspects, such as urgent reasons and the considerations stipulated under Supreme Court Regulation No. 5 of 2019, including psychological readiness, financial capacity, potential risks of domestic violence, and cultural factors that encourage early marriage" (Kurniawan, interview, June 5, 2024).

In addition, before ruling on applications for marriage dispensation, judges counsel the applicants regarding the risks and consequences of early

marriage. Thus, when the reasons presented are not urgent, judges expect petitioners and prospective spouses to reconsider their intention to marry, particularly when they are still minors. This point was further emphasized by Judge Sri Rezki Dwi Putri, who also serves as the Vice Chair of the Religious Court of Muara Bulian:

“To reduce the incidence of underage marriages, the Religious Court of Muara Bulian undertakes various measures, including providing information on the dangers of early marriage through an information desk before cases are formally registered. The Religious Court is also actively engaged in communication forums with the Regional Government, particularly in efforts to draft local regulations aimed at preventing child marriage, as initiated by the Muara Bulian Regional Government” (Putri, interview, June 5, 2024).

An analysis of interviews with judges at the Religious Court of Muara Bulian reveals that some rulings granting marriage dispensations were not solely based on procedural documentation but rather on “urgent reasons,” such as pregnancy out of wedlock or intimate relationships outside a formal union. In certain decisions, these considerations align with the principle of *maslahah mursalah*, which prioritizes safeguarding the petitioner’s social status and integrity in the event of rejection. However, these findings should be seen as indicative rather than universally generalizable, since not all rulings explicitly address socio-psychological

aspects of the crime. This reflects a judicial practice that, at times, remains more procedurally oriented than substantively progressive in the delivery of justice.

In contrast, the reasons for rejecting or denying applications for marriage dispensation were largely procedural, such as incomplete documentation or insufficient evidence to substantiate the petition. This illustrates that judicial considerations were analytical and objective, as judges assessed not only the substantive grounds of the petition but also its compliance with the applicable procedural requirements (Mursyid & Yusuf, 2022). Such rejections reflect the judiciary’s efforts to ensure that legal proceedings are conducted in accordance with legitimate provisions while also preventing potential misuse of the dispensation mechanism, which could negatively affect the parties involved, particularly the child who is the subject of the decision.

The disparity in interpretation within marriage dispensation rulings at the Religious Court of Muara Bulian becomes evident when comparing the legal reasoning applied in cases with relatively similar factual characteristics. In several cases, judges invoked the principle of *mafsadah* as the primary justification for rejecting applications, emphasizing the social, psychological, and economic risks of early marriage. However, in other cases with nearly identical factual circumstances, such as when prospective spouses had already

engaged in a premarital relationship, the court granted the application on the grounds of *maṣlaḥat* to safeguard family honor or prevent social stigma. This divergence indicates that the parameter of “urgent reasons” under Supreme Court Regulation No. 5 of 2019 has been variably interpreted, thereby expanding the scope of judicial subjectivity and influencing the direction of the rulings.

This suggests that the implementation of progressive laws at the judicial level has not yet been standardized effectively. The principle of progressiveness, which ideally integrates substantive justice, utility, and legal certainty (Alexy, 2021; Sumaya, 2018), risks producing legal uncertainty for the parties. On the one hand, interpretive flexibility allows judges to adapt rulings to the local socio-cultural context; on the other hand, excessive disparity may generate perceptions of inconsistency or even injustice in the eyes of society. Therefore, more detailed judicial guidelines are needed for interpreting indicators of urgent reasons and *maṣlaḥat* so that marriage dispensation rulings are not solely contingent upon individual judicial preferences but are also aligned with the overarching legal objective of protecting children.

The Relevance of Marriage Dispensation Rulings within the Framework of Legal Progressivism

The pursuit of truth inherently requires interpretation as a scientific

approach to understanding it. Thus, when one reads a text, one inevitably interprets it within one’s own cognitive framework (Karlsson, 2014). The same applies to legal scholars who interpret contracts, statutes, judicial decisions and constitutional norms. A proper understanding of interpretive methods can be further examined to reach conclusions through intellectual activity, enabling a more comprehensive grasp of legal meaning (Budiono & Izziyana, 2014; Susanti, 2015).

Dworkin’s theory of legal interpretation emphasizes that judicial decisions should ideally uphold the pre-existing rights of citizens, even when such rights are deemed controversial owing to the absence of clear definitions in the prevailing law (Karlsson, 2014). In the case of the minimum marriage age of 19 years stipulated under Law No. 16 of 2019, many rulings create room for marriage dispensation petitions to be granted by the Religious Courts (Wahyudi & Prastiwi, 2022).

Marriage dispensation, as granted by judges, illustrates how the law can be interpreted to reach decisions that incorporate social values and individual rights, even when the legislation itself does not provide explicit or detailed guidelines on the matter (Rahmawati & Nuraeni, 2021). For instance, in cases where a dispensation permits individuals to marry despite not meeting the statutory minimum age, judges interpret the law by considering multiple factors, including social

circumstances, individual needs, and fundamental rights guaranteed by the Constitution (Nasution & Nasution, 2021; Sarip et al., 2022).

Individual rights, even when not fully regulated or explicitly defined by legal texts, must be upheld. In the context of marriage dispensation, although regulations on the minimum marriage age explicitly establish a legal threshold, judges still retain interpretive discretion to consider personal rights, social needs, and contextual circumstances with the overarching aim of ensuring greater justice (Rizki et al., 2022). This interpretive process enables judges to look beyond the mere wording of statutory provisions so that in their decision-making, they do not rely solely on codified rules but also engage in a search for truth through contextual interpretation that incorporates social realities beyond the law.

This perspective aligns with the interpretive understanding of the law, which asserts that judicial rulings should ideally not be confined to the rigid application of legal rules but should emphasize the protection of individual rights, even when those rights are not fully elaborated or defined within existing legal texts (Karlsson, 2014). Thus, granting marriage dispensation, as an act of judicial interpretation, may be regarded as an example of applying the law in a manner that prioritizes substantive justice through a broader and more inclusive interpretation. In this sense,

the conception of the judge's role extends beyond a purely legal function.

In dispensation cases, judges are not merely bound by statutory texts but also apply the principles of progressive law, which allow them to take intellectual leaps to craft solutions relevant to prevailing social conditions and individual needs (Rahardjo, 2009). For instance, when a dispensation petition is submitted even though the prospective spouses have not yet reached the minimum age stipulated under Law No. 16 of 2019, judges may consider urgent factors such as pregnancy out of wedlock, ongoing intimate relationships outside formal marriage, cultural pressures, and the potential social consequences if the petition is denied.

This approach demonstrates that marriage dispensation rulings are not the result of mechanistic or rigid legal application but rather a judicial response to the dynamics of social life that require interpretive flexibility (Rahardjo, 2009). The principle of progressive law encourages judges to interpret the law creatively while remaining within the constitutional framework and principles of justice, thereby producing decisions that are not only procedurally valid but also substantively beneficial to the parties involved (Aulia, 2018). Progressive law encourages judges to engage in interpretive practices aimed at crafting solutions that are more just and better aligned with societal conditions (Aulia, 2018; Putri Kania Dewi Andhika & Arifin, 2018).

From interviews regarding how judges are able to interpret the law in such a manner without violating fundamental legal principles, Judge Sri Rezki Dwi Putri explained:

“Progressive law fosters flexibility in legal interpretation while remaining within the constitutional framework and the principles of justice. Judges have the authority to exercise discretion in rendering decisions as long as they are grounded in existing facts and laws. However, judges are also expected to think creatively in seeking fairer solutions, particularly in situations where a strictly textual application of the law may result in injustice or fail to provide substantive benefits for the petitioner” (Putri, interview, June 5, 2024).

Judges serve not only as enforcers of the law but also as wise counsel. They may provide guidance to the parties, such as offering advice on family life and responsibilities within the marriage. This role aligns with the spirit of progressive law, which emphasizes not only the issuance of verdicts but also the pursuit of equitable conflict resolution (Al Arif, 2019; Riwanto, 2018). Thus, progressive judicial decisions are directed more toward substantive justice than purely procedural compliance (Wahid, 2022). The essence of progressive law is to allow legal norms to function as living and responsive instruments of justice rather than as rigid procedural mechanisms (Rahardjo, 2009). In many cases, this requires judges to go beyond a literal

interpretation in their reasoning and decision-making.

Accordingly, within the framework of progressive law, judges’ granting of marriage dispensation can be viewed as a dynamic and responsive form of legal interpretation (Karima et al., 2023; Norhasanah, 2019). Judges are expected to interpret the law flexibly, demonstrate the courage to adjust legal applications to ongoing social changes, and prioritize broader values of justice rather than adhering strictly to static, written statutes.

Progressive legal theory situates judges not merely as executors of rules but as active interpreters capable of creating justice (Afif Khalid, 2014; Rahardjo, 2009). Judicial decisions that approve marriage dispensations illustrate that the law must adapt to social transformations and provide solutions to real societal problems, even when such solutions are not explicitly regulated within the existing statutes (Aulia, 2018). Progressive law enables judges to act more creatively and responsively in addressing social change without being confined by rigid, static legal texts (Marilang, 2017). As emphasized in an interview with Judge Beni Kurniawan:

“Judicial decisions such as the approval of a marriage dispensation demonstrate that the law must be able to adapt to social change and provide solutions to real, pressing problems. In cases of marriage dispensation, judges primarily consider specific circumstances that may not be explicitly

stipulated in legislation, thereby requiring a more flexible and progressive interpretation” (Kurniawan, interview, June 5, 2024).

Overall, judicial decisions granting marriage dispensation can be analyzed within Satjipto Rahardjo’s framework of progressive law, which emphasizes three core indicators: (1) the law must prioritize substantive justice; (2) the law must be adaptive to social dynamics; and (3) the law must not be trapped in rigid formalism (Aulia, 2018; Rahardjo, 2009). In this context, several rulings issued by the Muara Bulian Religious Court demonstrate progressive characteristics, particularly when judges explicitly consider socio-psychological factors, such as protecting children from the social stigma arising from premarital pregnancy or safeguarding family honor within a community strongly bound to customary values.

However, not all rulings satisfied the three indicators. Certain judgments, though granted, remained normative, with reasoning largely focused on the textual provisions of the law rather than on a deeper analysis of social consequences. This illustrates a disparity in the application of progressive law in practice: some judges adopt a more progressive stance, while others remain inclined toward formalism. The following table illustrates the relationship between the analyzed marriage dispensation rulings and the indicators of progressive law.

Table 2. Indicators of Progressive Law in Marriage Dispensation Rulings of the Muara Bulian Religious Court

No	Case Number	Verdict	Judge's Consideration	Indicators of Progressive Law Fulfilled
1	48/Pdt.P/2024/PA.Mbl.	Rejected	Lack of parties (<i>plurium litis</i> consortium), focus on formal aspects	None (formalism dominates)
2	28/Pdt.P/2024/PA.Mbl.	Granted	Out-of-wedlock pregnancy, child's social protection	Substantive justice and adaptability to social conditions
3	14/Pdt.P/2024/PA.Mbl.	Granted	Cultural and customary pressure, risk of social stigma	Substantive justice and adaptability to social conditions
4	Other decisions (majority)	Granted	No elaboration of social factors	Partial (only substantive justice)

Through the analysis of the indicators of progressive law presented in the table, it becomes evident that the application of this principle largely depends on judges’ sensitivity to integrating social and psychological factors into their legal reasoning. Decisions based solely on formal grounds tend to fail to fulfill the indicators of progressive law, as their orientation is limited to procedural compliance. Conversely, rulings that accommodate social utility and consider the socio-psychological conditions of the parties more closely represent the spirit of progressive law, as articulated by Satjipto Rahardjo, namely, a living law that dynamically responds to the needs of society (Rahardjo, 2009).

The granting of marriage dispensation by judges, which effectively overrides or modifies the statutory minimum age for marriage, serves as a concrete example of how justice and social utility can be prioritized over the strict application of positive laws. This aligns with Gustav Radbruch’s view that, while positive law requires compliance, justice and societal welfare must remain the ultimate objectives of legal enforcement (Isman, 2020; Radbruch, 2020). Within this

framework, judges function not only as executors of legislation but also as guardians of higher moral values (Islamiyati, 2018), ensuring that the application of the law does not disadvantage vulnerable parties (Alexy, 2021).

This practice is evident in marriage dispensation cases filed on urgent grounds, such as out-of-wedlock pregnancy, cultural pressure, and specific socio-economic conditions (Fadhli & Warman, 2021; Kurniawan & Refiasari, 2022). In such instances, the rigid enforcement of marriage age requirements often fails to reflect substantive justice (Al Hasan & Yusup, 2021). Judges thus retain interpretive discretion to balance individual interests with broader social utility while simultaneously avoiding potential adverse consequences should the petition be denied. This approach demonstrates that the principle of utility can coexist with the principle of justice, provided that judges prioritize empirically and morally relevant considerations (Aulia, 2018).

Accordingly, the understanding that law is not solely bound to the text of positive law but also to higher values of justice becomes central to shaping progressive rulings. Radbruch emphasized that when positive law contradicts genuine justice, it must prevail. Therefore, decisions granting marriage dispensation, though seemingly deviating from statutory minimum age provisions, may

nonetheless be deemed legitimate and just if they serve to uphold the higher ideals of law, namely substantive justice and social utility as the ultimate goals of the legal system (Chroust, 1944; Radbruch, 2020).

CONCLUSION

This study finds that marriage dispensation rulings at the Muara Bulian Religious Court reflect the strategic role of judicial interpretation in realizing progressive laws. Judges do not merely act as interpreters of legal texts but also as agents of justice who integrate substantive justice into judicial reasoning. The progressive approach is evident in judicial responses to situations not explicitly regulated by positive law, such as urgent needs, sociocultural pressures, and the economic complexity of families. This underscores that the application of progressive law enables judges to bridge the gap between the written legal norms and social realities.

The theoretical contribution of this study lies in the strengthening and extension of two major frameworks. First, within Satjipto Rahardjo's theory of progressive law, the findings affirm that the indicators of progressivity, social utility, substantive justice, and interpretive flexibility can be concretely operationalized in marriage dispensation rulings. This study expands the application of progressive law theory to the field of Islamic family law, a context that has rarely been

explored empirically. Second, within Ronald Dworkin's theory of legal interpretation, this study demonstrates how judges interpret the law not only on the basis of explicit rules but also through implicit principles to safeguard individual rights. Thus, this study not only confirms but also broadens the relevance of both theories within the jurisprudence of Indonesia's religious courts.

In addition to reinforcing existing theories, this study challenges the positivist view that regards the law as a rigid set of rules. The findings indicate that a purely textual application of the law risks neglecting substantive justice, particularly in cases involving children and families. An interpretive approach, combined with the principles of progressive law, offers an alternative model for judges to remain faithful to positive law while accommodating broader social needs and humanitarian values.

Based on these findings, several strategic recommendations are proposed. First, advanced training is needed for religious court judges on principle-based interpretation and the application of progressive law, including comparative studies from other jurisdictions. Second, a stronger synergy between courts, child protection agencies, and psychological experts is necessary to ensure that rulings incorporate multidisciplinary perspectives. Third, the regulations governing marriage dispensation should

be revised to provide clearer guidance while still allowing room for judicial discretion. Thus, the legal system can become more adaptive, responsive, and relevant to the ever-evolving dynamics of society.

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