

Marriage Dispensation Orders: Judicial Product or State Administrative Decision

Lely Mahartina Khoiru Ummah ^{a*}, Lilia Prasastiningtyas ^b

^{a,b} Universitas Islam Negeri Kiai Ageng Muhammad Besari Ponorogo, Ponorogo Regency, East Java Province, Indonesia.

ABSTRACT

The amendment to the minimum marriage age through Law Number 16 of 2019 has led to a marked rise in applications for marriage dispensation before the Religious Courts, prompting a conceptual question regarding the legal standing of such orders — whether they ought to be read purely as judicial products or as state administrative decisions. Through normative legal research employing statutory and conceptual approaches, this study analyzes the juridical character of marriage dispensation orders and examines whether they satisfy the criteria of a state administrative decision, namely concreteness, individuality, finality, and the production of legal consequences, within the framework of administrative law. The findings reveal that marriage dispensation orders carry a hybrid character: procedurally issued as judicial products by the Religious Courts, yet substantively displaying characteristics of administrative decisions given that they constitute concrete, individual, and final grants of permission. This ambiguity signals the relevance of applying the general principles of good governance (AUPB) — particularly the principles of prudence and the protection of the best interests of the child — in adjudicating dispensation cases, and leads this study to advance the conceptualization of marriage dispensation orders as a judicialized administrative act, drawing attention to the intersection between judicial authority and administrative decision-making in the Indonesian legal system.

ABSTRAK

Perubahan batas usia minimum perkawinan melalui Undang-Undang Nomor 16 Tahun 2019 telah mendorong peningkatan permohonan dispensasi kawin di Pengadilan Agama, sekaligus memunculkan pertanyaan konseptual mengenai kedudukan hukum penetapan tersebut — apakah semata-mata merupakan produk yudisial ataukah memenuhi karakter keputusan administrasi negara. Melalui penelitian hukum normatif dengan pendekatan perundang-undangan dan pendekatan konseptual, penelitian ini menganalisis karakter yuridis penetapan dispensasi kawin serta mengkaji pemenuhannya terhadap kriteria keputusan administrasi negara, yakni konkretitas, individualitas, finalitas, dan akibat hukum, dalam kerangka hukum administrasi. Hasil penelitian menunjukkan bahwa penetapan dispensasi kawin memiliki karakter hibrid: secara prosedural diterbitkan sebagai produk yudisial oleh Pengadilan Agama, namun secara substantif menampilkan karakteristik keputusan administratif karena merupakan pemberian izin yang bersifat konkret, individual, dan final. Ambiguitas ini menunjukkan relevansi penerapan asas-asas umum pemerintahan yang baik (AUPB) — khususnya asas kehati-hatian dan perlindungan kepentingan terbaik bagi anak — dalam penyelesaian perkara dispensasi, dan mendorong penelitian ini untuk mengajukan konseptualisasi penetapan dispensasi kawin sebagai tindakan administratif yang diyudisialisasi (judicialized administrative act), dengan menekankan titik persinggungan antara kewenangan yudisial dan pengambilan keputusan administratif dalam sistem hukum Indonesia.

ARTICLE HISTORY

Received 9 January 2026
Accepted 10 February 2026
Published 1 May 2026

KEYWORDS

Marriage Dispensation; State Administrative Decision; Religious Courts; Legal Ambiguity; General Principles of Good Governance (AUPB).

KATA KUNCI

Dispensasi Kawin; Keputusan Administrasi Negara; Pengadilan Agama; Ambiguitas Hukum; Asas-Asas Umum Pemerintahan yang Baik (AUPB).

1. Introduction

The amendment to the minimum age of marriage through Law Number 16 of 2019, which revised Law Number 1 of 1974 on Marriage, represents a legislative measure aimed at strengthening child protection and promoting gender equality within the institution of marriage. The new provision sets the minimum marriage age for both men and women at 19 years. Nevertheless, the law continues to provide an exception through the mechanism of marriage dispensation, which may only be granted by a court on compelling grounds and supported by sufficient evidence (Law No. 16 of 2019). Following this regulatory change, the number of applications for marriage dispensation filed before the Religious Courts has risen markedly. This phenomenon has generated extensive discourse from the perspectives of family law, child protection, and social policy. Most existing studies concentrate on the sociological factors driving the rise in dispensation cases, judicial considerations in granting applications, or the effectiveness of raising the minimum marriage age in curbing child marriage. Relatively few studies, however, have examined the legal standing of marriage dispensation orders within the structure of the Indonesian legal system — particularly from the vantage point of state administrative law (Hadjon, 1987).

Formally, marriage dispensation is granted through an order of the Religious Court, constituting a product of a judicial institution that emerges from court proceedings and is decided by a judge. Within the classical doctrine of separation of powers, court decisions are regarded as manifestations of judicial authority, clearly distinct from administrative functions. When analyzed substantively, however, a marriage dispensation order essentially constitutes the granting of permission — an exception to a general norm established by statute. In the framework of state administrative law, the granting of a permit is categorized as a governmental act that is concrete, individual, and produces legal consequences for a specific subject (Hadaiyatullah & Huda, 2020). A conceptual tension arises at precisely this juncture: is a marriage dispensation order entirely a judicial product, or does it also carry the characteristics of a state administrative decision? If purely judicial in nature, its review mechanism falls exclusively under procedural judicial law. If it bears administrative characteristics, however, the general principles of good governance (AUPB), the principle of administrative legality, and mechanisms of state administrative accountability also become operative. This ambiguity is further sharpened by the non-contentious (*voluntair*) nature of marriage dispensation proceedings, in which applications do not involve a dispute between opposing parties but constitute petitions seeking legal authorization for a particular condition. In such proceedings, the judge does not merely resolve a conflict but conducts an evaluative assessment of whether statutory requirements have been met — a function that closely resembles an administrative act, even though it is carried out through judicial procedures (Susanto, 2021).

In the theory of state administrative law, an administrative decision (*beschikking*) is defined as a written determination issued by a competent governmental body or official, which is concrete, individual, and final, and which produces legal consequences for a person or legal entity (Ridwan, 2020). When these criteria are measured against marriage dispensation orders, notable parallels emerge: the order is written, addressed to a specific subject, concerns a clearly defined object, is final in nature, and produces legal consequences in the form of permitting marriage below the statutory minimum age. The difficulty, however, arises with respect to the issuing authority — namely, the judiciary — which constitutionally operates within the domain of judicial power. The development of modern administrative doctrine demonstrates that the rigid dichotomy between judicial and administrative functions can no longer be consistently maintained. In contemporary constitutional practice, concepts such as *quasi-judicial* and *quasi-administrative* acts are recognized, reflecting the overlapping of functions in the exercise of state power. The analysis of marriage dispensation orders must therefore be conducted in a more contextual manner, rather than relying solely on formal institutional categorization (Sebyar, 2022).

Beyond the conceptual dimension, the ambiguity surrounding the legal standing of marriage dispensation orders carries real implications for accountability and rights protection. If such an order is understood as an administrative act, principles such as accuracy, prudence, proportionality, and the protection of the best interests of the child must be rigorously internalized in judicial reasoning. If positioned as a purely judicial product, the scope of oversight is confined to the legal remedies available within the judicial system (Hakim, 2017). In a state governed by the rule of law, clarity concerning the applicable legal regime of a state action is indispensable to ensure the protection of citizens' rights and to prevent

ambiguity in accountability. This research proceeds from the premise that marriage dispensation orders cannot be read as purely judicial products; rather, they carry a hybrid character that integrates judicial and administrative functions, and a more thorough conceptual reconstruction is therefore required to properly situate such orders within the appropriate legal framework (Ikawati & Anisa, 2023).

Unlike previous studies, which have predominantly emphasized sociological aspects, child protection concerns, or judicial reasoning within the framework of Islamic family law, this research examines marriage dispensation orders specifically through the lens of state administrative law. Through a normative-conceptual approach, this study analyzes relevant statutory regulations, doctrines of state administrative law, and the practice of issuing marriage dispensation orders, with the objective of determining whether such orders satisfy the criteria of a state administrative decision and assessing the implications of this construction for accountability mechanisms and the application of the general principles of good governance. The originality of this research rests on several points: first, it undertakes a conceptual reconstruction of marriage dispensation orders by situating them within the framework of state administrative law — an approach that remains underexplored in the existing literature; second, it systematically measures the criteria of an administrative decision — namely, concreteness, individuality, finality, and the production of legal consequences — against the characteristics of marriage dispensation orders; third, it advances the proposition that marriage dispensation orders constitute a hybrid form of state action, conceptualized as a *judicialized administrative act*; and fourth, it elaborates the normative implications of this construction for the application of prudence, accountability, and the protection of the best interests of the child within the practice of the Religious Courts (Fauzi, 2022).

Based on the foregoing, the issues examined in this study are as follows: (1) what is the juridical character of marriage dispensation orders within the Indonesian legal system; (2) do marriage dispensation orders satisfy the criteria of a state administrative decision from the perspective of administrative law; and (3) what are the conceptual and practical implications of such ambiguity for the practice of the Religious Courts. Through this analysis, the study seeks to develop a thorough understanding of the position of marriage dispensation orders within the national legal system and to formulate normative recommendations aimed at strengthening consistency and accountability in the practice of the Religious Courts in granting marriage dispensations (Ikawati & Anisa, 2023).

2. Methodology

This study constitutes normative legal research (*doctrinal legal research*) aimed at analyzing and reconstructing the legal standing of marriage dispensation orders from the perspective of state administrative law. Normative legal research positions law as a system of norms embodied in statutory regulations, court decisions, and legal doctrines (Soekanto & Mamudji, 2001). Accordingly, the primary focus of this research is not on social behavior, but on the normative and conceptual constructions that shape the legal system.

2.1 Type and Research Approach

This study employs normative legal research using both a statutory approach (*statute approach*) and a conceptual approach (*conceptual approach*). The statutory approach is conducted by examining relevant regulations, including Law Number 1 of 1974 on Marriage as amended by Law Number 16 of 2019, Law Number 30 of 2014 on Government Administration, and Law Number 48 of 2009 on Judicial Power, with the aim of identifying the legal norms governing marriage dispensation and analyzing the characteristics of state administrative decisions as regulated within Indonesian positive law. The conceptual approach, meanwhile, is employed to examine doctrines of state administrative law concerning administrative decisions (*beschikking*), theories of authority — covering attribution, delegation, and mandate — and theories regarding the functions of state power. This approach is necessary because the issue under examination does not merely concern the application of positive legal norms but also involves theoretical constructions related to the classification of state actions. By combining these two approaches, this research seeks to analyze whether marriage dispensation orders satisfy the criteria of a state administrative decision and to determine their conceptual position within the framework of the separation and distribution of state powers.

2.2 Sources of Legal Materials

This research employs three categories of legal materials — primary, secondary, and tertiary — as outlined by Marzuki (2016).

- 1) Primary legal materials consist of relevant statutory regulations, including: Law Number 1 of 1974 on Marriage in conjunction with Law Number 16 of 2019; Law Number 30 of 2014 on Government Administration; Law Number 48 of 2009 on Judicial Power; Supreme Court Regulation Number 5 of 2019 on Guidelines for Adjudicating Applications for Marriage Dispensation; and selected marriage dispensation orders issued by Religious Courts as normative analytical materials. These primary materials serve as the principal legal foundation for examining the regulatory framework governing marriage dispensation and for assessing its conformity with the criteria of a state administrative decision.
- 2) Secondary legal materials include scholarly works on state administrative law and civil procedural law, academic journal articles, and prior research relevant to marriage dispensation and state administrative decisions. The literature consulted includes works by Philipus M. Hadjon, Ridwan HR, Jimly Asshiddiqie, Bagir Manan, and Sudikno Mertokusumo (Hadjon, 2020). These sources function to construct the theoretical framework and to enrich the conceptual analysis undertaken in this study.
- 3) Tertiary legal materials consist of legal dictionaries and encyclopedias that assist in clarifying technical terminology within state administrative law.

2.3 Technique for Collecting Legal Materials

Legal materials were collected through library research, conducted by tracing, inventorying, and classifying materials relevant to the research problem (Hadjon, 2020). All legal materials were systematically compiled and analyzed based on their relevance to the question of the ambiguous legal standing of marriage dispensation orders. In addition, this study examined several marriage dispensation orders published in the official directory of court decisions as illustrative materials to assess the practical application of the criteria of an administrative decision within the practice of the Religious Courts.

2.4 Technique for Analyzing Legal Materials

The analysis of legal materials was carried out qualitatively through methods of legal interpretation and deductive reasoning (Soekanto, 2007). This research does not employ statistical analysis; rather, it applies a normative-conceptual analysis aimed at examining the conformity between the characteristics of marriage dispensation orders and the criteria of a state administrative decision. The analytical process proceeds through four stages as follows. The first stage involves identifying the legal characteristics of marriage dispensation orders based on prevailing regulations and the practice of the Religious Courts, with the analysis focusing on their voluntary (*voluntair*) nature, issuance procedures, and the legal consequences they produce. The second stage measures marriage dispensation orders against the criteria of an administrative decision as formulated in state administrative law doctrine — namely, concreteness, individuality, finality, and the production of legal consequences (Hadjon, 2021) — to determine whether such orders substantively meet the characteristics of a *beschikking*. The third stage analyzes the position of marriage dispensation orders within the theoretical framework of the distribution of state powers, seeking to determine whether such orders constitute purely judicial products or carry a hybrid character that integrates judicial and administrative functions. The fourth stage involves formulating a conceptual reconstruction of the standing of marriage dispensation orders as a *judicialized administrative act*, integrating the results of the criteria examination with the analysis of state power functions.

2.5 Argumentative and Prescriptive Approach

This research is both argumentative and prescriptive in nature. It is argumentative in that it does not merely describe legal norms but develops legal reasoning to support a particular construction concerning the legal standing of marriage dispensation orders. It is prescriptive in that it offers normative recommendations regarding the application of the general principles of good governance in the practice of the Religious Courts, should such orders be qualified as administrative acts (Soekanto & Mamudji, 2001). To ensure the validity of the argumentation, this study applies consistent legal reasoning and maintains coherence between positive legal norms and legal doctrine, with interpretation conducted systematically in accordance with the principles of the rule of law. Through this approach, the research does not stop at

identifying ambiguity but also proposes a conceptual resolution to clarify the legal regime that should govern marriage dispensation orders.

2.6 Validity and Consistency of Analysis

To ensure the validity of the argumentation, this study applies consistent legal reasoning and maintains coherence between positive legal norms and legal doctrine. Interpretation is conducted systematically, taking into account the harmony among statutory regulations and the principles of the rule of law. With this methodology, the research is expected to produce an analysis that is not only descriptive but also critical and constructive in addressing the ambiguity surrounding the legal status of marriage dispensation orders

3. Results

Based on the normative analysis conducted, this study identifies three principal findings regarding the legal standing of marriage dispensation orders within the Indonesian legal system. Marriage dispensation orders carry a dual juridical character. Formally, they are products of judicial authority issued by the Religious Courts through court proceedings. Substantively, however, they function as grants of permission — an exception to the minimum marriage age norm established by statute — and accordingly display characteristics that are administrative in nature. This duality is reinforced by the *voluntair* (non-contentious) character of dispensation proceedings, in which the judge does not resolve a dispute between opposing parties but evaluates whether statutory requirements have been satisfied in order to authorize a particular legal act.

The examination of the criteria of a state administrative decision further reveals that marriage dispensation orders substantively satisfy all required elements as formulated in administrative law doctrine and in Law Number 30 of 2014 on Government Administration. The orders are issued in written form, addressed to specific and identifiable legal subjects, concern a concrete and clearly defined object, are final without requiring further approval from another authority, and produce direct legal consequences in the form of permitting marriage below the statutory minimum age. The only contested dimension concerns the issuing authority — a judicial institution — which in classical doctrine is not categorized as an administrative governmental body. The ambiguity arising from the intersection of judicial form and administrative substance carries significant implications for oversight, accountability, and the application of the general principles of good governance (AUPB) within the practice of the Religious Courts. The absence of a clear legal regime governing this hybrid character risks producing inconsistency in judicial reasoning and weakening the protection of the rights of children who are the subjects of dispensation decisions.

4. Discussion

4.1 Marriage Dispensation as an Instrument of Exception to a General Norm

Marriage dispensation constitutes a mechanism of exception to the minimum marriage age as stipulated in Article 7 paragraph (1) of Law Number 1 of 1974 on Marriage, as amended by Law Number 16 of 2019. The provision establishes that marriage is permitted only if both the man and the woman have reached the age of 19 years. However, paragraph (2) opens the possibility of an exception through dispensation granted by the court on compelling grounds and supported by sufficient evidence. Normatively, a dispensation represents a legally sanctioned deviation from a general rule. In the doctrine of state administrative law, the granting of dispensation is conceptually analogous to the issuance of a specific permit in relation to a general prohibition or restriction (Ridwan, 2020), such that marriage dispensation substantively carries the characteristics of a licensing function from the outset. The licensing function is essentially administrative in nature, as it involves an assessment of whether statutory requirements have been fulfilled (Dewi, 2023). In the context of marriage dispensation, the court evaluates compelling reasons, the readiness of the prospective spouses, and the best interests of the child — an evaluation that does not constitute dispute resolution in the classical sense but rather resembles an administrative review of an application for permission.

4.2 The Voluntary Character of Marriage Dispensation Proceedings

Applications for marriage dispensation fall within the category of *voluntair* (non-contentious) matters rather than contentious litigation. Sudikno Mertokusumo explains that *voluntair* cases involve unilateral petitions that do not entail a dispute between opposing parties (Buwana *et al.*, 2025), and in such cases the judge does not adjudicate a conflict but issues a determination upon request. This *voluntair* character strengthens the argument that marriage dispensation orders more closely resemble mechanisms of administrative authorization than judicial dispute resolution, with the judge acting as a state organ granting approval for a legal act rather than as an arbiter resolving a conflict. Formally, however, the resulting product remains a court order that falls within the domain of judicial power as regulated under Law Number 48 of 2009 on Judicial Power (Wiratraman, 2021). Herein lies the ambiguity: the substance is administrative, yet the form is judicial.

4.3 Legal Consequences of Marriage Dispensation Orders

A marriage dispensation order produces concrete and direct legal consequences, namely granting legal authorization to prospective spouses to marry despite not having reached the statutory minimum age. These legal consequences are individual and specific. In the theory of administrative decisions, the element of legal consequence is essential in determining whether an act constitutes a *beschikking*: if a determination creates, modifies, or extinguishes rights or obligations, it bears the character of an administrative decision (Hadjon, 2021). Marriage dispensation orders clearly generate such consequences, as without the order the marriage cannot be legally registered. From the perspective of legal effect, therefore, marriage dispensation orders fulfill the characteristics of an administrative act.

4.4 Examination of the Elements of a State Administrative Decision

To determine whether a marriage dispensation order may be qualified as a state administrative decision, it is necessary to examine its conformity with the elements of an administrative decision as formulated in administrative law doctrine and in Law Number 30 of 2014 on Government Administration. Marriage dispensation orders are issued in the form of official documents containing the identities of the parties, legal considerations, and the operative ruling, thereby satisfying the written element. With respect to the element of issuance by a competent authority, a conceptual issue arises: the Government Administration Law stipulates that an administrative decision is issued by a governmental body or official, raising the question of whether a judge falls within that category. Classically, judges are not executive officials but part of the judiciary. From a functional perspective, however, when a judge exercises statutory authority to grant permission, the judge may be viewed as performing an administrative function institutionalized within judicial procedures. Philipus M. Hadjon explains that attribution of authority by statute may be granted to any organ, provided it is explicitly regulated (Hadjon, 1987), and in the present case the authority to grant marriage dispensation is directly attributed by statute to the court. The element of public authority is therefore fulfilled even though the subject exercising it is a judicial institution. Marriage dispensation orders further satisfy the element of concreteness because their object is specific — permission for marriage granted to particular individuals — as well as the element of individuality, since the order is addressed to clearly identified legal subjects, and the element of finality, since the order does not require further approval from another authority to become effective. Such orders additionally confer legal standing upon prospective spouses to enter into marriage, and without the order the marriage cannot be lawfully registered, thereby satisfying the element of producing legal consequences. Based on the foregoing examination, marriage dispensation orders substantively fulfill all elements of a state administrative decision. The only remaining issue lies in the institutional aspect — whether a judicial body may be regarded as the issuing subject of an administrative decision — and it is precisely at this point that the conceptual ambiguity central to this research emerges.

4.5 Tension Between Institutional Formalism and Substantive Function

In the classical theory of *trias politica*, judicial and administrative functions are strictly separated. Modern constitutional practice, however, demonstrates that these functions often intersect. Jimly Asshiddiqie argues that the contemporary separation of powers is better understood as a distribution of functions rather than an absolute separation (Asshiddiqie, 2021). Marriage dispensation orders represent a concrete example of this intersection: procedurally, they are judicial products issued through court proceedings, yet substantively they perform a licensing function (Alfons *et al.*, 2024). This dual character generates institutional ambiguity — formally judicial, yet functionally administrative — and raises broader questions

about the adequacy of classical institutional categories in capturing the hybrid nature of certain judicial acts.

4.6 The Concept of a Judicialized Administrative Act

The concept of a *judicialized administrative act* explains that an administrative action may be institutionalized through judicial mechanisms, with the court functioning as an organ that grants administrative legitimacy to a particular legal condition. This character can be observed in various practices, such as court approval of changes in legal entity status or the appointment of guardians, in which the court does not resolve a dispute but grants administrative authorization. Within this framework, a marriage dispensation order may be constructed as an administrative act embodied in the form of a judicial determination: the administrative substance — granting permission as an exception to a statutory norm — is executed through a judicial procedure. This hybrid construction reconciles the apparent contradiction between institutional form and substantive function, and provides a conceptual basis for applying administrative law standards to the issuance of such orders.

4.7 The Impact of Ambiguity on Oversight Regimes

If marriage dispensation orders are regarded as purely judicial products, oversight is limited to legal remedies available within the judicial system and review mechanisms remain internal to procedural law. If such orders possess administrative characteristics, however, principles of administrative oversight and accountability also become relevant. The ambiguity may lead to uncertainty regarding the applicable standards of review and institutional responsibility. In a state governed by the rule of law, such uncertainty risks weakening both legal certainty and institutional accountability, underscoring the need for a clearer normative framework governing the hybrid character of marriage dispensation proceedings.

4.8 Implications for the General Principles of Good Governance (AUPB)

Law Number 30 of 2014 on Government Administration requires every administrative decision to comply with principles such as legality, accuracy, and the public interest. If marriage dispensation orders are recognized as having an administrative dimension, judges are consequently obliged to apply a heightened standard of prudence in their reasoning, reinforcing the obligation to ensure that each dispensation is granted on the basis of careful examination, proportional reasoning, and clear justification. Marriage dispensation directly concerns children's rights and the future of younger generations, making the principle of prudence particularly paramount. The best interests of the child must serve as the primary consideration in judicial reasoning, requiring thorough assessment of evidence, social conditions, psychological readiness, and potential long-term consequences. The determination should not merely validate factual circumstances — such as pregnancy or social pressure — but must ensure that granting dispensation genuinely protects the child's welfare.

4.9 Accountability and Consistency of Decisions

Recognizing the administrative dimension of marriage dispensation orders necessitates consistent and transparent standards of reasoning. Judges, in this context, act not only as adjudicators but also as public authorities granting legal authorization, and their determinations must therefore reflect measurable standards, coherent reasoning, and accountability aligned with the general principles of good governance. Such an approach strengthens both institutional legitimacy and the protection of individual rights — particularly the rights of children affected by dispensation decisions — and contributes to a more principled and accountable practice of marriage dispensation adjudication within the Religious Courts.

5. Conclusion and Recommendations

This research departs from a fundamental question concerning the legal status of marriage dispensation orders within the Indonesian legal system: whether they constitute purely judicial products or possess the characteristics of state administrative decisions. Based on the normative and conceptual analysis undertaken, marriage dispensation orders exhibit a character that cannot be fully explained through a purely formalistic institutional approach, but rather require a more comprehensive conceptual reconstruction.

From the perspective of juridical character, marriage dispensation orders are formally products of

judicial power, issued by courts through judicial proceedings and embodied in the form of a court determination. They originate from attributed authority granted directly by statute to the courts to provide dispensations from the minimum marriage age requirement, and institutionally fall within the judicial domain subject to procedural judicial law. Substantively, however, marriage dispensation orders embody the granting of permission or an exception to a general statutory norm. In dispensation cases, judges do not resolve disputes between conflicting parties but assess whether specific legal requirements are fulfilled in order to grant legitimacy to a particular legal act. The *voluntair* (non-contentious) nature of marriage dispensation proceedings further underscores that the function exercised is closer to evaluative-administrative review than to adjudicative dispute resolution.

The examination of the elements of an administrative decision demonstrates that marriage dispensation orders substantively fulfill the characteristics of a *beschikking*. The orders are issued in written form, addressed to specific subjects, concern a concrete object, are individual and final in nature, and produce direct legal consequences in the form of permitting marriage below the statutory minimum age. The only contested aspect concerns the issuing authority — namely the judiciary — which in classical doctrine is not categorized as an administrative governmental body. The ambiguity surrounding the status of marriage dispensation orders reflects the intersection between judicial and administrative functions in a modern rule-of-law state. A formalistic approach emphasizing separation of powers tends to classify all court products as purely judicial acts, whereas a substantive approach reveals that certain actions procedurally carried out by courts may materially possess administrative characteristics.

Within this framework, this research advances the conceptual construction that marriage dispensation orders constitute a *judicialized administrative act* — an administrative action carried out through judicial mechanisms. This construction is not intended to blur the principle of separation of powers, but rather to clarify the applicable legal regime based on the nature and legal consequences of the act. If marriage dispensation orders are understood as possessing an administrative dimension, the general principles of good governance (AUPB) become applicable within the practice of the Religious Courts. The principles of legality, accuracy, prudence, proportionality, and the protection of the best interests of the child must serve as explicit and measurable evaluative parameters in judicial reasoning. Strengthening the application of these principles is crucial given the long-term consequences of underage marriage for children's rights, reproductive health, education, and social welfare. Judges therefore act not only as interpreters of legal norms but also as public authorities bearing administrative responsibility to ensure that dispensations are granted selectively and only on genuinely compelling grounds. Recognition of the administrative dimension further calls for more consistent and transparent standards of reasoning, as excessive variation in judicial considerations may create legal uncertainty and unequal treatment. The formulation of more detailed guidelines regarding the parameters of compelling grounds and indicators of the best interests of the child accordingly becomes relevant to strengthen accountability in the practice of the Religious Courts.

Theoretically, this research contributes to the development of state administrative law scholarship by expanding the scope of analysis to include state actions situated at the intersection of judicial and administrative functions. Marriage dispensation has traditionally been examined primarily within the frameworks of family law or child protection, and by situating it within state administrative law this study offers a new perspective that enriches discourse on the classification of state actions and the evolving dynamics of functional power distribution. The reconstruction of marriage dispensation orders as a *judicialized administrative act* is not merely theoretical speculation, but the result of analytical assessment of their legal elements and functional characteristics.

Ultimately, the ambiguity in the status of marriage dispensation orders should not be viewed as a weakness of the legal system, but rather as a reflection of the evolving complexity of the modern rule-of-law state. The challenge lies not in rigidly maintaining functional separation, but in ensuring that every state action — regardless of its form or procedural mechanism — remains subject to the principles of legality, accountability, and human rights protection. Marriage dispensation orders are therefore best understood as occupying a spectrum between judicial and administrative action, with the consequence that the application of the general principles of good governance must be strengthened in practice. This conceptual reconstruction is expected to serve as a foundation for developing more consistent, transparent, and child-oriented judicial policies and practices within the Indonesian legal system.

References

- Alfons, S. S., Soplanit, M., & Mail, S. M. H. (2024). Creating substantive justice in state administrative courts: A theoretical, philosophical, and human rights review. *Jurnal Suara Hukum*, 6(2), 298–306. <https://doi.org/10.26740/jsh.v6n2.p298-306>.
- Asshiddiqie, J. (2021). *Konstitusi dan hukum demokrasi elektoral*. Sinar Grafika.
- Buwana, S. A. N., Damanik, N., & Habib, M. (2025). Tinjauan implementasi dispensasi perkawinan. *Collegium Studiosum Journal*, 8(1), 51–61. <https://doi.org/10.56301/csj.v8i1.1618>
- Dewi, D. A. K. (2023). *Tinjauan Hukum Islam Terhadap Dispensasi Kawin bagi Anak Dibawah Umur dalam Peraturan Mahkamah Agung Nomor 5 Tahun 2019* (Skripsi, Universitas Islam Indonesia).
- Fauzi, M. Y. (2022). Pergeseran paradigma pembatasan usia perkawinan dan penerapannya dalam penyelesaian perkara dispensasi kawin. *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law*, 3(1), 33–49.
- Hadaiyatullah, S. S., & Huda, N. (2020). Praktek hukum acara dispensasi kawin. *Asas*, 12(1), 150–166.
- Hadjon, P. M. (1987). *Perlindungan hukum bagi rakyat di Indonesia*. Bina Ilmu.
- Hadjon, P. M. (2020). *Hukum administrasi dan good governance*. Gadjah Mada University Press.
- Hadjon, P. M. (2021). *Pengantar hukum administrasi Indonesia*. Gadjah Mada University Press.
- Hakim, I. R. A. (2017). *Pertimbangan hakim terhadap penetapan dispensasi kawin di pengadilan agama pacitan pada tahun 2016* (Skripsi, IAIN Ponorogo).
- Ikawati, E., & Anisa, D. (2023). Analisis meningkatnya permohonan dispensasi kawin masa pandemi Covid-19 di Pengadilan Agama Padangsidimpuan dan Pengadilan Agama Panyabungan. *Palita: Journal of Social Religion Research*, 8(1), 1–18. <https://doi.org/10.24256/pal.v8i1.3198>
- Marzuki, P. M. (2016). *Penelitian hukum*. Kencana.
- Ridwan, H. R. (2020). *Hukum administrasi negara*. Rajawali Press.
- Sebyar, M. H. (2022). Faktor-faktor penyebab permohonan dispensasi kawin di Pengadilan Agama Panyabungan. *Journal of Indonesian Comparative of Syari'ah Law*, 5(1), 1–14.
- Soekanto, S. (2007). *Pengantar penelitian hukum*. UI Press.
- Soekanto, S., & Mamudji, S. (2001). *Penelitian hukum normatif*. Rajawali Pers.
- Susanto, S. N. (2021). Penerapan asas-asas umum pemerintahan yang baik dalam praktik peradilan di Indonesia. *Administrative Law and Governance Journal*, 4(3), 459–470. <https://doi.org/10.14710/alj.v4i3.459-470>
- Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Lembaran Negara Republik Indonesia Tahun 1974 Nomor 1.
- Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Lembaran Negara Republik Indonesia Tahun 2019 Nomor 186.

Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan, Lembaran Negara Republik Indonesia Tahun 2014 Nomor 292.

Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman, Lembaran Negara Republik Indonesia Tahun 2009 Nomor 157.

Wiratraman, H. P. (2021). Legitimasi kekuasaan dan prosedur demokrasi dalam negara. *Jurnal Hukum*, 18(2), 1–10.