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LEGAL ANTHROPOLOGY OF CHILD MARRIAGE DISPENSATION: A STUDY OF THE RELIGIOUS COURT OF MOJOKERTO, INDONESIA

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Abstract *The dispensation of child marriage remains an important issue in Indonesia despite legal reforms that raise the minimum age of marriage. Previous studies have largely focused on judicial reasoning and interpretation of law, so attention has been limited to how legal practice is generated through institutional spaces. This study examines how the spatial organization of the Mojokerto Religious Court shapes legal authority, interaction, and the transformation of social experience into legal decisions. Using empirical legal methods within a socio-legal framework, this qualitative research adopts a legal anthropological approach. Data were collected through non-participant observations, in-depth interviews with judges, court clerks, PTSP and POSBAKUM officers, and document analysis. The findings show that institutional space is not just an administrative environment but an active mechanism that disciplines litigants, regulates institutional interactions, and translates personal narratives into legally recognizable facts. Judicial decisions arise through the interaction of spatial organizations, legal actors, bureaucratic procedures, and legal culture, not only through the provisions of the law. The study concludes that dispensation of child marriage is a socially generated legal practice, suggesting that law is constantly constructed through the interaction of institutional space, power relations, and legal culture within the Religious Courts.*

Keyword:

Child marriage dispensation, religious court, legal anthropology, socio-legal studies, legal culture

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1. Introduction

The practice of dispensation of child marriage in Indonesia, especially within the Religious Court, shows increasingly complex dynamics along with the increase in applications after the change in the minimum age limit for marriage. The Religious Court no longer functions simply as a normative institution that applies the law, but becomes a space where various social, moral, and psychological interests meet and are negotiated. In this context, the dispensation of child marriage not only reflects the application of the rule of law, but also represents a social process involving institutional actors such as judges, clerks, PTSP officers, and external institutions such as P2TP2A. This complexity suggests that legal practice cannot be understood textually alone, but rather must be seen as a social practice that takes place in a given space with a distinctive configuration of actors and power relations (Bourdieu, 1987).

A number of previous studies have examined the dispensation of child marriage from normative and juridical perspectives, focusing on judges' considerations, legal basis, and child

protection. These studies generally place the law as a rational and autonomous system, and see decisions as the result of the application of norms to facts. Some studies have also begun to integrate sociological approaches by highlighting social factors such as poverty, culture, and out-of-wedlock pregnancies as the background for dispensation applications (Aprillianto et al., 2024). However, these studies still have limitations in understanding how law is practiced concretely in the courtroom, especially in looking at the role of space, interaction between actors, and how social facts are constructed into legal facts through institutional processes (Irwin, 2025).

In the study of legal anthropology, law is understood as a living practice (*law in action*) that cannot be separated from the social and cultural context in which the law is carried out. This perspective views the court not just as an institution for the application of the rule of law, but as a social space where the meaning of the law continues to be negotiated through daily institutional practices. Referring to *Sally Falk Moore's concept of semi-autonomous social field*, the Religious Court has relative autonomy in shaping and implementing legal norms, but it is still influenced by the social and cultural values that develop in society regarding child marriage (Moore, 1973). Meanwhile, Pierre Bourdieu views the courts as a *juridical field*, that is, an arena where legal actors occupy different positions based on the forms of *capital* they have. In the practice of dispensation of child marriage, judges mobilize legal capital through their authority to interpret laws and regulations, symbolic capital through the legitimacy and authority inherent in the judge's office, and bureaucratic capital through their authority to control judicial procedures and decision-making processes. These various forms of *capital* allow judges not only to apply legal norms, but also to transform social reality into decisions that gain legal legitimacy (Bourdieu, 1987).

Previous research examining child marriage from the perspective of legal anthropology shows that this practice does not stand as a single phenomenon, but rather is formed through complex interactions between texts, cultures, and social structures. Research by Isra, Hamka Naping, Ahmad Ismail Guntur, and Ahmad Arham Mallu confirms that the legitimacy of early marriage in the context of Nusantara Islam does not come directly from classical texts, but from the negotiation process between the ambiguity of the text, the authority of interpretation, and patriarchal social structure (Naping et al., 2025). These findings are in line with Dwi Aprilianto et al. which shows that the practice of child marriage in Brebes is influenced by the internalization of religious values and local authorities such as *Lebe'* which forms the social legitimacy of the practice (Aprillianto et al., 2024). Meanwhile, The Battle of the Bulge, the Battle of the Bulge, the Identifying structural factors such as education, economics, and legal knowledge as the main determinants of child marriage (Kassa Tekile et al., 2020). In the context of legal culture, Yayan Sopyan and Helma Suryani shows that the practice of marriage is also determined by the kinship system and customary norms that live in the community, (Sopyan & Suryani, 2020) whereas Amelia Rahmaniah, Syamsul Anwar, and Rahmani Timorita Yulianti affirming that living law is a manifestation of religious values in concrete social space (Rahmaniah et al., 2020). On the other hand, Cevy Amelia et al. It shows that the relationship between culture and law is dynamic in the context of globalization, where societies continue to adapt without losing local value (Amelia & Kiani, 2025). Analytically, this study shows that child marriage is the result of a social construction involving power relations, religious interpretations, and cultural structures, so it cannot be understood through a normative approach alone.

Nevertheless, the development of contemporary anthropological studies shows that social practices including legal practices are shaped not only by cultural factors and actors, but also by spatial configurations and institutional interactions. Research by Jianqiang Yin dan Mengyan Jia

emphasizing that space has an active role in shaping social relations through multidimensional interactions between material, social, and historical factors, (Yin & Jia, 2026) while Xiaolong Zhao, Li Shi, dan Fuying Liu It shows that environmental and cultural factors simultaneously shape the structure of the space and the social practices that occur within it (Zhao et al., 2026). In the perspective of institutional ethnography, Rachel Irwin emphasizing that policy and legal practice are the result of complex interactions between actors in the global institutional space, (Irwin, 2025) and Aimee Grant shows that social space can create limitations and opportunities through symbolic dimensions and power relations in everyday life (Grant, 2021). Although these studies have made important contributions to understanding the relationship between law, culture, and space, most of them still focus on the societal or public sphere, and have not specifically examined how legal practices, especially the dispensation of child marriage, are produced within the institutional space of the courts. Therefore, this research offers novelty by integrating institutional anthropology and spatial anthropology approaches within the framework of *socio-legal studies*, to analyze how the practice of dispensation of child marriage is formed through the interaction of space, actors, and legal culture in the Mojokerto Religious Court. Thus, this study not only identifies the causative factors, but also reveals the process of legal production in institutional practice in a concrete and contextual manner.

2. Method

This research is an empirical legal research within the framework of *socio-legal studies* with a qualitative approach that focuses on *law in action*, that is, how the law is practiced in everyday life. The approach used is legal anthropology with an emphasis on the anthropology of space, which views the court as a social space that actively shapes interactions, behaviors, and the production of legal meaning through the configuration of space and the position of actors in it.

The research data consists of primary and secondary data. Primary data was obtained through direct observation of institutional practices in the PTSP room, POSBAKUM, as well as the case administration process at the Mojokerto Religious Court, as well as in-depth interviews with judges, clerks, and service officers. Secondary data are obtained from relevant legal, regulatory and scientific literature documents. The data collection technique was carried out through non-participatory observation and semi-structured interviews, focusing on the flow of movement of applicants between spaces, the use of space by actors, and the dynamics of interaction formed in institutional practices.

Data analysis was carried out qualitatively with thematic and interpretive approaches, focusing on spatial configuration, the role of actors, and power relations. The theoretical framework of Sally Falk Moore is used to understand the court as *semi-autonomous social field*, (Moore, 1978). whereas Pierre Bourdieu was used to analyze the distribution *Capital*, *habitus*, and power relations between actors in *field* law (Bourdieu, 1977). The validity of the data is maintained through triangulation techniques and the researcher's reflexivity, so that this study is able to provide a comprehensive understanding of the practice of child marriage dispensation as a result of interaction between space, actors, and legal culture in the context of the Mojokerto Religious Court.

3. Result and Discussion

3.1 Religious Courts as Institutional Space

The Mojokerto Religious Court cannot be understood solely as a formal legal institution, but as a social space that actively produces legal practice through the configuration of space and interaction between actors. In the perspective of spatial anthropology, the court works as a

structured system that shapes the legal experience of justice seekers from the moment they first enter the institution. The structure of the space such as PTSP as the initial access point, POSBAKUM as a space for articulating social problems into legal language, and the judge's space as the locus of decision production, forms a movement that is not neutral, but normative and directing. The movement of the applicant from one space to another represents the process of transformation from social reality to legal reality, where personal experience is reduced and legitimized through structured institutional mechanisms (Fadri et al., 2020).

Within the framework of Pierre Bourdieu's theory, the court can be understood as *field*, which is a social arena that brings together various actors with different capitals so as to produce power relations that affect the course of legal processes. Meanwhile, in Sally Falk Moore's perspective, the court is a *semi-autonomous social field*, that is, a space that has the ability to create and enforce its own internal rules, even though it is still influenced by social norms outside of itself. Both approaches show that legal practice is not born neutrally, but is produced through the interaction between the actors, structures, and spaces that frame the practice.

Institutionally, the Religious Court has a position as part of an independent judicial power with special authority in Islamic family law cases, which includes the function of receiving, examining, and deciding cases independently in the national judicial system (Sanusi & Mustakim, 2024). In addition, the transformation of the authority of the Religious Courts after the Marriage Law shows the expansion of jurisdiction that strengthens institutional legitimacy while increasing access to justice for the Muslim community (Airlangga et al., 2025). Thus, in the context of spatial anthropology, the court can be understood as a spatial system that not only regulates the flow of cases, but also shapes legal practice through the distribution of authority, the role of actors, and organized institutional mechanisms.

The findings of the researcher's interview with the judge who became the deputy chairman of the Mojokerto religious court Ruslan Saleh shows that the Religious Court is not positioned as an institution that acts arbitrarily against the parties, but as a space to find legal solutions to social problems that cannot be resolved at the administrative level, especially when the marriage application is rejected by the KUA due to the age factor. In this perspective, the practice of dispensation of child marriage is understood as an institutional response to social conditions faced by society, not solely as the application of legal norms. The judge also emphasized that the increasing requests for dispensation cannot be separated from the weak social resilience, which includes aspects of family, environment, as well as psychological and economic conditions, so that the court cannot be positioned as the only responsible actor (R. Saleh, personal communication, April 13, 2026). Therefore, this issue also demands the active involvement of local governments in strengthening social resilience through preventive and educational policies, so that legal practice in the courts reflects the close relationship between the institutional space and broader social dynamics.



Figure 1. Mojokerto Religious Court Seen from the Front

3.2 PTSP as a Transition Room and Legal Discipline

The results of interviews with PTSP officers show that the PTSP space serves as a starting point that determines whether an application can be processed as a legal case. This is reflected in the list of child marriage dispensation requirements that must be met by the applicant, as seen in the service documents, which include parental identity, population documents, rejection letters from the KUA, health certificates (pregnant/not pregnant), to recommendations from P2TP2A as a result of counseling. These requirements show that before entering the legal realm, the applicant's social problems have been first filtered and standardized through strict administrative logic. Thus, PTSP is not just a service space, but functions as an initial selection mechanism that determines the legitimacy of an issue to be recognized as a legal matter.

Furthermore, based on the explanation of the PTSP officer (Farahdina), the flow of the application for child marriage dispensation shows the existence of layered stages of space, starting from taking the queue number, verifying documents at PTSP, preparing an application letter at POSBAKUM, to registering cases through the system *E-Court* and distribution of files to the administration (back office). At the next stage, the case file is sent to the Chief Justice for the appointment of the panel of judges through the application *Smart Assembly*, which in dispensation cases tend to be directed to special judges. This series of processes shows that the practice of law does not take place directly, but rather through a series of spaces that systematically govern the flow, language, and form of the case. In this context, PTSP acts as a transitional space that transforms the social experience of the applicant into an administrative entity that can be processed in the judicial system

If examined more deeply, the practice at PTSP also reflects the formation of a distinctive institutional legal culture, which is not only administrative but also normative and symbolic. This culture is reflected in the way applicants are "disciplined" to follow the flow, meet very specific documents (including the intervention of other institutions such as KUA and P2TP2A), and conform to formal legal language and logic. In this context, PTSP forms what in Pierre Bourdieu's perspective is referred to as *Legal habitus*, which is a pattern of disposition that unconsciously shapes the applicant's way of thinking and acting in order to conform to the legal structure.[1]

Applicants who initially come with social narratives—such as family pressure or pregnancy conditions—are gradually directed to understand their problems within a standardized legal framework. On the other hand, in the framework of Sally Falk Moore, this culture shows that PTSP is not just an administrative space, but a part of *semi-autonomous social field* that have internal norms, practices, and logic that are able to regulate the behavior of actors without always having to rely on written norms. Thus, PTSP not only functions as an entrance to the case, but also as a space for the production of legal culture that subtly but systematically shapes the way society understands, accesses, and submits to the law.



Figure 2. Photo of PTSP PA Mojokerto Room

3.3 POSBAKUM as a Space for Social to Legal Translation

POSBAKUM at the Mojokerto Religious Court can be understood as a crucial space in the process of transforming social problems into formal legal construction. After passing the administrative selection stage at PTSP, the applicant is directed to POSBAKUM to prepare an application letter, where personal experiences such as family pressure, pregnancy conditions, or other social considerations are no longer presented in the form of a free narrative, but are reduced and compiled into a structured legal document. In this context, POSBAKUM serves as a translation space that transforms social reality into a legal language that can be accepted by the judicial system, as well as a starting point for the formation of legal facts (Rakhmawati & Zaman, 2025).

Based on the results of observation, the process of preparing an application letter at POSBAKUM was not carried out by copying all the stories submitted by the applicant. Instead, the officer first identifies the subject matter, then translates it into legal language in accordance with the provisions of the application for child marriage dispensation. Thus, the social experience of the applicants undergoes a transformation process from a daily narrative to a legal narrative that can be processed in the judicial system. The translation process shows that POSBAKUM not only functions as a provider of legal aid, but also as a space for the production of legal facts before the case enters the courtroom. In the translation process, not all of the applicant's experience is maintained in the application document. Various aspects such as shyness, family conflicts, social pressure from the environment, and the emotional dynamics of the parties are generally not explicitly stated in the application letter. The information that is retained is only the facts that are considered to have juridical relevance to the requirements for applying for a dispensation.

Thus, the preparation of legal documents always involves the process of selecting information so that social reality is simplified before gaining recognition as a legal fact.

Institutionally, this function is in line with POSBAKUM's role as a provider of legal aid services in the form of consultation, advice, and the preparation of case documents for the public, especially those who have limited legal understanding. POSBAKUM not only plays a technical role in helping but also determines the form and direction of the legal narrative submitted to the court. In fact, in the practice of child marriage dispensation, the quality of the preparation of the application document determines whether the case is accepted or not in the next process, so that this space has a strategic position in determining the administrative validity and legal substance of an application.(Rafly et al., 2025) In addition, POSBAKUM is also an important instrument in realizing access to justice (*access to justice*), especially for community groups that are economically and socially vulnerable (Ananda et al., 2025).

From the perspective of legal anthropology, the process that occurred at POSBAKUM shows a transformation of *Social Facts* become *Legal Facts*, which does not take place neutrally, but through the intervention of certain actors. POSBAKUM officers have a strategic role in classifying, selecting, and formulating certain aspects of the applicant's experience to conform to the applicable legal framework. This raises critical questions about who actually controls the legal narrative in the case of dispensation of child marriage. In many cases, applicants who have limited legal literacy tend to leave the formulation process completely to POSBAKUM officers, resulting in an unbalanced power relationship in the production of legal documents. This phenomenon shows that law is the result of social construction produced through the interaction between actors, language, and institutional structures (Suryaningsih et al., 2024).

The selection process shows that POSBAKUM officers have a strategic role in determining information that is considered legally relevant. Through knowledge of procedural procedures and law, officers select certain facts to be defended, while ignoring information that is considered to have no juridical significance. In Pierre Bourdieu's perspective, this condition shows the existence of symbolic power and cultural capital, because the ability to translate social language into legal language gives authority to POSBAKUM officers in shaping the initial construction of legal facts. The findings of the study also show that the emotional expressions of the applicants undergo a change in meaning when they are outlined in legal documents. Parents' concerns about children's associations, fear of out-of-wedlock pregnancies, and social pressure from society are not recorded as emotional expressions, but are translated into legal categories such as "urgent reasons" or "best interests for the child". Thus, the emotions of the parties undergo an objectification process so that they can be accepted as the basis for legal considerations in the examination of the case.

During the application preparation process, POSBAKUM officers also directed applicants to submit information directly related to legal needs in the case of child marriage dispensation. The directive is not intended to form new facts, but rather to help the applicant compile a chronology systematically according to the format and needs of judicial administration. POSBAKUM also functions as a mediation space between the applicant's social world and the rational logic of the law. Applicants who come with certain emotional conditions and social pressures are directed to understand their problems within a formal and standardized legal framework. This process reflects the stages of social construction—from the externalization of social experience, objectification in the form of legal documents, to the internalization of legal logic by the applicant—which shows that law is not only applied, but also studied and internalized through institutional practice. Thus, POSBAKUM can be understood as a very important anthropological

space, because it is here that the law begins to be produced concretely before it is finally decided by the judge (Lutfi, 2022).

Although each dispensation case has a different social background, the results of observations show that the narrative in the application letter tends to be composed using a uniform legal structure and language. The standardization shows that the diversity of social experiences of the applicants undergoes an institutionalization process so that all cases can be processed through the same legal mechanism. Therefore, POSBAKUM not only translates social experiences, but also standardizes narratives to suit the logic of the bureaucracy and the court legal system. Based on these findings, POSBAKUM cannot be understood solely as a unit of providing legal aid, but as an institutional space where social experiences are selected, translated, standardized, and legitimized into legal facts. Thus, legal practice in child marriage dispensation cases has actually been produced since the process of drafting the application, long before the judge examined the case in the courtroom.



Figure 3. Photo of the POSBAKUM Room

3.4 Administrative Structure and Role of the Registrar

Field findings at the Mojokerto Religious Court show that the flow of case administration involving PTSP, POSBAKUM, *E-Court*, SIPP, to *back office* It not only functions as a technical mechanism for service, but also as a system that determines the direction and rhythm of legal practice in the court. The clerk in the judicial system has an important position because it is responsible for the technical and non-technical administration of cases, including document management, case registration, and the arrangement of trials (Setiawan et al., 2025). Thus, case administration cannot be understood simply as an ordinary bureaucratic activity, but as an integral part of the legal production mechanism in the judiciary.

In practice, after the applicant completes the administrative process through PTSP and POSBAKUM, the case is registered through the system *E-Court* and then processed through SIPP before being distributed by the Chief Justice through the application *Smart Assembly*. This system shows that the course of the case has been regulated from the initial administrative stage before entering the courtroom. The clerk in this case has a strategic position because it is an element of the assistant leader as well as an assistant to the judge in the process of resolving the case from the time it is accepted to the decision. In fact, the duties of the clerk include the management of case administration, documentation, registration, and archiving which determine whether the legal process is orderly or not (Nabila et al., 2025).

In addition, the use of administrative technology such as *E-Court* and SIPP shows the transformation of the judicial bureaucracy towards a more integrated and digital-based system. The use of information technology in court administration is seen as a step to increase the efficiency, transparency, and effectiveness of case management. However, on the other hand, the system also forms an administrative control pattern that determines how a case moves, who handles it, and how the distribution of authority takes place within the courts. In this context, administrative spaces such as *back office* It is a space that has a great influence on the legal process, although it is often not directly visible to justice seekers (Setiawan et al., 2025).

Sociologically, the mechanism shows that the law is not only produced through the judge's decision in the courtroom, but also through the administrative process that takes place before the trial begins. The role of the judicial bureaucracy is very important in realizing substantive justice because the administrative system determines the effectiveness and quality of the legal process. Therefore, case administration is actually a form of power that works subtly through procedures, documents, digital systems, and case distribution that appear administrative but have great juridical consequences for the judicial process (Nursyahid, 2020).

In Pierre Bourdieu's perspective, the condition can be understood as a form of *bureaucratic capital*, which is the power born from mastery of administrative procedures, documents, and institutional mechanisms in a *field* law. Administrative actors such as clerks, clerks, and the Chief Justice have a strategic position in determining how cases are processed before reaching the judge. In fact, the registrar is not only in administrative duties, but also ensures that the entire process runs according to the principles of justice, transparency, and accountability of the judiciary. Thus, the practice of case administration in the Mojokerto Religious Court can be understood as a hidden arena of power, where laws are produced through bureaucratic mechanisms that work behind the scenes.



Figure 4. PA Mojokerto Clerk's Room

3.5 Judge as Main Actor

In the practice of dispensation of child marriage in the Mojokerto Religious Court, the position of the judge indicates the existence of a power space that is relatively independent of the executive structure. This can be seen from the judge's interpretation of the judicial institution as a power that is not under the President, but is under the Supreme Court and morally responsible to God. This construction shows that the independence of judges is not only understood as a normative principle in the constitutional system, but also as a symbolic culture that lives in the courtroom. This independence provides space for judges to form legal considerations based on beliefs, conscience, and social readings of the case at hand. In this context, the judge's room is not only an administrative workspace, but also an arena for the

production of moral authority that influences how the law is interpreted and applied in the case of dispensation of child marriage (Jamil et al., 2023).



Figure 5. Courtroom and Position of The Marriage Dispensation Trial

In the practice of trial, the judge at the Mojokerto Religious Court not only considers the formal legal aspects, but also the psychological and social condition of the child before deciding the marriage dispensation case. *Based on the results of an interview with the Marriage Dispensation Judge of the Mojokerto Religious Court, Judge Alvia Agustina Rahmah, S.H., "it was explained that the most important aspect in considering the application for dispensation of child marriage is the existence of "urgent reasons". However, the condition of pregnancy outside marriage is not automatically considered as a reason to justify granting a dispensation, because the judge still considers the child's psychological readiness, the level of emotional maturity, and the readiness of the prospective spouse in building a household, both from religious, economic, and psychological aspects"* (Alvia Agustina Rahmah, personal communication, 2025). Instead of simply applying the provisions of the law, judges actively seek additional forms of knowledge to evaluate a child's readiness for marriage. These findings suggest that the rule of law alone is considered insufficient to assess the complexity of child marriage cases, especially as it relates to the psychological maturity and future resilience of the family. Therefore, psychological readiness becomes the interpretive lens that judges use to determine whether a legal request truly reflects the best interests of the child, not just meeting procedural requirements. The interview also revealed that the category of "urgent reasons" is not treated as a fixed legal concept. On the contrary, the judge constantly interprets its meaning in relation to the social circumstances of each child. Pregnancy, family pressure, or religious concerns are therefore not automatically converted into legally relevant facts. These matters first undergo judicial interpretation, in which biological, psychological, and social realities are evaluated before becoming the legitimate legal basis for granting a dispensation.

Judge Alvia also explained *"That in the practice of trial there are children who have biologically experienced pregnancy, but mentally still show a very childish character. This condition is a serious concern for the judge because it shows that there is an imbalance between biological maturity and socio-psychological readiness to live a married life. Therefore, the existence of extension workers or psychological consultants from the local government who are present every Thursday at the Mojokerto Religious Court is considered very helpful for the judge in reading the child's psychological readiness before making a decision."* (Alvia Agustina Rahmah, personal communication, 2025). The judge's narrative shows that psychological expertise was not introduced to replace legal reasoning, but to compensate for the limitations of legal norms in

understanding the reality of children's lives. Biological maturity does not always correspond to emotional maturity, and this gap cannot be identified through legal documents alone. As a result, the courtroom becomes a space where legal authority intersects with psychological expertise to build judicial knowledge. This interaction also illustrates that judicial authority is increasingly underpinned by interdisciplinary knowledge. However, psychology does not determine judicial decisions. In contrast, psychology serves as one of the sources of knowledge among many other sources that are critically evaluated by judges before coming to legal conclusions.

However, the results of the psychological examination are not absolutely binding on the judge. Judge Alvia said *"That under certain conditions, the judge can still grant a dispensation if other legal facts are found that are considered stronger during the trial process. In addition, the judge also considers the age gap between the prospective husband and wife because the age difference is too far considered to have the potential to give rise to an unbalanced power relationship and increase the risk of domestic violence (KDRT)."* (Alvia Agustina Rahmah, personal communication, 2025). These findings suggest that legal authority remains in the hands of judges despite the involvement of external experts. Psychological assessments, social reports, and testimony in court are not followed mechanically, but are selectively incorporated into judicial reasoning. This shows that legal facts are ultimately generated through judicial interpretation, not through the automatic acceptance of expert opinions. Consideration of the age difference further illustrates that judges anticipate the social consequences of marriage in the future, rather than simply evaluating current legal conditions. Instead of focusing solely on whether legal requirements have been met, judges assessed how unequal age relationships can shape future power dynamics within the household, including the possibility of domestic violence.

The judge's consideration process shows that there is a tension between legal norms and social empathy. On the one hand, judges are required to carry out the principles of child protection and restrictions on early marriage as stipulated in the Marriage Law and PERMA Number 5 of 2019. But on the other hand, judges are also faced with social realities such as family pressure, community culture, fear of adultery, out-of-wedlock pregnancies, and the socio-economic conditions of the parties. In these conditions, judges use legal discretion to balance legal certainty and social welfare. In fact, in some cases, judges prefer to reject or suggest the revocation of dispensation if the child is considered psychologically immature even though the social pressure from the family is already very large (Zubaeri et al., 2022)

Judge Alvia also emphasized that *"Social factors such as the spread of marriage invitations cannot be categorized as urgent reasons to grant the dispensation of child marriage. In fact, in one of the cases, the judge once suggested the revocation of the dispensation application on the agreement of the applicant because the age of the child was only a few months short of the age of 19 years even though all the wedding preparations had been made. According to him, the judge is not only in charge of deciding the case, but also providing advice and understanding to the applicants that marriage is a social institution that requires mature readiness and cannot be carried out in a hurry"* (Alvia Agustina Rahmah, personal communication, 2025). The statement shows that the judge's room is not only a space for the production of legal decisions, but also a room for moral education that shows how judges carry out their social functions in the midst of the complexity of the problem of child marriage in society. This narrative shows that judges view themselves not only as decision-makers but also as moral educators responsible for preventing early marriage. Therefore, judicial authority extends beyond dispute resolution into the production of legal consciousness, where the petitioners are encouraged to reconsider marriage as a long-term social institution rather than a direct response to social pressures. As a result, the courtroom serves as a pedagogical space where legal norms, moral values, and social

responsibilities are communicated directly to the family. In this case, judicial practice becomes part of a broader process of shaping legal behavior rather than simply resolving legal disputes.

From Pierre Bourdieu's perspective, this judicial practice shows how judges mobilize various forms of capital in the legal field. Their authority is not only derived from the provisions of the law (legal capital), but is reinforced by the symbolic capital inherent in judicial positions, which allows them to determine which forms of knowledge deserve legal recognition. At the same time, judges exercise bureaucratic capital through their institutional authority to control courtroom procedures and ultimately define legally relevant facts. Therefore, these findings suggest that judicial decisions are generated through the interaction of legal norms, institutional authority, psychological expertise, and the professional experience of judges. Instead of functioning as passive interpreters of laws, judges actively construct legal meanings by selecting, interpreting, and legitimizing various forms of knowledge. In this sense, the courtroom is a central arena where law is socially produced through the interaction between actors, knowledge, power, and institutional space (Wati et al., 2023).

3.6 Legal Culture in the Practice of Dispensation

In the practice of dispensation of child marriage at the Mojokerto Religious Court, the courtroom shows that the law works very closely with the social, moral, and cultural values that live in the community. Based on the results of observations during the study, the researcher found that there were different patterns of behavior among the applicants for child marriage dispensation during the trial process. Children who apply for dispensation due to out-of-wedlock pregnancies tend to show expressions of fear, introspection, silence, and psychological distress when in the courtroom. On the other hand, in cases filed because of parents' concerns about children's association or reasons for avoiding adultery, children still show childish behaviors such as laughing, joking, and not showing emotional readiness to enter home life. This condition shows that the courtroom is not only an arena for formal legal examination, but also a social space that shows the cultural expression, level of social maturity, and psychological condition of the child directly (Jalil et al., 2023).

This phenomenon shows that the reason for dispensing child marriage cannot be understood only as a formal administrative or legal issue. In practice, reasons such as out-of-wedlock pregnancies, parents' fear of promiscuity, fears of adultery, and social pressure from the surrounding environment are the dominant factors that shape the dispensation application (Asmarini, 2021). Thus, the practice of dispensation shows that family law in the Religious Court is strongly influenced by religious values, family morals, and social culture of the community. In this context, the courtroom becomes an arena where state norms meet with the moral values of society that develop beyond formal law.

In addition, researchers found that almost all child marriage dispensation cases observed were related to the child's formal education dropout. Dropping out of school is the dominant pattern that appears in various cases, both motivated by pregnancy, family pressure, and dating relationships. In this context, education not only functions as an academic tool, but also as a social space that shapes the control, activities, and future orientation of children. When children lose their educational space, they tend to lose routines, social supervision, and motivation to develop themselves. The findings show that the practice of child marriage dispensation is closely related to the weak social control system and educational culture in the family and society (Hanafi et al., 2024).

Based on the results of an interview with the Marriage Dispensation Judge of the Mojokerto Religious Court, Judge Alfiyah "*explained that children who do not have activities, busyness, or*

motivation for life tend to fall more easily into relationships that lead to child marriage. According to him, this condition is often exacerbated by weak educational support from the family and social environment. Therefore, although some of the dispensation applications were filed at the urging of the parents, the judge still emphasized the importance of education for the child after the marriage took place." (Alvia Agustina Rahmah, personal communication, 2025). The statement shows that the practice of dispensation of child marriage is not only understood by judges as a family law issue, but also related to the failure of the social system in maintaining the sustainability of education and the future of children.

In Sally Falk Moore's perspective, the findings show that the law does not work autonomously, but is always influenced by the social, cultural, and social norms that live in society. The Court as *semi-autonomous social field* It does have the authority to shape and enforce its own rule of law, but legal practice is still influenced by social pressures, religious values, family morals, and the culture of society outside the courts (Moore, 1978). In the context of the dispensation of child marriage in the Mojokerto Religious Court, the law not only functions as a tool of state control, but also as a space for social negotiation between legal norms, community moral values, and the reality of the lives of the parties dealing with the law. Thus, the practice of dispensation of child marriage shows that the legal culture in the Religious Court is actually the result of the interaction between the formal legal system and social values that are alive and continue to be produced in the daily life of the community (Tanjung, n.d.).

3.7 Synthesis: The Court as a Legal Production Space

The findings of the research at the Mojokerto Religious Court show that the practice of dispensation of child marriage cannot be understood solely as a process of applying legal norms to a case, but as a process of legal production that takes place through the interaction of space, actors, culture, and power relations in judicial institutions. Institutional spaces such as PTSP, POSBAKUM, administrative rooms, and judges' rooms show the existence of social stages that gradually turn the applicant's personal problems and social reality into legal facts that are valid before the state. In this context, the law does not exist as something neutral and automatically found in the text of the law, but is produced through the institutional mechanisms, administrative processes and interpretations of the actors involved in it (Jalil et al., 2023).

The legal production process has been seen since the applicant first entered the PTSP room as an administrative discipline room. At this stage, family social issues began to be translated into language and legal procedures through administrative requirements, documents, and predetermined bureaucratic flows. Furthermore, in the POSBAKUM room, the social experiences of the applicants are transformed into a legal narrative in the form of an application letter that will be processed in the court system. Thus, social facts do not automatically become legal facts, but must first go through a process of translation and institutional legitimacy. These findings show that the courtroom works as a social system that actively shapes the way people understand and present their issues before the law (Fitriyani & Lallo, 2023).

In addition to space, institutional actors also have an important role in producing laws. PTSP officers, POSBAKUM, clerks, and judges not only carry out administrative functions, but also determine how cases are processed, understood, and directed in the judicial system. In the practice of case administration, for example, the *E-Court*, SIPP, and *Smart Assembly* shows that the court bureaucracy has the power to determine the distribution of cases, the flow of legal processes, and who is authorized to handle a certain case (Fitriyani & Lallo, 2023). In Pierre Bourdieu's perspective, this condition shows the existence of a distribution *Capital* and power relations within *field* law, where each actor has a certain position and authority in determining

the course of the legal process. Therefore, the law is not only produced by judges in the courtroom, but also through a network of administrative actors who work behind the trial process (Bourdieu, 1987).

At the same time, the practice of dispensation of child marriage in the Mojokerto Religious Court also shows that the law is greatly influenced by the social culture that lives in the community. The reasons for dispensation such as out-of-wedlock pregnancies, parents' fear of child association, family social pressure, and concerns about adultery show that the practice of family law is never completely independent of the religious, moral, and cultural values of society (Asmarini, 2021). In fact, the judge in deciding the case also considers the psychological condition of the child, family social relations, economic readiness, and potential social impact in the future. Thus, legal decisions are not born from the mechanical application of norms, but from the negotiation process between state law, the moral values of society, and the social reality of the parties dealing with the law.

The following researcher wants to explain the table to make it easier to understand in more detail and clearly from the research, here is the table:

Table 1. Institutional Spaces and the Social Production of Law in Child Marriage Dispensation

Institutional Space	Actors	Practices That Occur	Forms of Power Relations	Legal Anthropological Analysis
PTSP	PTSP Officer	Verify the requirements and administration of the application	Access control and administrative discipline	A disciplinary space that transforms social problems into legal procedures
POSBAKUM	POSBAKUM Officer	Preparation of dispensation application letter	Power in determining the legal narrative	Translation of social facts into legal facts
Back Office / Administration	Registrar and case administration	Case registration through e-court, SIPP, and Smart Assembly	Bureaucratic capital and distribution of cases	Administration as a mechanism of legal production and distribution
Courtroom	Judge, clerk, applicant	Fact-checking, psychology, and social conditions of children	Moral authority and discretion of judges	Arena of negotiation between law, morality, and social culture
Conference Culture	Children, family, judges	Expressions of fear, silence, social pressure, and childish behavior	Social relations and cultural pressures	The law is influenced by religious values, family morals, and community culture

In Sally Falk Moore's perspective, this condition shows that the court is a *semi-autonomous social field*, which is a social space that has the ability to form and carry out its own internal rules, but is still influenced by social norms and pressures from outside the legal institution (Moore, 1978). The court does have formal authority to determine whether a dispensation of child marriage can be granted or not, but decision-making practices are still influenced by community culture, religious values, family pressure, the psychological condition of the child, and the socio-economic reality of the parties. In this context, the law does not work completely autonomously, because the practice of law always interacts with social systems that live outside the courts. Therefore, the practice of dispensation of child marriage in the Mojokerto Religious Court shows that the law is basically the result of social negotiations that continue to be produced through the interaction between institutional spaces, actors, power relations, and community culture. Thus, this study confirms that law is not something that is objectively "discovered" in the text of the law, but something that is constantly produced, negotiated, and reinterpreted in social practice in the courtroom (Wati et al., 2023).

4. Conclusion

This study examines how the dispensation of child marriage is produced socially through the interaction of institutional spaces, legal actors, legal culture, and judicial authorities in the Mojokerto Religious Court. Rather than viewing the courts as neutral institutions that only apply the provisions of the law, the findings suggest that legal practice continues to be produced through institutional processes that regulate movement, regulate interactions, translate social experiences into legal narratives, and validate certain forms of legal knowledge. Therefore, the dispensation of child marriage arises not only from the rule of law, but from everyday practices in which institutional actors construct legally recognizable reality.

The findings further reveal that each institutional space plays a different role in producing legal outcomes. The PTSP disciplines the applicant through administrative procedures, the POSBAKUM selectively translates social experiences into a standardized legal narrative, the administrative structure regulates the circulation of cases through bureaucratic mechanisms, and the judge integrates legal norms with psychological, moral, and social knowledge before producing judicial decisions. These processes show that legal facts are not something that is given naturally, but rather is constructed through interaction, negotiation, and institutional interpretation.

Theoretically, this study contributes to legal anthropology by showing that institutional spaces are analytically productive, not merely descriptive. By integrating Sally Falk Moore's concept of the semi-autonomous social sphere with Pierre Bourdieu's juridical field theory, this study shows how institutional spaces structure authority, distribute bureaucratic and symbolic capital, and shape the production of legal knowledge in Islamic family courts. This perspective expands the study of socio-law by explaining how law is generated through the interaction of space, actors, power relations, and legal culture.

This study is limited to a single Religious Court and therefore reflects an institutional arrangement in the Indonesian judicial system. Further research should conduct comparative studies in various Religious Courts in different socio-cultural contexts to examine how variations in institutional space, organizational culture, and judicial practices affect the production of dispensations of child marriage. Such studies will further enrich legal anthropology by explaining how different institutional environments shape legal authority and judicial decision-making. Ultimately, the study argues that the law in the dispensation of child marriage is not only found

in the text of the law but continues to be produced through the interaction of institutional spaces, legal actors, legal culture, and judicial authority in the day-to-day practice of the courts.

References

Airlangga, A. R., Zufar, F. M., & Surbakti, S. A. K. (2025). Transformasi Kewenangan Peradilan Agama Pasca Undang—Undang Perkawinan Tahun 1974. *Presidensial: Jurnal Hukum, Administrasi Negara, dan Kebijakan Publik*, *2*(4), 235–242. https://doi.org/10.62383/presidensial.v2i4.1375

Amelia, C., & Kiani, P. (2025). Antropologi So sial dan Pelestarian Budaya Lokal di Era Globalisasi Multikultural. *Jurnal Ilmiah Zona Psikologi*, *7*(3). https://doi.org/https://doi.org/10.37776/jizp.v7i3.1864

Ananda, F., Novita, T. R., & Maryani, H. (2025). Kewenangan Pos Bantuan Hukum (Posbakum) di Pengadilan Agama SEI Rampah Dalam Mewujudkan Keadilan Bagi Masyarakat Tidak Mampu. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, *3*(4). https://doi.org/https://doi.org/10.61104/alz.v3i4.1530

Aprillianto, D., Na'imah, F. U., Fauzi, A., & Maknuun, L. I. (2024). The Controversy of Child Marriage Culture in The Perspective of Maqāṣid al-Usrah: A Case Study of The Authority of Lebe' in Brebes. *Al-Manahij: Jurnal Kajian Hukum Islam*, 199–218. https://doi.org/10.24090/mnh.v18i2.11554

Asmarini, A. (2021). Pertimbangan Hakim Terhadap Dispensasi Nikah Di Bawah Umur (Studi Kasus Pengadilan Agama Parigi). *Familia: Jurnal Hukum Keluarga*, *2*(2), 165–187. https://doi.org/10.24239/familia.v2i2.30

Bourdieu, P. (1977). *Outline of a Theory of Practice*. Cambridge University Press.

Bourdieu, P. (1987). The Force of Law: Toward a Sociology of the Juridical Field. *THE HASTINGS LAW JOURNAL*, *38*.

Fadri, K., Mukhlis, M., & Yusrizal, Y. (2020). Kewenangan Pengadilan Agama Dan Pengadilan Tata Usaha Negara Terhadap Pembebanan Nafkah Anak Akibat Perceraian Pegawai Negeri Sipil. *Suloh:Jurnal Fakultas Hukum Universitas Malikussaleh*, *8*(1), 48. https://doi.org/10.29103/sjp.v8i1.2488

Falk Moore, S. (1973). Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study. *Law & Society Review*, *7*(4), 719–746. https://doi.org/10.2307/3052967

Fitriyani, & Lallo, Sudirman. (2023). Pertimbangan Hakim Dalam Penetapan Dispensasi Kawin (Tinjauan Aspek Filosofis, Yuridis, Dan Sosiologis): Diskripsi Kasus Dan Pertimbangan Hakim Dalam Penetapan Dispensasi Kawin Di Pengadilan Agama Bogor. *Al-Mizan*, *19*(1), 105–120. https://doi.org/10.30603/am.v19i1.3294

Grant, A. (2021). Breasts and the city: An urban ethnography of infant feeding in public spaces within Cardiff, United Kingdom. *International Breastfeeding Journal*, *16*(1), 37. https://doi.org/10.1186/s13006-021-00384-2

Hanafi, D., Sabara, S., & Patimah, P. (2024). Social Media Usage Deviation and Impact on Muslim Family Dynamics in Makassar City, South Sulawesi. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, *8*(3), 1597. https://doi.org/10.22373/sjhk.v8i3.24113

Henny Suryaningsih, Asti Sri Mulyanti, & Temmy Fitriah Alfiany. (2024). Implementasi Bantuan Hukum Bagi Masyarakat Tidak Mampu di Posbakum Pengadilan Agama Sukabumi. *Demokrasi: Jurnal Riset Ilmu Hukum, Sosial dan Politik*, *1*(4), 44–50. https://doi.org/10.62383/demokrasi.v1i4.474

Irwin, R. (2025). Ethnographies of global health governance and diplomacy: A practical guide. *Annals of Anthropological Practice*, *49*(1), e70014. https://doi.org/10.1111/napa.70014

Jalil, A., Umar, M., & Azhar, H. (2023). Peran Hakim Dalam Upaya Menurunkan Angka Dispensasi Nikah Di Kabupaten Bojonegoro (Studi Kasus Di Pengadilan Agama Bojonegoro Tahun 2022). *CENDEKIA: Jurnal Studi Keislaman*, *9*(2), 254–270. https://doi.org/10.37348/cendekia.v9i2.487

Jamil, A., Nirmala, C. A. S., & Putri, I. M. (2023). Diskresi Hakim dalam Memutuskan Perkara Dispensasi Kawin di Pengadilan Agama Sukadana. *Syakhshiyyah Jurnal Hukum Keluarga Islam*, *3*(1), 121. https://doi.org/10.32332/syakhshiyyah.v3i1.7255

Kassa Tekile, A., Abate Woya, A., & Wakjira Basha, G. (2020). Determinants of early marriage among female children in Amhara Region, Ethiopia. *African Health Sciences*, *20*(3), 1190–1195. https://doi.org/10.4314/ahs.v20i3.22

Lutfi, L. K. (2022). Dukungan Sosial Bagi Pemohon Dispensasi Nikah Di Pos Bantuan Hukum Pengadilan Agama Ponorogo (Perspektif Konstruksi Sosial). *Jurnal Pro Justicia*, *2*(2). https://doi.org/:10.55380/projus.v2i2.362

Moore, S. F. (1978). *Law As Process: An Anthropological Approach*. Routledge and Kegan Paul, London, Henley and Boston.

Nabila, A. N., Nurfadilla, F., Pangestu, Y., Putra, S. F., & Hartoyo, D. O. (2025). Peran Panitera Dan Kode Etik Dalam Menjaga Integritas Pengadilan. *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat*, *3*(1). https://doi.org/DOI:%2010.11111/nusantara.xxxxxxx

Naping, H., Guntur, A. I., & Mallu, A. A. (2025). Religious Legitimation Of Early Marriage In Indonesia Through Nusantara Islamic Classical Texts. *Jurnal Lektur Keagamaan*, *23*(2). https://doi.org/https://doi.org/10.31291/jlka.v23.i2.1486

Nursyahid, N. (2020). Perlindungan Hukum Pemilik Merek Terdaftar Bagi Usaha Mikro Kecil Dan Menengah (Umkm) Di Sumatera Barat. *UNES Journal of Swara Justisia*, *4*(1), 81. https://doi.org/10.31933/ujsj.v4i1.152

Rafly, A. D., Sari, E., & Kalsum, U. (2025). Peran Pos Bantuan Hukum Dalam Memberikan Bantuan Hukum Kepada Masyarakat Yang Kurang Mampu Di Pengadilan Negeri Pematang Siantar. *Jurnal Ilmiah Mahasiswa Fakultas Hukum (JIMFH)*, *8*(3). https://doi.org/https://doi.org/10.29103/jimfh.v8i2.21450

Rahmaniah, A., Anwar, S., & Yulianti, R. T. (2020). Kerakatan And Baparcayaan In Diamond Transactions Through Pengempit (The Anthropology Of Islamic Law Study). *Syariah: Jurnal Hukum Dan Pemikiran*, *20*(2), 105. https://doi.org/10.18592/sjhp.v20i2.3880

Rakhmawati, N., & Zaman, A. Q. (2025). Pendampingan Non-Litigasi Terhadap Pemohon Dispensasi Nikah: Sinergi Posbakum Dan Pengadilan Agama Dalam Melindungi Hak Anak. *JIHAN: Jurnal Inovasi Hasil Pengabdian*, *3*(2). https://doi.org/10.51792/ggmd5w62

Sanusi, M. F., & Mustakim, R. (2024). Lembaga Negara Yang Mengatur Hukum Keluarga Dan Berfungsi Sebagai Penyelesaian Sengketa Hukum Keluarga (Peradilan Agama). *Qiyas : Jurnal Hukum Islam Dan Peradilan*, *9*(1). https://doi.org/http://dx.doi.org/10.29300/qys.v9i1.2830

Setiawan, Y., Rezki, M., & Shirotol, A. (2025). Optimalisasi Peran Dan Fungsi Kepaniteraan Dalam Mendukung Administrasi Pengadilan. *Jurnal Akademik Pengabdian Masyarakat*, *3*(2), 119–126. https://doi.org/https://doi.org/10.61722/japm.v3i2.4044

Sopyan, Y., & Suryani, H. (2020). Marriage with Same Tribes in the Customary Law of Minangkabau Batipuh Ateh (A Legal Anthropology Approach). *JURNAL HUKUM ISLAM*, *18*(2), 157–172. https://doi.org/10.28918/jhi.v18i2.3262

Tanjung, A. (n.d.). *Peran dan Diskresi Hakim Pengadilan Agama dalam Menangani Permohonan Dispensasi Kawin: Studi Socio-Legal atas Praktik Hukum dan Budaya Lokal*.

Wati, E. K., Larasati, D. A., Niswatin, N., & Imron, A. (2023). Tindakan Rasionalitas Aktor Lembaga Sosial Dalam Memutuskan Dispensasi Kawin Di Lembaga Pengadilan Agama Surabaya. *Jurnal Dialektika Pendidikan IPS*, *3*(3), 10–19. https://doi.org/10.26740/penips.v3i3.55372

Yin, J., & Jia, M. (2026). A spatial anthropology perspective on the coupling mechanism between infrastructure and market settlements. *Npj Heritage Science*, *14*(1), 101. https://doi.org/10.1038/s40494-026-02373-2

Zhao, X., Shi, L., & Liu, F. (2026). Cultural ecology perspective on mechanisms influencing the spatial morphology of traditional villages in Suichang County, China. *Scientific Reports*, *16*(1), 5311. https://doi.org/10.1038/s41598-026-36382-9

Zubaeri, A., Aizaturrohmah, A., & Rofiq, M. K. (2022). Pemeriksaan Perkara Dispensasi Kawin Oleh Hakim Tunggal Di Pengadilan Agama Batang Perspektif Maslahah. *An-Nawa: Jurnal Studi Islam*, *4*(1), 40–56. https://doi.org/10.37758/cv22b934