

Legitimacy of Marriage Dispensation in Religious Courts based on The Law, Judges' Considerations, and Case Decisions

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Abstract:

The age limit for marriage in Indonesia has brought changes to the regulation of the marriage age recognized by the state. The previous marriage law (UU No.1/1974) was reformulated into a new policy setting (UU No.16/2019) regarding marriage in Indonesia. This impacts the legitimacy of resolving legal cases of early marriages that occur, whether they are called early marriages, due to changes in statutory provisions or other problems of marrying by accident by taking legal action called marriage dispensation. Existing studies that respond to the issue of marriage dispensation tend to discuss changes or regulations on marriage dispensation after the birth of new regulations, apart from that, existing studies do not consider marriage at an early age as a legal problem that requires careful legal review. To fill this gap, this study focuses on what

questions are the factors that cause requests for marriage dispensation, how judges consider making marriage dispensation decisions and a description of the fairness of legal certainty in decisions on marriage dispensation cases. To answer this question, qualitative research was carried out on the statements of judges in religious courts and observing the results of court case decisions to get a comprehensive picture of the application of age regulation in marriage and the reasons why there are requests for marriage dispensation in court. From this research it was found that a marriage dispensation is a legal decision made based on the conditions of changes in the age limit in the Marriage Law and the conditions of young couples who are requesting permission to marry. Early marriage factors are caused by various things, data describing family factors, economic factors, and customary factors are the aspects that most influence someone marrying at an early age. The contribution of this research lies in the synchronization between laws, judges' considerations, and case decisions related to marriage dispensations to find harmony between legal norms and social reality.

Batasan usia menikah di Indonesia telah membawa perubahan terhadap aturan usia menikah yang diakui oleh negara. Undang-undang perkawinan sebelumnya (UU No.1/1974) dirumuskan kembali menjadi pengaturan kebijakan baru (UU No.16/2019) tentang perkawinan di Indonesia. Hal ini berdampak pada sah atau tidaknya penyelesaian perkara hukum perkawinan dini yang terjadi, baik yang disebut perkawinan dini, karena adanya perubahan ketentuan peraturan perundang-undangan maupun permasalahan perkawinan karena kecelakaan lainnya dengan melakukan upaya hukum yang disebut dengan dispensasi nikah. Kajian-kajian yang merespon permasalahan dispensasi nikah cenderung membahas tentang perubahan atau pengaturan dispensasi nikah pasca lahirnya peraturan baru, selain itu kajian-kajian yang ada juga tidak menganggap perkawinan pada usia dini sebagai suatu permasalahan hukum yang memerlukan kajian hukum secara cermat. Untuk mengisi kesenjangan tersebut, penelitian ini fokus pada pertanyaan apa saja yang menjadi faktor penyebab permohonan dispensasi nikah, bagaimana pertimbangan hakim dalam mengambil putusan dispensasi nikah, dan gambaran mengenai kewajaran kepastian hukum dalam putusan perkara dispensasi nikah. Untuk menjawab pertanyaan tersebut, dilakukan penelitian kualitatif terhadap keterangan hakim di pengadilan agama dan mencermati hasil putusan perkara untuk mendapatkan gambaran menyeluruh mengenai penerapan pengaturan usia dalam perkawinan dan alasan mengapa terdapat permohonan dispensasi nikah dalam perkawinan. pengadilan. Dari penelitian ini diketahui bahwa dispensasi nikah merupakan suatu keputusan hukum yang diambil berdasarkan kondisi perubahan batas usia dalam Undang-Undang Perkawinan dan kondisi pasangan muda yang sedang mengajukan permohonan izin menikah. Faktor pernikahan dini

disebabkan oleh berbagai hal, data yang menggambarkan faktor keluarga, faktor ekonomi, dan faktor adat merupakan aspek yang paling mempengaruhi seseorang menikah di usia dini. Kontribusi penelitian ini terletak pada sinkronisasi antara peraturan perundang-undangan, pertimbangan hakim, dan putusan perkara terkait dispensasi perkawinan untuk menemukan keselarasan antara norma hukum dan realitas sosial.

Key words: *Marriage dispensation; judge considerations; case decision.*

Introduction

Marriage is an agreement that is legalized by religion and the State (Law No. 16 of 2019 in conjunction with Law No. 1 of 1974) which is then called Law No. 16/2019 in conjunction with Law No. 1/1974 concerning Marriage to form eternal and happy family. As it developed, there were controversial issues related to the issuance of the Marriage Law that have not been resolved to date, one of them is child marriage. Underage age for marriage is considered a violation of children's rights. There are also other factors that cause parents to deliberately marry off their children, such as girls who become pregnant out of wedlock (married by accident). In this way, the State (Indonesia) regulates and makes policies regarding marriage issues as appropriate regarding the age limit for a person (male or female) who wishes to get married.

Efforts to reform the Marriage Law regarding the age limit for marriage have given rise to regulatory policies that adapt to this legal reform, one of which is the application for a marriage permit or what is called a marriage dispensation. This is the granting of permission from a judicial judge who has the authority to decide whether or not a request for permission to marry can be granted due to age constraints in entering into a marriage. Marriage dispensation is usually requested by the child's parents because apart from the main reason above (married by accident), other reasons are also taken into consideration, such as economic factors and customs and also someone who has been divorced and wants to remarry. Based on reality, Indonesian law reformed the Marriage Law to legitimize impacts in various aspects, one of which arises related to setting the age limit for marriage.

This legal harmonization and reform aims to regulate policies regarding the age limit for someone wishing to marry in Indonesia. Legal issues resulting from early marriage are also a consideration for the benefit of creating Law No. 16/2019

concerning Marriage.¹ To protect and ensure that marriages can run well and maintain their longevity, Law No. 16/2019 limits the age at which a person can get married so that an ideal marriage can be achieved at a mature age. The age limit in question is 19 years for men and women, previously in Law No.1/1974, 19 years for men and 16 years for women.²

Responding to the reality that in society there are still many underage people (men and women) who are married and causing many problems after the vows of marriage are made.³ The number of early marriage divorce cases that have been filed in religious courts for various motives and reasons. The number of cases of contested divorce in religious courts reaches thousands a year and is dominated by early marriage as a form of marriage carried out by someone who is psychologically immature (old enough).⁴ Therefore, the government is taking a serious stance to improve regulations and human resources for religious courts (judges) to anticipate these problems with the Marriage Dispensation policy.⁵

The enactment of Law Number 16 of 2019 concerning Marriage also triggered an increase in requests for marriage dispensation for child marriages. The National Commission on Violence against Women (KOMNAS Perempuan) summarizes the data report on the findings of marriage dispensation granted by Religious Courts, in 2021 there were 59,709 cases, in 2020 there were 64,211 cases, in 2016-2021 the trend of requests for marriage dispensation increased, the highest number occurred in 2020, a year after the release of the latest marriage law (UU No.16/2019).⁶ Changes in the age regulated by the Marriage Law for both men and women to 19 years as stated in Article 7 paragraph 1 of Law No.16/2019; "Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years."

¹Nawawi, M. A., Sulastri, Edi, R. N., & Setiawan, A. (2022). *Harmonization of Islam and human rights: judges' legal arguments in rejecting child marriage dispensation in Sukadana, Indonesia. Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 22(1), 117–133. <https://doi.org/10.18326/ijtihad.v22i1.117-133>

²Jamaluddin T and Yusuf Djabbar, "An Analysis of Judges' Considerations in Making Decision About the Case of Application for Marriage Dispensation After the Enactment of Law Number 16 of 2019 Concerning Marriage," *Al-Bayyinah*, 2021, <https://doi.org/10.35673/al-bayyinah.v5i1.981>.

³Iman Nurul, "BATAS USIA KAWIN DALAM UU NOMOR 16 TAHUN 2019 TERHADAP PRAKTEK PERKAWINAN DI BAWAH UMUR DI KABUPATEN BREBES," *Journal of Lex Theory* (2021).

⁴Kabid Panitera Muda PA Bondowoso "Tri Anita", "angka perceraian yang terjadi di Bondowoso", <https://radarjember.jawapos.com/berita-bondowoso/03/10/2022/angka-cerai-gugat-meningkat-pernikahan-dini-jadi-pemicu/> (Jumat, 14 April 2023, 23.30 WITA)

⁵Dini Nurilah, "Di Indonesia, Puluhan Kasus Perceraian Terjadi Setiap Jam," *Liputan 6*, 2016.

⁶Perempuan, K. (2021). *Komnas Perempuan*. Retrieved from <https://komnasperempuan.go.id/siaran-pers-detail/catahu-2020-komnas-perempuan-lambar-fakta-dan-poin-kunci-5-maret-2021>

This article aims to analyze the basic considerations of a Supreme Court Judge (Religious Court) in granting a request for marriage dispensation for underage marriages that have occurred, which is different from the previous research article which took decision data on case number 45/Pdt.P/2022/PA.Plp as knife. analysis based on the provisions of Islamic law through the orders of noble judges.⁷

This article aims to complement the shortcomings of the previous articles which explain marriage dispensations substantively and empirically, because it is based on the birth of Law No.16/2019, an amendment to Law No.1/1974. from a socio-legal perspective, it gave birth to policy changes as a result of these changes. Social problems have not been explained comprehensively. Specifically, this article wants to answer 3 questions regarding whether the marriage dispensation is valid or not, how legal reform is in the Marriage Law, how judges consider when making decisions on requests for marriage dispensations, and how to analyze these decisions. requests for marriage dispensation that have been decided regarding the reasons for the judge's consideration in granting the request for marriage dispensation in court, as an example of the phenomenon of marriage dispensation based on cases that have been decided.⁸

This study is motivated by the argument that marriage dispensations are closely related to legal changes in the Marriage Law (UU No.16/2019 jo. Law No.1/1974), both changes in macro and micro aspects will change the legitimacy of marriage. applicable regulation. In Law No.16/2019 there are several aspects that have been changed, not all of which depend on the concept of protecting child marriage (early marriage). There are at least 3 reasons why the Marriage Law re-regulates marriage dispensations. First, religious and cultural diversity: Indonesia is a very diverse country in terms of culture and religion. Therefore, the regulation of marriage dispensations can help accommodate various needs and different religious beliefs throughout the country, including meeting the demands of leaders of all religions who are urging that the marriage age limit be raised.⁹

Second, legal protection for children: marriage dispensation can be used to protect children from exploitation, sexual violence, promiscuity and the risks that

⁷Undang-Undang Dasar 1945 (Pasca Amandemen) "Kekuasaan Kehakiman", pasal 24 ayat 1

⁸Dwi Siswanto, "DINAMIKA DALIL HUKUM HAKIM DALAM PENETAPAN PERMOHONAN DISPENSASI NIKAH DI PENGADILAN AGAMA NGANJUK TAHUN 2015," AL-HUKAMA', 2017, <https://doi.org/10.15642/alhukama.2017.7.1.146-171>.

⁹Badan Pusat Statistik, & UNICEF. (2016). *Kemajuan yang Tertunda : Analisis Data Perkawinan Usia Anak di Indonesia*. Unicef Indonesia, (Analisis Data Perkawinan), 1-100. <https://doi.org/978-978-064963-6>

accompany it by setting an age limit for marriage, the marriage dispensation that will be given to children must be accompanied by urgent reasons and strong evidence.¹⁰ Third, Changes in Social Norms: Social and cultural norms can change over time. Restructuring marriage dispensations could help adapt regulations to these changes to reflect changing societal values and expectations.

Method

This research is of the juridical-empirical type with an Islamic legal approach as material for judicial consideration in issuing decisions based on the judge's decision. Data material was analyzed using qualitative methods from the explanation of the implementation of Law Number 16 of 2019 jo. Law Number 1 of 1974 concerning Marriage and Decisions on Application Cases 45/Pdt.P/2022/PA.Plp¹¹ which is the main source of data material as well as the Compilation of Islamic Law (KHI)¹² and other marriage-related application data. The source of informants in this research was the Palopo Religious Court Judge. Interview materials and other data collection such as documents, archives, diagrams and statistics were collected directly from the Religious Courts Office to provide a general overview of qualitative analysis of the main problems presented descriptively.¹³

Discussion

Overview of Changes to the Marriage Law in Indonesia (UU No.16/2019 jo. UU No.1/1974)

There are various suggestions and pressure from community institutions regarding the need to consider age when entering into marriage. For example, the Association of Indonesian Churches (PGI), the National Commission on Violence Against Women, the Child Protection Commission (KPAI) regarding child

¹⁰Ahyani, S. (2016). *PERTIMBANGAN PENGADILAN AGAMA ATAS DISPENSASI PERNIKAHAN USIA DINI AKIBAT KEHAMILAN DI LUAR NIKAH*. *Jurnal Wawasan Yuridika*, 34(1), 31. <https://doi.org/10.25072/jwy.v34i1.107>

¹¹ Mahkamah Agung RI, "Putusan Pengadilan Agama Palopo Nomor 45/Pdt.P/PA.Plp" (2022), <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaed3d73c82af2029ca9313531383230.html>.

¹²Mahkamah Agung RI, *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya*, Perpustakaan Nasional RI : Data Katalog Dalam Terbitan, vol. 1 (Mahkamah Agung RI, 2011), <https://perpustakaan.mahkamahagung.go.id/assets/resource/ebook/23.pdf>.

¹³Yoki Yusanto, "Ragam Pendekatan Penelitian Kualitatif," *JOURNAL OF SCIENTIFIC COMMUNICATION (JSC)*, 2020, <https://doi.org/10.31506/jsc.v1i1.7764>.

marriage, where the previous Marriage Law (UU No.1/1974) provided space for a person (a woman).) under 18 years of age or considered an adult according to the regulations. legislation.

The lack of uniformity in adult age limits or child age limits in various laws and regulations in Indonesia often raises questions about which limits should be used. Below are several age limit regulations for children and adults according to existing laws and regulations in Indonesia, which we also extracted from the book Explanation of Laws Concerning Age Limits (Ability and Authority to Act Based on Age Limits). ¹⁴ The following is a list of ages according to positive legal regulations in Indonesia that are considered adults and capable of carrying out legal actions, including entering into marriage.

Table 1.1
According to Positive Legal Adulthood in Indonesia

Legal Basis	Article
Criminal Code	<p>article 45</p> <p>In the case of imposing a criminal sentence on a minor for committing an act before the age of sixteen, the judge can determine:.... etc.</p> <p>However R. Soesilo in his book The Criminal Code (KUHP) and its Complete Comments Article by Article (p. 61) explain that what is meant by "immature" are those who are not yet 21 years old and are not yet married. If people marry and divorce before the age of 21, they are still considered adults</p>
Law No.1/1974 concerning Marriage	<p>Article 47</p> <p>Children referred to in the Marriage Law are those who have not yet reached 18 years of age.</p>
Law no. 13 of 2003 concerning Employment	Article 1 chapter 26

¹⁴Letezia Tobing, S.H., M.Kn. (2016). "Q&A Perbedaan Batasan Usia Cakap Hukum dalam Peraturan Perundang-undangan". Online at <https://www.hukumonline.com/klinik/a/perbedaan-batasan-usia-cakap-hukum-dalam-peraturan-perundang-undangan-lt4eec5db1d36b7/> , accessed 21 september 2023

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	A child is anyone under 18 (eighteen) years of age
Law no. 12 of 1995 concerning Corrections	<p>Article 1 chapter 8</p> <p>Correctional students are:</p> <p>Criminal children, namely children who, based on a court decision, are serving a sentence in juvenile correctional facilities up to the age of 18 (eighteen) years;</p> <p>State children, namely children who, based on a court decision, are handed over to the state to be educated and placed in children's prisons until they are 18 (eighteen) years old;</p> <p>a. Civil children, namely children who, at the request of their parents or guardians, obtain a court order to be educated in children's prisons until they are no later than 18 (eighteen) years old.</p>
Law no. 11 of 2012 concerning the Juvenile Criminal Justice System	<p>Article 1 number 3, number 4, and number 5</p> <p>Children in Conflict with the Law are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime.</p> <p>Children who are victims of criminal acts are children under 18 (eighteen) years of age who experience physical, mental suffering and/or economic loss caused by criminal acts.</p> <p>A child who is a witness to a crime is a child who is under 18 (eighteen) years of age who can provide information for the purposes of investigation, prosecution and examination at a court hearing regarding a criminal case that he or she has heard, seen</p>

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	and/or personally experienced.
Law no. 39 of 1999 concerning Human Rights	Article 1 Chapter 5 A child is every human being under 18 (eighteen) years of age and unmarried, including children who are still in the womb if this is in their interests.
Law no. 23 of 2002 concerning Child Protection. As last amended by Law No. 35 of 2014	Article 1 chapter 1 .A child is someone who is not yet 18 (eighteen) years old , including children who are still in the womb.
Law no. 44 of 2008 concerning Pornography	Article 1 chapter 4 A child is someone who is not yet 18 (eighteen) years old .
UU no. 12 of 2006 concerning Citizenship of the Republic of Indonesia	Article 4 letter h An Indonesian citizen is a child born outside a legal marriage to a foreign citizen mother whom an Indonesian citizen father recognizes as his child. This recognition is made before the child is 18 (eighteen) years old or unmarried.
Law no. 21 of 2007 concerning Eradication of the Crime of Human Trafficking	Article 1 chapter 5 A child is someone who is not yet 18 (eighteen) years old , including children who are still in the womb.

The data above shows the statutory regulations in giving meaning to the word "adult" as the basis for the age considered capable of carrying out legal actions. The debate regarding the ideal age for marriage has indeed become the subject of a long and strong discussion regarding the reform of legal regulations which are considered to be out of step with current developments. The promulgation of Law No. 16/2019 replaces Law No. 1/1974 concerning Marriage, where the most striking thing about the changes to the regulations is the minimum age limit for someone to get married as well as substantially changing the marriage dispensation that is applied to the court to obtain permission to marry.

In the news of the 2017 Constitutional Court material review request¹⁵ is the forerunner to the birth of Law No.16/2019. In the Constitutional Court's decision No.22-PUU-XV-2017, the Constitutional Court agreed with the applicant's insistence and the considerations of experts in health, psychology, and the age of 16 for women entering into marriage has no legal basis and force. The Indonesian Church Association, the National Commission on Violence Against Women, the Child Protection Commission have requested several times for a judicial review of the contents of article 7 of Law No. 1/1974, even though the NU and Muhammadiyah mass organizations still agree on the age of 16 for women to marry, but for other reasons (health) the Constitutional Court agreed. changing the marriage age limit for women to the same as men, namely 19 (nineteen) years and ordering that an explanation of the article which states "urgent reasons" to be granted marriage dispensation by a judge with strong evidence be made into a Government Regulation (PP) to explain the Marriage Law.

Legal Review (Implementation of Law No.16/2019 Marriage) Regarding Marriage Dispensation in Court

The following is data on applications for marriage dispensation at the Palopo City Religious Court as an illustration of the data on applications for marriage dispensation as described in the table below;

Table 1.2
Case data for Religious Court Palopo Marriage Dispensation
Application 2017-2022

No	Mariage Dispensation	Granted	Year
1	31 Perkara	31	2017
2	26 Perkara	26	2018
3	28 Perkara	28	2019
4	35 Perkara	35	2020
5	26 Perkara	26	2021
6	18 Perkara	18	2022

¹⁵Mahkamah Konstitusi, 2017. Putusan No. 22-PUU-XV-2017. Online at https://www.mkri.id/public/content/persidangan/putusan/22_PUU-XV_2017.pdf

The data above shows marriage dispensation data, where in 2017, 31 requests for marriage dispensation were granted, then in 2018 it fell to 26 requests. From 2017-2018 there was a decrease of 5 cases. From 2018-2019 there was an increase of 2 cases, in 2020 requests for marriage dispensation experienced an increase of 7 cases which were granted. Factors influencing the occurrence of requests for marriage dispensation in 2019 and above are changes in the law regarding the age limit for men and women as well as recommendations for requesting marriage dispensation after and/or currently having a wedding.¹⁶ From 2021 to 2022 there were 18 marriage dispensation cases granted, from 35 cases (in 2020) to 26 cases (in 2021) then dropping again to 18 (2022). This shows changes to Law No.16/2019 jo. Law No.1/1974 has an impact on the process of applying for marriage dispensation.

The decline in requests for marriage dispensation during the first two years (2017-2018) based on supporting evidence as the reason for requests for marriage dispensation was; First; Underage children have started to prioritize their education again, where learning activities have started to be carried out well at school, community activities have started to get busy earning a living. Second; legal awareness of changes to regulations in the Laws of the Republic of Indonesia, namely Law Number 16 of 2019, amendments to Law Number 1 of 1974 concerning marriage where the age limit is 19 (nineteen) years for men and women when wishing to get married. Third; pre-marital socialization, counseling from religious counselors, Religious Affairs Offices for each district/city, Regional Child Protection Commission (KPAD), Social Welfare Workers, Community Leaders, Traditional Leaders, and Religious Leaders.¹⁷

Interview with Palopo Religious Court Judge Mohammad Shofi Hidayat regarding the basic judge's considerations in granting requests for marriage dispensation at the Palopo religious court, he said:

"The judge's basis for granting a marriage dispensation request is based on the provisions of article 1 of the Supreme Court Regulation (PERMA) number 5 of 2019 concerning guidelines for adjudicating marriage dispensation requests. Based on Law Number 16 of 2019, amendments to Law Number 1 of 1974 concerning marriage. The readiness of the bride and groom must also be taken into consideration, especially in terms of mental readiness, physical readiness, especially in terms of health for women regarding reproduction,

¹⁶ Pasal 7 ayat (1),(2), dan (3) UU No. 16/2019 Pernikahan

¹⁷ Nur Putri Hidayah and Komariah Komariah, "Sosialisasi Undang-Undang Nomor 16 Tahun 2019 Sebagai Upaya Penyadaran Pemahaman Hukum Tentang Usia Minimum Pernikahan," *Jurnal Pengabdian Hukum Indonesia (Indonesian Journal of Legal Community Engagement) JPHI*, 2021.

economic readiness of the two candidates, whether they are able to support their household, the judge also pays attention to children's education, mental safety and the safety of their offspring.”

Granting a request for a marriage dispensation in a religious court must first examine the administrative requirements in applying, the judge carefully examines the trial case and the trial process for the child whose marriage dispensation is requested through the stages of the trial. The judge's determination of a marriage dispensation is based on considering the best interests of the bride and groom, considering the benefits of the child whose marriage dispensation is being requested, so by looking at all these things in the trial the marriage dispensation request will be granted.

Interview with the Chairman of the Palopo Religious Court, namely Mr. Tommi, regarding the basis of the judge's consideration in granting the request for a marriage dispensation at the Palopo Religious Court, he said:¹⁸

"The judge's decision is in writing, which is based on Law Number 16 of 2019, an amendment to Law Number 1 of 1974 concerning marriage, that the age limit for men and women is 19 years to be able to get married. "Then the judge also needs to consider aspects of mental readiness, health aspects where women's reproductive organs are considered mature, economic readiness where they can earn a living."

The judge's decision regarding marriage dispensation must reflect the trident of the court's decision (legal ideals), namely: justice, expediency and legal certainty, even though the law states that the age at which a man and a woman must be 19 years before they can marry. So here, *das sollen* and *das sein* are things that are very contradictory in the field, because even at the age of 16, many women still enter court, especially when that age is increased to 19 years, but of course the policy of the makers of Law Number 16 Years 2019 amendments to Law Number 1 of 1974 concerning marriage, there is great importance for children, namely from a biological perspective, a woman's age of 19 years is considered mature, her reproductive system is also mature, her emotions are considered mature both psychologically and physically.

He further said; that decision-making regarding the determination of the marriage dispensation application is still based on Law Number 16 of 2019, an amendment to Law number 1 of 1974 concerning marriage, and is based on the laws that exist in society and cannot be separated from the principle of Fighi's

¹⁸Tommi., Ketua Pengadilan Agama Palopo, Jl. Andi Djemma No. 111 Kota Palopo, Sul-Sel, Wawancara, 28 September 2022.

proposal, namely that marriage is based on Sharia at the level of jurisprudence. From the trident of the court which is also the ideal of law, the aspect of justice must be given to the person concerned by accepting registration, being tried through the trial stages. Then the aspect of legal certainty can be provided if someone wants to marry a minor, whether male or female, then the person who applies for marriage dispensation is the male or female parent.

The aspect of legal benefit is that in implementing legal certainty and justice, the benefits for those concerned are carefully considered. Therefore, in granting a determination regarding the application for marriage dispensation, it is necessary to consider its benefits, where the results of the determination of the application for marriage dispensation can provide pleasure and goodness to the child whose marriage dispensation is requested. So the granting of a marriage dispensation request can be based on the law in force in society or unwritten law, in this case the law can be deviated by the judge in granting a marriage dispensation decision and the judge's reasons are strengthened by considering that the marriage dispensation request will be granted if it is more beneficial for children whose marriage dispensation is requested for urgent reasons."

The interview above shows that the judge's basis for granting marriage dispensation refers to Law No.16/2019 jo. Law No.1/1974 Marriage. There are several reasons why the application has been carried out, invitations have been distributed, the child (girl) is already pregnant and both parties (parents/guardians) have agreed to get married, which is considered by the judge and negates the mandate of the statutory provisions if it is deemed more beneficial. for the prospective bride and groom.¹⁹

Several considerations are taken by the judge when granting a marriage dispensation request such as there is no mental readiness, not yet willing to settle down, the child still wants to go to school, and the economy is not yet established, so the judge can reject the marriage dispensation request. In this regard, judges in this case can create new laws according to the needs of society at that time. Likewise, when during the trial process one of the parties says they do not agree because they are worried that their child's health will be affected, or they still want to send their child to school, then with conditions in society like that the unwritten law will apply, namely a law that applies in society, then the judge can reject his request for a marriage dispensation.

¹⁹Dewi Atiqah, "Peran Hakim Dalam Mewujudkan Keadilan, Kepastian, Kemanfaatan Putusan," 2023, <https://pa-purwodadi.go.id/index.php/sub-bag-keuangan/pedoman/26-halaman-depan/artikel/358-peran-hakim-dalam-mewujudkan-asas-keadilan-kepastian-hukum-dan-kemanfaatan-putusan>.

Interview with Palopo Religious Court Judge, Mrs. Merita Selvina, who provided information on aspects of Islamic law regarding marriage dispensations.

“Regarding the Islamic Law Review of Applications for Marriage Dispensation, he said that: In granting requests for marriage dispensation in religious courts based on Law of the Republic of Indonesia Number 16 of 2019, amendments to Law Number 1 of 1974 concerning marriage. Then, when adjudicating children regarding marriage dispensations, it is based on Supreme Court Regulation (PERMA) Number 5 of 2019 concerning Guidelines for adjudicating marriage dispensations. This regulation was issued based on Law Number 16 of 2019, an amendment to Law Number 1 of 1974 concerning marriage, where there was an increase in the age limit for marriage, initially 19 years for men and 16 years for women, then men and women were made equal. Only 19 years old are considered fit for marriage.”

The usual reason for urgency is because the two candidates have often walked together, which is usually a condition for a violation to occur, namely a violation of religious norms and customs in the place where they live, there are also those who are urgent because they have received an application, have printed an invitation, there are also those who are urgent. because they were matched. The urgent reasons that often occur in the Palopo Religious Courts are children who become pregnant before marriage or what is more commonly called adultery. According to Law Number 16 of 2019, an amendment to Law Number 1 of 1974 concerning marriage, when there is an urgent reason, such as the girl being pregnant out of wedlock, the request for dispensation needs to be granted because this is one of the judge's considerations in granting a marriage dispensation, and by determining whether the request for dispensation is granted, it will be more beneficial for the child whose dispensation is requested.

In accordance with Supreme Court Regulation (PERMA) Number 5 of 2019 concerning guidelines for adjudicating marriage dispensation applications, the judge who hears the marriage dispensation application is a judge who already has a Supreme Court decision letter as a child judge, the judge has attended training or technical guidance regarding women facing with the law or certified in the juvenile criminal justice system. After the issuance of Supreme Court Regulation Number 5 of 2019, the trial for marriage dispensation applications is no longer a panel but a trial with a single judge.

Then, to face children when adjudicating in court, substitute judges and clerks no longer wear togas or other court attributes, this is so that children who are faced in the process of determining applications for marriage dispensation do not feel intimidated in court. Judging from Islamic law regarding the application for

marriage dispensation. Basically, marriage is an effort to implement sunnatullah (natural laws) that occur in humans and follow the sunnah of the Prophet Muhammad. As contained in Q.S. An-Nuur 24:32 ;²⁰

وَأَنْكِحُوا الْأَيْمَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِن يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ
مِنْ فَضْلِهِ ۗ وَاللَّهُ وَسْعٌ عَلِيمٌ ۝

“And marry the unmarried among you and the righteous among your male slaves and female slaves. If they should be poor, Allah will enrich them from His bounty, and Allah is all-Encompassing and Knowing.

The above interview can be analyzed; The determination of a marriage dispensation request by a religious court judge also needs to consider several aspects such as; Mental readiness, namely the ability to handle and face challenges in life, mental balance and good emotional management as preparation for difficult situations. Biological Readiness; It is often also called physical readiness which greatly influences a person's age level to carry out their duties and roles as husband/wife.

Reproductive maturity is for the sake of maintaining health and offspring for society, religion, homeland and nation. Looking at the various urgent reasons usually given by marriage dispensation applicants, other considerations include economic readiness and readiness to marry. Thus, living a domestic life will be faced with various household problems that require adequate readiness and maturity.

The author conducted an interview with the Deputy Chair of the Palopo Religious Court (H. Asis), regarding the Islamic Law Review of requests for marriage dispensation at the Palopo Religious Court, he said that:

"The request for a marriage dispensation requested by the parents of the minor prospective bride and groom is based on Law Number 1 of 1974 which was amended to Law Number 16 of 2019 concerning marriage, where initially the age of the man was 19 years and The age of a woman is 16 years and then the age of a man is equalized and the age of a woman is 19 years before she is considered fit for marriage. "Then the method of adjudication is based on Supreme Court Regulation (PERMA) Number 5 of 2019 concerning guidelines for adjudicating applications for marriage dispensation for children."

²⁰Kementerian Agama, "Al-Qur'an Dan Tafsirnya," in *Al-Qur'an Dan Terjemahannya Edisi Penyempurnaan 2019*, 2019, 277.

The judge determines the request for a marriage dispensation for underage children, it is necessary to look at and consider mental (psychic) readiness, namely the attitude of maturity or maturity of the prospective husband and wife so that they can later achieve happiness in their household, physical readiness, namely physical maturity, where the prospective husband and the prospective wife has been able to provide for her family's needs, health readiness, where a woman's reproductive health is considered mature as proven by the results of a health examination, then if the readiness of the child whose dispensation has been requested is deemed to be established her request for marriage dispensation can be granted.

If the child is pregnant and during the trial process the judge examines it, then several things are seen such as the condition of the child not being ready for marriage, then the judge can reject the request for dispensation (the judge is not affected by the condition of being pregnant), so the judge can see from her mental side, economic readiness and so on, for the benefit of the child and the child's future. In the trial process the judge must carefully look at the problems that exist in deciding on a marriage dispensation, namely that if the benefits are deemed to be greater than the harm, then the benefits are taken away and the request for dispensation is granted and conversely if the harm is greater than the benefits, then the judge does not grant the request for dispensation the marriage.

In the case of a child who is pregnant and then in the trial process, the judge must look at it as a whole, not just at the problem of the pregnancy, so even if the judge sees the pregnancy as being pregnant, other considerations cause it not to be granted, so the marriage dispensation request is not granted. So, in examining the trial process, the judge must have accuracy and confidence so that he can make a decision whether to grant the request for dispensation or not to grant the request for marriage dispensation.²¹

The trial examination process is a provision that must be looked at in determining a request for a marriage dispensation, because you could be pregnant but the judge does not grant your request for dispensation and you could also be pregnant so your request is granted, depending on the judge who examines your request for dispensation, depending on the benefits and harms due to consideration. The judge had several things to consider.

²¹H. Asis, Wakil Ketua Pengadilan Agama Palopo, Jl. Andi Djemma No. 111 Kota Palopo, Sul-Sel, Wawancara, 14 Oktober 2022

Judging from Islamic law regarding requests for marriage dispensation, marriage according to the Compilation of Islamic Law (KHI) is a strong contract or *mitsaaqan qholidhan* in obeying the commands of Allah Swt., and carrying it out is an act of worship which aims to create a household life that is *sakinah*, *mawaddah* and *warahmah*, where in this marriage the relationship between a man and a woman will become religiously legal.

According to Islam, marriage is an act of worship. Therefore, carrying out a wedding means carrying out part of the worship and having implemented part of the worship perfectly. Regarding the age limit for prospective brides and grooms, the Compilation of Islamic Law (KHI) considers the benefit of the family and household of the candidate whose marriage dispensation is being requested. The Compilation of Islamic Law in Article 7 states that marriage is only permitted if the man and woman have reached the age of 19 years. This age determination is the result of *ijtihadiah* of the formulators of the Compilation of Islamic Law.

General Overview of Marriage Dispensation (Case Analysis No.45/Pdt.P/2022/PA.Plp)

Legislative provisions set the age of marriage for men and women at 19 years before they can be considered fit for marriage. However, in case Number 45/Pdt.P/2022/PA.Plp, the Palopo Religious Court still accepted and granted the request for marriage dispensation submitted by the applicant, where the child whose marriage dispensation was requested was only 16 years old, here are the details of the case;²²

Table 1.3.
Palopo Religious Court Case Tracking Information System
[keywords: 45/Pdt.P/2022/PA.Plp]

Dekskripsi	Sumber
Nomor Perkara 45/Pdt.P/2022/PA.Plp	https://sipp.pa-palopo.go.id/index.php/detil_perkara

²² Sistem Informasi Penelusuran Perkara “45/Pdt.P/2022/PA.Plp”, Pengadilan Agama Palopo 2022

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Beranda Perdata Gugatan Perdata Pemohonan Jinayat Jinayat Anak Jadwal Sidang Laporan			
Nomor Perkara	Pemohon	Termohon	Status Perkara
45/Pdt.P/2022/PA.Plp	Disamakan		Minutasi
Data Umum	Penetapan	Jadwal Sidang	Saksi
Tanggal Putusan	Senin, 26 Sep. 2022		
Putusan Vertek	Tidak		
Sumber Putusan			
Status Putusan	Dikabulkan		
Nilai Caranl Ketugan (Rp.)			
Amar Putusan	1. Mengabulkan permohonan Para Pemohon; 2. Memberi dispensasi kawin kepada anak Para Pemohon bernama Tasya binil Sabar untuk menikah dengan Eron alias Muhi, Eron bin Markus Sampo Datur; 3. Membebarkan kepada Para Pemohon untuk membayar biaya perkara sejumlah Rp.370.000,00 (tiga ratus tujuh puluh ribu rupiah).		
Pemberitahuan Putusan			
	Status	Nama	Tanggal Pemberitahuan Putusan
	Pemohon 1	Disamakan	
	Pemohon 2	Disamakan	

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Based on data from the statements of honourable judges, and the provisions of the law, 16 years of age does not meet the requirements for carrying out a marriage. the possibility of granting it through a marriage dispensation by the Religious Court Referring to Law No.16/2019 Marriage jo. Law No.1/1974 Marriage Article 7 chapter 1;²³

"Because there is a goal for the benefit of human life, marriage dispensation can be given to the prospective bride and groom."

Seeing that the decision in case 45/Pdt.P/2022/PA.Plp was granted by the judge who viewed this decision as being in the interests of the welfare of the lives of the applicant's children. Judging from the perspective of Islamic law, giving dispensations according to the Islamic perspective is permissible because it is for the benefit of the people and with conditions that have been determined by the applicable legislation. In the Compilation of Islamic Law, article 53 explains that :²⁴

- 1) A woman who becomes pregnant out of wedlock can marry the man who impregnated her.
- 2) A marriage with a pregnant woman referred to in paragraph (1) can take place without waiting for the birth of the child.
- 3) By holding a marriage while the woman is pregnant, there is no need for remarriage after the child is born.

In line with the views of *Shafi'iyah* scholars in setting age limits for people who are considered adults (*baligh*). *Shafi'iyah* scholars think that boys and girls are

²³Pasal 7 Ayat 1 UU Pernikahan (UU No.16/2019 jo. UU No.1/1974)

²⁴Mahkamah Agung RI, *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya*.

considered mature when they reach the age of 15 years. *Shafi'i* scholars say that in order to marry an underage boy, there is a condition for benefit (good interests).

The Palopo Religious Court judge granted the petitioners' request in case number. 45/Pdt.P/2022/PA.Plp, and gave marriage dispensation to the applicant's child to marry the applicant's child's future husband due to urgent matters, namely pregnancy out of wedlock, or what is commonly known as "adultery" and for the sake of benefit for the bride and groom's two children.

According to Imam Syafi'i, a pregnant woman's marriage can take place and she can also have sexual intercourse with the man who impregnated her without waiting for the birth of the baby in her womb. Therefore, in case number 45/Pdt.P/2022/PA.Plp regarding the application for marriage dispensation submitted by the applicants, the judge's decision should be to grant the applicant's application for marriage dispensation.

Conclusion

The description of legal changes (reform) to the Marriage Law is a long consideration in the journey of marriage regulations in Indonesia. Legal changes resulting from changes in culture, religion, technology, and developments over time have also reformed regulatory policies that were deemed to be no longer ideal for implementation. The judge's basic considerations in granting a marriage dispensation request are several basic considerations. Whether it refers to statutory provisions, compilations of Islamic law, previous case decisions, or opinions of classical scholars.

Based on the phenomenon of marriage dispensation granted by a single judge at the hearing of the case, it is absolutely a decision that cannot be contested even though it is not in accordance with the proper provisions if you look at the context of the text alone. This is where the independence of judges lies in administering justice to uphold law and justice (UUD Article 24 Paragraph 1 Post-Amendment). Based on petition case number 45/Pdt.P/2022/PA.Plp, reviewing the analysis of positive law and Islamic law, there are differences and synchronization of the provisions of the marriage law (UU No.16/2019 in conjunction with UU No.1/1974) from in terms of the age of the child whose marriage dispensation is requested is not in accordance with the provisions of the amendment to the Marriage Law. However, the judge still granted the marriage dispensation request (case decision number 45/Pdt.P/2022/PA.Plp) on the grounds that the benefit of them (the applicant's children) was prioritized.

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