



LEGAL REVIEW OF THE GRANTING OF MARRIAGE DISPENSATION BY THE COURT FOR UNDERAGE CHILD MARRIAGE BASED ON LAW NO. 16 OF 2019 AS AN AMENDMENT TO LAW NO. 1 OF 1974 CONCERNING MARRIAGE

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Article Info	Abstract
Article History Received : 2024-12-03 Revised: 2024-12-10 Published: 2025-01-15	Child marriage is a phenomenon that still occurs in Indonesia even though the government has taken various steps to prevent it, one of which is through the revision of Law Number 1 of 1974 to Law Number 16 of 2019 concerning Marriage. In this regulation, the minimum age limit for marriage is raised to 19 years for men and women. However, this regulation still provides room for child marriage through the marriage dispensation mechanism, as regulated in Article 7 paragraph (2). This dispensation allows parents to submit an application to the religious court on urgent grounds. Ironically, in practice, the courts tend to grant almost all requests for marriage dispensation, which is contrary to the original purpose of the law to reduce the number of child marriages.
Keywords: <i>Marriage Dispensation, Child Protection, Legal Effectiveness</i>	This study aims to analyze the effectiveness of granting marriage dispensation from a legal perspective and its impact on the protection of minors. The research method used is a normative legal approach by analyzing related regulations, legal doctrines, and court decisions. The results of the study indicate that the marriage dispensation mechanism is still a legal loophole that allows the practice of child marriage to continue to occur. The main factors influencing the high number of marriage dispensations include social pressure, economic factors, and cultural norms that still consider early marriage as a solution to various family problems. Therefore, efforts are needed to tighten regulations, increase public legal awareness, and strengthen the role of child protection institutions so that marriage dispensation is not misused and truly functions as a child protection mechanism in accordance with the principle of legal benefit.

I. INTRODUCTION

Child marriage is a social phenomenon that still occurs in Indonesia, even though there have been various legal efforts to prevent it. Child marriage often occurs due to various factors, such as culture, religion, economy, and lack of understanding of its negative impacts. One of the main impacts of child marriage is physical and psychological unpreparedness in living a household life, which has the potential to lead to divorce, poverty, and hampered education of children, especially for women. In addition, reproductive health risks, early pregnancy, and limited access to education are serious consequences of this practice.(Febrian-Eny, Maulana-Nelson, and Simamora, nd)

The Indonesian government has taken steps to limit the practice of child marriage by raising the minimum age for marriage through Law Number 16 of 2019 as a revision to Law Number 1 of 1974 concerning Marriage. In this latest provision, the minimum age for marriage for men and women is set at 19 years. This change aims to provide better protection for children and ensure

their readiness to marry. However, even though there is an age limit, the regulation still leaves a gap through the marriage dispensation mechanism, as regulated in Article 7 paragraph (2) of Law Number 16 of 2019. This article allows parents to apply for dispensation to the religious court for urgent reasons accompanied by supporting evidence.(Tanjung and Tanjung 2022)

The existence of this marriage dispensation mechanism actually becomes a dilemma in enforcing child protection laws. On the one hand, the state has set an age limit for marriage to protect children from various negative impacts. However, on the other hand, the dispensation provisions provide space for child marriage to continue to occur, with the ratification of the religious court. This reality creates a contradiction with Article 26 of the Child Protection Law, which states that parents are obliged to prevent child marriage.(Ahmatnihar 2022)

The practice of marriage dispensation is increasingly becoming a concern because the number of applications continues to increase.

Based on data from the Ministry of Women's Empowerment and Child Protection (PPPA), throughout January-June 2020, 34 thousand applications for marriage dispensation were recorded, with 97 percent of them being granted. This shows that the provisions of dispensation are more often a way for society to legalize child marriage than as a protection mechanism. Marriage dispensation is also often submitted for various reasons such as pregnancy outside of marriage, social pressure, or concerns about promiscuity.

In addition, from a social and cultural perspective, child marriage is often supported by norms that still apply in society, including religious understandings that consider early marriage as a solution to maintain family honor. Some communities still view child marriage as commonplace, especially in areas with a strong patriarchal culture. In fact, in some cases, religious courts that should function as legal protectors of children actually legalize this practice under the pretext of the best interests of the child. (Risidawati et al. 2022)

This condition creates a dichotomy between the interests of state law and socio-religious norms. On the one hand, legal regulations have been changed to improve child protection, but on the other hand, society still has different views on the age of marriage. In fact, the role of judges in deciding marriage dispensation cases is also influenced by social and religious norms that develop in society. In many cases, the courts are more likely to grant marriage dispensation requests than to reject them, thus strengthening the perception that child marriage is still legally permissible. (Nawafitrid et al. 2024)

Child marriage also has a negative impact on women's reproductive health. Data from the Central Statistics Agency (BPS) shows that women who marry at a young age have a higher risk of experiencing pregnancy complications, premature birth, and maternal and child mortality. In addition, children born to mothers under the age of 18 are more susceptible to health problems such as low birth weight (LBW) and malnutrition. The World Health Organization (WHO) also emphasizes that childhood pregnancies have a higher risk of experiencing eclampsia, postpartum infections, and other health complications compared to pregnancies in adulthood.

In terms of education, child marriage also hinders women's opportunities to get a decent education. Many girls who marry at an early age

are forced to drop out of school because they have to play the role of wife and housewife. The average length of schooling for children who marry early is much lower than those who marry as adults. Data shows that most women who marry before the age of 18 only complete their education up to junior high school level or even lower. (Ahmatnijar 2022)

From a legal perspective, there are differences in interpretation between positive law and socio-religious norms in responding to marriage dispensation. Positive law aims to prevent child marriage and protect children's rights in accordance with the Convention on the Rights of the Child (CRC) which has been ratified by Indonesia through Law Number 35 of 2014. However, loopholes in the dispensation rules make this law ineffective. On the other hand, social and religious norms are often used as justification to continue child marriage, even though it is contrary to the principles of child protection regulated in national and international law.

Based on the various problems that have been described, this study aims to analyze the marriage dispensation policy from a legal perspective in Indonesia. This study will evaluate the extent to which the provisions in Law Number 16 of 2019 are able to reduce the number of child marriages and how the implementation of marriage dispensation in judicial practice in Indonesia. Thus, this study is expected to contribute to the development of family law in Indonesia and offer solutions to the problem of child marriage that is still rampant. (Aisyah and Panjaitan 2024)

II. RESEARCH METHODS

This research method uses a normative legal approach with qualitative research specifications that refer to legal norms in laws and regulations, legal doctrines, and court decisions. This study applies a legislative approach, a case approach, and a conceptual approach to analyze the granting of marriage dispensation for child marriage based on Law Number 16 of 2019. (Suprayogi 2023) The type of data used is secondary data obtained through literature and documentation studies, with primary legal sources in the form of laws and regulations such as the Marriage Law, the Child Protection Law, and court decisions. Secondary legal sources include books, scientific journals, and opinions of legal experts, while tertiary legal sources include legal encyclopedias and legal

dictionaries. Data collection techniques are carried out through literature reviews of relevant legal materials, as well as analysis of religious court decisions related to marriage dispensations. The data that has been collected is analyzed descriptively-analytically to organize and interpret patterns and relationships between legal regulations, judicial implementation, and their impact on preventing child marriage.

III. RESULTS AND DISCUSSION

A. Legal Regulations on the Granting of Marriage Dispensation in Indonesia

Child marriage is a phenomenon that is still rampant in Indonesia even though various legal efforts have been made to prevent it. In the context of national law, regulations regarding the minimum age limit for marriage have been changed through Law Number 16 of 2019 which amends the provisions in Law Number 1 of 1974 concerning Marriage.(Suprayogi 2023)However, even though the minimum age for marriage has been raised to 19 years for both men and women, legal loopholes still exist in the form of marriage dispensations granted by religious courts on the basis of urgent reasons. These marriage dispensations, which should be an exception, are often used by the community to continue to marry off their underage children. This phenomenon is a serious concern in legal studies because it has the potential to ignore the best interests of children that have been guaranteed in various child protection regulations in Indonesia.(Suprayogi 2023)

In Law Number 23 of 2002 concerning Child Protection, a child is defined as a person who has not reached the age of 18 years. Therefore, marriage carried out by a person under the age of 18 can be categorized as a violation of children's rights. Article 1 number 2 of the Child Protection Law expressly states that child protection is all forms of efforts to guarantee and protect children so that they can live, grow, develop, and participate optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination. Thus, child marriage can be considered a form of neglect of children's rights, especially in terms of education, health, and psychosocial welfare.

Child marriage not only impacts the personal lives of the children involved, but also has broader social consequences. Many studies have shown that children who marry at a young age are more susceptible to dropping out of

school, economic limitations, and higher health risks. Data from the Central Statistics Agency (BPS) shows that child marriage is correlated with the number of young pregnancies. Pregnancies that occur at the age of under 19 years have a higher risk of complications, both for the mother and the baby born. The World Health Organization (WHO) also notes that women who become pregnant at the age of 10-19 years are at greater risk of experiencing eclampsia, puerperal infections, and other health problems compared to women who become pregnant at a more mature age. This shows that child marriage not only has social impacts, but also has significant health risks.(Limbong, Siregar, and Yasid 2022)

Although the government has raised the minimum age for marriage through Law Number 16 of 2019, the practice of marriage dispensation remains a major challenge in reducing the number of child marriages. Article 7 paragraph (2) of the revised Marriage Law stipulates that under certain conditions, parents can apply for a marriage dispensation to a religious court on urgent grounds and supported by sufficient evidence. This legal loophole allows child marriages to continue to occur, especially in areas with social and cultural norms that still consider early marriage as a solution to various problems, such as pregnancy outside of marriage or economic factors. Data from the Supreme Court shows that throughout January-June 2020, there were around 34 thousand applications for marriage dispensation submitted to religious courts, and 97 percent of these applications were granted. This figure shows that although legal regulations have changed, their implementation still encounters many obstacles in the field.(Habiansyah et al. 2022)

The factors behind the high rate of child marriage in Indonesia are diverse, including economic factors, education, parental roles, customs and culture, and pregnancy outside marriage. Economic factors are often the main reason behind child marriage, where families with low economic conditions tend to marry off their children early to reduce the financial burden. In addition, limited access to education is also another trigger, where children who do not continue their education to a higher level are more likely to marry at a young age. Parental factors also play an important role, especially in cases where parents feel the need to marry off their children for certain reasons, such as avoiding promiscuity or maintaining family honor. In some communities, cultural and

customary norms are also still very strong in influencing the decision to marry off children, where refusing a proposal is considered impolite or tarnishing the family's good name.

From an Islamic legal perspective, the concept of legal capacity is one of the foundations in determining a person's readiness to marry. Islamic law divides legal capacity into two, namely the capacity to accept the law (*al-ahliyah al-wujub*) and the capacity to act legally (*al-ahliyah al-ada'*). A person is considered to have full legal capacity if they have reached puberty and have maturity in thinking and acting. Several scholars, such as Abu Zahrah and Az-Zuhaili, argue that a person who does not have perfect legal capacity should not be given the authority to take legal action, including in matters of marriage. Therefore, Islamic law should be a tool to protect children from underage marriage by considering aspects of physical, mental, and economic readiness before entering the marriage stage. (Lawalata, Titahelu, and Latupeirissa 2022)

In addition, Law Number 16 of 2019 which regulates the age limit for marriage aims to provide protection for children from the risks that can be caused by early marriage. One of the main considerations in the revision of this law is the Constitutional Court decision Number 22/PUU-XV/2017, which states that a lower age limit for marriage for women than for men can cause discrimination against the rights of women and children. In its ruling, the Constitutional Court ordered lawmakers to make changes to the Marriage Law to ensure better protection for children.

Although changes in legal regulations have been made, the challenges in their implementation are still great. Religious court judges who decide on marriage dispensation applications often face a dilemma between upholding legal norms and considering the social realities faced by society. In some cases, judges feel forced to grant marriage dispensation due to pressure from the family or community concerned. This shows that although child marriage has been legally restricted, its implementation still requires strengthening in various aspects, including in terms of public awareness, the role of the government in providing education, and consistency in implementing the law. (Febrian-Eny, Maulana-Nelson, and Simamora, nd)

Ultimately, although Law Number 16 of 2019 has been a step forward in efforts to prevent child marriage, there are still many challenges

that must be faced in its implementation. Marriage dispensation granted by religious courts is a legal loophole that allows the practice of child marriage to continue to occur. Therefore, synergy is needed between the government, legal institutions, academics, and the community in enforcing stricter regulations and raising awareness of the negative impacts of child marriage. Better legal awareness among the community also needs to be increased so that child marriage can be minimized and children can enjoy their rights in full without being burdened with the responsibilities of marriage that are not in accordance with their age and readiness.

B. The Benefits of Granting Marriage Dispensation to Minors Based on Legal Benefit Values

The theory of legal effectiveness attempts to analyze the extent to which a legal norm can actually apply in the life of society. The effectiveness of law does not only depend on the existence of the legal norm itself, but also on the extent to which the norm can be applied and obeyed by society. Hans Kelsen stated that legal effectiveness is closely related to legal validity, where a legal norm must be able to bind society so that compliance with it can be realized. (Amri, Dedi, and Saputra 2020)

Soerjono Soekanto stated that the effectiveness of the law is influenced by five main factors, namely legal factors (statutes), law enforcement factors, means or facilities factors, community factors, and cultural factors. (Amri, Dedi, and Saputra 2020) In this analysis, the main focus is on two factors: law (Law Number 16 of 2019) and law enforcers (Religious Court judges). The enforceability of the law can be categorized into three main aspects:

1. Applicable legally, namely when a legal norm is based on a higher rule.
2. Sociologically valid, namely when legal norms can be applied effectively and accepted by society.
3. Philosophically valid, namely when the law reflects the ideal values of justice and welfare.

In the context of Law Number 16 of 2019, one of the main objectives of changing the age limit for marriage is to reduce the number of child marriages and improve the welfare of minors. However, in practice, there has been a significant increase in applications for marriage dispensation at the Religious Courts. Data shows that after the change in this law, the number of applications for

marriage dispensation at several religious courts increased drastically. This phenomenon shows that although normatively the age limit for marriage has been increased, the implementation of this rule still experiences obstacles in the field.

The increase in applications for marriage dispensation shows that society is still looking for legal loopholes to continue marrying minors. In many cases, Religious Court judges grant marriage dispensation on urgent grounds, although the definition of what is meant by "urgent reasons" is not specifically explained in the law. This shows that the effectiveness of Law Number 16 of 2019 as an instrument for preventing child marriage still needs to be further evaluated.

In legal theory, the effectiveness of a regulation can be measured by the extent to which the regulation can be implemented in accordance with the purpose of its formation. In this case, Law Number 16 of 2019 aims to improve the protection of children from the risk of early marriage. However, in practice, the granting of marriage dispensation still often occurs, especially on the grounds of pregnancy outside marriage or parental concerns about their children's promiscuity.

According to Law Number 23 of 2002 concerning Child Protection, every child has the right to receive protection from detrimental practices, including child marriage. However, the existence of legal loopholes in the form of marriage dispensations has the potential to reduce the effectiveness of legal protection for children. The Constitutional Court's decision in Decision Number 22/PUU-XV/2017 has emphasized the importance of eliminating discrimination in the age limit for marriage, but there is still room for judges to grant marriage dispensations based on certain considerations.(Yanto, Hikmah, and Aqil 2023)

The legal benefits of marriage dispensation can be analyzed from two sides. On the one hand, marriage dispensation can provide legal protection for children who have become pregnant out of wedlock so that the child born later has a clear legal status. However, on the other hand, the massive granting of marriage dispensation can be a form of legalization of the practice of child marriage that should be prevented.(Aisyah and Panjaitan 2024) Thus, there needs to be a stricter evaluation of the mechanism for granting marriage dispensation so that it is not misused.

The effectiveness of a legal regulation can be influenced by social and cultural factors in society. In some areas in Indonesia, the practice of child marriage is still widely accepted as part of tradition and cultural values. In some communities, rejecting a proposal is considered impolite or tarnishing the family's reputation. This factor contributes to the still high rate of child marriage even though there are regulations that limit the age of marriage.

On the other hand, the role of law enforcement in implementing this rule is also a determining factor in the effectiveness of the policy. In some cases, judges tend to grant requests for marriage dispensation on the grounds of avoiding adultery or maintaining family honor. This attitude shows that moral and social considerations still influence legal decisions, so that existing regulations cannot be fully implemented strictly.(Fitriani 2024)

In order for the effectiveness of granting marriage dispensation to be realized properly, a more comprehensive approach is needed, including:

1. Increasing Public Legal Awareness Socialization regarding the negative impacts of child marriage needs to be further encouraged, especially in areas with high rates of child marriage.
2. Implementation of Stricter Mechanisms in Granting Marriage Dispensations Judges need to be given clearer guidelines in assessing urgent reasons to avoid misuse of marriage dispensations.
3. Strengthening the Role of Child Protection Institutions Institutions such as the National Commission for Child Protection and the Ministry of Women's Empowerment and Child Protection (KemenPPPA) must be more proactive in advocating for the protection of children from early marriage practices.
4. Tighter Supervision of Child Marriage The Office of Religious Affairs (KUA) and related agencies must be stricter in verifying the age documents of prospective brides and grooms to prevent data manipulation to avoid the marriage age limit stipulated in the law.

With these efforts, it is hoped that the effectiveness of granting marriage dispensation can be better controlled so that it no longer becomes a legal loophole that can be exploited to legalize the practice of child marriage. The legal benefits of granting marriage dispensation must

be truly directed at protecting children's rights in accordance with the principles of justice and welfare mandated by national and international law.

IV. CONCLUSIONS AND RECOMMENDATIONS

Based on the analysis that has been conducted, it can be concluded that the marriage dispensation mechanism in Law Number 16 of 2019 is still a loophole that allows the practice of child marriage to continue in Indonesia. Although this regulation aims to protect children's rights by raising the age limit for marriage to 19 years, the reality in the field shows that many dispensation requests are submitted and granted by religious courts on urgent grounds. This loophole makes the effectiveness of the regulation in reducing the number of child marriages weak, especially because there are still social and cultural factors, as well as indecisiveness in the implementation of the law. In addition, economic factors and religious norms are also the main triggers that encourage parents to continue to marry off their children at an early age.

Therefore, so that marriage dispensation does not become a legalization tool for child marriage, stricter supervision and stricter law enforcement are needed. The role of judges in assessing urgent reasons must be clarified with more specific guidelines, so that the granting of dispensation is truly selective and not misused. In addition, the government and child protection agencies need to increase socialization regarding the negative impacts of child marriage and strengthen regulations so that the age limit for marriage can be enforced effectively. With a stricter and more systematic approach, it is hoped that the legal benefits of the marriage dispensation mechanism can truly be directed at protecting children's rights and their welfare in accordance with the principles of justice and legal benefits.

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