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# Measuring Justice and Child Protection: A Juridical Study of the Marriage Dispensation After the Enactment of Law Number 16 of 2019

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#### ABSTRACT

The revision of Law Number 1 of 1974 through Law Number 16 of 2019 brought significant legal changes, particularly regarding the setting of the minimum age for marriage at 19 years for both men and women. This policy was designed to improve child protection and reduce the number of early marriages. However, the continued prevalence of marriage dispensation requests in religious courts indicates that the implementation of this regulation has not been fully effective and still leaves problems at the level of legal application. This study aims to examine the legal regulations regarding marriage dispensation after the enactment of Law Number 16 of 2019, identify the basis for judges' considerations in deciding dispensation cases, and evaluate the extent to which these decisions reflect the principles of justice and child protection. The approach used is normative juridical, combining analysis of legislation and case studies. Primary, secondary, and tertiary legal materials are analyzed qualitatively to gain a comprehensive understanding. The research findings reveal that although the minimum age for marriage has been raised, the existence of marriage dispensation still creates room for suboptimal child protection goals. Judges' considerations generally relate to empirical circumstances such as out-of-wedlock pregnancy and the family's socio-economic issues. However, not all of these considerations align with the principle of the child's best interests. Therefore, strengthened regulations and oversight mechanisms are needed for the practice of granting dispensations to maximize the principles of justice and child protection.

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### INTRODUCTION

Early marriage is an important issue that is still a serious concern because cases continue to occur in various regions of Indonesia, both urban and rural. This phenomenon shows low public awareness of the negative impact of child marriage and a lack of understanding of the urgency of child protection in the context of marriage. Nationally, it is recorded that more than 1.2 million women aged 20-24 years have been married before reaching the age of 18, and about

61,300 of them are even married before the age of 15. Despite the decline in 2020, the percentage of child marriage is still quite high, namely 10.18%, compared to 10.82% in 2019.

Most child marriages occur in the age range of 13 to 15 years. This condition often leads to an application for marriage dispensation, which is a request for the court to grant permission for prospective brides who have not met the minimum age limit to continue the marriage. The dispensation is considered a way out when there is an urgent situation or certain reasons that cannot be avoided (Pasaribu et al., 2025).

Juridically, marriage dispensation refers to the exception to the minimum age provision as stated in Article 7 paragraph (1) of Law Number 16 of 2019, which stipulates that men and women can only marry when they have reached the age of 19 years. If the age requirement has not been met, then the parent or guardian can apply for a dispensation to the Religious Court for those who are Muslim, or to the District Court for those who are religious other than Islam. This provision emphasizes that dispensation is not an automatic mechanism, but requires proof that there is a valid and urgent reason (Pasaribu et al., 2025).

In the examination process, the judge is obliged to listen directly to the opinions of the two prospective brides as a form of respect for the child's right to participate in decisions that have a great impact on his or her life. This process is in accordance with the principle of child protection which is the basis for the administration of justice for children, as also emphasized in the research of Muhamad Azhar Assidiqi Nur Sarip who emphasized that marriage dispensation is an exception mechanism that must be carried out strictly based on the principle of child protection (Sarip et al., 2024).

PERMA Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications stipulates that in determining the verdict, judges must base their considerations on a series of important principles. These principles include the fulfillment of the best interests of children, the protection of children's rights to live and develop properly, respect for children's opinions, and respect for human dignity. In addition, judges are also required to apply the principle of *non-discrimination*, pay attention to *gender* equality, and ensure that the decisions handed down contain elements of justice, utility, and legal certainty. These principles show that the dispensation of marriage is not just an administrative consent, but a legal decision that has enormous implications for the future of the child.

In addition, the economic aspect is also an important consideration in the process of granting dispensation. Economic immaturity often worsens the condition of child marriage, such as the potential for domestic instability, interrupted access to education, and the inability to fulfill children's rights optimally. Therefore, analysis of the economic readiness of the family and the bride-to-be is an integral part of fulfilling the principle of the best interests for the child (Sarip et al., 2024).

In practice, a request for dispensation can only be granted if the urgent reason presented can be truly proven. The evidence can be in the form of an age certificate, a medical certificate, and a parent's statement explaining the urgency of the marriage. Ariyanti S. Yatiti and colleagues point out that judges in Religious Courts are obliged to carefully assess the evidence and consider whether dispensation is really the best option for the child, not simply to fulfill parental wishes or avoid social pressure (Yatiti et al., 2025).

Thus, it can be seen that Law Number 16 of 2019 not only raises the marriage age limit, but also strengthens the child protection system through a stricter dispensation mechanism. The marriage dispensation is expected to be a truly selective instrument of exception, not a loophole to legalize child marriage. In the context of measuring justice and child protection, the

implementation of this law requires legal awareness from the community, the meticulousness of judges in deciding cases, and the involvement of all parties to ensure that every decision really prioritizes the best interests of children. Therefore, this study seeks to explore these issues comprehensively in order to measure justice and child protection in the marriage dispensation mechanism in Indonesia, as well as provide a clear picture of the challenges and juridical implications that arise behind its application.

## **METHODS**

This study uses a descriptive-analytical method with a normative juridical approach. In normative legal research, data is collected through literature studies by examining various legal materials, both primary, secondary, and tertiary legal materials. These materials include laws and regulations, court decisions, legal literature, expert doctrines, and other relevant literature sources. The analysis was carried out by focusing on legal principles, legal theory, and normative provisions that are directly related to the issue of marriage dispensation.

In addition to the normative approach, this study also utilizes a historical approach to trace the development of regulations regarding the marriage age limit and the dynamics of changes in marriage dispensation rules from time to time. This historical approach helps to provide a more comprehensive understanding of the background and developments of related legal policies.

The combination of these two approaches allows researchers to identify, understand, and analyze the provisions regarding marriage dispensation as stipulated in Law Number 16 of 2019 as an amendment to Law Number 1 of 1974. Thus, the normative juridical method used provides a strong and systematic academic foundation in examining legal problems related to marriage dispensation in Indonesia.

## **RESULTS AND DISCUSSION**

### **1. Regulation of Marriage Dispensation After the Enactment of Law No. 16 of 2019**

Marriage dispensation is a form of legal exception given by the courts, both the Religious Court and the Sharia Court, to prospective brides who have not reached the minimum age limit to marry. A request for dispensation is submitted by a parent or guardian when the child has not met the age requirements, but there are certain circumstances that are considered urgent so that the marriage is considered necessary to be carried out immediately. In practice, the dispensation mechanism serves as a legal instrument to deal with situations that cannot be reached by the general marriage age limit rule.

Prior to the enactment of Law Number 16 of 2019, the provisions regarding the minimum age of marriage referred to Article 7 of Law Number 1 of 1974, which is 19 years for men and 16 years for women. If the age requirement has not been met, the parent or guardian can apply for a dispensation to the court. Thus, dispensation becomes an administrative mechanism to provide legal legitimacy to underage marriage. This rule shows that national law has provided room for special conditions that cannot be resolved through minimum age provisions.

Major changes occurred after the passage of Law Number 16 of 2019. This regulation equalizes the age limit for marriage for men and women to 19 years. Article 7 of the amendment confirms that dispensation can only be granted if there is a truly urgent reason and accompanied by adequate supporting evidence. In addition, the court is obliged to hear directly the opinions of the two prospective brides before making a decision, so that the aspect of child protection obtains a stronger position in the judicial process. This provision is clearly designed to tighten the space for granting dispensations while reducing the number of child marriages (Muhari, 2025).

After the enactment of the law amendment, the authority to grant dispensation is placed entirely in the courts. Normatively, this emphasizes the role of the court as an institution that ensures that children receive maximum protection before entering marriage. However, the phenomenon in the field shows that there is a practice of child marriage that takes place outside the dispensation mechanism. Some are done unofficially without registration, while others remain recorded even though they do not meet the legal age requirements. This reality illustrates the insynchronization between legal norms and social practices, as well as showing that the implementation of rules has not been fully effective (Pasaribu et al., 2025).

In social practice, violations of the minimum age of marriage generally appear in two forms. First, the marriage was carried out secretly without official registration, so it did not obtain state recognition. Second, the marriage is still recorded even though it is contrary to Article 7 paragraph (2) of Law Number 16 of 2019. This condition shows the existence of administrative irregularities and the practice of legal smuggling to carry out child marriage. Although the term "treacherous marriage" is not recognized in the national legal system, the term is used in several studies to describe marriages that are not registered as required in Article 2 paragraph (2) of Law Number 1 of 1974.

In the context of the enactment of Law Number 16 of 2019, child marriage carried out without a dispensation decision from the court is clearly not in accordance with the principle of legal protection which is at the core of regulatory changes. Although according to the perspective of fiqh, marriages carried out privately can be considered valid as long as they meet the principles and conditions, the state still requires registration as an instrument to ensure legal certainty for the status of husband and wife and children born from the marriage. Failure to meet the registration requirements can cause various problems, such as unclear child status, maintenance disputes, and potential neglect.

The government through the Ministry of Women's Empowerment and Child Protection even opened the option of annulment of child marriages that had been registered but did not get a dispensation from the court. This policy shows that marriages that do not meet the administrative requirements as stipulated in Article 7 paragraph (2) of Law Number 16 of 2019 jo Government Regulation Number 9 of 1975 are considered procedurally defective. Thus, dispensation is not only a formal requirement, but also an instrument of protection that cannot be ignored in an effort to suppress the practice of child marriage (Fajar & Galih, 2024).

## **2. Judges' Considerations in the Marriage Dispensation Decision**

The judge's decision became the end point of a series of trial processes that had gone through the examination stage. In making decisions, judges are obliged to submit to positive legal rules and must not impose sanctions or decisions that are outside the limits of authority given by law. This principle emphasizes that every decision, including marriage dispensation cases, must be based on clear legal norms and can be accounted for juridically (Salmah, 2024).

Article 24 paragraph (1) of the 1945 Constitution states that judicial functions are carried out independently, indicating that the power of the court stands free from interference by any party. This independence provides space for judges to interpret and discover the law according to the needs of justice in society. This principle is reaffirmed in Article 5 paragraph (1) of Law No. 48 of 2009 which requires judges to explore legal values and a sense of justice that lives in society. Thus, even though the rules regarding marriage dispensation have been established, the judge still has room to assess each case in a case-by-case manner, especially when there is a void, ambiguity, or inconsistency of the norm with the facts at hand.

In the context of the marriage dispensation, the principle of judges' independence is directed to ensure that the decisions taken always prioritize the best interest of the child. Judges must conduct a comprehensive assessment of aspects of protection, parenting, welfare, and potential risks to children's growth and development before granting dispensation permits (Hernawan & Widigdo, 2023). Therefore, the role of judges is very strategic because through careful consideration, the marriage dispensation decision is not only legally valid, but also ensures the fulfillment of the protection of children's rights.

The judge's consideration in the marriage dispensation decision is generally based on three aspects: philosophical, juridical, and sociological. From the philosophical aspect, the judge used the principle of benefit by considering the principle of "rejecting mafsadat takes precedence over taking benefit." Dispensation permits can be granted if the refusal has the potential to cause greater harm, such as an increased risk of violating religious or social norms. From the juridical aspect, the judge based the decision on Article 7 paragraph (2) of Law No. 16 of 2019 and PERMA No. 5 of 2019, including ensuring the completeness of administrative documents, conducting an in-depth examination, and providing advice on the risks of early marriage. As for the sociological aspect, the judge assessed the social conditions of the prospective bride and family, such as the level of closeness of the relationship, mental and economic readiness, parental blessing, and the potential social impact if the application is not granted. The results of the study show that judges often consider the emotional maturity and financial readiness of the bride-to-be as determining factors (Fitriyani Dan Sudirman, 2023).

Through the combination of these three aspects, the judge seeks to ensure that the decision to grant marriage dispensation really brings the greatest benefit to the child and family. Therefore, the judge's consideration in the marriage dispensation decision is not only legal-formal, but also reflects sensitivity to moral, social, and child protection values as a whole.

### **3. Justice and Child Protection in the Practice of Marriage Dispensation**

The change in the minimum age of marriage through Law No. 16 of 2019 which sets the age of 19 years for men and women is a step by the state to strengthen child protection. This provision is designed so that children do not enter marital life before they are physically, mentally, or socially mature. Nevertheless, the mechanism of marriage dispensation is still maintained as an exception in certain conditions. Article 7 paragraph (2) emphasizes that dispensation can only be submitted by parents to the court, so the granting of permission must go through a judicial process oriented towards prudence, the principle of justice, and the protection of children (Safira & Levana, 2021).

Juridically, the court is the only institution authorized to deviate the age limit of marriage, with the obligation to hear directly the statements of the bride and groom and consider their readiness. This canism is actually formulated to ensure that every dispensation decision puts the best interests of the child as the main focus. However, the reality on the ground shows that there is still a real gap between normative provisions and ongoing social practices. In various regions, child marriage is still found to take place without dispensation procedures, either through the practice of under-handed marriage and marriage registration that violates administrative provisions. This condition shows that child protection efforts have not been fully effective.

In the case of underarm marriage, the child loses all forms of legal protection because the marriage is carried out without a court check on the child's readiness and without official registration. Children are not guaranteed administrative rights, no psychological assessments, and no mechanism to ensure that marriage is carried out without coercion. This situation creates

potential injustice, especially for girls who are more vulnerable to neglect, violence, or loss of access to education (Shantya & Dini, 2025).

Meanwhile, the registration of child marriages without dispensation shows violations by marriage registrars. This practice eliminates the judicial process that should assess the risks of early marriage, emotional readiness and children's health, and provide education about the consequences of marriage. In other words, procedural and substantial justice for children is not met.

Within the framework of legal protection, there are two corrective steps. First, for the case of marriage under hand, the couple can apply for *itsbat nikah*. However, this process can only be done after the child is old enough so that the protection provided is retrospective, not preventive. Second, for the registration of child marriages without dispensation, the annulment of marriage can be submitted because it is contrary to Article 7 paragraph (2) of Law No. 16 of 2019. This cancellation confirms that the state continues to strive to maintain the principles of justice and child protection, even after the violation occurred.

The issue of justice and child protection in the marriage dispensation is increasingly visible when referring to real cases, such as Decision Number 0023/Pdt.P/2022/PA. Sda. In the case, the request for a dispensation for a 15-year-old girl was granted with consideration of an out-of-wedlock pregnancy and concerns about potential social pressure and family disgrace. This decision shows that the family's social and moral considerations are still very dominant, so that aspects of the child's psychological protection and emotional readiness have not been the top priority. This shows that there is a social bias that can shift the principle of justice for children, because decisions are more directed at reducing social pressure than ensuring the safety and development of children.

Thus, although the marriage dispensation is intended as a form of protection for children, its application in the field has not fully reflected the principles of justice and the best interests of the child. There is still a real gap between the applicable rules and social conditions in society, so the protection provided tends to only be seen on paper and does not really meet the needs of children substantively. Therefore, a thorough evaluation of the practice of marriage dispensation is important to ensure that this legal instrument truly provides effective protection, prioritizes justice for children, and does not simply legitimize the social pressures that encourage early marriage (Parera, 2025).

## CONCLUSION

Based on the explanation that the researcher has explained, it can be seen that the determination of the minimum age of marriage to be 19 years old for prospective grooms and brides through amendments to Law Number 16 of 2019 is basically intended to strengthen efforts to protect children from the negative impacts of early marriage. However, the existence of a marriage dispensation mechanism causes this regulation to not be fully effective, because there are still many parents who apply for dispensation for urgent reasons. This condition shows that child marriage is still a social phenomenon that is difficult to eliminate, and regulations have not been able to completely change people's mindsets.

In judicial practice, judges are faced with a dilemma between the application of legal norms and factual conditions in the field. The considerations used are not only based on juridical rules, but also philosophical and sociological aspects such as pregnancy factors, social pressure, and the mental and economic readiness of the child. Although PERMA Number 5 of 2019 expressly mandates that judges' considerations must be oriented to the best interests of children,

the reality of the decision in the field shows that the principle of child protection has not been consistently used as the most decisive consideration.

Thus, it can be concluded that the mechanism of marriage dispensation has not fully reflected the principles of justice and protection of children as mandated by law. The practice of under-handed marriage and marriage registration without dispensation shows that the implementation of regulations has not been optimal. Therefore, strengthening supervision, improving public legal literacy, and consistency of judges in applying the principles of child protection are key so that the marriage dispensation truly functions as a strict exception instrument, not a loophole to legalize early marriage.

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