

Deviation Of Marriage Age Issues in Indonesia (Integration Review of Maqashid Sharia and Positive Law)

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Abstract

This research will answer two research questions, first: what are the rules regarding marriage dispensation in Indonesia and secondly, how is the problem of "marriage age deviation" based on the principle of fulfilling the principle of the best interests of the child and the urgent reasons for requesting marriage dispensation in the Religious Courts in terms of positive law and Islamic law (maqashid syariah). This application is submitted in a child marriage which is a marriage carried out at the age of a child. A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. This application is submitted by the applicant's parents (the bride and groom are under 19 years old). This study has not been discussed in terms of marriage age deviation. With qualitative research methods and data collection from the literature, the study shows that the existence of rules for implementing marriage age deviations causes the marriage dispensation option to give rise to new problems that have not been clearly and explicitly regulated in marriage regulations or child protection laws in Indonesia. From the perspective of maqashid sharia, this problem is not in accordance with *maqashid khamsah*, especially *hifz al-nafs* and *hifz al-nasl*.

Keywords: *Deviation, Marriage Age, Maqashid Syariah*

Abstrak

Penelitian ini akan menjawab dua pertanyaan penelitian, pertama: apa saja aturan terkait dispensasi kawin di Indonesia dan kedua bagaimana problematika "penyimpangan usia kawin" atas asas pemenuhan asas kepentingan terbaik bagi anak dan alasan mendesak dalam permohonan dispensasi kawin di Pengadilan Agama ditinjau dari hukum positif dan hukum islam (maqashid syariah). Permohonan ini diajukan dalam perkawinan anak yang merupakan perkawinan yang dilaksanakan pada usia anak. Anak adalah seseorang yang belum berusia 18 (delapan belas) tahun, termasuk anak yang masih dalam kandungan. Permohonan ini diajukan oleh orang tua pemohon (mempelai di bawah 19 tahun). Penelitian ini

belum dibahas dari segi penyimpangan usia kawin. Dengan metode penelitian kualitatif dan pengumpulan data dari kepustakaan, penelitian menunjukkan bahwa keberadaan aturan pelaksanaan penyimpangan usia kawin sehingga menyebabkan opsi dispensasi kawin melahirkan permasalahan baru yang belum diatur dengan jelas dan eksplisit dalam aturan perkawinan maupun undang-undang perlindungan anak di Indonesia. Dari sudut maqashid syariah, problematika ini tidak sesuai dengan maqashid khamsah terutama menjaga diri dan menjaga keturunan.

Kata kunci: *Penyimpangan, Usia Kawin, Maqashid Syariah .*

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Introduction

Child marriage refers to a marriage involving individuals under the age of 18, including those still in the womb¹. This type of marriage is typically requested by the parents of the child bride or groom through an application for a marriage dispensation. A dispensation is a form of exception to the formal implementation of legal provisions or laws.² Marriage dispensation specifically represents a deviation³ from the provisions of Article 7, paragraph (1) of Law No. 16 of 2019, which amended Law No. 1 of 1974 on Marriage, stipulating the minimum age for marriage for prospective male and female spouses.⁴

According to Article 7, Paragraph (2) of Law No. 16 of 2019, which amends Law No. 1 of 1974 on Marriage, a marriage dispensation, or "dispensasi kawin" as stated in the law, is a request that can be submitted by the parents of either the male or female party due to urgent reasons, supported by sufficient evidence, to allow the marriage to take place despite the prospective bride or groom not yet reaching the age of

¹ Undang-Undang, "Undang-Undang Perlindungan Anak," 2014.

² Undang-Undang Perkawinan, "UU Nomor 16 Tahun 2019," 2019, 1–8.

³ Hertasmaldi Hertasmaldi, Abdul Hafiz, and Mardianton Mardianton, "Problems of Rejection of Applications for Prospective Marriage Dispensation in Islamic Law," *Samara: Journal of Islamic Law and Family Studies* 1, no. 1 (2023): 35–42.

⁴ Miftakhul Janah, "Dispensasi Nikah Di Bawah Umur Dalam Hukum Islam," *Jurnal Hukum Keluarga Islam* 5, no. April (2020): 34–61.

19. This provision is also outlined in Article 1, Paragraph (5) of the Supreme Court Regulation of the Republic of Indonesia No. 5 of 2019, which provides guidelines for adjudicating marriage dispensation requests.⁵

Although the legal regulations stipulate that marriage should only occur when the prospective bride or groom has reached the age of 19, judges in court may consider the following principles when deciding on marriage dispensation requests⁶:

1. The best interests of the child;
2. The right to live, grow, and develop;
3. Respect for the child's opinions;
4. Recognition of human dignity and respect;
5. Non-discrimination;
6. Gender equality;
7. Equality before the law;
8. Justice;
9. Practicality and usefulness;
10. Legal certainty.

The purpose of the above guidelines for adjudication is to:

- a) Apply the principles as mentioned above;
- b) Ensure the implementation of a judicial system that protects children's rights;
- c) Increase parental responsibility in preventing child marriages;
- d) Identify whether there is any coercion behind the submission of a marriage dispensation request; and
- e) Achieve standardization in the process of adjudicating marriage dispensation requests in court.

However, it is unfortunate that in the various regulations related to marriage dispensation, there are no provisions that clearly stipulate the reasons that are allowed to apply for such dispensation.⁷

⁵ Mahkamah Agung RI, "Peraturan Mahkamah Agung RI No. 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin," *Peraturan Mahkamah Agung RI No. 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispensasi Kawin*, 2019.

⁶ Putri Ramadhani and Burhanuddin Abd. Gani, "Pedoman Hakim Dalam Mengadili Permohonan Perkara Dispensasi Kawin Menurut PERMA No. 5 Tahun 2019," *El-Hadhanah : Indonesian Journal Of Family Law And Islamic Law*, 2021, <https://doi.org/10.22373/hadhanah.v1i2.1624>.

⁷ Efrinaldi Efrinaldi, Jayusman Jayusman, and M Yenis, "Revealing The Dilemma of Marriage Dispensation Regulations In Indonesia," *ADHKI: Journal Of Islamic Family Law* 5, no. 1 (2023): 31–46.

Studies on marriage dispensation have been conducted from various perspectives. So far, research has mainly highlighted a number of aspects, such as concerns about the judge's decision⁸, the interpretation of urgency in the application⁹ and its analysis¹⁰, the reasons for granting marriage dispensation,¹¹ and pregnancy as a reason for the application¹². In addition, the factors driving dispensation applications,¹³ including pregnancy¹⁴ and the increasing number of cases,¹⁵ have also been the focus of discussion. Other studies include legal reform,¹⁶ the effectiveness of the Supreme Court Regulation,¹⁷ and the effectiveness of the law on marriage dispensation,¹⁸ even after its revision.¹⁹ Research also includes analysis of legal certainty,²⁰ juridical review,²¹

⁸ Ashabul Fadhli and Arifki Budia Warman, “‘ALASAN KHAWATIR’ PADA PENETAPAN HUKUM DISPENSASI KAWIN DI PENGADILAN AGAMA BATUSANGKAR,” *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 2021, <https://doi.org/10.14421/ahwal.2021.14203>.

⁹ Muhamad Beni Kurniawan and Dinora Refiasari, “PENAFSIRAN MAKNA ‘ALASAN SANGAT MENDESAK’ DALAM PENOLAKAN PERMOHONAN DISPENSASI KAWIN,” *Jurnal Yudisial*, 2022, <https://doi.org/10.29123/jy.v15i1.508>.

¹⁰ Lilik Andar Yuni, “Analysis of The Emergency Reasons in The Application of Marriage Dispensation at The Tenggarong Religious Court,” *Samarah*, 2021, <https://doi.org/10.22373/sjhk.v5i2.9135>.

¹¹ Muhamad Arif Rohman and Abdullah Arief Cholil, “Alasan-Alasan Pemberian Dispensasi Kawin Terhadap Pasangan Usia Nikah Di Bawah Umur Pada Pengadilan Agama Semarang Tahun 2018,” *Prosiding KONFERENSI ILMIAH MAHASISWA UNISSULA (KIMU) 2*, 2019.

¹² Hanisa Amalia et al., “Dispensasi Kawin Karena Alasan Hamil Berdasarkan Undang-Undang Nomor 16 Tahun 2019 Dan Interpretasi Hakim Pengadilan Agama,” *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law*, 2022, <https://doi.org/10.24042/el-izdiwaj.v3i2.14741>.

¹³ Muhamad Hasan Sebyar, “Faktor-Faktor Penyebab Permohonan Dispensasi Kawin Di Pengadilan Agama Panyabungan,” *Journal of Indonesian Comparative of Syari’ah Law* 5, no. 1 (2022).

¹⁴ Wawan Noviantoro, “Penetapan Dispensasi Kawin Karena Faktor Hamil Dan Akibat Hukumnya Ditinjau Dari Hukum Islam Dan Hukum Positif (Studi Di Pengadilan Agama Bengkulu),” *Qiyas: Jurnal Hukum Islam Dan Peradaban*, 2019.

¹⁵ Paidil Imar, “Faktor - Faktor Penyebab Meningkatnya Pengajuan Permohonan Dispensasi Kawin Di Pengadilan Agama Sengeti Kelas I B,” *Skripsi UIN Sulthan Thaha Saifuddin Jambi*, 2020.

¹⁶ Mardi Canda, *Pembaruan Hukum Dispensasi Kawin Dalam Sistem Hukum Di Indonesia* (Prenadamedia Group, 2021).

¹⁷ Muhammad Rifky Yusuf, “Efektivitas Hukum Terhadap Pemberlakuan PERMA No 5 Tahun 2019 Dalam Mengatasi Perkawinan Di Bawah Umur,” *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam*, 2022, <https://doi.org/10.37680/almanhaj.v4i2.1816>.

¹⁸ Rani Dewi Kurniawati, “Efektifitas Perubahan UU No 16 Tahun 2019 Tentang Perubahan Atas UU No 1 Tahun 1974 Tentang Perkawinan Terhadap Penetapan Dispensasi Kawin (Studi Kasus Di Pengadilan Agama Majalengka Kelas IA),” *Journal Presumption of Law*, 2021, <https://doi.org/10.31949/jpl.v3i2.1505>.

¹⁹ Sartika Dewi, “Dispensasi Kawin Anak Dibawah Umur Pasca Penambahan Usia Kawin Berdasarkan Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Di Pengadilan Agama,” *Syiar Hukum: Jurnal Ilmu Hukum*, 2021, <https://doi.org/10.29313/shjih.v19i2.8502>.

²⁰ Marwiyah Marwiyah, Ramon Nofrial, and Darwis Anatami, “Analisis Yuridis Pelaksanaan Pemberian Dispensasi Kawin Di Pengadilan Agama Batam Dalam Perspektif Kepastian Hukum Dan Perlindungan Anak,” *Jurnal Syntax Fusion*, 2023, <https://doi.org/10.54543/fusion.v3i01.241>.

²¹ Annie Miranika, “Analisis Yuridis Pemberian Dispensasi Terhadap Perkawinan Yang Dilakukan Anak Di Bawah Umur Menurut Undang-Undang Nomor 1 Tahun 1974,” *Supremasi Hukum* 16 (2020): 81–87.

procedural law practice²², review of child protection²³, and marriage laws²⁴ juridical analysis of judges' decisions²⁵ and paradigm shift²⁶ and reconception in an effort to prevent child marriage.²⁷ In the context of Islamic law, research often explores marriage dispensation through the maqashid sharia approach, as discussed by Rizkiyah and Nurul Ma'rifah, as well as the sadd al-zari'ah approach, which is analyzed by Ali Mutakin and Agus Khotibul Umam.

However, so far there has been no research that specifically discusses the deviation of the age of marriage by linking it to the rules of Indonesian positive law and maqashid sharia. Therefore, this research is important to ensure that there is legal certainty related to the limits of permissibility in certain conditions while the age of marriage is still a certain age.

Methods

This study is a qualitative research using the literature study method. The main sources in this study include Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, PERMA No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, and Law No. 23 of 2002 which was later amended by Law No. 35 of 2014 concerning Child Protection. In general, in addition to discussing marriage dispensation, Law No. 23 of 2002 and its amendments in Law No. 35 of 2014 on Child Protection are also important references.

²² Mursida and Neneng Desi Susanti, "Studi Analisis Terhadap Putusan Pengadilan Agama Nomor : 34/Pdt.P/2019/Pa.Dum Tentang Penolakan Dispensasi Kawin Ditinjau Dari Maqasid Syariah," *JURNAL AZ-ZAWAJIR*, 2022, <https://doi.org/10.57113/jaz.v2i1.111>.

²³ Achmad Bahroni et al., "Dispensasi Kawin Dalam Tinjauan Undang-Undang Nomor 23 Tahun 2002 Juncto Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak," *Transparansi Hukum* 2, no. 2 (2019).

²⁴ Mughniatul Ilma, "Regulasi Dispensasi Dalam Penguatan Aturan Batas Usia Kawin Bagi Anak Pasca Lahirnya UU No. 16 Tahun 2019," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam*, 2020, <https://doi.org/10.37680/almanhaj.v2i2.478>.

²⁵ D Novindasari and PR Listyawati - Ilmiah, "Kajian Yuridis Terhadap Penetapan Hakim Mengenai Dispensasi Kawin," *Jurnal.Unissula.Ac.Id*, 2021.

²⁶ Mohammad Yasir Fauzi, "Pergeseran Paradigma Pembatasan Usia Perkawinan Dan Penerapannya Dalam Penyelesaian Perkara Dispensasi Kawin," *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 3, no. 1 (2022): 33–49.

²⁷ Achmad Najib, Sudirman, and Nurhidayati, "Rekonsepsi Pencegahan Kawin Anak Dan Dispensasi Kawin Perspektif Undang-Undang Nomor 16 Tahun 2019," *Syakhsiyah Jurnal Hukum Keluarga Islam*, 2022.

The data collected was analyzed using a descriptive-analytical approach. Secondary data in the form of Religious Court decisions related to Marriage Dispensation as well as research journal articles were used to support and strengthen primary data.

Result and Discussion

Marriage Regulations And Marriage Dispensation In Indonesia

Marriage dispensation cases in the Religious Courts have become one of the largest types of cases in the last four years. A significant spike in the number of these applications occurred in 2020. Based on the records of the Religious Courts Case Data Bank, the number of cases included in the classification of marriage dispensation is as follows:

Table 1. Data on Marriage Dispensation Cases in Religious Courts

No	CASE DATA IN YEAR	NUMBER OF CASES
<i>1</i>	2019	24,851
<i>2</i>	2020	64,223
<i>3</i>	2021	62,918
<i>4</i>	2022	58,017
<i>5</i>	2023	42,764

Source: Religious Court Case Data Bank

The increasing number of marriage dispensation applications is thought to be due to the absence of clear limitations on the reasons that can be used to file such applications. Although the Supreme Court Regulation (PERMA) No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Requests states that marriage may only take place if the couple has met the age requirement (19 years old) and the court, under certain conditions, may grant dispensation in accordance with applicable regulations, the rules related to marriage dispensation in Indonesia are considered to focus only on administrative aspects.

The following is the content of Article 7 of Law No. 16/2019 on the Amendment to Law No. 1/1974 on Marriage, which explains the grounds for applying for dispensation of marriage²⁸:

- a. Paragraph (1): Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years.

²⁸ Perkawinan, "UU Nomor 16 Tahun 2019."

- b. Paragraph (2): In the event of a deviation from the age provision as referred to in paragraph (1), the parents of the male party and/or the parents of the female party may request dispensation from the Court on the grounds of extreme urgency accompanied by sufficient supporting evidence.
- c. Paragraph (3): The granting of dispensation by the Court as referred to in paragraph (2) shall listen to the opinions of both the prospective bride and groom who will enter into marriage.

The absence of clear rules on the valid grounds for applying for dispensation in the law is considered to detract from the meaning and purpose of marriage dispensation. In fact, marriage dispensation is supposed to be a limited state administrative decision, which aims to provide exceptions to prohibitions in certain situations. Therefore, it is important to formulate the permissible grounds for granting dispensation, so that the purpose of marriage dispensation is truly achieved, which is to resolve unavoidable cases and provide benefits to the public interest. In line with this, in Supreme Court Regulation (PERMA) No. 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, only the principles that must be fulfilled by judges in adjudicating marriage dispensation applications are listed.²⁹

From these principles, it can be seen that the grounds that can be raised by marriage dispensation applicants are not explained in detail. All the principles seem to focus on the “best interests of the child”, which is a very general definition. The best interests of the child can be interpreted in various aspects involving children, whether in government policy, community behavior, the legislature, or the judiciary. This interest is very important to consider because children are expected to be the successors of the nation, parents, and families. Society has the responsibility to safeguard and ensure that children's human rights are protected in accordance with the obligations regulated by positive law in Indonesia.

Furthermore, in Law No. 23 of 2002³⁰, which was later amended by Law No. 35 of 2014 concerning Child Protection, there are several points that regulate the rights of children as well as the obligations and responsibilities of parents, as follows:

²⁹ RI, “Peratur. Mahkamah Agung RI No. 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispens. Kawin.”

³⁰ Presiden Republik Indonesia, “UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 35 TAHUN 2014 TENTANG PERUBAHAN ATAS UNDANG-UNDANG NOMOR 23 TAHUN 2002 TENTANG PERLINDUNGAN ANAK” (2014).

1) Rights of the child

Article 9 paragraph (1) states: “Every child has the right to receive education and teaching in order to develop his or her personality and level of intelligence in accordance with his or her interests and talents”.

Article 10 further states: “Every child has the right to express and be heard, receive, seek, and provide information in accordance with his/her level of intelligence and age for his/her development in accordance with the values of decency and propriety”.

2) Parental Obligations and Responsibilities

Article 26 states: Parents are obliged and responsible for:

- a) Nurturing, nurturing, educating, and protecting the child;
- b) Developing children according to their abilities, talents, and interests;
- c) Prevent marriage at the age of the child; and
- d) Providing character education and instilling ethical values in children.

When looking at the essence of the two points above and comparing them with the judge's consideration in deciding the marriage dispensation application, as previously explained, this is clearly contradictory. Based on the definition of “Child” in Law No. 35 of 2014 on the amendment of Law No. 23 of 2002 on Child Protection, the judge's decision granting the application for dispensation of marriage is clearly contrary to the law that aims to prevent child marriage (especially under the age of 18). In addition, when referring to Law No. 16 of 2019 on the amendment of Law No. 1 of 1974, specifically Article 7 paragraph (2), which allows the parents of the male and/or female parties to apply to the Court for dispensation to marry on very urgent grounds and accompanied by sufficient evidence, this also still creates discrepancies in its application.

Problematics Of Marriage Age Deviation In Positive Law And Maqashid Sharia

Before entering the discussion, there are three important terms that need to be examined first as an introduction to the discussion of this paper, namely; deviation of marriage age, reasons of extreme urgency in marriage dispensation and the best interests of the child.

a. Marriage Age Deviation

The term deviation already exists in Law Number 1 of 1974 concerning Marriage.³¹ This term is found in Article 7 paragraph (2). However, in the explanation of the article, it is not further explained what is meant in this article. Further explanation is contained in the explanation of the article in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.³² This term is then found in Article 7 paragraph (2) with the full text as follows:

*In the event of a **deviation** from the age provision as referred to in paragraph (1), the parents of the male party and/or the parents of the female party may request dispensation from the Court on the reasons of extreme urgency accompanied by sufficient supporting evidence.*

Then, in the explanation of the law in this article, it is explained as follows:

What is meant by “**deviation**” is that it can only be done through the submission of a dispensation application by the parents of one or both parties of the prospective bride and groom to the Religious Court *for those who are Muslims and the District Court for others, if the man and woman are under 19 (nineteen) years of age.*

b. Reasons of Extreme Urgency

Still in the same law and the same article, the term very urgent reasons becomes the next keyword that ultimately provides a new and numerous interpretations so that the decision on dispensation of marriage can be granted by the judge. Unlike the term “deviation” above, the term “very urgent reason” only appeared after the amendment of the law in Law number 16 of 2019. The following is the article and explanation given:

Article 7 paragraph (2) reads in full as follows:

*In the event of a deviation from the age provision as referred to in paragraph (1), the parents of the male party and/or the parents of the female party may request dispensation to the Court on the **reasons of extreme urgency** accompanied by **sufficient supporting evidence**.*

Explanation:

What is meant by “**reasons of extreme urgency**” is a situation where there is no other choice and the marriage must take place.

³¹ Undang-Undang Perkawinan, “UU Perkawinan Nomor 1 Tahun 1974,” in *UU Perkawinan Nomor 1 Tahun 1974* (Menteri/Sekretaris Negara Republik Indonesia, 1974).

³² Perkawinan, “UU Nomor 16 Tahun 2019.”

What is meant by “*sufficient supporting evidence*” is a certificate proving that the age of the bride and groom is under the provisions of the law and a certificate from a health worker supporting the parents' statement that the marriage is urgent.

Then to ensure the implementation of this provision, the Government conducts socialization and guidance to the community regarding the prevention of early marriage, the dangers of free sex and unregistered marriage for the realization of a superior generation of nations.

The term very urgent reason is interpreted as a situation where there is no other choice and a marriage must be held. There is no further explanation after that. This situation has no form and boundaries, making it confusing. In the marriage dispensation decision, there are three forms of judge's decision. The decision grants, refuses and revokes. Here are some reasons and legal facts to illustrate the variety of circumstances in this marriage dispensation case.

Table 2: Types of Marriage Dispensation Decisions

Type of Judgment	Legal Facts and Judges' Considerations
Granted	<ul style="list-style-type: none"> a. The KUA refused to marry off the applicant's child because she was not old enough b. The applicant child had physical and mental readiness c. The marriage was carried out without coercion d. The two candidates have known each other for a long time and love each other e. There was no family relationship that prevented them from getting married. f. Efforts had been made to postpone the marriage, but the prospective bride and groom still wanted to marry g. The head of the family is able to provide (earn)³³ h. The applicants and witnesses are concerned that things will arise that violate religious and moral norms in the community if marriage is not hastened. i. Pregnant outside marriage.³⁴

³³ PA Tahuna, “Putusan_20_pdt.P_2024_pa.Thn_2024,” 2024.

³⁴ PA Sukamara, “Putusan_82_pdt.P_2024_pa.Skr_2024,” 2024.

<p>Refuse</p>	<p>a. The applicant's child was under the age of marriage, namely 19 years old.</p> <p>b. The applicant's child and her prospective husband have not been able to refrain from things prohibited by religion (adultery and drugs).</p> <p>c. The age of the petitioned child is 14 years, which is still classified as a child who must be given attention in terms of education, maturity of mind, mental and psychological to become a wife.</p> <p>d. The age mentioned above has reproductive, physical, psychological, economic risks, the risk of dropping out of school, the risk of disputes and domestic violence.</p> <p>e. If forced, it will produce musdharat in the household because it is not ready intellectually and spiritually, still under pressure from parents and other adults, immature to make decisions in the household.</p> <p>f. Prospective husbands are not considered mature and religiously ready.</p> <p>g. Parents have a responsibility for the best interests of the child as a successor who must be resilient for future life.</p> <p>h. There is no evidence to support the urgency of marriage as such: Recommendations from psychologists, professional social workers, social health workers, the Integrated Center for the Protection of Women and Children (P2TP2A) or the Indonesian / Regional Child Protection Commission (KPAI / KPAD).³⁵</p>
<p>Revoked</p>	<p>The Plaintiffs stated that they were withdrawing the case on the grounds that they were waiting for the Plaintiffs' children to reach the age required by the marriage law.³⁶</p>

³⁵ PA Sijunjung, "Putusan_6_pdt.P_2024_pa.Sjj_2024," 2024.

³⁶ PA Labuha, "Putusan_141_pdt.P_2024_pa.Lbh_2024," 2024.

In terms of the type of decision granted, there was no one specific circumstance that led to the judge granting this request. Many reasons are included in the legal facts and considerations of the judge. It is difficult to accept this as a translation of “reasons of extreme urgency”. Along with that, sufficient supporting evidence is also not included in the decision as a material consideration as described in the last point of the type of decision that rejects the request such as Recommendations from Psychologists, Professional Social Workers, Social Health Workers, Integrated Service Center for the Protection of Women and Children (P2TP2A) or the Indonesian / Regional Child Protection Commission (KPAI / KPAD).

c. Best Interests of The Child

This term is found in Supreme Court Regulation (PERMA) No 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, which only lists the principles that judges must fulfill in adjudicating marriage dispensation applications in Article 2. As a consideration of this PERMA, it is stated that Indonesia as a state party to the Convention on the Rights of the Child emphasizes that all actions concerning children carried out by social welfare institutions, state or private, courts, administrative authorities or legislative bodies, are carried out in the best interests of the child.³⁷

Article 16 of the PERMA states that in the examination, the Judge shall pay attention to the best interests of the child by:

1. Studying carefully and meticulously the petition;
2. Examining the legal position of the applicant;
3. Exploring the background and reasons for child marriage;
4. Exploring information related to whether or not there are obstacles to marriage;
5. Exploring information related to the child's understanding and consent to be married;
6. Taking into account the age difference between the child and the prospective husband/wife;
7. Hear testimony from the applicant, the child, the prospective husband/wife and the parents/guardians of the prospective husband/wife;

³⁷ RI, “Peratur. Mahkamah Agung RI No. 5 Tahun 2019 Tentang Pedoman Mengadili Permohonan Dispens. Kawin.”

8. Taking into account the psychological, sociological, cultural, educational, health, economic conditions of children and parents, based on recommendations from psychologists, doctors/midwives, professional social workers, social welfare workers, integrated service centers for the protection of women and children (P2TP2A) or the Indonesian/Regional Child Protection Commission (KPAI/KPAD);
9. Considering the presence or absence of psychological, physical, sexual and/or economic coercion; and
10. Ensure parents' commitment to take responsibility for the child's economic, social, health and education issues.

However, unlike the previous two points, there is again no explanation of the best interests of the child.

Discussion

From this explanation, it can be concluded that the form of change in the Marriage Law from Law Number 1 of 1974 to Law Number 16 of 2019 is regarding the age limit of marriage. The change occurred in the limit of permission for women to marry, which was originally from 16 years old to 19 years old, the same as the limit of permission for male marriage age. With this change, this law opens up wider options for filing a marriage dispensation application because of the three things previously mentioned, namely the deviation of the age of marriage, very urgent reasons, and the best interests of the child, for which there is no explicit explanation of the limitations of the term.

In positive law, there are at least three laws related to this marriage dispensation; Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, PERMA NO . 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications and Law No. 23 of 2002 which was later amended by Law No. 35 of 2014 concerning Child Protection. In general, apart from the marriage dispensation, Law No. 23 of 2002 which was later amended to Law No. 35 of 2014 concerning Child Protection article 2 explains that Child Protection is all activities to ensure and protect children and their rights so that they can live, grow, develop, and

participate optimally in accordance with human dignity, and receive protection from violence and discrimination.³⁸

The rights of children are detailed in the Child Protection Law, articles 4 to 18. Here are some important articles that can be related to child marriage:

- a. Article 9 paragraph (1): “Every child has the right to receive *education* and teaching in order to develop his/her personality and level of intelligence in accordance with his/her interests and talents”.
- b. Article 10 states: “Every child has the right to *express and be heard, to receive, seek and provide information in accordance with his/her level of intelligence and age* for his/her development in accordance with the values of decency and propriety”.
- c. Article 13 paragraph (1) Every child while in the care of parents, guardians, or any other party responsible for care, is entitled to **protection from treatment**: a. discrimination; b. *exploitation, both economic and sexual*; c. *neglect*; d. cruelty, violence, and abuse.

This explanation is linked in with the presence of Article 26 on parental obligations and responsibilities:

- 1) To nurture, maintain, educate, and protect the child;
- 2) To develop the child in accordance with his/her abilities, talents, and interests;
- 3) Prevent marriage at the age of the child; and
- 4) Providing character education and instilling ethical values in children.

Article 26 paragraph (3) of Law No. 23 of 2002 which was later amended in Law No. 35 of 2014 concerning Child Protection basically shows that parents do not have the main role as applicants in filing marriage dispensation cases, but on the contrary, parents are obliged and responsible for preventing child marriage. Of course this is in line with the age of marriage license for men and women at 19 years (not children).

Islamic law is a law that is based on, operates and has goals in accordance with revelation. It exists and has power based on revelation. It commands and prohibits based on revelation. In another sense, it can be said that the value that is considered right or wrong is what is considered right or wrong by revelation. In addition, reason is present

³⁸ Presiden Republik Indonesia, UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 35 TAHUN 2014 TENTANG PERUBAHAN ATAS UNDANG-UNDANG NOMOR 23 TAHUN 2002 TENTANG PERLINDUNGAN ANAK.

as a supporting tool to understand or think about the operation of the law.³⁹ The substance of the concept of Maqashid Sharia is benefit as stated by Ibn Qayyim al-Jauziyah, namely to prevent damage to humans and bring benefits to them, control the world with truth, justice and virtue and explain the path that must be followed before human reason.⁴⁰

In protecting the achievement of the objectives of shari'a above, or what is commonly called maqashid shari'ah, this maslahat is also divided into three levels; Primary Needs (Dharuriyah), Secondary Needs (Hajiyah) and Complementary Needs (Tahsiniyyah).⁴¹ The basic needs contained in five things (mabadi' al-khams or dharuriyat al-khams), namely protecting religion, soul, mind, offspring and property. Marriage between a man and a woman is to maintain honor (Hifz al-Hurmah) so that the couple does not fall into prohibited acts. In addition, it also aims to maintain healthy offspring or human survival (Hifz al-Nafs and Hifz al-Nasl), build a household full of love and affection, and aim to help each other to get mutual benefit. Islamic Sharia aims to realize the benefit of mankind and avoid harm."⁴²

CONCLUCION

Marriage regulations in Indonesia are considered unable to stem family problems, one of which is related to child marriage. Problems arise from the ambiguity of the legal language contained in existing regulations, including Deviations in the Age of Marriage, Urgent Reasons and the Best Interest of the Child. In positive law, there are at least three laws related to this marriage dispensation; Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, PERMA NO . 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications and Law No. 23 of 2002 which was later amended to Law No. 35 of 2014 concerning Child Protection. In general, apart from the marriage dispensation Law No. 23 of 2002 which

³⁹ Wardatun Nabilah and Zahratul Hayah, "FILOSOFI KEMASLAHATAN DALAM AKSIOLOGI HUKUM ISLAM (TELAAH KITAB MAQASHID SYARIAH)," *El -Hekam*, 2022, <https://doi.org/10.31958/jeh.v7i1.5810>.

⁴⁰ Wardatun Nabilah, "Persecutory and Defamation as Barriers to Inheritance (Review of Maqāshid Shari'ah in a Compilation of Islamic Law)," *ALHURRIYAH: Jurnal Hukum Islam* 6, no. 1 (2021): 49–62.

⁴¹ Wardatun Nabilah, Arifki Budia Warman, and Nurul Aini Octavia, "ISTIHSAN DALAM LITERATUR SYAFI'YAH (TELAAH ISTIHSAN DALAM KITAB AI-MUSTAŞFA AI-GHAZALI)," *Juris: Jurnal Ilmiah Syariah*, 2021, <https://doi.org/10.31958/juris.v20i1.3323>.

⁴² Wardatun Nabilah, Dewi Putri, and Deri Rizal, "Jasser Auda's System Approach in The Rules of Marriage Dispensation in Indonesia (Review of Maqashid Syariah)," *The Indonesian Journal of Islamic Law and Civil Law* 5, no. 2 (2024): 265–81.

was later amended to Law No. 35 of 2014 concerning Child Protection. Article 26 paragraph (3) of Law No. 23 of 2002 which was later amended in Law No. 35 of 2014 concerning Child Protection basically shows that parents do not have the main role as applicants in filing marriage dispensation cases, but on the contrary, parents are obliged and responsible for preventing child marriage. Of course this is in line with the age of marriage license for men and women at 19 years (not children). In terms of Islamic law, marriage between a man and a woman is to maintain honor (Hifz al-Hurmah) so that the couple does not fall into prohibited acts. In addition, it also aims to maintain healthy offspring or human survival (Hifz al-Nafs and Hifz al-Nasl), build a household mahligai filled with love and affection, and aims to help each other to get mutual benefit. Islamic Sharia aims to realize benefits for mankind and avoid harm, including in this marriage law.

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