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Implementing Child Protection in Marriage Dispensation Rulings: A Case Study at the Mahkamah Syar'iyah Takengon

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Abstract

*Ideally, marriage dispensation should be granted selectively with due consideration for the protection of children's rights, as regulated in Law No. 16 of 2019 and Supreme Court Regulation (PERMA) No. 5 of 2019. However, in practice at the Mahkamah Syar'iyah Takengon, dispensation requests are often granted based on reasons such as premarital pregnancy or long-term romantic relationships, without fully considering the long-term impact on children. This study aims to examine the implementation of child protection in the issuance of marriage dispensations and to analyze the judges' considerations in practice. This article is a field research using a qualitative approach, employing an empirical legal study method. The results show that while formal procedures are met, the substantive aspect of child protection is not yet prioritized. Judges' considerations tend to focus more on avoiding social harm, referring to the fiqh principle *dar'ul mafasid muqaddamun 'ala jalbil mashalih* (preventing harm is prioritized over gaining benefit), rather than emphasizing the child's best interest as the primary principle of protection.*

Keywords: Implementation, Child Protection, Dispensation, Takengon.

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Abstrak

Idealnya, dispensasi pernikahan diberikan secara selektif dengan mempertimbangkan perlindungan hak-hak anak, sebagaimana diatur dalam Undang-Undang No. 16 Tahun 2019 dan PERMA No. 5 Tahun 2019. Namun dalam praktiknya di Mahkamah Syar'iyah Takengon, permohonan dispensasi sering dikabulkan dengan alasan kehamilan di luar nikah atau hubungan pacaran lama, tanpa memperhatikan dampak jangka panjang terhadap anak. Penelitian ini bertujuan untuk mengkaji implementasi perlindungan anak dalam penetapan dispensasi pernikahan serta menganalisis pertimbangan hakim dalam praktiknya. Artikel ini tergolong dalam penelitian lapangan (*field research*) dengan pendekatan kualitatif. Metodologi yang digunakan adalah studi hukum empiris. Hasil menunjukkan bahwa meskipun prosedur formal telah dipenuhi, substansi perlindungan anak belum diutamakan. Pertimbangan hakim lebih fokus pada menghindari kemudharatan sosial, mengacu pada kaidah fiqh *dar'ul mafasid muqaddamun 'ala jalbil mashalih*, daripada pada kepentingan terbaik bagi anak sebagaimana prinsip perlindungan yang seharusnya menjadi prioritas utama.

Kata Kunci: Implementation, Children, Dispensation, Takengon

Introduction

Child protection is a vital part of national development and a shared responsibility among the state, society, and families. Within the framework of national law, children are regarded as individuals with specific rights to live, grow, and develop optimally, while being protected from violence, exploitation, and discrimination. One form of such protection is reflected in the state's policy on the minimum age of marriage, which aims to prevent child marriages that could jeopardize their future (Yahya Harahap, 2008). Law No. 16 of 2019, which amends Law No. 1 of 1974 on Marriage, represents a concrete step by the state in setting the minimum marriage age at 19 for both men and women. This provision seeks to ensure physical, mental, and social readiness of prospective spouses and protect children's rights from domestic violence, school dropout, and other psychological impacts.

Nevertheless, on the other hand, marriage dispensation is still permitted through parental petitions submitted to the courts, especially to the Religious Courts or Mahkamah Syar'iyah for Muslim citizens. In the context of Islamic law and the Indonesian legal system, this dispensation is interpreted as a lawful exception that must be granted cautiously, with careful consideration of the child's best interest. Therefore, the implementation of child protection in marriage dispensation decisions poses a major challenge for the judiciary, including the Mahkamah Syar'iyah Takengon, in balancing the enforcement of positive law, Islamic principles, and prevailing social realities (MS Takengon, 2023). At this point, the judge's role becomes crucial, as the decisions made affect not only the

legal status of the couple but also the future of the child, who deserves maximum protection.

Ideally, every marriage dispensation request should undergo comprehensive legal scrutiny, including administrative requirements, health conditions, psychological readiness, and socio-economic background of the applicants. Judges are expected not only to assess the urgency of the request but also to validate supporting evidence and hear the views of all parties, including both prospective spouses and their parents. Additionally, guidelines issued by the Supreme Court through PERMA No. 5 of 2019 concerning Procedures for Handling Marriage Dispensation Applications emphasize child protection principles, non-discrimination, and the best interests of the child as core standards in decision-making (Udin, 2021). Therefore, in practice, judges should not grant dispensations solely based on reasons such as premarital pregnancy or long-term romantic relationships, but must consider the long-term impacts on the child.

However, in reality, many findings reveal that marriage dispensation applications are frequently approved by courts for reasons that are normative and do not fully reflect the substantive principles of child protection. In the Mahkamah Syar'iyah Takengon, for example, numerous dispensations are granted based on conditions such as pregnancy resulting from extramarital relations, long-standing romantic involvement, or parental consent. The considerations often emphasize the avoidance of social harm, such as family shame or loss of honor, rather than a comprehensive protection of children's rights (MS Takengon, 2023). This raises concerns that marriage dispensation could become a shortcut that legitimizes child marriage practices and neglects systemic prevention efforts. Thus, a critical question arises: to what extent has the Mahkamah Syar'iyah Takengon implemented child protection principles in its marriage dispensation rulings?

This study aims to analyze in depth how child protection is implemented in the process of granting marriage dispensations at the Mahkamah Syar'iyah Takengon. The primary focus is on how judges consider various factors when approving or rejecting dispensation requests, and to what extent existing legal guidelines are applied to safeguard children's rights. This research also explores the social and legal dynamics that influence judicial decision-making and its impact on the future of underage married children. The contribution of this study lies in offering a critical and reflective understanding of the practice of granting marriage dispensations, particularly in relation to child protection. By examining a case study in Mahkamah Syar'iyah Takengon, the study aims to provide concrete policy reform recommendations, enhance the quality of judicial considerations, and strengthen child protection mechanisms within Indonesia's religious court system.

Literature Review

The study of child protection in the context of marriage is not a new discourse. Several scholars have already explored and published works on this issue. Abdurrahman, in his work titled; "*Telaah Efektivitas Undang-Undang Nomor 16 Tahun 2019 Tentang Perkawinan Dalam Menekan Angka Pernikahan Dini di KUA Telaga Biru*", discusses how the law has not been effective in reducing the rate of child marriage. He found that despite the establishment of a minimum legal

marriage age, the number of child marriages has actually increased, driven by factors such as education, economy, and peer influence (Abdurrahman, 2001). The similarity between his work and the present study lies in the focus on the effectiveness of Law No. 16 of 2019. However, the difference is in the object and scope: Abdurrahman focuses on empirical data from KUA Telaga Biru, while this study emphasizes the legal aspects of dispensation and its application in Mahkamah Syar'iyah Takengon.

Kareema and Garfes, in their work; *"Peran KUA dalam meniminimalisir Kasus Pernikahan Dini di Kecamatan Sukmajaya Kota Depok"*, studied child marriage practices in Sukmajaya Subdistrict, Depok City, and revealed that such marriages are still prevalent and have negative consequences for both families and the children involved. They emphasized the role of KUA in limiting marriage age through premarital counseling (Kareema & Garfes, 2020). The similarity with this research lies in the shared concern about the impacts of early marriage. However, unlike their preventive focus through the KUA's role, this study focuses on the juridical aspects of how marriage dispensation decisions are made by judges in Mahkamah Syar'iyah.

Udin, in his work; *"Efektivitas Undang Undang Nomor 16 Tahun 2019 Dalam Meminimalisir Problematika Perkawinan"*, using Soerjono Soekanto's theory of legal effectiveness, argues that the law has yet to be effective due to lack of preparedness among law enforcers, insufficient facilities, and low public awareness. He notes that issues such as early marriage, polygamy, and domestic violence are still rising, thereby calling for a comprehensive legal reform (Udin, 2021). The similarity with this study lies in the theoretical approach to evaluating legal effectiveness. The difference is that Udin raises broader issues concerning the overall ineffectiveness of the Marriage Law, while this study focuses specifically on the legal void surrounding the minimum age for marriage dispensation.

Ramadhani and Abd. Gani, in their research; *"Pedoman Hakim Dalam Mengadili Permohonan Perkara Dispensasi Kawin Menurut PERMA No. 5 Tahun 2019"*, discuss how marriage dispensation requests are sometimes granted even when not all requirements under PERMA No. 5 of 2019 are met. They reveal that approvals are often based on concerns about the biological condition of underage female applicants (Ramadhani & Abd. Gani, 2021). Their research shares a focus with this study on the decision-making process of marriage dispensations by judges. However, the difference lies in the research setting and emphasis: this study investigates the practice specifically at Mahkamah Syar'iyah Takengon with a focus on the legal vacuum regarding minimum dispensation age.

Based on the literature review, a research gap emerges that underlines the originality of this study. Previous studies mostly focus on the general effectiveness of the law, the impact of child marriage, or the role of institutions such as KUA or judges in the dispensation process. However, no existing research has thoroughly examined how the legal vacuum regarding the minimum age for marriage dispensation is applied in judicial practice, particularly at Mahkamah Syar'iyah Takengon. This study seeks to fill that gap through a detailed normative and juridical analysis.

Research Methodology

This article is categorized as field research employing a qualitative approach. The methodology used is empirical legal study, aimed at analyzing legal norms in relation to the local context in Takengon. The primary data sources in this study consist of direct interviews with relevant parties, including judges, the parents of petitioners, and representatives from child protection institutions (Muhaimin, 2020). Secondary sources include scholarly journals, books, and relevant publications issued within the last ten years, which support and enrich the normative data analysis. In preparing the data into a publishable journal manuscript, the author employed descriptive-qualitative data analysis, source and method triangulation for data verification, and credibility and confirmability measures for data validation, ensuring that the final journal draft meets scientific standards and can be academically justified.

The Phenomenon of Child Marriage

The phenomenon of child marriage is not a new issue in the history of Indonesian society, particularly in Aceh, a region known for its strong Islamic values and customary traditions. In traditional social settings, marrying at a young or even underage age was considered normal, and in some cases even regarded as honorable. In the past, individuals who delayed marriage until what was considered a "mature" age often faced social stigma. For women especially, marrying late came with the risk of being labeled a "spinster," a term loaded with psychological pressure and cultural norms that limited their freedom to choose their life path. Historically, early marriage was understood within the context of social and cultural needs. In a time when access to education was limited, the economy was weak, and threats to women's safety were high, early marriage served as a means of social protection and a way to preserve family honor.

However, as time progressed, these values began to shift. Rapid globalization introduced new paradigms, including human rights, gender equality, and education as a means of social mobility. Consequently, public perception of child marriage changed significantly. Once seen as normal, child marriage is now increasingly viewed as a harmful practice that impedes personal development and suppresses children's intellectual and creative potential—especially for girls. Globalization has indeed broadened society's horizons, but it has also introduced new and complex challenges. One negative impact of globalization is the emergence of existential frustration among young people, manifesting in an excessive pursuit of power, pleasure, wealth, employment, and even sexual satisfaction (Maknunah & Fauzi, 2022). In such circumstances, some communities view early marriage as a solution to mitigate the negative effects of globalization, particularly regarding promiscuity and immoral behavior. From this perspective, child marriage is seen as a preventive measure to protect children from greater moral harm.

Nevertheless, child marriage remains a highly complex issue, involving a tension between religious/cultural norms and modern state legal policy. In Islam, early marriage is not explicitly prohibited and is, in certain circumstances, allowed based on considerations of public benefit (maslahah). Islamic teachings emphasize

the objectives of marriage: achieving spiritual peace, protecting personal dignity, and preserving lineage in accordance with sharia. Thus, as long as the conditions and requirements of marriage are fulfilled and the greater benefit can be achieved, child marriage may be considered. Imam al-Syatibi's thought on *maqashid al-sharia* affirms that Islamic law must respond to social realities and always prioritize public welfare (Abu Ishaq As-Syatibi, 1975). On the other hand, the government—through various regulations—aims to protect children's rights from the adverse effects of early marriage. Law No. 23 of 2002 on Child Protection, reinforced by Law No. 16 of 2019, explicitly defines a child as anyone under the age of 18. Therefore, marriage below this age is seen as violating the spirit of children's rights protection, which includes the right to grow, learn, and develop optimally. The state is obligated to ensure that every child has an equal opportunity to grow without being burdened by premature domestic responsibilities that may jeopardize their physical and mental health, education, and social participation.

In this regard, both Islamic law and state law use the concept of *maslahah* (public benefit), although their orientations and benchmarks may differ. The legal maxim articulated by Izzudin Ibn Abd. Salam asserts that when two benefits conflict, the one with the greater benefit must be chosen. In the context of child marriage, measuring benefit becomes highly individual and relative. If early marriage is considered a way to save a child from moral deviation and negative environments, then it may be the best option. However, if early marriage opens the door to greater harm—such as domestic violence, poverty, and educational neglect—then postponing marriage is a more beneficial choice. The history of child marriage regulation shows that laws continue to evolve alongside societal dynamics and contemporary demands. In the past, there were no strict minimum age limits for marriage. Today, the state mandates a minimum marriage age of 19 for both men and women, and dispensations can only be granted by the court under urgent circumstances. During the dispensation process, judges are required to carefully consider all aspects related to the child's best interests, including physical and psychological readiness, as well as the potential social and economic consequences of the marriage.

Dispensation and Child Protection

Marriage is a social institution that involves not only two individuals but also binds them legally, religiously, and culturally in building a family. However, when marriage occurs at an age where individuals are not yet physically, mentally, or socially mature, various complex issues inevitably arise. One legal exception to the minimum age requirement for marriage is the mechanism of marriage dispensation granted by the court. In this context, a marriage dispensation is not merely a form of legal tolerance, but a space for thorough judicial consideration based on urgent and beneficial reasons. This phenomenon is increasingly drawing attention as it touches on child protection—an issue highlighted in various international conventions and national laws. In Indonesia's legal system, marriage dispensation is a permit granted to individuals under the legal marriage age as regulated in Law No. 16 of 2019, which sets the minimum age at 19 for both men and women.

This application may be submitted by a child's parent or guardian to the Religious Court or Mahkamah Syar'iyah for Muslims, accompanied by strong evidence and consideration of public benefit. Thus, marriage dispensation is not an automatic procedure but must go through a strict legal process, including the judge's assessment of the physical and emotional readiness of the prospective spouses (Mardani, 2010). This reflects a cautious effort to protect children's rights while avoiding abuse of authority in family law practices. The primary consideration in granting a marriage dispensation closely relates to the concept of *maslahah mursalah*—benefits not explicitly mentioned in sharia, but aligned with its objectives, such as the protection of reason, life, and lineage. If an act brings benefit and prevents harm, it can be considered lawful. In this context, dispensations may be granted if they are believed to prevent greater harm, such as promiscuity, premarital pregnancy, or psychological distress for emotionally involved youth (Wasman & Wardah Nuroniyah, 2011). However, such considerations must not override children's basic rights or the principle of prudence.

Child marriage has the potential to severely hinder physical, psychological, and social development. Young brides or grooms are often unprepared emotionally and economically for the responsibilities of marriage, which can lead to higher rates of divorce, structural poverty, and limited access to education and healthcare. Girls who marry as children are particularly vulnerable to domestic violence and pregnancy complications. Therefore, Law No. 16 of 2019 was introduced to revise prior regulations, with the main goal of strengthening legal protections for children and preventing child marriage (Yunus et al., 2023). To reinforce these protections, the Supreme Court issued Supreme Court Regulation (PERMA) No. 5 of 2019 as a guideline for adjudicating marriage dispensation requests. This regulation serves as a key reference for judges and enshrines fundamental principles such as the best interests of the child, the right to life and development, non-discrimination, and gender equality (Aditya & Waddington, 2021). This demonstrates the state's commitment to balancing legal flexibility with its obligation to protect children through accountable and child-sensitive judicial mechanisms.

In deciding on marriage dispensation cases, judges bear the heavy responsibility of comprehensively assessing the child's readiness—not only physically, but also mentally, emotionally, and socially. Judges must evaluate whether there is coercion, cultural pressure, or patriarchal practices behind the request. Judicial considerations must be grounded in a high degree of caution and ensure that decisions uphold justice and the child's well-being (Mukti Arto, 2004). Thus, judges are not merely enforcing the law textually, but also safeguarding humanitarian values within the context of family law. Their considerations are crucial in determining whether a dispensation is truly warranted. This process must not be arbitrary or a mere administrative formality; instead, it must be based on solid evidence revealed during the hearing. Such evidence forms the foundation for concluding whether the request truly aims to prevent greater harm, rather than simply respond to cultural or social pressure. Therefore, judges must be thorough, objective, and meticulous in uncovering relevant facts (Mukti Arto, 2004).

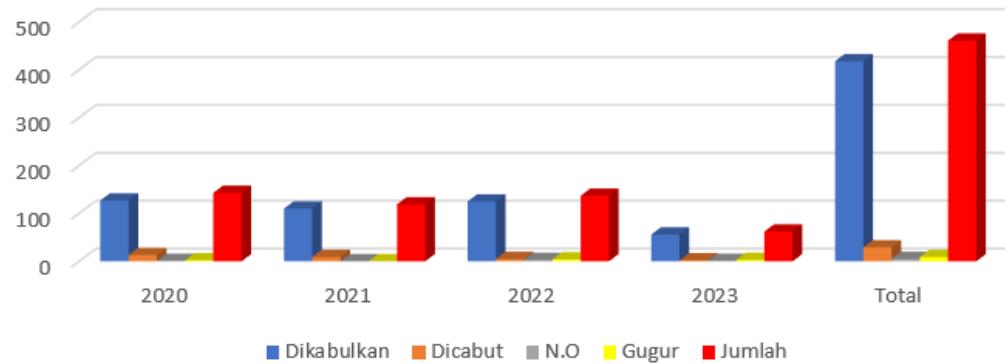
A key aspect of ensuring child protection in marriage dispensation cases is the court's evidence-gathering process. This process is critical for determining whether the stated conditions are valid or merely social manipulation to legitimize child marriage. Judges must identify whether coercion, power imbalances, psychological unpreparedness, or hidden rights violations are present. Judicial vigilance serves as the final safeguard to ensure that dispensations do not become a loophole for harming a child's future (Mukti Arto, 2004). An ideal ruling in dispensation cases should reflect three core principles: legal certainty, justice, and benefit. Legal certainty relates to the clear and firm application of law and procedure. Justice emphasizes the importance of recognizing each child's unique situation and needs. Meanwhile, benefit underscores that the law must result in positive outcomes. Integrating these elements will produce rulings that are not only legally valid but also capable of preserving the dignity and rights of children as citizens deserving full protection.

Although marriage dispensation may be a viable solution in certain situations, it must not become a tool to legalize child marriage. Therefore, public legal and social education about the dangers of early marriage is essential. Parents, community leaders, and religious figures must take the lead in preventing such practices. Marriage dispensation should only be granted when all child protection indicators are met and no better alternatives exist to safeguard the child's overall well-being. Strong collaboration is needed between the judiciary, child protection agencies, educational institutions, and civil society to create a legal system that is not only normatively sound but also effective in practice. Strengthening judges' capacities, providing child psychologists during trials, and involving children's voices in the process are concrete steps toward building a justice system that prioritizes child protection. Post-marriage monitoring of those granted dispensations is also crucial to ensure that children's rights remain protected throughout their married lives.

Implementation of Law Number 16 of 2019

Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 on Marriage regulates the minimum age for marriage. Previously, under Law Number 1 of 1974, the minimum age for marriage was 19 years for men and 16 years for women. Following the revision of the Marriage Law, which was formalized through Law Number 16 of 2019, the minimum marriageable age for both men and women was equalized to 19 years, as stipulated in Article 7, paragraph 1. Based on research conducted at the Mahkamah Syar'iyah Takengon, data show that from January 2020 to June 2023, there were 461 cases of marriage dispensation requests submitted to the court. The annual breakdown of marriage dispensation cases is as follows: (MS Takengon, 2023).

Permohonan Dispensasi Pernikahan Di Mahkamah Syar'iyah Takengon



Based on the table above, it is evident that a significant number of marriage dispensation cases were granted by the judges of the Mahkamah Syar'iyah Takengon. This indicates that Article 7, paragraph 1 of Law Number 16 of 2019, which amends Law Number 1 of 1974 on Marriage, has not been effectively implemented. The Deputy Chairperson of the Mahkamah Syar'iyah Takengon confirmed that the number of marriage dispensation cases in Takengon is the highest in the Aceh Province. Several NGOs, journalists, and child rights observers have visited the Mahkamah Syar'iyah Takengon concerning child marriage issues.

The Deputy Chairperson also explained that, in general, the judges have made efforts to apply the relevant legal provisions concerning the minimum marriageable age. The implementation of Law Number 16 of 2019 began following its enactment. According to the law, any male or female under the age of 19 who wishes to marry must obtain a dispensation from the Religious Court/Mahkamah Syar'iyah. Before the revision, the minimum age for marriage was 16 for females and 19 for males. As a result, many people in Takengon remain unaware of the updated legal age for marriage. Consequently, some dispensation requests were rejected, while others were approved. However, the interview findings contradict the data showing the high number of granted marriage dispensations by the Mahkamah Syar'iyah Takengon. Interviews revealed several factors influencing the judges' decisions: first, the strong support from parents and local authorities for the child marriage; second, the law allows judges to grant dispensations for "urgent" reasons. The law itself does not clearly define what constitutes "urgent," leaving room for judges to interpret the term based on the specific circumstances presented in court.

This legal ambiguity should be a major concern for the government in its efforts to protect the rights and freedoms of children. A revision of the law is necessary to ensure legal certainty and safeguard children's rights. Child marriage has numerous negative consequences, including interrupted education, where children are pulled out of school to marry and take on responsibilities such as becoming housewives—roles for which they are often neither physically nor mentally prepared, contrary to the ideals set out in the law (Latifiani, 2019). Children are a vulnerable group still undergoing physical and mental development. They lack the capacity to protect themselves or to make fully informed and rational

decisions. Therefore, they require special protection from both the government and society. While the government bears the primary responsibility for ensuring the protection of children's rights and freedoms through appropriate laws and policies, community participation is also essential. With strong support from society and parents in curbing the rise in child marriages, the implementation of this law can be realized more effectively.

Judges' Considerations in Granting Marriage Dispensation

Marriage is a social, religious, and legal institution that holds a central position in shaping a moral and orderly society. In Islam, marriage is viewed as a sacred act of worship and a sunnah of the Prophet Muhammad (PBUH), aimed not only at fulfilling human nature but also at safeguarding lineage (*hifz al-nasl*), personal dignity (*hifz al-'ird*), and inner peace. The Indonesian state, as a legal state, also recognizes the importance of this institution, as reflected in regulations that strictly govern the minimum age for marriage to ensure the physical, mental, and social readiness of individuals to establish a household (Ramdhani, 2021). However, in practice, certain circumstances may arise where an individual has not met the minimum age requirement but is compelled to marry. For this reason, the law provides a mechanism for marriage dispensation, which can only be granted by a court. In this context, the judge plays a crucial role in balancing legal certainty, justice, and broader public interest (*maṣlahah*).

Legally, judges' considerations in granting marriage dispensation must be based on Law No. 16 of 2019, which amends Law No. 1 of 1974 on Marriage. Article 7(1) states that marriage is only permitted if both the man and woman have reached the age of 19. If one of the parties does not meet this age requirement, the parents or guardian must submit a request for dispensation to the court. In practice, such requests are not automatically granted. Judges must conduct thorough examinations of the urgent reasons submitted along with supporting evidence. Supreme Court Regulation (PERMA) No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Applications provides normative guidance that such applications can only be approved if there is a proven urgent condition and no better alternative exists for the parties involved (Wasman & Wardah, 2011). This affirms that dispensation is not a freely granted legal leniency, but rather a last resort (*ultimum remedium*) used only in legally pressing situations.

Experiences from the Mahkamah Syar'iyah Takengon show that judges there do not solely base their decisions on statutory regulations but also consider prevailing social realities and moral aspects within the community. In decisions such as Case No. 16/Pdt.P/2022/MS.Tkn and No. 162/Pdt.P/2021/MS.Tkn, the court granted dispensations because the couples had been in long-term relationships, and in some cases, had already engaged in sexual relations despite lacking legal marriage status. In other instances, the bride was reportedly eight months pregnant, confirmed by a health clinic. In such conditions, judges reasoned that rejecting the application would lead to greater social harm, such as family dishonor, psychological pressure on the unborn child, and community stigma (Mardani, 2010). This shows that judges consider not only formal documents but also potential social consequences.

Judicial considerations also refer to the classical *fiqh* principle: *dar' al-mafāsid muqaddamun 'alā jalb al-maṣāliḥ*—preventing harm takes precedence over attaining benefits. In this context, harm refers to prolonged acts of fornication, out-of-wedlock pregnancies, or social bullying of children born without clear legal status. Thus, in such cases, judges may determine that granting dispensation serves a greater good. However, this principle is a double-edged sword; if applied too loosely, it may create public perceptions that extramarital relations can be “legitimized” through dispensations, potentially encouraging irresponsible behavior among youth. This presents an ethical dilemma that must be wisely navigated by judges. Another important factor in judicial consideration is the fulfillment of administrative requirements. According to PERMA No. 5 of 2019, judges must examine documents such as identity papers, proof of age, parental declarations, health certificates, and statements from educators or counselors regarding the child’s psychological condition.

In practice, the Mahkamah Syar’iyah Takengon does not approve applications merely based on parental requests. Judges still conduct in-depth verification, including summoning both parties to testify in court. This ensures the application truly arises from an urgent need, not familial or societal pressure. Moreover, judges must ensure there are no legal or *shar'i* prohibitions, such as marriage between *mahrams* (close blood relatives), or any form of coercion. Emotional and spiritual readiness is also assessed. Even if the legal age is unmet, judges evaluate whether the individuals have reached puberty (*baligh*) and understand the meaning of marriage. If it appears that one party lacks comprehension of marital responsibilities or is still entirely dependent on parents, the judge may reject the application—even if all administrative documents are in order (Mukti Arto, 2004).

Considerations based on *maslahah* (benefit) and *mafsadah* (harm) also serve as key benchmarks. In many cases, judges evaluate whether the negative consequences of rejecting a request outweigh those of granting it. For instance, denying a dispensation when the bride is already pregnant could lead to the child being unrecognized socially or legally, or even abandoned. Conversely, granting a dispensation without rigorous consideration could normalize child marriage and harm youth’s psychological development. Thus, judges are not merely legal technicians, but moral agents upholding societal values. The issue becomes even more complex when dispensations are granted due to out-of-wedlock pregnancies. Under Islamic law, a child born from *zina* (fornication) has no legal lineage (*nasab*) to the biological father, even if marriage follows. This results in legal consequences such as the absence of inheritance rights and sibling recognition among the father’s legitimate children.

This illustrates that, although a marriage may proceed under dispensation, other legal issues cannot be automatically resolved. Judges must therefore provide legal education to the parties involved so they understand the full implications of the decision (Mardani, 2010). From the perspective of *maqāṣid al-syārī'ah* (the higher objectives of Islamic law), judicial considerations must encompass three primary goals: first, protection of life (*hifz al-nafs*)—to prevent violence, neglect, or out-of-wedlock pregnancies that demean human dignity; second, protection of intellect (*hifz al-'aql*)—ensuring the child can continue their education and grow

up mentally healthy; and third, protection of lineage (*hifz al-nash*)—to ensure legal and social recognition for the child. If these three conditions are not met, the application should be denied (Aditya & Waddington, 2021).

Sociologically, marriage dispensation often becomes a “shortcut” for resolving broader social conflicts, such as extramarital pregnancy, economic hardship, or stigma against young couples. In societies that uphold traditional values, a child born outside of legal marriage is often seen as a major disgrace. Hence, judges must balance customary values, legal norms, and principles of justice. They cannot merely be legal technocrats but must also be capable of understanding social realities and delivering constructive judgments. The author argues that a further revision of Law No. 16 of 2019 is necessary—particularly concerning the minimum age eligible for dispensation and explicitly defined “urgent reasons” permitted by law. This is essential to avoid biased interpretations at both judicial and community levels and to prevent disparities in court rulings across regions. Furthermore, the law should also include clear sanctions for those who manipulate data or coerce children into marriage for particular interests.

Conclusion

Law No. 16 of 2019, which regulates the minimum age for marriage, has not yet been fully effective in its implementation. The lack of intensive and comprehensive public dissemination has resulted in many communities—especially in rural areas—failing to fully understand the purpose behind the age restriction for marriage. Furthermore, the absence of a clear provision regarding the minimum age eligible for dispensation has created a broad space for judicial interpretation, which opens the door to disparities in court decisions. This poses a challenge in realizing optimal child protection, as legal uncertainty can lead to inconsistent enforcement of child protection standards.

From the perspective of judicial considerations in granting dispensation, the approach taken is not limited to formal legal provisions but also includes social, medical, and religious aspects. Judges tend to grant dispensation when they believe that the harm (*mafsadah*) resulting from denial would be greater than the harm caused by early marriage itself—such as in cases of pregnancy due to premarital relationships. These considerations include reproductive health conditions, psychological readiness, partner compatibility (*kafā'ah*), and the involvement of both families. In addition to referring to statutory law and Supreme Court Regulation (PERMA) No. 5 of 2019, judges also draw on classical *fiqh* principles, particularly *dar'u al-mafāsid muqaddamun 'alā jalbi al-maṣāliḥ* (preventing harm takes precedence over attaining benefits), to avoid greater social and moral damage. Nonetheless, this approach must still be accompanied by the principle of prudence, so that the mechanism of dispensation does not become a permanent solution that ultimately undermines the very essence of child protection.

References

Abdul Manan. (2006). *Aspek-aspek pengubah hukum*. Kencana Prenada Media.

Abdurrahman. (2001). *Kompilasi hukum Islam di Indonesia*. Akademi Presindo.

Abu Ishaq as-Syatibi. (1975). *Al-Muwafaqat fi Usul Asy-Syari'ah*. Dar al-Ma'rifah.

Aditya, R. I., & Waddington, L. (2021). The legal protection against child marriage in Indonesia. *Bestuur*, 9(2), 126–134.
<https://doi.org/10.20961/bestuur.v9i2.55144>

Amri, A., & Khalidi, M. (2021). Efektivitas Undang-Undang Nomor 16 Tahun 2019 terhadap pernikahan di bawah umur. *Justisia: Jurnal Ilmu Hukum, Perundang-undangan dan Pranata Sosial*, 6(1).
<https://doi.org/10.22373/justisia.v6i1.10613>

Basrowi. (2008). *Memahami penelitian kualitatif*. Rineka Cipta.

Duski Ibrahim. (2008). *Metode penetapan hukum Islam: Membongkar konsep al-istiqra' al-ma'nawi Asytibi*. Ar-Ruzz Media.

Ibn Abd al-Salam, I. (n.d.). *Qowa'id al-Ahkam*. Dar al-Kutub.

Hamidi, J. (2011). *Hermeneutika hukum: Sejarah, filsafat, dan metode tafsir*. UB Press.

Habermas, J. (1979). *Theory of communicative action*. Boston University Press.

Kareema, T., & Garfes, H. P. (2020). Peran KUA dalam meminimalisir kasus pernikahan dini di Kecamatan Sumajaya Kota Depok. *Dirasat*, 15(1).

Saleh, K. W. (1987). *Hukum perkawinan di Indonesia*. Ghalia Indonesia.

Latifiani, D. (2019). The darkest phase for family: Child marriage prevention and its complexity in Indonesia. *Journal of Indonesian Legal Studies*, 4(2), 241–258. <https://doi.org/10.15294/jils.v4i2.34708>

Maknunah, L., & Fauzi, A. (2022). Kebermaknaan hidup masyarakat urban dalam perspektif Hanna Djumhana Bastaman: Kajian dimensi spiritual logoterapi. *Al-Ihath: Jurnal Bimbingan dan Konseling Islam*, 2(2).
<https://doi.org/10.53915/jbki.v2i2.228>

Mardani. (2010). *Hukum acara perdata Peradilan Agama & Mahkamah Syar'iyah*. Sinar Grafika.

Mahkamah Syar'iyah Takengon. (2023, September 14). *Daftar perkara*.
https://sipp.ms-takengon.net/list_perkara

Muhaimin. (2020). *Metode penelitian hukum*. Mataram University Press.

Mukti Arto. (2004). *Praktek perkara perdata pada Pengadilan Agama* (Cet. ke-5). Pustaka Pelajar.

Ramadhani, P., & Abd. Gani, B. (2021). Pedoman hakim dalam mengadili permohonan perkara dispensasi kawin menurut PERMA No. 5 Tahun 2019. *El-Hadhanah: Indonesian Journal of Family Law and Islamic Law*, 1(2).
<https://doi.org/10.22373/hadhanah.v1i2.1624>

Syarifuddin, A. (2006). *Hukum perkawinan Islam di Indonesia*. Kencana.

Udin, Z. (2021). Efektivitas Undang-Undang Nomor 16 Tahun 2019 dalam meminimalisir problematika perkawinan. *Tahkim: Jurnal Peradaban dan Hukum Islam*, 4(1). <https://doi.org/10.29313/tahkim.v4i1.7538>

Waluyadi. (2009). *Hukum perlindungan anak*. Mandar Maju.

Wasman, & Nuroniyah, W. (2011). *Hukum perkawinan Islam di Indonesia: Perbandingan fiqh dan hukum positif*. Teras.

Yahya Harahap. (2008). *Hukum acara perdata*. Sinar Grafika.

Yunus, F. M., Nurliyana, S., Jihad, A. A., Amri, A., & Yunus, S. M. (2023). Childfree and its relevance to 'azl from the perspective of Taqiyuddin an-Nabhani. *Petita: Jurnal Kajian Ilmu Hukum dan Syariah*, 8(2).
<https://doi.org/10.22373/petita.v8i2.235>