

# The Impact Law Number 16 of 2019 about Marriage Age Dispensation on The Child Marriage Gap

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**Abstract:** *Child marriage in Indonesia is quite high. Child marriage is a form of violence against children and is a practice that violates children's basic rights as outlined in the Convention on the Rights of the Child (CRC). Child marriage limits access to essential services, including education and health services, and can have long-term negative impacts on children's well-being and life chances. The legal age limit for marriage in Indonesia is a minimum of 19 years. However, one of the policies in the Marriage Law is a loophole that supports the legality of child marriages, through the granting of dispensations by the Court. The number of requests for marriage dispensation at the Ambarawa Religious Court continues to increase. This research uses a normative juridical methodology, namely reviewing court decisions. As a finding, one of the impacts of the enactment of Law Number 16 of 2019 which amends Law Number 1 of 1974 concerning Marriage is the increase in the number of requests for marriage dispensation at the Ambarawa District Court, Semarang Regency. This increase reached 337%, with the average number of applications per month increasing from 7.44 to 25.07. Changes in the marriage age as stated in Article 7 regarding the minimum marriage age of 19 years are not effective in reducing the number of child marriages. So it is necessary to optimize the implementation of Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Granting Marriage Dispensations to ensure that judges have clear procedures and structured steps in adjudicating marriage dispensation cases.*

**Keywords:** *Impact, Marriage, Marriage Dispensation, Child Marriage*

**Abstrak:** Perkawinan anak di Indonesia cukup tinggi. Perkawinan anak merupakan salah satu bentuk kekerasan terhadap anak dan merupakan praktik yang melanggar hak-hak dasar anak yang dituangkan dalam Konvensi Hak Anak (CRC). Perkawinan anak akan membatasi akses terhadap layanan penting, termasuk pendidikan dan layanan kesehatan, serta dapat menimbulkan dampak negatif jangka panjang terhadap kesejahteraan dan peluang hidup anak. Batasan usia sah untuk *menikah* di Indonesia adalah minimal 19 tahun. Namun salah satu kebijakan dalam UU Perkawinan menjadi celah yang mendukung sahnya perkawinan anak, melalui pemberian dispensasi oleh Pengadilan. Jumlah permohonan dispensasi perkawinan di Pengadilan Agama Ambarawa terus meningkat. Penelitian ini menggunakan Metodologi yuridis normatif, yakni mengkaji putusan pengadilan. Sebagai temuannya, salah satu dampak dari diberlakukannya Undang-Undang Nomor 16 Tahun 2019 yang mengubah Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan ialah meningkatnya jumlah permohonan dispensasi nikah di Pengadilan Negeri Ambarawa Kabupaten Semarang. Peningkatan ini mencapai 337%, dengan rata-rata jumlah permohonan per bulan meningkat dari 7,44 menjadi 25,07. Perubahan usia perkawinan seperti dalam Pasal 7 tentang usia perkawinan minimal 19 tahun tidak efektif menekan angka perkawinan anak. Sehingga diperlukan implementasi Peraturan Mahkamah Agung Nomor 5 Tahun 2019 tentang Pedoman Pemberian Dispensasi Perkawinan hendaknya dioptimalkan untuk memastikan hakim memiliki prosedur yang jelas dan langkah-langkah terstruktur dalam mengadili perkara dispensasi perkawinan.

**Kata Kunci:** *Dampak, Pernikahan, Dispensasi Perkawinan, Perkawinan Anak*

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## Introduction

Child marriage in Indonesia is quite high. Research conducted in Asian and African regions reveals that child marriages are frequently the result of patriarchal beliefs, gender norms that promote discrimination, limited access to education, and economic conditions. These fundamental factors play a significant role in sustaining the prevalence of child marriage, and it is imperative to tackle these issues to combat this detrimental practice and safeguard the rights of children, particularly young girls.<sup>1</sup> According to data from religious courts on applications for dispensation of child marriage in 2021, there were 65,000 cases, and in 2022, there were 55,000 applications.<sup>2</sup>

Child marriage constitutes a type of harm inflicted upon minors and represents a practice that infringes upon the fundamental rights of children, as delineated in the Convention on the Rights of the Child (CRC). Child marriage will restrict access to essential services, including education and healthcare, and can have long-term negative effects on a child's well-being and opportunities in life. Minors who enter into marriage before reaching the age of 18 face increased susceptibility in terms of accessing education and healthcare, and they are at a greater risk of experiencing violence. Moreover, children wed before turning 18 may encounter challenges in obtaining their essential requirements, which could lead to the continuation of poverty across generations.<sup>3</sup>

A child is defined as someone who is under the age of 18 according to the Marriage Law. The legal age limit for marriage in Indonesia is a minimum of 19 years. However, Indonesian law allows child marriages below the age of 19 with the permission of the local court through the granting of a dispensation. Marriage is a gateway to a new life. This event is considered sacred both in terms of religion and tradition. Marriage is not just about a change in status; it signifies the willingness of two individuals who promise to build a happy family both physically and emotionally. Marriage requires thorough readiness, including physical, mental, spiritual, and material preparation. Insufficient personal readiness can have a significant impact on the sustainability of the marital bond. Age readiness is closely related to the readiness of each individual in marriage.<sup>4</sup>

Age will influence a person's maturity in building a household. Age maturity will be one of the supporting factors in physical maturity, and psychological maturity, as well as an individual's readiness and responsiveness in facing life's challenges.<sup>5</sup> Hence, age becomes one of the crucial requirements for conducting a marriage. In Indonesia, this age factor has already been a matter of concern, as evidenced by government regulations on marriage that have set age restrictions for marriage. These age restrictions are expected to limit the incidence of child marriages.

Health science even aligns with these age restrictions for marriage. The Ministry of Health states that the healthy reproductive age is between 20 and 35 years. Women are considered physically and psychologically ready for reproductive processes such as pregnancy, childbirth, and breastfeeding during the healthy reproductive age.<sup>6</sup> If someone

<sup>1</sup> Joar Svanemyr et al, "Research Priorities on Ending Child Marriage and Supporting Married Girls," *Reprod Health* 12 No.1 (2015): 80 at 2.

<sup>2</sup> Kementerian PPPA, "Perkawinan Anak Di Indonesia Sudah Mengkhawatirkan," 2023, <https://www.kemenpppa.go.id/index.php/page/read/29/4357/kemen-pppa-perkawinan-anak-di-indonesia-sudah-mengkhawatirkan>.

<sup>3</sup> Kementerian PPN/Bappenas, "Strategi Nasional Pencegahan Perkawinan Anak," 2020, <https://www.unicef.org/indonesia/media/2856/file/National-Strategy-Child-Marriage-2020.pdf>.

<sup>4</sup> Fitri Sari and Euis Sunarti, "Kesiapan Menikah Pada Dewasa Muda Dan Pengaruhnya Terhadap Usia Menikah," *Jurnal Ilmu Keluarga Dan Konsumen* 6, no. 3 (2013): 143–53, <https://doi.org/10.24156/jikk.2013.6.3.143>.

<sup>5</sup> Elizabeth B. Hurlock, *Psikologi Perkembangan* (Jakarta: PT. Gelora. Aksara Pratama, 2004). p.207.

<sup>6</sup> Jay Barth, "Ripe for Reform: Arkansas as a Model for Social Change," *Arkansas Public Policy Panel*, 2012, 1–33, <http://eprints.undip.ac.id/32555/>.

gets married without the necessary physical and psychological readiness, there is a concern that they may face various physical and mental stressors. Physical unpreparedness for the reproductive process can impact the well-being of the prospective mother, the survival of the fetus, and the quality of the child to be born.<sup>7</sup> The psychological readiness of the mother can lead to stress that may affect the development of the fetus.

The age restrictions for marriage are not specifically detailed in the Islamic religion. However, given the importance of age as a factor in the sustainability and quality of married life, regulations regarding age restrictions for marriage are considered to be in line with the social and cultural conditions of the Indonesian nation. Age restrictions for marriage are one of the efforts to reduce maternal morbidity and mortality rates and maximize the readiness of children before embarking on a new phase of life.

Article 7 of Law Number 1 of 1974 on Marriage permits females to marry at the age of 16, while males are allowed to marry at the age of 19. This regulation still leaves the possibility of child marriages for females, as individuals under the age of 18 are still categorized as children according to the provisions of Article 1 of Law Number 35 of 2014 amending Law Number 23 of 2002 on Child Protection.

The differentiation in the application of the marriage age limit between males and females has the potential to give rise to discrimination in the protection and fulfillment of rights. As a result, Constitutional Court Decision Number 22/PUU-XV/2017 mandated the legislative amendment of the Marriage Law. Consequently, on October 14, 2019, Law Number 16 of 2019 on Amendments to Law, Number 1 of 1974 on Marriage was enacted, altering the provision of marriage permission to be granted only after a person reaches the age of 19, regardless of gender. The age of 19 is considered a point at which an individual is deemed physically and mentally mature enough to enter into marriage. Amendment to Article 7 of the Marriage Law is an effort to reduce birth rates and mitigate the risks of maternal and child mortality, which can occur as a consequence of the physical unpreparedness of mothers for the reproductive process. This regulation is expected to reduce or even eliminate the incidence of child marriages under the age of 19. However, child marriages do not simply disappear. Ironically, one of the provisions within the Marriage Law itself creates a loophole that supports the legality of child marriages, namely the article that mentions the granting of dispensations by the court. Article 7, paragraph 2 of the Amendment to the Marriage Law states that the parents of the prospective spouses can submit a dispensation request to the court in cases of age discrepancies, provided they present compelling reasons supported by sufficient evidence.<sup>8</sup>

The granting of dispensations for marriages of individuals under the age of 19 indicates that there are still efforts to legalize the practice of child marriages. The amendment to Article 7 of the Marriage Law, which was intended to reduce the incidence of child marriages, has, led to an increase in the number of applications for dispensations for marriages of minors.

The Semarang Religious High Court website records a 286.2% increase in marriage dispensation applications at the Central Java Religious Court during November 2019. The rise in child marriages is thought to be a consequence of the revision made to Article 7 of the Marriage Law, which elevated the minimum age for marriage. Semarang Regency is one of the areas affected by the amendment to the Marriage Law. Marriage dispensation

<sup>7</sup> Deal Baby Edyanti dan Rachmah Indawati, "Faktor Pada Ibu Yang Berhubungan Dengan Kejadian Komplikasi Kebidanan Angka Kematian Ibu Di Kota Malang Faktor Pada Ibu Yang Berhubungan Dengan Reaktif Dengan Analisis Data Sekunder . Bersalin Di Wilayah Kerja Puskesmas Arjowinangun Kota Malang Pada Bulan," *Jurnal Biometrika Dan Kependudukan* 3 No.1 (2014): 1-7.

<sup>8</sup> UU No 16, "UU No 16 Tahun 2019," *Undang-Undang Republik Indonesia No 16 Tahun 2019 Tentang Perubahan Undang-Undang No 1 Tahun 1974 Tentang Perkawinan*, no. 006265 (2019): 2-6, <https://peraturan.bpk.go.id/Home/Details/122740/uu-no-16-tahun-2019>.

applications at the Ambarawa Religious Court in Semarang Regency also increased during November 2019, with a total of 26 applications, averaging one case per day. This increase was even accompanied by a surge in divorce applications at the Ambarawa Religious Court in Semarang Regency, which may be one of the consequences of the high incidence of child marriages.<sup>9</sup>

The surge in requests for marriage dispensations is undeniably correlated with a rise in the prevalence of child marriages that persist. This fact underscores the ongoing need for more attention from both society and the government to address the issue of child marriages. There is a pressing need for a more in-depth study of the Marriage Law regulations to understand the impact of the enactment of Law Number 16 of 2019, amending Law Number 1 of 1974 on Marriage, on applications for marriage dispensation and child marriages.

The research problem that the author aims to investigate in this study is related to the number of marriage dispensation applications at the Ambarawa Religious Court after the enactment of the Amendment to Article 7 of the Marriage Law in Semarang Regency. This figure will serve as the reference point for the author in examining the impact of the enactment of Law Number 16 of 2019, amending Law Number 1 of 1974 on Marriage, on the number of marriage dispensation applications and child marriages in Semarang Regency.

Research related to child marriages has been conducted, with several studies addressing the issue of child marriages. Firstly, a study authored by Ananda Yuliana Putri dan Sutrisno titled “Efektivitas Pemberian Dispensasi Kawin dalam Menekan Angka Pernikahan di bawah Umur selama Masa Pandemi Covid-19 di Pengadilan Agama Magetan” published by Sultan Ageng Tirtayasa University, Serang-Banten. Research that delves into the factors influencing judges' decisions when granting marriage dispensations indicates that these dispensations are perceived as having limited effectiveness in curbing the upward trend of underage marriages.<sup>10</sup> Secondly, research by Ahmad Muqaffi, etc. titled “Menilik Problematika Dispensasi Nikah Dalam Upaya Pencegahan Pernikahan Anak Pasca Revisi UU Perkawinan” published by Antasari State Islamic University, Banjarmasin. The research results reveal that a significant concern regarding marriage dispensations is that the vast majority of these applications are approved by judges in religious court proceedings.<sup>11</sup> Thirdly, research by Itok Dwi Kurniawan titled “Dampak Dispensasi Perkawinan Terhadap Fenomena Perkawinan Anak di Indonesia” published in the Journal of Legal Research, Batik Islamic University of Surakarta. The findings in this research state that marriage dispensations contribute to the increase in child marriages in Indonesia.<sup>12</sup> Fourthly, research by Titing Sugiarti dan Kunthi Tridewiyanti titled “Implikasi dan Implementasi Pencegahan Perkawinan Anak” was published in the Legal Reasoning Journal. The study found that the Government has made efforts to reduce child marriages by enacting Law Number 16 of 2019 and Supreme Court Regulation Number 5 of 2019, which provide for dispensations. However, despite these measures, there are still cases of child marriages, particularly during the COVID-19 pandemic. Based on the data obtained, child marriages have increased due to various factors, including social, religious, economic, cultural, and the informal

<sup>9</sup> S Bowo Pribadi, “Batas Usia Picu Lonjakan Dispensasi Nikah Di Semarang,” [republika.co.id](https://nasional.republika.co.id/berita/qipecc3366/batas-usia-picu-lonjakan-dispensasi-nikah-di-semarang), 2019, <https://nasional.republika.co.id/berita/qipecc3366/batas-usia-picu-lonjakan-dispensasi-nikah-di-semarang>.

<sup>10</sup> Ananda Yuliana Putri and Sutrisno Sutrisno, “Efektivitas Pemberian Dispensasi Kawin Dalam Menekan Angka Pernikahan Di Bawah Umur Selama Masa Pandemi COVID- 19 Di Pengadilan Agama Magetan,” *Yustisia Tirtayasa: Jurnal Tugas Akhir* 2, no. 1 (2022): 84, <https://doi.org/10.51825/yta.v2i1.13932>.

<sup>11</sup> Ahmad Muqaffi, Rusdiyah Rusdiyah, and Diana Rahmi, “Menilik Problematika Dispensasi Nikah Dalam Upaya Pencegahan Pernikahan Anak Pasca Revisi UU Perkawinan,” *Journal of Islamic and Law Studies* 5, no. 3 (2022): 361–377, <https://doi.org/10.18592/jils.v5i3.5914>.

<sup>12</sup> Itok Dwi Kurniawan dkk, “Dampak Dispensasi Perkawinan Terhadap Fenomena Perkawinan Anak Di Indonesia (Studi Kasus Putusan Pengadilan Agama Indramayu Nomor 0196/Pdt.P/2020/PA.Im),” *Jurnal Penelitian Serambi Hukum* 15, no. 02 (2022): 52–61, <https://doi.org/10.59582/sh.v15i02.574>.

implementation of teaching and learning activities.<sup>13</sup> Fifthly, research by Tri Hendra Wahyudi dan Juwita Hayyuning Prastiwi titled “Seksualitas dan Negara: Permasalahan Dispensasi Perkawinan Anak di Indonesia” published in *Aspirasi: Journal of Social Issues*, Indonesian House of Representatives. The research findings reveal that the episteme of the first layer (religion) significantly influences the state's control over sexuality (the episteme of political power). The rationales behind marriage dispensation petitions, which encompass factors such as poverty, limited education, and cultural traditions, are justified by religious interpretations that permit child marriages within the specific community. The government, which should be a shield against child marriages, instead approves the majority of marriage dispensation applications, meaning that the government contributes to the increase in the number of underage marriages.<sup>14</sup>

### Research Methodology

The research methodology utilized in this study is normative juridical. This legal research belongs to the normative category as it scrutinizes the implementation of normative legal provisions that are applicable in society, encompassing codes, laws, or contracts within the community.<sup>15</sup> This research was conducted by collecting data on the number of marriage dispensation requests at the Ambarawa Religious Court in Semarang Regency. The data was gathered through literature review and documentary studies. Subsequently, the collected data was processed and analyzed by relevant theories and legal regulations.

Normative legal research explores diverse legal regulations associated with the research topic by gathering information from existing literature sources.<sup>16</sup> Normative legal research is an inquiry that involves the collection and analysis of secondary data, which may encompass books, legal statutes, court judgments, legal theories, and the viewpoints of renowned legal scholars.<sup>17</sup>

This research is conducted by collecting the following legal materials:

- a. Primary legal materials sourced from legislative regulations, including:
  - 1) Law Number 1 of 1974 on Marriage
  - 2) Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 on Marriage
  - 3) Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection
  - 4) Government Regulation Number 9 of 1975 on the Implementation of Law Number 1 of 1974 on Marriage
  - 5) Supreme Court Regulation Number 5 of 2019 on Guidelines for Granting Marriage Dispensations
- b. Secondary legal materials, including textbooks that contain legal principles and paradigms from scholars, seminar results, papers, and other academic works related to this study, are also essential for providing context and theoretical perspectives.
- c. Tertiary legal materials provide guidance and explanations for the primary and secondary legal materials studied. These materials serve as references and

<sup>13</sup> Titing Sugiarti & Kunthi Tridewiyanti, “Implementasi Dan Impikasi Pencegahan Pernikahan Dini,” *Jurnal Legal Reasoning* 4, no. 1 (2021): 81–95.

<sup>14</sup> Tri Hendra Wahyudi dan Juwita Hayyuning Prastiwi, “Seksualitas Dan Negara: Permasalahan Dispensasi Perkawinan Anak Di Indonesia Sexuality and the State: Dispensation of Child Marriage in Indonesia,” *Jurnal Masalah-Masalah Sosial* | 13, no. 2 (2022): 2614–5863, <https://doi.org/10.46807/aspirasi.v13i2.2988> linkonline: <http://jurnal.dpr.go.id/index.php/aspirasi/index>.

<sup>15</sup> Abdulkadir Muhammad, *Hukum dan Penelitian Hukum* (Bandung: Citra Aditya Bakti, 2004). p.52.

<sup>16</sup> Soerjono & Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: PT Raja Grafindo Persada, 2009). p.13.

<sup>17</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2005). p.35.

interpretations that help clarify the primary and secondary sources used in the research.<sup>18</sup>

This research employs a descriptive-analytical approach, which involves the process of analyzing the collected data and information along with presenting the data systematically to enhance understanding and draw conclusions. The research uses a quantitative data analysis system since the data collected consists of numerical values, which will be presented and analyzed accordingly.<sup>19</sup>

## Results and Discussion

### A depiction of the number of marriage dispensation applications

The number of marriage dispensation applications is a clear indicator of the prevalence of child marriages in Indonesia because marriage dispensations are sought to obtain legal recognition for underage marriages. Therefore, a high number of marriage dispensation applications serves as an indicator of the high incidence of child marriages. Of course, these numbers do not represent the actual count of child marriages, but it can be assumed that the actual practice of child marriages is even higher than the number of marriage dispensation applications in the Religious Court. This is especially likely because many marriages go unregistered in society. This reinforces the possibility that the actual number of child marriages is higher than the number of marriages seeking legal recognition in the Religious Court. The number of marriage dispensation applications at the Ambarawa Religious Court in Semarang Regency before and after the enactment of Law Number 16 of 2019 amending Law Number 1 of 1974 on Marriage can be observed in Table 1 below:

Table 1 : The number of marriage dispensation applications at the Ambarawa Religious Court in Semarang Regency.

Time	Date	Number	The average per month	The average per month
Before the legal marriage age was changed	January 1 to December 31, 2017	98	8,17	7,44
	January 1 to December 31, 2018	84	7	
	January 1 to October 14, 2019	68	7,16	
After the legal marriage age was changed	October 15 to December 31, 2019	50	20	25,07
	January 1 to December 31, 2020	238	19,83	
	January 1 to December 31, 2021	416	34,67	
	January 1 to December 31, 2022	349	29,08	
	January 1 to December 31, 2023	196	21,78	

Source: Information System for Case Search at the Ambarawa Religious Court

The number of marriage dispensation applications following the government's policy to raise the legal marriage age to 19 years at the Ambarawa Religious Court in

<sup>18</sup> Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*. p.82.

<sup>19</sup> Suratman dan H.Philips Dillah, *Metode Penelitian Hukum* (Bandung: Alfabeta, 2014). p.145.



Semarang Regency increased from an average of 7.44 per month to 25.07 per month. This represents an increase of 337%.

### **The Impact of the Government's Policy to Raise the Legal Marriage Age on the Number of Marriage Dispensation Applications and Child Marriages**

The policy change to Article 7 of Law Number 1 of 1974 on Marriage, raising the legal marriage age to 19 years, significantly impacts the number of marriage dispensation applications at the Religious Court. This is because the opportunity for girls to obtain legal recognition for marriages between the ages of 16 to 19 without dispensation no longer exists after the enactment of Law Number 16 of 2019, amending Law Number 1 of 1974 on Marriage.

The number of marriage dispensation applications at the Religious Court in Semarang Regency has increased. This figure indicates that the government's policy to raise the legal marriage age to 19 years for both males and females has implications for the increase in the number of marriage dispensation applications at the Ambarawa Religious Court in Semarang Regency. Factors underlying marriage dispensation applications include getting pregnant before marriage, religious and cultural factors, economic conditions, and education. The surge in marriage dispensation requests is believed to have been influenced by a variety of factors, including the COVID-19 pandemic. This includes elements like the transition to distance learning, premarital pregnancies, economic circumstances ranging from lower to middle income, traditional customs, socio-cultural factors, religious considerations, and the choices made by potential spouses.<sup>20</sup> Technological advancements that result in easier access to negative social media content and the increased accessibility of the internet, along with risky online behaviors, have also contributed to the occurrence of child marriages.<sup>21</sup>

A study carried out at the Semarang Religious Court reveals that approximately 90% of the rulings on marriage dispensation applications are attributed to cases of premarital pregnancy. Judges consistently approve these applications primarily due to this factor.<sup>22</sup> The statistics show that the court approves 90% of marriage dispensation applications. The increase in the number of marriage dispensation applications also implies an increase in the number of child marriages. The rising number of marriage dispensation applications demonstrates that the policy of raising the legal marriage age has not diminished the enthusiasm of the community to legalize underage marriages. This phenomenon highlights that the policy of raising the marriage age through Law Number 16 of 2019, amending Law Number 1 of 1974 on Marriage, has not been effective in reducing the incidence of child marriages.

Child marriages continue to occur despite the increase in the legal marriage age. This happens because a child below the legal marriage age can still get married if they obtain a dispensation from the local court. The Guidelines for the Implementation of Duties and Administration of Religious Courts explain that marriage dispensation should be requested by parents to the Religious Court within the jurisdiction of their place of residence, and/or where the underage person resides. Dispensation applications are voluntarily submitted by parents and/or underage prospective spouses. The Religious Court

<sup>20</sup> Putri and Sutrisno, "Efektivitas Pemberian Dispensasi Kawin Dalam Menekan Angka Pernikahan di Bawah Umur Selama Masa Pandemi COVID- 19 Di Pengadilan Agama Magetan." p.84.

<sup>21</sup> Titing Sugiarti & Kunthi Tridewiyanti, "Implementasi Dan Impikasi Pencegahan Pernikahan Dini." p.81-95.

<sup>22</sup> Munadhiroh Mudadhiroh, "Kajian Hukum terhadap Permohonan Dispensasi Kawin pada Perempuan di Bawah Umur di Pengadilan Agama Semarang (Studi Kesehatan Reproduksi)," *Jurnal Idea Hukum* 2, no. 1 (2016), <https://doi.org/10.20884/1.jih.2016.2.1.26>.

then hears the statements of both parties, the prospective spouses, before deciding on the marriage dispensation application.<sup>23</sup>

Judges have attributive authority in determining whether to grant or deny marriage dispensation applications. Attributive authority is the authority obtained through direct delegation from legal regulations.<sup>24</sup> Therefore, decisions regarding marriage dispensation applications are entirely dependent on the judge's discretionary policy considerations. Excessively lenient dispensation of marriages can also become a problem. Ideally, each marriage dispensation application should be thoroughly examined before approving. However, in practice, judges may sometimes provide leniency in granting dispensations, which can hinder efforts to reduce the number of child marriages. Field observations show that when one official refuses to grant a marriage dispensation, the same application may be approved by another appointed official. This flexibility indicates a lack of stringent requirements in the implementation of approved marriage dispensations.<sup>25</sup>

The granting of marriage dispensations that are too lenient does not align with the principles of protecting children's basic rights. This approach does not reflect the best interests of the child, considering that child marriage itself has significant impacts on a child's life. Therefore, strict requirements and thorough examinations should be applied as a means of safeguarding children's rights. According to the theories of Wagianti Soetedjo and Melani, children's basic rights include the right to life, the right to grow and develop, the right to participate, and the right to child protection. These basic rights emphasize that children should be protected from emergencies, the application of legal protection, and any matters related to their future. Children have the right to receive protection and make choices about their lives.<sup>26</sup>

Indonesia, being a nation that has officially accepted the United Nations Convention on the Rights of the Child (CRC), carries certain responsibilities that need to be met. These responsibilities encompass ensuring the safety and protection of children from various types of physical and psychological violence, misuse of authority, neglect, mistreatment (exploitation), and sexual abuse. Children's entitlements represent fundamental rights that should be provided and preserved for youngsters, spanning from early childhood to adolescence aged between 12 (twelve) and 18 (eighteen) years.<sup>27</sup>

In response to these issues, one of the follow-ups by the Supreme Court regarding the Marriage Law revision was the issuance of Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Applications, which was enacted on November 20, 2019. This regulation was issued to ensure that judges exercise greater care and consideration when granting marriage dispensation approvals.

The Supreme Court Regulation provides legal guidelines on how to adjudicate marriage dispensation applications for underage children, the provisions of which may not be clearly defined in legal regulations. This regulation is anticipated to provide a more comprehensive understanding of the child's best interests in all matters concerning children, aligning with the principles emphasized in the Convention on the Rights of the Child.<sup>28</sup>

<sup>23</sup> Pokja Perdata Agama Mahkamah Agung RI, "Pedoman Pelaksanaan Tugas Dan Administrasi Peradilan Agama" 53, no. 9 (2010): 61-65.

<sup>24</sup> Erlies Septiana HS, Salim & Nurbani, *Penerapan Teori Hukum Pada Penelitian Disertasi Dan Tesis* (Jakarta: Raja Grafindo, 2018), p.185.

<sup>25</sup> Muqaffi, Rusdiyah, and Rahmi, "Menilik Problematika Dispensasi Nikah Dalam Upaya Pencegahan Pernikahan Anak Pasca Revisi UU Perkawinan." p.361-377

<sup>26</sup> Wagianti Soetedjo dan Melani, *Hukum Pidana Anak* (Bandung: Refika Aditama, 2013). p.140.

<sup>27</sup> Mochamad Fadilah, "Tinjauan Hukum Tentang Perlindungan Hak-Hak Dasar Anak Korban Kekerasan Dihubungkan Undang-Undang Nomor 17 Tahun 2016 Tentang Penetapan Peraturan Pemerintah Pengganti Undang - Undang Nomor 1 Tahun 2016 Tentang Perubahan Kedua Atas Undang -Undang Nomor 23 " (Universitas Komputer Indonesia, 2020), <http://elibrary.unikom.ac.id/id/eprint/4258>.

<sup>28</sup> Mahkamah Agung RI, "Pedoman Mengadili Permohonan Dispensasi Kawin," *Buku Saku 2* (2020). p.47.



Judges need to consider and prioritize the child's best interests when making decisions regarding marriage dispensation. This includes listening to the child's opinions, considering their psychological and physical well-being, assessing their readiness, as well as determining if the child is aware of and consents to the marriage plan. Judges should also identify whether there is any psychological, physical, sexual, or economic coercion affecting the child or the family.<sup>29</sup>

Judges should be more diligent in considering marriage dispensation decisions to ensure that no child's rights are violated. One way to achieve this is by making it mandatory for judges to hear the child's statement before issuing a marriage dispensation decision. As the front line of defense in the government's efforts to prevent child marriages, judges must ensure that these marriages are truly based on the conscious and voluntary will of the child without any coercion from any party. Judges are expected to optimize their role as the right decision-makers in granting marriage dispensations, as it significantly impacts the future of the child.<sup>30</sup>

The optimization of the implementation of Supreme Court Regulation Number 5 of 2019 on the Guidelines for Granting Marriage Dispensation is expected to enhance the quality of case handling and marriage dispensation decisions. The judiciary undoubtedly plays a crucial role in safeguarding and serving as the last line of defense in preventing child marriages. The judiciary must be committed to upholding the best interests of the child, including respecting the child's views, preventing discrimination, and ensuring gender equality, as well as the principle of legal equality when resolving marriage dispensation cases.<sup>31</sup>

Even though legal provisions have been enacted, preventive measures and approaches are still necessary. The first step, of course, is to tighten administrative requirements. In addition, the government should conduct awareness campaigns and education on issues such as premarital sex and unregistered marriages as part of the effort to create a more qualified and successful younger generation for the nation.<sup>32</sup>

## Conclusion

Impacts of the enactment of Law Number 16 of 2019 amending Law Number 1 of 1974 concerning Marriage is the significant increase in the number of marriage dispensation requests in the Ambarawa District Court, Semarang Regency. This increase is substantial, with the average monthly requests rising from 7.44 to 25.07, indicating a 337% increase. The government's policy to raise the legal marriage age to 19 years is considered ineffective in reducing child marriages. Child marriages still occur despite the increase in the legal marriage age, as children under the legal age can still marry if they obtain a dispensation from the local court. Supreme Court Regulation Number 5 of 2019 concerning Guidelines for Adjudicating Marriage Dispensation Requests was established as a legal guideline for the process of adjudicating marriage dispensation requests, which previously lacked clear legal regulations. The implementation of this Supreme Court Regulation should be optimized to ensure that judges have clear procedures and structured steps in adjudicating dispensation of marriage cases, thereby improving the quality of case handling and dispensation rulings. The rulings on dispensation cases must safeguard the rights of children and prioritize the best interests of the child.

<sup>29</sup> 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.

<sup>30</sup> UU No 16, "UU No 16 Tahun 2019."

<sup>31</sup> Mahkamah Agung RI, "Pedoman Mengadili Permohonan Dispensasi Kawin." p.33.

<sup>32</sup> Lisman Lubis, "Dispensasi Kawin Jelang Dua Tahun Pasca Perubahan Undang - Undang Perkawinan," *Law Jurnal* 2, no. 1 (2021): 1-9, <https://doi.org/10.46576/lj.v2i1.1447>.

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