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Legal Policy of Child Marriage In the Covid-19 Pandemic Period

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Abstract: The increase in marriage dispensation applications that occurred during the Covid-19 pandemic also caused the high number of child marriage. Nevertheless, this has been strictly required in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 Concerning Marriage (Marital Law), the minimum age limit for men and women is 19 years, and requirements of irregularities for this age that must meet urgent criteria and sufficient support evidence. This is done, to reduce underage child marriages as a form of enforcing the principle of children's best interests. This paper describes the complexity of underage children's marriage during the Covid-19 pandemic period, as a convenience requirement of marriage dispensation has been set rigid in the Marriage act. The method used in this paper is normative by using several approaches: the statute, conceptual and case approach. The results of the government's policy during the Covid-19 pandemic period which brought massive changes to the community's order had an impact on the collapse of the family economy. This resulted in the mass number of the child's marriage in the pandemic period. The research findings of this study deliver to children's rights violations through child marriages. The risk of decreasing individual economies, maternal and infant health, and household violence become unavoidable considering the psychological conditions of children who are immature in marriage.

Keywords: Dispensation, marriage, child interest and state policy.

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Abstrak: *Peningkatan permohonan dispensasi kawin yang terjadi pada masa pandemi Covid-19 juga mendukung tingginya perkawinan anak dibawah umur. Kendati demikian, hal tersebut telah dipersyaratkan secara ketat dalam Undang-Undang Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan (Undang-Undang Perkawinan) yaitu batas usia minimal perkawinan bagi laki-laki dan perempuan yaitu 19 tahun serta persyaratan alasan penyimpangan atas usia tersebut yang harus memenuhi kriteria mendesak dan bukti-bukti pendukung yang cukup. Hal demikian dilakukan, demi mengurangi perkawinan anak di bawah umur sebagaimana bentuk dari penegakkan prinsip kepentingan terbaik anak. Tulisan ini menguraikan kompleksitas perkawinan anak di bawah umur pada masa pandemi Covid-19, sebagaimana syarat dispensasi kawin telah ditetapkan secara rigid dalam Undang-Undang Perkawinan. Metode yang digunakan dalam tulisan ini ialah normatif dengan menggunakan beberapa pendekatan yaitu pendekatan peraturan perundang-undangan, konseptual dan kasus. Hasil Kebijakan pemerintah pada masa pandemi Covid-19 yang membawa perubahan secara massif pada tatanan masyarakat berdampak kepada runtuhnya perekonomian keluarga. Hal ini berakibat kepada massalnya perkawinan anak di masa pandemi. Temuan penelitian penelitian ini mengantarkan kepada pelanggaran hak anak melalui perkawinan anak. Resiko penurunan perekonomian individu, kesehatan ibu dan bayi, serta kekerasan rumah tangga menjadi hal yang tidak dapat dihindari mengingat kondisi psikologis anak yang belum matang dalam perkawinan.*

Kata Kunci: *Dispensasi, perkawinan, kepentingan anak dan kebijakan negara.*

Introduction

One of the causes of frequent marriage of underage children is sociological because being pregnant outside of marriage, has made a relationship like a husband and a wife, children are arrested by the community with a partner who is not his mahram and dropouts child.¹ As the resolution of the Syariah Court Suka Makmur Number 250/Pdt.P/2019/MS.SKM which is in Nagan Raya Regency regarding the request for marriage dispensation, it is proven that in the decision of the boys and women who are arrested by the community because they are the reasons request for marriage dispensation. In addition, according to a Tapaktuan Sharia Court Judge, one of the reasons from the implementation of a marriage dispensation request for a high school dropout

¹Wisono Mulyadi, "Akibat Hukum Penetapan Dispensasi Perkawinan Anak Di Bawah Umur (Studi Kasus di Pengadilan Agama Pacitan)", *Privat Law* 5, No. 2, (2017), p. 71.

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and did not continue the education process, so there was no other purpose instead of marriage to reduce prohibited acts due to the association process.²

In addition, the data submitted by the Supreme Court and the Religious Justice Agency in 2018 showed that there were 13,880 cases of marriage dispensation requests. In 2019, this number increased significantly to 24,864 cases and was the fourth most commonly registered case of the Religious Court.³ This proves that the high request for marriage dispensation has degraded the interests of children, one of which prevents marriage in the age of the child as mandated by Article 26 paragraph (1) letter c Law Number 35 of 2014 concerning Amendments to Law Number 23 in 2002 concerning child protection.

To reduce the number of marriage dispensation requests, the Constitutional Court through its decision on decision number 22/PUU-XV/2017 followed by the House of Representatives and the President, has revised Law Number 1 of 1974. The revision was poured in the form of law Number 16 of 2019 was limited in terms of addressing the decision of the Constitutional Court, which revising the previous age limit of marriage, male at the age limit of 19 years and women at the age limit of 16 years, becoming equal to the age limit of both men and women at 19 years. The revision also confirms that in the application of marriage dispensation, it must be included urgent reasons and accompanied by sufficient supporting evidence.⁴

But in practice, the revision which aims to reduce the number of marriage dispensation requests in the Covid-19 pandemic period is continues to increase. The data submitted again by the Directorate General of Religious Justice Agency showed that there were 34,000 requests for marriage dispensation from January 2020 to June 2020. Based on this number, 97% of the

²Mansari, Muzakir, Ahmad Fikri Oslami, and Zahrul Fatahillah, “Konkretisasi Alasan Mendesak dan Bukti Cukup Dalam Memberikan Dispensasi Perkawinan Bagi Anak Oleh Hakim”, (Ms-Blangpidie.go.id). [accessed on July 1, 2021]. Muhammad Iqbal and Rabiah, Penafsiran Dispensasi Perkawinan bagi Anak di Bawah Umur (Analisis Beberapa Putusan Mahkamah Syar’iyah Aceh), *El-Usrah: Jurnal Hukum Keluarga* 3, No. 1 (2020), p. 101-114. Analiansyah and Ali Abubakar, “Children Handling Procedure in Islamic Criminal Offense in Aceh,” *Ahkam: Jurnal Ilmu Syariah* 21, No. 1 (2021), p. 111-140.

³Mustofa and Ahmad Taujan Dzul Farhan, Dispensasi Kawin dan Kepentingan Terbaik Bagi Anak, Direktorat Jenderal Badan Peradilan Agama (mahkamahagung.go.id), [accessed on July 1, 2021].

⁴ See Article 7 of Law No. 16 of 2019 on the Amendment of Act No. 1 of 1974 About Marriage.

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application was granted and 60% who submitted was consisting of children under 18 years.⁵

Thus has been a problem, despite being strictly established regarding the terms of marital age irregularities or the request for marriage dispensation as stipulated in the Marital Law, the significance of the increase in the request for marriage dispensation continues during the Covid-19 pandemic period. Therefore, based on this article up to two questions. First, how is the conception of Marital Law in Indonesia? Second, what becomes an obstacle to the emphasis of a marriage dispensation request in the Pandemic Covid-19 period, even though it has been tightened for the request for marriage dispensation?.

The research method used in this study is normative legal research. This method combines and explains structured rules that apply in the context of certain legal classifications, describes the relationship between regulations and problems and creates a useful conception in the future.⁶ The approach used in this study is the approach of laws and regulations (statute approach) and the laws and regulations used are primary law. Another approach used is a conceptual approach and case approach. Legislation as primary law such as the 1945 Constitution, Constitutional Court Decision Number 27/PUU-XV/2017, Law Number 16 of 2006 concerning Amendments to Law Number 1 of 1974 concerning Marriage, Law Number 35 of 2014 amendments to Law Number 23 the Year 2002 concerning Child Protection.

Child Marriage Phenomenon in Indonesia

Child marriage has become a social problem that has not been resolved. In 2018, 1 in 100 boys and 1 in 9 girls in Indonesia had conducted marriages, for this, United Nations Children's Fund (UNICEF) put Indonesia as one of the 10 countries with the highest child marriage level in the world. The condition of the violation of social rights, education, and health of children for the presence of privacy is a serious problem for the nation and the state because the marriage association indicates the end of childhood for someone who should be the most important period of physical, emotional and social development before entering adulthood.⁷ According to the principle of *mutatis mutandis*, marriage forces children to become adults before they mature psychologically.

Cultural implications in the middle of the community cannot be avoided in child marriage phenomena. Culturally, marriage is considered a family

⁵See at *Dispensasi Jadi Celah Perkawinan Anak, Aturan Terbaru Disiapkan* (mediaindonesia.com), [accessed on July 1, 2021].

⁶Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Prenadamedia Group, 2016, p. 32

⁷Plan International, *Because I am a Girl: The state of the world's girls 2012: Learning for Life*, London: Plan International, 2012, p. 22.

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prerogative, so that children are rarely involved in the determination of marriage, and done when the children have not been able to determine their own will. Physical readiness to give birth or to have sexual intercourse which experienced by children who want to marry is not considered by relatives, this is strengthened by public confidence in more early marriage, which will improve the financial ability and honor for the bride and family. But if the child is late or not married, prosperity and family fortune will also be late or even disappear.⁸

Furthermore, the root of patriarchy culture places women as a second-grade society who has no choice of life and herself.⁹ This is illustrated through the dominance of women as victims of child marriages in Indonesia. Child marriage numbers of 10% or more occur in 106 districts, the highest marriage area of girls occurred in West Sulawesi with the highest prevalence, and West Java with the highest absolute rate of 273,300 marriage.¹⁰ Girls tend to be mated by families after their first menstruation because it is believed to be able to maximize the reproductive potential of the girl.¹¹ In addition to heredity, child marriage is also based on families that avoid sexual relations and pregnancy outside marriage.

Research and advocacy released by the Women's Health Foundation (WHF) states that the reproductive problems of Indonesian women including child marriage besides being based on social construction are also the impact of religious misinterpretation. The ideology of Pancasila accommodates the divinity values in Indonesia placing religion as one source of social construction amid people's lives. The belief is that children's marriage is permitted in religious teachings, especially Islam as a majority religion because there is no aging limit set explicitly. A person's '*akil baligh*' (puberty) becomes a measure, so people believe that as long as a child have reached '*akil baligh*' (puberty) they can carry out marriage without consideration of age.

In addition to cultural and religious factors, the rampant behavior of sexual relations outside the marriage that results in pregnancy is also the cause of children's marriage phenomena. Deviations of the behavior of sexual relations

⁸ Kasjim Salenda, "Abuse of Islamic Law and Child Marriage in South-Sulawesi Indonesia", *Al-Jamiah: Journal of Islamic Studies* 54, No. 1, (2016), p. 96-97.

⁹ Emy Susanti, "Unequal Gender Relations in the Practices of Girl Marriage In Poor Families at East Java Province", *Culture and Politics* 31, No. 4, (2018), p. 446.

¹⁰ Pusat Kajian dan Advokasi Perlindungan dan Kualitas Hidup Anak, "Child Marriage in Indonesia" "Child Marriage in Indonesia", downloaded from <https://www.unicef.org/indonesia/media/2816/file/child-marriage-factsheet-2020.pdf> [accessed at 1 July 2021].

¹¹ Rural Women's Social Education Centre and Asian-Pacific Resource and Research Centre for Women, "*National Report: The Influence of Conservative Religious Interpretations on Child Marriage in West Java and East Java*", Jakarta: Woman Health Foundation, 2017, p. 2.

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outside of marriage are caused by a lack of knowledge related to reproductive health, uncontrolled association, and the ease of accessing negative things makes the pregnancy unwanted to be one of the biggest factors of child marriage.¹² Seven of the eight women interviewed in the research of the Independent Youth Alliance (ARI), said that unwanted pregnancy (KTD) is the reason they were carrying out marriage at the age of the child.

This was affirmed by the findings of the Department of Women's Empowerment of Child Protection and Population Control (DP3AP2) which stated that 80% of marriage dispensation that occurred in the Special Province of Yogyakarta was caused by a pregnancy outside of marriage or KTD, the panel of judges tended to be difficult to reject the reason for pregnancy dispensation. Pregnancy caused by these behaviors which costs the family honor and to rescue the future of children in the content of social stigma to the point of pressing the child's marriage.¹³ A study in Bangka Belitung found several programs that have been applied to prevent and deal with child marriage problems through the Reproductive Health Center for Adolescent Health (PIK KRR) and the Youth Care Health Program (PKPR).¹⁴

On the other hand, national socio-economic survey statistics show a higher level of education for people who are married over 18 years. The average length of school both for women and men aged 20-24 years who held marriage after the age of 18 was higher than those who held marriage before the age of 18. Although this finding does not immediately state that education has a causality relationship with child marriage, it must be underlined that education or school participation can be one way to prevent children's marriage phenomena. Skills education and training can reduce the possibility of child marriage by 1.3 percent (secondary school) and 0.46 percent (training institutions).¹⁵

¹² Eny Kusmiran, *Kesehatan Reproduksi Remaja dan Wanita*, Jakarta: Salemba Medika, 2014, p. 36.

¹³ Dinas Pemberdayaan Perempuan Perlindungan Anak dan Pengendalian Penduduk Daerah Istimewa Yogyakarta, "Pendewasaan Usia Perkawinan atau Pencegahan Perkawinan Anak melalui Peraturan Desa", downloaded from: <https://dp3ap2.jogjaprovo.go.id/berita/detail/579-pendewasaan-usia-perkawinan-pencegahan-perkawinan-anak-melalui-peraturan-desa> [accessed on July 1, 2021].

¹⁴ Gaib Hakiki, et. al, *Pencegahan Perkawinan Anak: Percepatan yang Tidak Bisa Ditunda*, Jakarta: Badan Pusat Statistik, Badan Perencanaan Pembangunan Nasional, UNICEF, dan Pusat Kajian dan Advokasi Perlindungan dan Kualitas Hidup Anak Universitas Indonesia, 2020, p. 44.

¹⁵ Kumala Dewi L. P. R and Dartanto T., "Natural Disasters and Girls Vulnerability: Child Marriage Is a Coping Strategy of Economic Shocks In Indonesia?", *Vulnerable Children and Youth Studies* 14, No. 1, (2019), p. 24-35.

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The family economy on the other hand is the determinant of the occurrence of child marriage phenomena. Some of the views stated that the child as a burden on the family economy, financial difficulties, and economic downturn tend to make poor families make children's marriage a way out to cut household costs and escape the of poverty condition.¹⁶

Government Policy Related to Child Marriages

Marriage is a basic human need that gave birth to family bonds is one of the elements in people's lives regulated by positive law. The 1945 Constitution of the Republic of Indonesia as the highest legal basis for the Indonesian nation places article 28b that sounds "Everyone has the right to form a family and continue the descendants through legitimate marriage" as a constitutional basis of marriage.

Before the enactment of laws governing related marriages, the provisions of the procedures for the Indonesian Community Marriage refer to the rules of religion and their respective cultures.¹⁷ The difference in arrangements causes legal uncertainty on legitimate marital procedures. The legal basis unification is then carried out by the government with the results of the Law 1 number in 1974 as a basis for universal marital law.

Regulation of the Limitation set in Article 7 paragraph (1) Law Number 1 of 1974 states that "marriage is only permitted if the man reaches the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years" permission from parents. Legalization of the marriage of a daughter in the content of the law is determined because of the public's view of the age of maturity and the readiness of women's marriage earlier than men.

The policy is contrary to Law Number 35 of 2004 concerning the protection of children who declare the child as someone who is not aged 18 (eighteen) years, including children who are still in the womb. Cultural discrimination for the age limit of girls seemed to negate the guarantee of protection for the right of the child to grow, develop, and participate optimally following human dignity.¹⁸

¹⁶ Irwan Hidayana M., et al., "Factors Influencing Child Marriage, Teenage Pregnancy and Female Genital Mutilation/Circumcision in West Lombok Districts and Sukabumi, Indonesia", *Yes I Do Baseline Report*, (2016), p. 36.

¹⁷Adriaan Bedner and Stijn Van Huis, "Plurality of Marriage Law and Marriage Registration for Muslims in Indonesia: A plea for pragmatism", *Utrecht Law Review* 6, Issue 2 (2010), p. 177.

¹⁸Jordy Herry Christian and Kirana Edenela, "Amolation of Women's Rights Due to Discrimination of Marital Age Limits", *Lex Scientia Law Review* 3, No. 1, (2019), p. 9.

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Rejection of age discrimination for sex differences in the provisions of Law Number 1 of 1974 turbulent in various layers of society. Various efforts were made to equalize the marriage age of men and women to prevent children's marriage. Statutory testing efforts at the Constitutional Court are carried out from case number 30-74/PUU-XII/2014. But in the verdict of the Constitutional Court refused to equalize the age limit of marriage with cultural and religious considerations related to marriage in Indonesia.¹⁹

Brotherhood in fighting for equality is done through statutory testing in case Number 22/PUU-XV/2017. In this consideration, the Court stated that the age difference in the marriage law was not based on clear scientific reasons, and only based on the reasons of gender alone. The myth that women grow up faster growing in the middle of the community cannot be the basis for the difference between marital age limits.²⁰

Another consideration of the Constitutional Court in its decision is related to the protection of children's rights, the prospective husband and wife must have been psychologically and emotionally mature to be able to carry out marriage to apply marriage goals properly without ending in divorce and getting good and healthy offspring. Thus the marriage between minors must be prevented. The acceptance of statutory testing by the Constitutional Court became the basis of the source of Law Number 16 of 2019 Amendments to Law Number 1 of 1974 concerning Marriage which equalized a marital age limit to 19 years.

The revision of the marital law was initiated to be a means of minimizing child marriage that hampered the increase in the human resource index as one of the indicators of the Sustainable Development Goals (SDGs) which had become a global commitment. Medium-Term Development Plan (RPJMN) in 2020-2024 set a reduction target of 8.74% of child marriage in 2024.²¹ Based on the government carried out various steps of education, improving family parenting skills, counseling for troubled families, and optimizing community forums for parents who have children in adolescence.

But the implications for increasing marital age limits and educational facilities do not directly stop the child's marriage tap. Article 7 Paragraph (2)

¹⁹ Decision of the Constitutional Court Number 30-74/PUU-XII/2014. Amrullah and Ahmad Rizki, Tinjauan Maqashid Syariah Terhadap Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017 tentang Permohonan Batas Usia Kawin, *El-Usrah: Jurnal Hukum Keluarga* 3, No. 1 (2020), p. 115-124.

²⁰ Decision of the Constitutional Court Number 22/PUU-XV/2017.

²¹ Badan Perencanaan Pembangunan Nasional, "Narasi RPJMN IV 2020-2024", Jakarta: Bappenas, 2020, p. 111.

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Law Number 1 of 1974 Junction Law Number 16 of 2019 states that: "In terms of irregularities in paragraph (1) this article can request a dispensation to the court or other officials requested by the two parents of the male or female party"

A resource of marriage dispensation in marital laws is the basis of other legalities for child marriages in Indonesia. The exception of the age limit through the mechanism of the court to obtain permission to marital dispensation by the Religious Court was carried out, the average age of girls in submitting marriage dispensation was 14.5 years and the average age of boys was 16.5 years. Analysis of the Australian Decision of Indonesia Partnership for Justice (AIPJ2) revealed that 35% of the client's dispensation request that was studied was the case submitted by parents on behalf of their daughter and 65% on behalf of their son.²² However, there are no definite criteria in determining the granting process of marriage dispensation regulated in the Act.

The existence of the Supreme Court Regulation Number 5 of 2019 concerning Guidelines to Marriage Dispensation Application as a legal basic of the Religious Court in handling the marriage dispensation case has the purpose of ensuring the implementation of marriage dispensation that protects the rights of children, identify whether there is or absence of coercion behind the request for children's marriage dispensation, realize The standardization of the process and increasing the responsibilities of parents to prevent children's marriage.²³

PERMA Number 5 of 2019 also regulates several things such as Judges must advise first to the parties regarding the risk of child marriage, such as the cessation of education, the risk of disruption of reproductive health, entangled in the circumstance of poverty, has not stabilized the emotional condition of children, and the potential of domestic violence ladder. In the trial process, children who will carry out marriage must also be presented, if this is not fulfilled, the trial will be postponed. Because before, 45% of marriage dispensation decisions did not indicate the child's perspective related to the dispensation requested. By ensuring these important things, the judge can decide fairly by taking into account the perspective of the child.

Marriage of Underage Children in the Covid-19 Pandemic Period

The high number of requests for marriage dispensation requests was revealed by the Directorate General of the Supreme Court Religious Justice Agency, namely 34,000 requests for marriage dispensation throughout January 2020 to June 2020. Based on this number, 97% of requests are granted and 60%

²² Siti Aisyah Kara, et al., *Panduan Penelitian dan Pemantauan Perkawinan Usia Anak*, Makassar: Liblitera Institute, 2019, p. 12

²³ Allika Fadia Tasya and Atik Winanti, "Dispensasi Perkawinan Anak Setelah Adanya PERMA Nomor 5 Tahun 2019", *Wajah Hukum* 5, No. 1, (2021), p. 244.

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who submit it is consisting of children under the age of 18 years.²⁴ An outbreak of underage children's marriage in the Pandemic Covid-19 period also has diverse forms and is seen in the Postita Petitioner in the request for marriage dispensation in the Religious Courts/Islamic Courts.

The author takes four decisions for determining the request for marriage dispensation that will be used as an example of a case regarding the rise of early childhood marriage in the Covid-19 pandemic period accompanied by the reason for the request and the consideration of the judge in deciding the marriage dispensation application. The decision of the marriage dispensation request comes from the Sharia Takengon Court, Central Aceh District; Probolinggo Religious Court, Probolinggo City; Sumber Religious Court, Cirebon Regency; Religious courts.

At the Sharia Takengon Court, Central Aceh District, the request for determination of marriage dispensation was stated at the verdict number 276/Pdt.P/2020/Ms.Tkn, the applicant applied for a marriage dispensation on November 10, 2020. In the position, the Petitioner revealed that the daughter would Request marriage dispensation, 17 years old. The request for marriage dispensation was carried out because the daughter who would become a candidate for the child of the Petitioner, had made a prohibited relationship and the prospective wife of the Petitioner had become pregnant and entered a 7-week pregnancy.²⁵ In the decision, it was seen that the appeal of a marriage dispensation was carried out because of the reason for the prospective wife of the Petitioner's child, the dispensation of the marriage dispensation turned out to have had sexual relations outside of marriage, causing a pregnancy, so that the arrest of the court in the request for marriage dispensation was one of the urgent reasons in conducting underage marriage that has been determined by the Marital Law.

In the decision to determine the marriage dispensation in the Probolinggo Religious Court, the City of Probolinggo, the Petitioner applied for a marriage dispensation on August 4, 2020. On the verdict number 110/Pdt.P/2020/PA/Prob was mentioned in the position, the Petitioner revealed the child who was married to both of them 18 years and under the specified conditions, 19 years. The urgent reason for the Petitioner did determine the marriage dispensation had been engaged to approximately 7 months ago and has been pregnant with approximately 7 months.²⁶

²⁴ See at Dispensasi Jadi Celah Perkawinan Anak, Aturan Terbaru Disiapkan (mediaindonesia.com), [accessed on July 1, 2021].

²⁵ See Verdict No. 276 / Pdt.P/2020/MS.Tkn, p. 2.

²⁶ See Verdict No. 110 / Pdt.P/2020/PA/Prob, p. 2-3.

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In the decision of the determination, the judge said that in his consideration, one of which was a marriage dispensation request due to an urgent reason, namely because of the Petitioners' son of containing or pregnant with approximately 7 months of pregnancy. The judge also considers the best interests of children who prevent violations of religious norms and continuous decency for the Petitioners' children if the marriage dispensation request is not immediately ratified and is a category of urgent conditions.²⁷

Another consideration used by the judge in deciding the a quo case also uses the other juridical legal basis, namely the Regulation of the Supreme Court Number 5 of 2019 concerning the Guidelines to Try to Application for Marriage Dispensation. In consideration, judges use the Juridical basis of Article 17, namely consideration of judges in the diploma dispensation must consider the best interests for children within the framework of legislation and laws are not written in the form of legal values, local wisdom, and a sense of living in the community.²⁸

Therefore, in the decision, it can be concluded based on the Posita (subject matter) and the judge's consideration in deciding the marriage dispensation application is the fulfillment of urgent reasons that prevent violations of religious norms or decency in the best interests of children.

Furthermore, in the decision number 85/Pdt.P/2021/PA.SBR, a requestor decision to determine the Sumber Religious Court, Cirebon Regency. The request was submitted on February 5, 2021. In his application, the applicants filed a marriage dispensation with the Petitioners' children namely girls with a 17-year-old and have not met the age requirements determined by the Marital Law. In the position, the applicants submitted their requests for the reasons that the Petitioners had established relations for 1 year, so that according to the Applicant's assumption if not immediately to take a marriage will cause a lot of sustainable sin.²⁹ In the decision, the judge affirms the Position of the Petitioners that if it is not proposed by the marriage, it will cause resourcefulness and sustainable sin as disclosed in his consideration.³⁰

The author believes that in this case, the judge does not consider the insufficient age based on the best interests of the child, although the prospective husband has fulfilled the age requirements and has been able to provide a living. The absence of consideration of the judge on an urgent reason as the Marital Law was not considered in the decision.

²⁷ See Verdict No. 110/Pdt.P/2020/PA/Prob, p. 26.

²⁸ See Verdict No. 110/Pdt.P/2020/PA/Prob, p. 26-27.

²⁹ See Verdict No. 85/Pdt.P/2021/PA.Sbr, p. 2-3.

³⁰ See Verdict No. 85/Pdt.P/2021/PA.Sbr, p. 10.

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Furthermore, the decision of the Marriage dispensation was issued by the Sumber Religious Court, Cirebon Regency submitted by the Petitioners on November 27, 2020. Decision number 611/Pdt.P/2020/PA.SBR submitted by the applicants with one of the children (women) 17 years old and not fulfilling the requirements as determined by the Marital Law, age of 19 years. In the posts of the verdict, the applicant was postulated that the two candidates were one of them who were under the age of 19 years, had established a relationship for 1 year and had been engaged and stated that if it was not immediately held, it would cause damage and this was an urgent matter.³¹

The view of the judge in the verdict, affirms the argument or Posita (subject matter) from the applicant who assumed that if it was not married with the mechanism of the request for determination of marriage dispensation by the Religious Court, there will be a deed or will continue to commit actions that are banned by religion, so the judge decides to grant a request for marriage dispensation submitted by the applicant.³²

Of the four decisions that the author took on the request for marriage dispensation submitted during the Covid-19 pandemic period, the applicant saw a variety of records recorded, one of which was an early age marriage caused by sexual relations outside of marriage, causing pregnancy so that it was categorized as an urgent reason and unreliable reasons are only in the form of concerns to violate the norms of morality and religious norms.

Weaknesses and Impact of Marriage Dispensation in the Covid-19 Pandemic Period

1. Clamping the Occurrence of Marriage Dispensation During the Covid-19 Outbreak Period

The disadvantage of the marriage dispensation during the Covid-19 pandemic period has a variety of reasons both sociologically and economically. However, these weaknesses can also be reviewed in terms of juridical and the power of justice as the last spearhead in giving a ruling for the valuation of the marriage dispensation proposed by the applicants to marry their children who are underage or early age.

This was seen from the juridical aspects, namely Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. In Article 7 of the Marriage, Law has been determined: the marriage requires that both for men and women are 19 years and the requirements of the deviation

³¹ See Verdict No. 611/Pdt.P/2020/PA.Sbr, p. 3.

³² See Verdict No. 611/Pdt.P/2020/PA.Sbr, p. 11.

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(marriage dispensation) of the age must be accompanied by urgent reasons and sufficient supporting evidence.³³ This provision is one of the improvement efforts as the mandate of the decision of the Constitutional Court Number 22/PUU-XV/2017 which mandates the DPR to immediately revise the limits of marriage age, especially for women.³⁴

Although it is a refinement, because in the previous Marital Law, women have a marital age limit of 16 years and 19-year-old men and not the excessive reason for urging and sufficient supporting evidence, in practice, the Marital Law still has not been able to reduce the number of dispensation with reasons that are truly urgent because of the lack of understanding of the judge in considering marriage dispensation.

Explanation of Article 7 Paragraph (2) of Marital Law is stated that irregularities to the age of marriage can be made if the urgent reason and the situation cannot be resolved if the marriage is not implemented with a dispensation mechanism. In addition, sufficient supporting evidence in the explanation of Article 7 paragraph (2) of the Marital Law also mentioned that it must be accompanied by information from health workers.

In line with this, Article 7 paragraph (3) of the Marital Law said that the provision of marriage dispensation by the court must listen to the opinion of the two candidates. Based on the explanation of Article 7 paragraph (3) of the Marital Law, the provision of marriage dispensation by the court must be based on the spirit of child marriage prevention, moral, religious, customary, and cultural considerations, psychological, health, and impacts.

At the Source Court, Cirebon District on Decision Number 85/Pdt.P/2021/PA.SBR which tried the request for marriage dispensation for children, in the Petitioner's Petitioner did not include enough evidence of supporters, such as letters from health workers who supported the claims of the Petitioners The marriage is urgent.

On the *a quo* verdict, the applicant only postulated that the age of the Petitioner (candidate wife) who was 17 years old, was married because there was a reason that according to the assumption of the Petitioner was urging that the Petitioner had established a relationship of love for 1 (one) year, so that according to the applicant if he did not hold marriage will lead to many damages and sustainable sin or can violate religious values.³⁵

In the same court regarding marriage dispensation namely verdict number 611/Pdt.P/2020/PA.SBR, Cirebon Regency, the applicant who will

³³ See Article 7 paragraph (1) and (2) of Law Number 16 Year 2019 on the Amendment of Act No. 1 of 1974 About Marriage.

³⁴ See Verdict Number 22/PUU-XV/2017.

³⁵ See Decision No. 85/Pdt.P/2021/PA.Sbr, p. 3.

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marry his 17-year-old child (women), postulates in the position that the Petitioner's son has established love for 1 year and has been engaged. The reason for urging the wedding is held because if it is not immediately then it will cause disadvantages and sustainable sin.³⁶

In practice in the two decisions, the judge did not question the absence of formal evidence in the form of a health worker certificate stating that the Marital Was urgent as confirmed in the explanation of Article 7 paragraph (2) of Marital Law. In addition, in considering marriage dispensation, the judge also cannot be glued to religious values alone, but there is another value in the form of psychological aspects, health aspects, and the impact of marriage dispensation which is an obligation to take into considerations.

In harmony with this, the Constitutional Court in decision number 74/PUU-XII/2014 by listening to witnesses and experts stated that children's marriage is vulnerable and potentially causes various problems from physical health and reproductive health, mentality, psychological and social obstacles that lead to divorce and The neglect of children produced from the marriage.³⁷

Marriage dispensation carried out mainly with prospective women who have not reached a predetermined age also has an impact on significant distinction so it causes discrimination. The Constitutional Court through Decision Number 22/PUU-XV/2017 revealed that currently the 1945 Constitution has included a guarantee of children in the form of children's rights and poured rigid in Law Number 35 of 2014 concerning Amendment to Law Number 23 the Year 2002 concerning child protection (Child Protection Law), which is a maximum age of a child is 18 years.³⁸

The age limit set by the Child Protection Law indirectly has provided implications that children must achieve a predetermined age limit to be able to carry out or capable of law, including carrying out the marriage process that must have a legally capable dimension. Therefore this axiom is criminalized in Article 26 paragraph (1) letter c of the Marital Law, parents are obliged and responsible for preventing marriage at the age of the child.

The Supreme Court Regulation No. 5 of 2019 concerning Guidelines for prosecuting the appropriate marriage dispensation has also regulated the things as stated by verbal expressions on various considerations of the Constitutional Court's decision. In Article 17 of the *a quo*, PERMA (*Peraturan Mahkamah Agung/Supreme Court Rules*), not only religious values or local wisdom are just the basics of being allowed to be married dispensation, but there are protection

³⁶ See Decision No. 611/Pdt.P/2020/PA.Sbr, p. 3

³⁷ See the Decision of the Constitutional Court Number 74/PUU-XII/2014, p. 49.

³⁸ See Article 1 Number 1 Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

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and the best interests for children in legislation, including in the context of formal terms of marriage dispensation and other considerations such aspects as Health, psychosocial, psychological, mental and social.

2. Pandemic Covid-19 to Underage Marriage

Globally, the Coronavirus Disease (Covid-19) pandemic has had an impact on all life order including the health, economy, education, social and political sectors. Covid-19 in Indonesia touched 2,203,108 cases, an increase in the number of sufferers continuously, the impact of various government policies such as PSBB, and PPKM which stopped economic activities worsened the impact suffered by the state. The Central Statistics Agency recorded an economic recession with an average minus of 2.07 percent on the performance of the national economy in 2020. The increase in the number of poor people occurred as a result of economic contraction to 26.4 million people, equivalent to 9.8 percent of the national population.³⁹

Economic instability due to a pandemic resulted in an increase of 2,76 million poverty rates in Indonesia.⁴⁰ The collapse of family income tends to contribute to the absence of access to education due to financial limitations that end child marriage, according to research UNFPA Pandemi Covid-19 resulted in 13 million child marriages in one year throughout the world.⁴¹ According to LBH APIK, there is a case of compulsion for children in three regions, namely the city of Makassar, Gowa Regency, and Pangkep. According to LBH APIK, there is a case of compulsion for children in three regions, namely the city of Makassar, Gowa Regency, and Pangkep.⁴² This is believed to be a means to stop costs for children, the acceleration of marriage is considered a family economic strategy to ease the financial burden.

³⁹World Vision, "Covid-19 Aftershocks", downloaded from https://www.wvi.org/sites/default/files/2020-05/aftershocks%20final%20Version_0.pdf, [accessed on July 2, 2021].

⁴⁰ Feni Freycinetia Fitriani, "*Setahun Covid-19 di Indonesia: 2,76 Juta Orang Jadi Warga Miskin*", Downloaded from <https://ekonomi.bisnis.com/read/20210302/9/1362714/setahun-covid-19-di-indonesia-276-juta-orang-jadi-warga-miskin> [accessed on July 2, 2021].

⁴¹ United Nations Population Fund, "Child Marriage, Female Genital Mutilation Urgent Priorities As Pandemic Threatens Progress", Downloaded from <https://www.unfpa.org/news/child-marriage-female-genital-mutilation-urgent-priorities-pandemic-Threatens-Progress> [accessed on July 2 2021].

⁴² Kompas, "*Pernikahan Anak Saat Pandemi, Istri Usia 14 Tahun ALami KDRT hingga Orang Tua Ingin Putrinya Kembali Sekolah*", Downloaded from <https://regional.kompas.com/read/2020/08/27/06070061/pernikahan-anak-saat-pandemi-istri-usia-14-tahun-alami-kdrt-hingga-orang-tua?page=all> [accessed on July 2, 2021].

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Violations of children's rights with marriages occur due to a very large health risk. The study stated that the high risk of death related to pregnancy was the main cause of death of women aged 15-19 years (married and unmarried) throughout the world.⁴³ Furthermore, babies who will be born by underage mothers also have a health risk in the form of tending to be born prematurely, weighing too low, and malnutrition.⁴⁴ The percentage of infants with a slightly larger low body weight (14.95 percent) born of women who have been married at the age of children compared to children born of women who have never experienced child marriage (13.57 percent).⁴⁵

In addition to health implications, World Bank research proves that children's marriage also limits women's productivity in work, because the process of childbirth and childcare responsibility can affect the type of work that can be married, they tend to be forced to do low salaries to adjust other responsibilities.

The underage marriage event not only violates the human rights of children, but research also states that children's marriage will worsen the country's economy in the long run. The low education of children married underage will be a barrier to get formal work.⁴⁶ In certain aggregate points, this event will have an impact on the decline in the economy of the surrounding community and the decline in the national economy.⁴⁷ This will make it difficult for the recovery of the economy through the next generation after the Pandemic.

In addition to economic factors suffered by individuals and countries, children's marriage in the pandemic period is also closely related to education. Pandemic has forced the teaching and learning system not to run optimally and replaced it with a remote learning program (PJJ). It turns out that the learning activities at home resulted in the too-free association.⁴⁸

Marriage dispensation often occurs due to irregularity of adolescent behavior during a pandemic period. Escape Parents' supervision of children in

⁴³Envuladu E. A., et al., "Determinants and Effect of Girl Child Marriage: A Cross Sectional Study of School Girls in Plateau State, Nigeria", *International Journal of Medicine and Biomedical Research* 5, No, 3, (2016), p. 123.

⁴⁴Brenda Rogers, "Child Marriage in Ethiopia and Its Associated Human Rights Violations", *University of Washington Bothell Policy Journal*, (2012), p. 15.

⁴⁵Gaib Hakiki, et. al, *Pencegahan Perkawinan Anak..*, p. 30.

⁴⁶Grown C. G., et.al, *Taking Action: Achieving Gender Equality and Empowering Women*, New York: United Nations Development Programme, 2005, p. 10.

⁴⁷ World Bank, *Economic Impacts of Child Marriage: Work, Earnings And Household Welfare Brief*, World Bank, 2017, p. 5.

⁴⁸ Kasih, A. P., "Pakar Unpad: Angka Pernikahan Dini Melonjak Selama Pandemi", downloaded from <https://edukasi.kompas.com/read/2020/07/08/131828971/pakar-unpad-angka-pernikahan-dinimelonjak-selama-pandemi>, [accessed on February 16, 2021].

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daily activities and the absence of face-to-face learning activities often cause promiscuity that affects pregnancy. This force parents to submit a dispensation to children marriage. In the province of the Special Region of Yogyakarta, 80 percent of the request for marriage dispensation granted as reasons for pregnancy outside of marriage. The judge's consideration to granting the request was based on the worries of parents of fear and shame because his son was pregnant but was not married.⁴⁹

On the other hand, child marriages also occur due to the child's will. The case of child marriage was carried out by a siri method in West Nusa Tenggara due to the lack of face-to-face school which resulted in Mona (14-year-old child) asking to carry out marriage properly. Mona became a housewife and her husband worked informally with wages below the provincial minimum. However, the child's marriage led to domestic violence, Mona stated that her husband often hit and scratched, resulting in Mona back to her family.⁵⁰

The phenomenon of domestic violence in child marriage is caused by the psychological and emotional maturity of couples who are married underage, so they do not understand the solution to a good problem in the household. The impact that occurred as a result of this was an emotional expression by committing physical and verbal violence.

Conclusion

The current conception of marital law in Indonesia has followed the conception of the best interests for children as in Law Number 35 of 2014 Amendments to Law Number 23 of 2002 concerning Child Protection of 19 Years. But in practice, the application of a 19-year marital age limit to prevent a request for marriage dispensation still cannot be overcome. This is because the role of the judge as the spearhead to ratify marriage dispensation is still trapped in the paradigm of religious values simply without heeding other aspects such as health aspects, the best interests for children, psychosocial, mental, psychological, and social. The government's policy during the Covid-19 pandemic period which brought massive changes to the community's order had an impact on the collapse of the family's economy, this resulted in the mass of marriage of children in the pandemic period. In addition to economic factors suffered by individuals and countries, children's marriage in the pandemic

⁴⁹Elga Andina, "Meningkatnya Angka Perkawinan Anak Saat Pandemi Covid-19", *Info Singkat Kajian Singkat Terhadap Isu Aktual Dan Strategis* 13, No. 4, (2021), p. 15.

⁵⁰Callistasia Wijaya, "Covid-19: 'Ratusan Kasus Pernikahan Anak Terjadi Selama Pandemi', Orang Tua 'Menyesal Sekali' dan Berharap Anak Kembali Sekolah" downloaded from <https://www.bbc.com/indonesia/indonesia-53719619> [diakses pada 2 Juli 2021]. [accessed on July 2, 2021].

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period is also closely related to education. Pandemic has forced the teaching and learning system not to run optimally and replaced it with a remote learning program (PJJ). The reality, home learning activities resulted in too much free-time misuse, promiscuity, and causing unwanted pregnancies. The research findings for this convey violations of children's rights through children's marriage. The risk of decreasing individual economies, maternal and infant health, and household violence become unavoidable considering the psychological conditions of children who are immature in marriage.

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